Juvenile Dependency Mediation Curriculum

Mediation is increasingly being used nationally in juvenile dependency cases as an alternative dispute resolution process. California law states that "each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening." (Welfare and Institutions Code section 350 [a][1]).

Dependency mediation, as defined by rule 5.518 of the California Rules of Court, “is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child’s safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.”

Numerous counties in California offer dependency mediation at various stages of a juvenile dependency case. Pursuant to California Rule of Court 5.518, dependency mediators are required to complete at least 40 hours of initial dependency mediation training and 12 hours of annual continuing education on specified topics.

This curriculum has been developed specifically for training dependency mediators. The curriculum is organized according to units, with some units containing multiple chapters. The units are as follows:

A. Dependency Mediation Foundations (overview, definitions, confidentiality, impartiality, neutrality)
B. Dependency Mediation Context (child welfare system, juvenile dependency court, participant roles and involvement)
C. Children & Dependency Mediation
D. Conducting a Dependency Mediation Appointment (orienting participants, multi-party mediation, caucusing, co-mediation, concluding mediations)
E. Special Issues in Dependency Mediation (capacity, domestic violence, substance abuse, mental health, dual diagnosis, cultural issues)

The units consist of faculty training plans, power points, and multiple handouts and materials for participants. Due to the size of the document, hard copy versions are not available.

If you have questions about this document, or other questions related to dependency mediation training, program development or administrative issues, please contact the Administrative Office of the Courts’ Center for Families, Children & the Courts at cfcc@jud.ca.gov.

Acknowledgements

Special thanks are extended to the following Judicial Council staff members and consultants for their contributions to the production of this curriculum:

Jennifer Crawley (lead author)
Laura Collier, Jennifer Crawley, Elizabeth Dunn, Deana Farole,
Juan Palomares, Kristine Van Dorsten, Don Will

Juvenile Dependency Mediation Curriculum

Table of Contents

Tab

Curriculum Units

A. Dependency Mediation Foundations

A.1. Historical Overview & Definitions……..... **A1**

A.2. Confidentiality……..……... **A2**

A.3. Impartiality & Neutrality……..... **A3**

B. **Dependency Mediation Context**

B.1. Overview: Child Welfare System/Juvenile Dependency Court… **B1**

B.2. Participant Roles and Involvement…….....… **B2**

C. Children & Dependency Mediation ……...…….…… **C**

D. Conducting a Dependency Mediation Appointment

D.1. Orienting Participants to Dependency Mediation…… **D1**

D.2. Multi-Party Mediation & Collaborative Resolution Methods……. **D2**

D.3. Caucusing…….……...…….…...……. **D3**

D.4. Co-Mediation…….……..….……... **D4**

D.5. Concluding Mediations …….…….. **D5**

E. Special Issues in Dependency Mediation

E.1. Capacity to Mediate……...…….…..…..... **E1**

E.2. Domestic Violence and Its Impact on Mediation …… **E2**

E.3. Substance Abuse, Mental Health, & Dual Diagnosis..... **E3**

E.4. Cultural Issues …….…….…….. **E4**

Unit A:
Dependency Mediation Foundations

CONTENTS

Chapter 1: Historical Overview & Definitions

Chapter 2: Confidentiality

Chapter 3: Impartiality & Neutrality

Unit A, Chapter 1:
Historical Overview & Definitions

Presentation Methods: • Lecture Presentation • Group Discussion • Individual Exercise **Participant Materials:** • *Handout A* – "Historical Overview of Juvenile Dependency Mediation in California" • *Handout B* – "Juvenile Dependency Mediation in CA, 2013 (map)" • *Handout C* – "Mediation Definitions- General & Dependency" • *Exercise 1* – "Continuum of Dispute Resolution Approaches" • *Handout D* – "Continuum of Dispute Resolution Approaches" • *Handout E* – "Typical Issues Addressed in Dependency Mediation" • *Handout F* – "Comparing Collaborative Practices in Dependency Court" • *Handout G* – "Juvenile Dependency Mediation in California: An Overview (2012)" • *Reflection Tool* – "Self-Assessment & Training Reflection" **Suggested Pre-Session Reading:** • *Handout A* – "Historical Overview of Juvenile Dependency Mediation in California" • *Handout B* – "Juvenile Dependency Mediation in CA, 2013 (map)" • *Handout C* – "Mediation Definitions- General & Dependency" • *Handout E* – "Typical Issues Addressed in Dependency Mediation" • *Handout F* – "Comparing Collaborative Practices in Dependency Court" • *Handout G* – "Juvenile Dependency Mediation in California: An Overview (2012)"	***Estimated Duration:*** *1 ½ Hours*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives _____	***5 Minutes***
2. Historical Context of Dependency Mediation: California & Beyond *(Lecture & Large Group Discussion)* _____	***10 Minutes***
3. A General Definition of Mediation *(Large Group Discussion)*_____	***15 Minutes***
4. Locating Mediation on a Dispute Resolution Continuum *(Individual Exercise & Large Group Discussion)*_____	***15 Minutes***
5. Defining Juvenile Dependency Mediation *(Large Group Discussion)* _____	***15 Minutes***
6. Common Issues Addressed in Juvenile Dependency Mediation *(Large Group Discussion)*_____	***10 Minutes***
7. Differentiating Group Decision-Making Practices in Child Welfare *(Large Group Discussion)* _____	***15 Minutes***
8. Summary & Close _____	***5 Minutes***

1. Learning Objectives: After concluding *Unit A, Chapter 1: Historical Overview and Definitions*, participants will be able to: a. Outline the historical context of juvenile dependency mediation in California b. Demonstrate awareness of the broader development of child protection mediation (nationally and internationally) c. Provide a general definition of mediation and understand how it relates to other alternative dispute practices d. Provide a comprehensive definition of juvenile dependency mediation and understand the types of disputes it is often used address e. Distinguish juvenile dependency mediation from other forms of group decision making and alternative dispute resolution practices in child welfare cases	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Historical Context of Dependency Mediation: California & Beyond a. Review and discuss the below participant handouts and PowerPoint slides. Explore with participants what they found interesting or informative about the material and/or observations about the development of the field (within the state, nation and world). *(Slides 2–6)* • Handout: *"Historical Overview of Juvenile Dependency Mediation in California"* • Handout: *"Juvenile Dependency Mediation in California: An Overview (2012)"* b. Discuss additional topics about your local program. *(Slide 7)* • When did your court first offer juvenile dependency mediation? • When your court developed its dependency mediation program did it draw from any already existing court model? • Approximately how many child protection cases are mediated each month/year in your court?	***10 Minutes*** *Lecture & Group Discussion* ***Power Point Slides 2 – 7*** ***Materials:*** *Handout A – Historical Overview of Juvenile Dependency Mediation in California* ***Facilitator Notes:*** Colorado & Connecticut were other pioneers in the practice of Child Protection Mediation (CPM). Florida also became a leader by end of 1980s.

3. A General Definition of Mediation a. What is mediation? b. Which general definition of mediation did you find most useful on the "*Mediation Definitions*" participant handout? *(Slide 8)* • Judge Leonard Edwards writes: "Mediation is not an exotic, complicated process. Mediation is about talking and exchanging ideas in an environment where the discussion is guided by a facilitator." [1] c. How is mediation defined in your local protocols or rules of court? (*Slide 9)* d. What are some frequent elements in mediation definitions and common descriptions of the mediator's role? • mediation process is informal • mediation process is confidential • mediation process is non-adversarial • mediator is neutral/impartial • mediator facilitates communication • mediator does not offer his/her own opinion regarding likely court outcomes or the merits of the case • mediator assists parties in reaching a voluntary agreement • mediator has no authority to impose a solution • mediator helps parties to identify and explore issues • mediator helps parties to focus on underlying interests • mediator assists the parties in generating alternatives/options for resolution • mediator helps parties resolve misunderstandings and clarify perceptions • parties control the outcome and the mediator controls the process	***15 Minutes*** *Group Discussion* ***PowerPoint Slides 8 – 9*** ***Materials:*** *Handout C – Mediation Definitions* ***For More Information See References at end of Chapter.***

1 Edwards, Leonard P. (2009). "Achieving timely permanency in child protection courts: The importance of frontloading the court process." *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring 2007, pp. 1-37

4. Locating Mediation on a Dispute Resolution Continuum a. Individual exercise: On the **exercise sheet** titled *"Continuum of Dispute Resolution Approaches"* place the following dispute resolution practices in the empty diagram boxes: • Mediation-Arbitration • Negotiation • Judicial decision • Informal discussion and problem solving • Arbitration • Mediation b. After participants have completed the above exercise, reconvene the group and explore the following questions: • Where on the continuum did you place the various dispute resolution practices? What is the rationale for your choice? • How would you define each of the above practices? • In addition to benefits/challenges of each approach detailed in Handout, what other comments might you add to benefits/challenges?	***15 Minutes*** *Individual Exercise & Group Discussion* ***Materials:*** *Exercise 1 – Continuum of Dispute Resolution Approaches* *Handout D – Continuum of Dispute Resolution Approaches (Distribute after exercise)*

5. Defining Juvenile Dependency Mediation

15 Minutes

Group Discussion

PowerPoint Slides 10 – 13

Materials:

Handout C – Mediation Definitions

a. How would you explain your work as a juvenile dependency mediator to a friend or significant other?

b. Review and discuss the participant handout titled, "*Mediation Definitions*" and Slides 9, 10 *"California Rule of Court 5.518(b): Juvenile Dependency Mediation."* Solicit group observations and feedback- for example, which definition of juvenile dependency mediation did individuals find most helpful/instructive?

c. How would you define "safety and best interest" of the child? Per California Rule of Court 5.518(b)(2), what factors are considered in this determination? *(Slide 11)*

d. When you describe dependency mediation to others are there any frequent misunderstandings either about your role or the process? What did you perhaps misunderstand about dependency mediation prior to receiving additional information/training?

Facilitator Note:

Confidentiality significantly varies state to state, depending on adoption, adaptation of Uniform Mediation Act

Also, "safety and best interests" in CA compared to other states, for example FL. Also see AFCC Guidelines for JDM.

e. How is juvenile dependency mediation similar to and different from child custody mediation? Some possibilities below:

- Similarities: (*Slide 12)*
  - Best interest of child & safety of all family members
  - Similar role/responsibilities for mediator- e.g., managing the process
  - Many of the same mediator interventions
  - Frequent issues of substance abuse, mental health issues, domestic violence, family violence and concern for child protection issues
  - Generally, mediation agreements become court orders and are made part of court record, though records confidential in dependency cases
- Differences: (*Slide 13)*
  - Variety of specific issues in addition to custody/visitation, depending on the stage of the case.
  - Always a confidential process.
  - Never a mediator recommendation (dependency)
  - Multi-party mediation (dependency)
  - Dependency proceedings initiated by ***state action/intervention, whether parents want to be in court or not***

(Continued….)

5. Defining Juvenile Dependency Mediation (continued) • Differences: (Continued, *Slide 13)* o Dependency court time-line. If no reunification, possible termination of parental relationship. o Stages of the dependency court process (initial hearing through termination of parental rights (TPR) and post-adoption contact o Child has a statutory right to participate in some portion of the mediation appointment if he/she chooses (dependency) o Parents usually represented by attorneys o Parents who may be "in-custody" can participate & concurrent criminal charges not unusual in dependency cases o There is often pre-mediation contact w/ professionals & self-represented parties (case preparation) in dependency cases o Co-mediation is utilized more frequently in dependency o Continuing sessions may be more likely in dependency- often not necessary	***CONTINUED*** *Group Discussion*

6. Common Issues Addressed in Juvenile Dependency Mediation

10 Minutes

Large Group Discussion

PowerPoint Slides 14

Materials

Handout E – Typical Issues Addressed in Dependency Mediation

a. At which stages of the court process does your mediation program receive referrals? *(Slide 14)*

b. What types of cases are most likely to be mediated in your program?

c. Are there any types of child protection cases/issues that your mediation program does not mediate (i.e., exclusionary criteria)?

- While there is evidence that mediation at all stages of the court process and with all case types is effective and beneficial, sometimes programs opt to not mediate certain cases. For example, the most frequently excluded case types are sexual abuse cases, cases involving domestic violence allegations, and cases with pending criminal charges. What decisions has your court/program made about diverting certain cases from the dependency mediation process?

d. Review and discuss the handout titled *"Typical Issues Addressed in Dependency Mediation."* Solicit feedback from participants. For example, were there any topics/issues/stages of the court process that participants' programs had not considered mediating?

Misconception Alert:

Author and mediation trainer Bernie Mayer observes that many child protection mediation programs "tend to commit to the use of mediation at only one stage of the process and tend to express a clear preference for its use at that particular stage (e.g., during the treatment planning, placement review, or at the stage of permanency planning or termination of parental rights), but the evidence from program evaluations suggests that it can be useful at any stage." *

**** (Mayer, B., "Reflections on the state of consensus-based decision-making in child welfare." Family Court Review, Vol. 47, No. 1, January 2009, p. 14.)***

7. Differentiating Group Decision-Making Practices in Child Welfare

a. Have participants compare and contrast the following:

- Juvenile Dependency Mediation/Child Protection Mediation
- Team decision making (TDM)
- Family Group Conferencing (FGC) or Family Group Decision Making (FGDM)

b. If a parent previously attended a TDM meeting and is now participating in a dependency mediation appointment how would you differentiate the two processes for that parent?

c. What are some unique elements of each of the above approaches?

d. What ideas do you have about the optimal use (case type/scenario/etc.) for each of the above practices? Do they overlap? Are they distinct or complimentary?

e. In addition to the above group decision-making practices in child welfare, some courts utilize the below settlement procedures. Can you define these and compare them to the above practices?

- Preliminary Conferences
- Pre-Trial Settlement Conferences (Conducted by the Parties)
- Judicially-Supervised Settlement Conferences

15 Minutes

Large Group Discussion

Materials:

Handout F – Comparing Collaborative Practices in Dependency Court

For More Information See:

Mayer, 2009. "Reflections on the state of consensus-based decision making in child welfare"

Olson, 2009. "Family group conferencing and child protection mediation: Essential tools for prioritizing family engagement in child welfare cases"

Lubin, 2009. "Are we really looking out for the best interests of the child? Applying the New Zealand model of family group conferences to cases of child neglect in the United States"

8. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment, as appropriate c. Encourage participants to complete the "*Self-Assessment & Training Reflection*" tool for Unit A, Chapter 1 a. Encourage participants to provide feedback on the training d. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Materials:*** *Training Reflection* *Self-Assessment & Training Reflection*

REFERENCES

Edwards, Leonard P. (2009). "Child Protection Mediation: A 25-Year Perspective." *Family Court Review*, Vol. 47, No. 1, January 2009, p. 72.

Edwards, Leonard P. (2009). "Achieving timely permanency in child protection courts: The importance of frontloading the court process." *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring 2007, pp. 1-37.

Firestone, Greg. (2009). "Empowering Parents in Child Protection Mediation: Challenges and Opportunities." *Family Court Review*, Vol. 47, No. 1, January 2009, pp. 98-115.

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Moore, C. W. (1996). The Mediation Process: Practical Strategies for Resolving Conflict. 2nd Edition.

Mayer, Bernie. (2000). The Dynamics of Conflict Resolution: A Practitioner's Guide.

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Olson, K.B. (2009). "Family group conferencing and child protection mediation: Essential tools for prioritizing family engagement in child welfare cases." *Family Court Review*, Vol. 47, No 1, January 2009, pp. 53-68.

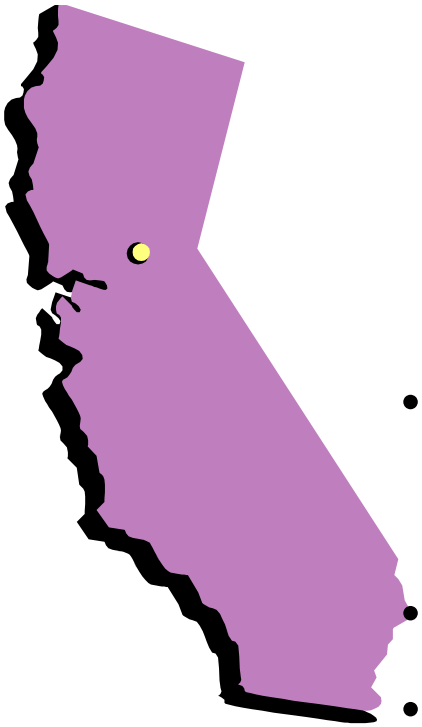
California Juvenile Dependency Mediation Curriculum

Unit A: Juvenile Dependency Mediation Foundations

Chapter 1:
Historical Overview & Definitions

California Administrative Office of the Courts

Historical Overview – California*



- Mid-1980s: California pilots first programs (L.A. & Orange Counties); 1992: Senate Bill 1420 passed encouraging creation of dependency mediation & authorizing several pilots (L.A., Santa Clara, Tulare, Sacramento & Contra Costa); 1996: Senate Bill 1675 passed encouraging all juvenile courts to develop mediation programs & Section 350 of the Welfare and Institutions Code amended
- 2004: Standards of practice for court connected dependency mediation adopted as California Rule of Court 1405.5 (renumbered to CRC 5.518 in 2007)
- 2008 – CA Blue Ribbon Comm. on Children/Foster Care
- 2009 – 2012: Dependency mediation offered in half of 58 counties.

Dependency Mediation by County California 2012*

Dependency Mediation Offered

- Alameda
- Contra Costa
- Fresno
- Humboldt
- Kern
- Kings
- Los Angeles
- Marin, 2009 - 2011
- Napa
- Nevada
- Orange
- Riverside
- Sacramento
- San Bernardino
- San Francisco
- San Luis Obispo
- San Mateo
- Santa Barbara
- Santa Clara
- Santa Cruz
- Siskiyou
- Sonoma
- Sutter
- Tulare
- Ventura*
- Yolo*
- * Data may not be current

Dependency Mediation Developing

- Butte
- Calaveras

Juvenile Dependency Mediation in California, 2013

No Dependency Mediation Program

Dependency Mediation Program

Map revised August 2013,
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Handout F
Unit A, Chapter 1: Historical Overview & Definitions

Historical Overview – United States

Dependency Mediation & Family Group Decision Making programs exist in some form in at least 42 states: (2007 data)*

Alabama	Alaska	Arizona	Arkansas	California
Colorado	Connecticut	Florida	Hawai'i	Illinois
Indiana	Iowa	Kansas	Kentucky	Louisiana
Maryland	Maryland	Massachusetts	Michigan	Minnesota
Missouri	Mississippi	Montana	Nebraska	Nevada
New Hampshire	New Jersey	New Mexico	New York	N. Carolina
Ohio	Oklahoma	Oregon	Rhode Island	Texas
Utah	Vermont	Virginia	Washington	Washing. D.C.
West Virginia	Wisconsin			

International Leaders In Child Protection Alternative Dispute Resolution

- New Zealand
- Canada
- England
- Australia
- United States

Your Court's Mediation Program

- INSERT information about when your court first offered juvenile dependency mediation
- INSERT information about which program(s), if any, your court drew from to develop its program
- INSERT information about the approximate number of dependency cases your program mediates each month/year

General Definition of Mediation

<u>Uniform Mediation Act- Section 4, 2003</u>

"'Mediation' means a process in which a **mediator facilitates communication and negotiation** between parties to assist them in reaching a **voluntary agreement** regarding their dispute."

"Mediation is not an exotic, complicated process. Mediation is about **talking** and **exchanging ideas** in an environment where the **discussion is guided by a facilitator**."

California Rule of Court 5.518(b) Juvenile Dependency Mediation

"Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection."

California Rule of Court 5.518(b) Juvenile Dependency Mediation

- Confidential process
- Conducted by specially trained, neutral third-party mediators
- No decision-making power
- Non-adversarial setting
- Mediator assists the parties in reaching a
  - Fully informed
  - Mutually acceptable resolution
  - That focuses on the child's safety and best interest and the safety of all family members
- Mediation is concerned w/ any & all issues related to child protection

CRC 5.518(b)(2) “Safety & Best Interest”

- "Safety and best interest of the child" refers to the child‘s Physical, psychological, and emotional well-being
- Includes consideration of all of the following:
  A. The preservation & strengthening of the family & family relationships whenever appropriate & possible
  B. The manner in which the child may be protected from the risk of future abuse or neglect
  C. The child's need for safety, stability, & permanency
  D. The ongoing need of the child to cope with the issues that caused his/her involvement in dependency system
  E. Child's need for continuity of care & the effect that removal & subsequent placements have had/may have on the child
  F. The child's education….

Similarities

Juvenile Dependency Mediation (JDM) & Child Custody Mediation (CCM)

- Best interest of child & safety of all family members
- Similar role/responsibilities for mediator- e.g., managing the process, facilitation, many of same mediator interventions
- Frequent issues of substance abuse, mental health issues, domestic violence and concern for child protection issues
- Generally, mediation agreements become court orders and are made part of court record, though records confidential in dependency cases

Differences
JDM & Child Custody Mediation

- Multi-party mediation (JDM)
- Strict court time-lines for reunification, permanency plan(JDM)
- Multiple stages of the court process; i.e., initial hearing through TPR and post-adoption contact (JDM)
- Never a mediator recommendation (JDM)
- Pre-mediation case prep./contact w/ parties common (JDM)
- Child has a statutory right to participate in some portion of the mediation appointment if he/she chooses (JDM)
- Parents generally represented by attorneys

Your Court's Mediation Program

- INSERT information about case types and/or stages of the court process mediated by your program

Historical Overview of Juvenile Dependency Mediation in California*

Mid-1980s

California pilots its first programs (L.A. & Orange Counties)

1992

Senate Bill 1420 (Russell) was passed authorizing several pilot counties to use dependency mediation (L.A., Sacramento, Santa Clara, Contra Costa & Tulare). This bill also encouraged CA's courts to create dependency mediation programs.

1996

Senate Bill 1675 (Russell) encouraged all juvenile courts to develop mediation programs. Section 350 of Welfare and Institutions Code was amended to read: "Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interest of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary."

2004

Standards of practice for court connected dependency mediation were adopted as California Rule of Court 1405.5 (renumbered in 2007 now CRC 5.518). CRC was largely based on the Juvenile Dependency Court Mediation Association's (JDCMA) "Uniform Standards of Practice."

2008

California's Blue Ribbon Commission on Children in Foster Care recommends that "mediation and other forms of alternative dispute resolution be available in all courts at any time in the proceedings."

2009

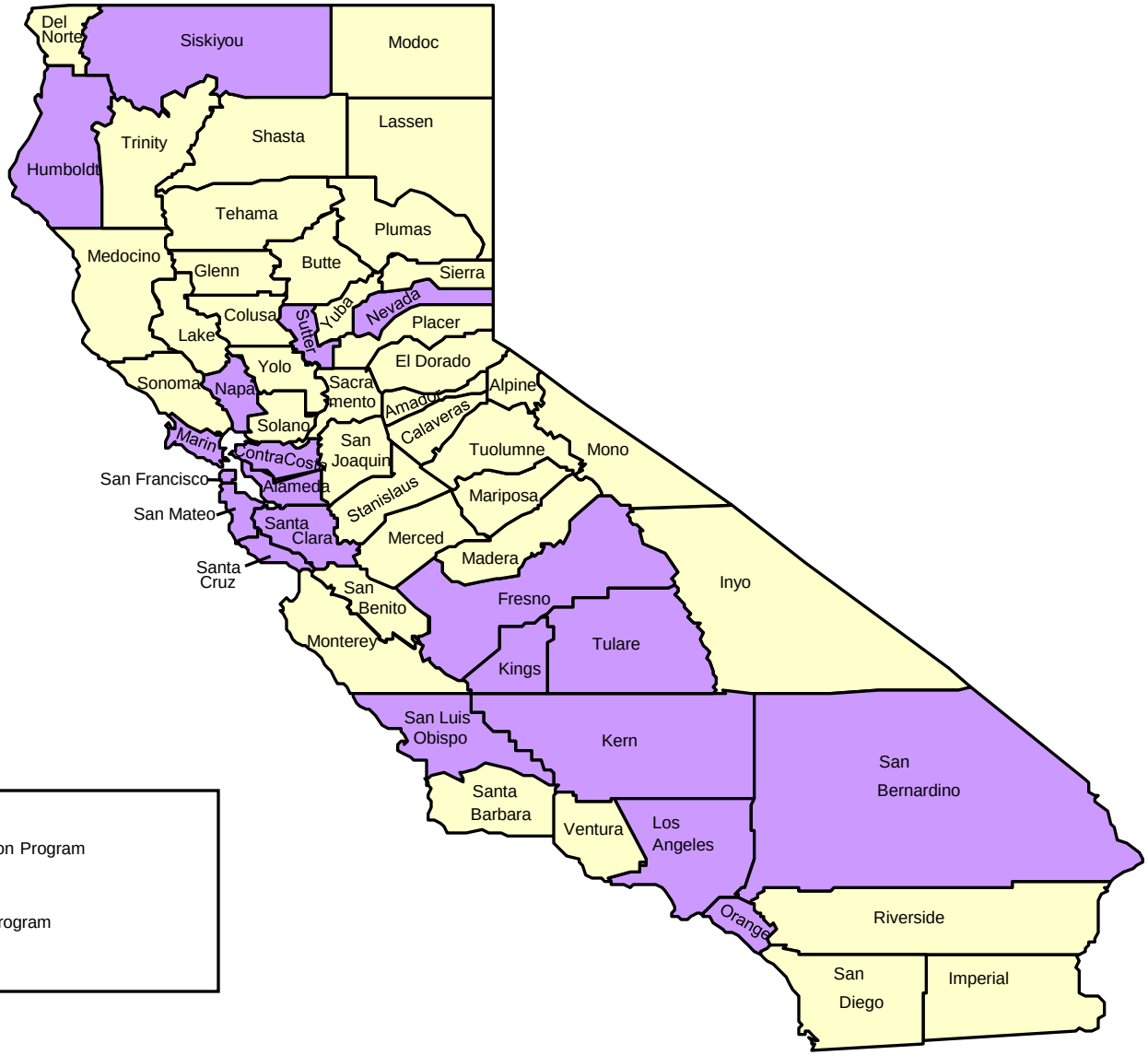
Dependency mediation is offered in 25 of California's 58 counties with 2 counties in program development.

2012

Dependency mediation offered in 23 counties

*See further details at: http://www.courts.ca.gov
Research Update, February, 2012, Juvenile Dependency Mediation in California: An Overview

Juvenile Dependency Mediation in California, 2013



No Dependency Mediation Program

Dependency Mediation Program

Map revised August 2013,
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Handout B
Unit A, Chapter 1: Historical Overview & Definitions

General and Dependency Mediation Definitions

General	
Uniform Mediation Act-Section 4[1]	"'Mediation' means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute."
California law	California Evidence Code, section 1115(a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
Dependency	
"Best Practices in Child Protection Courts"[2]	Mediation "is a process in which parties to a conflict meet with a neutral third party (the mediator) to develop an agreement that settles the matters at issue to the satisfaction of the parties. The mediator has no authority to impose a solution, but strives to reframe the issues to assist the parties in seeing their conflicts from different perspectives, emphasizing areas of common ground and guiding them toward recognizing new approaches to resolve their problems."
Assn of Family & Conciliation Courts[3]	"Child protection mediation (CPM) is a collaborative problem solving process involving an impartial and neutral person who facilitates constructive negotiation and communication among parents, lawyers, child protection professionals, and possibly others, in an effort to reach a consensus regarding how to resolve issues of concern when children are alleged to be abused, neglected or abandoned."
California	California Welfare & Institutions Code 350(2) "Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. California Rule of Court, Rule 5.518(b) (1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a non adversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.
NCJFCJ[4]	"…..Mediation in child protection cases has four basic interdependent stages: orientation, fact-finding and issue development, problem solving, and agreement/disagreement and closure."

[1] Uniform Mediation Act, See http://www.uniformlaws.org/ActSummary.aspx?title=Mediation%20Act
[2] Barbara Flicker, "Best Practices in Child Protection Court," (May 24, 2005), p. 6. (See www.abanet.org/child/rclji/bestpractices.doc).
[3] Association of Family & Conciliation Courts (AFCC); Guideline for Child Protection Mediation, 2012, §1.1
[4] National Council of Juvenile and Family Court Judges, "Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice" (p. 124).

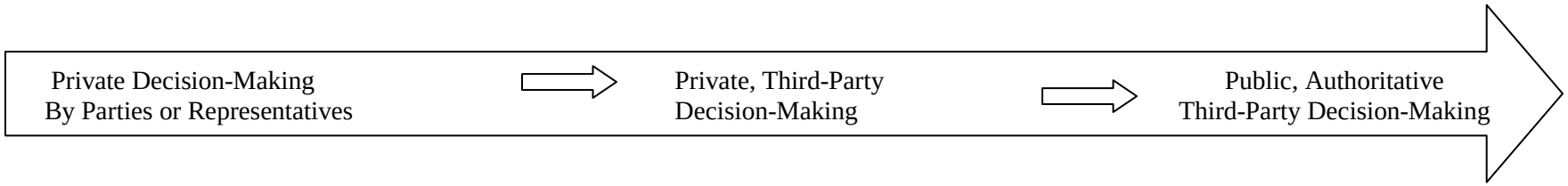
New York[5]	"Mediation … is a consensual dispute resolution process in which a neutral third party helps disputants to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome for all participants. Mediators do not offer their own opinions regarding likely court outcomes or the merits of the case. Instead, mediators offer the opportunity to expand the settlement discussion beyond the legal issues in dispute and focus on developing creative solutions that emphasize the parties' practical concerns."
Florida[6]	Rule 8.290(a)(2): "Dependency mediation" means mediation of dependency matters. Rule 8.290(a)(3): "'Mediation' means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives."

[5] NCJFCJ Permanency Planning for Children Department, "Introducing Child Permanency Mediation In New York State: Planning and Implementing A Multi-Site Pilot Project," (October 2005), p. 5.
[6] Florida Rules of Juvenile Procedure, Rule 8.290, Revised January 1, 2013

Exercise Sheet: Continuum of Dispute Resolution Approaches

Instructions: Locate the following dispute resolution practices in the boxes on the diagram below, according to descriptive phrases listed below

1) Mediation-Arbitration
2) Negotiation
3) Judicial Decision
4) Informal Discussion & Problem Solving
5) Arbitration
6) Mediation



- Informal
- Empowered parties
- Process highlights self-determination
- Collaborative & connecting practices

- Formal & unilateral
- Decreased personal control over the outcome
- Increased involvement of external decision-makers
- Risks estranged parties due to increased coercion

Handout D: Continuum of Dispute Resolution Approaches[1]

Disputes may be resolved between the parties, (or representatives) with or without assistance of a third party neutral.

Informal Discussion & Problem Solving	Negotiation	Mediation

Process remains more private (and may involve confidentiality), more informal, kinds of issues to be discussed may be more nuanced, and parties are provided opportunity to connect with the "other side" and collaboratively resolve issue to their own satisfaction, through their own efforts.

<<----------->>

Disputes are resolved, if parties cannot agree, by the decision of a third party authority not necessarily chosen by the parties in conflict.

Mediation-Arbitration	Arbitration	Judicial Decision

Process is more formal, standardized by rules, parties have less personal control over the outcome; process involves public legal forum where decision making is made as the result of advocacy &argument, proving the case, and "fact-finding" judgments are made by others, increasing probability of continued strains between the parties (a winner/ a loser).

[1] Adapted from *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd Edition, Christopher W. Moore (1996) p. 7 and a chart developed by Margaret Herman, Catherine McKinney & Reid McCallister of the Car Vinson Institute of Government & Jerry Gale, William Quinn & John Lawless of the College of Family and Consumer Sciences of the University of Georgia Office of Dispute Resolution

Definitions: Continuum of Dispute Resolution Approaches

Negotiation: "Other than informal conversations, the most common way to reach a mutually acceptable agreement is through *negotiation*. Negotiation is a bargaining relationship between parties who have perceived or actual conflict of interest. The participants voluntarily join in a temporary relationship designed to educate each other about their needs and interests, to exchange specific resources, or to resolve less tangible issues such as the form their relationship will take in the future or the procedure by which problems are to be solved."[2]

Mediation: "*Mediation* is an extension or elaboration of the negotiation process that involves the intervention of an acceptable third party who has limited or no decision-making power. This person assists the principal parties in voluntarily reaching a mutually acceptable settlement of the issues in dispute. As with negotiation, mediation leaves the decision-making power primarily in the hands of the people in conflict…. Mediation is usually initiated when the parties no longer believe that they can handle the conflict on their own and when the only means of resolution appears to involve impartial third-party assistance."[3]

Med-Arb: "Process by which a neutral functions first as a mediator, helping the parties to arrive at a mutually acceptable outcome. If mediation fails, the same neutral then serves as an arbitrator, issuing a final and binding decision."[4]

Arbitration: *Arbitration* is a generic term for a voluntary process in which people in conflict request the assistance of an impartial and neutral third party to make a decision for them regarding contested issues. The outcome of the decision may be either advisory or binding. Arbitration may be conducted by one person or a panel of third parties. The critical factor is that they are outside of the conflict relationship. Arbitration is a private process in that the proceedings, and often the outcome, are not open to public scrutiny. People often select arbitration because of its private nature, and also because it is more informal, less expensive, and faster than a judicial proceeding. In arbitration, the parties frequently are able to select their own arbiter or panel, which gives them more control over the decision than if the third party were appointed by an outside authority or agency."[5]

Judicial Decision: A judicial approach involves the intervention of an institutionalized and socially recognized authority in a dispute. This approach shifts the resolution process from the private domain to the public. In the judicial approach, the disputants usually hire lawyers to act as their advocates and the case is argued before an impartial and neutral third-party- a judge, and perhaps a jury as well. These decision makers take into consideration not only the disputants' concerns, interests, and arguments, but also the broader society's standards and values. The judge or jury is usually required to make a decision based on and in conformity with case law and legal statutes…. Because the third party is socially sanctioned to make a decision, the results of the process are binding and enforceable. The disputants lose control of the outcome but may gain from forceful advocacy of their point of view and by a decision that reflects socially sanctioned norms."[6]

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[2] Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd Edition, (1996) p. 8.
[3] *Ibid.*
[4] Stephen Goldberg, Frank Sander and Nancy Rogers, *Dispute Resolution: Negotiation, Mediation and Other Processes*, (1992), pp. 199-200 as cited in Forest Mosten, *The Complete Guide to Mediation: The Cutting-Edge Approach to Family Law Practice*, (1997), p. 420.
[5] Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd Edition, (1996) p. 9.
[6] *Ibid*

Typical Issues Addressed in Dependency Mediation

* This Handout is also included in *Unit B: Dependency Mediation Context, Chapter 2*, and will be reviewed there

Jurisdiction Hearing **(Some courts refer cases to JDM at Detention)**	• Whether or not the petition can be safely and appropriately dismissed, or dismissed with a voluntary case plan • Safety planning • Whether or not a parent intends to submit, admit or deny petition • The specific language/wording of the petition • The finding(s) sought against a parent; (e.g., parties may agree that Social Services will not seek a certain finding or that Social Services will request that a different finding be made) • Visitation for the child with parents, siblings, extended family • Early identification of potential placements, including relatives • Early delineation of roles and responsibilities • Early discussion/refinement of visitation • Facilitation of relationship building/mending between any combination of parties
Disposition Hearing	• What services the parent, social worker, and others believe are appropriate for the parents/family to complete • What expectations social services may have for the parent/family and what the parent/family can expect from social worker • Appropriate services for child (counseling, tutoring, medical/dental, extracurricular activities, etc.) • Placement of the child (in home, out of home, with relative care-giver, foster care, etc.) • Visitation for child with parents, siblings, extended family • Discussion of possible terms for dispositional order & long term goal for child (e.g., reunification) • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties • Safety planning
Review Hearing(s) **(Note: Discussion may be limited by specific issues referred by the court.)**	• Review both child's & parent's case plan & progress with services • Visitation for child with parents, siblings, extended family • Placement of the child (in home, out of home, with relative care-giver, foster care, etc.) • Should case plan be detailed, clarified, corrected, revised or updated? (e.g., services modified/increased/decreased?) • Is long term case goal for child still appropriate? • Is social services' assistance adequate? (reasonable efforts) • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties • Safety planning

Permanency Planning Hearing	• Discussion of permanency options- reunification, adoption, guardianship, independent living, APPLA • Exploration of foster parent's understanding and commitment to permanency goal • Discussion of placement in view of permanency goal • Discussion/identification of needs/services necessary for achievement of permanency goal • Discussion of "back-up plans"/concurrent plans in cases moving toward adoption/guardianship • Discussion of any issues that are barriers to permanency • Facilitation of relationship building/mending between any combination of parties
Custody Orders at Dismissal ("Exit Orders)	• What happens when the dependency case is closed • Resolution of custody issues- who will care for the child • What will the child's schedule of care be for: the school year, vacations, holidays, special events, etc. • How will the child spend time with different family members • Other issues to be addressed for child's safety & well being • Facilitation of relationship building/mending between any combination of parties
§326.26 (or Termination of Parental Rights Hearing/ "TPR")	• Whether or not a parent's parental rights should be terminated • Whether or not the parent chooses to relinquish the child voluntarily- a process to focus on child's needs • Facilitation of relationship building/mending between any combination of parties • Engage parents in planning for the future of their child
Post-Adoption Contact	• Whether or not post-adoption contact is appropriate and in the child's best interest • If post-adoption contact is appropriate, what form will the post-adoption contact take (e.g., photos, letters, information sharing, phone calls, supervised in-person visits, unsupervised contact) • Engage parents in planning for the future of their child • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties
Post-Guardianship Contact	• Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any parties • Visitation issues- exploration of how the child will spend time with different family members • Exploration of if/when/how the child may have safe and appropriate contact with his/her parent • Negotiate a disposition of the motion before the Court

Comparing Collaborative Practices in Child Welfare

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Variations or Alternative Names		Family Group Decision-Making	Child Protection Mediation (CPM); Child Welfare Mediation; Permanency Planning Mediation (PPM)
Organizer	Facilitator	Coordinator	Confidential Mediator
Typical Program Oversight	Child Welfare Agency	Child Welfare Agency	Juvenile Court
Introduced	TDM is part of Family to Family Initiative (F2F); F2F began in 1992	1994/1995- concept design and practice begun in New Zealand	Early 1980s- California, Colorado & Connecticut
Goal of Meeting	To make immediate decision regarding child's placement, with a high level of family involvement and consensus.	Family, broadly defined, creates the initial plan, taking the lead to identify needs and request services- many less traditional	"To structure an atmosphere of respect in which good faith confidential discussions ensure that everyone's concerns are heard and understood in order to reach a fully informed and mutually acceptable resolution." [1]

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Distinctive Element	Only for placement related decisions- including initial removal, placement preservation, and permanency planning "Held for every placement-related decision faced by every family served by the public child welfare agency"[1]	Comprehensive preparation Private family time Position the extended family network with leading the decision making process Change the dynamic of accountability and responsibility for the child toward the family.	Confidential process (see exceptions discussed in Unit.A.2) May address any issue related to child protection and encouraged at all stages of the court proceedings. Can focus upon and address a range of legal and interpersonal issues Mediator is a court-qualified and non-recommending Permits wide professional involvement to discuss issues between parents and professionals, as well as legal matters such as petition language, jurisdictional issues, concurrent planning goals, and exit orders.

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Decision Responsibility	Aim is to have a consensus building process w/ family which reverts back to social worker decision in the absence of consensus. Formerly these decisions were made individually by the social worker with his/her supervisor. "Agency maintains responsibility if consensus regarding placement issue cannot be achieved." [1] Department is legally responsible for the decision	"The family crafts the initial plan privately. The agency worker partner with the family in the decision phase of FGC to ensure the plan achieves safety, permanency and well-being." [1] If there are concerns among the professionals about the family's plan, they may send the family to meet privately again or they may work as a group to modify the plan. The professionals ultimately have veto power.[2] (p. 62) Approximately 5% -10% of the time the family's plan is not adopted by the social services agency. **If the family's plan is not adopted by the department then decision making reverts back to the "regular process" or perhaps mediation referral.**	The parties together have the decision-making responsibility. If the parties reach an agreement about the issues under discussion the parties' agreement is typically presented to the court to be approved, modified with the parties' consent, or not approved. If approved the mediation agreement becomes a court order. Across programs in the U.S., "81% of cases referred to mediation resolved all issues, 10% resolved some of the issues, and 9% resolved none of the issues." [3]
Length of Meeting	One to two hours	Three to five hours	Varies among programs and based on the needs of the parties. Typical duration of 2 ½ to 3 hours. Range between one to four hours. Additional appointments available if needed.

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Referral	Social worker "calls" TDM "Assigned social worker required to schedule when placement-related decision must be made." [1]	Department of social services "calls" FGC "In most communities, the assigned social worker, family or community member may refer a family to an FGC at any time." [1] FGC not a onetime event; Available any time a decision is being made	Referrals vary by program. "Referrals may be pursuant to court order, at the request of the parties, or their attorneys, the agency, or the Judge. Referrals may also be at the direct request of the parties, the social worker, CASA, family member or other interested parties. "[1]
Scheduling Requirement	"Mandatory- meeting held before any placement or re-placement occurs, or before any initial court hearing in cases of imminent risk removal." [1]	"Voluntary" [1]	California programs generally receive court–ordered referrals

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Preparation to Convene	Generally held 24 to 48 hours after removal or change in placement "Often limited preparation due to crisis nature of many placement decisions. Assigned social worker invites family and prepares them." [1]	One to three weeks to organize and convene. Preparation viewed as critically important to engage family in participating and leading the process. Preparation and locating other family members, takes longer than other models of group decision making Some programs commit funds to locate and transport relatives from outside the area.[4] Preparation to determine if FGC is appropriate, for example if parents have a supportive network of family & community members to convene. Also screens for D.V. and sexual abuse history, and multi-generational abuse.	Varies by program. Some programs receive referrals directly from court on the day of the hearing; Other programs take from one day to three weeks to schedule for a mediation appointment All JDM programs are required to screen for domestic violence. Some programs meet individually with parties immediately prior to the scheduled mediation. Other programs engage in extensive pre-mediation "case development" involving individual discussions with participants. [1]

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Team Members	"Facilitator is deemed a team member. All who attend have either family's permission or a right to participate as 'treatment team' members."[1] Most typically attorneys do not participate in TDM, not considered a "legal venue." If legal counsel does participate it is more likely to be the child's attorney than the parents' attorneys.	"During preparation, the Coordinator works with the family to achieve an inclusive FGC. FGCs average 9 family members." [1] Underlying belief that child belongs to the entire family system. Anyone with a connection to or relationship with the child or family should be included in the FGC, whether they are actual family or just treated as if they are family. Parent not able to disallow a fellow family member's participation unless there are safety issues.	Participants vary depending on the issues to be discussed and consent of the parties (or discretion of the Court). Often range between 6-12 participants. Mediator is not a participant, but a neutral, non-decision-making facilitator. May include any one of the following individuals: birth parents, dependent child, siblings, attorneys, social workers, family members, foster parents, CASA, counselors, treatment providers, Indian Tribe, de facto parents, Guardian Ad Litem (parents), prospective adoptive parents, D.V. support person, or other interested parties.
Facilitator & Role	"Immediately accessible, full time agency staff facilitator who, as team member, shares the responsibility for a quality decision. Same facilitator for family throughout their involvement in the system." [1] Facilitator is not impartial/neutral; He/she may help with decision-making and is a party with an interest in the outcome Facilitator is not a case-carrying social worker or line supervisor; generally facilitator exclusively dedicated to TDMs	Coordinator may work for the child welfare agency or community based organization, but should not be overseeing the case so that there is no appearance that the coordinator is dictating the plan. A trained Coordinator prepares participants, guides the process and does not have decision making authority, except to decide whether or not to proceed with FGC. Portions of the FGC are facilitated and portions are for private family time.	Varies by program. Mediators may be court employees, contract employees, or a community volunteer. All court connected mediators are neutral, non-decision-making facilitators. "All court-connected mediators must meet the extensive education, experience and training requirements prescribed for dependency mediators pursuant to California Rule of Court 5.518(e)." [1]

	Family to Family Team Decision Making (TDM)	Family Group Conferencing (FGC)	Juvenile Dependency Mediation (JDM)
Confidentiality	"Focus on privacy [vs. confidentiality] - family is told information may be used for case planning, or in court if necessary. Use of forms discouraged." [1] Information is collected and recorded from session, i.e., not confidential	"In some communities, participants may be asked to sign a confidentiality form. In others, the use of confidentiality forms is discouraged because it counters the purpose of widening the circle." [1]	"The mediation as well as pre-case development contact with the participants is confidential. Both WIC §350 as well as the CA Evidence Code §1115-1128 provide statutorily protected confidentiality for the mediation process. Many programs may have participants sign an agreement acknowledging the confidentiality of the mediation and limited exceptions to confidentiality." [1]
After Meeting Responsibility	Assigned social worker primarily responsible to implement decision from meeting; other participants play supporting roles. "Outcome data collected and used for self-evaluation and planning." [1]	Participants may carry out and monitor resultant plan, in partnership with assigned social worker who maintains all case responsibilities. "FGC Coordinator only facilitates FGC, but may plan follow-up FGCs, as necessary." [1]	"Participants are accountable to implement the provisions of their individual and shared responsibilities outlined in their mediation agreement." [1] If problems surface, mediation can be utilized to reconvene participants.
Usage	TDM now in 17 states, 80 individual sites In California there are 25 active Family to Family counties	"Variations of FGC are being implemented in over 35 states and 22 countries." [1] FGC is not mandated by law but can be a process adopted by a child welfare agency [3]	California as of 2009- JDM offered in 26 counties; being developed in 2 counties. "Mediation services are encouraged and recommended for all California Dependency Courts pursuant to CA WIC §350 and the Blue Ribbon Commission on Children in Foster Care. Its usage is expanding worldwide in the Juvenile Justice System, as well." [1]

For More Information:

- Annie E. Casey Foundation. Listed under "Major Initiatives." www.aecf.org
- National Center on Family Group Decision Making at http://www.americanhumane.org
- Association of Family & Conciliation Courts: "Guidelines for Child Protection Mediation" at www.afccnet.org

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Information in this paper on the various practice models and their components for family meetings were compiled directly from the following material:

[1] Merkel-Holguin, Lisa (2005) "Key Characteristics of Family Meetings." Handout distributed at the Beyond the Bench XIX Conference, San Diego, California on December 12, 2008.

[2] Olson, K.B. (2009). "Family group conferencing and child protection mediation: Essential tools for prioritizing family engagement in child welfare cases." *Family Court Review*, Vol. 47, No 1, January 2009, pp. 53-68. See also FGDM guidelines published at http://www.americanhumane.org/assets/pdfs/children/fgdm/guidelines.pdf

[3] Edwards, L., Child Protection Mediation: A 25-Year Perspective. Family Court Review, Vol. 47, No. 1, January 2009, p. 77

[4] Edwards, L. & Sagatun-Edwards, I. (2007). "The transition to group decision making in child protection cases: Obtaining better results for children and families." *Juvenile and Family Court Journal*, Vol. 5, No. 1, Winter 2007, pp. 1-16.

Research Update

ADMINISTRATIVE OFFICE OF THE COURTS
CENTER FOR FAMILIES, CHILDREN & THE COURTS

February 2012

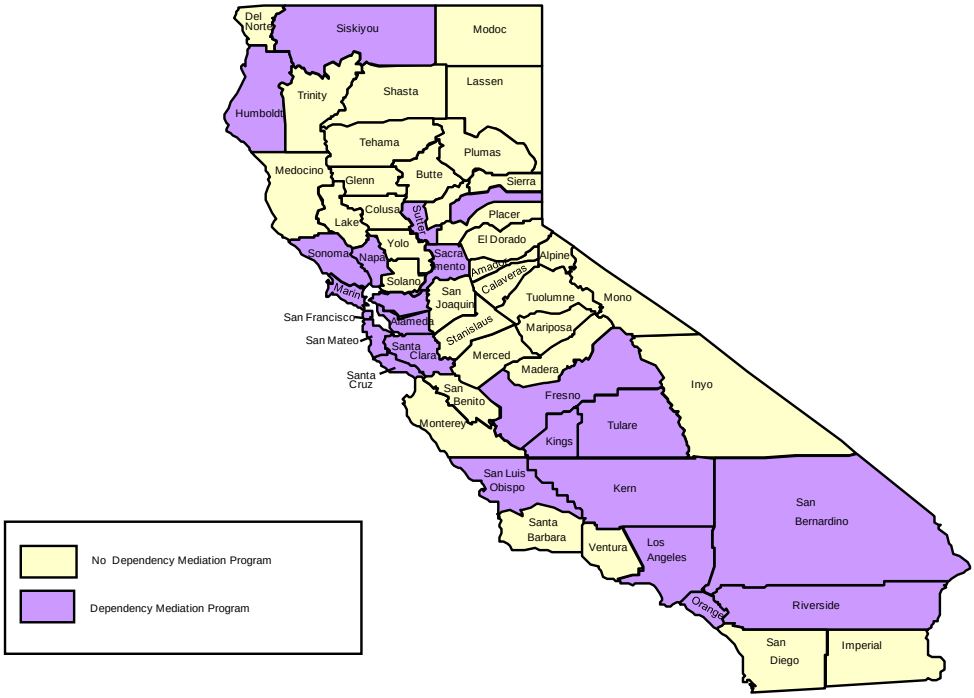
Juvenile Dependency Mediation in California: An Overview

This research update provides a detailed summary of the results obtained from the 2011 Juvenile Dependency Mediation (JDM) Survey. The JDM Survey was designed, in part, as a follow-up to a dependency mediation survey that was conducted in 2002 by the Administrative Office of the Courts.[1] The purposes of the current survey were to gather updated information about these programs and to compare findings to the earlier survey. The main survey was conducted in March 2011, and a shorter follow-up survey was completed in November 2011.

Dependency Mediation in California

California is one of the national leaders in juvenile dependency mediation.[2] The first court-based dependency mediation program in the United States was started in Los Angeles in May 1983. Most of the other juvenile dependency mediation programs in California started in the 1990s. New legislation contributed to the development of these programs. Dependency mediation programs are currently available in 23 counties across the state (see Figure 1).

Figure 1: ***California Counties That Offer Dependency Mediation Services***



[1] Center for Families, Children & Cts., Admin. Off. of Cts., "Court-Based Juvenile Dependency Mediation in California," *Research Update* (Mar. 2003), *www.courts.ca.gov/documents/JDM.pdf.*

[2] John Lande, *Mediation: Child Protection Mediation* (Arlington, VA.: Nat. Ctr. for State Courts, July 2000).

Dependency mediation, as defined by rule 5.518 of the California Rules of Court, is "a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members."[3]

Dependency mediation may involve multiple participants beyond the parties and their attorneys, such as the children, social workers, selected family members, foster parents, court appointed special advocate (CASA) representatives, support persons, and other individuals with pertinent involvement in the case. The mediator facilitates a discussion among the participants, giving them an opportunity to share with and listen to others regarding the issue(s) for which they were referred to mediation. The issues may involve decisions such as visitation, placement, exit orders, and other dispositional or jurisdictional matters. If the parties are able to reach an agreement on any issues, these issues are presented to the court. The mediator makes no recommendations to the court if the parties are unable to reach an agreement.

Methodology

In March 2011, a request to participate in the survey was sent to program administrators in all 23 counties that provide dependency mediation across the state. Responses were collected online through the survey website SurveyMonkey. Areas of inquiry included program staffing, caseloads, program funding, mediation referral processes, mediation activities, orientation processes for parents and children, procedures for identifying and handling cases with domestic violence (DV) issues, children's participation in mediation, and methods for gathering mediation outcome data. Responses were received from 20 programs, resulting in an 87 percent response rate.

The shorter follow-up survey was completed in November 2011 using the same procedures as described for the initial survey. The goal of the second survey was to gather updated information on program staffing and funding changes in order to assess the impact of recent budget cuts to the California courts. A total of 19 responses were received—an 83 percent response rate.

Results

Unless otherwise described, the following results are based on the initial survey conducted in March 2011. Where applicable, results from the updated November 2011 survey are included.

Program Background and Structure

- At the time of the survey, all programs had been in place for five years or longer, with the majority (n=14) in place for 10 years or longer.
- Most dependency mediation programs are operated in family court by a family court services (FCS) program (see Table 1). Two programs are independent of family court services but under the same agency umbrella. Two programs are under the juvenile dependency court, and one is part of the alternative dispute resolution (ADR) unit.
- In 15 out of 20 programs, juvenile dependency mediators also mediate family law cases.

[3] Cal. Rules of Court, rule 5.518(b)(1).

- Three-quarters of programs reported using, as a standard practice, one mediator per case (see Table 2). Compared to the earlier dependency mediation survey, slightly fewer programs are using co-mediation as a typical practice (see Figure 2).

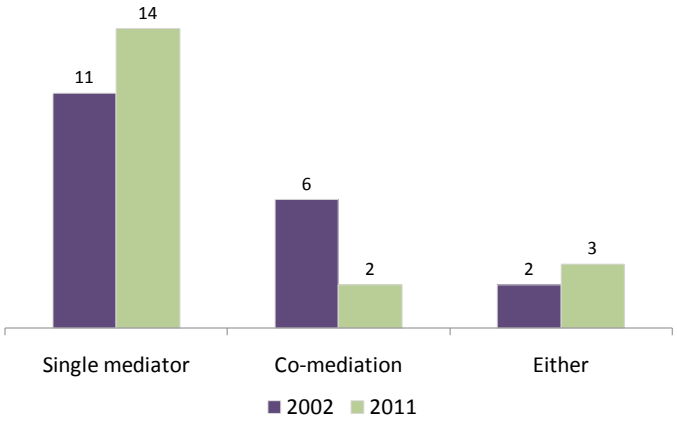
Table 1: *Program Structure*

	N
In family court services	13
Independent of FCS, but under same agency	2
In juvenile dependency court	2
Part of ADR unit	1
Other (nonprofit or Dept. of Health and Human Svcs. agency)	2
Total	*20*

Table 2: *Number of Mediators per Mediation Session (Usual Practice)*

	N
Single mediator	14
Co-mediation	2
Either	3
Missing	1
Total	*20*

Figure 2: *Number of Mediators per Session, 2002 vs. 2011*



Program Staffing

- Programs most frequently use court-employed mediators to provide dependency mediation services. A few programs employ contract mediators, and two use volunteers (see Table 3).
- Mediators and program supervisors are generally dedicated part-time to dependency mediation services.
- The number of staff (part- or full-time) dedicated to dependency mediation services ranges from 1 to 12. The average number of staff (part- or full-time) for dependency mediation programs is 4. (See Table 4.)
- Results of the more recent survey (November 2011) indicate that approximately one-fourth of counties have experienced decreases in staffing levels since the time of the initial data collection (March 2011) (see Table 5).

Table 3: *Program Staffing*

	N (programs)
Court-employed mediators	16
Contract mediators	4
Volunteer mediators	2

Note: Two programs use a combination of court-employed and contract or volunteer mediators.

Table 4: *Number of Staff*

	Average Number of Staff Per Program	Range
Full-time mediators	<1	0 to 5
Part-time mediators	3	0 to 12
Supervisors/managers	1	0 to 2
*Total program staff**	*4*	*1 to 12*

*Total program staff includes the total number of full-time and part-time mediators and supervisors/managers.
Note: Average number of full-time mediators is less than one because most programs (13 of 20) reported having no full-time mediators.

Table 5: *Staffing Changes in Past Six Months*

	N
Increased	0
Decreased	5
No change	11
Other	3
Total	*19*

Note: Table is based on the results of the follow-up survey conducted in November 2011.

Program Funding

- With the exception of a few programs that are provided or funded by outside sources (e.g., the county child protective services (CPS) or the health and human services (HHS) agency), dependency mediation services are funded through the local court's budget. No programs are funded through grants or court fees (see Table 6).
- Respondents were asked to describe whether budget changes had affected their program's services. At the time of the initial survey, several programs indicated that budget changes had led to reductions in filings and fewer mediations, reductions in the space available for conducting mediation services, hiring freezes, and staff reductions. A few respondents stated that their programs experienced no budget changes but that the impact of future budget cuts was concerning.

- More recent responses to questions about funding and staffing revealed that about one-third of dependency mediation programs have seen budget changes in the past six months (see Table 7).
- According to survey respondents, the impacts of recent budget reductions include staff reduction and hiring freezes, draining of resources from other areas, a decreased ability to provide services, and increases in staff workload. These impacts were also felt by some programs that had not experienced recent budget cuts but had had prior reductions in funding or ongoing staff shortages.

Table 6: *Source of Funding*

	N
Part of court budget	17
Grant funds	0
Court fees	0
Other	4

Notes: Total responses exceed the number of responding programs because respondents could select more than one source of funding. "Other" sources include funding and services provided by social services agencies (CPS, HSS) and the use of volunteer mediators.

Table 7: *Budget Changes in Past 6 Months (Follow-up Survey)*

	N
Yes	6
No	13
Total	*19*

Note: Table is based on the results of the follow-up survey conducted in November 2011.

Program Volume and Capacity

- The average length of mediation sessions was approximately two hours, with a range of 75 to 225 minutes.
- Eleven programs indicated that they conduct between 1 and 5 mediation sessions per month. Seven programs responded that they conduct between 25 and 65 sessions per month.
- The typical number of sessions per case is 1. Only two programs typically provide more than 1 session per case.
- All respondents indicated that the number of sessions allowed per case had no limit.
- Findings from the original survey revealed that programs were providing either fewer or the same number of sessions per month, compared to the numbers from the previous 12 months (see Table 8).
- Results of the more recent survey show that programs continue to have either no change in session levels (58 percent) or a decrease (26 percent) in the number of monthly mediation sessions (see

Table 9). When asked to describe the reasons for any changes in the number of mediation sessions, the most common responses were changes in bench officers, changes in the number of referrals for mediation, and staffing reductions in the mediation program.

Table 8: ***Changes in Number of Sessions in Past 12 Months (Initial Survey)***

	N
Increased	3
Decreased	7
Stayed the same	9
Missing	1
Total	*20*

Note: Table is based on the results of the initial survey conducted in March 2011.

Table 9: ***Changes in Number of Sessions in Past 6 Months (Follow-up Survey)***

	N
Increased	3
Decreased	5
Stayed same	11
Total	*19*

Note: Table is based on the results of the follow-up survey conducted in November 2011.

Mediation Referral Process

- The procedural stages at which cases are referred to dependency mediation vary considerably across programs. Some programs refer at a variety of case stages while others tend to refer at one or two time points.
- The stages at which cases are referred to dependency mediation most frequently are the time of dismissal/exit orders, disposition hearings, and jurisdiction hearings. Some programs also commonly refer cases at the time of review hearings (see Table 10).
- The referral stages at which cases are least likely to be referred include time of prefiling/pre-petition, postadoption contact agreement, and detention (see Table 10).
- The most frequent referral methods are requests by parties with a court order or referrals on the court's own motion (see Table 11).
- In nearly all dependency mediation programs, attorneys, judicial officers, parents, and social workers are allowed to request dependency mediation services. In many programs tribal representatives, CASA representatives, and children are also allowed to request mediation. (See Table 12.) Although the data shows that only two courts reported non parties requesting mediation, the number of non parties joining attorneys in requests is unknown.

- The majority of respondents (70 percent) indicated that the court is willing to order mediation over the objection of the parties.

Table 10: ***Frequency of Referrals to Mediation at Different Stages***

	Never/ Rarely	Sometimes	Often	Missing
Prefiling/Pre-petition	14	3	1	2
Detention	10	3	5	2
Jurisdiction	4	7	7	2
Disposition	4	4	9	3
6-month review	4	9	4	3
12-month review	4	9	4	3
18-month review	7	5	4	4
366.26 hearing	9	6	1	4
Post permanency review hearing	8	7	2	3
Dismissal/exit orders	2	4	11	3
Post adoption contact agreement	11	5	0	4

Table 11: ***Frequency of Referral Methods***

	Never/ Rarely	Sometimes	Often	Missing
At request of parties or attorneys with court order	2	7	8	3
At request of parties or attorneys without court order	8	4	4	4
On court's own motion	1	6	5	8
At request of non parties	12	2	0	6
By court order automatically at certain stages	8	2	7	3

Note: An error on the initial survey excluded "On court's own motion" as an option. Attempts to collect this information later resulted in fewer responses and therefore a higher number of missing responses.

Table 12: *Individuals Allowed to Request Mediation*

	N
Attorney	19
Judicial officer	18
Parent	17
Social worker	17
Tribal representative	13
CASA representative	12
Child	12
Caregiver	9
Other	1

Note: Total responses exceed the number of responding programs because respondents could select more than one category.

Mediation Orientation

- Mediation orientation for parents most often occurs on the same day as the mediation session (see Table 13).
- The most common orientation method is in-person orientation by the mediator. Some mediation programs use other methods, such as written materials, videos, and orientation by phone (see Table 14). Nine programs reported using multiple methods of mediation orientation.

Table 13: *When Parent Orientation Takes Place*

	N
Prior to day of mediation	5
Day of mediation, before session	7
Day of mediation, time of session	7
Missing	1
Total	*20*

Table 14: *Parent Orientation Methods*

	N
In-person, by mediator	17
With written materials	7
By phone	3
By video	2
Other	4

Notes: Other methods include PowerPoint, packet from court, Internet, and party's attorney. Total responses exceed the number of responding programs because respondents could select more than one method.

Domestic Violence

Rule 5.518 of the California Rules of Court requires courts to ensure that JDM programs use an intake process to screen for restraining orders, domestic violence, or safety-related issues affecting the child or any other party.[4] In addition, the rule requires programs to develop a protocol for providing mediation in domestic violence cases, including a review of case-related information before the mediation, a differential domestic violence assessment to determine the nature of the violence, and a mediation structure designed to meet the need for safety and non coerced participation in the process.[5] The rule does not set out specific screening methods or procedures to be included in the protocols, so the survey included a series of question to assess the ways in which the courts are implementing the domestic violence–related sections of the rule.

- According to the survey responses, domestic violence screening methods involving collateral sources (review of documents and court records, consultation with court or attorneys) are more frequently used than methods directly involving the parents (in-person interviews with parents, parent questionnaires) (see Table 15).
- Half of respondents indicated that parties are always or usually screened separately for domestic violence issues (see Table 16).
- Respondents reported using a variety of options to ensure participant safety (see Table 17).

Table 15: *Methods Used to Screen for DV/Safety Issues*

	Never	Sometimes	Usually/ Always
In-person interviews with parents at time of orientation	6	3	8
In person interviews with parents before orientation	8	7	2
Parent questionnaires	8	2	4
Consultation with court or attorneys	3	4	11
Review of documents and court records	1	0	17
Review of CLETS (Cal. Law Enforcement Telecom. System)	11	4	3
Phone screening with parents	10	3	2

Note: Total responses exceed the number of responding programs because respondents could select more than one method.

[4] Cal. Rules of Court, rule 5.518(c)(1)(F).
[5] Cal. Rules of Court, rule 5.518(d)(4).

Table 16: ***How Often Parties Are Screened Separately***

	N
Always	4
Usually	6
Sometimes	6
Never	1
Missing	3
Total	*20*

Table 17: ***Methods to Ensure Safety When DV Is an Issue***

	N
Separate sessions at same time/ shuttle mediation	14
Security escort to car	13
Staggered arrival/departure times	13
Presence of security personnel	12
DV advocates	11
Separate waiting rooms	10
Teleconferencing	8
Separate sessions at separate times	7
Other	2

Note: Total responses exceed the number of responding programs because respondents could select more than one method.

Participants in Mediation

- Parents, social workers, children, and attorneys for parents and children are always or nearly always allowed to participate in mediation (see Table 18).
- The majority of programs also allow the participation of caregivers/foster parents, county attorneys, CASA representatives, extended family members, tribal representatives, and other support persons for the child or parent (see Table 18).
- Usual participants include parents, social workers, and attorneys. A few programs indicated that caregivers/foster parents, support persons, or extended family members usually participate. No programs listed children as usual participants (see Table 18).
- The usual participants of dependency mediation have changed since the original survey was done in 2002 (see Table 19). A comparison of survey results shows a notable reduction in the participation of social workers, children's attorneys, CASA representatives, caregivers/foster parents, extended family, children's support persons, and the children themselves. There have also been moderate reductions in the participation of parent attorneys, extended family, parent support persons, and county attorneys.

Table 18: *Mediation Participants*

	Allowed to Participate	Usually Participate
Parent	17	17
Social worker	17	12
Child	16	0
Child's attorney	16	11
Parent's attorney	16	10
Caregiver/foster parent	15	2
CASA	14	4
Attorney for county	14	9
Extended family member	13	1
Tribal representative	13	2
Parent support person	12	2
Child support person	11	0
Parent's significant other	11	1

Notes: Three respondents left this question blank; therefore, the total number of possible responses is 17. Total responses across all participant types exceed the number of responding programs because respondents could select more than one category.

Table 19: *Usual Mediation Participants, 2002 vs. 2011*

	2002 (N=19)	2011 (N=17)
Parent	100% (19)	100% (17)
Social worker	95% (18)	71% (12)
Child's attorney	74% (14)	65% (11)
Parent's attorney	63% (12)	59% (10)
Attorney for county	58% (11)	53% (9)
CASA	47% (9)	24% (4)
Caregiver/foster parent	32% (6)	12% (2)
Child	26% (5)	0% (0)
Extended family member	16% (3)	6% (1)
Parent significant other	16% (3)	6% (1)
Parent support person	11% (2)	12% (2)
Child support person	5% (1)	0% (0)
Tribal representative	N/A	12% (2)

Notes: Three respondents left this question blank in 2011; therefore, the total number of possible responses is 17. Total responses across all participant types exceed the number of responding programs because respondents could select more than one category.

Children's Participation

- When children do participate, most programs always provide some form of orientation to mediation (see Table 20), typically during an in-person meeting with the mediator (see Table 21).
- Fourteen programs indicated that children can directly participate in mediation by attending and participating in mediation sessions (see Table 22).
- Other methods used to involve children in the process include having others relay the child's point of view, holding separate child-mediator interviews, and having the child write a letter (see Table 23).
- Seven out of fifteen programs have a minimum age for children to be eligible to participate directly in the mediation session. The required minimum age varied between 4 and 14 years.
- In addition to the child's age, other important considerations for the child's participation include the child's request to participate; the child's emotional stability and maturity; agreement by the court, mediator, or

child's attorney; the nature of the abuse or neglect; the nature of the disputed issue; and the level of conflict between the child and the child's parents (see Table 24).

Table 20: *How Often Participating Children Receive Orientation*

	N
Always	12
Usually	2
Sometimes	1
Never	2
Missing	3
Total	*20*

Table 21: *How the Mediation Process Is Explained to Children*

	N
In-person meeting with mediator	15
Written materials	3
Phone	2
Video	0
Other	2

Notes: Five respondents skipped this item; therefore, the total number of possible responses is 15. Total responses across all methods exceed the number of responding programs because respondents could select more than one method.

Table 22: *How Children Directly Participate in Mediation*

	N
Attend and participate in session	14
Participate in session by phone	1
Children do not directly participate	4

Notes: Five respondents skipped this item; therefore, the total number of possible responses is 15. Total responses across all methods exceed the number of responding programs because respondents could select more than one method.

Table 23: ***Other Methods of Including Children in Mediation***

	N
Others relay child's point of view	16
Child has separate interview with mediator	9
Child writes letter	6

Note: Total responses exceed the number of responding programs because respondents could select more than one method.

Table 24: ***Factors Important in Considering Child's Participation***

	N
Child's request to participate	14
Child's emotional stability	14
Agreement by court/mediator/child's attorney	13
Child's maturity/ability to understand proceedings	13
Nature of abuse/neglect	12
Nature of disputed issue	11
Level of conflict between child and parents	11
Stage of proceeding	5
Agreement by child's parents/caregivers	5

Notes: N represents the number of respondents who listed the factor as "very important." Total responses exceed the number of responding programs because respondents could select more than one factor.

Indian Child Welfare Act (ICWA)

- Ten out of seventeen respondents indicated that their program has a policy for handling ICWA cases.
- Based on survey responses, dependency mediation programs encountered ICWA cases only "sometimes" or "rarely" (see Table 25).
- Of the thirteen programs that encountered at least some ICWA cases, nine indicated that they have a policy for handling these cases.

Table 25: ***Frequency With Which ICWA Cases Are Encountered***

	N
Often	0
Sometimes	8
Rarely	6
Never	4
Missing	2
Total	*19*

Mediation Program Outcomes/Data Collection

- Eleven programs collect and track case level data. Four respondents also indicated that their program has a mechanism for case follow-up and review.
- Seven programs assess client satisfaction with mediation services using either post session satisfaction surveys or comment forms in the reception area. A few respondents stated that their programs obtain satisfaction information through complaint forms and feedback from judges and attorneys.
- Approximately half of the mediation programs collect data on client outcomes. Types of outcomes measured include agreement rates, client satisfaction, types of agreements, number of mediations scheduled versus held, whether agreements were sustained, and whether cases went to trial.
- Respondents were asked to describe how they think mediation success should be measured. Common response themes included higher agreement rates, party satisfaction with process, fewer contested hearings, a productive mediation process, benefits to the children, and faster resolution of cases (shorter time to permanent placement or reunification).
- Respondents were asked to describe the biggest challenges facing dependency mediation services. Several common themes emerged, including the lack of support or understanding of dependency mediation by judges, attorneys, or others; limited budget and staff resources; and insufficient time to provide mediation services.

Post Mediation Activities

- In the majority of programs, the juvenile dependency mediator reports the terms of mediation agreement to the court (see Table 26).
- The terms of the mediation agreement are most often provided to the court through written or computer-generated reports (n=18). A few respondents (n=4) indicated that the mediation agreement was reported verbally to the court.
- According to most respondents, mediation cases "sometimes" come back for mediation at later stages in the case (see Table 27).

Table 26: *Individuals Who Usually Report Terms of Agreement to Court*

	N
Juvenile dependency mediator	12
Attorney for parent	2
Attorney for child	1
Social worker	1
Other	7

Notes: "Other" includes county counsel, parties, and agency attorney. Total responses exceed the number of responding programs because respondents could select more than one category.

Table 27: ***How Often Cases Come Back for Additional Mediation***

	N
Often	2
Sometimes	14
Never	3
Missing	1
Total	*20*

Judicial Council of California
Administrative Office of the Courts

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Chief Justice of California
and Chair of the Judicial Council

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CFCC generates and distributes research-based information that has promise for informing the work of the courts in California and nationwide. To learn more about its work and to see more *Research Updates*, visit *www.courts.ca.gov/cfcc-publications.htm.*

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The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.

Training Self-Assessment

A.1. Historical Overview & Definitions

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My awareness of the historical context of juvenile dependency mediation in California	☐	☐	☐	☐
My awareness of the broader development of child protection mediation (nationally and internationally)	☐	☐	☐	☐
My ability to define mediation generally and my understanding of how mediation relates to other alternative dispute resolution practices	☐	☐	☐	☐
My ability to define juvenile dependency mediation and my understanding of the types of disputes it is often used to address	☐	☐	☐	☐
My ability to distinguish juvenile dependency mediation from other forms of group decision making in child welfare cases	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit A:
Dependency Mediation Foundations

CONTENTS

A.1. Historical Overview & Definitions

A.2. Confidentiality

A.3. Impartiality & Neutrality

Unit A, Chapter 2:
Confidentiality

Presentation Methods: • Lecture Presentation • Group Discussion • Facilitator Role Play **Participant Materials:** • *Handout A* – "CRC & Confidentiality" • *Handout B* – "Exceptions to Confidentiality Table" • *Handout C* – "Sample Agreement to Mediate Form" • *Handout D* – "Sample Mediation Outcome Form" • *Handout E* – "Legal Codes- Confidentiality & Mediation" • *Reflection Tool* – "Self-Assessment & Training Reflection" **Suggested Pre-Session Reading:** • *Handout A* – "CRC & Confidentiality" • *Handout B* – "Exceptions to Confidentiality Table"	***Estimated Duration:*** *2 ½ Hours*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives	***5 Minutes***
2. Definition, Purpose & Codes About Mediation Confidentiality *(Lecture Presentation & Discussion)*	***20 Minutes***
3. Exceptions to Confidentiality & Rationale for Exceptions *(Lecture Presentation & Discussion)*	***30 Minutes***
4. Confidentiality of Juvenile Court Proceedings *(Lecture Presentation & Discussion)*	***10 Minutes***
5. Child Abuse and Neglect Reporting Requirements and Dependency Mediation *(Lecture Presentation & Discussion)*	***15 Minutes***
6. Are Mediators Exempt from Mandatory Child Abuse and Neglect Reporting Requirements? *(Lecture Presentation & Discussion)*	***10 Minutes***
7. Mediator Confidentiality Requirements - Mediation Practice *(Lecture Presentation & Discussion)*	***10 Minutes***
8. Practice Tips to Help Participants Maintain Confidentiality *(Lecture Presentation & Discussion)*	***15 Minutes***
9. Confidentiality & Separate Discussions (& Caucusing) *(Lecture Presentation & Discussion)*	***5 Minutes***
10. Explaining Mediation Confidentiality & Responding to Questions *(Facilitator Role-Play)*	***15 Minutes***
11. Agreements to Disclose Specific Mediation Communications *(Lecture Presentation & Discussion)*	***10 Minutes***
12. Summary & Close	***5 Minutes***

1. Learning Objectives: After concluding *Unit A, Chapter 2: Confidentiality*, participants will be able to: a. Define mediation confidentiality, generally, and be aware of key legal statutes that address confidentiality and the limits of confidentiality in dependency mediation b. Recognize the value & purpose of confidentiality in mediation c. Identify typical exceptions to confidentiality and understand the rationale for these limitations d. Recognize confidentiality requirements regarding juvenile court proceedings and court related records e. Understand mandatory reporting requirements under the Child Abuse and Neglect Reporting Act. *(Review Only- Intended to Supplement Training)* f. Demonstrate awareness of California Welfare and Institutions Code Section 350(a)(2) which exempts dependency mediators from ***mandatory*** child abuse and neglect reporting requirements during a child protection mediation g. Describe and explain to mediation participants the program's confidentiality policy and the exceptions to confidentiality h. Understand participants' ability to agree (as a group) to the disclosure of a specific mediation communication and recognize the possible benefits and pitfalls of this practice	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Definition, Purpose & Codes About Mediation Confidentiality

a. What is confidentiality? (*Slide 2, 3)*

- Mediation communications (verbal, written, audio, et al.) are **privileged** and cannot be used (offered as evidence) in the court case related to the mediation or in any other due process **civil** hearing; (*Privilege* is the right to withhold testimony)
- Neither the mediator nor any mediation participants may disclose **to the court** or to anyone else a communication that is part of a mediation process
- Confidentiality applies from referral through conclusion of mediation outcome return to court.

b. What is the purpose or value of the confidentiality of mediation communications? (*Slide 3)*

- Increases the likelihood of resolution by encouraging a full sharing of information without fear that ideas/remarks will later be used against participants
- Encourages creativity in option generation
- Promotes candor and frank discussions that are more likely to really address participants' concerns
- Promotes participant self-determination- mediator can focus on facilitation rather than needing to think about mediator's recommendation to court or mediator's statement in the event mediator subpoenaed to testify about what was said in mediation (important distinction from family law mediation in recommending counties in California)

c. Is there any information about the dependency mediation appointment that may be disclosed to the court? Hint: Think of administrative issues. (*Slide 7)*

- Whether the mediation occurred or has terminated
- Whether an additional mediation appointment has been scheduled
- Whether an agreement was reached
- Who attended the mediation appointment
- Non-identifying information (or statistical data) for the purpose of program evaluation and/or research (ok outside of court setting, too)

20 Minutes
Lecture &
Group Discussion

PowerPoint Slides 2 – 8

Materials:

Handout C– Sample Mediation Agreement Form

For More Information See:

AOC, 2004. "Juvenile Dependency Mediation Data Collection Project Report"
(For guidance on dependency mediation data collection)

National Conference of Commissioners on Uniform State Laws, 2003.
Uniform Mediation Act.
(The UMA has not been enacted in California, but Section 17.2(a) and approaches confidentiality more conservatively. Some guidance on disclosure of administrative data. Be sure to confirm with your local court practices.)

CRC 5.518generally

(Continued….)

2. Definition, Purpose & Codes About Mediation Confidentiality (continued) d. What legal statutes address the confidentiality of mediation generally and what do they say? *(Slide 5-7)* • Trainees must be familiar with California Evidence Code Sections 1115-1128 (See Handout "Legal Codes- Confidentiality & Mediation") • Discuss each code section's emphasis and the distinctions between the code sections • Encourage trainees to memorize or be very familiar with the these code sections and their essence e. What legal statutes address specifically address the confidentiality of juvenile dependency mediation and what do they say? (*Slides 7-8)* • California Rule of Court 5.518(c)(2)(D) Each dependency mediator must: Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties; • California Rule of Court 5.518(j)(3) Mediators must: Protect the confidentiality of all parties, including the child. Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.	***CONTINUED*** *Lecture &* *Group Discussion* ***PowerPoint Slides 5-8*** ***Materials:*** *Handout E – Legal Codes- Confidentiality & Mediation* *Handout A – CRC & Confidentiality*

3. Exceptions to Confidentiality and Rationale for Exceptions

a. What are typical exceptions to confidentiality in dependency mediation? (*Slides 9-10)*

- Information that would support new allegations of child abuse or neglect
- Information about known/suspected elder and dependent adult abuse
- A mediation participant's threat to harm him/herself
- A mediation participant's threat to harm someone else
- Any written settlement/mediation agreement signed by all parties
- Non-identifying information about a mediation may be made available for program evaluation and research
- Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by introduction or use in mediation;
  - For example, reports, evaluations, test results, etc. (already a part of the court record or otherwise available/discoverable) do not suddenly become confidential because referred to during mediation

a. There are a handful of other rare circumstances in which confidential information from mediation may be vulnerable to compelled disclosure. Can you name some the unusual situations in which a court would determine whether a mediation communication was, in fact, privileged? (CA Evidence Code §703.5) (*Slide 11).* ***Local court program – importance of detailed policy and procedure guide.***

- A statement that could give rise to civil or criminal contempt

  Example: During the course of mediation, counsel for one of the parties says that the judge is a corrupt jerk bought off by CPS. Another mediation participant reports these statements were made about the judge and civil contempt proceedings later arise. Mediator is subsequently subpoenaed. Mediator asserts privilege and court determines whether or not mediator must testify as to whether or not alleged statements were made

- A statement or conduct that could constitute a crime

  Example: Mediation participant suddenly gets out of her chair and kicks another participant's ankle. Aggrieved participant files charges and mediator subsequently subpoenaed. Mediator asserts privilege and court determines whether or not mediator must testify as to whether or not alleged conduct occurred

30 Minutes

Lecture Presentation & Discussion

PowerPoint Slides 9-13

Materials:

Handout B – Exceptions to Confidentiality Table

For More Information See:

Leslie, Richard, S., 2008. "The Dangerous Patient and Confidentiality Revisited: The Real 'Tarasoff Duty,' the Old and New Immunity Statutes"

(For information about dangerous clients)

Facilitator Notes:

some of this section may be better suited for an advanced training, or a specific-focus training, as can get very dense, and better addressed by program supervisor/local court protocol

(Continued….)

3. Exceptions to Confidentiality & Rationale for Exceptions (continued) • A statement or conduct that could be the subject of investigation by the State Bar or Commission on Judicial Performance Example: A parent makes a formal complaint to the state bar about his attorney's conduct during the mediation (e.g., my lawyer was drunk during mediation); State bar proceedings follow; Mediator possibly called during state bar proceedings to testify as to whether the attorney did, in fact, appear to be drunk; Mediator asserts privilege and only testifies if compelled; *(Clearly mediator would terminate or not commence mediation in the above scenario)* c. What is the rationale for the above limitations on confidentiality? • Balancing the benefit of protecting mediation communications with compelling social policies that serve the public interest in providing for the safety and protection of others. d. What do your court's dependency mediation protocols and/or local court rules say about confidentiality and exceptions to confidentiality? *(Slide 13)* e. How much should the mediator disclose when there is the option or requirement to breach mediation confidentiality? (*Slide 12)* o Only what is necessary to fulfill the mandatory or optional reporting process; Keep the remainder of the mediation communications confidential o While the Uniform Mediation Act (UMA) has not been enacted in California, UMA Section 6(d) provides some guidance: If a mediation communication is not privileged (e.g., new allegation of child abuse or neglect), the mediator (or other mandated reporter) may only disclose the limited information necessary to make the required child abuse report to the proper authorities. Other mediation communications remain privileged and must not be disclosed.	***CONTINUED*** *Lecture Presentation & Discussion* ***PowerPoint Slides 13-14***

4. Confidentiality of Juvenile Court Proceedings

10 Minutes

Lecture Presentation & Discussion

PowerPoint Slide 14

a. In addition to the statutorily protected confidentiality of juvenile dependency mediation, child protection mediators must be aware that juvenile court proceedings themselves are confidential. In order to protect the privacy rights of the child, there is a strong public policy of protecting the confidentiality of juvenile court proceedings and records. (See Welfare and Institutions Code §300.2) *(Slide 14)*

- Restricted access to juvenile court hearings- only individuals involved/approved may attend
  - California Welfare and Institutions Code (WIC) §346: "Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court."
  - California Rule of Court (CRC) §5.530(a) and WIC §345: "All juvenile court proceedings must be heard at a special or separate session of the court, and no other matter may be heard at that session. No person on trail, awaiting trial, or accused of crime, other than a parent, de facto parent, guardian or relative of the child, may be present at the hearing, except while testifying as a witness."
- Restricted access to juvenile court records
  - CRC §5.552.C and WIC §827 address the confidentiality of juvenile case files and the strict guidelines about who can have access to the juvenile case file

b. What does the confidentiality of juvenile court proceedings mean for a child protection mediator?

- As court personnel, mediators have access to dependency and related court files
- Mediators may not release any information from/about the case to others unless compelled by court order or as required by law
- Mediators should not share information with anyone other than mediation staff (e.g., supervisors/colleagues for consultation)
- Mediation staff members (including clerical staff) are also required to keep dependency case information confidential
- Court files and mediation files should be kept confidentiality at all times.

Alert:

When mediating juvenile dependency cases, special care must be taken to not discuss case information outside of the mediation office. Even "innocent disclosures" may identify cases- as it is not unusual for more egregious incidents of child abuse and neglect to be reported by the media. It is important to remember that while the public may attend other family law proceedings (such as divorce and child custody matters) juvenile court proceedings are NOT open to the public.

5. Child Abuse & Neglect Reporting Requirements and Dependency Mediation ***(Overview only. Purpose - Be aware of how CANRA may impact mediation process.)***

a. The Child Abuse and Neglect Reporting Act (CANRA) requires certain professionals (generally individuals who have a great deal of contact with children) to report known or suspected instances of child abuse or neglect.

b. Some "regular" as well as "occasional" dependency mediation participants (i.e., not just parties) are mandated reporters of child abuse and neglect. Can you identify some of these professionals? *(Slide 15)*

(Partial list below. See Penal Code §11165.7 for complete list of mandated reporters.)

- Social workers, social work supervisors, etc.
- CASAs (Court Appointed Special Advocates)
- Mental health professionals (such as psychologists, psychiatrists, marriage and family therapists)
- Foster parents
- Group home personnel residential care personnel
- Teachers and school personnel
- Child care providers
- Child visitation monitors (i.e., supervised visitation providers)
- Probation and parole officers

c. CANRA's Basic Reporting Provisions

- A mandated reporter *must make a report* whenever, in his/her professional capacity or within the scope of his/her employment, he/she has knowledge of, or observes, a child (person under 18) whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.
- "Reasonable suspicion" occurs when it is objectively reasonable for a person to suspect child abuse and neglect (based upon facts that could cause a reasonable person in a like position, drawing on his or her training and experience - when appropriate).

15 Minutes

Lecture Presentation & Discussion

PowerPoint Slides 15-17

For More Information See:

California Penal Code § 11164-11174.4
The Child Abuse and Neglect Reporting Act

California Department of Social Services Office of Child Abuse Prevention
"The California Child Abuse & Neglect Reporting Law: Issues and Answers for Mandated Reporters"

(Continued….)

5. Child Abuse and Neglect Reporting Requirements & Dependency Mediation (continued)

d. If you are a mandated reporter, you must report the following types of abuse and neglect: *(Slide 16)*

- Sexual abuse
  - Sexual assault
  - Sexual exploitation
- Neglect
  - Severe neglect
  - General neglect
- Physical abuse
  - Willful harming or injuring of a child or the endangering of the person or health of a child
  - Unlawful corporal punishment
  - Non-accidental physical injury
- Emotional maltreatment
- Abuse in out-of-home care

e. If, during the course and scope of your employment (as someone in one of above categories) you know, observe, or have a reasonable suspicion that child abuse or neglect has occurred; you must make two reports. *(Slide 17)*

1. Verbal Report: **Immediately** (or as soon as practicably possible) contact the local police, sheriff's department, or county welfare agency
   - Your county's child welfare agency's phone number:_____
2. Written Report: **Within 36 hours** of receiving the information regarding the incident of abuse/neglect complete and send written report (*Suspected Child Abuse Report*- Form SS 8572) to designated agency
   - The form and its instructions are available online at:
     http://caag.state.ca.us/childabuse/pdf/ss_8572.pdf
     http://caag.state.ca.us/childabuse/pdf/8572_instruct.pdf

- Retain a copy of the written report for the confidential mediation file

CONTINUED

Lecture Presentation & Discussion

PowerPoint Slides 16-17

Facilitator Notes:

This section may be more detailed than needed. Alert trainees to mark this for more future reference

For More Information See:

Child Welfare Information Gateway (2007). "Recognizing Child Abuse and Neglect: Signs and Symptoms"

For general information & links see: www.childwelfare.gov/can

6. Are Dependency Mediators Exempt from Mandatory Child Abuse and Neglect Reporting Requirements? ***(Overview only. Purpose: be aware of issues and what program/court protocols state.)***

a. Are child protection mediators exempt from mandatory child abuse and neglect reporting requirements while conducting juvenile dependency mediation? *(Slides 18-21)*

- Maybe- it depends on your profession's ethical requirements and local protocol
- On the one hand:

  California Welfare and Institutions Code §350(a)(2) indicates that : "Notwithstanding any other provision of law, **no person, except the mediator, who is required to report suspected child abuse** pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code), **shall be exempted from those requirements** under Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code because he or she agreed to participate in a dependency mediation program established in the juvenile court."
- On the other hand:
  - Dependency mediation program protocols, local court rules and mediation confidentiality agreements to mediate forms (signed by all mediation participants) all specify that new instances of known or suspected child abuse and neglect will not be confidential and that the mediator (whether or not a mandated reporter) and other participants (such as the social worker and CASA) will report this information to appropriate authorities
  - While a mediator is wearing a "mediation hat" (vs. a "health practitioner hat") while conducting a dependency mediation, it is wise for a mediator to make sure program has an explicit policy explaining your mediator role, and whether, though not "required" by statute, professional ethics may require reporting. Program should be conversant to professional requirements and ethics.
  - An argument can be made that the court hired/contracted with a licensed or pre-licensed mental health professional because the court valued the individual's education, training and experience. As the license/pre-license is relevant to the mediation work, it would seem that the health practitioner-mediator must comply with the legal requirements for individuals of his/her license background.
- Critical that the dependency mediation program/court provide explicit guidance regarding any conflict perceived by mediator and his/her professional ethics.

10 Minutes

Lecture Presentation & Discussion

PowerPoint Slides 18-21

Misconception Alert:

While there are likely to be other "mandated reporters" attending the dependency mediation appointment, it is critical to know- and inform others prior to substantive discussions- whether or not the **mediator** will **also** be a reporting party. This is essential as the mediator may be meeting with mediation participants individually or in small groups without other mandated reporters present. Program protocols vary so be sure to know what your local protocol requires.

7. Mediator Confidentiality Requirements – Mediation Practice a. What are the implications of confidentiality on the creation, storage and disposal of mediation records? • Consider using child's first name and initial of last name and case number for mediation agreements and mediation files o Benefit: If a mediation agreement is later misplaced by a mediation participant, the child's privacy is more protected than if the child's last name had been used o Refer to local court protocol • Discuss with your supervisor and program staff what records you will keep in the mediation file o Some programs keep signed confidentiality agreement/agreement to mediate, signed mediation agreements, completed intake/domestic violence screening forms and little else o Many programs destroy mediator's notes or impressions at conclusion of mediation, unless notes document the necessity and steps taken for an optional or mandatory disclosure of mediation information (e.g., child abuse reporting or participant danger to others) o Rationale for this is that if mediation file is subpoenaed, documents do not unduly compromise confidentiality • See CRC 5.518(c)(1)(H) b. California Rule of Court 5.518(j) (4) instructs mediators to "Maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations." What does this mean for the mediator? Example: The child tells her therapist that she is not ready to return to her mother's care. She feels safe and cared for with her paternal aunt and uncle and wants to remain in their care until she is certain that her mother has stopped drinking and using drugs. As the child loves her mother and does not want to hurt her feelings, the child does not want her preferences revealed. The child's therapist has disclosed the above information to the social worker, child's attorney and mediator is made aware prior to mediation. Mediator must use discretion and good judgment to avoid compromising the child's relationship with therapist and thus the child's psychological treatment.	***10 Minutes*** *Lecture Presentation & Discussion*

8. Practice Tips to Help Participants Maintain Confidentiality
 	
a. Prior to any substantive discussions, the mediator will provide all mediation participants with both a verbal and written explanation of mediation confidentiality and exceptions to confidentiality. Ideally, the mediator will also have participants acknowledge and agree to these terms by signing an agreement to mediate. What further steps can the mediator take to maximize the likelihood of mediation participants maintaining confidentiality? *(Slide 22)*
 	
Some practice tips below:
 	
• Consider incorporating a "no note-taking" or "shred notes upon departure" policy for dependency mediation
  o Be sure to mention this practice at the outset of the mediation appointment and perhaps have a paper shredder at exit
  o Rationale: Notes taken during mediation will not end up in files where others (esp. social services agency personnel or CASA staff members) may not be aware of confidentiality requirements
  o Instead, if session resulted in a signed agreement, have each party leave with a signed copy of the mediation agreement (best practice)
  o Or have all mediation participants agree in writing that a specific mediation communication may be disclosed (see California Evidence Code §1122)
• Ongoing stakeholder outreach
  o Consider discussing with social service agency (and other agencies like CASA or probation) how to internally document mediation participation
  o Rationale: Social service agencies have internal databases and case files in which social workers document case updates/client contact, etc. It is important to have a discussion with social service agency personnel about how social workers can appropriately document mediation participation
	15 Minutes
	
	Lecture Presentation & Discussion
	
	PowerPoint Slide 22
	
	(Continued…)

8. Practice Tips to Help Participants Maintain Confidentiality o Alternatives: Mediator or social service agency staff can provide an in-service or similar outreach in which social workers (and/or others) are instructed to include in internal notes only administrative information about the mediation; for example, the mediation date, outcome (agreement/no agreement), participants present, if a return mediation appointment has been scheduled, and terms of signed mediation agreement. It is important for agency staff to remember that statements made during mediation should not be recorded. o Consider reminders (at the conclusion of the mediation appointment and during outreach) that disclosures made in mediation may not be revealed in future reports/testimony to court (esp. relevant for social workers and CASA volunteers who have reporting functions) b. Frequently Asked Questions: • May a social worker (or CASA volunteer) consult w/ his/her supervisor or other agency staff person not present at mediation? o Discuss the possible need for consultation in advance of the mediation appointment o Consider having individual with decision making authority attend mediation (instead of or in addition to supervisee- depending on local practice and case needs) o Alternatively have the supervisor (additional agency staff person) sign confidentiality statement in advance of mediation and be available for consultation; All mediation participants informed • Can parents and other family member mediation participants talk to other family members, friends, support people (not participating in mediation) about what is discussed in mediation? • Can the child talk about his/her case and mediation experience? • If a mediation participant has a complaint about the mediation process how can he/she have this addressed without breaching confidentiality?	***CONTINUED*** *Lecture Presentation & Discussion*

9. Confidentiality and Separate Discussions a. What do your court's mediation protocols or local court rules say about how the mediator will handle information obtained in pre-mediation case-preparation discussions and/or in caucus. Specifically, (barring permissive and mandatory reporting requirements), will the mediator keep this information confidential from other mediation participants or may the mediator (at his/her discretion) disclose this information to the other mediation participants? b. Most often programs choose to have conversations held between the mediator and participants in caucus remain confidential. c. Whatever your local practice, be sure to inform mediation participants about your protocol prior to substantive mediation discussions.	***5 Minutes*** *Lecture Presentation & Discussion* ***Facilitator Notes:*** *Refer participants to Curriculum Unit D.3. "Caucusing" to understand the advantages and disadvantages of different approaches to the confidentiality or non-confidentiality of information received during pre-mediation preparation and in caucus*

10. Explaining Mediation Confidentiality & Exceptions and Responding to Questions a. If group size allows, find several attendees willing to role-play mediation participants. (Alternatively, have other mediation staff members not in training role-play mediation participants.) Encourage role-players to ask questions in role during the role-play demonstration. Facilitator demonstrates how to explain (to mediation participants) confidentiality and exceptions to confidentiality, as well as how to respond to questions related to confidentiality *(Slide 23)* b. Processing the Role Play • Facilitator shares: o What aspects of the orientation did you feel positively about? o What aspects of the orientation might you adjust in the future? • Ask each role-player: o What was it like to be in your role? o What was helpful about the explanation of confidentiality and the limits of confidentiality? o In your role as ____, was there anything about the explanation of confidentiality and exceptions that you would need clarified? • Invite observers to share comments and observations about the role-play process: o What was helpful? Interesting? o Any alternative ideas about how to approach explanations of confidentiality and exceptions?	***15 Minutes*** *Facilitator Role-Play* ***PowerPoint Slide 23*** ***Facilitator Notes:*** *If group size allows, find several individuals willing to role-play mediation participants* *At the conclusion of the role play thank the volunteers for their valuable contribution to the training!* ***Remind participants that Unit D.1****.* *"Orienting Participants to Dependency Mediation" contains both a demonstration of a mediation orientation (including an explanation of confidentiality) and role-play practice for participants*

11. Agreements to Disclose Specific Mediation Communications	***10 Minutes***
a. Can mediation participants agree that certain information from mediation not remain confidential? *(Slide 24)* • Yes. According to California Evidence Code §1122, a communication or writing made in mediation may be disclosed if: o The mediator and all mediation participants (not just parties) expressly agree in writing (or orally in accordance with California Evidence Code §1118) to the disclosure of the communication, document or writing o IMPORTANT: To prevent misunderstandings, ensure that all participants sign a written document that specifically outlines what information from mediation may be disclosed	*Lecture Presentation & Discussion* ***24-25*** ***Handout C – Sample Agreement to Mediate Form***
b. What are some of the potential drawbacks to the practice of having certain mediation communications not be privileged? *(Slide 25)* • When confidentiality applies to some but not all of the mediation discussions, misunderstandings will likely surface; e.g., confusion about what exactly can be disclosed, to whom, and for what purpose; These misunderstandings may fuel participants' distrust of the mediation process/program • Concept of confidential mediation and protected discussions may erode over time resulting in a "culture change" that may be difficult to reverse if more comprehensive confidentiality practices later desired	***Facilitator Notes:*** *Uniform Mediation Act §13.3 (not enacted in CA) provides further guidance: If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, privilege does not apply to the mediation or part agreed upon.*
c. While this practice (utilizing signed written agreements to expressly detail mediation communications available for disclosure) may be problematic if over utilized or poorly implemented, a judicious use of this practice may prevent the covert, unauthorized disclosure of mediation communications.	
d. Can you imagine a situation in which all of a session's mediation participants want to agree in writing that a certain mediation communication be available for disclosure outside of the mediation session (i.e., not confidential)?	

12. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) a. Encourage participants to complete the Unit A.2. *"Self-Assessment & Reflection Tool"* and *"Training Reflection"* c. Encourage participants to provide feedback on the Unit A.2. training d. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Materials:*** *Reflection Tool – Self-Assessment & Training Reflection*

UnitA.2

REFERENCES:

Diamond, Michelle & Nunez, Amy (2004). *Juvenile Dependency Mediation Data Collection Project Report*. San Francisco: Administrative Office of the Courts, Center for Families, Children & the Courts.

Leslie, Richard. S. (2008). The Dangerous Patient and Confidentiality Revisited: The Real "Tarasoff Duty," The Old and New Immunity Statutes and the "New" Exception to Confidentiality. *The California Therapist*, September/October.

Laugh, Patty, *ed* (2003). *The California Child Abuse & Neglect Reporting Law: Issues and Answers for Mandated Reporters.* Sacramento: California Department of Social Services, Office of Child Abuse Prevention, 2003.

California Rules of Court, Title V, Family and Juvenile Rules. *Rule 5.505, Juvenile Dependency Court Performance Measures*. Adopted January 1, 2009.

Child Abuse & Neglect. (n.d.). *Child Welfare Information Gateway*. From http://www.childwelfare.gov/can

Recognizing Child Abuse and Neglect: Signs and Symptoms (2007). (n.d.). *Child Welfare Information Gateway*. From <http://www.childwelfare.gov/pubs/factsheets/signs.cfm>

Uniform Mediation Act, regarding Section 17.2(a) provides some guidance about administrative issues that generally may disclosed. Be sure to confirm with your local court practices See www.uniformlaws.org

California Juvenile Dependency Mediation Curriculum

Unit A: Juvenile Dependency Mediation Foundations

Chapter 2: Confidentiality

California Administrative Office of the Courts

Definition- Confidentiality

- Mediation communications (in all forms) are **privileged** and cannot be used in the court case related to the mediation, or any other **civil** proceeding
- This includes information from mediation case preparation
- Neither the mediator nor any of the participants may disclose **to the court** or to anyone else a communication (verbal or written) that is part of a mediation process

Purpose of Confidentiality

- Encourages full sharing of information without fear that ideas/remarks will later be used against participants
- Encourages creativity in option generation
- Promotes candor and frank discussions that are more likely to *really* address participants' concerns
- Promotes participant self-determination- mediator can fully attend to facilitation (vs. preparing his/her comments for recommendation or potential subpoena)

Mediation DEFINED

- CA, civil, generally
- 1115. For purposes of this chapter: (a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. (b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation. (c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

- CA, dependency

  350. (a) (2) Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary.

- CRC definition 5.518 (b) and (d) refers to "confidential process" … with local protocols that explain confidentiality and any limitations, and that all local protocols "comply with state laws, applicable rules of court, and local (court) protocols.

California Rule of Court 5.518

CA Rule of Court CRC 5.518(j)(3)

Mediators must:

- Protect the confidentiality of all parties, including the child.
- Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute
- Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.

CA Evidence Code §1119(c)

<u>CA Evidence Code §1119(c):</u>

All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

<u>For additional information see:</u>

CA Evidence Code §1115-1128

Mediator May Disclose
(Within the Court Setting)

- Whether the mediation occurred or has terminated
- Whether an additional mediation appointment has been scheduled
- Whether an agreement was reached
- Who attended the mediation appointment
- <u>Non-identifying</u> information (or statistical data) for the purpose of program evaluation and/or research (ok outside of court setting, too)

California Rule of Court 5.518

<u>CA Rule of Court 5.518(c)(2)(D)</u>

Each dependency mediator must:

- Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties;

Typical Exceptions to Confidentiality In Dependency Proceedings

- Information that would support **new** allegations of **child abuse or neglect**
- Information about known or suspected **elder abuse and/or dependent adult** abuse
- A mediation participant's **threat to harm him/herself**
- A mediation participant's **threat to harm someone else**

Typical Exceptions to Confidentiality

- Not typical but possible: **Criminal court** proceeding & mediator subpoenaed; Mediator claims privilege & court determines if mediator must disclose mediation communications
- Any written settlement/mediation **agreement** (signed by all parties)
- Non-identifying information about a mediation may be made available for program evaluation or research
- Evidence or information that is otherwise admissible or subject to discovery

Infrequent Yet Possible Exceptions

- A statement that could give rise to civil or criminal contempt
- A statement or conduct that could constitute a crime
- A statement or conduct that could be the subject of investigation by the State Bar or Commission on Judicial Performance

How Much Should Mediator Disclose?

- **<u>Only</u>** what is necessary to fulfill the mandatory or optional reporting process;
- Keep the remainder of the mediation communications confidential

Your Mediation Program

Insert the sections of your dependency mediation program protocol and/or local court rules that address dependency mediation confidentiality and exceptions to confidentiality

Juvenile Court Proceedings

- In order to protect the privacy rights of the child, there is a strong public policy of protecting the confidentiality of juvenile court proceedings and records.
- Restricted access to <u>court hearing</u>
- Restricted access to <u>court records/files</u>

Mandated Reporters & Mediation

Some dependency mediation participants are mandated reporters of child abuse & neglect. Partial list of possible mandated reporters:

- Social workers & supervisors
- CASAs
- Mental health professionals (such as, psychologists, psychiatrists, MFTs)
- Foster parents
- Group home & residential care personnel
- Teachers & school personnel
- Child visitation monitors

Making a Child Abuse Report

If you are a mandated reporter you must report the following types of abuse & neglect:

- Sexual abuse
- Neglect
- Physical abuse
- Emotional maltreatment
- Abuse in out-of-home care

Are Mediators Exempt from Mandated Reporting Requirement?

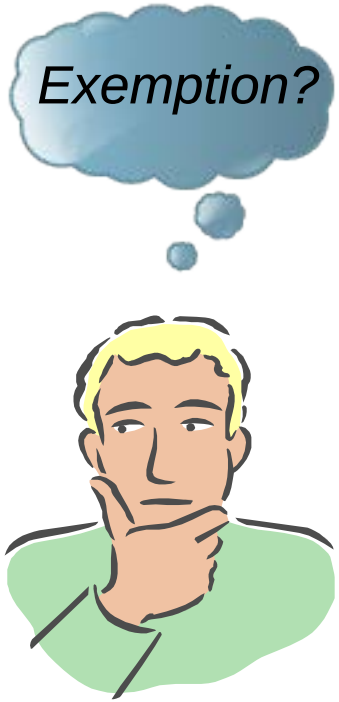
Maybe

<u>On the one hand:</u>

- CA W&I Code §350(a)(2) indicates that:

  No person, **except the mediator**, who is required to report suspected child abuse (pursuant to CANRA) shall be **exempted** from those requirements because he/she agreed to participate in a dependency mediation program established in the juvenile court. *(code summary)*

Are Mediators Exempt from Mandated Reporting Requirement?



Maybe

<u>On the other hand:</u>

- Most dependency mediation protocols, local court rules, and mediation confidentiality agreements to mediate (signed by all participants)
- Specify that new instances of known or suspected child abuse and neglect will not be confidential
- And that the mediator and other participants (such as S.W. &CASA) will report to authorities *

Are Mediators Exempt from Mandated Reporting Requirement?

- While other "mandated reporters" may attend dependency mediation appointment, it is critical to know (and inform participants prior to substantive discussions) whether or not the <u>mediator</u> will <u>also</u> be a reporting party
- Essential as the mediator may meet with mediation participants individually or in small groups- without other mandated reporters present

Practice Tips:

Helping Participants Maintain Confidentiality

- Provide verbal and written explanation of mediation confidentiality & exceptions
- Have all participants sign an agreement to mediate (w/ confidentiality & exceptions)
- Consider incorporating a “no note taking” or “shred notes upon departure” policy
- If necessary/desired by all, have all participants agree in writing to disclosure of specific mediation communication
- Ongoing stakeholder outreach (esp. with agencies); Discuss internal documentation of mediation & not including mediation communications in future reports/testimony

Facilitator Role Play

Role Players:

- What was it like to be in your role?
- What was helpful about the explanation of confidentiality and the limits of confidentiality?
- In your role as ____, was there anything about the explanation of confidentiality & exceptions that you would like further clarified?

Opting Out of Confidentiality

According to CA Evidence Code §1122, a communication or writing made in mediation may be disclosed if:

- The mediator and all mediation participants (not just parties) expressly agree in writing (or orally in accordance with CA Evidence Code §1118) to the disclosure of the communication, document or writing
- Prevent misunderstanding by having all participants sign a written document that specifically outlines information from mediation that may be disclosed

Opting Out of Confidentiality

Potential Drawbacks:

- When confidentiality applies to some but not all mediation communications, misunderstandings more likely
- Mistakes may fuel participants' distrust of the mediation process
- Concept of confidential mediation and protected discussions may erode over time resulting in a "culture change" that may be difficult to reverse

Potential Benefits:

- May prevent covert, unauthorized disclosures

California Rules of Court & Dependency Mediation Confidentiality

CRC Code Section	California Rule of Court – Text
CRC 5.518(b)(1)	"Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a non adversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.
CRC 5.518(c)(1)(H)	Each court that has a dependency mediation program must ensure that: (H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the: (i) Storage and disposal of records and any personal information accumulated by the mediation program; and (ii) Management of any new child abuse reports and related documents.
CRC 5.518(c)(2)(D)	Each dependency mediator must: (D) Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties;
CRC 5.518(d)(5)	All local protocols must include the following: (5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about: (B) The importance of keeping confidential all communications, negotiations, or settlement discussions by and between the participants in the course of mediation; (C) The mediator's role and any limitations on the confidentiality of the process;
CRC 5.518(d)(6)	All local protocols must include the following: (6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age-appropriate way the mediation process to a participating child. The following information must be explained to the child: (E) Any limitations on the confidentiality of the process;
CRC 5.518(j)(3)	Mediators must: (3) Protect the confidentiality of all parties, including the child. Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.
CRC 5.518(j)(4)	Mediators must: (4) Maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
Information that would support new allegations of child abuse and neglect *(Continued…)*	• CRC 5.518(j) (3) acknowledges that mediators may be required by statute- Child Abuse & Neglect Reporting Act (CANRA) - to make mandatory reports. • By professional background, many mediators are classified as "health practitioners" and "health practitioners" are mandated reporters of known or suspected child abuse and neglect (CA Penal Code §11164-11174.4). • While, on the one hand, WIC 350(a)(2) indicates no person, except the mediator is exempt from mandatory child abuse/neglect reporting requirements during the course of a juvenile dependency mediation; • On the other hand, most dependency mediation protocols, local court rules and mediation confidentiality statements/agreements to mediate (signed by all mediation participants), specify that new instances of known or suspected child abuse and neglect will not be confidential and that the mediator (whether or not a mandated reporter) and other participants (such as the social worker and CASA) will report new allegations to appropriate authorities; and if you are mandated reporter you must exercise caution & consult before ever deciding not to report! • While there are likely to be other "mandated reporters" attending the dependency mediation appointment, it is critical for the mediator to know- and inform others prior to substantive discussions-	**California Rule of Court §5.518(j)(3)** Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). **California Penal Code §11164-11174.4** For full code sections see leginfo.legislature.ca.gov check "Penal Code," enter code sections in keyword search & click "search" **California Welfare and Institutions Code Section 350(a)(2)** Notwithstanding any other provision of law, no person, except the mediator, who is required to report suspected child abuse pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code), shall be exempted from those requirements under Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code because he or she agreed to participate in a dependency mediation program established in the juvenile court.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED Information that would support new allegations of child abuse and neglect	whether or not the **mediator** will **also** be a reporting party. This is essential as the mediator may meet w/ mediation participants individually or in small groups- without other mandated reporters present.	**Also see:** **Uniform Mediation Act §17.2.(c)** *(Not enacted in California)* A mediator may disclose: (c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such maltreatment. . *[Author's note: this applies if the protective agency is participating in mediation.]*
Known or suspected elder and dependent adult abuse *(Continued…)*	• CRC 5.518(j) (3) acknowledges that mediators may be required by statute to make mandatory reports. • By professional background, many mediators are classified as "health practitioners" and "health practitioners" are mandated reporters of known or suspected elder and dependent adult abuse (per W&I §15610.37 and W&I §15630. (a)). • While a mediator is wearing a "mediation hat" (vs. a "health practitioner hat") while conducting a dependency mediation, if you are mandated reporter of elder/dependent adult abuse, use caution & consult before ever deciding not to report! • Additionally, many dependency mediation protocols, local court rules, and mediation confidentiality statements/agreements to mediate (signed by all	**California Rule of Court §5.518(j)(3)** Mediators must not release information or make any recommendations about the case to the court or to any individual **except as required by statute** (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). **Welfare and Institutions Code §15610-15610.65 and §15630-15632** For full code sections see leginfo.legislature.ca.gov check "Welfare and Institutions Code," enter code sections keyword search & click "search"

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED Known or suspected elder and dependent adult abuse	mediation participants), continue to have mediators (including non-mandated reporter mediators) report known or suspected elder and dependent adult abuse. • It is essential that you know what your local court rules and program protocols say about whether or not the dependency mediator will report known or suspected elder and dependent adult abuse. • Additionally, ensure that your protocols are clearly explained to all mediation participants prior to substantive mediation discussions. • In a dependency mediation context, elder/dependent adult reporting requirement may surface, for example, when mediating a case with a developmentally delayed parent or grandparent relative caregiver.	**Also see:** **Uniform Mediation Act §17.2.(c)** *(Not enacted in California)* A mediator may disclose: (c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such maltreatment. *[Author's note: this applies if the protective agency is participating in mediation.]* For more information about elder abuse and/or dependent adult abuse see: http://safestate.org/index.cfm?navid=1479
A mediation participant's threat to harm him/herself *(Continued…)*	• CRC 5.518(j) (3) acknowledges that mediators may be required by statute to release certain information, such as "threats of harm or violence." • By professional background, many mediators are classified as "psychotherapists" and if a "psychotherapist" determines that a client presents an imminent danger to him/herself, psychotherapist may (vs. must) release information if the release of information is necessary to prevent the threatened danger (CA Evidence Code §1024)	**California Rule of Court §5.518(j)(3)** Mediators must not release information or make any recommendations about the case to the court or to any individual **except as required by statute** (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding **threats of harm or violence**).

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED A mediation participant's threat to harm him/herself	• While neither psychotherapists nor mediators are required by statute to release information if a client is a danger to him/herself, many court jurisdictions clarify (in local rules, mediation protocols, and mediation confidentiality statements/agreements to mediate- signed by all mediation participants) that a mediation participant's "threat of harm to self or others" will not be handled as a confidential mediation communication. (It can be argued that CA Evidence Code §1115-1128 does not prohibit a danger to self disclosure in this circumstance- as it is agreed to in writing by all participants at outset.) • Depending on the nature of the case, mediators may take one or more various steps: 1.) Notify the police or psychological emergency team (PET team); 2.) Ideally with the suicidal person's consent, notify another person reasonably able to help prevent the threat, such as the individual's treatment provider to arrange an emergency appointment or another supportive person (e.g., family, friend, clergy) to transport for voluntary hospitalization	**Also see:** **Model Standards of Practice for Family and Divorce Mediation; Standard VII.22** As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon. **Uniform Mediation Act §16.1.(c)** *(Not enacted in California)* There is no privilege under section 14 of this act for a mediation communication that is: (c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence **California Evidence Code §1024** *(Applies to psychotherapists)* There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
A mediation participant's threat to harm another *(Continued…)*	• CRC 5.518(j) (3) acknowledges that mediators may be required by statute to release certain information, such as "threats of harm or violence." • By professional background, many mediators are classified as "psychotherapists" and if a "psychotherapist" determines that a client presents a serious and imminent danger of violence/threat to harm another (not just "huffing and puffing" with no intent or likelihood of follow-through), the "psychotherapist" should use reasonable care to protect the intended victim against such danger. • Depending on the nature of the case, mediators may take one or more of various steps: 1.) Warn the intended (foreseeable) victim or others likely to apprise the victim of the danger; 2.) Notify the police; 3.) Take other steps reasonably necessary under the circumstances- for example, disclose to court security/bailiff or another person reasonably able to prevent/lessen the threat. • If a "psychotherapist" wants to be protected by CA Civil Code §43.92 (sometimes called the "immunity statute"), he/she must warn intended victim and notify the police; otherwise he/she can take other steps (such as voluntary hospitalization) to exercise reasonable care to protect intended victim. *(It is advisable for mediators to follow the requirements of the "immunity statute," i.e. must warn & notify)*	**California Rule of Court §5.518(j)(3)** Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding **threats of harm or violence**). **Also see:** **Model Standards of Practice for Family and Divorce Mediation; Standard VII.22** As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon. **Uniform Mediation Act §16.1.(c)** *(Not enacted in California)* There is no privilege under section 14 of this act for a mediation communication that is: (c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence **California Civil Code §43.92**. *(Applies to psychotherapists; Sometimes referred to as "the immunity statute")*

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED A mediation participant's threat to harm another	• Court jurisdictions clarify in local rules, mediation protocols and confidentiality forms/agreements to mediate (signed by all mediation participants) that a mediation participant's "threat of harm" will not be handled as a confidential mediation communication. • This is often called a "Tarasoff duty"	**California Civil Code § 56.10(c)(19)** *(Applies to psychotherapists)* **California Evidence Code §1024** *(Applies to psychotherapists- see section above for text)* *See Also: Leslie, Richard, S., "The Dangerous Patient and Confidentiality Revisited: The Real "Tarasoff Duty," the Old and New Immunity Statutes, and the "New" Exception to Confidentiality" The California Therapist, Sep/Oct 2008.*
A written settlement (mediation agreement) signed by all parties and counsel *(Continued…)*	• Mediators should inform mediation participants (during orientation and in confidentiality statement) that: 1.) Attorneys for the parties have an opportunity to review any written agreement that is reached before it is presented to the court; 2.) Once signed by all parties, written settlement agreements will be tendered to the court for review/approval and become part of the court file; 3.) If adopted by the court the mediation agreement becomes an enforceable/binding court order (this should also be clear on the mediation agreement itself).	**California Evidence Code §1123**. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied: (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect. (b) The agreement provides that it is enforceable or binding or words to that effect. (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED A written settlement (mediation agreement) signed by all parties and counsel		(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute. **California Rule of Court §5.518(c)(2)(D)** Each dependency mediator must: (D) Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties; **Also see:** **Uniform Mediation Act §16.1.(a)** *(Not enacted in California)* There is no privilege under section 14 of this act for a mediation communication that is: (a) In an agreement evidenced by a record signed by all parties to the agreement
An oral (mediation) agreement *(Continued…)*	• If it is your program's practice that parties put verbal agreements on the court record, mediators should inform mediation participants (during orientation and in a confidentiality statement) that: 1.) Attorneys for the parties have an opportunity to review all agreement terms prior to the agreement terms being recited on the court record 2.) The parties will be asked (by the judicial officer) to express on the record that they agree to the agreement terms recited	**California Evidence Code §1124.** An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied: (a) The agreement is in accordance with Section 1118. (b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED An oral (mediation) agreement	3.) The parties must expressly state on the record that the oral agreement is enforceable or binding 4.) The parties' oral agreement will be recorded by a court reporter, tape recorder, or other reliable means of sound recording. The recording will be reduced to writing and the writing must be signed by the parties within 72 hours after it is recorded.	accordance with Section 1118, to disclosure of the agreement. (c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute. **California Evidence Code §1118**. An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions: (a) The oral agreement is recorded by a court reporter or reliable means of audio recording. (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited. (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect. (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
Mediation communications may be vulnerable to compelled disclosure if a criminal case is pending or filed at a later date *(Continued…)*	• According to CA Evidence Code §1119(a)&(b) verbal and written mediation communications are not admissible or subject to discovery and cannot be compelled in **CIVIL** actions and other noncriminal proceedings. **The protection of mediation communications in criminal proceedings is not addressed.** • According to CA Evidence Code §703.5, mediators are not competent to testify about statements, conduct or decisions made during mediation in any subsequent **CIVIL** proceeding. • Ensure that both your verbal and written explanations of confidentiality and exceptions to confidentiality address the vulnerability of mediation communications if/when a criminal case is pending or filed at a later date • If the mediator is subpoenaed in a criminal court • proceeding the mediator will assert privilege and only testify if ordered by court • Encourage participants to consult with their attorneys about these issues prior to participating in mediation.	**California Evidence Code Section 1119(a) & (b).** Except as otherwise provided in this chapter: (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other **noncriminal** proceeding in which, pursuant to law, testimony can be compelled to be given. (b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other **noncriminal proceeding** in which, pursuant to law, testimony can be compelled to be given. **California Evidence Code §703.5.** No person presiding at any judicial or quasi-judicial proceeding, and **no** arbitrator or **mediator**, shall be **competent** to **testify**, in any subsequent **civil proceeding**, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, **except** as to a

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED Mediation communications may be vulnerable to compelled disclosure if a criminal case is pending or filed at a later date		statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.
Non-identifying information about a mediation may be made available for program evaluation and research *(Continued…)*	• Mediators should inform mediation participants (during orientation and in confidentiality statement) that: 1.) Non-identifying information may be used for local, statewide and national data collection efforts; • Prior written permission from all mediation participants (vs. parties) would be necessary to reveal any information about a case that could identify the case (i.e., for training vignettes or for case examples for professional articles, etc.)	**California Rule of Court 5.518(c) (1) (E) (ii).** Each court that has a dependency mediation program must ensure that: (E) Dependency mediation services demonstrate accountability by: (ii) Participating in any statewide and national data-collection efforts; **California Rule of Court 5.505**. Juvenile Dependency Court Performance Measures adopted effective January 1, 2009

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED Non-identifying information about a mediation may be made available for program evaluation and research		**Also see:** **Association of Family & Conciliation Courts: Guidelines for Child Protection Mediation. www.afccnet.org**
Administrative information about the mediation appointment *(Continued…)*	• Mediators should inform mediation participants (during orientation and in confidentiality statement) about administrative information that may be provided by the mediator to the court. • Mediation outcome forms typically include the following information: 1.) If the mediation took place: a.) Whether a full, partial or no agreement was reached; b.) Parties present; c.) Whether an additional mediation appointment has/will be scheduled 2.) If the mediation did not take place, whether it was due to: a.) A party's failure to appear; b.) Mediation appointment rescheduled;	**Also see:** **Guidelines for Child Protection Mediation at www.afccnet.org** **Uniform Mediation Act §17.2.(a)** *(Not enacted in California)* A mediator may disclose: (a) Whether the mediation occurred or has terminated, whether a settlement was reached and attendance.

Exceptions to Confidentiality

Exception to Confidentiality	Plain Language Summary & Mediator's Duty/Informed Consent	Code Section/Statute & Text
CONTINUED Administrative information about the mediation appointment	c.) Resolved prior to mediation (in which case, depending on your protocol, judicial officer may have already signed order vacating mediation appointment)	
Evidence or information that is otherwise admissible or subject to discovery	• Mediators should inform mediation participants (during orientation and in confidentiality statement) that: 1.) Information and documents (such as, social worker reports, substance abuse evaluations, test results, treatment provider recommendations, etc.) that are already part of the court record or otherwise available/discoverable do not become confidential simply by being discussed in mediation	**California Evidence Code Section 1120(a)**. Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation. **Also see:** **Uniform Mediation Act §14.3.** *(Not enacted in California)* Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation **Guidelines for Child Protection Mediation at www.afccnet.org**

Sample Agreement to Mediate Form

Juvenile Dependency Mediation
Superior Court, _____ County
Mediation Confidentiality Statement/Agreement to Mediate

Case Number # **Child's Name & Date of Birth:**

Juvenile Dependency Mediation is a **confidential** process consistent with California Evidence Code Sections 1115-1128. Neither the mediator nor any of the participants may disclose to anyone else a communication made in mediation and information from mediation cannot be used in the court case related to the mediation, or any other **CIVIL** proceeding.

The mediator only reports to the court the following information: that the mediation was held, who attended and the result of the mediation. The mediator does **NOT** make any recommendation to the court as to how the case should be decided, and does not testify at court. All communications, negotiations or settlement discussions by and between participants in the course of mediation shall remain confidential. **However, certain EXCEPTIONS require or permit disclosure**:

1. Some professionals conducting or participating in the mediation may be permitted or required by law to report specific information to certain authorities, such as:
   a. Information that would support **new allegations of child abuse or neglect**;
   b. Information about **elder abuse or dependent adult abuse**;
   c. Any **threats** a mediation participant makes **to harm self or others**.
2. Any voluntary written settlement agreement, signed by the parties
3. There may be other circumstances where confidential mediation communications **may** not be privileged including, if a **criminal case** is pending or filed at a later date. Mediation participants are encouraged to consult with their attorneys prior to and throughout mediation.
4. Any communication disclosure expressly agreed to in writing pursuant to Evidence Code Section 1122, as described and initialed here:_____
   - ❑ Attach pages as needed.
5. Non-identifying information about a mediation may be made available for program evaluation

Agreement to Mediate

I understand and agree to abide by the confidentiality statement set forth above. I agree to participate in mediation in an effort to resolve this matter. I understand that the attorneys for the parties will review any written agreement that is reached before it is presented to the court.

Mother	Date	Father	Date	Child	Date
Attorney for Mother	Date	Attorney for Father	Date	Attorney for Child	Date
Social Worker	Date	CASA	Date	Other	Date
County Counsel	Date	Other	Date	Other	Date

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

[address or other court required format]

IN RE Minors: **Name** **Date of Birth** **Action #** **Name of Child(ren)**	**For Court Use Only**
	Department:
JUVENILE DEPENDENCY MEDIATION OUTCOME **Mediation Date:**	**Next Court Date:** **Time:**

MEDIATION RESULTS: ☐ **Agreement, see attached**

☐ **Partial Agreement, see attached. Unresolved issues listed**

☐ **No Agreement** ☐ **Cancelled. No Appearance by**

☐ **Mediation Terminated** ☐ **Mediation continued, Date:**

Mediator_____, _____ Court Dependency Mediation Services

PARTICIPANTS:

NAME	RELATIONSHIP TO CHILD
	Mother
	Father
	Child Welfare Worker
	Child Welfare Supervisor
	Attorney for Child
	Attorney for Mother
	Attorney for Father
	County Counsel
	CASA
	Paternal aunt, Maternal uncle, cousin, comm.. member, other “interested party”

Agenda: [Referral Issues]

Next page……..

The Parties agree as follows:

[insert the language of agreement…..]

The participants approve the disclosure of this agreement and intend for it to be reviewed by all counsel for the parties, and request the court approve as a court order.

Agreed by:

Parent	Date	Attorney for Parent	Date
Parent	Date	Attorney for Parent	Date
Child Welfare Worker	Date	County Counsel	Date
Child Welfare Supervisor	Date		
CASA	Date	Attorney for Minors	Date

SO ORDERED:

_____Date_____

Judge/Commissioner of the Juvenile Court

Prepared by [Dependency Mediator] [or other as appropriate, court requirement]

Legal Codes – Confidentiality & Mediation

California Evidence Code Section 1115.

For purposes of this chapter:

(a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

California Evidence Code Section 1116.

(a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.

(b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

California Evidence Code Section 1117.

(a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115**.**

(b) This chapter does not apply to either of the following:

(1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code**.**

(2) A settlement conference pursuant to Rule 3.1380 of the California Rules of Court.

California Evidence Code Section 1118.

An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

(a) The oral agreement is recorded by a court reporter or reliable means of audio recording.

(b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.

(c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.

(d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

California Evidence Code Section 1119.

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

California Evidence Code Section 1120.

(a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

  (1) The admissibility of an agreement to mediate a dispute.

  (2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

  (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

California Evidence Code Section 1121.

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

California Evidence Code Section 1122.

(a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

  (1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

  (2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115**.**

California Evidence Code Section 1123.

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

California Evidence Code Section 1124.

An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

(a) The agreement is in accordance with Section 1118.

(b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.

(c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

California Evidence Code Section 1125.

(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

  (1) The parties execute a written settlement agreement that fully resolves the dispute.

  (2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.

  (3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.

  (4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.

  (5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that partially resolves the dispute.

(2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

California Evidence Code Section 1126.

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

California Evidence Code Section 1127.

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

California Evidence Code Section 1128.

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

California Evidence Code Section 703.5.

No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

Training Self-Assessment

A.2. Confidentiality

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My understanding of the terms and definitions	☐	☐	☐	☐
My awareness of and conformity w/ California Rules of Court related to court, mediator, and program confidentiality	☐	☐	☐	☐
My ability to utilize mediation practices that promote awareness	☐	☐	☐	☐
My ability to safeguard confidentiality when meeting or speaking w/ mediation participants separately	☐	☐	☐	☐
My ability to assure that mediation agreements comply with confidentiality requirements.	☐	☐	☐	☐
My self-awareness and skill managing confidentiality questions	☐	☐	☐	☐
My ability to respond appropriately to participant concerns about mediator/mediation confidentiality	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit A:

Dependency Mediation Foundations

CONTENTS

A.1. Historical Overview & Definitions

A.2. Confidentiality

A.3. Impartiality & Neutrality

Unit A, Chapter 3:
Impartiality & Neutrality

Required Instructional Materials:

- Computer
- PowerPoint Slides
- Projection Screen

Presentation Methods:

- Individual Exercise
- Small Group Discussion
- Large Group Discussion
- Mediation Observation & Individual Exercise

Participant References:

Unit A.3. Participant Handouts

- Participant Worksheet- *"Impartial Phrasing Practice Exercise"*
- Participant Handout A- *"Impartiality- CRC & Mediator Statement & Repair Strategies"*
- Participant Worksheet- *"Mediation Observation Tool"*
- Participant Handout B- *"Recognizing & Responding to Mediator Bias"*
- Participant Handout- *"Self-Assessment & Reflection Tool"*

Suggested Pre-Session Reading & Exercises:

- Participant Worksheet- *"Impartial Phrasing Practice Exercise"*
- Participant Handout A - *"Impartiality- CRC, Mediator Statement & Repair Strategies"*
- Participant Handout B - *"Recognizing & Responding to Mediator Bias"*

Estimated Duration:

2 Hours

Observation:

1.5 – 2.5 Hours

Mediation Observation & Individual Exercise: Impartiality in Live Session

OPTIONAL

30 Minutes

Large Group Discussion: Complex Issues (For Mixed or Advanced Practitioners)

Juvenile Dependency Mediation Curriculum

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***5 Minutes***
2. Large Group Discussion: What are Mediator "Impartiality" and "Neutrality" and Why Do They Matter? ----------	***15 Minutes***
3. Large Group Discussion & Small/Large Group Exercise Review: Impartiality in Practice----------	***30 Minutes***
4. Large Group Discussion: Practicing in Compliance with the California Rules of Court Related to Impartiality & Neutrality------	***15 Minutes***
5. Mediation Observation & Individual Exercise ----------	***1 – 2 ½ Hours***
6. Large Group Discussion: Impartiality- Case Preparation & Caucusing----------	***15 Minutes***
7. Individual Exercise & Large Group Discussion: Recognizing & Appropriately Managing Mediator Bias----------	***20 Minutes***
8. **OPTIONAL** Large Group Discussion: Complex Issues (For Mixed and Advanced Practitioners)----------	***OPTIONAL 30 Minutes***
9. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After Concluding Unit A.3. Participants Will Be Able To: a. Define the terms "impartiality" and "neutrality" and recognize their value in mediation b. Summarize and understand compliance with the California Rules of Court related to mediator impartiality and neutrality c. Implement mediation practice strategies that communicate to participants the mediator's commitment to an impartial process d. Safeguard impartiality when meeting or speaking with mediation participants separately (i.e., during mediation case preparation and caucusing) e. Understand essential concept of using impartial language when drafting agreement language f. Demonstrate self-awareness and skill managing personal bias g. Respond appropriately to participant concerns about mediator impartiality and neutrality	***5 Minutes*** ***Facilitator Notes:*** • *Welcome participants* • *Review break time, end time, location of restrooms, etc.* • *Review learning objectives with participants* ***Facilitator Note:*** *Objective "e" – focus this aspect of training on "impartiality" of language rather than agreement writing*

2. Large Group Discussion:

15 Minutes

PowerPoint Slides 2-4

What are Impartiality and Neutrality and Why Do They Matter?

The terms "neutral" and "impartial" commonly appear in discussions about proper conduct for mediators. As defined by most professional organizations, however, the terms often leave mediators somewhat fuzzy about what distinguishes one from the other. Are they so overlapping as to be the same? Why have both terms?

a. While the terms are often used interchangeably, how would you differentiate impartiality and neutrality? *(PowerPoint Slides 2-3)*
   - "Mediators are ethically bound to be impartial to participants, and neutral as to the agreements reached in mediation"[1]
   - Impartial as to process and neutral as to outcome is a way mediators often describe their role.
   - **Impartiality**- Commitment to aid all participants maximally; Freedom from bias/favoritism
   - **Neutrality**- If the Mediator has a prior relationship with the parties, what is it, what impact, how perceived by the participants? Does Mediator's background and personal experiences bias the mediator's commitment to maximally assist all parties

b. What do your court's mediation protocols or local court rules say about mediator impartiality and neutrality? *(PowerPoint Slide 4)*
   - Can an agency social worker also be a mediator?
   - Recall the "Continuum of Dispute Resolution discussion earlier in A.1?

c. While both constructs are critical, which factor would you imagine most significantly impacts a participant's sense of procedural due process?
   - Research suggests that disputants are less concerned about a mediator's prior relationships or "…alignment biases than they are about the level of bias that is shown during the mediation. Thus, it is the actions, not the prior history that seems to matter to disputants in interpreting mediator neutrality…"[2]

d. Why might mediation participants care about the mediator's impartiality?
   - Sense of procedural fairness
   - Increased feelings of vulnerability and need to be guarded/defensive
   - If a mediator offers advice, counsel or a professional opinion professional mediation participants (e.g., attorneys, social workers, etc.)

Misconception Alert:

While helpfully posing questions about the child's best interests and tentatively "floating trial balloons" about the child's needs, dependency mediators *must be very careful to pose questions rather than make statements or recommendations on behalf of the child*

… The mediator may have a great deal of education and experience in child development/ child psychology, *HOWEVER*, in a mediation context the child's attorney, social worker, CASA, therapist & other parties advocate for the child's

[1] Association of Family and Conciliation Courts, Guidelines for Child Protection Mediation, 2012, §5.6
[2] Conlon, D., The Handbook of Mediation: Bridging Theory, Research and Practice, Herrman, M., Ed., 2006, p.

are likely to perceive the mediator as overstepping or confusing the mediation role *For facilitator or trainees with some dependency mediation experience:* Have you (or your colleagues) ever been referred a mediation case in which you (or your colleagues) had a previous relationship with one of the parties? How was this handled?	

3. Large Group Discussion & Small/Large Group Exercise Review:

Impartiality in Practice

a. There are numerous factors that impact a mediation participant's perception of the impartiality of the mediation process. What are some of these factors?

- Location considerations *(PowerPoint Slide 5)*
  - Ideally neutral location where neither party has a strong emotional connection or physical control over space
  - Distractions & interruptions minimized
  - Distance from the usual/conflict environment may promote an open-minded exploration of issues
  - Any psychological handicap being in a new location?
- Physical Setting Considerations *(PowerPoint Slide 6)*
  - Seating arrangements and shape of the table (e.g., ideally avoid "head of table")
    - Consider seating disputants on the same side of a table (or at a round or octagonal table)- to signal a more collaborative tone
    - Mediator seated equal distance from parties
    - Ideally identical chairs; Avoid chairs that suggest additional power/status
  - Ideally comparable amount of physical space for each participant & between participants
  - Space for private discussions
  - Waiting room(s)
    - Waiting room is crucial so that the mediator is not associating with some mediation participants prior to the arrival of other mediation participants (which may create perception of bias)
    - What is available in waiting room? Is environment important?
- Time Considerations *(PowerPoint Slide 7)*
  - When caucusing, consider meeting with each party/group for close to the same amount of time (parties will be aware of time inequities)
  - Be conscious of providing each party/group with a comparable amount of speaking time in session
- Non-Verbal Communication *(PowerPoint Slides 8-9)*
  - Amount of eye contact w/ each party
  - Equivalent greeting (e.g., handshake)
  - Mediator's body language (e.g., eye rolling, sighing, avoiding eye contact or smiling & laughing with one party)

30 Minutes

PowerPoint Slides 5-11

Participant Handout:

- *Impartial Phrasing Practice Exercise (Depending on number of participants possibly review in small groups)*

For More Information See:

- *Christopher Moore, The Mediation Process: Practical Strategies for Resolving Conflict, 1996, pp. 141-160.*
- *Forrest Mosten, The Complete Guide to Mediation: The Cutting-Edge Approach to Family Law Practice, 1997, pp. 75-87.*
- *Paul Ekman, Emotions Revealed: Recognizing Faces and Feelings to Improve Communication and Emotional Life, 2003.*
- *Barbara Madonik, I Hear What You Say, But What Are You Telling Me? The Strategic Use of Nonverbal Communication in Mediation, 2001.*

3. Large Group Discussion & Small/Large Group Exercise Review:

Impartiality in Practice (CONTINUED)

- Verbal Communication *(PowerPoint Slides 10-11)*
  - Consider avoiding adversarial, value-laden language about the process of mediation itself
  - Equivalent introductions (e.g., call all parties by Mr./Ms. or- with approval- call all by first names)
  - "Translate the language of the disputants into neutral terms to remove bias, positions, and judgment."[3]
  - Focus on underlying interests & what parties are trying to achieve
  - Find a mutually acceptable definition/framing of the issues that will help parties cooperate
- Use of Language Interpreters. Most courts utilize certified court interpreters, who are available to mediation, as mediation is considered a court-related session
- Mediator relationship to any related agency such as child welfare, CASA

b. Prior to the training session trainees may have completed the "*Impartial Phrasing Practice Exercise.*" Have trainees share their responses to this exercise in either large or small groups. As needed suggest possible responses and explore with trainees their reactions to the exercise. For example, was the exercise challenging in any way? How did trainees manage to validate speakers without invalidating other mediation participants?

c. How does the act of reframing raise issues about the mediator's impartiality? *(For more info see Moore ,supra, p. 219)*

- A mediator's reframing efforts are based on the mediator's conception (implicit or explicit) of a more constructive dialogue/relationship
- Inevitably, the mediator is guided by his/her subjective notions of what optimal dialogues/relationships look like
- Despite the subjectivity of the mediator's perspective, most mediation participants find the mediator's reframing very helpful
- Mediator re-frame should always ask "is that right?" " is that what you are concerned about?" Point. Participant can agree, or disagree and keep talking, keeping the language that of the participant.

Continued

Facilitator Note

In this discussion, include question about ***where*** *dependency mediations are held,(courtroom, conference room, agency, other) why does it make a difference?*

[3] (Christopher Moore, p. 222)

3. <u>Large Group Discussion & Small/Large Group Exercise Review:</u> **Impartiality in Practice (CONTINUED)** d. How might a mediator screen for domestic violence/restraining orders, etc., . and implement appropriate safeguards while maintaining the parties' sense of due process? o Remind participants that screening and session safeguards are a standard practice in every case (i.e., they are not being singled out) o It may be helpful to mention that the mediator is not making a determination about the factual basis of the allegation o D.V. protocol protects both alleged victim & restrained party (i.e., restrained party protected from any risk of inadvertent violation of the restraining order)	*Continued*
4. <u>Large Group Discussion:</u> **Practicing in Compliance with the California Rules of Court Related to Mediator Impartiality & Neutrality** a. How might you explain impartiality and neutrality to mediation participants? b. If you had had a previous relationship with a prospective mediation participant (e.g., children on same soccer team, members of the same church or civic organization) how might you handle this? c. How would you manage a mediation participant's stated concern (or inference) about your impartiality as the mediator? d. What would you do if you noticed that your co-mediator was struggling with bias in a specific mediation case? Alternatively, how might you best respond if your co-mediator approached you with a concern about your lack of impartiality in a specific case?	***10 Minutes*** ***<u>Handout A:</u>*** • *Impartiality- CRC, Mediator Statement & Repair Strategies*

5. Mediation Observation & Individual Exercise: **Impartiality in Live Session** Observe an experienced colleague or neighboring juvenile dependency mediation program. During the course of the dependency mediation observation pay particular attention to: o The mediator's explanation of impartiality/neutrality during the mediator's orientation or opening remarks o How the following elements contribute to the participants' perceptions of impartiality: ▪ Location of the mediation (e.g., neutral or party's "territory") ▪ Physical setting (e.g., seating distances, table shape, similar chairs) ▪ Time issues (e.g., amount of caucus & speaking time for each party) ▪ Nonverbal communication (e.g., amount of eye contact with each party, nodding, mediator's facial expressions) ▪ Verbal communication (e.g., equivalent introductions, reframing party's polarizing remarks, objective language) o What are your impressions of the participants' perceptions of impartiality? What led to this perception?	***1 – 2 ½ Hours*** ***Participant Handout:*** • *Mediation Observation Tool* ***Facilitator Notes:*** *If an observation of a live mediation session is not possible, consider having participants complete the questions and agreement drafting exercise in response to a role play.*
6. Large Group Discussion: **Impartiality- Case Preparation & Caucusing** a. In terms of impartiality- what are some potential pitfalls of meeting (or talking) with parties separately? *(PowerPoint Slide 13)* o Mediator controls the channel of communication and can be seen as sharing only part of the information selectively- thus influencing parties into agreement o Mediator can suppress or enhance data, or introduce entirely new info. o Difficult for intermediary to be information channel without exhibiting some degree of partiality (either explicit or implicit) o Parties do not have the advantage of face-to-face communication to test accuracy of information exchanged b. If a mediator has contact with some (but not all) mediation participants prior to a mediation session, how might this impact the participants' sense of procedural fairness? What mediator strategy might remedy this?	***15 Minutes*** ***PowerPoint Slide 13*** ***For More Information See:*** • *Moore, C., The Mediation Process: Practical Strategies for Resolving Conflict, 1996, p. 325.* ***Facilitator Notes:*** *Remind participants that Curriculum Unit D.3. "Caucusing" addresses this*

c. What strategies might help safeguard mediator impartiality (and perceptions of impartiality) during caucuses and pre-mediation case preparation? Some ideas below. o Working w/ a co-mediator (discuss potential bias w/ colleague & debrief) o Meeting with the parties for the same amount of time o Selecting the caucusing sequence (e.g., which party to meet w/ first) in a way that feels equitable or makes sense to participants o Framing the caucus (or pre-mediation case preparation contact) as a way to help **all** parties get the most out of mediation o When concluding a caucus avoid both verbal and non-verbal language that other participants might interpret as mediator alignment (e.g., opening the door to the caucus room while laughing or smiling) o Discussing mediator impartiality at the outset of the mediation appointment and inviting parties to raise impartiality concerns o Prior to meeting or talking separately (either for case preparation or in-session caucusing), informing parties (and stakeholders) about the purpose of the separate discussion, confidentiality & exceptions o With participants' explicit permission, summarizing caucus discussion and asking for participants' confirmation and additions	*topic in more depth* Being as transparent as possible in word exchanges, body language, and comfort level (if M appears nervous about upcoming separate meeting, then parties will get nervous too.) Telling them you might and why, telling they you are and why, telling them what happened, with permission of party (if summarizes what the party said, ask for party's confirmation, additions.

7. Individual Exercise & Small Group Discussion:

Recognizing and Appropriately Managing Mediator Bias

a. When introducing the five minute individual exercise below the facilitator may share a relevant personal reflection about his/her experience with bias. Alternatively the facilitator can share the example below.

- One mediator (who considered her faith tradition eclectic) disclosed her difficulty working with conservative Christians (sometimes referred to as fundamentalist Christians). This mediator noted that she found one mediation session particularly challenging- a case in which the father arrived at the mediation session placing a bible squarely in the center of the mediation table. This same father raised numerous concerns about the children being placed in the home of a "non-believing" foster family. The mediator acknowledged that she found it difficult to maintain an impartial stance throughout the appointment, particularly when the father advocated for the children to be removed from their present placement.

b. Spend five minutes free-writing or thinking about a personal experience where you noticed that you felt biased against an individual. This reaction may have taken place in a personal setting or work environment. Use the following questions to guide your reflections. *(Note: You will not be required to share your personal reflection with anyone.)*

- Reflect on the individual, interaction or situation that triggered your bias or was challenging for you?
- How did you become aware of your bias or unproductive reaction?
- Were there any subtle (or not so subtle) clues of your bias that the individual(s) might have picked up on?
- Were you able to constructively manage your bias? How?
- In what types of situations are you more likely to have a bias triggered?
- Have you ever had suspicions that an individual in his/her professional capacity was biased against you (or having a difficult time relating to you)? What was this experience like for you?

c. Have participants gather in small groups of 3 or 4 people. *(Group members are welcome- but not required- to share their personal reflections.)* Have participants discuss their observations and comments about the Handout C, "*Recognizing & Responding to Mediator Bias.*" Conclude this segment by providing individuals with the opportunity (if desired) to share any personal reflections or discoveries with the large group.

20 Minutes

Participant Handout:

- *Recognizing & Responding to Mediator Bias*

For More Information See

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 196-197.*
- *Workshop handout titled, "The Psychology of Intergroup Bias," Professor Jack Glasser, Goldman School of Public Policy, UC Berkeley.*
- *Schofield, A., "Bias in Mediation," (February 2005); See www.mediate.com/articles/schofieldA4.cfm*
- *Teyber, E., Interpersonal Process in Psychotherapy, Fourth Edition, (2000).*
- *Gillen, S., "Different Types of Countertransference and the Importance of Addressing Them in Supervision," Practical Applications in Supervision: A Manual Written by the California Association of Marriage and Family Therapists Educational Foundation, (1990).*

8. OPTIONAL Large Group Discussion:

Complex Issues (For Mixed or Advanced Practitioners)

a. As a mediator is it ever appropriate to not be impartial? When might "weighing in" be fitting?

b. If a mediator were to share a concern or perspective how could the mediator do so while maximally preserving the mediator's working relationship with all of the parties?

c. Respond to the quote on *PowerPoint Slide 14.* Should a mediator determine which mediation participants are reasonable or manipulative?

d. Is there a difference between impartiality regarding the parties/outcome and maintaining appropriate norms in mediation?

e. Should a mediator suggest options for the parties to consider or does this compromise mediator impartiality?

f. Zena Zumeta poses the question, "Is neutrality a specific set of behaviors, or should it be defined from the parties' perceptions?" [4]

g. According to Zena Zumeta, another active discussion topic related to mediator neutrality relates to "cold" versus "warm" neutrality. "That is, to what extent can a mediator empathize with the parties and still remain neutral?" [5]

h. Given the subjective nature of human experience and systems theory, is it realistic to believe that mediators can be impartial even if they try?
   - What are the ethics promoted by impartiality and neutrality?
   - Are mediator efforts in this area critical anyway?

OPTIONAL

30 Minutes

PowerPoint Slide 14

Facilitator Notes:

- *Depending on your program's needs, select one question or multiple questions for group discussion*

- *Bernard Mayer, Beyond Neutrality: Confronting the Crisis in Conflict Resolution, 2004.*
- *William Ury, The Third Side, 2000.*
- *The Handbook of Mediation: Bridging Theory, Research and Practice, Margaret Herrman, (Ed.), 2006.*
- *Bush, R. B. & Folger, J., The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition, (1994).*

[4] *Zumeta, Z., "A Trainer Responds to the Model," in Herrman, M. (Ed.), 2006, The Handbook of Mediation: Bridging Theory, Research and Practice, p. 415*

[5] *(Zumeta, Z., "A Trainer Responds to the Model," supra, p. 415.*

8. OPTIONAL Large Group Discussion (Continued): **Complex Issues (For Mixed or Advanced Practitioners)** i. Often the idea of a neutral third party is questioned. Discuss what might be typical questions, and how you might respond to emphasis the key elements discussed in this section. j. If you have ongoing contact with professional stakeholders, how do you make choices about the amount and type of contact you have with these stakeholders? For example, is lunch ever appropriate? k. Discuss the potential tension between a dependency mediator's duty to remain impartial and his/her concurrent obligation to "consider the health, safety, welfare, and best interest of the child… and encourage the formulation of settlements that preserve these values" (CRC 5.518(j)(6)). l. Is an inevitable mediator bias towards settlement created when effective mediation is defined as helping parties reach agreements?	***CONTINUED*** ***OPTIONAL***
9. Summary & Close: a. Review learning objectives and briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit A.3. *"Self-Assessment & Reflection Tool"* and "*Training Reflection"* d. Encourage participants to provide feedback on the Unit A.3. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Participant Handouts:*** • *Self-Assessment & Reflection Tool*

Juvenile Dependency Mediation

DRAFT Curriculum PowerPoint Presentation

Unit A, Chapter 3

Impartiality & Neutrality

California Administrative Office of the Courts

Impartiality

- Freedom from favoritism or bias, either in word or action
- Commitment to aid all participants (as opposed to a single individual), in reaching a mutually satisfactory agreement
- Mediator does not play an adversarial role
- Mediator must maintain impartiality while raising questions for the parties to consider as to the appropriateness & feasibility of proposed options

Neutrality

- Neutrality refers to the relationship that the mediator has with the disputing parties
- Unless all agree to proceed, a mediator should withdraw from the mediation if the mediator’s background or personal experiences would prejudice the mediator’s performance

Your Mediation Program

- Insert the sections of your mediation program protocol and local court rules that address mediator impartiality/neutrality

Impartiality in Practice

Location Considerations

- Ideally neutral location where neither party has a strong emotional connection or physical control over space
- Distractions & interruptions minimized
- Distance from the usual/conflict environment may promote an open-minded exploration of issues
- All have same psychological handicap being in a new location

Impartiality in Practice

Physical Setting Considerations

- Seating arrangements & shape of table (e.g., ideally avoid “head of table”)
- Amount of physical space for each participant & between participants
- Space for private discussions
- Waiting room(s) help prevent appearance of bias by having mediator sitting w/ one party/group prior to session

Impartiality in Practice

<u>Time Considerations</u>

- When caucusing, consider meeting with each party/group for close to the same amount of time
- Be conscious of providing each party/group with a comparable amount of speaking time

Impartiality in Practice

<u>Non-Verbal Communication</u>

“What you do speaks so loud that I cannot hear what you say.”

- Ralph Waldo Emerson

Impartiality in Practice

Non-Verbal Communication

- Amount of eye contact w/ each party
- Equivalent greeting (e.g., handshake)
- Mediator's body language (e.g., eye rolling, sighing, avoiding eye contact or smiling & laughing with one party)

Impartiality in Practice

Verbal Communication

- Consider avoiding adversarial, value-laden language about the mediation process

Polarized Terminology	Preferred Language
Conflict	Issue(s) to be Resolved
Position	View-point or Perspective
Negotiation	Discussion or Dialogue
Parties	Use people's names

Impartiality in Practice

Verbal Communication

- Equivalent introductions (e.g., call all parties by Mr./Ms. or, with approval, call all by first names)
- “Translate the language of the disputants into neutral terms to remove bias, positions, and judgment” (C. Moore)
- Focus on underlying interests & what parties are trying to achieve
- Find a mutually acceptable definition or framing of the issues that will help parties cooperate

Drafting Mediation Agreements

Written mediation agreement serves three important purposes:

- Fair process. Everyone participates in the drafting of the terms of the agreement
- Substantive Fairness. Everyone's participation ensures that each has had an opportunity to be heard on issues
- Emotional Satisfaction: a collaborative drafting effort enhances the likelihood the parties feel they "own" the agreement; Leading to a greater likelihood that the parties will abide by the agreement

Caucusing & Challenges to Mediator Impartiality

- Mediators control channel of communication & can share information selectively- perhaps “manipulating” parties into agreement
- Mediator can suppress or enhance data, or introduce entirely new information
- Difficult to be information channel without exhibiting some degree of partiality
- Participants do not have advantage of face-to-face communication to test accuracy of information exchanged

Impartial Phrasing Practice Exercise

Write brief responses to the following statements- Attempt to help speakers clarify concerns, have others experience mediation as a fair and supportive, and keep mediation constructive for all.

EXAMPLE

Statement: "You (social worker) NEVER take my phone calls and yet YOU claim I am the one not following through?

Response: *"It sounds like you're frustrated that your phone calls have not been returned. Are you wanting to talk with Linda (social worker) about ways to have communication be more effective and timely?"*

1. "You have been completely irresponsible about your daughter's medical needs."

_____

_____

2. "Don't you (mediator) think that his comment was verbally abusive?"

_____

_____

3. "You people are totally self-righteous."

_____

_____

4. "Everyone thinks that your behavior was reprehensible."

_____

_____

5. "We can end this mediation right now unless you change your superior tone."

_____

_____

6. "Can you be quiet for a moment? Enough is enough!" (One mediation participant to another)

_____

_____

7. "That's just the way perpetrators are."

_____

_____

8. "If you had had some self-control you wouldn't be in this situation."

_____

_____

9. "Don't you (mediator) think that her contact with the child needs to be supervised?"

_____

_____

California Rules of Court Relating to Impartiality and Neutrality

CRC Code Section	California Rule of Court- Text (Emphasis Added)
CRC 5.518(c)(1)(A)	Each court that has a dependency mediation program must ensure that: (A) Dependency mediators are **impartial**, are competent, and uphold the standards established by this rule;
CRC 5.518(c)(2)(E)	Each dependency mediator must: (E) Treat all mediation participants in a manner that preserves their dignity and self-respect;
CRC 5.518(c)(2)(F)	Each dependency mediator must: (F) Promote a safe and **balanced** environment for all participants to express and advocate for their positions and interests;
CRC 5.518(c)(2)(G)	Each dependency mediator must: (G) Identify and disclose potential grounds on which a mediator's **impartiality** might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator must inform the court;
CRC 5.518(c)(2)(H)	Each dependency mediator must: (H) Identify and immediately disclose to the participants any reasonable concern regarding the mediator's continuing capacity to be **impartial**, so they can decide whether the mediator should withdraw or continue;
CRC 5.518(j)(2)	Ethics/standards of conduct; Mediators must: (2) Maintain objectivity, provide information to and gather information from all parties, and **be aware of and control their own biases**.
CRC 5.518(j)(7)	Ethics/standards of conduct; Mediators must: (7) Operate within the limits of their training and experience and disclose any limitations or **bias** that would affect their ability to conduct the mediation.
CRC 5.518(j)(9)	Ethics/standards of conduct; Mediators must: (9) Disclose to the court, to any participant, and to the participant's attorney any **conflicts of interest or dual relationships**, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties an alternative method of resolving the issues in dispute.

What is behind the Concepts of Impartiality & Neutrality[1]

Hin Hung's excellent article (see citation below) points out that "More important than what the words signify is the ***parties' feeling that the mediator is acting with 'neutrality and impartiality'***." He **emphasized four values** underlying the terms: non-partisan fairness, the degree of mediator intervention, role limitation, and objectivity.[2] If a mediator acquires these skills, s/he "gain(s) respect and enhance(s) the parties' credibility and trustworthiness.

Mediator Repair Strategies for Perceived Bias[3]

Dependency mediation is a constant process of maintaining a **balanced** working relationship with all participants. Mediators must be attuned to any perception by a participant that the mediator is biased or has developed an imbalanced alliance with another participant. To preserve the mediator's effectiveness, the mediator must quickly address any indication that a participant feels that impartiality has been breached:

1. The mediator must recognize the breach in the mediation relationship and deliberately focus on the perceived bias:
   Example: *I get the sense that you feel that I am siding with the other party. It seems like you're not sure if I really understand your perspective.*
2. The mediator must understand the participant's perception of mediator bias by inviting the participant to describe his/her experience: (perhaps in caucus)
   Example: *Help me to understand- are you feeling ganged up against because I'm helping the other parties to share their point of view?*
3. The mediator would then validate and legitimize the client's experience and relate the mediator's actions to mediation goals as well as concern for all of the parties and the effectiveness of the process
   Example: *I can understand how it might seem unfair to you that I'm giving the other parties time to express their ideas. I really want this process to be successful for all of you and, in my experience, for mediation to resolve disputes it requires that all of you share your perspectives, hear one another out and jointly problem-solve solutions.*
4. Finally, in order to work towards a common goal, the mediator must confirm that balance has been restored to the mediation relationship:
   Example: *Do you feel reassured as to my concern for you and your ability to get the most out of the mediation process?*

[1] Hung, Hin (2002) "Neutrality and impartiality in mediation," ADR Bulletin: Vol. 5: No. 3, Article 7, p. 45. Available at: http://epublications.bond.edu.au/adr/vol5/iss3/7
[2] Ibid, author credits Morris C 'The Trusted Mediator: ethics and interaction in mediation' in Macfarlane J (ed) Rethinking Disputes: the mediation alternative Cavendish Publishing Ltd1997 London p 319.
[3] Leslie S. Greenberg & Susan M. Johnson, Emotionally Focused Therapy for Couples (1988), pp. 180 & 181.

Mediation Observation Tool

Case Name/No. (Or Program ID):_____ Date of Mediation: _____

Number of Participants:_____ Age(s) of Children:_____

Mediator(s):_____ Mediation Outcome:_____

1. ***Stage of court process & issues addressed:***

2. ***Brief background & summary (e.g., removal date, placement, visitation, special issues):***

3. ***What topics were discussed in the mediation orientation and how were they explained?***

4. ***How were special issues (such as, D.V., a participant's diminished capacity to mediate, substance abuse, mental health, cultural issues, etc.) managed in session?***

5. ***If a child attended any portion of the mediation appointment: How was the child oriented to mediation? Did the child participate in caucus, large group, combination and why?***

6. ***What mediator behaviors/practices demonstrated the impartiality of the mediation process?***

7. ***When tensions escalated or impasses emerged what interventions did the mediator utilize?***

8. ***Possible factors leading to agreement/non-agreement:***

9. ***New understandings and/or lessons learned:***

10. ***Other comments:***

Training Self-Assessment

A.3. Impartiality & Neutrality

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My understanding of the terms "impartiality" and "neutrality"	☐	☐	☐	☐
My awareness of and conformity w/ California Rules of Court related to mediator impartiality and neutrality	☐	☐	☐	☐
My ability to utilize mediation practices that signal impartiality	☐	☐	☐	☐
My ability to safeguard impartiality when meeting or speaking w/ mediation participants separately	☐	☐	☐	☐
My ability to draft clear and impartially worded agreements	☐	☐	☐	☐
My self-awareness and skill managing personal bias	☐	☐	☐	☐
My ability to respond appropriately to participant concerns about mediator impartiality and neutrality	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit B:

Dependency Mediation Context

CONTENTS:

Chapter 1: Overview: Child Welfare System /Juvenile Dependency Court Proceedings

Chapter 2: Dependency Mediation Participant Roles & Involvement

Dependency Mediation Context

Unit B, Chapter 1: Child Welfare System / Juvenile Dependency Court

Presentation Methods:

- Large Group Discussion
- Lecture Presentation

Participant Materials:

- *Exercise 1* – "Match Welfare and Institutions Codes with Forms of Maltreatment"
- *Handout A* – "Differentiating Dependency and Adult Criminal Court Proceedings"
- *Handout B* – "Juvenile Dependency Court Hearings: Sequence, Timing & Purpose"
- *Exercise 2* – "Chronological Sequence of Juvenile Dependency Court Hearings"
- *Reflection Tool* – "Self-Assessment & Training Reflection"

Suggested Pre-Session Reading:

- *Exercise 1* – "Match Welfare and Institutions Codes with Forms of Maltreatment"
- *Handout A* – "Differentiating Dependency and Adult Criminal Court Proceedings"
- *Handout B* – "Juvenile Dependency Court Hearings: Sequence, Timing & Purpose"
- *Exercise 2* – "Chronological Sequence of Juvenile Dependency Court Hearings"
- Article 1 - Judge Leonard Edward's 2007 article, "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process" PDF version of article available at : http://www.nccourts.org/Citizens/CPrograms/Improvement/Documents/frontloadingSpring07_Edwards.pdf (Also available on *Moodle*)

Estimated Duration:

2 Hours

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives _____	***5 Minutes***
2. Entering the Child Welfare System / Juvenile Dependency Court Jurisdiction (*Lecture & Large Group Discussion*) _____	***20 Minutes***
3. Child Placement Options & Preferences (*Lecture & Large Group Discussion*) _____	***25 Minutes***
4. Proceeding Through the Child Welfare System/Juvenile Dependency Court (*Lecture & Large Group Discussion*) _____	***25 Minutes***
5. Exiting the Child Welfare System/ Juvenile Dependency Court Jurisdiction (*Lecture & Large Group Discussion*) _____	***30 Minutes***
6. The Child Welfare System's Impact on Children & Families (*Lecture & Large Group Discussion*) _____	***10 Minutes***
7. Summary & Close_____	***5 Minutes***

1. Learning Objectives: After concluding *Unit B: Dependency Mediation Context*, participants will be able to: a. Describe a child welfare agency's internal process when receiving, investigating and responding to reports of suspected child abuse and neglect. b. Define the legal bases for the court to declare a child a dependent and take jurisdiction under W&IC § 300. c. Describe the sequence, timelines and purposes of juvenile dependency court hearings. d. List the different types and preferred order of foster care placements. e. Become familiar with the role of the attorneys for child, parent, and agency, throughout the court proceeding f. Discuss impacts on placement when Indian Child Welfare Act (ICWA), Interstate Compact on the Placement of Children (ICPC), and Concurrent Planning is involved. g. List permanent plan options and their order of preference. h. Describe how cases exit the juvenile dependency court system. i. Explain the importance of detailed child custody/visitation orders when exiting dependency, and role of mediation. j. Describe court and mediation practices related to post-adoption contact k. Discuss the child welfare system's potential impacts on children and families.	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Entering the Child Welfare System / Juvenile Dependency Court

20 Minutes

Lecture & Group Discussion

PowerPoint Slides 2-6

Materials:

Exercise 1 – Match Welfare and Institutions Codes with Forms of Maltreatment

Handout A – Differentiating Dependency and Adult Criminal Court Proceedings

a. How do children and families come to the attention of County social services ("CPS")? *(Slide 2)*

1. Each of California's 58 counties has a 24-hour emergency response system (child abuse hotline) to receive and investigate reports of suspected child abuse and neglect. Reports are received from:
   - Mandated reporters of child abuse (i.e. therapists, doctors and teachers)
   - Concerned citizens (such as neighbors, family members and witnesses)
2. After receiving a child abuse report, the child welfare agency will utilize an emergency response protocol to determine whether to:
   - Screen out a report of suspected child abuse/neglect, OR
   - Investigate a report of suspected child abuse/neglect (Agency will also determine whether investigation must be immediate)

b. What happens after the child welfare agency investigates a report of abuse or neglect? After completing an emergency response investigation the child welfare agency internally determines whether the allegations are:

1. Unfounded
2. Inconclusive
3. Substantiated

Based on their risk assessment, what options does the child welfare agency have in each of these circumstances? If the case is: *(Slides 3-4)*

1. Unfounded
   - Close case (with or without providing referrals for services)
   - No court involvement
2. Inconclusive
   - Close case (with or without providing referrals for services)
   - Keep case open (within social services) and offer the family voluntary services to remedy or prevent abuse/neglect (w/o court intervention)
3. Substantiated
   - Close case (with or without providing referrals for services)
   - Keep case open (within social services) and offer the family voluntary services to remedy or prevent abuse/neglect (w/o court intervention)
   - Seek court intervention (via a petition requesting that court declare child a dependent or take jurisdiction) and either:
     - Keep the child in the home & provide court supervised family maintenance services (FM)
     - Remove the child from the home & provide court supervised family reunification services (FR)

Misconception Alert:

While court approval is ultimately necessary to continue to maintain a child out of his/her home, it is important to remember that when the child welfare agency determines that there is an immediate risk of danger to a child, the agency has the authority to remove the child without delay (protective custody). The court will subsequently determine the appropriateness of the child's continued removal at the initial (detention) hearing.

(Continued….)

2. Entering the Child Welfare System / Juvenile Dependency Court (continued)

CONTINUED

Lecture & Group Discussion

c. What are a child welfare agency's voluntary services?

- Voluntary services are offered to willing families that are interested in receiving early, intensive services that may obviate the need for formal court intervention. Voluntary services can include:
  - 30 days of emergency home services
  - 6 months of family maintenance services (child maintained at home)
  - 6 months of voluntary foster care placement

d. As mentioned above (in 2.c.), ***if the child welfare agency is seeking court intervention in a particular case,*** the agency must file a petition to request that the juvenile court take jurisdiction. W&IC § 300 lays out the legal reasons (or bases) for the court to sustain a petition and declare the child a dependent.

PowerPoint Slide 5

As the bases for dependency court jurisdiction are often referred to by code section letter, to enhance credibility and ease communication with regular system participants, it is suggested that dependency mediators memorize the W&IC § 300 letter associated with each type of maltreatment. *(Slide 5)*

For More Information See:

California Courts at http://www.courts.ca.gov/8041.htm

California Dependency Online Guide at: http://cadependencyonlineguide.info/

(a) Serious physical harm

(b) Neglect

(c) Serious emotional damage

(d) Sexual abuse

(e) Severe physical abuse of a child under 5

(f) Death of another child

(g) No provision for support

Code section used when a parent is unable to provide- or arrange for- the care of their child; May apply when:

The parent is incarcerated or institutionalized and is unsuccessful making plans for their child's ongoing care

Child has been left with a relative or custodian who is no longer willing to care for the child and the parent cannot be located

(h) Freed for adoption

Code section used when one or both parents have relinquished or had parental rights terminated for 12 months and an adoption petition has not been granted

(i) Acts of cruelty

(j) Child's sibling abused or neglected

(Continued….)

2. Entering the Child Welfare System / Juvenile Dependency Court (continued):

CONTINUED

Lecture & Group Discussion

e. Direct trainees to complete the "*Practice Exercise- Match Welfare and Institutions Codes with the Forms of Maltreatment*." (Alternatively, trainees may have completed this exercise prior to the training session.)

Briefly review this exercise.

Did any trainees develop a strategy to facilitate the recall of these code sections?

Also, do trainees know how research or locate specific W&IC section language when they have questions?

Materials:

Exercise 1 – Match Welfare and Institutions Codes with Forms of Maltreatment

Misconception Alert:

There is an important distinction between a **court substantiation** and an **internal, child welfare agency substantiation** of child abuse and neglect. When the child welfare agency determines that there is credible evidence that the maltreatment allegations are valid, the allegations are officially substantiated *within the agency*. The court will make its own determination about the validity of the maltreatment allegations and it is thus possible for the same allegations to be substantiated by the agency and unsubstantiated by the court. Furthermore, while a child welfare agency finding of child abuse and neglect will never, on its own, result in a termination of parental rights (TPR), there are other implications. For example, the finding will determine how much future involvement the family is likely to have with the agency and will also be entered in the Child Abuse Central Index which is checked during placement assessments and other licensing processes.

2. Entering the Child Welfare System / Juvenile Dependency Court (continued):

CONTINUED

Lecture & Group Discussion

f. What is the authority of juvenile dependency court and when does that authority come into effect? Once a petition is filed and until a petition is dismissed or dependency is terminated, the court has exclusive authority over the care, custody and control of the dependency minor, and

1. Exclusive jurisdiction over custody and visitation (W&IC § 304)
2. Exclusive jurisdiction to determine paternity (W&IC §§ 316.2, 726.5; CRC 1413)
3. Restraining orders (W&IC § 213.5; CRC 1412)
4. Exit orders (W&IC § 362.4; CRC 1429.1)

g. *For facilitator or participants with some dependency mediation experience-* Reflect on the child protection mediation cases that you have facilitated:

1. In the child protection cases that you mediate, which allegations do you most frequently come across?
2. Are there any allegations that your county/program does not mediate?
3. Are you (or other mediators in your program) ever asked to mediate cases in which a petition is not being filed (i.e., voluntary plans)?

Misconception Alert:

A typical misunderstanding of the juvenile court process involves the nature of findings under W&IC § 300. While it is possible for a family to have a **concurrent criminal case** involving the same or related allegations, a finding under W&IC § 300 is NOT the same as a criminal court conviction.

Criminal courts assume jurisdiction over criminal violations (as set forth in the California Penal Code and other related codes) and require the highest standard of proof (evidence) to find someone guilty of a crime.

The juvenile dependency court adjudicates cases involving children who have been or are at risk of being abused or neglected by their parents or guardians. The juvenile dependency court is a **civil** court process and is not designed to be a punitive system. Instead the proceedings are intended to protect children, preserve and strengthen families when possible, and provide children with safe and legally permanent homes.

Dependency cases that have a parallel criminal court proceeding may face additional challenges in mediation. Discuss these possible constraints. Can you imagine mediation procedures that might serve to minimize or mitigate some of these difficulties?

For additional information see Handout A: "Differentiating Dependency and Criminal Court Proceedings"

3. Child Placement Options & Preferences:

25 Minutes

Lecture Presentation & Large Group Discussion

PowerPoint Slides 7 - 9

a. When a child must be removed from a parent as a result of abuse or neglect, the child will be placed in foster care- a state supervised and county managed system of temporary care. There are different forms of foster care and some settings are preferred over others.

Can you name the different types of foster care placements? What is the preferred order of placements- from least to most restrictive? *(Slide 7)*

1. Relative or Kinship Home
   - When a child is removed from a parent/guardian, social services has an affirmative duty to look for relatives for assessment and placement (W&IC § 309(d)). Pursuant to Family Code 7950 (a)(1), the child welfare agency is required to make a "diligent" effort to locate an appropriate relative
   - Pursuant to W&IC § 361.3(c)(2), A "relative" is "an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship…" This includes:
     - Stepparents
     - Siblings, step-siblings, half-siblings
     - Grandparents, great-grandparents, great-great grandparents
     - Aunts/uncles, great aunts/uncles, great-great aunts/uncles
     - First cousins, first cousins once-removed
     - Nieces, nephews
     - Spouse of any divorced or deceased relative in above list
   - Preferential consideration is given to child's placement with grandparents, aunts, uncles and adult siblings (W&IC § 361.3(a))
   - Non-relative extended family members [NREFMs] may also be considered for placement.
     - Pursuant to W&IC § 362.7, "A "non-relative extended family member" is defined as any adult caregiver who has an established familial or mentoring relationship with the child… The parties may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends."

Misconception Alert:

While relatives are preferred placement providers, there is not an automatic obligation to place a child with a relative. A relative's home may not be in compliance with mandatory foster care requirements (see section 3.b.) and an approved relative may be unable or unwilling to care for the child.

For More Information See:

Berrick, Jill Duerr (1998). "When Children Cannot Remain Home: Foster Family Care and Kinship Care." Available at: www.futureofchildren.org

California Partnership for Children (2000). *The Kinship Guardianship Assistance Payment Program.* Available at: www.cdss.ca.gov

Deihl, R, Martin, M., & Nunez, S. (2002) *Caregivers and the Courts: Improving Court Decisions for Children in Foster Care.*

http://helponechild.org/pdf/Caregivers&CourtsFull.pdf

(Continued….)

3. Child Placement Options & Preferences (continued):

2. Foster Family Home (Two types of 24-hour family based foster care)
   - Licensed foster family homes
     - Family residence ***licensed*** by the ***county***
     - May care for a maximum of 6 children (8 if sibling groups)
     - Licensed individual resides in the home
   - Foster family agency certified home
     - Family homes that are recruited, supervised and ***certified*** by the ***foster family agency*** (FFA) organization (vs. licensed by county)
     - The private, non-profit FFA is licensed and the caregivers in the home are certified by the FFA
3. Group Home
   - A licensed group home utilizes a paid staff to provide 24-hour care
   - Group homes vary in size, structure, level of supervision and services
   - There are small group homes of six foster children and a "house parent" as well as large institutional settings and residential treatment centers; Emergency shelter care is also included in this category
   - Children with significant emotional or behavioral problems are often placed in group homes and some group care settings provide intensive, specialized treatments
     - Generally higher level group homes (e.g., "a level 14 group home") will receive more funding, provide more specialized care (or care for children with greater needs), have higher staff/foster child ratios (e.g., more staff), and have more demanding staff requirements (e.g., for training, education, and experience)
   - According to the Youth Law Center (2009):
     - "When a child is placed in a group care or treatment setting, specific criteria must be met. No foster child may be placed in a group home unless the placement is necessary to meet the treatment needs of the child and the group home has a treatment program that meets those treatment needs. If the case plan provides for placement in a community treatment facility, the plan must specify why that is the most appropriate placement and how the continuing stay criteria will be met." [1]
   - Often inadequate minimum staffing ratios (e.g., 10 infants to 1 adult) and high staff turnover mean that group home settings are unlikely to meet a child's need for consistent, available and responsive care. For this reason, group care is a last resort.

CONTINUED

Lecture Presentation & Large Group Discussion

For More Information See:

For information on foster care placements and licensing requirements provided by the California Department of Social Services (CDSS):

www.cdss.ca.gov

[1] Youth Law Center (2009): *Fact Sheet: Mental Health Services for Foster Youth in California.",* www.ylc.org

	(Continued….)

3. Child Placement Options & Preferences (continued):

b. What is the process to have a relative or non-relative extended family member's home selected for the child's foster care placement?

- Pursuant to W&IC §§ 309(d) and 361.4(a) through 361.4(c) assessment consists of:
  - An in-home inspection (see Dependency Quick Guide, 2007, p. F-70)
  - A criminal records check (state and federal and *Live Scan* fingerprint verification of the same) of:
    - The relative; and
    - All adults in the home (an adult is a person over 18 years old)
    - As deemed necessary by the social worker- children in the home over 14 years old
  - A Child Abuse Central Index check on all adults living in the home
- Pursuant to W&IC § 361.3(a), in determining whether the relative placement is appropriate, "the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs;

(2) The wishes of the parent, the relative, and child if appropriate;

(3) Placement of siblings and half siblings in the same home;

(4) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or child abuse or neglect;

(5) The nature and duration of the relationship between the child and the relative and the relative's desire to care for the child;

(6) The ability of the relative to do the following:

(a) Provide a safe, secure and stable environment for the child;

(b) Exercise proper and effective care and control of the child;

(c) Provide a home and the necessities of life for the child;

(d) Protect the child from his or her parents;

(e) Facilitate court-ordered reunification efforts with the parents;

(f) Facilitate visitation with the child's other relatives;

(g) Facilitate implementation of all elements of the case plan;

(h) Provide legal permanence for the child if reunification fails.

CONTINUED

Lecture Presentation & Large Group Discussion

For More Information See:

AOC (2007). *Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents.* *http://cadependencyonlineguide.info/*

Facilitator Notes:

A criminal records check may also be referred to as a CLETS check. (California Law Enforcement and Telecommunications System)

(Continued….)

3. Child Placement Options & Preferences (continued):

c. What is the Indian Child Welfare Act (ICWA) and what does it say about the placement of Indian children? *(Slide 8)* ***(Overview Only!)***

- The United States Congress passed ICWA in 1978 (25 USC §1901(4)):
  - …"to express the preference for keeping Indian children with their families,
  - deferring to tribal judgment on custody issues, and
  - Placing Indian children who must be removed from the parental home with their own families or tribes. All dependency proceedings involving Indian children are governed by ICWA…" (AOC, *Dependency Quick Guide*, 2007)
- In some circumstances, tribal courts may intervene and case can be transferred to trial courts; in any event, state courts must comply with ICWA regulation.
- California has more Indian residents than any other state (California Indian Legal Services, 2010 and AOC, 2008)
  - Indigenous tribes
    - With over 100 federally recognized Indian tribes in California, Alaska is the only state that precedes California in the number of indigenous tribes
  - Non-indigenous tribes
    - As a result of the Bureau of Indian Affairs' (BIA) desire for Indian assimilation and the subsequent relocation of Indian families from reservations to, among other destinations, Los Angeles and the Bay Area, California is home to numerous Indians whose tribes are not indigenous to California.
    - In California, the number of Indians from out-of-state tribes outnumbers the number of Indians tribes indigenous to California
- Compliance with ICWA requires (among other things):
  1. Inquiry- Court and child welfare agency must inquire whether a child for whom a dependency petition has been filed may be an Indian child or may have Indian ancestors
  2. Notice- Whenever an Indian child is involved in a dependency proceeding, the child welfare agency must send notice of upcoming proceedings to the parent, Indian custodian, and all tribes of which the child may be a member or may be eligible for membership, and, if no tribe can be identified, to the Bureau of Indian Affairs. Appeals and reversals are not uncommon when notice has been improper.

CONTINUED

Lecture Presentation & Large Group Discussion

PowerPoint Slide 8

For More Information See:

California Indian Legal Services (2010). *California Judges Benchguide: The Indian Child Welfare Act.* Available at: *www.calindian.org*

AOC (2008). *Bench Handbook: The Indian Child Welfare Act* (Available on Caldog.)

http://cadependencyonlineguide.info/

Goldsmith, D. J. (2002) "In the Best Interests of an Indian Child: The Indian Child Welfare Act" at:

http://legal-dictionary.thefreedictionary.com/Indian+Child+Welfare+Act

National Council of Juvenile and Family Court Judges, 2003. *Indian Child Welfare Act Checklists for Juvenile and Family Court Judges,* *http://www.ncjfcj.org/*

(Continued….)

3. Child Placement Options & Preferences (ICWA, continued): 3. Adherence to placement preferences- Absent good cause to the contrary, courts must adhere to the below order of Indian child placement preferences- descending priority order (W&IC § 361.31): • **Foster/pre-adoptive placement preferences** for an Indian child: a. Member of the Indian child's extended family b. Foster home licensed or approved by the Indian child's tribe c. State- or county-licensed, certified Indian foster home d. Children's institution approved by the tribe or operated by an Indian organization that offers a program designed to meet the Indian child's needs. • **Adoptive placement preferences** for an Indian child: a. Member of the Indian child's extended family b. Other members of the Indian child's tribe c. Another Indian family • According to 25 U.S.C. §1903(2) an *"extended family member"* is defined by the law or the unique custom of the child's tribe. If none, then "an extended family member" is an adult who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, or stepparent. • When no preferred placement is available, "active efforts shall be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe." (W&IC § 361.31(i)) • For ICWA provisions see: o 25 U.S.C. §§ 1901-1963 o W&IC 361.31 o CRC 5.664	***CONTINUED*** *Lecture Presentation & Large Group Discussion* *(Continued….)*

3. Child Placement Options & Preferences (continued):

d. **Out-of-state placement possible**. What is the Interstate Compact on the Placement of Children (ICPC) and how does it work? *(Slide 9)*

- ICPC is an agreement among participating states and territories (including California), that regulates the moving of a child out of state for a foster care or pre-adoptive placement. (See Family Code § 7901, art. 3(b)).
- ICPC outlines procedures that help member jurisdictions cooperate and coordinate regarding the inter-state (or inter-territory) placement and supervision of dependent and delinquent children.
- Pursuant to CRC 5616(d), a child cannot be placed out of state until the receiving jurisdiction has provided written confirmation that the proposed placement is "not contrary to the child's best interest." Unfortunately, the ICPC process often takes a considerable amount of time.

e. **NOTE**: It is important to remember that some children are never removed from their homes. Other children may initially be removed from their homes and then placed back in their parents' care. For children that are situated in out-of-home placements, what percent of the time is each out-of-home placement setting utilized? According to May 2010 data from California's case management system (CDSS, 2010), placement usage rates are as follows:

- Relative home: 33.3%
- Foster family home: 39.6%
  - Foster family agency (FFA) certified home: 29.9%
  - Licensed foster family home: 9.7%
- Group home: 13.5%
- Guardian home: 11.4%
- Other/unspecified home: 1.8%
- Other facility: 0.4%

f. What do foster children experience in terms of placement stability/instability? According to the CWS/CMS Dynamic Report System (Needell et al, 2010), children who first entered care between October 2008 and March 2009 and are still in foster care for over 1 year:

- 30.6% are in placement number 1 (original placement)
- 41.3% are in placement number 2 (1 placement change)
- 28.2% are in placement number 3 or more (16.9% placement 3 and 11.3% placement 4 or more)

CONTINUED

Lecture Presentation & Large Group Discussion

PowerPoint Slide 9

For More Information See:

AOC, 2007. *Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents.* Available at: *http://cadependencyonlineguide.info/*

California Department of Social Services, 2010. *Child Welfare Services/ Case Management System, Characteristics of Children in Out of Home Care.* Available at: www.cdss.ca.gov

Needell, B. et al., 2010. *Child Welfare Services Reports for California.* Retrieved 7/15/2010, from University of California at Berkeley Center for Social Services Research website. *http://cssr.berkeley.edu/ucb_childwelfare*

	(Continued….)

4. **Proceeding Through the Child Welfare System/Juvenile Dependency Court**

a. Unlike many other court processes, the juvenile dependency court process entails a specific progression of hearings within precise periods of time. California dependency court timelines are governed by both California Welfare and Institutions Code (W&IC) and federal statutes. Can you identify the sequence, timing and purposes of the various juvenile dependency court proceedings?

Review and discuss *Handout B* "Juvenile Dependency Court Proceedings: Sequence, Timing & Purposes".

b. Direct trainees to complete *Exercise 2* – "Chronological Sequence of Juvenile Dependency Court Hearings." (Trainees may have completed this exercise prior to training.) Briefly review this exercise. How did trainees master the sequence of juvenile dependency court hearings and timelines? Is there anything about the flow of the dependency court process that is confusing?

c. **NOTE:** Important to remember that each party whether the child, a parent, or the social work agency, is entitled to be represented by an attorney at all hearings, (exception - initial uncontested detention hearings). Children are appointed attorneys at state court expense, as are *most* parents, qualifying due to economic circumstances. These rights to representation has evolved due to the constitutional issues involved (termination of parental relationship, for example), the related legal complexities and the inherent conflicts being addressed. See Unit B, Chapter 2: Dependency Mediation and Participant Roles and Involvement.

d. A permanent plan is intended to help a child obtain a lifetime connection to safe and loving family. Without a legally permanent home a child is vulnerable to placement instability and further life disruptions. Identify the possible permanency options in their order of preference- i.e., from most preferred to least preferred? (W&IC § 366.22) *(Slide 10)*

1. Reunification (return to parent/caregiver's custody)
   - Sometimes permanency goals include custody being granted to the previously non-custodial (non-offending) parent
2. Adoption
3. Legal Guardianship
4. APPLA (another planned permanent living arrangement)
   - Formerly known as long term foster care- LTFC

25 Minutes

Lecture Presentation & Large Group Discussion

PowerPoint Slides 10-13

Materials:

Handout B – Juvenile Dependency Court Hearings: Sequence, Timing & Purpose

Exercise 2 – Chronological Sequence of Juvenile Dependency Court Hearings

Article 1 -

Edwards, 2007. "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process"

For More Information See:

National Council of Juvenile and Family Court Judges, 1995. *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*

National Council of Juvenile and Family Court Judges, 2000. *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and*

	Neglect Cases *(Continued….)*

4. Proceeding Through the Child Welfare System/Juvenile Dependency Court (continued):

e. What is concurrent planning (CCP)? *(Slide 11)*

- In CCP, social services must simultaneously (not sequentially) pursue both the primary case plan goal (typically reunification) and the contingency or alternative case plan goal (e.g., adoption or guardianship if reunification is not possible)
- A strategy introduced with the 1997 passage of the Adoption and Safe Families Act (ASFA) designed to reduce delays in attaining permanent family placements
  - ASFA allows CCP (social worker may concurrently make reasonable efforts towards FR and placement of child for adoption/guardianship)
  - Since 1998, California law has required that concurrent plans be developed for all children placed in foster care
  - Level of CCP implementation varies by jurisdiction- protocols vary
- In CCP ongoing assessment is necessary to determine the probability of attaining each case plan goal (e.g., reunification potential)
- CCP also requires an ongoing focus on the child's best interest and evolving needs in regards to his/her permanent placement
  - Factors such as the child's age, sibling relationships and special needs (such as physical health, mental health, behavioral problems and/or developmental delays), are considered when contingency planning
- Benefits:
  - CCP does help courts maintain compliance with ASFA mandates for timely permanency, reduced placements, and good case management- decreases problematic foster care drift
- Potential Drawbacks:
  - Some parents feel undermined by CCP and experience reunification efforts as disingenuous and half-hearted
    - May result in increased tension between parents and other system participants (such as social workers and foster parents)
    - Parental distrust and skepticism may surface in mediation
  - Some social workers experience internal conflict about their dual roles- i.e., feel "fractured," "schizophrenic"
  - Some resource families relate the emotional difficulty of both supporting reunification and remaining open to permanency
  - U.C. Berkeley research study (2004) that evaluated the effects of CCP suggests that, "Concurrent planning is associated with a reduced likelihood of reunification and an increased likelihood of adoption."

CONTINUED
Lecture Presentation & Large Group Discussion

PowerPoint Slides 11-13

Materials:

Handout B – Juvenile Dependency Court Hearings: Sequence, Timing & Purpose

Exercise 2 – Chronological Sequence of Juvenile Dependency Court Hearings

For More Information See:

National Resource Center on Foster Care and Permanency Planning (n.d.). "Differential assessment to prevent foster care drift"

D'Andrade et al., 2004. "Concurrent Planning: Implementing a Complex Reform for Maximum Benefit" http://cssr.berkeley.edu/pdfs/Concurrent_Planning-Implementing.pdf

Moodle: http://calcourts.moodle.com/

4. Proceeding Through the Child Welfare System/Juvenile Dependency Court (continued):

CONTINUED
Lecture Presentation & Large Group Discussion

PowerPoint Slides 11-13

f. As mentioned above, concurrent planning requires social workers to pursue two permanency goals on behalf of the child at the same time. Imagine that a case has a primary case plan goal of reunification and a secondary or alternative case plan goal of adoption or guardianship. How would the social worker work towards these divergent goals at the same time? What practical steps might the social worker take to contribute to the success of each of these permanency goals? *(Slide 11-12)*

- Sample of social worker efforts to achieve family reunification:
  - Collaboratively engage parents in early (immediate- if possible), focused, intensive services
    - Maintain frequent contact with parents to support, encourage and monitor treatment progress
    - Regularly check in with service providers re. treatment progress
    - As early as possible- identify barriers to progress and work with parents to resolve barriers and modify case plan as necessary
  - Unless detrimental, arrange for frequent parent-child visitation
    - Review visitation often to determine whether it is appropriate to increase frequency, decrease level of supervision, or change location
  - Provide assistance obtaining affordable housing, job training, and other practical services/resources
  - Fully explain to parents: ASFA reunification time frames, rationale for time frames, and consequences of not meeting time frames
  - Early identification of child's father and paternity determination
- Sample social worker efforts to achieve adoption or guardianship:
  - Early identification of child's father and paternity determination
  - Early, comprehensive search for relatives, fictive kin and resource families; Explore potential willingness to adopt
  - If possible, arrange initial placement of the child with a relative or non-relative resource family* who can, if necessary, provide the child a permanent home (*sometimes called "fost-adopt family")
  - Fully explain to caregivers: ASFA reunification time frames, consequences of parent failure to meet time frames, and need to both support reunification and, if necessary, be available for permanence
  - If appropriate, submit an ICPC request for home studies of any out of state relative wiling to be considered as a permanent placement option; Utilize visitation to support child's relationships with potential permanent caregivers

Practitioner Considerations:

Since the passage of the Adoption Assistance and Child Welfare Act of 1980 (PL 96-272), child welfare agencies have been required to make "reasonable efforts" to reunify families. Not surprisingly, agencies as well as courts have struggled to determine what "reasonable efforts" entails. If services that could help a parent to successfully care for his or her child are simply not available, can the agency say that it has made "reasonable efforts" to reunite the family? This question and others continue to baffle dependency court professionals.

Continued….)

4. Proceeding Through the Child Welfare System/Juvenile Dependency Court (continued):

g. What are *reasonable efforts*? *(Slide 13)*

- Reasonable efforts refer to the proper standard of efforts that the child welfare agency must make to preserve and reunify families
- Federal law has required child welfare agencies to provide reasonable efforts since 1980 (Adoption Assistance and Child Welfare Act)
- The court must determine whether the child welfare agency is fulfilling its responsibilities to families
- When parties have significant concerns about the adequacy of the child welfare agency's efforts, a contested hearing can be set to decide the issue- the case may also be referred for mediation
- Implications: Among other implications, the court cannot terminate parental rights if it determines that reasonable efforts were not made
- Reasonable efforts are required whenever a child is removed from a parent or guardian (see exceptions below)
- Pursuant to W&IC § 361.5(b), reasonable efforts are NOT required when:
  - The whereabouts of the parent are unknown.
  - The parent has a mental disability that makes him or her incapable of utilizing services.
  - There is a prior adjudication of physical or sexual abuse of a child, and after the child was returned home, the child has been removed due to additional physical or sexual abuse.
  - The parent caused the death of another child through abuse or neglect.
  - The parent has inflicted severe physical or sexual abuse on the child or a sibling.
  - The child was conceived as a result of a sexual offense.
  - The parent has willfully abandoned the child.
  - The parent's rights to another child have been terminated, and conditions that led to the termination have not been remedied.
  - The parent has been convicted of a violent felony.
  - The parent has a history of chronic use of drugs or alcohol and refused to comply with a treatment program.
  - The parent has indicated a lack of interest in reunification services.
- In the above circumstances, the child welfare agency can recommend to the court that no services be offered to the parent (W&IC §361.5(b) and CRC 5.695 & 1456)
- These cases proceed directly to a 366.26 hearing and are often informally referred to as *"bypass"* cases

CONTINUED
Lecture Presentation & Large Group Discussion

PowerPoint Slide 13

For More Information See:

Child Welfare Information Gateway, 2008. "Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children" https://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm

(Continued….)

4. Proceeding Through the Child Welfare System / Juvenile Dependency Court (continued): h. As an example, what might the court consider when it is determining whether or not the child welfare agency made *reasonable efforts* at detention to prevent or eliminate the need for the child's emergency removal? And are there are available services that might prevent the need for further detention? • Pursuant to W&IC § 319(d), among other things (like whether placement with the non-offending parent was/is possible), the court might consider whether the child welfare agency provided or could provide: "case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services" that would have prevented removal or could now safely allow the child to be returned home **Advanced Practitioner Consideration**: *It is incorrect to assume that parents in bypass cases are not involved in the juvenile dependency court process. While this may be true, it is certainly not always the case.* *On a similar note, it is essential to remember that parents retain their parental rights even though the child welfare agency is recommending that the parent not be offered reunification services.* *When bypass cases are referred for mediation it is appropriate for parents (with intact parental rights) to attend mediation.*	***CONTINUED*** *Lecture Presentation & Large Group Discussion*

5. Exiting the Child Welfare System/Juvenile Dependency Court:

30 Minutes

Lecture Presentation & Large Group Discussion

PowerPoint Slide 14

a. What is a typical length of stay for children who enter foster care? According to the CWS/CMS Dynamic Report System *(citation on right)*, of all foster children in care on April 1, 2009:

- 34.9% have been in care for under one year
- 19.5% have been in care between 1-2 years
- 45.7 % have been in care for more than 2 years

b. How do cases exit the juvenile dependency court system? According to California's *Dependency Quick Guide* (2007), "The court may terminate jurisdiction at several different stages of the proceedings and under a number of varying scenarios." Typically cases exit the juvenile dependency system in the following ways: *(Slide 14)*

- **Reunification (custody returned to one or both parents)**
  - Pursuant to W&IC § 213.5, the court may enter protective orders and/or orders regarding custody and visitation when terminating jurisdiction of a case with a child under 18 years old
  - Juvenile court custody orders are final and will continue until modified or terminated by a superior court (W&IC § 362.4)
  - Juvenile court custody orders cannot be modified unless a court finds both a significant change in circumstances and that the suggested modification is in the child's best interest (W&IC § 302(d))
  - Sometimes called "exit orders" or family law orders (FLO's)
- **Termination of Parental Rights (TPR) & Adoption**
  - The purpose of terminating parental rights is to free a child for adoption, thus parental rights cannot be terminated for just one parent.
  - Unless the other parent is deceased or has already relinquished or had his/her parental rights terminated, both parents will simultaneously lose their parental rights. The process may be voluntary (i.e., a relinquishment) or involuntary (a court termination).
  - The juvenile dependency court's jurisdiction must terminate when an adoption is finalized W&IC § 366.3(a); CRC 5.730(g) & 5.740(a)(2).

For More Information See:

Needell et al., 2009. *Child Welfare Services Reports for California.* Available at :http://cssr.berkeley.edu/ucb_childwelfare

AOC, 2007. *Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents.* Available at: http://cadependencyonlineguide.info/

Practitioner Considerations:

When parents oppose the termination of their parental rights, family loyalties often make relatives reluctant to adopt. It is not unusual for cases to be referred for mediation when a relative caregiver is willing to provide ongoing care for the child, but is hesitant to adopt the child as a result of awkward family dynamics and allegiances. In an effort to secure legal permanency for the child, child welfare agencies often strongly encourage relatives to adopt. Mediation discussions may revolve around whether the child's best interests

(Continued….)

5. Exiting the Child Welfare System/ Juvenile Dependency Court (continued):

- **Legal Guardianship**
  - A legal guardianship is established by a court order that states that the non-parent guardian is the individual responsible for taking care of the child.
  - Pursuant to W&IC § 366.3(a) & 366.4, when the juvenile court establishes a legal guardianship the court can either continue its supervision (i.e., not close the case) or terminate court jurisdiction
  - Legal guardians have many of the same rights and responsibilities as parents. For example, a guardian can:
    - Decide where the child resides (however, must update the court if moving to a different city and must get the court's permission prior to moving out-of-state)
    - Decide where the child attends school
    - Give permission for most health care services for the child (e.g., medical, dental, counseling)
  - A legal guardianship differs from an adoption in important ways. For example, while a guardianship grants custody of a child to the guardian, parents retain their parental rights (parental rights must be terminated prior to an adoption). With intact parental rights:
    - Parents may petition the court to obtain visitation rights
    - Parents may petition the court to terminate the guardianship
    - Parents must continue to financially support the child

Misconception Alert:

There are two types of guardianships in California. Non- juvenile court related guardianships are overseen by the Probate Court.

- **Emancipation ("Ageing Out")**
  - While jurisdiction is terminated for many youth on their 18th birthdays, it is possible (and often in the best interest of the youth) for the youth to remain a dependent until the youth is 21 years old
  - The best interest of the youth is the primary criteria used to determine whether or not the court should maintain jurisdiction
  - Youth ageing out of the foster care system are extremely vulnerable to a number of poor outcomes including, poverty, homelessness and criminal justice system involvement (see suggested articles on right).

CONTINUED

Lecture Presentation & Large Group Discussion

For More Information See:

California Courts Self-Help Center, *2010*."Juvenile Court Guardianship" Available online at:

http://www.courts.ca.gov/selfhelp-childabuse.htm

Gardner, 2008. "Youth Aging Out of Foster Care: Identifying Strategies and Best Practices"

http://www.dshs.wa.gov/pdf/ca/YouthAgingoutofFoster.pdf

Edwards, 2008. "Aging Out of Foster Care…And Into College"

http://www.chhs.ca.gov/initiatives/CAChildWelfareCouncil/Documents/Aging%20Out%20and%20Into%20College.pdf

Needell et al.,2009. *Child Welfare Services Reports for California.* Available online at: *http://cssr.berkeley.edu/ucb_childwelfare*

	(Continued….)

5. Exiting the Child Welfare System / Juvenile Dependency Court (continued):

c. What percent of California foster children have their cases closed (or exit the juvenile dependency court system) in each of the above ways? According to the CWS/CMS Dynamic Report System *(citation on right)*, between January 1, 2008 and December 31, 2008, foster children in California exited the child welfare system in the following manner:

- Reunification: 53.7%
- Adoption: 20.9%
- Legal Guardianship: 8.3% (Kin-Gap eligible & other guardianships)
- Emancipation ("Ageing Out"): 12.9%
- Other: 4.3% (Includes missing children and cases where exit unspecified)

d. **Custody & Visitation Orders at Dismissal**. As mentioned above, when a child is being returned to parental custody, the juvenile dependency court will issue exit orders or family law orders. These orders will be "filed with the superior court in any pending family court matters (such as dissolution, custody, or paternity cases) or can be the basis for opening a new file" (Dependency Online Guide, 2007). Vague orders about "reasonable visitation" or schedules "arranged by the mutual agreement of parents" are typically inadequate and should be avoided. For the following reasons it is essential that exit orders be crafted wisely:

- Orders are final and not easily modifiable (see 5.a. above)
- While parents have court appointed counsel in dependency matters, they are unlikely to be able to afford representation in future Family Court actions (when seeking custody order modifications)
- Similarly, parents will not have the support and guidance of the additional professionals (e.g., social workers, service providers, and CASA volunteer) that have contributed to the child-focused decision making that has characterized the dependency court process
- Failure to comply with exit orders may lead to more child welfare agency involvement (e.g., re-removal and/or re-initiation of dependency proceedings)
- Vague orders provide parents with little guidance when inevitable disagreements about custody and visitation arrangements arise
- Parents may be compelled to discuss and negotiate schedules- a potentially dangerous prospect for alleged victims of domestic violence
- Vague orders are difficult to enforce when court/police intervention is necessary and they do not provide sufficient specificity when child support orders are sought

CONTINUED

Lecture Presentation & Large Group Discussion

For More Information See:

Judicial Council of California, Administrative Office of the Courts, 2007. *Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents* Available online at: *http://cadependencyonlineguide.info/*

Needell et al.,2009. *Child Welfare Services Reports for California.* Available online at: *http://cssr.berkeley.edu/ucb_childwelfare*

PowerPoint Slide 15

(Continued….)

5. Exiting the Child Welfare System/ Juvenile Dependency System (continued):

e. Juvenile dependency mediators are often asked to mediate "exit orders" and some courts establish a protocol that presumes that all cases exiting the dependency system (that involve two parents or a parent and a relative caregiver or NREFM) are referred for the mediation of exit orders. As exit order mediation more closely resembles child custody mediation, dependency mediators and program should review child custody mediation best practices valuable.

- Discussion -*"Mediating Exit Orders: JDCMA In-Service Workshop"*
  - According to the authors, what topics and issues may be helpfully addressed in a dependency mediation exit order?

f. Sometimes courts refer parties to mediation at the 366.26 hearing to discuss termination of parental rights and other permanency options. At this stage of the court process mediation discussions typically revolve around whether the child's needs are best served by TPR and adoption, legal guardianship, or (occasionally) the child welfare agency giving the parent(s) a time-limited additional opportunity to work toward reunification. There may also be dialogue about grief or separation counseling for one or more of the parties, how final visits can best be arranged (individuals present, length of time, location, etc.), an agreement that the parent can prepare a scrapbook or letter to accompany the child, and the social worker's willingness to relay the parent's desire for information sharing/contact when prospective adoptive parents have not already been identified.

While cases at this late stage of the dependency court process are less likely to result in an agreement than earlier stage cases, contested hearings are avoided in a great number of cases and permanency is thus expedited. An independent evaluation of Toledo Ohio's permanency mediation program (Thoennes, 2001)[2] obtained the following results:

- 46.2% of cases resulted in a parent agreeing to voluntarily relinquish parental rights and 83.3% of these cases included some provision for information sharing or future contact/communication between the parent and child
- 40.4% of cases resulted in no agreement
- 11.5% of cases resulted in the child welfare agency agreeing to pursue a lesser disposition, such as a legal guardianship (parental rights intact)

CONTINUED

Lecture Presentation & Large Group Discussion

Facilitator Notes:

For more information about mediation techniques and drafting dependency mediation agreements see Unit D.2 Multi-Party Dynamics and Collaborative Resolution Methods

For More Information See:

Harmon et al., 2002. "Mediating Exit Orders: JDCMA In-Service Workshop" at

http://Calcourts.moodle.com

(Continued….)

[2] Thoennes, N, "Permanent Custody Mediation: Lucas County Court of Common Pleas, Juvenile Division" at

http://cntrpolres.qwestoffice.net/reports/Lucas%20County.pdf

5. Exiting the Child Welfare System / Juvenile Dependency Court (continued):

g. As mentioned above, sometimes biological parents consider voluntarily relinquishing their parental rights. When a specific permanent home has been identified for the child, **the court may refer the biological parent(s) and prospective permanent caregivers (such as relative and non-relative adoptive parents and relative and non-relative legal guardians) to dependency mediation to explore whether some form of post-adoption or post-guardianship contact might be in the child's best interest and agreeable to the parties.**

h. Post Adoption Contact. Adoptions that involve some provision for the *contact of a biological relative* (parent, sibling, or other family member) and the child following the finalization of the adoption are often referred to as open adoptions. In California, Post Adoption Contacts are defined, described, and governed by California Family Code, §8616.5, and *provide for minimums on visitation, information sharing and future contact. Mediation agreement must provide certain language as outlined by the statute.*

OPTIONAL – ADVANCED PRACTICIONER TRAINING (I & J)

i. Judicial officers, mediators and other system participants often carefully weigh a number of factors when they consider post-permanency mediation:

- When is it appropriate for parents and other biological relatives to meet the alternate permanency providers?
- When might some form of information sharing or contact between the child (or the resource family on behalf of the child) and the birth family be in the child's best interest?
- How can this information sharing or contact be arranged in a way that is emotionally and physically safe for the child and non-disruptive for the child's developing relationship with his/her permanency family?
- How are permanency families best approached about these delicate issues and what kind of support do these families need?
- As there is a range of ways for a child to be involved with his/her birth family following permanency, what arrangements are best for this child? What is this permanency family comfortable implementing?
  - Information sharing
    - Letter/card/photo to be sent on occasion by birth parent/family
    - Letter/card/photo to be sent on occasion by permanency family to birth parent/family
    - Letter/photos to be shared with the child at a later point in time

CONTINUED

Lecture Presentation & Large Group Discussion

PowerPoint Slide 16

For More Information See:

Thoennes, 2001. *"Permanent Custody Mediation: Lucas County Court of Common Pleas, Juvenile Division"*

OPTIONAL ADVANCED

NOT ALL COURTS REFER THESE CASES TO MEDIATION.

(Continued…)

5. **Exiting the Child Welfare System / Juvenile Dependency Court (continued):** o Phone calls between the birth parent/family and the child (or adoptive family) o Child may initiate future contact (phone/in-person) as he/she desires o Contact for child and birth parent/family (supervised/unsupervised) ▪ Discussions of in-person contact are much more common when the child is placed with a relative or someone else known to the biological parent(s), such as a fost-adopt family	***CONTINUED*** *Lecture Presentation & Large Group Discussion* ***PowerPoint Slide 16*** *(Continued….)*

5. Exiting the Child Welfare System:

Lecture Presentation & Large Group Discussion (CONTINUED)

CONTINUED

j. Below there is some specific information about post-adoption contact agreements in California. For more information see Family Code § 8616.5 and W&IC § 366.29.

1. Who may be a party to a post-adoption contact agreement?
   - The adopting parent(s)
   - The birth parent(s)/relatives
   - The child
     - Children age 12 and older must consent in writing to the terms and conditions of the post-adoption contact agreement and any subsequent modifications of the agreement.
     - If child is of an age where he/she must consent, the child's attorney should be present at mediation
   - In cases governed by the Indian Child Welfare Act, the child's Indian tribe
   - While not obligatory, a mediation addressing post-adoption contact issues may include additional (non-party) participants such as, counsel for the child, counsel for the birth parents, counsel for the prospective adoptive parents, the adoptions social worker, county counsel and CASA
2. What can be included in a post-adoption contact agreement? A post-adoption must be limited to (but does not have to include) the following:
   - Provisions for the child's visitation with birth parent(s) and relatives (including siblings), and Indian tribe if relevant
   - Provisions for future contact between the birth parent(s) and relatives (including siblings), Indian tribe if relevant, and child and/or adoptive parents
   - Provisions for sharing information about the child in the future
3. What is the court's role in a post-adoption contact agreement?
   - Court can review and approve a mutually agreed upon post-adoption contact agreement at the time that the adoption is finalized
4. Are post-adoption contact agreements legally enforceable?
   - Yes. The post-adoption contact agreement is enforceable in the court that grants the adoption. Enforcement must be in the best interests of the child and mediation (or other ADR) must be attempted first.
   - **However, birth parents must understand that the court will not set aside a finalized adoption decree, rescind a relinquishment, or modify a termination of parental rights order because of any party's non-compliance with the post-adoption contact agreement**

For More Information See:

- *"Postadoption Contact Agreements between Birth and Adoptive Families," California, State Statutes Series, Child Welfare Information Gateway. See: http://www.childwelfare.gov/systemwide/laws_policies/state/index.cfm?event=stateStatutes.processSearch*

5. Exiting the Child Welfare System: **Lecture Presentation & Large Group Discussion (CONTINUED)** 5. How can a post-adoption contact agreement be terminated or modified? The agreement can be modified or terminated if either of the following occur: ▪ All parties (including the child if the child is 12 or older) must agree in writing to the modifications and file the agreement with the court ▪ The court finds all of the following: • The termination or modification is necessary to serve the best interests of the child. • There has been a substantial change of circumstances since the original agreement was executed and approved by the court. • The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.	***CONTINUED***

6 The Child Welfare System's Impact on Children

10 Minutes

Lecture Presentation & Small Group Discussion

a. There is a difficult balance that social workers and courts face when determining whether to remove a child from his or her parents or guardian. While most children that are removed from their families are physically safe in foster care, many suffer in other ways as a result of their removal from parents, for example, their mental health and emotional development may be compromised. Yet, if the child cannot be safely maintained at home, removal and dependency court involvement may be the only legitimate options.

Break up into small groups. Reflect on the circumstances of dependent children (you may wish to review sections 3.e., 3.f., 5.a. & 5.c.). Discuss both the typical challenges and potential benefits to the child of dependency system involvement.

- Typical challenges:
  - Child may experience grief, loss, depression and problematic attachment relationships as a result of disrupted caregiver relationships and placement changes
  - Over time, child may exhibit problematic internalizing and externalizing behaviors that make maintaining placements progressively more difficult
  - Child may experience multiple changes and uncertainties, such as home environment changes, school changes, neighborhood changes, and peer group changes
  - Child may experience negative long-term impacts of child welfare system involvement- such as, higher delinquency rates, higher teen birth rates, higher unemployment rates, reduced earnings as an adult, and higher rate of homelessness and incarceration
- Potential benefits:
  - Parent may recognize the need for change, actively participate in services and benefit from services
  - Child may experience parent's changed behavior as a sign that the parent truly cherishes him/her
  - Child's extended family system and support network may be mobilized to provide care and assistance
  - Child may receive direct services that would not have otherwise been available and parent may be more equipped to advocate on behalf of child
  - When reunification is not possible, a safe and loving permanent family may be located for the child

For More Information See:

- *Troutman, B, Ryan, S., & Cardi, M., "The Effects of Foster Care Placement on Young Children's Mental Health," University of Iowa Hospitals and Clinics, Protecting Children, 2000. Available at: http://www.medicine.uiowa.edu/icmh/archives/reports/Foster_Care.pdf*
- *"Disruptions in Close Relationships: How They Affect A Child's Behavior's Thoughts and Feelings," University of Wisconsin Extension, 2003. Available at: http://www.uwex.edu/relationships/files/B3786-4.pdf*
- *"Finding the Missing Pieces: Helping Adopted Children Cope with Grief and Loss," Adoption Learning Partners, 2002. Available for fee at: http://www.adoptionlearningpartners.org/finding_missing_pieces.cfm*

7. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit B.1. *"Self-Assessment & Reflection Tool"* and *"Training Reflection"* a. Encourage participants to provide feedback on the Unit B.1. training d. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Participant Handouts:*** • *Self-Assessment & Reflection Too* • *Training Reflection*

California Juvenile Dependency Mediation Curriculum

Unit B:
Dependency Mediation Context

Chapter 1:
Child Welfare System/Juvenile Dependency Court

California Administrative Office of the Courts

How Families Come to the Attention of *County Child Protection System (CPS)*

- Each county has a Child Welfare Department, with has a 24 hour "Hotline" to report suspected child abuse. (Emergency Response)
- After receiving a report of known/suspected child abuse or neglect, CPS will:
  - Screen out inappropriate calls; or
  - Investigate the Report further
    - Immediate response indicated?

CPS Determines Whether…

Based on risk assessment, CPS determines if:

1. <u>Report of Abuse Unfounded</u>
   - Close case (w/ or w/o providing referrals)
2. <u>Report of Abuse Inconclusive</u>
   - Close case (w/ or w/o providing referrals)
   - Keep case open (w/in CPS) & offer voluntary services to remedy/prevent abuse & neglect

- Note: No court involvement in either case.

CPS Determines Whether…

3. <u>Report of Abuse Substantiated</u> (Internal CPS Substantiation)
   - Close case (w/ or w/o providing referrals); or
   - Keep case open (w/in CPS) & offer voluntary services to remedy/prevent abuse & neglect; or
   - Remove Child(ren)
     - Lawfully take child into protective custody (up to 48 Hrs)
     - Petition the court to formally detain and take jurisdiction over child, and obtain court orders allowing CPS to:
       - Keep the child in the home & provide court supervised family maintenance services (FM)
       - Remove the child from the home & provide court supervised family reunification services (FR)

W&IC §300
Bases for Dependency Court Jurisdiction

(a) Serious physical harm

(b) Neglect

(c) Serious emotional damage

(d) Sexual abuse

(e) Severe physical abuse of child under 5

(f) Death of another child

(g) No provision for support

(h) Freed for adoption

(i) Acts of cruelty

(j) Child's sibling abused or neglected

What is the Dependency Court's Scope of Jurisdiction?

Once a petition is filed & until petition dismissed or dependency terminated:

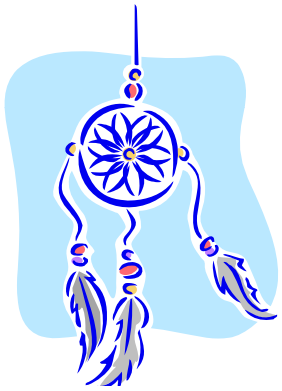
- EXCLUSIVE jurisdiction over custody, visitation, etc.
- EXCLUSIVE jurisdiction to determine paternity
- Restraining orders
- Periodic Reviews, Contested Hearings as appropriate, permanent plan orders
- Dismissal of the Case

Foster Care Placement Options (From Most to Least Preferred)

1. <u>Relative or Kinship Home</u>
   - Includes non-relative extended family members (NREFMs)
2. <u>Foster Family Home</u>
   - Licensed foster family homes
   - Foster family agency certified homes
3. <u>Group Home</u>

Indian Child Welfare Act (ICWA) May Determine Placement

ICWA was passed by the United States Congress to express the preference for:



- Keeping Indian children with their families
- Deferring to tribal judgment on custody issues
- Placing Indian children who must be removed from the parental home with their own families or tribes
- All dependency proceedings involving Indian children are governed by ICWA

For More Info See: Dependency Quick Guide, 2007.

Out-of- State Placements Governed by Interstate Compact on the Placement of Children (ICPC)

- ICPC is an agreement among participating states & territories (including CA), that regulates the moving of a child out of state for a foster care or pre-adoptive placement
- A child *cannot* be placed out of state until the receiving jurisdiction provides written confirmation that the proposed placement is “not contrary to the child’s best interest.”

Permanent Plan Options
(From Most to Least Preferred)

1. <u>Reunification</u>
   - Return to parent/caregiver's custody
2. <u>Adoption</u>
3. <u>Legal Guardianship</u>
4. <u>APPLA</u>
   - Another planned permanent living arrangement; Formerly known as long term foster care- LTFC

Child Welfare Agency's "Concurrent Planning" and Permanent Placement

- Social Services must simultaneously pursue both a primary case plan goal & a contingency or alternative case plan goal if primary fails
  - Primary case plan goal typically reunification
  - Secondary case plan goal typically adoption or guardianship
- Strategy designed to **reduce delays** in attaining permanent family placements for children in foster care
- Requires ongoing assessment of reunification potential & child's best interest

Sample Social Worker Responsibilities in Concurrent Planning

Reunification Efforts

- Engage parents in early, intensive services
  - Frequent contact to support, trouble-shoot & monitor progress
- Arrange for frequent parent-child visitation & review often
- Fully explain law governing reunification time frames & consequences of not meeting time frames

Alternative Plan Efforts

- Early identification of child's father & paternity determination
- Early, comprehensive search for relatives, fictive kin & resource families (explore potential willingness to adopt)
- If possible, arrange initial placement of the child with a relative or non-relative resource family

Law's Requirement that County Provide "Reasonable Efforts"

- Proper standard of efforts that child welfare agency must make to preserve & reunify families
- Court must determine whether child welfare agency is fulfilling its responsibilities to families
- Reasonable efforts are required whenever a child is removed from a parent or guardian **EXCEPT** when not required pursuant to W&IC § 361.5(b); Examples include:
  - Severe physical or sexual abuse, parent convicted of violent felony & involuntary TPR
  - When reasonable efforts not required case is sometimes referred to as a "bypass case"

Exiting the Juvenile Dependency Court Jurisdiction

1. Reunification and Dismissal of the Case
2. Termination of parental rights & adoption
3. Legal guardianship
4. Dependent Child's Emancipation ("Ageing Out")

Custody and Visitation Orders at Dismissal

- Customarily, courts have dismissed cases with custody to one parent and “reasonable visitation” to other.
- BUT, Orders (mediation agreements) should be carefully crafted because:
  - Orders are final and not easily modifiable; orders transferred to Family Court, for any subsequent custody issue.
  - Parents unlikely to access private counsel for future custody order modifications
  - Parents unlikely to access supportive “partners” (e.g., CASA & service providers) once out of dependency court system
  - Failure to comply with exit orders may lead to re-removal & additional dependency court intervention
  - Parents will need specific guidance when inevitable custody/visitation disagreements arise

Examples of Post-Adoption Contact

- Information sharing
  - Letter/photo to be sent by birth parent
  - Letter/photo to be sent by adoptive family
  - Letter/photo to be shared w/ child at later time
- Phone calls between the birth parent/family and child (or adoptive family)
- Contact for child and birth parent/family (supervised or unsupervised)
- Child may initiate future contact (phone or in-person) as he/she desires (less typical)
- Family Code sections, 8616.5 et seq

Differentiating Juvenile Dependency Court and Adult* Criminal Court Proceedings

Given the nature of child abuse and neglect allegations, there is often a great deal of confusion about the distinction between juvenile dependency court and criminal court proceedings addressing child maltreatment issues. The table below is intended to clarify system differences.

	Juvenile Dependency Court	**Criminal Court (Adult)**
Goals	• Protect children • Preserve & strengthen families (when possible) • Provide children with safe, loving & legally permanent homes	• Protect the public • Deter future crime • Punish wrongdoing • Rehabilitate the offender
Philosophical Emphasis	• Treatment and Reunification	• Punishment
Petitioning Agency/Atty.	• County Counsel	• District Attorney
Standard of Proof	• Civil court process has a lower standard of proof	• Criminal court requires a much higher standard of proof- evidence
Privacy of Proceeding	• Confidential (closed) proceeding	• Public (open) proceeding
Concurrent Dependency & Criminal Court Involvement	• Child protection parents' attorneys estimate that 13% of their cases are simultaneously involved in criminal court proceedings • Remaining cases were either less serious or lacked adequate evidence for criminal prosecution • Sexual abuse cases are most likely to be concurrently involved in both courts	• Criminal prosecutors estimate that 60% of their child ***maltreatment cases*** are simultaneously involved in juvenile court proceedings • Often because the non-offending parent is unable or unwilling to protect child from the alleged perpetrator
Potential Results of Lack of Coordination	• "[W]hen juvenile court actions precede the criminal court matter, as they do in most circumstances, the alleged offenders are at risk. Information they provide to comply with juvenile court treatment plans, such as their involvement in therapy, can be used against them in subsequent criminal proceedings." • Concerned about the inadequate protection provided by testimonial immunity statutes, defense counsel may advise clients to not testify in juvenile court and not participate in therapy (esp. for sexual abuse)	• Conflicting court orders • While ASFA timelines now prevent unwarranted delays in juvenile dependency court proceedings, previously children in dual jurisdiction cases were at risk for stalled treatment and placement plans.

Note: This chart is NOT same for Juvenile Dependency/Juvenile Delinquency Proceedings.

See Also: *National Institute of Justice, 1996. "Coordinating Criminal and Juvenile Court Proceedings in Child Maltreatment Cases"*

Chronological Sequence of Juvenile Dependency Court Proceedings Exercise

Arrange the following list of court hearings/events in the chronological sequence in which a case would proceed through the dependency court process- i.e., number 1 would be the earliest event and number 9 would be the last event.

- Disposition Hearing
- 12 Month Review Hearing (Permanency Hearing)
- Initial Hearing ("Detention Hearing")
- 366.26 Hearing (.26 or Selection & Implementation Hearing)
- 6 Month Review Hearing
- Jurisdiction Hearing
- Review of Permanent Plan (RPP or Permanency Review Hearing)
- Petition Filed
- 18 Month Review Hearing

Chronological Sequence of Juvenile Dependency Court Proceedings

1.

2.

3.

4.

5.

6.

7.

8.

9.

Juvenile Dependency Court Proceedings: Sequence, Timing & Purpose

Note: Statutes are updated from time to time, continue education should keep mediator advised of any changes in law.

Court Event/Proceeding	Timeline	Legal Code	Decisions/Purpose
Petition by County Child Protection Agency	• If a child detained a WIC §300 petition must be filed **within 48 court hours** of protective custody (initial removal)	W&IC § 313	
Initial Hearing (Sometimes called a "Detention Hearing" when child detained) Other states may refer to it as an "Emergency Removal Hearing" or "Shelter Care Hearing	• **Next court day** after petition is filed if child detained • **Within 15 court days** of date petition filed if child not detained	W&IC §§ 315 & 319	• Should the child be declared a dependent • Approve or deny the temporary removal of the child from his/her caregivers • Truth of allegations in the petition **not** at issue, instead focuses on whether risk of harm warrants continued detention • Can child be returned home with services
Jurisdiction Hearing	• **Within 15 court days** of initial/detention hearing if child detained • **Within 30 days** of date petition filed if child not detained	W&IC § 356 and CRC 5.684(f) and (h)	• Purpose "is to make a factual determination about whether the child has been abused or neglected as defined in section 300(a)–(j)." (Dogbook, 2007) • Court may sustain petition and find some/all allegations true, if sufficient evidence • OR petition dismissed (and previous orders terminated) if court finds not proved by preponderance
Disposition Hearing	• **Within 10 court days of jurisdiction** if child detained & services recommended • **Within 30 days of jurisdiction** if child detained & no services recommended • **No more than 45 days after juris.** if child not detained	W&IC § 358 and CRC 5.686	• Should child be declared a dependent • If so, should child be removed or returned to caregivers; Where should child be placed; How should visitation take place; Who should receive services; Which services are appropriate

Court Event/Proceeding	Timeline	Legal Code	Decisions/Purpose
Six Month Review Hearing	• **Within 6 months of the date that the child entered foster care*** • **6 months after disposition** if child not detained	W&IC § 366.21(e) W&IC § 366.22 and CRC 5.710-5.720	• Review parent's progress to determine if the child can be safely returned or • If continued placement necessary, should reunification services continue/terminate • Only 6 mos. of services for child under 3 at time of removal (or sibling group w/ same)
Twelve Month Review Hearing (Permanency Hearing)	• **Within 12 months from the date the child entered foster care***	W&IC § 366.21(f) and CRC 5.715(a)	• Review parent's progress to determine if the child can be safely returned or • If continued placement necessary, should reunification services continue/terminate • Court must terminate unless substantial probability of return w/in 18 mos. of initial removal or no reasonable efforts/services
Eighteen Month Review Hearing	• **Within 18 months from initial removal ♦**	W&IC § 366.22 and CRC 5.720	• Last possible review hearing if case is family reunification; • Family maintenance cases reviewed every 6 mos. until dependency terminated
§366.26 Hearing (.26 or Selection & Implementation Hearing)	• **Within 120 days of the court's order denying or terminating family reunification services**	W&IC § 366.26; CRC 5.725; JV-320	• Reunification efforts are over and focus is on determining and implementing next best permanent plan for child; i.e., TPR & referral for adoption, legal guardian appointed (either continuing or terminating dependency), APPLA, or continue case for 180 days to locate an adoptive home
Review of Permanent Plan (RPPs or Permanency Reviews)	• **At least once every six months following termination or denial of reunification services**	W&IC § 366.3(a) W&IC § 366.3(d) and CRC 5.740(a) & (b)	• Actively assess child's safety and appropriateness of plans and services to effectuate best option for permanency (adoption, guardianship, return to parent's custody, or APPLA) as quickly as possible

* The date that the child entered foster care is the date of jurisdiction OR 60 days after initial removal, whichever is earlier

♦ The initial removal is the date that the child was taken into custody or first removed from his/her caregivers

Match W&IC Sections 300(a)-(j) with the Corresponding Form of Maltreatment

Background: Regular juvenile dependency mediation participants (such as attorneys and social workers) are likely to use a common shorthand when talking about the child abuse and neglect bases by which the juvenile dependency court can take jurisdiction of a case (Welfare and Institutions Code § 300 (a)-(j)). Knowing this shorthand will likely increase the mediator's credibility and facilitate the mediator's dependency mediation practice.

Exercise: *Draw a line to connect the Welfare and Institutions Code Section letter to the corresponding form of maltreatment.*

300(**a**)	Neglect
300(**b**)	Serious emotional damage
300(**c**)	No provision for support
300(**d**)	Death of another child
300(**e**)	Child's sibling abused or neglected
300(**f**)	Serious physical harm
300(**g**)	Freed for adoption
300(**h**)	Sexual abuse
300(**i**)	Acts of cruelty
300(**j**)	Severe physical abuse child under 5

California Juvenile Dependency Mediation Curriculum

Self-Assessment & Training Reflection

Unit B: Dependency Mediation Context

Chapter 1: Child Welfare System / Juvenile Dependency Court Proceedings

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

1. Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My familiarity with CPS' internal process when receiving, investigating and responding to reports of child abuse and neglect.	☐	☐	☐	☐
My ability to identify the legal bases for the court to declare a child a dependent under W&IC §300.	☐	☐	☐	☐
My awareness of the different types and preferred order of foster care placements.	☐	☐	☐	☐
My ability to discuss the sequence, timelines and purposes of juvenile dependency court hearings.	☐	☐	☐	☐
My familiarity with common child welfare practices and terminology such as, ICPC, ICWA, and concurrent planning.	☐	☐	☐	☐
My awareness of permanent plan options and their order of preference.	☐	☐	☐	☐
My understanding of how cases exit the juvenile dependency court system.	☐	☐	☐	☐
My familiarity with best practices for exit order mediation.	☐	☐	☐	☐
My familiarity with court and mediation practices related to post-adoption contact	☐	☐	☐	☐
My recognition of the child welfare system's potential impacts on children.	☐	☐	☐	☐
My familiarity with the role of attorneys for the child, parent, and agency	☐	☐	☐	☐

2. What is the most important idea that you learned today?

Unit B: Dependency Mediation Context

Chapter 1: Child Welfare System / Juvenile Dependency Court Proceedings

3. What was the most confusing topic today?

4. What important questions remain unanswered for you?

5. What resources will help answer your questions or provide more information about this topic?

6. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit B:

Dependency Mediation Context

CONTENTS:

Chapter 1: Overview: Child Welfare System /Juvenile Dependency Court Proceedings

Chapter 2: Dependency Mediation Participant Roles & Involvement

Unit B. Chapter 2:

Dependency Mediation Participant Roles & Involvement

Required Instructional Materials: • Computer • PowerPoint Slides • Projection Screen **Presentation Methods:** • Individual Exercise • Small Group Discussion • Large Group Discussion • OPTIONAL: Facilitated Multi-Disciplinary Panel **Participant References:** Unit B.2. Participant Handouts • Participant Vignette 1 *"Vignette 1."* • Participant Handout- A *"Dependency Mediation Worksheet"* • Participant Handout- B *"Participant Roles- Juvenile Dependency Mediation"* • Participant Handout- *"Self-Assessment & Reflection Tool"* • Participant Handout- *"Training Reflection"* **Suggested Pre-Session Reading & Exercises:** • Participant Vignette 1 - *"Vignette 1."* • Participant Handout- B *"Participants' Roles- Juvenile Dependency Mediation"*	***Estimated Duration:*** ***2 Hours*** ***OPTIONAL*** ***1 Hour*** *Facilitated Multi-Disciplinary Panel: Clarifying Participant Roles*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***5 Minutes***
2. Large Group Discussion: Getting Started----------	***5 Minutes***
3. Individual Exercise: Exploring Participants for *Vignette 1*.-------	***10 Minutes***
4. Small Group Discussion Followed by Large Group Discussion: Exploring Participants for *Vignette 1*.----------	***30 Minutes***
5. Large Group Discussion: Weighing Additional Participant Involvement----------	***15 Minutes***
6. Large Group Discussion: Clarifying Participant Roles----------	***25 Minutes***
7. OPTIONAL Facilitated Multi-Disciplinary Panel: Panel Discussion- Dependency System Participant Roles ----------	***(OPTIONAL)*** ***60 Minutes***
8. Large Group Discussion: Options for Participant Involvement-----	***15 Minutes***
9. Large Group Discussion: Structuring the Mediation Appointment -	***10 Minutes***
10. Large Group Discussion: The Value of Multiple Perspectives------	***5 Minutes***
11. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After Concluding Unit B.2. Participants Will Be Able To: a. Identify participants who *regularly* attend dependency mediation appointments b. Identify participants who *may* attend dependency mediation appointments c. Understand typical issues referred to dependency mediation d. Understand each participant's role and degree of participation e. Assess (or help the parties assess) if it would be beneficial to have additional people attend the dependency mediation appointment f. Better analyze how to structure the dependency mediation appointment given party alliances, concerns and levels of participation g. Assure compliance, as required, with Court Referral Order h. Appreciate the value of multiple perspectives	***5 Minutes*** ***Facilitator Notes:*** • *Welcome participants* • *Review break time, end time, location of restrooms, etc.* • *Review learning objectives with participants*

2. Large Group Discussion:

Getting Started

5 Minutes

a. What are some general considerations for dependency mediations in terms of numbers of participants?
   - Generally encourage equal numbers of people on each "side"
   - Generally the more people participating in mediation the greater the likelihood that the session will not result in an agreement
   - However, the right people do need to be present and often "additional participants" are critical to resolving the issues

b. While dependency mediators may have a limited impact on these issues (due to court referral orders, program protocols), what are some considerations about the individuals who should ideally participate in a specific mediation appointment?
   - Generally, individuals who should participate in dependency mediation are readily apparent. While the mediator does not decide who the parties are, occasionally the mediator may help the parties decide who should actively participate in mediation. This is especially relevant with agency representatives where there may be flexibility about who participates
     - Example: If trust has developed with social services, the mediator may ask the social worker which department staff member would be the optimal participant; Sometimes a social worker will acknowledge having a conflictual relationship with a certain client; Often he/she has a colleague that relates more constructively with the same client
     - Sometimes it is preferable to have the individuals with the poor relationship participate in the mediation session together (e.g., early in case and social worker assignment will not be changing)
     - At other times (e.g., termination of parental rights case) helping parties select less controversial participants may be preferable
   - Participants should also include those who:
     - Have the power or authority to make a decision
       - The mediation process is undermined when a participant does not have the authority to make a final decision
       - An individual's lack of decision-making authority will likely lead other participants to believe that the party/agency had no intention of really resolving the dispute; This experience may lead to future unwillingness to mediate as the process is seen as a waste of time
     - Have the capacity, if they are not involved, to reverse or damage a negotiated settlement. (Think about this in relation to dynamics of family authority/influence about decisions being made)
     - Know and understand the issues in dispute
     - Have demonstrated a commitment to bargaining in good faith

For More Information See:

- *Madonik, B., I hear what you say, but what are you telling me? The strategic use of nonverbal communication in mediation, (2001).*
- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflicts, Second Edition, (1996).*

3. <u>Individual Exercise:</u> **Exploring Participants for Vignette 1.** a. Have participants read Vignette 1 b. Have participants answer: 1. Who are the legal parties? 2. Who should attend the mediation appointment? (regular/standard attendees per your county's protocols) 3. Are there additional participants that you (or parties/judicial officer) might consider including in the mediation? 4. What is the rationale for participant inclusion/exclusion? 5. What might be the referral issues? c. If helpful you may distribute *Handout A: Dependency Mediation Case Data Sheet"*	***10 Minutes*** ***<u>PowerPoint Slides</u>*** ***<u>Participant Handouts:</u>*** • *Vignette 1* • *Handout A: Dependency Mediation Case Data Sheet*

4. Small Group Discussion Followed by Large Group Discussion:

Exploring Participants for Vignette 1. & Other Cases

a. If training in a large group: participants may break up into groups of three to discuss and compare thoughts regarding the above exercise. Small groups can review and subsequently share with the large group:
   - Who are the legal parties in *Vignette 1*.? (*PowerPoint Slide 2)*
   - Who should attend the mediation appointment per your local protocol? (regular/standard attendees)
     - Minimal participant model (*PowerPoint Slides 3)*
       - In some counties juvenile dependency mediation is conducted without the participation of legal counsel- this is rare
       - "Only 3 percent of programs report that parents' attorneys rarely or never attend mediation and 6 percent say that the agency's attorney rarely or never attends. This is certainly consistent with other research, which finds that programs today virtually always include the family, all of the attorneys in the case, and the caseworker."[1] (Thoennes, 2009, citation on right)
       - Refer to California Rule of Court 5.518(d)(2)(C): Any attorney who has not participated in the mediation must have an opportunity to review and agree to any proposal before it is submitted to the court for approval.
     - Typical participants (*PowerPoint Slides 4)*
   - Are there additional participants that you (or parties/judicial officer) might consider including in the mediation? (*PowerPoint Slide 5)*
   - What is the rationale for participant inclusion/exclusion?

b. Consider other juvenile dependency scenarios (i.e., not *Vignette 1*.). Reflecting on these other cases, can you name the roles of additional individuals that might be appropriate to include in mediation? (*PowerPoint Slide 6)*

c. Which individuals (from the extended participant list recorded on *PowerPoint Slide 6*) should automatically be included in mediation if involved in the case and desire participation? (*PowerPoint Slide 7)*

30 Minutes

(10 min. in small group & 20 min. for report back & large group discussion)

PowerPoint Slides 2-7

Facilitator Notes:

- *To increase group participation, allow small groups to report conclusions for each question before relevant portion of each PowerPoint is displayed.*

[1] *Thoennes, N., "What We Know Now: Findings From Dependency Mediation Research. Family Court Review, Vol. 47 No. 1, January 2009, p. 27.*

5. <u>Large Group Discussion:</u> **Weighing Additional Participant Attendance** a. What do your court's mediation protocols (and/or local court rules) say about how determinations will be made about whether or not an additional (non-party) participant may be included in dependency mediation? *(PowerPoint Slide 8)* Typical options below: o Court's discretion (e.g., specified in referral order) o Mediator's discretion (generally collaborative process in consultation w/ parties), or o With the agreement of all legal parties b. Generally what would one want to consider (or help the parties consider) when determining whether to include additional participants in the mediation appointment? *(PowerPoint Slides 9-10)* o What are the benefits of including a specific additional participant? o What are the drawbacks of including a specific additional participant? o How relevant/critical is his/her participation to the issues being discussed in mediation? o Are there other constructive ways to obtain this person's point of view or expertise? o What is each party's perspective about including the specific additional participant? o How constructive is the individual's participation likely to be? o Do any parties strongly object to the inclusion of a specific additional participant? Why? o Is it possible to trouble-shoot the level and/or timing of the individual's participation? o Discuss any case examples that trainee has been involved in.	***10 Minutes*** ***<u>PowerPoint Slides 8-10</u>***

6. <u>Large Group Discussion:</u> **Clarifying Participant Roles** a. What is the judicial officer's role in dependency mediation? *(PowerPoint Slide 11)* b. Imagine that you are mediating a dependency case. What tasks and functions are you providing? What is your role? *(PowerPoint Slide 12)* c. Despite very different roles and interests what common functions or tasks do all mediation participants have? All participants: o Identify issues to address in mediation o Share their own point-of-view (or client's point of view) o Listen to the point-of-view of others o Share information about the case o Brainstorm and assist in fashioning solutions o Participate in dialogue and negotiation o Ask questions and provide clarifications d. What are the more unique elements of each participant's role? What contributions may distinguish participants from one another? (Note: these contributions are not exclusively limited to these participants, lots of overlap at times) o <u>Parent</u> and/or <u>Guardian</u> for Child *(PowerPoint Slide 13)* ▪ Identifies safety concerns, such as D.V. ▪ Asks questions re. mediation process, agreements, expectations, etc. o <u>Parent's Attorney</u> *(PowerPoint Slide 14)* ▪ Provides parents w/ legal advice & info. (e.g., confidentiality limits) ▪ Assists parents in effectively participating in mediation process o <u>Child's Attorney</u> *(PowerPoint Slide 15)* ▪ Represent the child's interests and share child's preferences ▪ When appropriate, explore with the child his/her desire to participate in mediation and prepare child for participation o <u>Social Worker</u> *(PowerPoint Slide 16)* ▪ Identify reunification goals of parents, case plan requirements ▪ Identify support services and resources ▪ Be authorized to sign-off on mediation agreement	***30 Minutes*** ***<u>PowerPoint Slides 11-27</u>*** ***<u>Facilitator Notes:</u>*** • *Some previous coverage of mediator's role in Curriculum A.1.* • *Unique elements of each participant's role are in bold in PowerPoint* *(Continued)*

6. Large Group Discussion:

Clarifying Participant Roles (CONTINUED)

- County Counsel *(PowerPoint Slide 17)*
  - Represent social services' interests and concerns re. child protection
  - Some dependency mediation programs call for county counsel to draft the mediation agreement
  - May have institutional limitations on what he/she able to negotiate; Consider exploring possible constraints prior to mediation or in caucus*
  - ** Importance of multi-agency/court meeting to address issues in mediation as related to court process, hearings, etc.*

- Court Appointed Special Advocate (CASA) *(PowerPoint Slide 18)*
  - California Rule of Court, Rule 5.655 describes CASA's function in juvenile court process, including:
    - Independently investigate the child's case;
    - Determine the child's needs;
    - Explore family and community resources to meet the child's needs;
    - Make recommendations to the court;
    - Advocate for the child;
    - Monitor the case;
    - Be the voice of what is in the child's best interest; and
    - Be the voice of the child's expressed wishes
  - CASA's distinct role in dependency mediation:
    - CASA often has the most comprehensive information about the child's day to day needs, adjustment, challenges, etc.
    - There may be times when it is appropriate for CASAs to assist with mediation agreement implementation (e.g., facilitating child's tutoring or sibling contact)
    - CASA performs the duties of a GAL- advocating for the best interests of the child
    - California Rule of Court 5.518(d)(2)(D): "As appropriate, …any guardian ad Litem, [or] **CASA volunteer**… may participate in mediation."
    - CASA is not a party to the case, but is an officer of the court
    - If CASA is assigned to a case, CASA is generally not excluded from mediation

CONTINUED

For More Information See:

- *Information on CASA's role in dependency case taken from National CASA/GAL Volunteer Training Curriculum: Volunteer Manual, 2nd Edition, National CASA, 2002, p. 2-23.*
- *See California Rule of Court 5.655 "Program requirements for Court Appointed Special Advocate programs"*

6. Large Group Discussion:

Clarifying Participant Roles (CONTINUED)

- Child *(PowerPoint Slide 19)*
  - The child has a right to participate in the dependency mediation process accompanied by his or her attorney. (CRC 5.518(d)(2)(B))
  - Child may share his/her perspective about issues such as placement, visitation, removal or return home and other needs (e.g., school)
  - Child may want to ask questions and be updated about developments in his/her case
  - Older child may be participating in discussions about house rules, appropriate behavior, etc.
- Guardian Ad Litem (GAL) for parent- whether or not parent is a minor *(PowerPoint Slide 20)*
  - GAL is a person appointed by the court to protect the rights of an incompetent person (e.g., a person unable to understand the nature of the proceedings or to assist counsel in preparing the case)
  - Appointment of a GAL removes control over the litigation from the parent and transfers it to the GAL
  - GAL makes decisions "as if" parent
  - If a mediation agreement is drafted, have both the parent and GAL sign agreement; If appointed, GAL must be included in mediation
- Indian Tribe *(PowerPoint Slide 21)*
  - Represents the best interests of the child as defined by the Indian Child Welfare Act (ICWA)
  - Ensures that parents, child, and tribe have all rights afforded pursuant to ICWA
  - Advocates for culturally relevant service options and dispositional recommendations
  - Advocates for placement decisions that preserve Native American families: preference first to child's extended family, then to foster families of the same tribe, and finally to foster families of another tribe
  - Tribal courts may request transfer of jurisdiction from state court to tribal court
  - If child is a member of Indian Tribe & tribal representative involved in the case, tribal representative should participate in mediation
  - Given geographic constraints, not unusual for tribal representatives to participate in dependency mediation telephonically

CONTINUED

Facilitator Notes:

- *Remind participants that Curriculum Unit C is entirely devoted to "Children & Dependency Mediation"*

For More Information See:

- *Additional information about Indian Tribes can be found in the Administrative Office of the Court's "Juvenile Court Administrative Desk Book" which can be found on the California Dependency Online Guide (Caldog) website.*

6. Large Group Discussion:

Clarifying Participant Roles (CONTINUED)

- De Facto Parent *(PowerPoint Slide 22)*
  - Status that is judicially created and maintained (i.e., juvenile court determines who is granted de facto parent status)
  - "'De facto parent' means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." *(CRC 5.502(10))*
  - If granted de facto parent status granted by the juvenile court the person does not have the same rights/responsibilities as a parent or guardian but instead has the below limited rights:
    - De factor parent has right to be present at dependency proceedings (Note: Caregivers who are not de facto parents can go to all dependency review and permanency hearings)
    - De factor parent has right to be represented by counsel
    - De factor parent has right to present evidence and examine witnesses
    - De factor parent has right to participate as a party in the disposition hearing and any hearing after that
  - A de facto parents does NOT have the right to:
    - Reunification services; Custody; Visitation; Attorney fees (unless judge appoints attorney); Rehearing; Automatic receipt of social worker's report and other documents
  - De facto parent likely included in mediations (addressing disposition and subsequent court stages) when de facto parent's participation is necessary and appropriate to assert his/her interest in the child
  - For the Judicial Council of California's "De Facto Parent Pamphlet" see www.courts.ca.gov/documents/jv299.pdf
  - Also see CRC 5.534(e)
- Relative (Relative caregiver, other family member, or "fictive kin") *(PowerPoint Slide 23)*
  - Shares about child's adjustment and medical/educational/emotional needs
  - If appropriate, transports child for mediation
  - If appropriate, assists with the implementation of the agreement
  - "As appropriate, other **family members** and any guardian ad Litem, CASA volunteer, or other involved person or professional may participate in the mediation." (CRC 5.518(d)(2)(D))

CONTINUED

Practitioner Considerations:

The 1997 passage of the federal Adoption and Safe Families Act (ASFA) greatly expanded opportunities throughout the country for foster parents and relatives caring for dependent children to participate in juvenile court hearings regarding the children in their homes. As a requirement of receiving federal foster care funds, ASFA requires that states provide foster parents, including fost-adopt parents and kin caregivers, with notice and an opportunity to be heard in any review or hearing to be held with respect to the child in their care. In California, caregivers may attend all hearings or submit information to the court in writing." ("Caregivers and the Courts: Improving Court Decisions Affecting Children in Foster Care" Jan 2002, CFCC & National Center for Youth Law, p. 1)

6. Large Group Discussion: **Clarifying Participant Roles (CONTINUED)** o Foster Parent *(PowerPoint Slide 24)* ▪ Shares about the child's adjustment & medical/educational/emotional needs ▪ If appropriate, transports the child for mediation ▪ If appropriate, assists with the implementation of the agreement ▪ While foster parents have a right to attend court hearings, they are not parties to the case and thus do not have the automatic right to participate in mediation ▪ Depending on your local protocol foster parents may be included in dependency mediation at the court's discretion, mediator's discretion or agreement of all parties ▪ Even if the foster parent does not have de facto parent status, it may be wise to include him/her in a mediation that involves placement or visitation issues that may impact the foster parent; obtaining the foster parent's buy-in may make things work better for the child ▪ If a foster parent is a "fost-adopt" parent (or prospective adoptive parent) and the case is referred to explore post-adoption contact, foster parent should be included in mediation (see below) ▪ Concurrent planning often increases tension between "fost-adopt" parents & birth parents o Treatment Provider *(PowerPoint Slide 25)* ▪ May share about client's needs and treatment progress, consistent with any specific confidentiality requirements ▪ May provide client with emotional support ▪ If appropriate, may assist parties in identifying potential solutions and/or fine points of the agreement ▪ As with other additional participants, it is sometimes appropriate and sometimes inappropriate to include treatment providers ▪ Depending on your local protocol treatment providers may be included in dependency mediation at the court's discretion, mediator's discretion or agreement of all parties ▪ Examples: • Child's therapist included in a portion of the mediation appointment to clarify child's needs around visitation • Parent's substance abuse counselor included in a portion of the mediation appointment to discuss parent's treatment progress	***CONTINUED***

6. Large Group Discussion: **Clarifying Participant Roles (CONTINUED)** o Prospective Adoptive Parent (and/or Prospective Guardian) *(PowerPoint Slide 26)* ▪ While a prospective adoptive parent/guardian is not a party to the case (unless they have de facto parent status), it is often crucial to include a prospective adoptive parent/guardian in any mediation where placement and visitation of the child in their care is an issue ▪ Participation is essential when mediation is to explore the possibility of post-adoption/post-guardianship contact for child and his/her birth parents/family o Domestic Violence Support Person *(PowerPoint Slide 27)* ▪ A mediation participant who has been the victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person (CRC 5.518(d)(2)(E)) ▪ The support person may not actively participate in mediation except to be present as a source of emotional support for the alleged victim ▪ Unless the support person is the alleged victim's attorney, he/she may not advocate on behalf of the alleged victim ▪ If disruptive, the support person may be excluded from mediation (unless the support person is the alleged victim's attorney)	***CONTINUED*** ***Facilitator Notes:*** • *For additional information refer participants to Curriculum Unit E.2. "Domestic Violence and It's Impact on Dependency Mediation"*

7. <u>Facilitated Multi-Disciplinary Panel:</u> **Panel Discussion- Dependency System Participant Roles** a. If possible have your Presiding Juvenile Court Judge invite a representative group of dependency court professionals to a brown bag lunch in order to share about their respective roles in the dependency court system. Ensure that all stakeholder groups are represented. It may be helpful to have presenters prepare to answer the following sample questions: o What is your role in the Juvenile Dependency Court legal process? o Describe some of your responsibilities o What are the typical concerns of your clients or agency? o If someone in your role was not involved in the Juvenile Dependency Court legal process what would be missing? o What energizes you about your role in the Juvenile Dependency Court legal process? What led you to this profession/role? b. Consider inviting other dependency court stakeholders (e.g., attorneys, social workers, CASA volunteers) to attend the brown bag lunch/in-service c. Select a panel facilitator (e.g., an individual to facilitate introductions, time management, closing, etc.)	***<u>OPTIONAL</u>*** ***60 Minutes***

8. <u>Large Group Discussion:</u> **Options for Participant Involvement** a. What are some different ways that individuals can be included in the mediation process? Partial list below: o Provide written report to be reviewed prior to or during appointment o Be available by phone for consultation or support (not on speaker phone during session but available for a certain party to contact, e.g., social work supervisor available by phone with authority to approve agreement) o Be present in the waiting room for consultation, agreement approval or support o Be present for the entire mediation appointment but only to provide moral and emotional support, i.e., not to actively participate in discussion or decision-making (e.g., D.V. Support Person) o Participate in a portion of the mediation appointment by phone (e.g., out of county social worker speaks to the progress of a home study for potential placement providers) o Participate in the entire mediation appointment by phone (e.g., in-custody parent- if not transported) o Participate in a portion of the mediation appointment in person, e.g., speak to specific issues only (like parent's progress in treatment or child's therapist's thoughts on appropriate visitation) o Participate in caucus/separate session only; Have mediator or representative relay concerns, proposals, etc. to other mediation participants o Participate in the entire mediation appointment in person and actively discuss all issues b. Ask participants if they can think of situations in which they might choose to employ the various strategies above? c. *For facilitator or participants with some dependency mediation experience:* If possible share examples of mediation sessions that you facilitated/supervised in which different approaches to structuring the mediation appointment were utilized. o As the mediator, what was your rationale for your choice of appointment structure? o Can you think of any appointments that you wish that you had structured differently? Why?	***15 Minutes***

<u>9. Large Group Discussion:</u> **Structuring the Mediation Appointment** a. Earlier in this chapter, we explored possible mediation participants for *Vignette 1*. Remembering your list of possible mediation participants for *Vignette 1*, as well as the case dynamics, what are some possible ways to structure the dependency mediation appointment? Consider participant alliances, anticipated concerns, levels of participation, etc. Note: When discussing structure you are exploring issues such as whether to orient everyone together, conduct the mediation in a in a large group format, caucus format, or combination, and the potential sequence of separate meetings. b. Ask participants to share their thinking process	***10 Minutes***
<u>10. Large Group Discussion:</u> **The Value of Multiple Perspectives** a. Imagine that certain voices are missing from the mediation dialogue- e.g., no CASA perspective, or no parent's attorney point-of-view. o How would the mediation be different? o What are the benefits of multiple perspectives? b. *For facilitator or participants with some dependency mediation experience:* Have you (or your colleagues) ever been referred a mediation case in which a key participant or agency was not involved? (Not that the dependency mediation proceeded without an assigned/appointed party, but that the case did not have certain roles filled. For example, a parent refused the appointment of a public defender or a CASA volunteer was not assigned.) o Did you (or your colleague) have any concerns about the process? o How were information development and decision-making impacted?	***5 Minutes***

<u>11. Summary & Close:</u> a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit B.2. *"Self-Assessment & Reflection Tool"* d. Encourage participants to provide feedback on the Unit B.2. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***<u>Participant Handouts:</u>*** • *Self-Assessment & Reflection Tool*

Juvenile Dependency Mediation

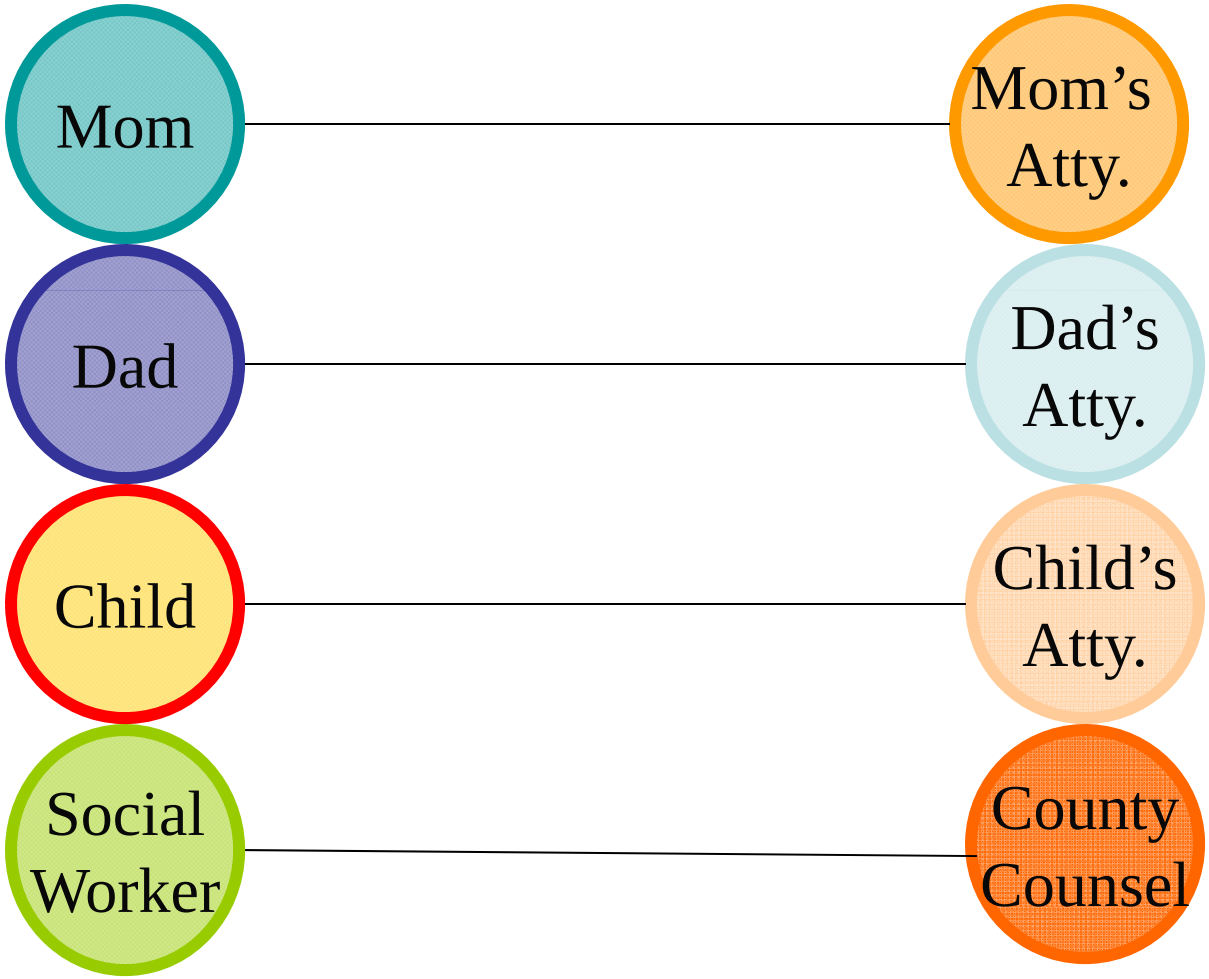
DRAFT Curriculum PowerPoint Presentation

Unit B. Chapter 2

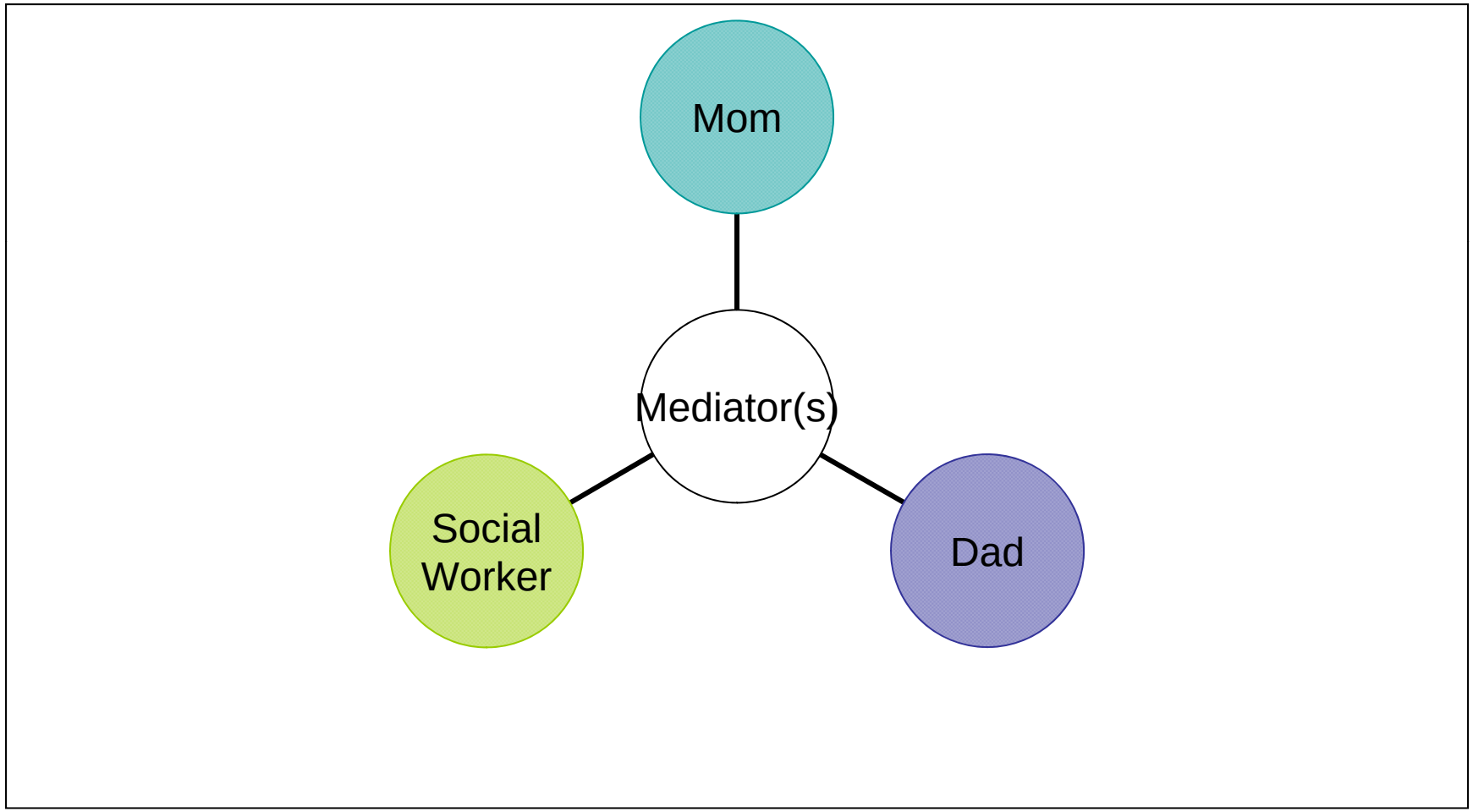
Dependency Mediation Participant Roles & Involvement

California Administrative Office of the Courts

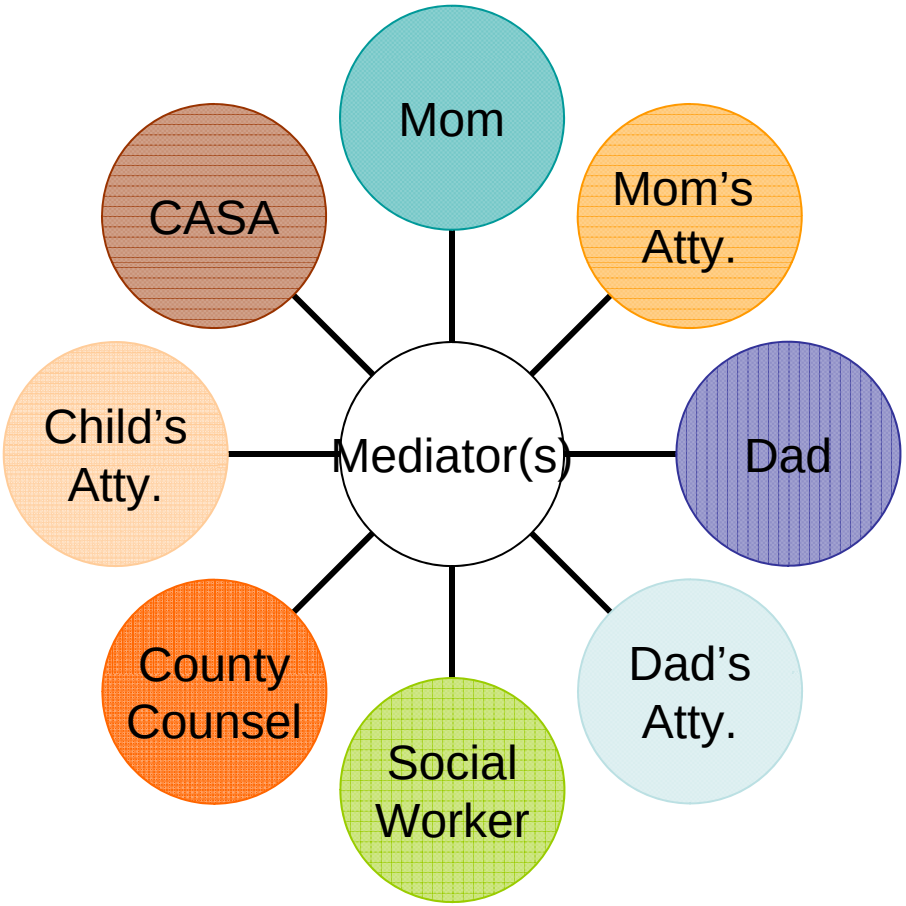
Legal Parties & Counsel



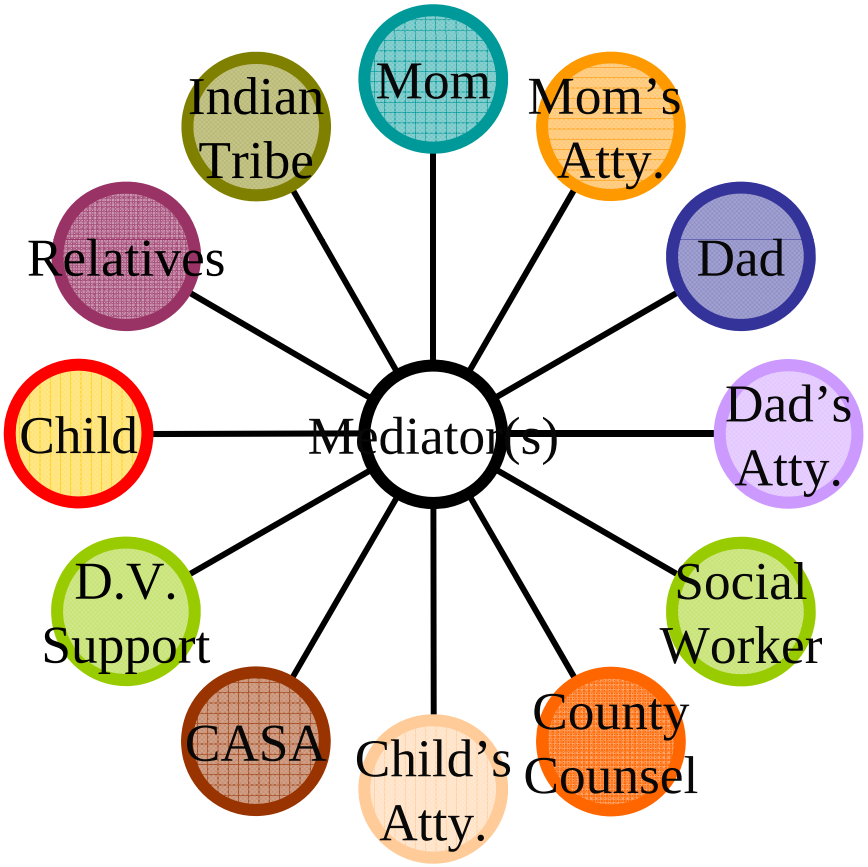
Minimal Participants Model



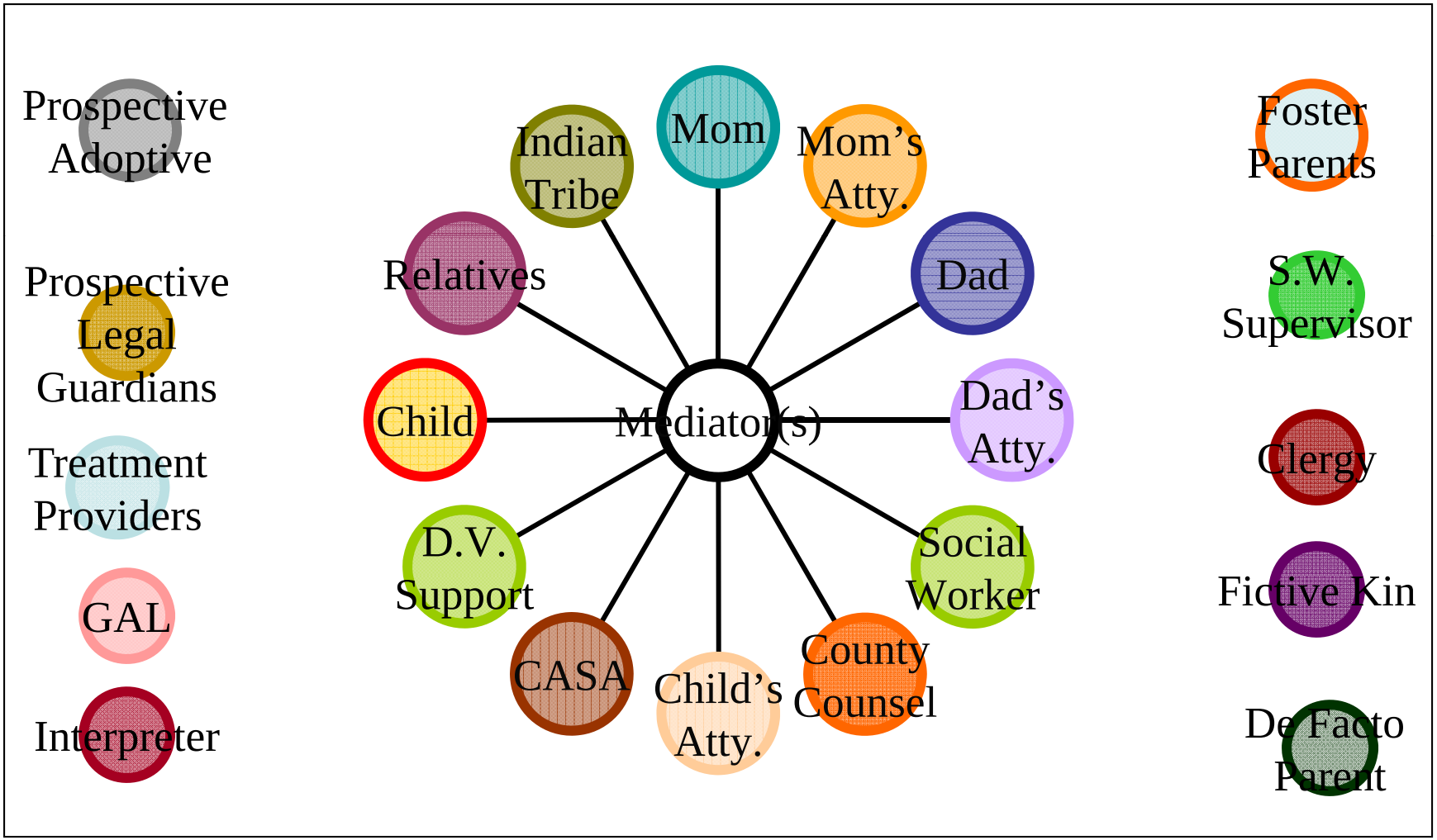
Typical Participants



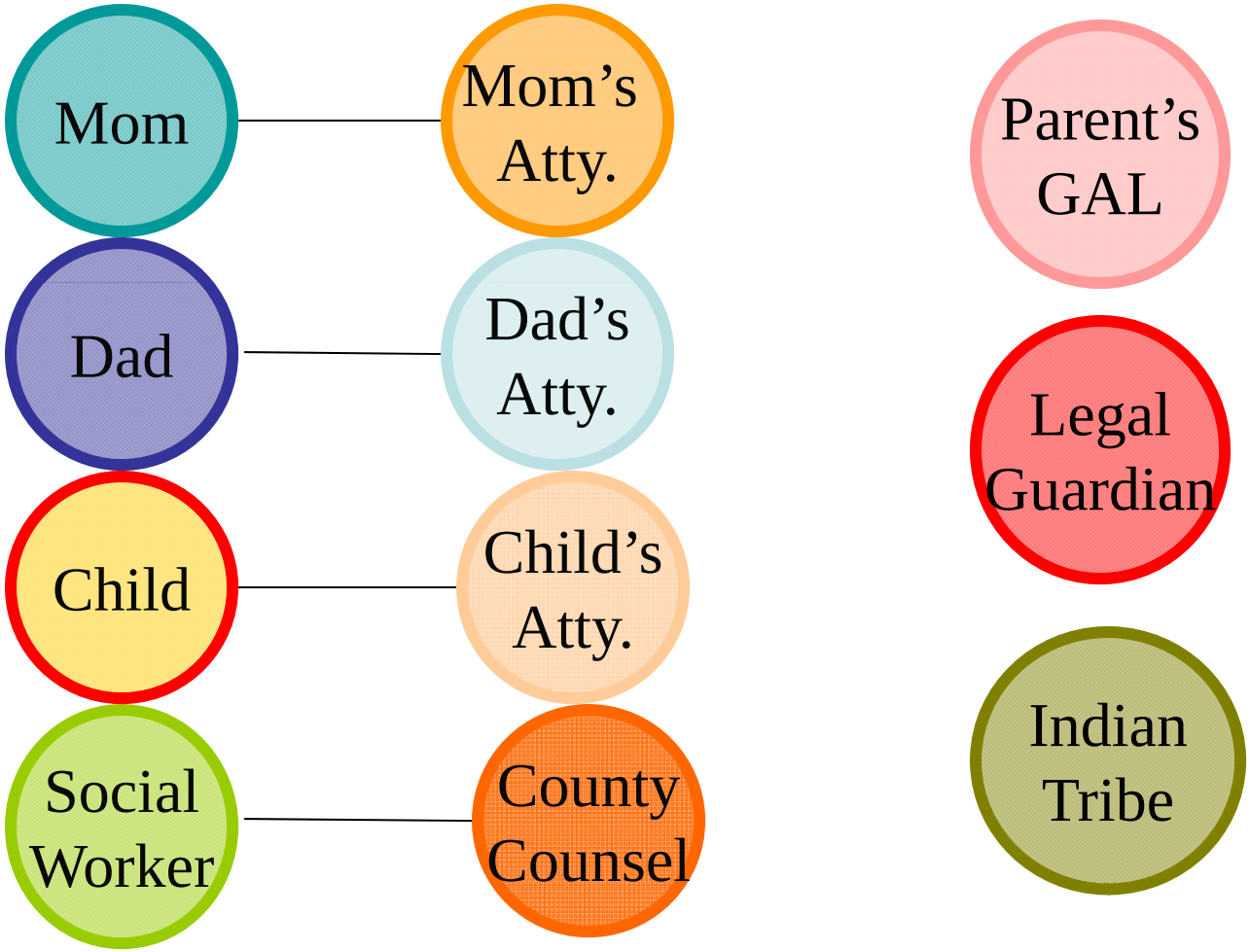
Possible Additional Participants Vignette A.4.



Other Potential Participants



Individuals Included in Mediation If Involved in Case & Desire Participation



Your Mediation Program

- Insert the sections of your mediation program protocol (and/or local court rules) that address how determinations will be made about whether or not an additional (non-party) participant may be included in dependency mediation

Include Additional (Non-Party) Participants?

- What are the **benefits** of including the specific additional person? (e.g., relative, foster parent, service provider)
- What are the **drawbacks** of including the specific additional person?
- How **relevant**/critical is his/her input to the issues being discussed in mediation?
- Are there more constructive ways to obtain this person's point of view or expertise?

Include Additional (Non-Party) Participants?

- What is **each party's perspective** re. including specific additional participant?
- How **constructive** is person's participation likely to be?
- Do any **parties strongly object** to the inclusion of a specific additional participant? Why?
- Is it possible to **trouble-shoot** the **level/timing** of the individual's participation?

Judicial Officer's Role

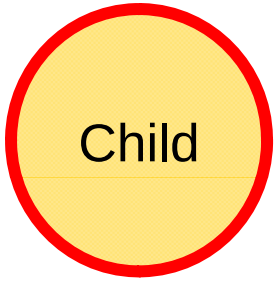
- Refer/order cases to mediation
- Demonstrate support for process of mediation
- Review mediation agreements to determine acceptability to the court
  - Ensure legality/fairness of result & child's safety and best interest addressed
- When a mediation agreement has not been reached continue with mediation, or schedule hearing
- Ensure that parties do not introduce confidential communications from mediation into the court process

Participant Roles & Involvement

Mediator

- Reviews documents & screens for safety issues
- Orients the parties to the mediation process
- Assists with identification of underlying issues & concerns
- Facilitates communication, promotes dialogue/negotiation & manages process
- Helps parties identify & evaluate possible solutions & explores practicality of plans
- Maintains impartiality with a focus on child's safety and best interest
- Confirms agreements & drafts agreements

Participant Roles & Involvement



Child

- Child has a right to participate in the dependency mediation process accompanied by his or her attorney. (CRC 5.518(d)(2)(B))
- Child may share his/her perspective about issues such as placement, visitation, removal or return home & other needs (e.g., school)
- Child may want to ask questions & be updated re. developments in his/her case
- Older child may be participating in discussions re. house rules, appropriate behavior, etc.

Participant Roles & Involvement

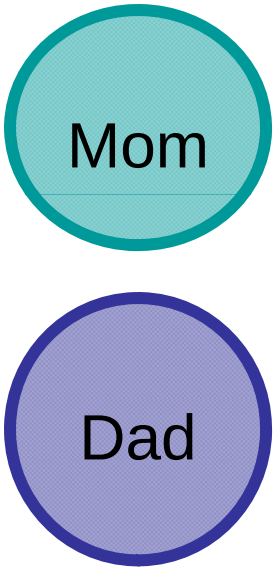
Child's Atty.

See Child's Slide

Child's Attorney

- Represents child's interests & preferences
- When appropriate, prepares the child to participate in the mediation process
- Assists in information development
- Assists in identifying issues & potential solutions
- Reviews mediation agreements for acceptability and ensure child's safety, interests & needs addressed

Participant Roles & Involvement



Parent (and/or Child's Legal Guardian)

- Prepares for mediation by speaking w/ attorney (and mediator, depending on program design)
- Identifies safety concerns (D.V.) so that mediation is structured appropriately
- Helps identify questions to be discussed/solved
- Presents own concerns & ideas for child
- Listens to ideas & concerns of others
- Helps clarify information & problem-solve
- Asks questions about the mediation process, agreements, expectations, etc.

Participant Roles & Involvement

Mom's Atty.

Dad's Atty.

Parent's Attorney

- Orients parent to the mediation process & prepares parent to participate in session
- Represents the parent's interests
- Assists in information development
- Assists in identifying issues & potential solutions
- Promotes dialogue and negotiation
- Reviews mediation agreements for acceptability to parent

Participant Roles & Involvement

Social Worker

- Presents his/her professional and/or Department's point of view
- Assists in information development
- Assists in identifying issues & potential solutions
- Helps identify services & resources
- Should be authorized to sign-off on mediation agreement

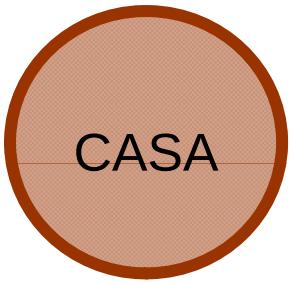
Participant Roles & Involvement

County Counsel

(Social Services is represented by District Attorney, City Attorney, check individual County)

- Represents Social Services' interests
- Assists in information development
- Assists in identifying issues & potential solutions
- Promotes dialogue and negotiation
- Reviews mediation agreements for acceptability to Social Services and any related legal issues.

Participant Roles & Involvement



CASA/GAL Volunteer

- Presents CASA's concerns & ideas for child
- Assists in information development
- Assists in identifying issues & potential solutions
- Helps identify services & resources
- If appropriate, assists w/ implementation
- Is not a "party" and cannot veto the agreement, though may raise concerns

Participant Roles & Involvement

<u>Guardian Ad Litem (GAL) for Parent</u>

GAL

- Person appointed by the court to protect the rights of an incompetent person (e.g., a person unable to understand the nature of the proceedings or to assist counsel in preparing case)
- Occasionally GALs are appointed for parents who are non-dependent minors (when minor parent's maturity impacts his/her capacity)
- Appointment of GAL removes control over litigation from parent and transfers it to GAL
- GAL makes decisions "as if" parent
- If a mediation agreement is drafted, have both the parent and GAL sign agreement

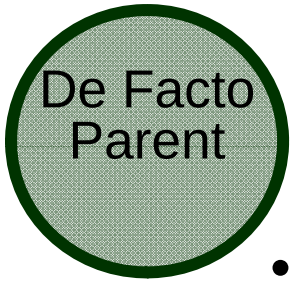
Participant Roles & Involvement

Indian Tribe

Indian Tribe Representative

- Represents the best interests of the child as defined by the Indian Child Welfare Act (ICWA)
- Ensures that parents, child, and tribe have all rights afforded pursuant to ICWA
- Advocates for culturally relevant service options and dispositional recommendations
- Advocates for placement decisions that preserve Native American families: preference first to child's extended family, then to foster families of the same tribe, and finally to foster families of another tribe
- Tribal courts may request transfer of jurisdiction from state court to tribal court

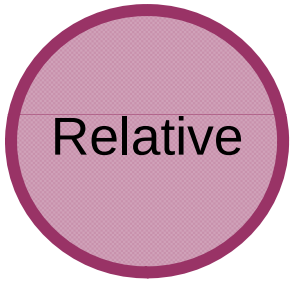
Participant Roles & Involvement



De Facto Parent

- CRC 5.502(10): "De facto parent" is a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both child's physical & psychological needs for care & affection, and who has assumed that role for substantial period.
- If granted de facto parent status person does not have the same rights/responsibilities as a parent or guardian but instead has limited rights to participate (see curriculum for clarification)
- De facto parent likely included in mediations (addressing disposition and subsequent court stages) when de facto parent's participation is necessary and appropriate to assert his/her interest in the child

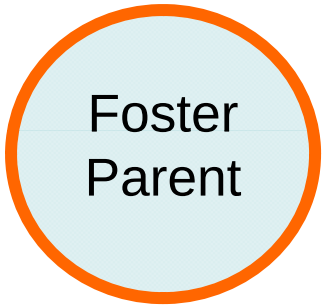
Participant Roles & Involvement



Relative (relative caregiver or other family member)

- May share about the child's adjustment & medical/educational/emotional needs
- If appropriate, transports the child for mediation
- If appropriate, assists with implementation of agreement
- Assist in information development
- Assist in identifying issues & potential solutions
- May help fine tune agreement/plan

Participant Roles & Involvement



Foster Parent

- Shares about the child's adjustment & medical/educational/emotional needs
- If appropriate, may help parties figure out the particulars of the agreement
- If appropriate, transports child for mediation
- If appropriate, assists with implementation of the agreement on behalf of the foster child

Participant Roles & Involvement

Treatment Providers

Treatment Provider

- Shares about treatment progress & client needs
- If appropriate, assists parties in identifying potential solutions & details of the agreement
- Sometimes appropriate & sometimes inappropriate to include treatment providers
- Examples:
  - Child's therapist present to clarify child's needs around visitation
  - Parent's substance abuse counselor present to discuss parent's treatment progress

Participant Roles & Involvement

<u>Prospective Adoptive Parent/Guardian</u>

- If relevant, shares about the child's adjustment & medical/educational/emotional needs
- If appropriate, transports child for mediation
- If appropriate, assists with implementation of agreement
- Assists in identifying issues & potential solutions

Participant Roles & Involvement

D.V. Support

Domestic Violence Support Person

- A mediation participant who has been the victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person (CRC 5.518(d)(2)(E))
- Support person may not actively participate in mediation except to be present as a source of emotional support for alleged victim
- Unless support person is victim's attorney, he/she may not advocate on behalf of alleged victim
- If disruptive, support person may be excluded from mediation (unless support person is victim's atty.)

Vignette 1[1]

Procedural Stage of Case at Mediation Referral: Jurisdiction/Disposition

Court File Review:

Two children (Joseph age 7 and Becca almost 3 years old) were removed from their mom (Mercedes age 24) on allegations of neglect (b) for repeatedly leaving the children in the care of her sister (**Petra,** age 16) for over-nights and weekends. The police were called to Petra's house one Saturday night because a neighbor called 911 to report the seemingly non-stop crying of a young child in the apartment building. (The neighbor became particularly concerned when no one answered the door when she went to check on the crying.) When the police arrived the two children were found alone in the apartment. As both children were being taken into protective custody, Petra returned home saying that she had been "just around the corner" getting cigarettes (10:00 p.m. at night).

Individuals & Points of View:

Cecilia Campo, Social Worker: The petition contains several "b" allegations, among them, that mom (Mercedes) repeatedly left the children with her immature younger sister (Petra) who would leave the children alone for hours at a time and would have friends in the house (smoking marijuana and drinking beer) while mom (Mercedes) was away. Additionally there were concerns that the children were dirty and going to school with grimy clothes. Furthermore, Joseph once told a social worker that his "auntie" beat him up and that he often did not get to school because "no one woke him up in time."

Mercedes Torres, Mother: Mercedes really wants some help but is mad at her sister (Petra) for being stupid. Mercedes acknowledges feeling pretty overwhelmed with both children. Joseph's father was never in his life, and while she was a teenage mom she was doing okay until she hooked up with Becca's father (Cooper) a few years ago. Mercedes' described her relationship with Cooper as pretty volatile. Cooper left about 6 months ago, although he is still around occasionally. For the past several months Mercedes is back to smoking marijuana, missing work, and hanging out. While Mercedes is alright with the idea of getting services and the kids staying with someone else for awhile, she adamantly does NOT want the Cooper's sister (Nola Buck) to have the children, "that bitch hates me and will turn the kids' heads around." Mercedes wants her mother **(Celine Long)** to take the kids, but the social worker is concerned that the maternal grandmother is ambivalent and is therefore less likely to be a stable placement.

Henry Lyle, Attorney for Mercedes: Henry wants to go to trial on the allegations and thinks (for once) he has a client who can beat the charges. He will argue that: 1.) Mom (Mercedes) was not neglectful when leaving the children with her 16 year old sister (Petra); 2.) That the child (Becca) was not crying for very long; 3.) That there are many children in the apartment; 4.) That the children were dirty because they

[1] Author acknowledges and thanks Elizabeth Dunn, Superior Court Dependency Mediation Program Manager, retired, for this adapted case scenario.

were playing all day and the maternal aunt (Petra) was going to give them a bath before bedtime; 5.) That the maternal aunt (Petra) was gone little more than an hour; and 6.) That the 7 year old (Joseph) was mature enough to watch his sister (Becca) for a "little bit." From previous mediation experience with Henry you know that he will object to having CASA present during any discussion about jurisdiction.

Cooper Buck, Father of Becca: Cooper told the social worker that he is not interested in being a placement for his daughter (Becca) or her half brother (Joseph). He would like his sister (Nola Buck) to take care of Becca and Joseph. If Becca is placed with Nola, he would like to have regular visits with her at his sister's home. Cooper acknowledged having several physical altercations with Mercedes, "we had some wicked fights." Additionally, Cooper told the social worker that there is possible Indian heritage on his side of the family.

Harold Eden, Attorney for Cooper Buck: Harold would like his client to take a more active interest in his daughter's case. Harold plans on advocating for Cooper to receive reunification services, but simultaneously privately acknowledges that his client wants to minimize his role in the dependency case.

Jez Moen, Children's Attorney: Jez asked for mediation, because he does not want to have his client (Joseph) testify (as many of the allegations are based on statements Joseph made to the social worker). Plus, Joseph wants to be back with his mother (Mercedes) and is worried about his sister (Becca) who is in a different emergency placement, although he has seen her a couple of times. Jez mentioned that Joseph is a very verbal 7 year-old and is particularly interested in his dependency case. Jez thinks that there is a possibility that Joseph will, in fact, want to tell the mediator and other adults what he thinks.

Kathryn O'Brien, CASA: According to your court's practice, Kathryn O'Brien has already been appointed to the case. The Court hopes that Kathryn may be able to assist in the discussion about dispositional issues. Kathryn is in the process of making preliminary contact with the children and other parties and hopes to participate in mediation discussions addressing placement and services for the children.

Nola Buck, Paternal Aunt: Nola, the children's paternal aunt (age 31), used to help out when both parents were together. According to Nola, since Cooper (dad) left Mercedes (mom), Mercedes started picking fights with Nola. Subsequently Nola refused to take care of the children and be at Mercedes' "beck and call." Nola wants to take the children into her care and be the relative placement. The social worker is going to recommend that the children be placed with Nola. Placing the children with Nola will mean that: 1.) the children will live about 20 miles away from their home, 2.) that Joseph will attend a new school, and 3.) that travel will be an issue for Mercedes' visitation.

Clement Moore, County Counsel: Clement mentioned that he was surprised that mom's attorney (Henry) was arguing to have the case dismissed with an immediate return of the two children to mother. Clement feels that the children's lack of supervision combined with mom's poor judgment and recent drug use were enough to establish jurisdiction.

Juvenile Dependency Mediation Case Data (program form)

Participant's Name	***Contact Info.***	***Case Information***
Child(ren) (D.O.B. & Age):		Dept. & Case #
Child(ren)'s Attorney:		Appt. Date/Time:
Mother:		Preparation Time: Orientation Time: Mediation Time: Follow-Up Time:
Mother's Attorney:		Mediation Outcome:
Father:		Referral Date:
Father's Attorney:		Procedural Stage:
Social Worker:		Next Hearing(s):
Social Work Supervisor/Other:		Removal Date:
County Counsel (Agency Attorney):		Placement of Kids (Pre & Post Med):
CASA: (Individual CASA appointed at Disposition, though some county CASA programs send representative at initial hearing)		D.V.:
Other/Role:*		Who Requested:
Other/Role:*		Allegations:
Other/Role:*		Related Cases:
Other/Role:*		Referral Notes:

*Other Possible Participants: Family Members, Treatment/Service Providers, Father 2, Father 2's Attorney, Indian Tribe Representative, Foster Parents, Prospective Adoptive Parents, Relative Caregivers, De Facto Parents, D.V. Support Person, Parent's GAL, Clergy, Interpreters, Etc.

Participant Roles- Juvenile Dependency Mediation

Judicial Officer	Mediator	Parent/Family Member
• Refers/orders cases to mediation • Demonstrates support for mediation • Reviews mediation agreements to determine acceptability to the Court; Ensures legality/fairness of result, and child's safety and best interest addressed • When a mediation agreement has not been reached continues with hearing process • Ensures that parties do not introduce confidential information from mediation into the Court process	• Reviews documents & screens for safety issues (e.g., D.V.) • Orients the parties to the mediation process • Assists with identification of underlying issues & concerns • Facilitates communication, promotes dialogue/negotiation & manages process • Helps parties identify & evaluate possible solutions & explores practicality of plans • Maintains impartiality with a focus on child's safety and best interest • Confirms agreements & drafts agreements	• Prepares for mediation by speaking with attorney • Identifies safety concerns (D.V.) so that mediation is structured appropriately • Helps identify questions to be discussed/solved • Presents own concerns & ideas for child • Listens to ideas & concerns of others • Helps clarify information & problem-solve • Asks questions about the mediation process, agreements, expectations, etc.
County Counsel	**Child's Attorney**	**Parent's Attorney**
• Represents Dept. Social Services' interests • Assists in information development • Assists in identifying issues & potential solutions • Promotes dialogue and negotiation • Reviews mediation agreements for acceptability to Social Services	• Represents child's interests & preferences • When appropriate, prepares the child to participate in the mediation process • Assists in information development • Assists in identifying issues & potential solutions • Reviews mediation agreements for acceptability and ensures child's safety, interests & needs addressed	• Orients parent to the mediation process & prepares parent to participate in session • Represents the parent's interests • Assists in information development • Assists in identifying issues & potential solutions • Promotes dialogue and negotiation • Reviews mediation agreements for acceptability to parent
Social Worker	**CASA**	**Foster Parent**
• Presents the Department's point of view • Is authorized to sign-off on mediation agr. • Assists in information development • Assist in identifying issues & potential solutions • Helps identify services & resources	• Presents CASA's concerns & ideas for child • Assists in information development • Assists in identifying issues & potential solutions • Helps identify services & resources • If appropriate, assists w/ implementation	• Shares about the child's adjustment & medical/educational/emotional needs • Helps, as appropriate, in figuring out the particulars of the agreement • If appropriate, transports child for mediation and/or helps to implement the agreement on behalf of the foster child

Training Self-Assessment

B.2. Participant Roles & Involvement

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My ability to identify participants who regularly attend dependency mediation appointments	☐	☐	☐	☐
My ability to identify participants who may attend dependency mediation appointments	☐	☐	☐	☐
My understanding of each participant's role and degree of participation	☐	☐	☐	☐
My understanding of typical issues involved in the dependency mediation	☐	☐	☐	☐
My ability to assess (or help parties assess) whether or not to include additional people in the mediation	☐	☐	☐	☐
My ability to analyze how to structure the dependency mediation appointment (given party alliances, concerns and levels of participation)	☐	☐	☐	☐
My appreciation of the value of multiple perspectives	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit C:

Children & Dependency Mediation

Unit C:
Children & Dependency Mediation

Presentation Methods: • Large Group Discussion • Didactic Presentation • Mock Debate (OPTIONAL) • Case Scenario Exercise & Discussion (OPTIONAL)	***Estimated Duration:*** ***2 Hours***
Participant Materials: • *Handout A* – "CRC & Children & Dependency Mediation" • *Handout B* – "Rights of Children in Foster Care" • *Handout C* – "Services Checklist for Children & Adolescents" • *Handout D* – "Continuum for Child Voice & Participation in Dependency Mediation" • *Handout E* – "Considerations for Separate or Joint Meetings for the Child and His/her Parents & Siblings" • *Handout F* – "Sample Language for Talking with Children in Dependency Mediation" • *Vignette Unit C* – "The Victoria P. Case" – Child Orientation to Mediation • *Handout G* – "Case Scenarios Involving Children" • *Reflection Tool* – "Self-Assessment & Training Reflection"	*OPTIONAL:* *30 Minutes* Debating Child Participation in Dependency Mediation *(Mock Debate)* *OPTIONAL:* *15-30 Minutes* Exploring Child Participation (*Case Scenario Exercise & Discussion*)
Suggested Pre-Session Reading & Exercises: • *Handout A* – "CRC & Children & Dependency Mediation" • *Handout D* – "Continuum for Child Voice & Participation in Dependency Mediation" • *Handout E* – "Considerations for Separate or Conjoint Meetings for the Child and His/her Parents & Siblings" • *On-Line Video* – "What Juvenile Dependency Attorneys Need to Know about Basic Child Development" *(30 min; http://cadependencyonlineguide.info/*	*Facilitator's NOTE:* ***Important:*** *Mediators should be familiar with this online guide (left) (also referred to CalDOG); mediators will need to register with the site, using court affiliation.*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives_____	***5 Minutes***
2. Practicing in Compliance with California Rules of Court (CRCs) *(Large Group Discussion)* _____	***10 Minutes***
3. OPTIONAL: Debating Child Participation in Dependency Mediation (*Mock Debate: For Mixed or Advanced Practitioners*) _____	*30 Minutes (Optional)*
4. Determining Whether (and How) to Include a Child Participant *(Large Group Discussion)*_____	***15 Minutes***
5. Continuum of Child Involvement in Dependency Mediation *(Large Group Discussion)*_____	***15 Minutes***
6. Benefits & Potential Risks of Child Participation in Dependency Mediation *(Large Group Discussion)*_____	***20 Minutes***
7. Orientation- Preparing Children for Participation in Dependency Mediation *(Large Group Discussion)*_____	***10 Minutes***
8. Facilitator Demonstration: Child's Orientation to Mediation *(Fish Bowl Role-Play)* _____	***20 Minutes***
9. Preparing Adults for the Child's Participation in Mediation *(Large Group Discussion)*_____	***5 Minutes***
10. OPTIONAL: Exploring Child Participation in Case Scenarios *(Case Scenario Exercise & Discussion)*_____	***15-30 Minutes(Optional)***
11. Strategies for Building Rapport & Talking with Children *(Large Group Discussion)*_____	***10 Minutes***
12. Special Issue: Disclosure, Recantation & Denial of Child Sexual Abuse *(Didactic Presentation)* _____	***10 Minutes***
13. Special Issue: Extending Foster Care *(Didactic Presentation)* ____	***5 Minutes***
14. Special Issue: The Intersection of Dependency & Delinquency *(Didactic Presentation)* _____	***5 Minutes***
15. Summary & Close_____	***5 Minutes***

1. Learning Objectives: After concluding *Unit C*: *Children & Dependency Mediation*, participants will be able to: a. Understand the various, often distinct relationships a child has to other parties in dependency court system. b. Summarize practice compliance with CRCs related to child participation in dependency mediation c. Recognize the benefits and potential risks of child involvement in dependency mediation d. Analyze cases involving a prospective child participant in order to consider and practice appropriate mediation orientation skills e. Explain the different ways that a child may participate in dependency mediation f. Assess when it is optimal to meet with a child separately or together with his/her sibling(s) and/or parent(s) and/or other parties g. Prepare adult and child mediation participants for the child's participation in mediation h. Build rapport in talking with children i. Be knowledgeable about case plan service options for children and adolescents j. Recognize important general facts about the disclosure, recantation and denial of child sexual abuse k. Understand general issues related to mediation and the extension of foster care for youth ages 18 to 21 l. Become aware of so called "cross-over" cases, related to the intersection of dependency and delinquency proceedings	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Introduction & Practicing in Compliance with the California Rules of Court (CRC):	***10 Minutes***
a. **IMPORTANT CONTEXT:** The child has various distinct relationships within the dependency system: with child welfare worker; a CASA; foster parent; relative placement; therapist, educational advocate, parent; siblings etc. b. **BE AWARE of Relationship of Child and his/her attorney.** Children are represented by attorneys in dependency proceedings, and attorneys bound by California Statute, Rules of Court, and case law. ○ Welfare & Institutions Code, section 317, sets forth various duties: i. … to represent a child … dependent pursuant to this section shall be to advocate for *the protection, safety, and physical and emotional well-being of the child or non minor dependent* ii. *counsel is charged with representing the wishes of the child…* except when advocating for those wishes conflicts with the protection or safety of the child. If the court finds that a child … is not competent to direct counsel, the court shall appoint a guardian ad litem for the child… *iii. …Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.* *iv. Counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings* ○ *See also California Rule of Court, 5.660(b) et seq.* ○ *See also http://cadependencyonlineguide.info/*	*Large Group Discussion* ***Facilitator Notes:*** *Child participation in dependency mediation often generates a great deal of apprehension. Remind trainees to review outline regarding upcoming discussion about different "levels" of child involvement and a review of inappropriate discussion topics later in the unit.* *continued*

2. Introduction & Practicing in Compliance with CRC (continued):

c. The California Rules of Court have numerous provisions that specifically address child participation in dependency mediation. What are some of these provisions? *(Slide 2)*

- The child has a *right* to participate in the dependency mediation process accompanied by his or her attorney.
- If the child makes an informed choice not to participate, then the child's attorney may participate.
- If the child is unable to make an informed choice, then the child's attorney may participate.
- Review and discuss *Handout A.*
  - What are the implications of the CRCs on dependency mediation practice?
  - How is the Rule divided, why?
  - Questions?

d. What do your program protocol and local court rules say about child participation in dependency mediation? *(Slide 3)*

e. While results vary from site to site (and are not widely available), children participate in mediation in what percentage of cases?

- About 20%- Santa Clara County, CA, (Edwards 2002), but compare with the 2012 AOC Research update available at http://www.courts.ca.gov/documents/JDM_Research_Update_Final.pdf
- 19%- New York State (New York State OCFS 2007)
- Child's statutory right to participate in dependency mediation in California may gradually increase the number of child/youth participants
- Child participation in dependency mediation often generates a great deal of apprehension. NOTE: importance of discussion in this chapter on levels of participation.

(Continued…)

PowerPoint Slides 2–4

Materials:

Handout A: "CRC and Children & Dependency Mediation"

Handout B: "Rights of Children in Foster Care"

Misconception Alert:

While the child has a statutory right to "participate in the dependency mediation process accompanied by his or her attorney… the mediator is responsible for the mediation process and structure. Thus, the mediator (in consultation with the child's attorney and relevant individuals) focuses on whether it would be good, for example, to meet with the child and his/her attorney in caucus. The child's attorney may then be involved in sensitive large group discussions without the child present.

2. Introduction & Practicing in Compliance with CRC (continued):	***CONTINUED*** *Large Group Discussion*
f. *For trainees with some dependency mediation experience: [or examples from Facilitator]:* Discuss your experience mediating dependency cases in which a child participated. For example: • How was the decision about the child's participation made? • Despite the child's statutory right to participate in dependency mediation, were there any parties that objected to the child participating in mediation? What was the individual's concern and how was it handled? • How did you make decisions about appropriately structuring the mediation once it was determined that the child would participate? • What suggestions or tips (for mediating dependency cases involving a child participant) do you have for developing colleagues? • Are there any lessons (about mediating dependency cases involving a child participant) that you learned the hard way?	
g. How would a child become aware of her/his statutory right to participate in a dependency mediation appointment? • Typically the child's attorney will have this discussion with the child prior to the mediation appointment and update the mediator about the child's decision. If counsel prefers, the mediator can assist counsel in having this conversation with the child. Either way, the mediator will simply want to ensure that the child has been informed about his/her right to participate in dependency mediation. • Remember child's attorney representation of "express interest" and/or "best interests." WIC, §317, discussed above • Dependency Court Definition of "Guardian ad Litem" for dependent child. Attorneys and GAL appointment: WIC, §317 (e); CRC5.660	*See Welfare & Institutions Code Section, 317 and CRC, Rule 5.660*
h. For important information about the rights of children in foster care see: • Handout B "Rights of Children in Foster Care" • "Every Child, Every Hearing: How To Ensure The Daily Well-Being of Children In Foster Care By Enforcing Their Rights," Center for Families, Children & The Courts, Administrative Office of the Courts, Judicial Council of California, January 2007. Available at: www.courts.ca.gov/documents/EveryChild.pdf	
	(Continued…)

2. Introduction & Practicing in Compliance with CRC (continued):	**CONTINUED** Large Group Discussion
• Practitioner Reflections: *Both the non-profit Pew Commission on Children in Foster Care and California's Blue Ribbon Commission on Children in Foster Care recommend that parents and children participate in court proceedings in a meaningful way.* ***Discussion Question: What is "meaningful participation"? (Slide 4)***	
• Pew Commission on Children in Foster Care: (Policy Recommendations, updated 2007) o *Strengthening Courts- Recommendation 3:* To safeguard children's best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them. Courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings.	***Pew Commission established in 2003 by the non-partisan, non-profit initiative of Pew Charitable Trusts. Policy Recommendations, updated 2007***
• California's Blue Ribbon Commission on Children in Foster Care, at :[1] o *Recommendation 2B:* All participants in dependency hearings and subsequent appeals, including children and families, should have an opportunity to be heard and meaningfully participate in court. o *Recommendation 2C:* Judicial officers should ensure that local court practices facilitate and promote the attendance of children, parents, and caregivers at hearings o *Recommendation 2E:* All courts should have non-adversarial programs available as early as possible and whenever necessary for children and families to use to resolve legal and social issues when appropriate. The Blue Ribbon Commission recommends that: Mediation and other forms of alternative dispute resolution should be available in all courts at any time in the proceedings. o See: **http://www.courts.ca.gov/**	***California Commission established 2006, updated reports, 2012***

[1] http://www.courts.ca.gov/documents/brc-progress-0810.pdf

3. OPTIONAL: **Debating Child Participation in Dependency Mediation:** a. The topic of *child participation* in dependency mediation often generates a great deal of anxiety and mixed feelings. This exercise is designed to help trainees 1) Explore their personal beliefs about child participation in dependency mediation; and 2) Internalize information regarding the benefits and potential risks of child participation in dependency mediation. 3) Understand rationale for Rule of Court and dependency mediation program protocol. b. Divide trainees into two groups of approximately equal numbers. Have one group brainstorm and present "arguments" to support child participation in dependency mediation. Have the second group advocate to not have children participate in mediation- unless absolutely required by the child's request and statutory right. Provide each team with: • Ten minutes to meet and prepare "arguments" • No more than five minutes to present initial remarks • No more than two minutes for collegial "rebuttal" • Five minutes may be used at the conclusion of the mock debate to debrief as a large group and share new insights and perspectives	***30 Minutes (Optional)*** *Mock Debate* *(For Mixed or Advanced Practitioners)* ***Facilitator Notes:*** *This exercise should ideally take place prior to the large group discussion in section 4.* *If training one mediator or a small number of mediators the trainer may choose to present one side of the debate him/herself or have trainees develop arguments both for and against child inclusion in dependency mediation.*

4. Benefits & Potential Risks of Child Participation:

a. What are some potential benefits of child involvement in dependency mediation? *(Slides 5-8)*

- Direct benefits for child
  1. Empower child (who wants to participate) so that child's perspective, preferences, needs, etc. can be shared
  2. Decrease child's possible sense of victimization, alienation, or sense that he/she is being punished or excluded
  3. Child may feel heard and sense that adults care about their needs
  4. Child is the most affected by child protection issues and by the outcome of mediation and should have a voice in the process
  5. Child has a right to know what is happening
  6. Children are often confused by CPS/Court involvement and may be helped by participating in mediation in an appropriate fashion
  7. Child can cope better with changes if they know and understand the reasons for the changes
  8. By including a child in mediation the child can experience some sense of input and control when his/her life feels totally out of control
  9. If the child's concerns are heard, then reassurance, planning, guidance can be given
  10. Child may experience relief from sharing feelings of sadness, anger, confusion
  11. Child's sense of responsibility, self-esteem and competence may increase as he/she participates in discussions and gains practical skills in sharing his/her views
  12. Child may receive reassurance that absent parent still loves him/her
- Benefits for family
  1. Parents are often more impacted about the need to change when their child gives direct input
  2. Care in family system reinforced
  3. Modeling- families observe constructive conflict resolution
  4. Mediation interventions may help reduce blaming and arguments within the family

20 Minutes
Large Group Discussion

PowerPoint Slides 5 - 10

Materials:

Handout C: "Services Checklist for Children & Adolescents"

For More Information See:

NOTE: These references general describe child custody issues related to family law matters. Keep dependency mediation context in mind.

Boshier, P. & Steel-Baker, D., "Invisible Parties: Listening to Children." (2007), 45 Family Court Review, 548-559.

Saposnek, D. T. (2004). *"Working with Children in Mediation," In J. Folberg, A.L. Milne &P Salem, , Divorce & Family Mediation: Models, Techniques and Applications, pp 155-179*

Sanchez, E. A. & Kibler-Sanchez, S. (2004). *"Empowering Children in Mediation." 42Family Law Review, 554-575.*

(Continued…)

4. Benefits & Potential Risks of Child Participation (continued)

CONTINUED

Large Group Discussion

PowerPoint Slides 5 - 10

- Benefits for cooperation and compliance
  1. Inclusion may reduce the child's negative affect about and resistance to unpopular decisions
     - For example, increased likelihood of child following through with collaboratively developed plans for placement, visitation, post-adoption contact or expectations for child's behavior while in placement or on trial home visit
  2. If children participate, there may be better adult compliance with agreements reached
- Benefit for decision-makers and mediation process
  1. It may be easier to emphasize children's needs and plan for services (see handout- "*Services Checklist for Children & Adolescents*") when children participate in some fashion
  2. Focus of parties changes for the better ("Let's work together on behalf of…")
  3. Parties gain firsthand knowledge about this specific child's needs (developmental, emotional, and psychological) - generally more compelling than global information like, "children of a certain age typically need…."
  4. More information can be gleaned about the child's coping skills, temperament, relationships, emotional bonds, special needs, etc.
  5. Children may disclose real feelings to the mediator, whereas they may tell others what they believe the others want to hear
  6. Child's participation may encourage honesty and accountability; However, the child should never be asked or encouraged to "report" on parent(s)
  7. Child inclusion may improve the parties' reality testing

Misconception Alert:

Whether or not the child participates in mediation, it is important that the mediator be sensitive to perceptions of bias and not adopt the role of "child expert" (with passionate recommendations on behalf of the child). Unlike children in child custody situations, all dependent children in California have an attorney. Dependent children may also have a CASA, therapist and/or evaluator. While the mediator may, in fact, have the education and experience to be a "child expert," in the role of impartial facilitator the mediator will want to maintain a balanced approach to helping the parties themselves make optimal plans for the child.

(Continued…)

4. Benefits & Potential Risks of Child Participation (continued) b. What are some potential risks of involving a child in dependency mediation? *(Slides 9-10)* • Potential negative impacts for child o Exposure to mediation related conflict may be stressful for child (e.g., anxiety, nightmares, stomachaches, or stress-related insomnia) o Attending dependency mediation appointment may be an additional intrusion into the child's life (e.g., time out of school, other activities) o Child may be too young or immature • Potential problematic family interactions o Parent may have a punitive response to child's disclosures o Child might be manipulated or coached by a parent o Pressures and loyalty conflicts may be exacerbated o Adult (esp. parent) authority may be undermined • Potential training issues o Mediator may not be adequately trained/experienced in working with children c. When a child has chosen to participate in mediation and yet there are concerns about the child's potential contact with the alleged offender- how might the mediator structure the appointment to make it as safe and appropriate as possible? *(Also See Unit E, Special Issues)* • Separate sessions (entirely separate days and times) • Shuttle/staggered mediation or telephonic mediation • Separate waiting rooms (waiting areas not visible to one another) • Different entrances/exits and travel routes for child and alleged perpetrator • Child accompanied by a support person/advocate • Security/bailiff present nearby	***CONTINUED*** *Large Group Discussion* ***PowerPoint Slides 5 - 10*** *(Continued…)*

5. <u>Benefits & Potential Risks of Child Participation (continued)</u>

a. While a child is participating in the dependency mediation appointment in person what are some topics that would not be appropriate? *(Slide 11)*

- Whether or not abuse/neglect occurred
- Statements that minimize the child abuse/neglect allegations
- Statements that blame the child for the abuse/neglect

c. Review steps in assessing child participation: (check court referral)

1. Prior to a dependency mediation appointment, the mediator may prompt the child's attorney to discuss with his/her client the child's right to participate in dependency mediation. (Depending on counsel's comfort level, the mediator can also offer to assist counsel in talking with the child about dependency mediation.)

a. The mediator may want to educate minor's counsel about the variety of ways that a child can be involved in the mediation process before the child's attorney talks to the child about his/her right to participate in mediation. Knowing the different levels of participation available to him/her, the child (in consultation) will be able to make a more informed decision about his/her involvement in mediation.

2. In conversation with his/her attorney (and possibly the mediator), the child can decide if he/she would like to participate in the dependency mediation process.

3. Once the mediator is aware of the child's desire to participate in the dependency mediation appointment, the mediator can determine how to appropriately structure the mediation appointment.

4. If it has been determined that the child will not be participating in the dependency mediation process, at the outset of the mediation appointment the mediator may want to inform mediation participants that the child's participation was **considered** but deemed inappropriate (either by the child him/herself or by the child's representative). This update (about the child's participation having been considered) can serve as an reminder for regular system participants and family members about the child's right to be involved in the dependency process.

<u>15 Minutes</u>

Large Group Discussion

PowerPoint Slides 11 - 13

For More Information See:

AOC. *"Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents"* *<u>www.courts.ca.gov/documents/Dogbook_2Ed_online.pdf</u>*

<u>Misconception Alert</u>:

While the mediator is *assessing the child's participation in dependency mediation*, the mediator is <u>not</u> acting as a child evaluator or investigator. In fact, a great deal of the mediator's assessment is done before ever meeting the child, for example, through interviews with professional parties and document/case file review. Of course the mediator continues to *assess the child's participation in dependency mediation* after speaking directly with the child and the other parties.

(Continued…)

5. Assessing Child Participation (Continued):

d. Decisions about how to structure a mediation appointment involving a child participant are made by the mediator (often in consultation with the child's attorney and other relevant individuals) on a case by case basis. Can you think of some important factors for the mediator and others to consider when assessing child participation? *(Slides 12-13)*

- Child's chronological age
  - Generally, older children participate in mediation more frequently
    - Shows respect for adolescent's growing independence, cognitive abilities and likelihood of having clear preferences
    - Contributes to older child's compliance with agreements
- Developmental level
  - For information on child development see references at right.
- Maturity
  - Assess carefully- some dependent children may be less mature than their chronological years would suggest (possibly a result of the abuse/neglect) and others may appear more mature (e.g., parentified)
- Emotional well-being
  - The child's safety and well-being are always at the forefront of the decision about whether, and how, to include the child in the mediation process
  - For example, child participation may be contraindicated if it is clear that a parent/caregiver blames the child for the abuse/neglect or is likely to be punitive about the child's disclosures
- Desire to participate
  - Ensure that the child is aware of the variety of ways (direct and indirect) for him/her to participate in mediation
- The nature of the abuse/neglect
  - E.g., child participation less common when there are sexual abuse allegations, unless child is only participating with the non-offending parent or in caucus
- The nature of the disputed issue
  - Child participation is more likely if the disputed issue is directly relevant to the child (e.g., removal or return, placement, visitation, household rules for return home)
- Perspective of the child's attorney, therapist/treatment provider, CASA volunteer, parents, social worker and other relevant parties

CONTINUED

Large Group Discussion

PowerPoint Slides 12 - 13

For More Information See:

Websites:

Child Development Institute at childdevelopmentinfo.com

Society for Research in Child Development at srcd.org

Articles:

New York State Permanent Judicial Commission on Justice for Children. (2008). *Tools for Engaging Children in Their Court Proceedings: A Guide for Judges, Advocates and Child Welfare Professionals.* Available on http://cadependencyonlineguide.info/

(Continued…)

5. Assessing Child Participation (Continued):

CONTINUED

Large Group Discussion

Materials:

Handout B: "Rights of Children in Foster Care"

Practitioner Reflection:

While there are no hard and fast rules about a child's age and the suitability of his/her participation in dependency mediation, legal statutes provide general guidance about age-appropriate child inclusion in decision-making.

- Attorneys for children must interview all child clients age 4 and older (Welfare and Institutions Code [WIC] §317(e)).
- Children age 10 and older are entitled to notice.
- At any age a child can request to attend his/her dependency court hearing. If a child is over 10 years of age and is not present at a dependency court hearing, the court must ensure that notice was proper and inquire as to why the child is absent (WIC §317.5(b), 349; and California Rule of Court 5.534(n)).
- The court cannot terminate parental rights if a child age 12 or older objects to termination (§ 366.26(c)(1)(B)). Similarly, an adoption cannot be finalized without the consent of a child 12 or older (Family Code §8602).
- A child 12 or older has a right to review (and receive information and updates about) his/her own case plan and plan for permanent placement (WIC §16001.9(a)(20)). *See Handout B*
- Children age 16 and older are entitled to services to assist in the transition to independent living (WIC §366.3(e)).

6. Continuum of Child Involvement in Dependency Mediation:

a. A child (or the child's point of view and needs) can be included in dependency mediation in various ways. What are some possibilities?

A. Child **NOT PRESENT** at mediation; Others relay child's point of view and report on child's needs

- Child's attorney (and, if relevant CASA) attend mediation and advocate on behalf of the child
- Child's treatment provider, assessor, etc. provides a **written report** prior to mediation
- Child's treatment provider, evaluator, teacher, etc. **available by phone** to participate in some/all of the mediation
- Child's therapist, evaluator, etc. **attends** some/all of the mediation

B. Child **PRESENT** at court/mediation with **INDIRECT** participation; Others relay child's point of view and report on child's needs

- Child **writes a letter** (draws a picture) to be shared at mediation
- Child in separate waiting room (does not enter mediation room) but mediator pays a courtesy visit and chats briefly (if adequate privacy); Child also present for timely updates from his/her representative
- Child participates by phone with only child's representative and or mediator present in mediation room
- Child participates in mediation (**separate session/caucus only**) and child's representative (and/or mediator) relays child's views
- Child shares his/her perspective in a separate session but is present when the mediator/child's representative shares the child's views with other participants

C. Child **PRESENT** at mediation with **DIRECT** participation; Child shares concerns, preferences and perspectives with some/all participants.

- Child available by phone (with some/all participants present
- Child present for the conclusion of the mediation appointment for adult parties to **answer questions** and **inform child** about agreements
- Child present towards the end of the appointment to receive a mediation update and provide input into a **non-finalized** agreement
- Child **periodically participates** in mediation; Present for the portions of the appointment that are most relevant to the child's concerns (e.g., visitation or placement preferences) and not present for other discussions (e.g., whether or not the court should take jurisdiction)
- Child participates in the **entire mediation** appointment in person and actively discusses all issues (e.g., household rules for trial home visit)

20 Minutes

Large Group Discussion

PowerPoint Slides 14 - 16

References:

Handout D:
"Continuum for Child Voice & Participation in Dependency Mediation"

Handout E:
"Considerations for Separate or Conjoint Meetings with the Child & Parents/ Siblings"

For More Information See:

Saposnek, D. T. (2004). *"Working with Children in Mediation," supra*

Sanchez, E. A. & Kibler-Sanchez, S. (2004). *"Empowering Children in Mediation." , supra*

(Continued…)

6. Continuum of Child Involvement (continued)

CONTINUED

Large Group Discussion

b. What should the mediator keep in mind if the mediator is presenting the child's perspectives to the other mediation participants?

- As parents/others may feel vulnerable to a child's criticism, rejection, or perspective on events, the mediator must frame the child's feedback in a way that will help adults listen and respond constructively.
  - Example: "It seems that Jane misses you (mom) very much… I get the sense, however, that she is worried that you may start drinking again if she comes home right now."
- The mediator must check with the child about what the child is comfortable with being shared in session (confidentiality & limitations)
  - There may be topics that the child does not want revealed (e.g., he/she does not want to hurt a parent's feelings)
  - It is wise to respect the child's desire for confidentiality provided that the child's revelation was not a safety issue that must be reported (e.g., an exception to confidentiality)
- The mediator may want to preview (with the child) the language that the mediator might use to relay the child's perspective to other mediation participants- checking on the child's comfort with the delivery language
- If the child shares but does not want his/her views conveyed to others, the mediator may ask the child's permission to share impressions or general themes of the talk
- If the child's feedback is particularly critical of a parent/other participant the mediator may choose to meet with that person individually to privately process and respond to the input, and for face-saving
- If the child will be present during the mediator's delivery, he/she can be invited to signal the mediator (or correct the mediator) if the mediator misspeaks or omits information

c. Can you think of contexts or circumstances for which the different methods of child inclusion would be appropriate?

d. What factors might the mediator consider when assessing whether or not to meet with the child and his/her parent(s) together? What factors might the mediator consider when deciding whether to meet with the siblings together or separately or both?
(See Handout E)

Misconception Alert:

While time constraints are almost always an issue in dependency mediation, explaining protocols preemptively often averts time consuming misunderstandings. It is helpful, for example, to educate parties about how a child's disclosures in mediation will be handled. If a child's disclosures (apart from safety issues) will only be shared with mediation participants with the child's permission, parties should be aware of this policy prior to the child's meeting with the mediator. Parties new to mediation may be expecting a full report on the child's disclosures in mediation are likely to be more frustrated than the experienced mediation participants/attorneys who may more readily accept the child's ability to determine if and how her feelings and views are

7. Orientation: Preparing A Child for Participation in Mediation a. Curriculum Unit B.2. addressed orienting participants to mediation. How might orienting a child to dependency mediation be similar to and different from orienting an adult to mediation? b. Per CRC 5.518(d)(6), what are the topics that a mediator must explain (age appropriately) to a child participating in mediation? • Any options available to the child for his/her participation in the mediation • What is going to happen in the mediation process • The role of the mediator • What realistic goals the child may expect from the mediation and the limits on his/her ability to control the outcome • Any limitations to the confidentiality of the process • The child's right to be accompanied throughout the mediation process by his/her attorney and/or other support persons • The ability to take a break and/or discontinue participating in the mediation process. c. Consistent with the Rule, how might you check-in with a child to verify his/her understanding of the mediation process? d. Does any of the language in the handout *"Sample Language for Talking with Children in Dependency Mediation"* fit for your? If not, what language/explanations might you use when speaking with children?	***10 Minutes*** *Large Group Discussion* ***PowerPoint Slides 15 - 16*** ***References:*** *Handout F:* "Sample Language for Talking with Children in Dependency Mediation" ***For More Information See:*** Saposnek, D. T.(2004). *"Working with Children in Mediation," supra* Sanchez, E. A. & Kibler-Sanchez, S. (2004). *"Empowering Children in Mediation." supra*

8. Facilitator Demonstration: Child's Orientation to Mediation a. Drawing on *"Vignette Unit C"* the facilitator demonstrates a mediation orientation for the child, Victoria (age 11) and her attorney, Alice. b. Processing the Role Play • Facilitator shares: o What aspects of the orientation did you feel positively about? o What aspects of the orientation might you adjust in the future? o Were there any ways that you tailored the orientation to this specific case? • Ask each role-player: o What was it like to be in your role? o What was helpful about the orientation? o In your role as ____, was there anything about the orientation that could have been more effective? • Invite participants to share observations or comments about the role-play: o What was interesting? Helpful? o Any alternative ideas?	***20 Minutes*** *Fish Bowl Role-Play* ***References:*** *Vignette C*: "The Victoria P. Case" ***Facilitator Notes:*** *Find two participants willing to role-play the child and his/her attorney, (based on Vignette C).* *At the conclusion of the role play thank the volunteers for their valuable contribution to the training!*

9. Preparing Adults for the Child's Participation in Mediation:

5 Minutes
Large Group Discussion

a. How might a mediator prepare adult mediation participants for a child's inclusion in some or all of the mediation appointment? *(adapted from citations on right)*

- Prior to the child's inclusion, discuss with participants (esp. parents) the range of feedback possible from the child followed by an inquiry about the participant's imagined reaction to child's potential statements
- If there will be a parent-child meeting, have the parents reassure their child about their love and desire to hear child's feelings and point of view (**only if appropriate and parents are genuine about this**)
- Assist parents, family members, foster parents, etc. understand how to deal with the child after the child's participation in mediation
  - Don't ask the child what the child said to the mediator
  - If child spontaneously volunteers- the adult should not question, criticize, get angry at, or subtly reject the child
  - Remind adults that an adult's negative reactions to the child's disclosures may diminish the child's trust in talking with professionals in the future If the situation worsens for the child after participating in mediation the child may assume that professionals can't help.

b. Additional reminders for when a child/youth participates in mediation:

- The child should not be made to feel that he/she is responsible for the situation bringing him/her to mediation (i.e., the abuse/neglect)
- Neither should the child feel that the outcome of mediation is dependent on him/her; Take steps to minimize the possibility of the child experiencing guilt about sharing his/her views
- It is important that the child not have a mistaken sense of omnipotence; Assist the child in understanding that his/her views are important and yet there are multiple factors for decision-makers to consider
- Disrespectful language and/or inappropriate behavior from any mediation participant will not be tolerated

For More Information See:

Saposnek, D. T.(2004). *"Working with Children in Mediation," , supra*

Sanchez, E. A. & Kibler-Sanchez, S. (2004). *"Empowering Children in Mediation." , supra*

Practitioner Reflection:

It may be helpful to acknowledge, validate and process a parent's emotional reaction to the child's disclosures in caucus. This time can also be used to coach a parent in preparation for a conjoint session with the child and/or other parties. Among other things, the mediator may help the parent avoid defensive remarks and focus on support, acceptance and validation of the child.

10. OPTIONAL:

Exploring Child Participation in Case Scenarios

a. Given the topics and context of dependency mediation, appropriately including children in dependency mediation appointments requires skill and good judgment. The following exercise is intended to help mediators practice reflecting on case circumstances to design a wise and fitting mediator response or plan of action.

- Instructions (Option A)
  - Facilitator or trainee reads a scenario to the group (Handout G: *"Case Scenarios Involving Children"*)
  - Trainees volunteer to role-play the mediator, rehearse a mediator response or suggest strategies and considerations for the case scenario
  - Large group discussion follows
- Instructions (Option B)
  - Trainees break into pairs where seated and read assigned scenario(s) from Handout G: *"Case Scenarios Involving Children"*
  - Pairs have four minutes to craft brief responses to each assigned scenario
  - When formulating a response have trainees:
    - Consider what mediator questions, remarks, strategies and considerations might be helpful in the scenario situation
    - Formulate general tips and/or suggestions for similar cases
  - Trainees report back: Pairs have two minutes to share their ideas
  - Large group discussion: Facilitator and other trainees can respond and discuss additional/alternate responses to the scenario(s)

15 – 30 Minutes (optional)

Case Scenario Exercise & Discussion

PowerPoint Slide 17

References:
Handout G: "Case Scenarios Involving Children"

Facilitator Notes:

You may assign one of the scenarios based on group training needs or utilize both of the scenarios for expanded practice.

Alternatively, you can assign pairs different scenarios.

Option B instructions are on PowerPoint Slide 17 for training group to refer to during the exercise

Practitioner Reflection:

If one of the decisions made during mediation is about the child resuming unsupervised contact with a parent or returning to a parent's care, it is important that the child be prepared for this change. Mediation can be an opportunity to explain to the child why it is now permissible for the child to see a parent on his/her own or return home.

It may also be appropriate to review coping skills and safety planning with the child- or, alternatively, plan for these discussions outside of mediation.

Mediation may also be a chance for a parent who has been abusive/neglectful to acknowledge his/her behavior directly to the child and reassure the child about the parent's commitment to appropriate parenting, as well as the measures the parent has taken to ensure future safety.

11. Strategies for Building Rapport & Talking with Children

10 Minutes

Large Group Discussion

a. Don Saposnek advises showing respect for the child by "displaying honesty, empathy, compassion, understanding, kindness, non-criticalness, acceptance, helpfulness, and, of course, patience." [2]

b. What are some strategies for developing rapport with children during a dependency mediation process?

- First focus on helping the child feel safe, connected and comfortable
- Rapport is best developed by interacting with children in play (at an appropriate developmental level)
  - If adolescent not too depressed/anxious joking around can be a natural way to deal with new and tense situation
  - For younger child movement activities may be more relaxing (e.g., coloring, playing with Nerf ball, silly putty, play-doh, etc.)

c. Typically children need a "warm-up" time before talking about important, emotionally laden topics[3]. What might you do as a mediator to ease the child into the appointment?

- Begin with benign questions proceeding to more significant questions when child shows readiness (appears more relaxed, perhaps smiles)
- Sample rapport building questions:
  - "What kinds of things do you like to do for fun?"
  - "What are the things that you're good at?"
  - "Do you have any pets?"
  - "What are their names?"
  - "Do you have a best friend?"
  - "What do you like about him/her?"
- When rapport has been established ask the child what he/she already knows about attending the mediation appointment:
  - "Who told you about today's appointment?"
  - "Did __ talk to you about what to expect today?"
  - "What did __ say?" (Then fill in missing information or clear up misunderstandings)
  - "How do you feel about being here today?"

For More Information See:

Saposnek, D. T.(2004). *"Working with Children in Mediation,"*

Sanchez, E. A. & Kibler-Sanchez, S. (2004). *"Empowering Children in Mediation."*

Misconception Alert:

When the mediator is talking with child mediation participants, it is important for the mediator to remember and for the child to know (in an age appropriate way) that the mediator is a facilitator of the discussion- not a fact finder/investigator. To help clarify this distinction, consider avoiding the term "interview" when speaking with children- as interview may have unwanted connotations of examination and evaluation.

(Continued…)

[2] Saposnek, D.T., "Working with Children in Mediation, "(2004), supra, page 167
[3] Ibid, pps. 167-168

11. Strategies for Building Rapport & Talking with Children (continued)

CONTINUED

Large Group Discussion

d. What types of questions might you pose/avoid when discussing more significant issues?

- Generally indirect and open-ended questions optimal
  - Exception- very vocal older teen with strong opinions that he/she is determined to share
- Avoid asking questions that might make the child feel disloyal to his/her parent(s)
  - Instead pose questions that give the child wide latitude to reveal a range of feelings both positive and negative
- Examples:
  - "If you could change one thing about the current situation, what would that be?" and "What else would you like to change?"
  - "Do you have anything that you would like to tell the adults here today?"
  - "Do you have anything that you would like me/your attorney/CASA to tell the adults for you?"
  - "Is there anything that you've told me that you specifically do not want shared with the adults" (apart from safety issues- i.e., new allegations abuse/neglect, threats to harm self/others)

For More Information See:

New York State Permanent Judicial Commission on Justice for Children. (2008). *Tools for Engaging Children in Their Court Proceedings: A Guide for Judges, Advocates and Child Welfare Professionals*. Available http://cadependencyonlineguide.info/

Practitioner Reflections:

Don Saposnek writes, "The decision to include children in the mediation process is a function of many personal, professional, and contextual variables. Mediators are more likely to include children if they are personally comfortable with, and knowledgeable about, children at different ages, have had positive experiences interacting with a wide range of children, and have had professional training in interviewing children of various ages" (Saposnek, D.T., "Working with Children in Mediation, "(2004), supra, page 1556

What is your experience and comfort level talking with children?

Are there steps that you might take to enhance your skills?

12. Special Issue: Disclosure, Recantation & Denial of Child Abuse:

10 Minutes

Didactic Presentation

a. In the course of a child's participation in dependency mediation it is possible to have a child spontaneously discuss allegations of child abuse/neglect.

- If the child is making a **new** disclosure of child abuse/neglect (not addressed in present or past dependency court files):
- Make a child abuse report if you are a mandatory reporter of child abuse (See Unit A.2. Section 5 on reporting requirements)
- If the child is **recanting** child abuse (child is retracting previously disclosed incident(s) of child abuse/neglect) and/or the child continues to **deny** child abuse/neglect:
  - Listen empathically so that the child feels validated and understood
  - If you are not already meeting alone or in caucus with the child, consider moving to separate discussions
  - Frame for the child the scope of the dependency mediation discussion: "While I hear what you are saying about the allegations, the main reason for today's mediation appointment is to discuss…."
  - Remind the child that as the mediator you do not have any decision-making authority in the case
  - If you are not already meeting with the child and his/her attorney:
    1) Ask the child if the child has already spoken with his/her attorney;
    2) Suggest that the child share his/her perspective about the allegations of abuse/neglect with his/her attorney
    3) Explore with the child and his/her attorney whether the child's perspective should be shared with the social worker and/or other parties
  - Remind the child that the judge and adults in the case care very much about the child's point of view and will consider the child's perspective as well as many additional factors and perspectives when making decisions about the case
  - Whether the child discloses, recants or denies child abuse/neglect, explore whether the child is receiving supportive services, such as counseling, to process feelings and experiences
  - As the child may be experiencing intense guilt, shame, and/or depression the mediator should be alert for any signs that indicate that the child is an imminent risk to him/herself. Depending on the nature of the case, if the child is suicidal, the mediator may: 1) Notify the police or a psychological emergency team; 2) Ideally with the child's consent, notify the child's attorney, social worker, treatment provider (or another person reasonably able to help prevent the threat) and ensure that emergency arrangements are made to secure the safety of the child (e.g., crisis counseling, voluntary hospitalization).

Misconception Alert:

Dependency mediators are not expected to be fact-finders. Sections 11.b. through 11.e. are provided as background information to illuminate the context of dependency mediation. The mediator does not have an obligation (and, in fact, it is often counter-productive for the mediator to attempt) to determine the truth of the child abuse and neglect allegations. Remember that it is the mediator's role to help the parties explore and resolve issues of fact.

Additionally, while it is extremely unlikely for a mediator to intentionally involve a child in discussions about the truth of the child abuse and neglect allegations, mediators must be prepared for child-initiated discussions about these issues.

(Continued…)

12. Special Issue- Disclosure, Recantation & Denial of Child Abuse: (continued) [4]

CONTINUED

Didactic Presentation

b. Younger children are more likely to make accidental disclosures- e.g., "spontaneous statements about abuse that are not consistent with the topic of conversation or of the ongoing activity (e.g., stating, while watching TV, "Uncle Bob hurt my bottom") (p. 208).

c. Older children are more likely to make purposeful disclosures- however, they may be more reluctant to disclose as they have a greater awareness of the consequences of reporting intra-familial abuse and may have already disclosed to friends

d. In general, disclosure rates do not seem to be related to the severity of the abuse.

e. Children with supportive parents are more likely to disclose abuse than children without parental support. …

- For example, a 1992 study of children (ages 3 to …[13] years) only included children with 1.) medical substantiation of sexual abuse …and 2.) No prior disclosures of/suspicion of child sexual abuse. In this study, parents were informed by hospital staff about the child's sexually transmitted disease before the child either disclosed or was asked about CSA. "Children whose mothers accepted the possibility of abuse… were more likely to disclose (63% of this group disclosed), compared with children whose parents were not supportive and did not believe their child had been abused (only 17% of these children disclosed)." (p. 215).

f. Research about the *recantation* and *denial* of child sexual abuse is somewhat controversial. While the following information is not universally accepted, some important empirically validated points are summarized below:

g. When abused children are directly asked about abuse, denials, tentative disclosures and recantations do not "characterize the disclosure patterns of children with validated histories of sexual abuse." (p. 194)

h. "Several studies suggest that once children have made an abuse disclosure, they are likely to maintain their allegations during formal assessment." (p. 209)- Especially true of older children.

i. There are two different interpretations of recantations: "The first is that the child is withdrawing a true statement of abuse. The second is that the child is withdrawing a false allegation of abuse." (p. 216)

j. While some children recant sexual abuse, it is uncommon - "only a small percentage of children in these studies recant" (p. 217). Recantation rates from methodologically sound studies range from 4% to 15%.

For More Information See:

Burkhart, M. (1999). "I take it back: When a child recants"

Walters, S. (2002). "Working with the non-offending caregiver"

Massengale, J. (2001). "Child Development: A Primer for Child Abuse Professionals,"

(Continued…)

[4] London, K., Bruck, M., Ceci, S., Shuman, D. (2005), "Disclosure of child sexual abuse: What does the research tell us about the ways that children tell?" *Psychology, Public Policy, and Law*, Vol. 11 No. 1, pp. 194-226.

13. Special Issue- Extending Foster-Care to Age 21:

a. With the passage of the Fostering Connections Act in 2008, *federal funds* became available to pay for services such as housing, vocational and educational assistance, and counseling for interested foster youth between the ages of 18 and 21. Previously *states* were responsible for financing services for foster youth aged 18 to 21. As a great deal of research demonstrates positive outcomes for foster youth who obtain services through age 21, California's Blue Ribbon Commission on Foster Care recommends that California take advantage of this new federal law (Recommendation 1B).

b. Benefits for youth remaining in the foster care system past age 18:
- Higher educational attainment
- Greater likelihood of employment, and if employed, higher earnings
- Lower rate of pregnancy and child birth
- Higher rate of services addressing independent living skills received

c. To be eligible for federal funding 'emancipated' foster youth must be:
- Enrolled in school or job training
- Be working a minimum number of hours
- Or, have a medical condition that prevents one of the above
- Foster youth must also want to voluntarily participate in the program

d. Mediation referrals may be impacted by decisions to extend foster care to age 21. Cases may be referred to address issues such as:
- Renegotiating household rules and relationships with foster parents and/or roommates
- Renegotiating relationships between foster youth and birth parents/family (youth may have had an ongoing contact or may be re-connecting as young adults after little or no contact)
- Accessing financial aid and services such as health care, career counseling, mental health counseling, educational counseling, housing assistance, and life skills training

5 Minutes

Didactic Presentation

Facilitator's Note: *There is likely a growing number of articles at this regulation is implemented in California, and a search should be done to keep this topic as informed as possible*

For More Information See:

California Blue Ribbon Commission on Children in Foster Care (2009) *"Fostering a New Future for California's Children: Final Report and Action Plan."*

National Governors' Association, Center for Best Practices (2007). *"Issue Brief: State Policies to Help Youth Transition Out of Foster Care"*

Susan Jekielek & Brett Brown (2005). *"Census 2000: The Transition to Adulthood – Characteristics of Young Adults Ages 18 to 24 in America."*

14. Special Issue- The Intersection of Dependency & Delinquency

10 Minutes

Didactic Presentation

a. As a dependency mediator you may find that you occasionally mediate cases in which a family has one child in the dependency system and another child in the delinquency system. Similarly, you may mediate cases in which a child is both a dependent child and ward of the court. Dual system involvement is not unusual. Multiple studies show that while child maltreatment does not determine delinquency, it is a significant risk factor for juvenile arrests and delinquency system involvement. *(AOC, 2005)*

b. Overview of Assembly Bill 129 *(AOC, 2007):*

- Prior to the enactment of AB 129:
  - Probation and social services were to determine which status would serve the best interests of the minor and the protection of society when children met the description of both dependent and ward
  - Courts were unable to simultaneously make child a dependent and a ward
  - The single-status requirement was seen as impeding the ability of courts, probation and child welfare to address family issues in a comprehensive and coordinated manner
- Effective January 1, 2005, AB 129 allows counties to develop a local dual-jurisdiction protocol to designate specific youth as "dual status" (both dependent and ward). Perceived benefits of the dual-status system include:
  - Family issues treated more holistically- drawing on combined strengths/resources of dependency and delinquency systems; For example, services to address parenting needs via dependency system and children's criminal behavior via delinquency system
  - Improved decisions as court receives more complete information
  - Expanded range of services and placements available
  - Increased dialogue and understanding between probation, child welfare and court

c. Effective collaboration between the dependency and delinquency systems is often challenging. It is easy to understand how coordination can be difficult given the different legal mandates and philosophies of these courts and agencies. Mediation may be a particularly effective venue for child welfare workers, probation officers, families, attorneys and others to learn about one another's concerns and create optimal (non-duplicative, non-conflicting) plans for children and families.

For More Information See:

Administrative Office of the Courts (2007) *"Dual-Status Children: Protocols for Implementing Assembly Bill 129: A Report to the California Legislature"*

Administrative Office of the Courts (2005) *"Fact Sheet- Intersection Between Juvenile Dependency and Delinquency: Available Research"*

Practitioner Reflection:

Consider the following common "dual status" concerns when dealing with possible cases crossing two systems: finding suitable placements, parent mental health issues, holding parents accountable, eliciting parental cooperation, continuity of services, and inter-agency information sharing and coordination.

15. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit C *"Self-Assessment & Reflection Tool"* and *"Training Reflection"* d. Encourage participants to provide feedback on the Unit C training e. Provide reminder of future meeting schedule and thank participants	***5 Minutes*** ***Materials:*** *Reflection Tool* – "Self-Assessment & Training Reflection"

UNIT 3

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California Juvenile Dependency Mediation Curriculum

Unit C: Children & Dependency Mediation

California Administrative Office of the Courts

CRC 5.518(d)(2)(B)

- The child has a right to participate in the dependency mediation process accompanied by his or her attorney.
- If the child makes an informed choice not to participate, then the child's attorney may participate.
- If the child is unable to make an informed choice, then the child's attorney may participate.

Your Mediation Program

- Insert portions of your program's protocol (and/or local court rules) that address child participation in dependency mediation

Meaningful Participation for Children

- <u>Pew Commission on Children in Foster Care</u> Strengthening Courts- Recommendation 3:

  Courts should be organized to enable **children** and parents to **participate in a meaningful way** in their own court proceedings.

- <u>CA's Blue Ribbon Commission on Children in Foster Care</u> *Recommendation 2B*:

  All participants in dependency hearings and subsequent appeals, including **children** and families, should have an opportunity to be heard and **meaningfully participate** in court.

Potential **Benefits** of Child Participation

Weighing Potential Benefits & Risks

Direct Benefits for Child

- Child may feel heard and that her voice matters
- Child may receive reassurance that absent parent still loves him/her
- Children can cope better w/ changes if know & understand reasons for changes
- Children are the most affected by CPS issues & should have voice in the process
- Child's voice is often direct, concise, eloquent
- Child may experience relief from sharing

Potential **Benefits** of Child Participation

Weighing Potential Benefits & Risks

Benefits for Family

- Parents are often more impacted about the need to change when their child gives direct input
- Care in family system reinforced
- Modeling- families observe constructive conflict resolution
- Mediation interventions may help reduce blaming & arguments within the family

Potential **Benefits** of Child Participation

Weighing Potential Benefits & Risks

<u>Benefits for Cooperation & Compliance</u>

- Inclusion may reduce the child's negative affect about & resistance to unpopular decisions
- If children participate, there may be better adult compliance w/ agreements reached

Potential **Benefits** of Child Participation

Weighing Potential Benefits & Risks

Benefits for Decision-Makers & Process

- It may be easier to emphasize children's needs when children participate
- Focus of parties changes for the better
- Parties gain firsthand knowledge about the specific child's developmental, emotional, & psychological needs
- May encourage honesty & accountability; However, child never asked or encouraged to "report" on parent(s)
- Child inclusion may improve the parties' reality testing

Potential **Risks** of Child Participation

Weighing Potential Benefits & Risks

<u>Potential Negative Impacts for Child</u>

- Exposure to mediation related conflict may be stressful for child (e.g., anxiety, nightmares, stomachaches, or stress-related insomnia)
- Attending dependency mediation appointment may be an additional intrusion into the child's life (e.g., time out of school)
- Child may be too young or immature

Potential **Risks** of Child Participation

Weighing Potential Benefits & Risks

Potential Problematic Family Interactions

- Parent may have a punitive response to child's disclosures
- Child might be manipulated or coached
- Pressures & loyalty conflicts may be exacerbated
- Adult/Parent authority may be undermined

Potential Training Issues

- Mediator may not be adequately trained/ experienced in working w/ children

Inappropriate Topics When a Child Participates

- Whether or not abuse/neglect occurred
- Statements that minimize the child abuse/neglect allegations
- Statements that blame the child for the abuse/neglect

Determining Whether & How to Include a Child in Mediation

- What does the *court referral* say about issues? Participants?
- Unless child has expressed a desire to participate- determine participation on a case by case basis using CRC as guide
- Work closely with child's attorney essential
- Assess the child's participation
  - Throughout the entire mediation process
  - Especially before meeting with child and parent together

Determining Whether & How to Include a Child in Mediation

Factors to consider:

- Child's chronological age
- Developmental level
- Maturity
- Emotional well-being
- Desire to participate
- The nature of the abuse/neglect
- The nature of the disputed issue
- Perspective of child's attorney, therapist, CASA, parents, SW & other relevant parties

Continuum of Child Involvement in Dependency Mediation

A.
Child not present at mediation

Others
relay child's point of view (POV)

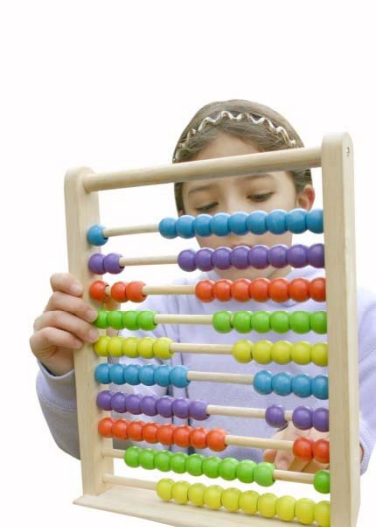
B.
Child present at court/mediation

Indirect participation
Others relay child's POV

C.
Child present at mediation

Direct participation
Child shares own POV w/ other parties

Mediation Orientation for Child



<u>CRC 5.518(d)(6):</u>

All local protocols must include:

- Protocols related to the inclusion of children in the mediation, including a requirement that the mediator **explain in an age-appropriate way** the mediation process to a participating child.

- **The following information must be explained to the child:**

Mediation Orientation for Child

CRC5.518(d)(6) cont'd

A. How child may participate in mediation
B. What occurs during mediation process
C. The role of the mediator
D. What child may realistically expect from mediation & limits on his/her ability to affect outcome
E. Any limitations on confidentiality
F. Child's right to be accompanied throughout mediation by his/her attorney & other support persons
G. Child's right to leave mediation session if his/her emotional or physical well-being threatened

Instructions
Case Scenarios Involving Children

1. Break into pairs where seated & read assigned scenario(s) from *"Case Scenarios Involving Children" - Handout G*
2. Craft brief responses to one or both scenarios (4 min/ea.)
3. When formulating a response:
   - Consider what mediator questions, remarks, and/or strategies might be helpful in the scenario situation
   - Formulate general tips & suggestions for similar cases
4. Report back: Pairs have 2 minutes to share ideas
5. Large group discussion: Facilitator & trainees respond and discuss additional/alternate responses to scenario(s)

California Rules of Court: Children & Dependency Mediation

CRC Code Section	California Rule of Court
5.518(b)(2)	"**Safety and best interest of the child**" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of all of the following: (A) The preservation and strengthening of the family and family relationships whenever appropriate and possible; (B) The manner in which the child may be protected from the risk of future abuse or neglect; (C) The child's need for safety, stability, and permanency; (D) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system; (E) The child's need for continuity of care and the effect that removal and subsequent placements have had, or may have, on the child; and (F) The child's education, which includes the child's participation, progress, need for assistance, cognitive development and, if applicable, early childhood education and care, the need for special education and related services, and the extent to which the child has or has had limited English proficiency (LEP).
5.518(c)(1)(B)	Each court that has a dependency mediation program must ensure that: (B) Dependency mediators maintain an appropriate focus on issues related to the **child's safety and best interest** and the safety of all family members;
5.518(c)(1)(C)	Each court that has a dependency mediation program must ensure that: (C) Dependency mediators provide a forum for all interested persons to **develop a plan focused on the best interest of the child**, emphasizing family preservation and strengthening and the child's need for permanency;
5.518(c)(1)(F)	Each court that has a dependency mediation program must ensure that: (F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or **safety-related issues affecting the child** or any other party named in the proceedings;

CRC Code Section	California Rule of Court
5.518(c)(2)(A-B)	Each dependency mediator must: (A) Attempt to assist the mediation participants in reaching a settlement of the issues consistent with **preserving the safety and best interest of the child, first and foremost**, and the safety of all family members and participants; (B) **Discourage** participants from **blaming the victim and from denying or minimizing allegations of child abuse** or violence against any family member;
5.518(d)(2)(A-B)	All local protocols must include the following: (2) A policy on who participates in the mediation, according to the following guidelines: (A) When at all possible, dependency mediation should include the direct and active participation of the parties, including but not limited to the **child**, the parents or legal guardian, a representative of the child protective agency, and, at some stage, their respective attorneys. (B) **The child has a right to participate in the dependency mediation process accompanied by his or her attorney. If the child makes an informed choice not to participate, then the child's attorney may participate. If the child is unable to make an informed choice, then the child's attorney may participate.**
5.518(d)(4)	All local protocols must include the following: (4) A protocol for providing mediation in cases in which… violence perpetrated by any other mediation participant has, or allegedly has, occurred… The protocol must also appropriately address all **family violence** issues by encouraging the **incorporation of appropriate safety and treatment interventions in any settlement…**
5.518(d)(6)	All local protocols must include the following: **(6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age-appropriate way the mediation process to a participating child. The following information must be explained to the child:** (A) How the child may participate in the mediation; (B) What occurs during the mediation process; (C) The role of the mediator; (D) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome; (E) Any limitations on the confidentiality of the process; (F) The child's right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and (G) The child's right to leave the mediation session if his or her emotional or physical well-being is threatened.

CRC Code Section	California Rule of Court
5.518(j)(3)	Mediators must: (3) **Protect the confidentiality** of all parties, including the **child**.
5.518(j)(4)	Mediators must: (4) **Maintain the confidential relationship between** any family member or the **child and his or her treating counselor**, including the confidentiality of any psychological evaluations.
5.518(j)(6)	Mediators must: (6) **Consider the health, safety, welfare, and best interest of the child** and the safety of all parties and other participants in all phases of the process and encourage the formulation of settlements that preserve these values.
5.518(j)(8)	Mediators must: (8) **Not require the child to state a preference for placement.**

Rights of Children in Foster Care

California Welfare & Institutions Code § 16001.9(a) 2013[1]

It is the policy of the state that all children in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.

(14) To work and develop job skills at an age-appropriate level, consistent with state law.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To be involved in the development of his or her own case plan and plan for permanent placement.

(20) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

[1] NOTE – Any statute, rule of court, federal regulation should be regularly reviewed for any subsequent updates.

(21) To be free from unreasonable searches of personal belongings.

(22) To confidentiality of all juvenile court records consistent with existing law.

(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(24) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(25) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (23) of subdivision (a).

Services Checklist for Dependent Children and Adolescents

One of the benefits of dependency mediation generally is the collaborative agreement and the detailing of an agreement that may lead to more comprehensive, parent engaged services plan. These details are often the result of a renewed group focus on the child and services needed for reunification with this family. To continue this strong tradition, mediators may assist mediation participants in considering appropriate services for children and adolescents, including:

Counseling

- Posttraumatic stress groups; Treatment for traumatized children; Crisis counseling; Grief counseling
- Individual therapy & Play therapy
- Conjoint counseling with non-offending parent; Conjoint counseling with offending parent
- Anger management
- For parenting teens- parenting education, skills training and coaching
- For teens nearing emancipation- life skills courses, employment programs & goal setting/future planning

Mediation

- Mediation for child & parent/foster-parent/relative care-giver (e.g., expectations & rules)

Educational Services

- Tutoring
- Individualized Educational Plan (IEP)
- Counseling/mentoring teens about post-secondary education & job training opportunities (and practical help with financial aid and other applications)

Extracurricular & Enrichment Activities

- Sports, music, arts, etc.
- Opportunities to volunteer (enhance self-esteem by contributing/giving back)

Transportation

- Transportation to and from home school; Extracurricular activities; Special events
- Transportation for regular contact w/ parents (siblings if placed elsewhere & significant others like grandparents)

Supervised Visitation & Exchange Services

- Use of supervised access and exchange facilities
- Therapeutically supervised contact for child & parent

Assessments, Evaluations & Screenings

- Early childhood development screening/assessment
- Psychological evaluation & treatment; Dual diagnosis evaluation and treatment
- Psychiatric evaluation (medication evaluation) & treatment
- Medical evaluation & treatment; Dental evaluation & treatment

Substance Abuse Evaluation & Treatment

- Al-Ateen; AA
- Alcohol and drug treatment
- Juvenile drug court

Continuum for Child Voice & Participation in Dependency Mediation

A.	B.	C.
Child <u>not present</u> at mediation	**Child <u>present</u> at court/mediation**	**Child <u>present</u> at mediation**
Others relay child's point of view (P.O.V.)	**<u>Indirect</u> participation**	**<u>Direct</u> participation**
	Others relay child's P.O.V.	**Child shares own P.O.V. w/ other parties**
Child's point of view/needs relayed by child's attorney/CASA	Child writes a letter to be read out loud during mediation	Child participates in the entire mediation appointment and actively discusses all issues
Expert (such as child's therapist) provides written report	Child in mediation waiting room to receive timely updates & share p.o.v. w/ representative or mediator	Child participates in portions of the mediation appt. most relevant to child's concerns (e.g., visitation, placement)
Child's therapist, teacher, evaluator, etc. available by phone	Child participates by phone w/ only child's representative or mediator in mediation room	Child participates towards the end of the mediation appt. to provide some input into <u>non-finalized</u> agreement
Child's treatment provider etc. available for in-person mediation participation	Child participates in mediation through a separate session only and child's representative/mediator relays point of view	Child present at the conclusion of mediation appt. to have <u>questions answered</u> and be <u>informed</u> of decisions made
		Child participates by phone w/ some/all mediation parties present in mediation room

Handout D

Unit C: Children & Dependency Mediation

Deciding On Separate or Joint Meetings Of the Child & Parents and/or Siblings?

While mediators are not investigators or evaluators, the following information can help mediators structure mediations. Information is obtained via court file/document review and discussions with adult parties (and their attorneys). [1]

Note: *Court referral orders may include both parent and child, however, mediator in charge of process and considerations of whether & how to meet should be made in consultation with child's attorney, parent attorney, and social worker.*

Considerations whether to meet together or separately with the child and PARENT(S):

Before meeting with a parent and child together always meet with each separately.

Some general assessment criteria:

- Specific history of child abuse/neglect
- Level of parent-child conflict & overall quality of parent-child relationship

Some assessment criteria for parents:

- Status of the case, if child "out-of-home," frequency, quality of visits
- Parent's active mental health and/or drug use issues
- Parent's attitude toward child (e.g., supportive or blaming) – though that may encourage some facilitated meeting, to hear the other's voice
- Capacity for warmth, empathy & genuineness
- Ability to acknowledge mistakes/take responsibility
- Parent's maturity, ego strength & ability to appropriately handle child's potential disclosures
- Parent's willingness to take child's perspective into account

Some assessment criteria for children:

- Child's chronological age, maturity, developmental level and temperament
- Child's ability to relate to mediator (and/or advocates/support people)
- Child's self-confidence (and/or level of guilt)
- Child's desire to be seen with parent(s)
- Child's mental health (e.g., level of depression/anxiety)
- Are there other siblings, will they be present, how will that help/hinder meeting

Considerations whether to meet together or separately with the child and SIBLING(S):

Interviewing siblings together:

- Are the children placed in same foster care home; if not, do they visit often
- Offers the benefit of sibling support in talking about difficult topics

[1] Adapted from: Saposnek, D. T., "Working with Children in Mediation," in Divorce and Family Mediation (2004), Eds. Folberg, J., Milne, A. L. & Salem; and Sanchez, E. A. & Kibler-Sanchez, S., "Empowering Children in Mediation." Family Court Review, Vol. 42 No. 3, July 2004.

- Gives mediator opportunity to observe the children's interactions and relationships with one another
- More efficient use of mediator time
- Program utilizes a co-mediation model

Individual interviews should be considered when:

- The children have expressed conflicting accounts of events
- The children were not removed at the same time (may be at different stages of reunification)
- There is a wide age gap between the children
- The children have previously expressed different preferences or desires
- When one child is extremely talkative and/or overpowering
- Possibly when siblings have only one parent in common (i.e., half-siblings)
- When children have different permanent plans or one appears more adoptable

Sample Language:
Talking with Children in Dependency Mediation

Per California Rule of Court 5.518(d) (6) when children participate in mediation, they must receive an age appropriate orientation to the mediation process. Below are examples of possible language to use when talking with a child. Be sure to reflect on the child's age, length of time in care, and other case factors to determine whether or not the language is appropriate in your case.

(A) How the child may participate in the mediation;

Here are some different ways for you to participate in today's appointment (discuss options from handout "Continuum for Child Participation")…. *What option sounds the best to you?*

(B) What occurs during the mediation process;

The focus of today's appointment will be to share ideas, brainstorm options and make good decisions. Sometimes I meet with everyone together and sometimes I meet with people one-on-one. By carefully listening to one another the adults in your case have a chance to create an agreement about… (If appropriate - share likely topics). Ultimately your judge will decide if he/she thinks that the agreement is the best possible plan for you and your case at this time.

(C) The role of the mediator;

As you know child protective services' job is to keep children safe. There were some circumstances (or things) that concerned them and a social worker shared these concerns with the judge. As your mediator it is my job to help your parents and the other people in your case (if appropriate- discuss names & roles) brainstorm together to see if they can make some plans that they all agree are the best possible decisions for you and your family at this time. I am not a judge - I will not be making decisions. Instead I will be helping your parents and the other adults share ideas and come up with solutions for how to make things better. (If appropriate- discuss some of the mediation topics that would be of interest to the child. For example, "Today we'll be talking about….).

(D) what the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;

While all of the adults participating in today's mediation appointment are very interested to hear and take into account your ideas, concerns, feelings and points of view, ultimately the decisions about _____ (e.g., how you spend time with your dad, whether you return home at this time) will be made by the agreement of your parents and the other adults (if appropriate- discuss names & roles). The judge will then make the final decision about whether he/she agrees that the plan the adults in your case created is the best plan at this time. If the adults in your case continue to have very different ideas about what is best (and are unable to reach an agreement) then the judge will decide on the best plan.

Even if you were to clearly tell the adults at today's mediation (or the judge) exactly what you wanted, that does not necessarily mean that all of the adults (or the judge) will decide that your idea is the best plan at this point in time. While the adults want very much to understand your feeling and ideas, there may be other concerns or things that they also need to consider.

(E) Any limitations on the confidentiality of the process;

What happens in mediation is confidential (or private). What that means is that I won't tell the judge (or anyone else) what you and the other people attending today's mediation appointment say. The other people participating in mediation also won't tell the judge (or anyone else) what is said at today's appointment. (If appropriate- discuss the reason for confidentiality).

When you and I talk alone or with your attorney, I won't tell the people attending today's mediation appointment what you say, unless you specifically want me to share your thoughts and ideas with them.

While generally what is talked about in mediation is confidential (or private), there are some things that would not be confidential (or private).

1. *If, for example, you told me that there was a new time that you were hurt or had important needs not met (neglect), that information would not be confidential (or private).*
2. *Also, if you told me about an older person (over age 65) or someone not able to care for him/herself (dependent adult) being hurt or not taken care of, that information would not be private.*
3. *And, if you told me that you felt so sad that you were thinking about hurting yourself-*
4. *Or, maybe you are so angry that you made a serious threat to hurt yourself or someone else, that information would not be private. I would share this type of safety information with the right people to help make sure that you and others stay safe.*
5. *If there is a signed written agreement at the end of today's appointment, the information in the signed mediation agreement would not be confidential- those are agreements everyone wants the court to know about. The judge will review the signed agreement to decide if it should become a court order. (Optional depending on age appropriateness)*
6. *Lastly, some of the information that is talked about during today's mediation appointment may be information that was already available to the people in your case (for example, reports and records). This previously available information does not become confidential because we also talk about it in mediation. The confidentiality is really about the new things that are talked about during our appointment. (Optional depending on age appropriateness)*

Confidentiality and the limits to confidentiality can be pretty confusing. Do you have any questions so far? Please check with me or with your attorney if, at any point, you have a question about confidentiality (or the privacy of mediation).

(F) The child's right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and

(G) The child's right to leave the mediation session if his or her emotional or physical well-being is threatened.

It can be beneficial to help a child's "gate-keeper" (attorney, social worker, CASA, parent, foster-parent, etc.) frame mediation in a constructive and non-threatening manner when introducing the idea to the child.

Your parents and I and the other people in your case (if appropriate name parties & explain roles) will be talking with a mediator to share ideas and brainstorm together about how to make the best plans and decisions in your case. We care very much that the decisions made are the best decisions for you and your family. If you feel comfortable you are welcome to participate in some of the mediation appointment to help us understand your feelings and ideas about….

There are different ways that you can participate in mediation. Some possibilities are…. What would be the best fit for you?

Vignette Unit C – The Victoria P. Case - Orientating Child to Dependency Mediation

The Victoria P. case is referred to mediate disposition.

Victoria (age 11) was allegedly sexually abused by her mother's boyfriend (Ted). Victoria's older brother Phil (14) was not removed from his mother's care as there was no indication that he was endangered in any way. While Victoria's mother (Beatrice) really loves her daughter, she has had a difficult time believing that Ted would touch Victoria in a sexual manner. Beatrice thinks that Victoria must have misunderstood something innocent that Ted did.

Victoria's biological father is deceased. His parents (Danielle and Roger) live out of the state and are planning on attending the mediation appointment. The paternal grandparents would like to provide a safe, stable, and if necessary, permanent home for Victoria. Beatrice does not want to participate in services and is willing to have Victoria indefinitely placed out of state with Danielle and Roger.

You understand from Victoria's attorney (Alice) that Victoria is "shy and sweet and really loves her mother." You also learn that Victoria would like to attend at least some portion of the mediation appointment and that the parties anticipate that mediation discussions will focus on placement decisions, services for Victoria, and safe visitation for Victoria and her mother and brother.

Case Scenarios Involving Children

1. Leann & Kelly B. Case:

You are mediating a case that is referred at the .26 hearing to address whether or not the court should terminate parental rights.

Approximately 14 months ago Leann (age 13) and Kelly (age 8) were removed from their father (Henry) who had allegedly slapped Leann on the face on two separate occasions. Leann's teacher called CPS when she noticed bruises.

Prior to the girls' removal from their father, they had been seeing their mother (Alice) for short periods of time on most weekends. Alice is mildly developmentally delayed and resides in an assisted living environment. While Alice would like to maintain contact with the girls she does not feel that she is able to care for the girls on her own.

The children's father completed some of his services but neglected large portions of his case plan. Despite Henry's sporadic follow-through (which he attributes to his conflict with the social worker.), Henry strongly hopes to be reunited with his daughters.

Leann and Kelly have been placed in a warm and supportive foster home. Their foster parents are open to adopting them. You understand from the children's attorney that while Kelly would like to return home, Leann is somewhat ambivalent- wanting proof that her father has stopped drinking and has really changed. Henry believes that if his oldest daughter Leann vocally objects to adoption, both girls will eventually be returned to his care. At the mediation appointment Henry says, "Bring in Leann so that she can tell everyone that she does not want to be adopted."

2. Jessica L. Case:

Jessica is 15 years old and is 7 months pregnant. She has spent the last 4 years in and out of foster care. She was removed from her mother for neglect as her mother had a severe long-term drinking problem. Jessica's father has been in prison most of her childhood (convictions for substance related charges, multiple robberies and battery).

Recently Jessica was placed in a level 3 home after jabbing another student with a pencil. Jessica often runs away from her placement. Most of the time she is located at the home of her adult brothers- who aged out of foster care. The discouraged social worker requested mediation as a final effort to find solutions.

At the time of the mediation referral Jessica's mother has been sober for six months. Jessica's mother and stepfather (both in recovery) share a one room studio apartment. They would like to have Jessica placed with them but historically have found it difficult to have Jessica follow any household rules, for example, coming home at night, attending school and helping out with household chores.

Jessica attends the mediation appointment and states that she "has decided" to live with her father who will be released from prison in one month. You know from your case preparation and court file review that (in addition to the department's concerns about the appropriateness of Jessica's father), Jessica's father plans to live with his mother after he is released. You are also aware that Jessica's paternal grandma adamantly refuses to have Jessica stay in her home. According to county counsel, she and her client (the social worker) do not trust Jessica and have "run out of patience." How might you help Jessica and the other mediation participants explore optimal, yet realistic, options for Jessica's case?

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Self-Assessment & Training Reflection

Unit C: Children & Dependency Mediation

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the material. You will not be asked to submit this form.

1. Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED ---------- PROFICIENT			
My ability to recall the CRCs related to child participation in dependency mediation	☐	☐	☐	☐
My ability to recognize the benefits and potential risks of child involvement in dependency mediation	☐	☐	☐	☐
My ability to analyze cases involving a prospective child participant and to design and implement appropriate mediation procedures	☐	☐	☐	☐
My ability to explain different ways a child may participate in dependency mediation	☐	☐	☐	☐
My ability to assess when to meet with a child separately or together with his/her sibling(s) and/or parent(s)	☐	☐	☐	☐
My ability to prepare adults and child mediation participants for the child's participation.	☐	☐	☐	☐
My ability to develop rapport and talk with children	☐	☐	☐	☐
My ability to recall service options for children and adolescents	☐	☐	☐	☐
My ability to distinguish important facts about the disclosure, recantation and denial of child sexual abuse	☐	☐	☐	☐
My ability to describe issues related to the extension of foster care for youth ages 18 to 21	☐	☐	☐	☐
My ability to describe concerns related to the intersection of dependency and delinquency	☐	☐	☐	☐

Self-Assessment & Training Reflection

2. What is the most important idea you learned today?

3. What was the most confusing topic today?

4. What important questions remain unanswered for you?

5. What resources will help answer your questions or provide more information about this topic?

6. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit D:
Conducting a Dependency Mediation Appointment

CONTENTS

Chapter 1: Orienting Participants to Dependency Mediation

Chapter 2: Multi-Party Mediation & Collaborative Resolution Methods

Chapter 3: Caucusing

Chapter 4: Co-Mediation

Chapter 5: Concluding Mediations Appropriately

Unit D, Chapter 1:
Orienting Participants to Dependency Mediation

Presentation Methods: • Large Group Discussion • Didactic Presentation • Individual Exercise • Facilitator Role-Play • Small Group Role-Play **Participant Materials:** • *Handout A* - "CRC & Dependency Mediation Orientation" • *Handout B* - "Sample Domestic Violence Screening" • *Handout C* - "How to Prepare for Mediation (Attorney/Agency)" • *Handout D* - "Benefits of JDM" • *Handout E* - "Typical Issues Addressed in Mediation" (Context) • *Vignette D* - "Robby & Jewel" • *Reflection Tool* - "Self-Assessment & Training Reflection" **Suggested Pre-Session Reading & Exercises:** • *Handout A* - "CRC & Dependency Mediation Orientation" • *Handout B* - "Sample Domestic Violence Screening" • *Handout C* - "How to Prepare for Mediation (Attorney/Agency)" • *Handout D* - "Benefits of JDM" • *Handout E* - "Typical Issues Addressed in Mediation" (Context)	***Estimated Duration:*** *1 Hour & 50 Minutes*

• *Vignette D- "Robby & Jewel"*	
OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives_____	***5 Minutes***
2. Reflecting on Personal Experience & Serving Clients with Respect *(Individual Exercise & Large Group Discussion)*_____	***10 Minutes***
3. Intake Safety-Issue Screening *(Didactic Presentation & Large Group Discussion)*_____	***15 Minutes***
4. Topics to Cover in a Dependency Mediation Orientation *(Didactic Presentation & Large Group Discussion)*_____	***10 Minutes***
5. Orienting Professionals & Pre-Mediation Case Preparation *(Large Group Discussion)*_____	***10 Minutes***
6. Providing a Mediation Orientation & Responding to Participant Questions *(Facilitator Role-Play)*_____	***20 Minutes***
7. Orienting Participants to Mediation *(Small Group Role-Play)* _____	***35 Minutes*** *(or less)*
8. Summary & Close_____	***5 Minutes***

1. Learning Objectives After concluding *Unit D Chapter* , participants will be able to: a. Recognize the importance of treating "all mediation participants in a manner that preserves their dignity and self-respect" (CRC 5.518(c)(2)(E)) b. Implement a domestic violence screening that complies with California Rule of Court 5.518(c)(1)(F). *In-depth coverage can be found in Unit E: Domestic Violence and Its Impact on Mediation* c. Reflect on a specific mediation referral (e.g., issues, stage of the proceeding, party dynamics, etc.) and determine the safest and most productive way to orient participants to the mediation process d. Provide a welcoming, informative and easily understood orientation for non-professional participants e. Effectively prepare professional participants for mediation, via a traditional orientation as well as pre-mediation case preparation (if consistent with local protocols/practice)	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Reflecting on Personal Experience & Serving Clients with Respect a. Spend five minutes free-writing about a personal experience in which you were uncomfortable, anxious or overwhelmed. Sometimes memories of a hospital experience, visit to a child's school, meeting with a loan officer, or a loved one's medical emergency can trigger these types of feelings. Use the following three questions to guide your reflections. *(Note: You will not be required to share your personal reflections with the facilitator or group.)* • How were you treated by others? • Was the way you were related to helpful or not helpful? • If it wasn't helpful, how would you have liked to have been treated? b. Facilitator may share a relevant personal reflection about being on the receiving end of services when feeling frightened, in pain or overwhelmed. Group members are welcome (but not required) to share their personal reflections.	***10 Minutes*** *Individual Exercise and Large Group Discussion* ***Facilitator Notes:*** ✓ *The purpose of this exercise is to create more empathy for clients who are often overwhelmed and unfamiliar with the Court process* ✓ *Refer to California Rule of Court 5.518(c)(2)(E)-. treating: "All mediation participants in a manner that preserves their dignity and self-respect"*

3. Intake Safety-Issue Screening

a. Review and discuss CRC 5.518(c)(1)(F) *(Slide 2)*

b. What is the purpose of safety screening?
- To determine if it is safe and appropriate to meet
- And to determine how to structure the mediation appointment (e.g., which, if any, session safeguards are necessary and appropriate)

c. What are some methods for screening? *(Slide 3)*
- Document review:
  - Current & previous dependency court files
  - Other court records (e.g., restraining orders)
  - As able, police records
  - As able, CPS records
- On-site written questionnaires
- Face to face separate interviews
- Phone screening
- Recommend multiple screening methods & ongoing assessment

c. What are some important guidelines for in-person interviews? *(Slide 4)*
- Screen EACH party
- Screen each party SEPARATELY (out of sight & hearing distance)
- Explain that screening and assessment are standard procedures
- Define abusive behaviors
- Move from general to specific questions
- Explain confidentiality and exceptions to confidentiality
- As many victims do not identify themselves as victims ask specific questions about behavior
- Suggest possible ways to structure the mediation appointment and help the party reflect on her/his ability to mediate with session safeguards
- Screening & assessment continue throughout entire mediation process (e.g., watch body language for clues of distress and/or intimidation)

15 Minutes

Didactic Presentation & Large Group Discussion

PowerPoint Slides 2-6

Materials:

Handout A: "CRC & Dependency Mediation Orientation"

Handout B: "Sample Domestic Violence Screening"

Facilitator Notes:

Remind participants that Unit E.2: "Domestic Violence and its Impact on Mediation" contains additional information about D.V. screening & appropriate procedures

For More Information See:

AOC, 2009. *Unit E.2, California Juvenile Dependency Mediation Curriculum*

Ellis, 2008. "Divorce and the Family Court: What Can Be Done About Domestic Violence?"

Ellis & Stuckless, 2006. "Domestic Violence, DOVE, and Divorce Mediation"

3. Intake Safety-Issue Screening (continued)
 	
d. Discuss the screening questions contained in *"Sample Domestic Violence Screening."* Which screening questions did you find most useful? Did you find any questions problematic? Why?
• Remember that screening questions are not intended to be therapeutic, overly intrusive or alienating. Again, the purpose is for the mediator to gather enough information to be able to make determinations about whether and how to conduct the mediation appointment.
• Program screening tools should focus on dependency court issues; who are mediation participants, including attorneys, or only one parent, or
  • Each parent may be meeting separately with rest of the group as issues are specific to that parent and/or involve visitation with child as arranged by social worker; or
  • The domestic violence issue may involve a non-parent, and so that non-parent likely not involved in dependency court proceedings.
• Additional information about the "Potency, Pattern and Primary Perpetrator Screening" (PPP)
  o Generally multiple positive indicators signal higher risk
  o Some indicators are more important than others [e.g., #1, #2, #3]
 	
e. If the court records, social worker report, and/or safety-issue screening process indicated that there is a history (or alleged history) of domestic violence, what process and structure modifications should the mediator consider? *(Slides 5&6)*
• Separate orientations (CRC 5.518(d)(4)(C)(i))
• Separate session (days/times) (CRC 5.518(d)(4)(C)(i))
• Security/Bailiff present nearby
• Staggered arrival and departure times for alleged victim and alleged perpetrator (e.g., alleged victim depart prior to alleged perpetrator)
• Separate waiting rooms; different entrances/exits
• D.V. support person present (CRC 5.518(d)(2)(E) & 5.518(d)(4)(C)(ii))
• Protect alleged victim's contact info (i.e., don't have forms visible)
• If not conducting entire mediation session separately- meet separately w/ parties prior to finalizing any mediation agreement (prevent coercion)
• Inform parties about timeline in which mediation agreement may become a
	15 Minutes
	Didactic Presentation & Large Group Discussion
	
	Materials:
	Handout B: "Sample Domestic Violence Screening"
	
	For More Information See:
	
	Girdner, L., 1999. *Domestic Abuse and Custody Mediation Training for Mediators, Instructor's Guide.*
	
	Jaffe, P. G., et al., 2008. "Custody disputes involving allegations of domestic violence: The need for differentiated approaches to parenting plan"
	
	Kelly, J. B., & Johnson, M. P., 2008. "Differentiation among types of intimate partner violence: Research update and implications for interventions"
	
	Folberg, J. et al., 2004. "Mediation and Domestic Abuse"
	
	Ver Steegh & Dalton, 2008. *"Report from the Wingspread Conference"*

court order	

4. Topics to Cover in a Dependency Mediation Orientation a. Given what you have learned about dependency mediation thus far, what would you suggest discussing with parties during a dependency mediation orientation? b. What is the purpose of orientation? What is the mediator trying to accomplish? Some possibilities below. *(Slide 7)* • Safe, productive and informed participation and decision making (CRC 5.518(d)(5)) o **Essential: Bi-lingual interpreters**. Typically court referred mediations are considered a court hearing and so entitled to court certified language interpreter. o If not available, what accommodation might allow mediation to proceed? ▪ Most important is comfort level of person wanting interpreter. ▪ What would caution you against using a bi-lingual family member, social worker, attorney, or mediator? ▪ What about an interpreter available by telephone? ▪ What accommodations might work? • Set the tone for the appointment (respectful, collaborative, etc.) • Help participants relax (decrease physiological arousal) and better know what to expect so as to help them participate at their best • Preemptively set the stage for mediator re-direction and active management of the mediation process; Frame as way to help individual (and other participants) get the most out of the appointment • Other ideas? c. One of the purposes of orientation is to educate clients about the process of mediation. Per the California Rules of Court, what are eight topics that mediators should address with participants prior to commencing	***10 Minutes*** *Didactic Presentation & Large Group Discussion* ***PowerPoint Slides 7-9*** ***Materials:*** Handout A: "CRC & Dependency Mediation Orientation" Handout D & E ***Facilitator Notes:*** ✓ *Remind participants that Unit C.1 "Children & Dependency Mediation" addresses orienting a child to dependency mediation* *Remind participants that Unit A.2 "Confidentiality" addresses confidentiality and exceptions to confidentiality in more detail*

mediation? *(Slide 8)*
• Review and discuss CRC 5.518(d)(5)(A-D)
  o The mediation process
  o The typical participants
  o The range of disputes that may be discussed
  o The typical outcomes of mediation
  o The importance of keeping confidential all communications, negotiations, or settlement discussions by and between participants
  o The mediator's role
  o Any limitations on the confidentiality of the process
  o The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person & have sessions separate from the alleged perpetrator	

4. Topics to Cover in an Orientation (continued)
 	
d. Given the purposes of orientation, what other elements might be helpful to address before or at the beginning of mediation? *(Slide 9)*
Before
• Discuss participants' hopes & expectations for mediation
• Provide optimistic (yet realistic) sense of the mediation's possibilities
At the beginning of the mediation:
• Introductions
• Review goals & purpose of mediation
• Obtain participant's permission to assist him/her in being as effective as possible (i.e., mediator will be active and may re-direct, re-frame, etc.)
• Provide a brief overview of the stage of the proceeding, and issues
• Mention the possibility that the mediator may meet with individuals/groups in caucus
  o Explain purpose and benefits of caucus and answer questions
  o Be sure to address whether or not the information discussed in caucus will be kept confidential from other participants
• Review ground rules and appropriate/productive mediation behavior (esp. if there are allegations of domestic violence or you sense that an individual may have difficulty participating appropriately)
• Provide procedural information about what happens at the conclusion of mediation if there is a full agreement, partial agreement or no agreement
  o For example, discuss agreement drafting & signing, court approval	

process, next court hearing, etc.	

5. Orienting Professionals & Pre-Mediation Case Preparation a. How might you modify a mediation orientation to have it be appropriate for professionals? Keep in mind that many social workers and attorneys may frequently or regularly participate in mediation. b. What elements would be similar to a mediation orientation for children, parents? What might be different? c. If it is your program's practice to speak with professional participants and un-represented parties (or in some jurisdictions represented parties, as well) prior to mediation, how is the information obtained during these pre-mediation conversations handled, i.e., is this information confidential or not? d. What types of issues might you discuss with professionals prior to a mediation appointment? Some ideas are listed below. • More comprehensive orientation for professionals who have not previously participated in dependency mediation (with particular attention to the problem-solving and collaborative nature of discussions) • Review items on Handout C - "How to Prepare for Mediation" • Obtain a better understanding of potential areas of agreement and disagreement (contested issues- i.e., why was this case referred?) • Assist with preliminary brainstorming (how to orient client, safety etc.) • Determine (or help the parties determine) who else should attend the mediation appointment, and get necessary permissions • Is the professional aware of any D.V. and/or safety issues • Confirm mediation location & date/time • Help professionals determine which reports, evaluations, treatment providers, etc. may assist the mediation decision makers in resolving the issues • Answer questions about the process	***10 Minutes*** *Large Group Discussion* ***Materials:*** Handout C: "How to Prepare for Mediation" ***Facilitator Notes:*** *Mediators may want to consider distributing their program's JDM protocols and forms, especially when professional participants are anxious about or new to the mediation process* **Practitioner Considerations:** Many programs (both nationally and internationally) find it essential to provide ongoing outreach to professional stakeholders. By regularly explaining protocols, addressing concerns and trouble-shooting issues, the participation of professionals can be optimized. Program support is also likely to improve.

6. Providing a Mediation Orientation & Responding to Questions a. Drawing on *"Vignette D,"* facilitator demonstrates a mediation orientation for Julie Bell (mother) and her regional center worker, Cindy Warren. b. Processing the Role Play • Facilitator shares: o What aspects of the orientation did you feel positively about? o What aspects of the orientation might you adjust in the future? o Were there any ways that you tailored the orientation to this specific case? • Ask each role-player: o What was it like to be in your role? o What was helpful about the orientation? o In your role as ____, was there anything about the orientation that could have been more effective? • Invite observers to share comments and observations about the role-play process: o What was helpful? Interesting? o Any alternative ideas?	***20 Minutes*** *Facilitator Role-Play* ***Materials:*** Vignette D: "Vignette D" ***Facilitator Notes:*** ✓ *Find two participants willing to role-play Julie Bell and Cindy Warren based on "Vignette D.1"* ✓ *At the conclusion of the role play thank the volunteers for their valuable contribution to the training!* ✓ *Remind participants that Unit C.1 "Children & Dependency Mediation" contains a role-play demonstration of a child orientation to dependency mediation*

Misconception Alert:

Sometimes mediators assume that a mediation orientation should take place with everyone in the same room at the same time. In addition to separate orientations when there are allegations of domestic violence, there may be other times when orienting participants separately makes sense- for example, when preparing a child for participation in mediation. While additional time may be required, it is worthwhile assessing the best configuration for the mediation orientation. If orienting separately remember to preserve perceptions of impartiality by providing orientations of equal duration.

7. Orienting Participants to Mediation
 	
a. If training in a large group- participants may break up into groups of 3. Drawing from *"Vignette D: Robby & Jewel,"* take turns role-playing the mediator. There will be three role-plays.
• One mediator will orient Julie Bell (mother) and her regional center worker (Cindy Warren) to mediation (with or without Andy Camp, Jewel's biological father)
• One mediator will orient Bob Harkin (Robby's biological father) to mediation (separate orientation due to allegations of domestic violence)
• The remaining mediator will orient Daniel Fisher to orientation
  o Daniel Fisher, County Counsel (not mentioned in vignette) was recently hired and has never participated in mediation
• When you are not role-playing the mediator or a client (Julie Bell, Bob Harkin or Daniel Fisher), you will be the observer- focused on constructive feedback for team members
• Plan on approximately 7-10 minutes for each role-play and 2-4 minutes for processing each role play (see below)
 	
b. At the conclusion of each of the three role-plays *(Slide 10),*
• Mediator shares:
  o What aspects of the orientation did you feel positively about?
  o What aspects of the orientation (if any) would you like help with?
  o Were there any ways that you tailored the orientation to this specific case?
• Role-player discusses:
  o What was it like to be in your role?
  o Describe several things that were helpful about the orientation
  o Are there adjustments that might further strengthen the orientation?
• Observer shares:
  o Describe several things that were helpful about the mediation orientation
  o Are there adjustments that might further strengthen the orientation?
	***35 Minutes** (or less)*
	Small Group Role-Plays
	
	PowerPoint Slide 10
	
	Materials:
	Vignette D:
	"Robby & Jewel"
	
	Facilitator Notes:
	✓ *Remind participants to be supportive of one another as they take risks and practice these new skills. Research demonstrates that people learn better when in a caring environment!*
	✓ *While role-playing participants may want to refer to the handout titled "Sample Domestic Violence Screening."*

c. At the conclusion of the role plays, reconvene the large group and invite participants to share observations and comments about their role-playing experience: • What did they learn? What was challenging? Interesting? • Invite participants to share different/alternative ideas about how to approach orientation	

8. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit D.1 Reflection Tool - "Self-Assessment & Training Reflection" d. Encourage participants to provide feedback on the Unit D.1 training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Materials:*** *Reflection Tool*: "Self-Assessment & Training Reflection"

UNIT D.1

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California Juvenile Dependency Mediation Curriculum

Unit D.1
Participants to Dependency Mediation

California Administrative Office of the Courts

Intake Safety-Issue Screening

<u>CRC 5.518(c)(1)(F):</u>

Each court that has a dependency mediation program must ensure that:

The dependency mediation program uses an intake process that screens for and informs the mediator about :

- any restraining orders
- domestic violence, or
- safety-related issues

affecting the child or any other party named in the proceedings;

Intake Safety-Issue Screening

Methods of Screening:

- Document Review:
- On-Site Written Questionnaires
- Face to Face Separate Interviews
- Phone Screening
- Recommend multiple screening methods & ongoing assessment

Intake Safety-Issue Screening

Screening Guidelines:

- Screen EACH party
- Screen each party SEPARATELY
- Define abusive behaviors
- Move from general to specific questions
- Explain confidentiality & exceptions
- As many victims do not identify themselves as victims ask specific questions about behavior

Screening Informs the Structure of Orientation & Mediation

- Separate session (days/times)
- Separate waiting rooms
- Two possible entrances/exits
- D.V. advocate present
- Security/Bailiff present nearby
- Consider escorts to car
- If not conducting entire mediation session separately- meet separately w/ parties prior to finalizing any mediation agreement

Screening Informs the Structure of Orientation & Mediation

- Protects alleged victim's contact information
- Inform parties about timeline in which any agreement are to become court orders
- Provides guidelines for when a mediation may be terminated, when necessary.
- Arranges for staggered arrival and departure times for alleged victim and alleged perpetrator (e.g., alleged victim depart prior to alleged perpetrator); or separate sessions; separate days

Mediation Orientation

<u>CRC 5.518(d)(5):</u>

All local protocols must include the following:

An oral or written orientation that facilitates participants'

- safe, productive and informed participation and decision making
- Essential bi-lingual interpreters: if not available, what are other appropriate accommodations

Orientation & CRC 5.518(d)(5)(A-D)

- Mediation process
- Typical participants
- Range of disputes that may be discussed
- Typical outcomes of mediation
- Importance of keeping all mediation communications confidential
- The mediator's role
- Any limitations of confidentiality
- An alleged victim’s right to have a support person and separate session from alleged perpetrator

Additional Orientation Topics

- Introductions
- Review goals & purpose of mediation
- Comfortable, family-friendly process
- Obtain participant's permission to assist him/her in being as effective as possible
- Provide brief overview of appt. structure
- Mention the possibility that the mediator may meet with individuals/groups in caucus
  - Explain purpose & benefits of caucus
  - Address whether or not info. discussed in caucus will confidential from other parties

Additional Orientation Topics

- Review ground rules and appropriate mediation behavior
- Discuss participant's expectations for mediation
- Provide optimistic (yet realistic) sense of appointment's possibilities
- Provide procedural information about what happens at the conclusion of mediation if there is a full/partial/no agreement

At Conclusion of Role-Plays…

1. **<u>Mediator shares</u>**:

- What aspects of the orientation did you feel positively about?
- What aspects of the orientation (if any) would you like help with?
- How did you tailor the orientation to this specific case?

2. **<u>Role-player discusses</u>**:

- What was it like to be in your role?
- Describe several things that were helpful about the orientation
- Are there adjustments that might further strengthen orientation?

3. **<u>Observer shares</u>**:

- Describe several things that were helpful about the orientation
- Are there adjustments that might further strengthen orientation?

California Rules of Court & Dependency Mediation Orientation

CRC Code Section	California Rule of Court - Text
CRC 5.518(c)(1)(F)	Each court that has a dependency mediation program must ensure that: (F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings.
CRC 5.518(d)(5)	All local protocols must include the following: (5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about: (A) The mediation process, the typical participants, the range of disputes that may be discussed, and the typical outcomes of mediation; (B) The importance of keeping confidential all communications, negotiations, or settlement discussions by and between the participants in the course of mediation; (C) The mediator's role and any limitations on the confidentiality of the process; and (D) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.
CRC 5.518(d)(6)	All local protocols must include the following: (6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age-appropriate way the mediation process to a participating child. The following information must be explained to the child: (A) How the child may participate in the mediation; (B) What occurs during the mediation process; (C) The role of the mediator; (D) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome; (E) Any limitations on the confidentiality of the process; (F) The child's right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and (G) The child's right to leave the mediation session if his or her emotional or physical well-being is threatened.

Sample Domestic Violence Screening[1]

General Questions:

- I'd like to ask you some general questions about your relationship.
- How were decisions made in your relationship/marriage?
- What happens when the two of you fight?
- How does your partner respond when angry?
- How do you?
- How would I know if you are angry?
- How would I know if the other person is angry?
- Has anger ever risen to a level where someone is afraid?

Specific Questions:

- I'd like to ask you some questions about what some people do when they are angry:
- Have any of these occurred in your relationship: Shouting? Name calling? Pushing? Hitting? Choking? Slapping? Biting?
- Have weapons ever been used, or threatened to be used against someone in your household?
- Does your partner control any of your day-to-day activities to the point that you don't feel free to come and go?
- Do you feel that you can disagree with your partner without fear?
- Do you have access to money without having to ask permission?

Questions About Participating in Mediation:

- Now I'd like to ask you some questions about participating in the mediation process:
- Do you have any concerns about participating in mediation?
- Do you feel that you can freely put your concerns/issues on the table?
- If mediation starts going in a direction that you are not comfortable with, what would help you feel comfortable?
- Is there anything that worries you about meeting with your partner/former partner?
- Do you have any suggestions about how we might best meet?
- Do you have any questions about the process?

[1] Taken (and slightly adapted) from: Milne, Ann. (2004). "Mediation and Domestic Abuse." *Divorce and Family Mediation*, pp. 322-323. Originally adapted from: Girdner. (1990). *Conflict Assessment Protocol*, which is based on dangerousness assessment research: Stuart & Campbell (1989); Campbell (1986); and Strauss (1979).

Benefits of Juvenile Dependency Mediation

Mediation provides an opportunity for all the individuals involved in a child's life to have a discussion about the child's future and best interests.

Mediation empowers parents by placing them on an even playing field with the professionals involved in the case.

Mediation allows the participants to resolve issues by crafting unique solutions and remedies that may not be available to the court.

Mediation provides a forum for individuals involved in a case to collaboratively address conflicts and problems the court may not have the time to explore.

Mediation provides an opportunity for individuals involved in the case to address communication and relationship issues, which have become barriers to progress in the case.

Mediation humanizes all the individuals involved in the case.

Mediation allows for a thorough discussion about the family, which may help identify specific services and providers needed to achieve reunification or another type of permanency for the child.

Mediation is a non-adversarial and confidential process, which allows everyone at the table to speak honestly and openly about his or her situation and feelings.

Mediation participants are more likely to follow-through and comply with mediation agreements since they had extensive input in crafting the terms of the agreements.

Typical Issues Addressed in Dependency Mediation

Jurisdiction Hearing **(Some courts refer cases to JDM at Detention)**	• Whether or not the petition can be safely and appropriately dismissed, or dismissed with a voluntary case plan • Safety planning • Whether or not a parent intends to submit, admit or deny petition • The specific language/wording of the petition • The finding(s) sought against a parent; (e.g., parties may agree that Social Services will not seek a certain finding or that Social Services will request that a different finding be made) • Visitation for the child with parents, siblings, extended family • Early identification of potential placements, including relatives • Early delineation of roles and responsibilities • Early discussion/refinement of visitation • Facilitation of relationship building/mending between any combination of parties
Disposition Hearing	• What services the parent, social worker, and others believe are appropriate for the parents/family to complete • What expectations social services may have for the parent/family and what the parent/family can expect from social worker • Appropriate services for child (counseling, tutoring, medical/dental, extracurricular activities, etc.) • Placement of the child (in home, out of home, with relative care-giver, foster care, etc.) • Visitation for child with parents, siblings, extended family • Discussion of possible terms for dispositional order & long term goal for child (e.g., reunification) • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties • Safety planning
Review Hearing(s) **(Note: Discussion may be limited by specific issues referred by the court.)**	• Review both child's & parent's case plan & progress with services • Visitation for child with parents, siblings, extended family • Placement of the child (in home, out of home, with relative care-giver, foster care, etc.) • Should case plan be detailed, clarified, corrected, revised or updated? (e.g., services modified/increased/decreased?) • Is long term case goal for child still appropriate? • Is social services' assistance adequate? (reasonable efforts) • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties • Safety planning

Permanency Planning Hearing	• Discussion of permanency options- reunification, adoption, guardianship, independent living, APPLA • Exploration of foster parent's understanding and commitment to permanency goal • Discussion of placement in view of permanency goal • Discussion/identification of needs/services necessary for achievement of permanency goal • Discussion of "back-up plans"/concurrent plans in cases moving toward adoption/guardianship • Discussion of any issues that are barriers to permanency • Facilitation of relationship building/mending between any combination of parties
Custody Orders at Dismissal ("Exit Orders)	• What happens when the dependency case is closed • Resolution of custody issues- who will care for the child • What will the child's schedule of care be for: the school year, vacations, holidays, special events, etc. • How will the child spend time with different family members • Other issues to be addressed for child's safety & well being • Facilitation of relationship building/mending between any combination of parties
§326.26 (or Termination of Parental Rights Hearing/ "TPR")	• Whether or not a parent's parental rights should be terminated • Whether or not the parent chooses to relinquish the child voluntarily- a process to focus on child's needs • Facilitation of relationship building/mending between any combination of parties • Engage parents in planning for the future of their child
Post-Adoption Contact	• Whether or not post-adoption contact is appropriate and in the child's best interest • If post-adoption contact is appropriate, what form will the post-adoption contact take (e.g., photos, letters, information sharing, phone calls, supervised in-person visits, unsupervised contact) • Engage parents in planning for the future of their child • Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any combination of parties
Post-Guardianship Contact	• Discussion of issues causing conflict and/or concerns expressed by any party to the case • Facilitation of relationship building/mending between any parties • Visitation issues- exploration of how the child will spend time with different family members • Exploration of if/when/how the child may have safe and appropriate contact with his/her parent • Negotiate a disposition of the motion before the Court

How to Prepare for Mediation (Attorney/Agency)

- What are the court referral issues?
    - Think about what other matters might need to be discussed, and how/whether they are part of the mediation.

- Review any documents that might be important.

- Inform the mediator if you are aware that the case involves allegations of domestic violence or any other safety issues

- As a courtesy to other participants, arrive on time for the mediation

- Allow yourself enough time for mediation, and keep mediator informed

- Be aware of your own biases, assumptions, hopes and concerns

- Share your perspective- use examples and be as specific as possible

- The mediation process needs you to be ready to consider different perspectives and options as part of the process. Be open to talking with, listening to, and brainstorming with others

- Think about resources and support that could be helpful

- Is there more than one way re-solve the issues, expanding from "all or nothing"

- Share current and other important information about the situation/case

- Ask questions if anything about the process or decisions is confusing

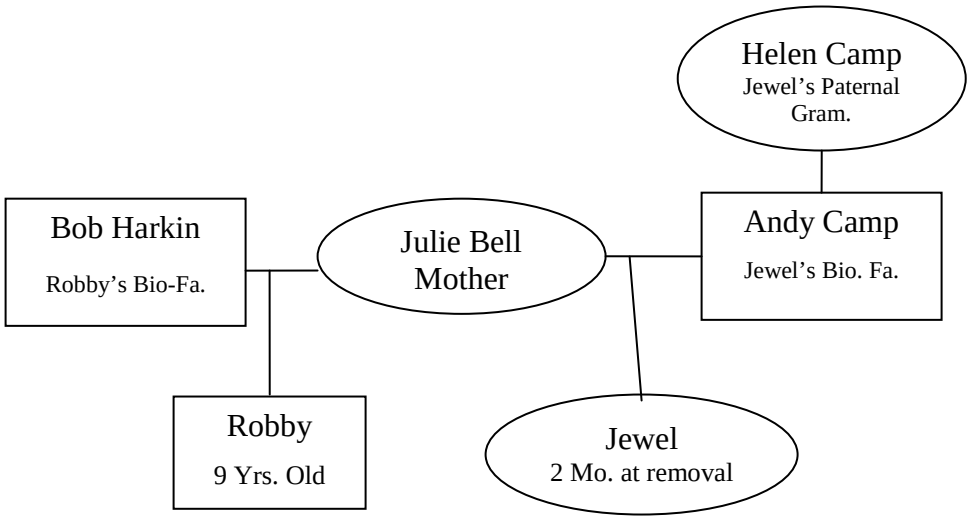
- Complete an exit survey to provide the mediator with feedback about your mediation appointment

- Bring to the mediation appointment (or distribute prior to the appointment) any reports, practical information, code sections, and written materials that may assist in case resolution

- Be able to sign off on agreements reached; Have authority to approve agreement or discuss with the mediator the person who should attend

- Consider the child's safety, well-being, best interests, and big picture needs

Vignette D – Robby & Jewel



On June 23, 2008 there was a domestic violence incident between Julie Bell and Bob Harkin. Robby (age 9) and Jewel (2 months) were in the home during the altercation. When the police arrived they observed Bob Harkin jabbing a broom stick in the air towards Julie Bell. The officers noted in their report that Julie Bell told them that she had half a pint of alcohol earlier that evening. Also in the report is a statement from Bob Harkin saying the conflict started when Julie Bell threw a dirty frying-pan at him after she returned home drunk from a bar. Bob Harkin was arrested and charged with a misdemeanor for "great bodily injury." Julie Bell was arrested and charged with a misdemeanor for "disorderly conduct- alcohol use." She was also charged with a second misdemeanor for "cruelty to child- possible injury" as the police observed Julie behaving belligerently and out of control with Jewel distressed and crying in her arms.

Despite court ordered and community intervention, there has been a long history of domestic violence between Julie Bell and Bob Harkin dating back to 2000 when Robby was detained due to his parents' domestic violence and substance abuse. While the court returned Robby to Julie's care after 14 months, social services and court records reflect concern over the fact that services were minimally completed. Despite reluctance the case was closed as it was determined that Julie Bell was providing Robby with the minimum level of appropriate care.

In addition to the domestic violence incident of June 23, 2008, it was also determined that Robby suffers from chronic asthma and has not seen a doctor in four years despite significant wheezing. Julie Bell mentioned that she suggests that Robby breathe into a paper bag when he complains about difficulty breathing. Additionally Robby is often observed to be hungry at school. School personnel note that he often has a bad odor and wears the same clothes for a week at a time.

Social services is concerned that Julie Bell is unable to care for Robby and Jewel due to her mental illness and developmental disability. (Julie has previously been diagnosed with Major Depressive Disorder- Recurrent, Substance Abuse Disorder, and Mild Mental Retardation). Over the past 9 years she has received numerous services from her local regional center and community service agencies. According to personnel at the regional center and at two social service agencies, Julie has been non-compliant with case plan goals and services with all three agencies. She has a history of frequently canceling appointments and not taking prescribed medication. While inconsistent with treatment, Julie Bell has a positive relationship with her regional center worker, Cindy Warren.

Julie Bell's apartment manager reports that Julie is now facing eviction as she failed to both clean her very dirty apartment and pay for the damaged door and walls from the most recent altercation with Bob. Additionally the manager noted that other apartment residents frequently complain about Julie and Bob's regular "screaming and yelling."

Bob Harkin and Julie Bell's relationship is chaotic and intermittent. As a result, Robby Harkin does not see his father on a regular basis. When Bob Harkin is involved he states that he helps Julie with the housework and care of the children as he is skeptical that she can adequately care for the children on her own.

Julie Bell first disclosed that she believed that Bob Harkin was Jewel's biological father. Bob Harkin held himself out to be Jewel's father and had been helping to care for Jewel since her birth. Later in the case Julie told social services that she did not think that Bob was Jewel's father. Julie said that she knew who the real father was but that the father was not ready to be involved with CPS or have his name disclosed. After about a month of social services involvement, Julie told the social worker that the alleged father was now ready to "step up to the plate." The social worker contacted Jewel's alleged father (Andy Camp) and a DNA test confirmed Andy's paternity.

During one conversation with social services Andy shared that he was very concerned for baby Jewel but was unable to care for her at that time. Later he said that he'd like to have custody of baby Jewel so that he could have his mother raise her. At another point in time Andy disclosed that he grew up in foster care as his mother abused him as a child.

Robby and Jewel were removed at the time of the above incident and placed in foster care. Julie wants to reunify with both of the children and attends about 75% of her scheduled visits with them. Bob wants to reunify with both of the children. Since the outset of the case (prior to Andy's involvement) Bob requested and was granted visitation with Jewel (as well as with Robby), even though it was later determined that he was not Jewel's biological father. Bob has been 95% consistent in visiting both children. In the last 6 months, Andy has been living with Julie, and has hinted to the social worker that he would like his daughter to be raised in a more stable environment than he and are able to provide.

Julie and Andy are both resentful of Bob's reunification efforts. Prior to the 6 month review hearing, the case is referred to mediation to address services, visitation and possible long term plans.

Self-Assessment & Training Reflection

Unit D.1 Orienting Participants to Dependency Mediation

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

1. Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED			PROFICIENT
My practice of treating "all mediation participants in a manner that preserves their dignity and self-respect"	☐	☐	☐	☐
My ability to implement a domestic violence screening that complies with CRC 5.518(c)(1)(F)	☐	☐	☐	☐
My ability to analyze mediation referrals to determine the safest and most productive way to orient participants to the mediation process	☐	☐	☐	☐
My ability to provide a welcoming, informative and easily understood orientation for non-professional participants	☐	☐	☐	☐
My ability to effectively prepare professional participants for mediation (via orientation and case preparation efforts)	☐	☐	☐	☐

2. What is the most important idea that you learned today?

3. What was the most confusing topic today?

4. What important questions remain unanswered for you?

5. What resources will help answer your questions or provide more information about this topic?

6. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit D:

Conducting a Dependency Mediation Appointment

CONTENTS

D.1 Orienting Participants to Dependency Mediation

D.2 Multi-Party Mediation & Collaborative Resolution Methods

D.3 Caucusing

D.4 Co-Mediation

D.5 Concluding Mediations Appropriately

Unit D, Chapter 2:
Multi-Party Mediation & Collaborative Resolution Methods

Presentation Methods: • Didactic Presentation • Group Discussion • Individual Exercises and/or Pairs Exercises **Participant Materials:** • *Handout A* - "Glossary of Mediation Interventions and Terms" • *Exercise 1* - "Crafting a Mediator Response" • *Exercise 1* - "Sample Answers" • *Exercise 2* - "Positions & Interests" • *Exercise 2* - "Sample Answers" • *Exercise 3* - "Problematic & Preferred Mediator Statements: Avoiding Evaluative Comments & Legal Advice" • *Exercise 3* - "Sample Answers" • *Handout B* - "Responsive Approaches to Impasse" • *Handout* - "Post-Mediation Self-Assessment Inventory" • *Handout* - "Sample Case Summary Form" • *Reflection Tool* - "Self-Assessment & Training Reflection" **Suggested Pre-Session Reading & Exercises:** • *Handout B* - "Responsive Approaches to Impasse" • *Exercise 1* - "Crafting a Mediator Response" • *Exercise 2* - "Positions & Interests" • *Exercise 3* - "Problematic & Preferred Mediator Statements: Avoiding Evaluative Comments & Legal Advice"	***Estimated Duration:*** *3 Hours*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives_____	***5 Minutes***
2. Multi-Party Mediation- Getting Started (*Large Group Discussion*)_____	***5 Minutes***
3. Creating a Collaborative Atmosphere in Mediation & Starting The Session (*Large Group Discussion*)_____	***15 Minutes***
4. Multi-Party Mediation- Potential Challenges & Suggestions (*Large Group Discussion*)_____	***25 Minutes***
5. Monitoring the Mediation Session (*Large Group Discussion*)_____	***15 Minutes***
6. Managing the Communication Process (*Large Group Discussion*)_____	***10 Minutes***
7. The Mediator's Toolbox *(Discussion & Practice Exercise)*_____	***35 Minutes***
8. Positions & Interests *(Discussion & Practice Exercise)*_____	***30 Minutes***
9. Problematic & Preferred Mediator Statement- Avoiding Evaluative Conduct & Legal Advice *(Discussion & Practice Exercise)*_____	***15 Minutes***
10. Exploring Impasses (*Large Group Discussion*)_____	***20 Minutes***
11. Summary & Close_____	***5 Minutes***

1. Learning Objectives: After concluding *Unit D, Chapter 2: Multi-Party Mediation & Collaborative Resolution Methods*, participants will be able to: a. Create a collaborative atmosphere in dependency mediation and effectively commence the session b. Be aware of and develop strategies to work effectively with some of the typical challenges of multi-party mediation c. Monitor the mediation process and appropriately time interventions/ process guidance d. Manage the communication process in mediation e. Utilize a variety of mediation techniques and interventions f. Understand the difference between positions and interests and be able to draw out mediation participants' interests g. Avoid problematic evaluative conduct and legal advice when mediating h. Constructively explore mediation impasses i. Consider the value of post-mediation assessment, (here, and at conclusion of Unit D., Chapter 5: Concluding Mediations). Reflect on personal dependency mediation practice and assess ongoing education and training needs	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Multi-Party Mediation- Getting Started:

5 Minutes

Large Group Discussion

a. *For facilitator or trainees with some dependency mediation experience:* Discuss your experience helping multiple mediation participants maximize their session by working collaboratively with one another despite significant differences of opinion.

- How did you set/maintain a collaborative tone for the dependency mediation appointment?
- How did you balance each participant's need to be heard/feel validated?
- How did you help participants regularly focus on the child's needs and best interests without compromising perceptions of mediator impartiality?
- How did you determine when a passionate discussion was no longer constructive? What did you do?
- What strategies or interventions do you find most helpful when you are mediating dependency cases?
- What suggestions or tips (for working with multiple disputants at one time) do you have for developing colleagues?
- Are there any lessons (about working with multiple disputants at one time) that you learned the hard way?

PowerPoint Slide 2

b. In what ways might working with multiple participants be similar to working with two disputants? *(For novice participants ask them to imagine.)*

- Mediator helps each individual share perspective and listen to others- same concept…just more people to assist in this way
- Mediator role and process management the same; "Referee" even when working with two disputants- e.g., sometimes have a participant "hold" idea until the other has finished his/her remarks, formally take turns, etc.
- Other thoughts/ideas?

c. In what ways is working with multiple participants different than working with two disputants?

Have participants respond to the following Christopher Moore quote: "When negotiations are between more than two disputants, interpersonal dynamics become exponentially more complex." *(Slide 2) (citation right)*

Do trainees agree? In what ways is multi-party mediation more complex than two-party mediation?

For More Information See:

Moore, C.W., *The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), p.337.*

3. Creating a Collaborative Atmosphere in Mediation & Starting the Session

a. According to author Christopher Moore, "In addition to facilitating communication, the mediator often must create an emotional climate conducive to clear communication and joint problem solving." *(citation on right)* Can you think of some considerations that might promote a positive emotional climate during the dependency mediation appointment? *(Slides 3-8)*

- Setting Considerations
  - Neutral territory
  - Neat, clean, attractive environment
  - Free from distracting noise (e.g., telephone)
  - If possible, identical chairs for all participants (esp. height and other indicators of power/seniority)
  - Ideally round table (no "head" of table). Some programs have NO table, and create a circle with side tables for convenience.
  - Consider seating conflicting parties on the same side of the table (side by side with "buffer(s)" in between vs. across)
- Social Conventions
  - Facilitate introductions
  - Engage in brief informal conversation and small talk
  - Find things in common (among participants and with mediator)
  - Have snacks/beverages available- sharing food can create community

Advanced Practitioner Considerations:

Why would a mediator be concerned about setting a positive emotional tone in mediation?

According to Roger Fisher and Daniel Shapiro, "Positive emotions can make it easier to meet substantive interests. Positive emotions toward the other person reduce fear and suspicion, changing [the] relationship from adversaries to colleagues." Furthermore, "Emotions are usually contagious."

Fisher, R. & Shapiro, D., 2005. *Beyond Reason: Using Emotions as You Negotiate*

15 Minutes
Large Group Discussion

PowerPoint Slides 3-10

Facilitator Notes:

- ✓ *Unit D.1 "Orienting Participants to Dependency Mediation" contains useful information about creating a collaborative atmosphere in mediation.*
- ✓ *Similarly, Unit D.3 "Caucusing" addresses ways to use separate discussions (prior to and during mediation) to create and maintain a problem-solving tone for mediation.*

For More Information See:

Moore, C.W., *The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 210-211.*

Madonik, B., *I hear what you say, but what are you telling me? The strategic use of nonverbal communication in mediation, (2001).*

3. Creating a Collaborative Atmosphere in Mediation & Starting The Session (continued)

15 Minutes
Large Group Discussion

PowerPoint Slides 3-10

- Mediator's Demeanor
  - Calm
  - Respectful
  - Confident
  - Optimistic about possible resolution
- Mediator's Initial Remarks
  - Put people at ease
  - Install confidence; invite parties to trust in the mediator and process
  - Reference the participants' interdependence and common goals
  - Use metaphors and analogies of cooperation (e.g., assembling a puzzle)
- Process Management
  - Remind participants about behavioral guidelines/ground-rules
  - Intervene to prevent interruptions, verbal attacks and conflict escalation
  - Encourage participants to focus on issues to be resolved instead of each other
  - Translate value-laden or judgmental language into less emotionally charged language (reframe)
  - Help participants ask for what they want (vs. talking about what they don't want)

b. After orienting participants to the dependency mediation process (and/or introductory remarks), what are some possible ways to begin more substantive discussions? What might the mediator say to assist with this transition?

c. What are some possible ways for the mediator to determine who shares first?

- Individual that requested mediation (or initiated the complaint) opens
- In an effort to empower parents, mediator can ask parents to be the first participants to share their thoughts, ideas and concerns. Make sure to set the limited context of the mediation issue.
- Most talkative/volatile individual asked to share first (letting off steam & helping that person then listen better to others- although may create negative initial tone for session)

Advanced Practitioner Considerations:

During the initial phase of mediation and throughout the appointment, some participants may need help not dominating the discussion while others may need encouragement to share their point of view. When a couple of participants are over-participating, mediators may want to focus on less verbal group members. Look for body language and facial expressions that may indicate a desire to speak. You might say, "Was there an idea that you wanted to express?" or "You look like you might want to say something." If participation continues to be uneven suggest a structured go-around to give each person a chance to speak.

3. Creating a Collaborative Atmosphere in Mediation & Starting The Session (continued)

15 Minutes
Large Group Discussion

PowerPoint Slides 3-10

- What is the agenda and at what stage in the court process is this case?
- Some mediators first meet separately with professional parties, i.e., without parents/non-professionals; the brief "professional check-in" time is intended to clarify issues & reduce the likelihood of volatility in the larger group; tt generally takes place after the mediator has established rapport with parents (perhaps via. an orientation); care must be taken to ensure that parents do not feel left out or that the system is "rigged"
- Regardless of who is asked to open the discussion, all participants can be reassured that everyone will have an opportunity to share concerns

d. **Program Management**. Can you think of some program outreach and pre-mediation strategies that might help set the right tone for the dependency appointment? *(Slides 9-10)*

- Program Outreach
  - Co-develop protocols w/ local stakeholders (esp. mediation detractors)
  - Provide ongoing outreach to individuals & agencies involved in dependency mediation
  - Educate stakeholders about protocols (esp. confidentiality & limits)
  - Be available and responsive to questions and concerns. As mediator, you are the face of the program, and can provide good program feedback.
  - Troubleshoot issues and normalize program "growing pains"
- Program materials and visibility in the courtroom process
  - Mediator present in courtroom (greet families and answer questions)
  - Mediation reading material available (knowing what to expect from mediation can decrease anxiety about the process)
  - Case preparation; e.g., phone calls (opportunity to set tone, de-mystify the mediation process, begin preliminary brainstorming, etc.)
    - If you intend to have contact with parents/non-professionals prior to the mediation appointment be sure that attorneys are aware of and comfortable with this practice (some attorneys may be concerned about their clients incriminating themselves). If attorneys are reluctant to have you speak with their clients without them, it is wise to accommodate the attorney's concern and wait to speak with the parent/non-professional during orientation - with the attorney present.
  - Orientation is a crucial way to prime mediation readiness. Make sure the attorneys are aware that you are talking with the client, and if attorney requires, arrange conference call.

4. Multi-Party Mediation: Potential Challenges & Suggestions

15 Minutes
Large Group Discussion

PowerPoint Slides 11-15

a. Juvenile dependency mediation can be challenging. What are some of the factors that contribute to the complexity of the dependency mediation process? Non-exhaustive list below.

- Lots of mediation participants
  - Numerous agendas and relationship histories
  - Not all family members have same view of what is best for child
- Complicated, multi-issue cases
  - Layers of challenges (e.g., homelessness, literacy, parental history of abuse/foster-care system involvement, substance dependence, etc.)
  - Agency offering family maintenance to one parent but family reunification to other parent (Why is this potential issue?)
  - Concurrent planning for guardianship/adoption at same time as reunification
- Alliances and "teams" in mediation; possible examples below:
  - Parents and their legal counsel
  - Multiple representatives from one agency (e.g., social services)
  - A domestic violence support person and the alleged victim
  - The Indian Tribe representative and the individual with the Indian heritage (for more information see the Indian Child Welfare Act)
  - Sometimes the child's attorney and CASA volunteer
- Often tensions within a "team"
  - Example: the social worker has an intensely held opinion about the safety issue while county counsel has a strongly held perspective about the lack of merit of the legal case
- Imbalances
  - Over-representation for one group (e.g., social services)
  - Power imbalance between social service agency and parent
- Attorneys present
  - May cause more anxiety for non-attorney dependency mediators and those with less experience working with attorneys
  - Examples of difficult attorney statements:
    - "Objection!!" (when other mediation participants speak)
    - "Isn't it right that….?" (statements disguised as questions; not genuine inquiry)
    - Attorneys and social workers with "history"

Misconception Alert:

Children's attorneys and CASA volunteers do not always have the same perspective. This is especially true when the child's stated preferences are widely divergent from his/her best interest at which time CASA advocates for the child's best interest and minor's counsel generally highlights the child's preferences - or at a minimum makes the child's preferences known (perhaps along with other information for the court's consideration)

4. Multi-Party Mediation: Potential Challenges & Suggestions (Continued) • Often parents experience court as "criminal" and "punishment" • Dependency court time-line & terminology • Substance abuse, D.V., mental illness prevalent (See Unit E) b. While other portions of the JDM Curriculum will address some of the remaining unique and difficult aspects of dependency mediation, **this section will explore and develop practical suggestions for five of the above challenges.** *(Slides 11-15)* 1. Mediating complicated, multi-issue cases • Take a deep breath and trust in the process • Tackle one item at a time (prioritize or easier issues first); use visuals • Avoid feeling overly responsible • Decrease anxiety by simply trying to understand each side • Often there are not perfect solutions; focus on a constructive next step • Don't rush (may increase tension) - instead (when possible) schedule a follow-up appointment 2. Working with "teams" or "alliances" • Alliances are developed for support. The goal is to understand and work effectively with alliances - not to break or rupture alliances • Often alliances shift based on the issues and the stage of the case o Example: Early in a case the child's attorney and parents' attorneys may align as each wants to give reunification the best shot possible. However, they may not be aligned about every issue (e.g., their views about the parents completing substance abuse treatment) and they may not be aligned throughout the case (e.g., their approaches to permanency should the parents subsequently fail to complete their case plans). • While others may see an alliance or team as monolithic and unified in its positions, it is helpful to remember that "teams are composed of individuals with varying interests." (Moore p. 339, citation on right)	***15 Minutes*** *Large Group Discussion* ***PowerPoint Slides 11-15*** ***For More Information See:*** Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflicts, 2nd. Edition* Malhorta & Bazerman, 2007. *Negotiation Genius: How to Overcome Obstacles and Achieve Brilliant Results at the Bargaining Table and Beyond* Fisher & Ury, 1991. *Getting to Yes: Negotiating Agreement Without Giving In, Second Edition* Wilkinson, 2004 .*The Secrets of Facilitation: The S.M.A.R.T. Guide to Getting Results with Groups*

4. Multi-Party Mediation: Potential Challenges & Suggestions (Continued) • Regardless of "faction," make an effort to understand the underlying interests and perspectives of each individual involved in a mediation • It is not unusual for there to be a team-member that has some common interest or bond with an individual on a different team (e.g., formerly worked in the same legal office; or shares certain values) o Explore whether these less entrenched individuals can fruitfully brainstorm and create options that satisfy all participants • Mediators may need to meet with members of an alliance in caucus to help process internal "team" conflict (see next item below) or to coach them (coaching may include process suggestions, education about mediation strategies, and questions to clarify interests)	***15 Minutes*** *Large Group Discussion Continued*

4. Multi-Party Mediation: Potential Challenges & Suggestions (continued)

15 Minutes
Group Discussion

3. Mediating tension/differences within a "team"
   - Caucus is a safer place to explore the varying interests held within "team" (diminished need to appear "unified") (see next chapter)
   - Help participants consider what "agreement" means; i.e., different "levels" of agreement or consensus (e.g., 100% agreement when the individual believes that every aspect of the solution is the very best vs. "I can live with it. I can support it.")
   - Can person say, "If it was just up to me I might change a few things, but for success we need a plan that everyone can live with and support."
   - Does stating reservations address participant's need to feel heard
   - Ask, "If you could change one thing about your team's proposal what would it be?" "How does the team feel about __'s suggestion?"
   - Ask each team member, "On a scale of one to ten where one means… and ten means… where are you?" Follow up with "What would help you move from a six to a seven?"
4. Mediating with out of balance "sides" (1 parent, 4 agency reps)
   - Try to address (numbers of participants) prior to mediation
   - Suggest that the presence of an equal number of people sends a message that supports the spirit of mediation and is conducive to achieving positive results (otherwise some overwhelmed/defensive)
   - During session use caucus to explore with over-represented "side" the ideal person to participate; Alternatively use caucus to create safety for outnumbered "side"
   - Consider telephonic participation or "on call" availability if a participant (such as the social worker) needs to consult with a supervisor mid-session (remember- have confidentiality form signed)
   - If overrepresentation is a recurrent issue, consider addressing programmatically (i.e., discuss issue at advisory committee meeting with all stakeholders)
   - To keep everyone engaged (including non-system participants- i.e., parents) avoid fast paced discussions with technical jargon
   - Consider including parents in the beginning of the mediation session- i.e., not starting the session with just attorneys/professionals
   - Consider asking parents first (and then others) what issues they would like to discuss; Collaboratively set the agenda
   - Consider asking parents to first describe their children (bring child virtually into mediation space)

Advanced Practitioner Considerations:

One tool when working with teams may be to make the spectrum of perspectives (within an alliance) more explicit. Drawing a spectrum arrow in both directions on a dry erase board label the ends of the spectrum with the most diametrically opposed positions on a certain issue (e.g., child should return home right away and concurrent plan should shift to adoption). Ask individual participants (vs. one response per "team") to locate their views anywhere on the continuum- invite participants to share why they chose their location. If this exercise is done in caucus participants may be more open to exploring new ideas. Making the variety of perspectives within an alliance more explicit may help surface possible middle ground to further explore in the large group.

Schrock-Shenk (Ed.), 2000.

4. Multi-Party Mediation: Potential Challenges & Suggestions (continued)

- Clarify participant roles so parents feel less outnumbered and do not mistakenly believe that all professionals are on the same "side"

5. Mediating with attorneys present

- Program: should provide for training/orientation sessions for attorneys as a group through bar association or other. Offer credit for CEU's.
- Describe to attorneys how collaborative and interest based approaches best assist clients to good resolution of court issues.
- If counsel if having difficulty shifting from a adversarial mind-set consider caucus; generally less "posturing" when client not present
- Increase attorney confidence by being knowledgeable about basic dependency procedures, law, etc.
- The degree of lawyer involvement can depend on the mediation program's protocol, specific case issues, participants' preferences, and the mediator's style. If attorneys are not present, need protocol for obtaining input and approval of agreements.
- Agreements MUST be reviewed and signed by counsel before being presented to the court
- Remember that attorneys can be a tremendous help!
  - They can provide information about possible settlement ranges and potential judicial decisions, i.e., a reality check; other necessary legal information; and client coaching (e.g., appropriate mediation behavior)
  - Presence of counsel may also help a participant feel safer and less vulnerable- and thus able to participate more effectively

15 Minutes
Group Discussion

PowerPoint Slides 11-15

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflicts, 2nd. Edition*

Malhorta & Bazerman, 2007. *Negotiation Genius: How to Overcome Obstacles and Achieve Brilliant Results at the Bargaining Table and Beyond*

Fisher & Ury, 1991. *Getting to Yes: Negotiating Agreement Without Giving In, Second Edition*

Wilkinson, 2004 .*The Secrets of Facilitation: The S.M.A.R.T. Guide to Getting Results with Groups*

Advanced Practitioner Considerations:

If the parties' attorneys are not directly participating in the mediation appointment it may be helpful for the party (or mediator) to update the attorney about important developments in mediation. By not directly participating in mediation these individuals are not aware of the constraints of the other parties, new information shared, and problem-solving discussions, i.e., the heart of what impacts participants' willingness to consider new ideas, shift perspectives and ultimately reach an agreement. Absent attorneys may have unrealistic expectations about the mediation process - perhaps thinking that the settlement should resemble their client's opening position. Education throughout the negotiation process (about the composition of a realistic and probable settlement) may help to ensure that the final proposed agreement is not a surprise. Settlement rejection is less likely if there has been regular communication with the attorney and the attorney has had the opportunity to counsel his/her client and contribute ideas.

5. Monitoring the Mediation Session

a. Throughout the mediation appointment the mediators monitor session dynamics to determine if and when their intervention or process guidance is necessary. Often subtle redirection is useful and sometimes more dramatic intervention is required. While a range of possible interventions will be explored throughout the remainder of this chapter, for the purpose of this section can you think of situations that might indicate that a mediator response or action (of some kind) would be appropriate? Non-exhaustive list below. *(Slides 16-17)*

- When strong emotions and/or negative dialogue are escalating the differences between participants
- When any of the participants indicate that the discussion is getting too heated
- When a participant is behaving/saying things that he/she will likely regret
- When a participant says that he/she is having difficulty thinking
- When a participant seems to want to get out of the room or get another mediation participant to stop talking
- When small issues suddenly become big issues
- When participants are making unreasonable demands
- When interruptions are disruptive
- When negative remarks are personal (not about issues) and/or hostile
- When participants seem to have lost focus on the issues to resolve
- When criticism, defensiveness, contempt or stonewalling have increased
  - Criticism - statements implying that there is something globally wrong with the other person - perhaps his/her character
  - Contempt - recognize when lip corners pull to the side, often accompanied by eye rolls and upward glance
  - Stonewalling - listener withdraws from the interaction, looks away and down, and is generally not responsive (e.g., few "listener vocalizations")

15 Minutes
Large Group Discussion

PowerPoint Slides 16-18

For More Information See:

Fisher & Shapiro, 2005. *Beyond Reason: Using Emotions as You Negotiate*

Gottman, 1999. *The Marriage Clinic: A Scientifically-Based Marital Therapy*

Johnson, 1996. *The Practice of Emotionally Focused Marital Therapy*

Madonik, 2001. *I hear what you say, but what are you telling me? The strategic use of nonverbal communication in mediation*

Advanced Practitioner Considerations:

While people often think that emotions get in the way of rational mediation discussions, a participant's emotions may provide the mediator with critical insight about the relative importance of an issue to that participant.

5. Monitoring the Mediation Session (continued)

b. What non-verbal behavior could indicate that it would be wise for the mediator to consider intervening? Generally consider intervention when there are a handful of the below indicators. *(Slide 18)*

- Signs of physiological arousal (or flooding)
  - Accelerated heart-beat
  - Increased sweating
  - "Adrenaline rush"
  - Vigilance - individual can only detect danger cues and is unable to process new information
- Breathing cues
  - Holding breath
  - Irregular breathing
  - Shallow breathing
  - Rapid breathing
- Body language and gestures
  - Arms akimbo (folded across chest)
  - Hips swiveled away from other participant(s)
  - Long eye closures or eyelid flutters (person may be overwhelmed)
  - Trembling, flushing, pointing, etc.
- Facial expressions
  - Anger: lips pressed together, or can't see red part of upper lip
    - Often an aggressive stance signals that an individual feels protective or defensive
  - Sadness or distress: inner corner of brows are drawn up & together and brow furrows
- Vocal cues
  - Tone of voice
  - Pitch of voice
  - Volume of voice
- Auto-involvements
  - "Away" behavior indicating person has "checked out"/not attending
  - Examples: Playing with hair/pencil; Glazed look staring out window

15 Minutes
Large Group Discussion

PowerPoint Slides 16-18

Advanced Practitioner Considerations:

When you notice restricted breathing, consider changing your own breathing pattern (to a deeper, more relaxed rhythm) for participants to emulate.

Researchers have developed a construct called "negative affect reciprocity." According to John Gottman, "This term refers to the increased probability that a person's emotions will be negative (anger, belligerence, sadness, contempt, etc.) right after his or her partner has exhibited negativity." This concept reinforces the value of an active mediator stance when negotiations become emotionally intense.

For More Information See:

Gottman, 1999. *The Marriage Clinic A Scientifically-Based Marital Therapy*

6. Managing the Communication Process

10 Minutes
Large Group Discussion

a. Communication in mediation can be managed in various ways. Generally mediators create more structure when conflicts intensify or when subject matter is emotionally charged for participants. What are some different ways for mediators to structure communication? *(Slide 19)*

PowerPoint Slide 19

- Low intensity/emotionality: Participants meet together **without** the mediator present (often during session break)
  - Examples: intake and ongoing social workers need privacy to get on the same page or parent needs to consult with his/her attorney
  - Safe & appropriate to meet without mediator
  - Mediation participants speak directly to one another- mediator present but unobtrusive (not directing discussion)
- Medium intensity/emotionality: Mediator coaches the interaction- perhaps asks a participant to turn toward and speak directly to another
  - Examples: "It sounds like you were very embarrassed when Jane (social worker) came to your workplace to discuss the CPS case…. Can you tell Jane what that was like for you?" Or "Can you say what you just said in another way?" (vs. "Can you change tone?")
- Medium-high intensity/emotionality: Mediator instructs participants to direct all comments to the mediator and the mediator launders/translates comments for other participant(s)
  - Other participant(s) remain in the room and listen to the discussion, however, perhaps seated so that presence is less obtrusive and/or eye contact less likely (reduce likelihood of problematic non-verbal)
- Medium-high intensity/emotionality: Mediator meets with participant in caucus/separate session and participant present when mediator (or attorney) relays participant's concerns, proposals, etc. to others
  - Example: Parent overwhelmed, shy and reluctant to speak in large group setting but wants to listen to discussion
  - When participant present for the mediator's delivery, he/she can be invited to signal or correct the mediator if mediator misspeaks or omits important points

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflicts, Second Edition*

6. Managing the Communication Process (continued) • Medium-high intensity/emotionality: Participant exclusively participates in mediation via caucus/separate session and is not present when the mediator relays his/her concerns to other mediation participants o Example: domestic violence/family violence issues have informed the initial structure of the mediation (i.e., separate sessions, safety arrangements, etc) • Medium-high intensity/emotionality: Take a break (when appropriate, frame as mediator's need vs. result of participant's strong emotion)	***10 Minutes*** *Group Discussion* ***PowerPoint Slide 19***

7. The Mediator's Toolbox

a. It is not unusual for mediation sessions to become tense and difficult. Can you think of some interventions (in addition to the communication strategies mentioned above) to help keep mediation sessions constructive? *(Slides 20-27)*

1. Make process comments
   - "I'm noticing that the mediation appointment has gradually become more intense and that fewer questions are being asked. I'm wondering whether it would be helpful to…"
   - "I seem to have lost you…was my comment off the mark for you?"
   - "I sense that this process is difficult for you. Is there some way that I can be more supportive?"
2. Slow down the process
   - "Before you go any further, let me see if I've got it…."
   - "Let's back up for a minute…"
   - "Tell me again…"
   - "Some important things are being said and I'm not tracking as well as I would like…Let's rewind the conversation a bit…"
   - "Let me catch up with what just happened here. You said…and then you said…"
3. Multi-directed partiality and acknowledgement
   - Remember to equally acknowledge, empathize with and validate all participants (in turn or otherwise)
   - "I can appreciate why you might feel that way"
   - "I learned a great deal from what you said, specifically…"
   - I can imagine how difficult this conversation must be and I appreciate your willingness to raise/respond to these issues."
   - "If I'm understanding correctly, for you Inez, the primary concern is…. and for you Trish, the key issue seems to be…"
   - "I see, Al. It sounds like this has been a pretty difficult situation for you - especially in the following ways…I am also hearing that this has been challenging for you, Lisa…"

35 Minutes

Large Group Discussion

PowerPoint Slides 20-40

Materials:

Handout A – " A Glossary of Mediation Interventions & Terms"

Exercise 1 – "Crafting a Mediator Response"

Exercise 1 – Sample Answers

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflicts, Second Edition*

7. The Mediator's Toolbox (continued)

4. Ask clarification (and other) questions
   - "Can you tell me more about…"
   - "Can you help me better understand your feelings/thoughts about…" "…. Is that what you were trying to say?
5. Normalize/Universalize
   - Participants may feel relieved to know that different perspectives are the norm in mediation & that their experience may not be unusual
   - "Differences of opinion are to be expected here in mediation. In fact, part of the value of this process is being able to discover how we can learn from and be creative with these different points of view."
   - "You are not alone - most people I know feel anxious and disoriented when they enter a court room…"
6. Reference common goals
   - "I want this process to be as constructive as possible for all of you and I'm remembering that some of your goals for our time were…"
   - "There is a lot of information here...Given that you collectively mentioned wanting to be able to take the contested hearing off calendar - where would you like to go from here?"
7. Reinforce moments of recognition
   - Draw attention to moments when participants are more open, responsive and sympathetic to the other's situation
   - "I'm not sure that __ heard you. Can you say that [supportive comment] again?"
   - "Did you hear what __ just said about your accomplishment?"
8. Refer participants to one another (especially useful when the mediator feels "being drawn in" by one side or another, or is aware of his/her own desire to interject an opinion)
   - "Can you ask the others what they think of your proposal?"
   - Mediator to other participants: "What do you think about Arlene's suggestion?"
   - "Can you share that concern with the others here? Can you tell them… [summarize person's remarks]… e.g., I'm overwhelmed trying to get to so many services each week?"

35 Minutes

Group Discussion

PowerPoint Slides 20-40

Materials:

Handout A – "A Glossary of Mediation Interventions & Terms"

Exercise 1 – "Crafting a Mediator Response"

Exercise 1 - "Sample Answers"

Advanced Practitioner Considerations:

When discussions become intense consider summarizing and paraphrasing more frequently. Mediation participants may need additional support at these times and this intervention may be more effective than repeated reminders about being respectful.

For More Information See:

Bush & Folger, 1994. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*

Kaner, 2007. *Facilitator's Guide to Participatory Decision-Making, p. 150.*

7. The Mediator's Toolbox (continued)

b. Successfully responding to provocative statements in mediation can be challenging. The following practice exercise ("Crafting a Mediator Response") is designed to help mediators practice developing appropriate ways to manage difficult statements in mediation. There is not a single "right" answer but instead multiple ways to respond constructively. *(Slides 28-40)*

- Instructions (Option A)
  - Facilitator/participant reads a statement to the group from the practice exercise "Crafting a Mediator Response"
  - Individuals volunteer to rehearse a response or suggest strategies
  - Large group discussion follows
- Instructions (Option B)
  - Participants break into pairs where seated
  - Pairs have two minutes to craft responses to each assigned statement
  - When formulating a response have trainees attempt to:
    - Help the speaker clarify his/her concerns
    - Have all participants experience the process as fair and supportive
    - Keep mediation constructive for all
    - Have pairs briefly share their ideas with the group
    - Large group discussion: Facilitator and other participants respond and discuss additional/alternate responses to the exercise
- Example: "Kelly (social worker) is completely lying. I did not grab my child by the hair."
  - "It sounds like you have a different perspective. Would you like to share your point of view?"
  - "Can you describe the incident that the social worker is concerned about?"

35 Minutes

Large Group Discussion

PowerPoint Slides 20-40

Materials:

Exercise 1 – "Crafting a Mediator Response"

Exercise 1 - "Sample Answers"

Facilitator Notes:

- ✓ *To save time you may want to have each pair respond to different statements*
- ✓ *Option B instructions are on PowerPoint Slide 28 for trainees to refer to throughout the exercise.*
- ✓ *When the PowerPoint is in slide show mode, click a second time to reveal answers (i.e., answers not visible on first click of slide).*
- ✓ *To save time, consider skipping or deleting PowerPoint slides.*

8. Positions & Interests

a. When mediating it is often valuable to help participants focus on interests, as opposed to positions. How would you define these two terms? *(Slides 41-42)*

- Positions
  - Rigid statements or demands presented as solutions
  - Positions often obscure what people really want; the individual's needs and concerns are frequently hidden, unexpressed or incompletely understood
  - A position focus results in inattention to a participant's underlying concerns
  - Positions polarize and can create a contest of wills
  - Positions are especially problematic in multiparty disputes
    - Who do you make reciprocal concessions with?
    - If coalitions form and develop positions it can be harder to change these positions (now endorsed by an "alliance")
    - Difficult to change positions when higher authorities (not present in mediation) must be satisfied with the outcome
  - Example: "You can only visit with Elliot on-site at social services." Other responds, "OK…Let's have the court decide because I want to have unsupervised visits."(child is getting lost, no space for her needs)
- Interests
  - Reason(s) behind the positions (i.e., human needs, concerns, hopes, fears, desires, etc. that led person to adopt a certain position)
  - A single interest or multiple interests may lie behind an individual's position
  - Focusing on interests allows for more creativity and flexibility in option generation; (i.e., multiple solutions possible when focused on interests vs. one solution promoted when focused on positions)
  - Interest focus leads to clarity and empowerment for individual and recognition of other's basic needs
  - Participants often have several fundamental interests in common; (e.g., well-being of child, desire to avoid contested court hearing)
  - Easier to develop solutions that meet the essential interests of all sides in a multi-party dispute (vs. the positions of all sides)

30 Minutes

Large Group Discussion

PowerPoint Slides 41-49

Materials:

Exercise 2 – "Positions & Interests"

Exercise 2 – "Sample Answers"

For More Information See:

Fisher &Shapiro, 2005. *Beyond Reason: Using Emotions as You Negotiate*

Fisher & Ury,1991. *Getting to Yes Negotiating Agreement Without Giving In, 2nd Edition*

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflicts, Second Edition*

Schrock-Shenk, 2000. *Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition*

8. Positions & Interests (continued)

b. What questions and/or comments can mediators use to help participants explore underlying interests? *(Slide 43)*

- "Can you say more about why this is important to you?"
- "What is at the core of this issue for you?"
- "Tell me more about your basic concerns here."
- "What matters the most to you about this issue?"
- "If your proposal is not accepted, what consequences/outcomes are you most concerned about?"

c. To better understand a person's (or side's) underlying interests it may also be helpful to step into the other's shoes and imagine prospective decisions from the other's point of view. What questions can mediators ask themselves to better appreciate the constraints and perspectives of mediation participants?

- What are the short-term and long-term consequences of this decision for this participant (or for his/her loved ones or clients)?
- What (psychological, economic, legal, political) consequences might the participant be concerned about? Without child, lose housing; child will like the foster parent "better"; foster home environment.
- How will others significant to the participant (e.g., family members, children, colleagues, agency supervisors, etc.) perceive this decision?
- What kind of precedent will this decision set for this participant/agency?
- Is the decision consistent with the individual or group's principles/values?
- How final is this decision for this participant? Can it be un-done?

d. The most compelling interests are often basic human needs. Fisher and ury, ***Getting to Yes***, describe some fundamental concerns that motivate most people. Can you think of some?

- Autonomy or control over one's life
- Security
- Affiliation or a sense of belonging
- Recognition and/or appreciation

30 Minutes

Group Discussion

PowerPoint Slides 41-49

Materials:

Exercise 2 – "Positions & Interests"

Exercise 2 – "Sample Answers"

Misconception Alert:

While "Why?" questions are tremendously helpful, use care when probing so that participants do not feel defensive or perceive you to be asking them to justify their positions. "Why" questions can be reframed into "what" or "how" questions.

8. Positions & Interests (continued)

e. Often mediation participants make rigid position statements that assume that there is only one possible way to resolve an issue. As a mediator it can be difficult to manage multiple participants with opposing positions. The practice exercise *"Positions & Interests"* is designed to help mediators (1) Imagine the potential interests that may lie behind an individual's position statements, i.e., the needs, hopes, and concerns that the individual is trying to have met (Part A); and (2) develop a mediator response that helps participants clarify and share their underlying interests (Part B). *(Slides 44-49)*

- Instructions (Option A)
  - Facilitator/trainee reads a statement from the practice exercise *"Positions & Interests"*
  - Part A: Trainees imagine and suggest ideas about the speaker's possible underlying interests
  - Part B: Trainees suggest a mediator response/question to draw out the speaker's underlying interests
  - Large group discussion follows (re. additional or alternate responses)
- Instructions (Option B)
  - Participants break into pairs where seated
  - Pairs have two minutes per position statement to:
  - Part A: Imagine the potential interests that lie behind the speaker's position statements; i.e., the needs, hopes, and concerns that the speaker may be trying to have met
  - Part B: Develop a mediator response/question to help the speaker clarify & share his/her underlying interests
- Pairs briefly share their ideas with the group
  - Large group discussion follows (re. additional or alternate responses)
  - Example of exercise on next page

30 Minutes

Large Group Discussion

PowerPoint Slides 41-49

Materials:

Exercise 2 – "Positions & Interests"

Exercise 2 – "Sample Answers"

Facilitator Notes:

- ✓ *There are multiple possible underlying interests as well as questions/comments to draw out interests. Sample answers are examples only- many other appropriate answers are also possible.*
- ✓ *Option B instructions are on PowerPoint Slide 44 for trainees to refer to throughout the exercise.*
- ✓ *When the PowerPoint is in slide show mode, click a second time to reveal answers*
- ✓ *To save time, consider skipping or deleting PowerPoint slides.*

8. Positions & Interests (continued)

- Example: When discussing case plan options the mother (Toni) remarks, "I will never agree to participate in an in-patient substance abuse treatment program." (Slides 41-42)
  - Part A - Imagine Interests:
    - Toni is worried about losing her job and then her housing- creating more obstacles to reunification.
    - Toni previously had a bad experience with the in-patient treatment program director.
    - Toni knows that she will not be able to have child placed with her on-site at program.
    - Toni does not have health insurance. She is worried about unmanageable bills.
    - Toni does not want to be separated from her boyfriend.
    - Toni doesn't believe that she has a serious drug problem.
  - Part B - Draw Out Interests:
    - "Toni, can you say more about your concern about participating in an in-patient program?"
    - "Toni, can you help me/us understand why participating in an in-patient treatment program is out of the question for you?"

30 Minutes

Group Discussion

PowerPoint Slides 41-49

Materials:

Exercise 2 – "Positions & Interests"

Exercise 2 – "Sample Answers"

9. Problematic & Preferred Mediator Statements: Avoiding Evaluative Conduct & Legal Advice

a. At times the distinction between effective mediator "reality testing" and inappropriate mediator conduct can be difficult to discern. While it is not unusual for mediators to help participants weigh applicable law and the strengths and weaknesses of various proposals in mediation, it is important for mediators to carefully avoid offering legal advice or evaluative comments. This exercise is intended to help mediators (1) recognize problematic mediator remarks, and (2) replace problematic mediator statements with appropriate mediator responses (e.g., questions that help participants appropriately obtain legal advice and/or independently draw conclusions).

- Instructions (Option A)
  - Facilitator or trainee reads each problematic statement to the group (from practice exercise "Problematic & Preferred Mediator Statements: Avoiding Evaluative Comments & Legal Advice")
  - Trainees suggest preferred mediator questions/responses
  - Large group discussion follows (re. additional or alternate responses)
- Instructions (Option B)
  - Participants break into pairs where seated
  - Pairs have two minutes to craft brief responses to each assigned problematic statement
  - When formulating a response have trainees attempt to:
  - Transform each problematic mediator statement into a more appropriate mediator question/response
  - Help clients obtain legal advice from legal counsel and independently (or with counsel assistance) draw their own conclusions (vs. providing an evaluation as the mediator)
  - Have pairs briefly share their ideas with the group
  - Large group discussion follows (re. additional or alternate responses)
- Example: Avoid applying legal precedent to the specific facts of the dispute.
  - Problematic: In separate orientation w/ mother- "While you exercised poor judgment by leaving Maggie (15 month-old daughter) in your younger sister's care, the situation described in the petition does not rise to the level of requiring formal court jurisdiction."
  - Preferred: "Arlene (mom's attorney), what would you advise your client in this situation? Can you say more about the benefits and limitations of this approach?"

15 Minutes

Large Group Discussion

Materials:

Exercise 3 – "Problematic & Preferred Mediator Statements: Avoiding Evaluative Comments & Legal Advice"

Exercise 3 – "Sample Answers"

PowerPoint Slides 50-55

For More Information See:

Adapted from Love and Cooley, 2005. *"The Intersection of Evaluation by Mediators and Informed Consent: Warning the Unwary"*

Facilitator Notes:

- ✓ *When the PowerPoint is in slide show mode, click a second time to reveal answers*
- ✓ *Sample answers are examples only. Many other appropriate responses are possible.*
- ✓ *Option B instructions are on PowerPoint Slide 50 for trainees to refer to throughout exercise.*
- ✓ *To save time, consider skipping slides.*

10. Exploring Impasses

b. Respond to the following quote from mediator and trainer, Bernie Mayer:

- "As with so much else about effective conflict resolution, moving through impasse is usually more a matter of attitude than of tool or technique. Seldom will people break a significant impasse by using a clever intervention strategy, unless that strategy addresses the fundamental cause of the impasse or the needs of the participants." (Mayer, p. 177, *citation on right*)
- What are your thoughts?
- What are some mediator attitudes and beliefs that might be helpful in dealing with impasses effectively?
- What comments, thoughts, observations, etc. do you have after reviewing *Handout B -"Responsive Approaches to Impasse*"? (Mayer, pp. 177-180, *citation on right)*
  - Impasse is OK
  - People have good reasons for being at an impasse
  - Parties have to find their own way through an impasse
  - Anxiety and fear are not helpful
  - Impasse is a natural and often helpful part of the conflict process
  - An impasse may not have an immediate solution, but people can usually find a constructive next step
  - In an impasse, slower is usually faster

c. Taking a break from the mediation appointment to thoughtfully reflect on the session process can be a helpful mediator strategy - particularly when the parties are at an impasse. Which questions from *Handout B* seem particularly valuable for this purpose?

d. Mediators may find that adopting a learner's mindset is beneficial for their long-term mediation practice. What post-session reflections and other practices might help the mediator with his/her ongoing professional development?

  - For sample tools see *"Post-Mediation Self-Assessment Inventory"* and *"Sample Case Summary Form"*

20 Minutes

Group Discussion

Materials:

Handout B – "Responsive Approaches to Impasse"

Handout - "Post-Mediation Self-Assessment Inventory"

Handout - "Sample Case Summary Form"

For More Information See:

Mayer, 2000. *The Dynamics of Conflict Resolution: A Practitioner's Guide*

Yalom, 1995.*The Theory and Practice of Group Psychotherapy*

Advanced Practitioner Considerations:

Group therapist Irvin Yalom believes that a practitioner's attitude and constructive relationship with clients (e.g., concern, genuineness, empathy, etc.) are far more critical than any intervention or technique that the practitioner utilizes.

Do you find this perspective relevant for mediation?

<u>11. Summary & Close:</u> a. Review learning objectives & briefly summarize content covered b. (OPTIONAL) Provide between session assignment c. Encourage participants to complete the *Reflection Tool* - *"Self-Assessment & Training Reflection"* d. Encourage participants to provide feedback on the Unit D.2 training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Materials:*** <u>*Reflection Tool*</u> *– "Self-Assessment & Training Reflection"*

REFERENCES:

Moore, Christopher W. (1996). *The Mediation Process: Practical Strategies for Resolving Conflict (*2nd Edition). San Francisco: Jossey-Bass, pp. 210-211, 337.

Fisher, Roger & Shapiro, Daniel. (2005). *Beyond Reason: Using Emotions as You Negotiate*. Random House Business Books, pp. 7, 13.

Madonik, Barbara. (2001) *I hear what you say, but what are you telling me? The strategic use of nonverbal communication in mediation.* San Francisco: Jossey-Bass.

Malhorta, Deepak. & Bazerman, Max H. (2007). *Negotiation Genius: How to Overcome Obstacles and Achieve Brilliant Results at the Bargaining Table and Beyond.* New York: Bantam Dell.

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Wilkinson, Michael. (2004). *The Secrets of Facilitation: The S.M.A.R.T. Guide to Getting Results with Groups.* San Francisco: Jossey-Bass.

Schrock-Shenk, Carolyn. (2000). "Conflict Spectrum Tool" in *Mediation and Facilitation Training Manual* (4th Edition). Akron, PA: Mennonite Conciliation Service, p. 223.

Gottman, John M. (1999). *The Marriage Clinic: A Scientifically-Based Marital Therapy.* W.W. Norton & Company, pp. 42-46, 124-125.

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Bush, R. A. B. & Folger, J. P. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition.* San Francisco: Jossey-Bass, p. 89.

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Mayer, Bernard. (2000). *The Dynamics of Conflict Resolution: A Practitioner's Guide.* San Francisco: Jossey-Bass.

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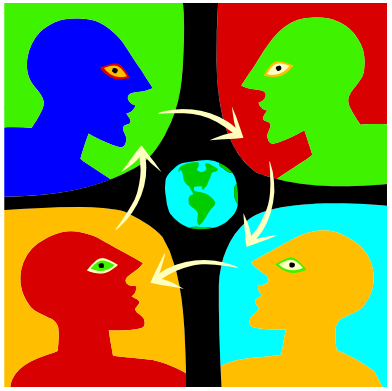
California Juvenile Dependency Mediation Curriculum

Unit D.2
Multi-Party Mediation & Collaborative Resolution Methods

California Administrative Office of the Courts

Multi-Party Mediation



"When negotiations are between more than two disputants, interpersonal dynamics become exponentially more complex."

-Christopher Moore, The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), p. 337.

Creating a Collaborative Atmosphere

In-Session Strategies

Setting Considerations

- Neutral territory
- Neat, clean, attractive environment
- Free from distracting noise (e.g., phone)
- If possible, identical chairs (esp. height & other indicators of power/seniority)
- Ideally round table (no “head” of table)
- Consider seating conflicting parties on the same side of a table (vs. across)

Creating a Collaborative Atmosphere

In-Session Strategies

Social Conventions

- Facilitate introductions
- Brief informal conversation/small talk
- Find things in common; Between mediator and parties & among parties
- Share snacks & beverages

Creating a Collaborative Atmosphere

In-Session Strategies

Mediator's Demeanor

- Calm
- Respectful
- Confident
- Optimistic about possible resolution
- Other mediator qualities?

Creating a Collaborative Atmosphere

In-Session Strategies

Mediator's Initial Remarks

- Put people at ease
- Instill confidence; Invite parties to trust in the mediator & process
- Reference the parties' interdependence & common goals
- Use metaphors & analogies of cooperation (e.g. assembling puzzle)

Creating a Collaborative Atmosphere

In-Session Strategies

Process Management

- Encourage parties to focus on the issues to be resolved & not each other
- Translate value-laden language into less emotionally charged language (Reframe)
- Help parties ask for what they want (vs. don't want)
- Remind participants about behavioral guidelines/ground-rules
- Intervene to prevent interruptions, verbal attacks, & conflict escalation

Creating a Collaborative Atmosphere

In-Session Strategies

Multi-Directed Partiality & Acknowledgement

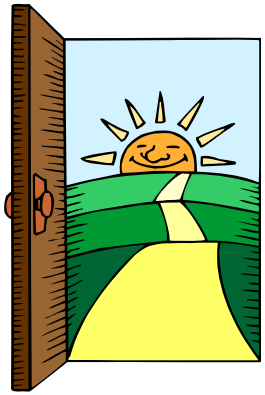
- Empathize & validate without "taking sides"
- "If I'm understanding correctly, for you Inez, the primary concern is.... and for you Trish, the key issue seems to be…"
- "I see Al… it sounds like this has been a pretty difficult situation for you- esp. in the following ways… I am also hearing that this has been challenging for you, Lisa…"

Creating a Collaborative Atmosphere

Program Outreach

- Program liaison
- Co-develop protocols w/ local stakeholders (esp. mediation detractors)
- Ongoing outreach w/ individuals & agencies involved in mediation
- Educate re. protocols (esp. confidentiality)
- Be available & responsive to questions & concerns
- Troubleshoot issues & normalize “growing pains”

Creating a Collaborative Atmosphere



Pre-Mediation Strategies

- Mediator presence in courtroom
- Mediation reading material available
- Case preparation (e.g., phone calls)
- Orientation- priming readiness

Multi-Party Mediation
Potential Challenges

Mediating complicated, multi-issue cases

- Take a deep breath & trust in the process
- Tackle one item at a time (prioritize or easier issues first); make use of visuals, white boards, easels
- Avoid feeling overly responsible
- Decrease anxiety by simply trying to understand each side
- Often there are not perfect solutions; focus on a constructive next step given the circumstances
- Don’t rush- instead schedule follow-up appt.

Multi-Party Mediation
Potential Challenges

Working with "teams" or "alliances"

- Goal is to understand & work effectively w/ alliances, not to break or rupture alliances
- Often alliances shift based on the issues being discussed and the stage of the case
- While a team appears monolithic- it is composed of individuals with varying interests and perspectives
- Make an effort to understand each individual's perspective/interests
- Look for team members with some commonality with the "other side" to assist w/ brainstorming

Multi-Party Mediation
Potential Challenges

<u>Mediating tension/differences within a "team"</u>

- Caucus safer place to explore varying interests held within "team" (diminished need to appear "unified")
- Help participants consider what "agreement" means (i.e., different "levels" of agreement or consensus)
- Can person say, "If it was just up to me, I might change a few things, but for success we need a plan that everyone can live with and support."
- Does being able to state reservations address participant's need to feel heard
- Ask, "If you could change one thing about your team's proposal what would it be?" "How does team feel about this suggestion?"

Multi-Party Mediation
Potential Challenges

<u>Mediating with out of balance "sides"</u>

- Try to address prior to appointment
- Explain rationale- session more likely to be successful when people don't feel outnumbered
- Use caucus to explore w/ over-represented "side" the ideal person to participate; Alternatively caucus can create safety for outnumbered "side"
- Avoid fast-paced discussions w/ technical jargon
- Consider including parents at beginning of session
- Consider first asking parents re. issues to discuss
- Clarify participant roles so parents do not mistakenly believe all professionals on same "side"

Multi-Party Mediation
Potential Challenges

Mediating with attorneys present

- Educate about philosophy & tone of mediation
- Frame cooperative, integrative & interest based approaches as best way to assist clients
- If counsel if having difficulty shifting from a adversarial mind-set consider caucus
- Generally less “posturing” when client not present
- Increase confidence in mediator by being knowledgeable about basic dependency procedures, law, etc.
- If you meet separately w/ client, have client share his/her rationale for position shift w/ his/her atty.

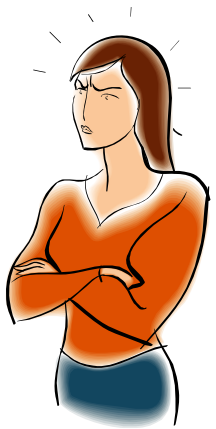
Consider Intervention When…

- Any of the participants indicate that the discussion is getting too heated
- A participant is behaving/saying things that he/she will likely regret
- A participant says that he/she is having difficulty thinking
- A participant seems to want to get out of the room or get another mediation participant to stop talking
- A participant appears to distrust mediator

Consider Intervention When…

- Small issues suddenly become big issues
- Participants are making unreasonable demands
- Interruptions are disruptive
- Negative remarks are personal (not about issues) and/or hostile
- Participants seem to have lost focus on the issues to resolve
- Criticism, defensiveness, contempt or stonewalling have increased

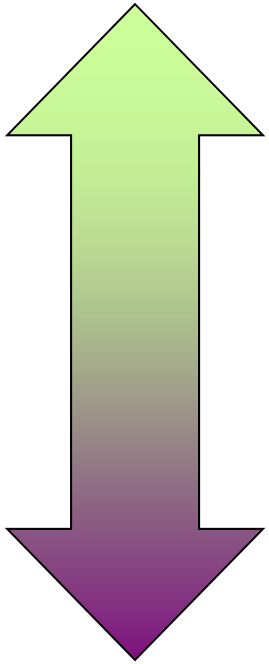
Assess Non-Verbal Behavior



- Signs of physiological arousal
- Breathing cues
- Body language & gestures
- Facial expressions
- Vocal cues
- Other

Managing the Communication Process

Low Intensity/



High Intensity/

- Participants speak without mediator present
- Participants speak directly to one another
- Mediator actively coaches interaction
- Mediator asks participants to direct all comments to mediator & mediator translates/launders comments for other(s)
- Caucus with participant present when mediator (or atty.) relays his/her concerns
- Caucus with participant absent when his/her concerns relayed to other(s)
- Session break

The Mediator's Toolbox

Make Process Comments

- "I'm noticing that the mediation appointment has gradually become more intense and that fewer questions are being asked. I'm wondering whether it would be helpful to…"
- "Arlene, I seem to have lost you… was my comment off the mark for you?"
- "I sense this process is difficult for you. Shall we take a break? (or other suggestion, or ask what they need – be careful of maintaining neutrality.

The Mediator's Toolbox

Slow Down the Process

- "Before you go any further, let me see if I've got it…."
- "Let's back up for a minute…"
- "Tell me again…"
- "Some important things are being said and I'm not tracking as well as I would like… Let's rewind the conversation a bit…"
- "Let me catch up with what just happened here. You said … and then you said…"

The Mediator's Toolbox

Multi-Directed Partiality & Acknowledgement

- Remember to equally listen to, empathize with & validate all mediation participants (in turn or otherwise)
- "I can appreciate why you might feel that way."
- "I learned a great deal from what you said, specifically…"
- "I can imagine how difficult this conversation must be and I appreciate your willingness to raise/respond to these issues."
- "If I'm understanding correctly, for you Inez, the primary concern is…. and for you Trish, the key issue seems to be…"

The Mediator's Toolbox

Ask Clarifying Questions

- "Can you tell me more about…"
- "Can you help me better understand your feelings/thoughts about…"
- Re-state what person said, and ask …. "Is that what you were trying to say?"

The Mediator's Toolbox

Normalize

- Participants may feel relieved to know that different perspectives are the norm in mediation & that their experience may not be unusual
- "Differences of opinion are to be expected here in mediation. In fact, part of the value of this process is being able to discover how we can learn from and be creative with these different points of view."
- "You are not alone- most people I know feel anxious and disoriented when they enter a court room…"

The Mediator's Toolbox

Reference Common Goals

- "I want this process to be as constructive as possible for all of you and I'm remembering that some of your goals for our time were…"
- "There is a lot of information here... Given that you collectively mentioned wanting to be able to take the contested hearing off calendar- where would you like to go from here?"

The Mediator's Toolbox

Reinforce Moments of Recognition

- Draw attention to moments when participants are more open, responsive and sympathetic to the other's situation
- "I'm not sure that __ heard you. Can you say that again, about ___ good drug tests?
- "Did you hear what __ just said about how clearly your children love you? How much work you have done?"

The Mediator's Toolbox

Refer Participants to One Another

- "Can you ask the others what they think of your proposal?"
- Mediator to other participants: "What do you think about _____'s suggestion?"
- "Can you share that concern with the others here? Can you tell them… [*summarize person's remarks*]… e.g., I'm overwhelmed trying to get to so many services each week?"

Instructions:
Crafting a Mediator Response

- Break into pairs where seated
- You will have **few minutes to** craft brief responses to **each** statement assigned to your pair from Exercise 1 - *"Crafting a Mediator Response"*
- When formulating a response:
  - Help speaker clarify his/her concerns
  - Have all participants experience process as fair & supportive
  - Keep mediation constructive for all
- Briefly report back on pair's work
- Others discuss & respond

Crafting a Mediator Response

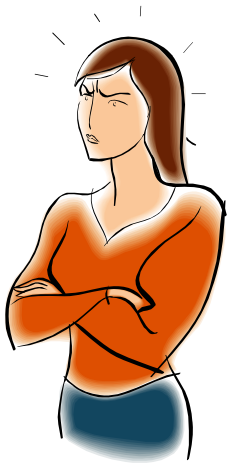
Examples:

1. "Kelly (social worker) is completely lying. I did not grab my child by the hair."
   - "Can you describe the incident that the social worker is concerned about?"
   - Be alert to attorney's concerns about "incriminating statements."

Crafting a Mediator Response

1. "You (directed to father) are so flakey. I am at my wit's end!"
   - "Molly, can you say more about the specific concerns that you have?"
   - "Molly, you clearly sound frustrated, would you say what you just said another way? What is do you want for your child during visits?

Crafting a Mediator Response



2. "Don't you (mediator) think that Val was completely negligent?"
   - "I can see that the children are very important to you. Can you describe the care that you would like to see them receive?"

Crafting a Mediator Response

3. "Helen (CASA), you drive an expensive car, live in the suburbs and don't understand anything about us."
   - "Patrice, what would you like Helen (& perhaps the rest of us) to understand about you and your experience?"
   - "It sounds like you feel like nobody here has a clue about where you're coming from… maybe you feel totally misunderstood. Can you help us see what this situation is like for you?"

Crafting a Mediator Response

4. "Al, it's not just me… Everyone thinks your behavior is totally irresponsible."

- "Al, this may be difficult but I'm going to ask Frank to say more about what he personally finds problematic about this situation. You may want to defend yourself or respond but I'm going to ask you to hold your thoughts for a few moments. Can you do that?"
- "Frank, I'd like you to take a moment and think about one change that Al could make that would make a difference in this situation?"

Crafting a Mediator Response

5. "This whole situation has been a joke from start to finish."
   - "Are you saying that you believe that intervention was unnecessary?"
   - "Grant, you sound angry and disillusioned. What do you want everyone to understand about you, about what is best here, etc. "

Crafting a Mediator Response

6. "I can't stand all of the arguing. If you would just be reasonable we could work something out."

- "Fiona, let's talk a bit about the way we are having this conversation. How can this discussion be more constructive?"
- "What do you think would "bring the temperature down?" Do you have an idea in mind?

Crafting a Mediator Response

7. "You (social worker) and your attorney have wanted me to fail from the beginning."
   - "Tim, I'm noticing that your eyes are closed and that your face looks sad. How are you doing right now?"
   - "If Chang and Elizabeth did want you to succeed, how would you know?"
   - "Can you say more about the support that you would like to receive?"

Crafting a Mediator Response

8. "Peter (teenager), if you could just act responsibly we could return you home."
   - "What specific behavior from Peter would lead you to believe that living at home could be a success?"

Crafting a Mediator Response

9. "Wouldn't you (mediator) be irate if she did that to you?"
   - "I'm interested in hearing about your anger and how you have been affected."
   - "It sounds like you would like Nancy to understand the impact of her behavior on you."

Crafting a Mediator Response

10. "If you had done your case plan six months ago you would not be in this situation."

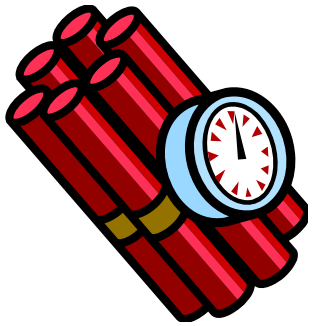
- "Can you say more about the options you see at this stage of the case?"
- "Given your understanding of the present situation, what next step would you suggest?"

Crafting a Mediator Response

11. Parent remarks, “What’s the big deal? We were all hit as kids - I know I was - and I turned out OK.”

    - Ignore statement and allow other participants to redirect conversation
    - Acknowledge parent’s perspective “now” and ask him/her other ways to respond to situation that would be good.

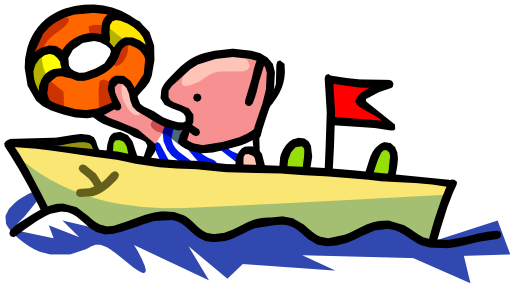
Positions & Interests



Positions

- Rigid statements/demands presented as solutions
- Cover for what people really want; needs & concerns hidden, unexpressed or incompletely understood
- A position focus results in inattention to participants' underlying concerns
- Positions polarize & can create a contest of wills
- Positions esp. problematic in multi-party disputes

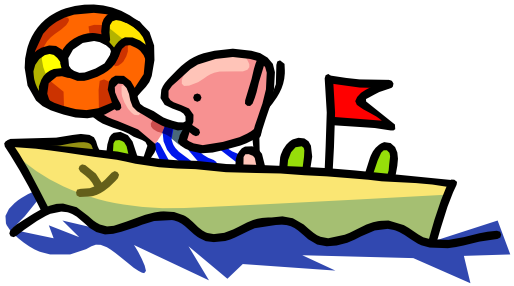
Positions & Interests



<u>Interests</u>

- Reason(s) behind positions (i.e., human needs, concerns, hopes & fears that led person to adopt a certain position)
- A single interest or multiple interests may lie behind an individual's position
- Interest focus allows more creativity & flexibility in option generation; multiple solutions possible
- Interest focus leads to clarity & empowerment for individual & recognition of other's basic needs
- Often some interests in common

Positions & Interests



<u>Drawing Out Interests</u>

- "Can you say more about why this is important to you?"
- What do you think (the child) needs here?
- "What is at the core of this issue for you?"
- "Tell me more about your basic concerns here."
- "What matters the most to you about this issue?"
- "If your proposal is not accepted, what consequences/outcomes are you most concerned about?"

Positions & Interests

Exercise 1 Instructions:

- Participants break into pairs where seated
- Pairs have 2 minutes per position statement to:
  - Part A: Imagine the potential interests that lie behind the speaker's position statements; i.e., the needs, hopes, and concerns that the speaker may be trying to have met.
  - Part B: Develop a mediator response/question to help draw out the speaker's underlying interests.
- Pairs briefly share their ideas with the group
- Large group discussion follows

Positions & Interests

Example: Toni remarks, "I will never agree to participate in an in-patient substance abuse treatment program."

Part A - imagine interests:

- Toni is worried about losing her job (& then her housing)
- Toni had a bad experience with the program director
- Toni knows her child cannot be placed w/ her at the program
- Toni does not have health insurance & concerned re. bills
- Toni does not want to be separated from her boyfriend
- Toni doesn't believe that she has a serious drug problem

Part B - draw out interests:

- "Can you say more about your concern about participating in an in-patient treatment program?"
- "Toni, can you help us understand why an in-patient treatment program is out of the question for you?"

Positions & Interests

1. Kathy (minor's counsel) states, "The child's therapist should not participate in mediation"

<u>Part A - imagine interests</u>:

- Kathy is concerned that child's therapist may feel cross-examined by parents' attorneys
- Kathy is worried that child's therapist may unintentionally disclose too much & thus compromise child's treatment
- Kathy interviewed child's therapist & believes she can adequately relay therapist's p.o.v.
- Kathy disagrees w/ therapist's assessment

<u>Part B - draw out interests</u>:

- "Tell me more about your concern."
- "Are there some potential consequence or outcomes (of the counselor's presence in mediation) that make you uneasy? Can you say more about these concerns?"

Positions & Interests

2. At the outset of mediation Toby (the father) asserts, “I won’t submit to jurisdiction.”

Part A- imagine interests:

- Toby thinks the petition is grossly inaccurate
- Toby concerned submission will impact his criminal court case
- Toby worried that once jurisdiction established, he’ll be stuck with an impossible case plan
- Toby thinks his family will see submission as admission of guilt

Part B- draw out interests:

- “What would you like to see happen around jurisdiction?”
- “Toby, has your attorney had a chance to chat with you about the possibilities at this stage of the process? How would you rate the alternatives that he/she has mentioned?”
- “Tell me more about your concerns.”

Positions & Interests

3. Marta (social worker) declares, “Tanya (mother) can’t have any more visits with Jesus (the child).”

<u>Part A- imagine interests</u>:

- Marta must personally supervise visits & has zero time to offer
- Marta heard from foster parent that child “acts up” after visits
- Marta concerned re. precedent- other families may expect more
- Marta aware of waiting list at supervision site
- Marta knows child’s counselor does not advise
- Marta only has authorization to offer __# visits

<u>Part B- draw out interests</u>:

- “Marta, can you say more about your concerns around increasing visits?”
- “Can you help the group better understand your reluctance?”

Positions & Interests

4. Ron (the father) states, “I don’t want my daughter taking that medication.”

Part A - imagine interests:

- Ron in recovery & worried daughter could develop an addiction
- Ron concerned others may tease daughter if she takes meds.
- Ron thinks prescription will mean daughter is “crazy” & “weak”
- Ron believes that medicating daughter is part of the “controlling” social worker’s agenda

Part B - draw out interests:

- “What would you like the group to understand about this issue for you?”
- “What are you hoping to avoid by having Melissa not take medication?”
- “What’s at the heart of this issue for you?”

Problematic & Preferred Mediator Statements

- Break into pairs where seated
- Pairs have two minutes to craft brief responses to each assigned problematic statement
- When formulating a response attempt to:
  - Transform each problematic mediator statement into a more appropriate mediator question or response
  - Help clients obtain legal advice from legal counsel and independently (or with counsel assistance) draw their own conclusions
- Briefly share your ideas with the group
- Large group discussion follows

Problematic & Preferred Mediator Statements

Example: Avoid applying legal precedent to the specific facts of the dispute.

- Problematic: In separate orientation "While you (mother) exercised poor judgment by leaving Maggie (15 month-old daughter) in your younger sister's care, the situation described in the petition does not rise to the level of requiring formal court jurisdiction."
- Preferred: *"Arlene (mom's atty.), what would you advise your client in this situation? Can you say more about the benefits and limitations of this approach?"*

Problematic & Preferred Mediator Statements

1. Avoid advising parties about their legal rights or responsibilities.

- Problematic: "You are just the foster parent, not a party, and have no legal right to deny the mother visitation."
- Preferred: "I understand that you are really concerned about how Rachinda behaves when she comes back from visiting her Mom. Would it help to talk with the social worker (or foster family agency) about the mother's rights, and how you might help prepare Rachinda for visits and adjust once she comes back to your home?"

Problematic & Preferred Mediator Statements

2. Avoid offering any personal or professional opinion as to how the court will resolve the dispute.

- Problematic: *"It is unlikely that Judge Smith will order that the children should be returned home at this stage of the case."*
- Preferred: "Imagine that Judge Smith does not return the children home right now. Why might the Judge make this order?"

Problematic & Preferred Mediator Statements

3. Avoid providing any personal or professional evaluation of the strengths or weaknesses of the case, either directly or implicitly.

- Problematic: *"Your claim that eating poppy seeds resulted in your false positive urine test is problematic."*

- Preferred: *"What are you hearing back from the other mediation participants when you mention that eating poppy seeds caused your urine test to be false positive?... Given their skepticism, could it be more productive to approach this issue a different way?"*

Problematic & Preferred Mediator Statements

4. Avoid recommending a specific course of action.

- <u>Problematic</u>: *"It seems like you would do well to simply submit to the petition and get on with the process of reunifying with your children."*
- <u>Preferred</u>: *"Julian, after chatting with your attorney, what are your thoughts about whether to admit to the petition, submit to the petition (as is or with modified language), or deny the petition? Tell me more about why that alternative makes sense to you."*

California Juvenile Dependency Mediation Curriculum (Unit D.2)

Glossary of Mediation Interventions and Terms

A

- Acknowledgement:
  - The mediator can acknowledge a participant's point of view and/or feelings, and encourage each participants to acknowledge one another
- Apology:
  - Genuine apologies between parties can be powerful; For example, "I'm sorry that I wasn't more discrete when I raised this issue with you at your workplace"
- Active Listening:
  - "You have an opportunity to interrupt the chorus of monologues if you are willing to be the first to listen" (Getting Past No p. 55)
  - A person who does not feel heard repeats him/herself
  - "Once you have heard the other side out, they will most likely become less reactive, more rational, and more responsive to problem-solving negotiation. It is no coincidence that effective negotiators listen far more than they talk." (Getting Past No p. 57)
- Ask Questions:
  - "But making assertions can easily arouse resistance. The better approach is to ask questions. Instead of giving the other side the right answer, try to ask the right question. Instead of trying to teach them yourself, let the problem be their teacher." (Getting Past No p. 80)
- Attorney Participation:
  - Valuable! For example, attorneys often assist with client coaching, option generation, sharing range of likely outcomes if determined by court, essential legal information

B

- Balancing Power:
  - Equalizing power relationships between parties
- Best Self:
  - Understanding each party's desire for pay-back, but drawing on the best self
- Balcony:
  - "Metaphor for a mental attitude of detachment;" "From the balcony you can calmly evaluate the conflict almost as if you were a third party. You can think constructively for both sides and look for a mutually satisfactory way to resolve the problem." (Getting Past No)
- Background of Care:
  - An important factor to consider, for example, when transitioning a child from kinship care to biological parent; maintaining child's key relationships is protective for child
- Brainstorm:
  - Generate ideas while suspending evaluation of ideas

C

- Compliment:
  - Find ways to affirm what parties are doing right, (e.g., preparing for mediation appointment, attending mediation appointment, good intentions as a parent, not interrupting, etc.)
  - When possible encourage parties to compliment/acknowledge each other, even in small ways

- Confusion Response:
  - "I'm puzzled by……"
- Consultation:
  - Consult with your co-mediator/supervisor, or if you do not have access to colleagues during the appointment, develop a list of interventions and mediator mantras to review mid-session to re-focus and strategize
- Common Interests:
  - Help parties focus on common interests/goals, (e.g., preserving child's well-being)
- Choreograph:
  - Orchestrate what parties say to each other; when appropriate (for example with grandma and biological mom), "Can you turn to her and share your concern…" OR "Can you ask [the other party] what s/he thinks of your proposal?"
- Colombo Approach:
  - Express confusion instead of a direct challenge, "I'm afraid I don't understand…."
  - "By the way, this thought just crossed my mind…"
  - Pose questions you may know the answers to
- Creativity:
  - Help parents think in creative ways that develop innovative solutions
  - A common illustration of creative thinking that "expands the pie" is the dispute over one lemon: lemon peel for someone making cheesecake and lemon wedges for someone making lemonade
- Credit:
  - Have parties take credit for successful outcomes in mediation
  - A successful resolution is the parties' accomplishment, not the mediator's
- Clarification Questions:
  - Tool to confirm that everyone is understanding and is on the same page
  - Specifics have been explored
- Curiosity:
  - Express curiosity and wonder
  - "I'm curious about…" "Tell me more about…."

D

- Domestic Violence Support Person:
  - Alleged victim of D.V. may have a D.V. support person present during mediation
- Diplomacy:
  - Mediator is a diplomat with sensitivity to what should be shared when

E

- Establishing Rapport:
  - Essential to build a connection and join with the client, create trust
- Expectations:
  - Explore what parties are hoping to accomplish or may have heard about mediation
- Educate:
  - Provide information about the process of mediation, e.g., confidentiality & exceptions, mediator's role, what happens if issues do not resolve, etc.
  - If mediator shares any substantive information (e.g., helping to generate options) the "suggestion" is generally provided carefully so as not to create concerns about bias. For example, "I don't know if it's a fit at this time but some parties in this situation have considered..... to successfully address this issue"

- Exceptions:
  - Solution focused intervention that explores exceptions to the problem
  - Focus attention on when a problem is not happening and what is different at those times
- Empathy:
  - Empathy is an effective intervention in mediation, as in therapy
- Externalize Problem:
  - Solution focused intervention that focuses on separating the problem from the people
  - Naming the problem is one way to externalize the problem ("the alcohol problem" v. "the alcoholic")
- Explore Alternatives:
  - Brainstorming followed by exploring feasibility of alternatives
- Explore Parent's Desire for Child:
  - What kind of childhood did you have? (don't have to answer, just think)
  - What kind of childhood do you want for your child?
  - What kind of childhood are your children having?
  - Who were the most influential people in your childhood?
  - How do you want your children to remember you?
- Elicit:
  - Calling forth the parties' ideas
  - Mediation is empowering for parties to the degree that they are assisted in co-creating their own resolutions vs. being told what to do

F

- Fostering Empowerment:
  - A party is empowered in mediation when…. [1]
    - He/she reaches a clearer realization of his/her goals and interests…
    - Is aware of the range of options available to him/her….
    - Increases his/her own skills in conflict resolution…..
    - Gains a new awareness of resources…..
    - Reflects, deliberates and makes conscious decisions for him/herself
- Fostering Recognition:
  - A party gives recognition in mediation when…. [2]
    - He/she feels secure enough to stop thinking exclusively about his/her own situation and to focus, to some degree, on what the other party is going through
    - Allows him/herself to see the other party, and his/her conduct, in a different and more favorable light
    - Let's go of his/her own viewpoint and tries to see things from the other party's perspective
    - Openly acknowledges his/her changed understanding of the other
    - Decides, in the light of his/her changed understanding of the other's past conduct and his/her situation, to make some concrete accommodation to the other in terms of how the disputed issues are handled

[1] Folger and Bush's The Promise of Mediation 1994, pp. 85-88
[2] Ibid, pp. 89-94

G

- Generate Options:
  - Brainstorm
- Grief:
  - Empathize with feelings of loss, and share about stages of grief and grief process
- Goals:
  - Focus on a common goal (e.g., desired outcomes for children) that all parties can endorse

H

- Humor:
  - Helps people relax; decreases physiological arousal

I

- Interruptions w/ Purpose:
  - Mediator structures the process so that parties accomplish their goals during the session
  - For example the mediator might say, "There is so much history and information here, it is unfortunate to miss any of it, but I'm remembering that you were hoping that by the end of our appointment…."
- Imagine:
  - "Imagine you were (the social worker), what concerns might you have about…?" Would he/she add anything else?"
  - To the (social worker) who was listening to the above, "What do you think about what he/she just said?"
- Interests:
  - Focus on underlying concerns, needs, fears, desires v. inflexible positions
  - After clarifying underlying interests then explore different options for meeting interests
  - To clarify interests diplomatically ask "why" questions; Why does party want that? What problem is the party trying to solve? (e.g., "This issue seems pretty important to you, can you help me better understand why you feel so strongly about...?)
- Immediacy:
  - Here and now focus
- Impartiality:
  - Demonstrate basic stance of impartiality; for example, sit equidistant from parties and spend the same amount of time with parties when in separate sessions

L

- Language:
  - Using meaningful words; terminology that fosters sense of cooperation vs. adversarial stance
  - E.g., "issues to be resolved" vs. "problems," or "disputed issues"

M

- Metaphors:
  - Metaphors of cooperation; For example, pilots fighting in the cockpit of an airplane with ground control also involved in argument vs. pilots working well w/ each other and w/ ground control; the first scenario alarms passengers and the second provides comfort to passengers; first scenario is a metaphor the distress a child feels when adults in his/her in conflict w/ one another

    - Metaphors of the mediation process (e.g., parties assembling a jig-saw puzzle in which each party has some puzzle pieces)
- Meta-Commenting:
    - Comments about the process, not the content
    - "Is this interaction typical of what goes on the two of you?" (for example, addressed to family members in dispute)
    - If appropriate- "Let me tell you about what I'm experiencing."

N

- Next Step:
    - An impasse may not have an immediate solution, but people can usually find a constructive next step
    - "It is often more useful to think through a helpful immediate step one can take than to struggle with finding ways to 'overcome' impasse or 'break' a deadlock….. it is often better to ask, What is the best thing that can be done now? rather than, How can this impasse be overcome?" [3]
- Normalizing:
    - Clients experience relief hearing that many people experience confusion, upheaval, depression, anger, etc. when faced with a specific challenging situation (e.g., child removal)
- Nonverbal Behavior:
    - Breathing: sighing, shallow breathing, exhaling loudly, holding breath, hyperventilating
    - Facial Expressions: frowning, furrowing brows, looking at floor, pursing lips, flushing, tightening of all facial muscles
    - Eye Movement: rolling eyes, looking at floor, staring, normal eye contact, wink, squinting, glaring, etc.
    - Body language: turning body away, trembling, tapping foot, slumping in chair, leaning forward in chair, looking at watch, shrugging shoulders, yawning, gestures, nodding head, shaking head, crying, covering face, pointing finger, plugging ears, sweating
    - Voice quality: pitch, tone, speed, intensity, yell, whisper, stuttering, forceful, reflective, sarcastic/cynical tone
- Neutrality:
    - Parties must believe that mediator does not have a significant prior history/relationship w/ the other parties that would bias the mediator against him/her

O

- Orientation to Mediation:
    - Provide description of the mediation process and answer questions
    - Explain confidentiality and exceptions, mediator's role, structure of appt. (e.g., possible separate sessions)
    - Address what to expect, e.g., what happens if there is a resolution, what happens if there is not a resolution
- Optimism:
    - Mediator function may include holding open the hope that the conflict is resolvable
- Observe:
    - Mediator attuned to parties' verbal and non-verbal communication

[3] Mayer, B., The Dynamics of Conflict Resolution: A Practitioner's Guide, p 178.

- Open-Ended Questions:
    - Draw out parties to help prevent party's narrow focus on his/her entrenched position; For example, "Tell me more about…" "Can you say more about.."
- Objective Language:
    - Help parties use more objective or factual language, e.g., "Dad has missed 3 supervised visits" instead of "He's totally irresponsible…. He never shows up for supervised visits"
    - Take the sting of accusation and blame out of the statement

P

- Pacing and Leading:
    - Sensitive and attuned use of timing, (e.g., allowing for some story-telling while containing unlimited story-telling)
- Preempting:
    - Mediator can make some initial remarks that provide a framework for the discussion to follow
- Physiological Arousal:
    - Recognize when parties are overwhelmed and flooded w/ emotions- good time to take a break or move to caucus
- Prioritizing:
    - Help parties prioritize their concerns and address the most urgent and time sensitive issues first
- Perspective:
    - Taking a step back to get some perspective
- Position:
    - Rigid negotiation stance often a concrete statement of what willing to accept
    - Look behind positions to interests (needs, desires, concerns, fears, aspirations, etc.)
- Proposals:
    - Solid proposals will address children's best interests and, as much as possible, meet other parties' concerns
    - A proposal is a possible agreement to which party is ready to say "yes"
    - Optimal to have each party to have more than one proposal in mind, (e.g., party can think about his/her favorite scenario, an acceptable runner-up scenario, and lastly a scenario that he/she can live with)
- Paraphrase:
    - Tool for mediator to check that he/she understands
- Psychodrama:
    - Mediator is alter-ego for party and then asks, "Is that what you were trying to say?"

Q

- Qualifying Statements:
    - Allows the mediator give input while minimizing defensiveness
    - The mediator's input is phrased in a way to make it more tentative
    - For example, "every situation is different, but it is not unusual….."

R

- Reframe:
    - Make a party's comments more palatable to the other party by removing the blame and accusation

- Reflect:
  - Mediator attends to, focuses on and reflects client's message (spoken and implied)
- Resources:
  - Be knowledgeable about a full range of resources in your local area; If critical resources are not available work w/ others to advocate for resource development
- Resistance:
  - Efforts to break down resistance usually only increase it… more effective to try to go around resistance
- Rehearse:
  - Help a party practice what to say to the other party or how to respond to what the other party may say (coaching)

S

- Systemic Interventions:
  - Help parties see the self reinforcing negative interaction cycle
  - For example, Parent feels that social worker makes all decisions and is controlling; Parent angrily confronts social worker; Social worker feels that parent is uncooperative and critical, she is overwhelmed by parent's style of communication; Parent's angry approach confirms for social worker that she must avoid arguments by making parenting decisions on her own
- Separate Sessions:
  - Caucus
  - Use separate sessions to address a party's strong feelings; help a client rehearse; address issues that are too sensitive for conjoint session
  - Separate sessions are standard (at least initially for assessment purposes) for all mediation cases involving allegations of domestic violence
- Standards:
  - Fair and objective criteria used to decide optimal solution
  - For example, precedent, research/scientific criteria, reciprocity
- Summarize:
  - Checks for understanding, demonstrates tracking
- Scaling:
  - Exploring party's level of support for a certain belief/proposal- use spectrum/continuum or numerically (1-10) locate degree of support; This may surface doubts (part of person has hesitations or conflicted different point of view)
- Silence:
  - Waiting during periods of silence can be a tool that fosters creative thinking
- Step Up Plan
  - A graduated plan (or step up plan) includes incremental steps that are designed to gradually assist the family in moving toward a certain outcome
  - Frequently utilized to ensure success w/ reunification and when care is necessary for the parent and/or child not to be overwhelmed by the pace of change
- Supervised Visitation:
  - There are formal supervised visitation programs and informal arrangements involving extended family/friends, etc. (e.g., foster parent/grandma present when parent spending time with child)

- Sequence of Mediation:
    - Idea of stages of the mediation process
    - 1. Provide an orientation, 2. Gather information and have parties share their concerns, 3. Problem-solve and generate options, 4. Evaluate options

T

- Trust:
    - Re-build trust incrementally; for example, by following a mediation agreement diligently, being on time for supervised visits, etc.
- Time Line:
    - Visual tool to help mediation participants sequence past events and plan for future events
- Time Out:
    - Invite participants to let the mediator know when a break is needed
    - Mediators, too, may benefit from brief breaks to refocus, plan, consult, etc.

U

- Understanding:
    - Communicating understanding may defuse conflict and facilitate cooperation

V

- Validate:
    - Conveys understanding of the client's experience
    - Client is entitled to his/her experience and emotional response
    - Mediator may try to separate a party's understandable response from the intention/character of the other party (when possible)
- Visual Aids:
    - For example calendars, dry erase boards

W

- Welcome:
    - Mediator setting tone of session; reduce tension and physiological arousal
- What If Questions:
    - Assist parties in discussing options
    - Introduce possible solutions w/o challenging a party's position
- Wrongs:
    - Discussions regarding past wrongs can be reframed into discussions regarding future remedies
    - "Reframe the blame as joint responsibility for tackling the problem." Getting Past No pp. 93, 94

X

Y

Z

#

CRAFTING A MEDIATOR RESPONSE PRACTICE EXERCISE

Write brief responses to the following statements- Attempt to help speakers clarify concerns, have others experience mediation as a fair and supportive, and keep mediation constructive for all.

Example: "Kelly (social worker) is completely lying. I did not grab my child by the hair."

– *"It sounds like you have a different perspective. Would you like to share your point of view?"*

1. "You (directed to father) are so flakey. I'm at my wit's end."

_____

_____

2. "Don't you (mediator) think that Val (mother) was completely negligent?"

_____

_____

3. "Helen (CASA), you drive an expensive car, live in the suburbs and don't understand anything about us."

_____

_____

4. "Al, it's not just me…. Everyone thinks your behavior is totally irresponsible."

_____

_____

5. "This whole situation has been a joke from start to finish."

_____

_____

6. "I can't stand all of the arguing. If you would be reasonable we could work something out."

_____

_____

7. "You (social worker) and your attorney have wanted me to fail from the beginning."

_____

_____

8. "Peter (teenager), if you could just act responsibly we could return you home."

_____

_____

9. "Wouldn't you (mediator) be irate if she did that to you?"

_____

_____

10. "If you had done your case plan six months ago you would not be in this situation."

_____

_____

SAMPLE ANSWERS

CRAFTING A MEDIATOR RESPONSE PRACTICE EXERCISE

Write brief responses to the following statements- Attempt to help speakers clarify concerns, have others experience mediation as a fair and supportive, and keep mediation constructive for all.

Example: "Kelly (social worker) is completely lying. I did not grab my child by the hair."

- *"It sounds like you have a different perspective. Would you like to share your point of view?"*
- *"Sara, you clearly see things differently. Let's check with your attorney to see whether he thinks this is a good time for you to talk about what happened from your perspective."*

1. "You (directed to father) are so flakey. I'm at my wit's end."
   - *"Molly, can you say more about the specific concerns that you have?"*
   - *"Molly, you clearly sound frustrated. To better help Jim respond to your key concerns, could you say what you just said another way?"*

2. "Don't you (mediator) think that Val (mother) was completely negligent?"
   - *"It sounds like you believe that Val's behavior was negligent."*
   - *"I can see that the children are very important to you. Can you describe the care that you would like to see them receive?"*

3. "Helen (CASA), you drive an expensive car, live in the suburbs and don't understand anything about us."
   - *"Patrice, what would you like Helen (& perhaps the rest of us) to understand about you and your experience?"*
   - *"It sounds like you feel like nobody here has a clue about where you're coming from… maybe you feel totally misunderstood. Can you help us see what this situation is like for you?"*

4. "Al, it's not just me…. Everyone thinks your behavior is totally irresponsible."
   - *"Al, this may be difficult but I'm going to ask Frank to say more about what he personally finds problematic about this situation. You may want to defend yourself or respond but I'm going to ask you to hold your thoughts for a few moments. Can you do that?"*
   - *"Frank, I'd like you to take a moment and think about one change that Al could make that would make a difference in this situation?"*

5. "This whole situation has been a joke from start to finish."
   - *"Are you saying that you believe that intervention was unnecessary?"*
   - *"Grant, you sound angry and disillusioned. What part of this situation is the most troublesome for you?"*

6. “I can’t stand all of the arguing. If you would be reasonable we could work something out.”
   - *“Do you have an idea in mind or a proposal that you would like to float?”*
   - *“Fiona, you mentioned arguing. Before we go any further, let’s talk a bit about the way we are having this conversation. How can this discussion be more constructive?”*

7. “You (social worker) and your attorney have wanted me to fail from the beginning.”
   - *“Tim, I’m noticing that your eyes are closed and that your face looks sad. How are you doing right now?”*
   - *“If Chang and Elizabeth did want you to succeed, how would you know?”*
   - *“Can you say more about the support that you would like to receive?”*

8. “Peter (teenager), if you could just act responsibly we could return you home.”
   - *“What specific behavior from Peter would lead you to believe that living at home could be a success?”*

9. “Wouldn’t you (mediator) be irate if she did that to you?”
   - *“I’m interested in hearing about your anger and how you have been affected.”*
   - *“It sounds like you would like Nancy to understand the impact of her behavior on you.”*

10. “If you had done your case plan six months ago you would not be in this situation.”
    - *“Can you say more about the options you see at this stage of the case?”*
    - *“Given your understanding of the present situation, what next step would you suggest?”*

11. Parent’s attorney remarks, “What’s the big deal? We were all hit as kids- I know I was- and we turned out OK.”
    - *Ignore statement and allow other participants to redirect conversation*
    - *If you have a strong professional relationship with this attorney, smile and humorously comment, “Chris, that sure explains a lot!”*

Positions & Interests Practice Exercise

Often participants in mediation make position statements that assume that there is only one possible way to resolve an issue. Part A of this exercise is to help mediators imagine the potential interests that may lie behind an individual's position statements, i.e., the needs, hopes, and concerns that the individual is trying to have met. Happily, mediators do not have to rely on hunches; they can ask questions and draw out participants. Part B of this exercise involves developing a mediator response/question to help draw out the speaker's underlying interests. Confirm with the speaker that this is, in fact, their interest.

Position Example: When discussing case plan options the mother (Toni) remarks, "I will never agree to participate in an in-patient substance abuse treatment program."

Part A-Imagine Interests:

- Toni is worried about losing her job and then her housing- creating more obstacles.
- Toni previously had a bad experience with the in-patient treatment program director.
- Toni knows that she will not be able to have child placed with her on-site at program.
- Toni does not have health insurance. She is worried about unmanageable bills.
- Toni does not want to be separated from her boyfriend.
- Toni doesn't believe that she has a serious drug problem.

Part B- Draw Out Interests:

- "Toni, can you say more about your concern about participating in an in-patient program?"
- "Toni, can you help me/us understand why participating in an in-patient substance abuse treatment program is not an option from your point of view?"

1. Kathy (minor's counsel) states, "The child's therapist should not participate in mediation"

Part A-Imagine Interests:

_____

_____

_____

Part B- Draw Out Interests:

_____

_____

2. At the outset of mediation Toby (father) asserts, "I won't submit to jurisdiction."

Part A-Imagine Interests:

_____

_____

_____

Part B- Draw Out Interests:

_____

_____

3. Marta (social worker) declares, "Tanya (mother) can't have any more visits w/ Angel (child)."

Part A-Imagine Interests:

_____

_____

_____

Part B- Draw Out Interests:

_____

_____

4. Ron (father) states, "I don't want my daughter taking that medication."

Part A-Imagine Interests:

_____

_____

_____

Part B- Draw Out Interests:

_____

_____

SAMPLE ANSWERS

Positions & Interests Practice Exercise

Often participants in mediation make position statements that assume that there is only one possible way to resolve an issue. Part A of this exercise is to help mediators imagine the potential interests that may lie behind an individual's position statements, i.e., the needs, hopes, and concerns that the individual is trying to have met. Happily, mediators do not have to rely on hunches; they can ask questions and draw out participants. Part B of this exercise involves developing a mediator response to help draw out the speaker's underlying interests.

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Part A- Imagine Interests:

- Toni is worried about losing her job and then her housing- creating more obstacles.
- Toni previously had a bad experience with the in-patient treatment program director.
- Toni knows that she will not be able to have child placed with her on-site at program.
- Toni does not have health insurance. She is worried about unmanageable bills.
- Toni does not want to be separated from her boyfriend.
- Toni doesn't believe that she has a serious drug problem.

Part B- Draw Out Interests:

- "Toni, can you say more about your concern about participating in an in-patient program?"
- "Toni, can you help me/us understand why participating in an in-patient substance abuse treatment program is not an option from your point of view?"

1. Kathy (minor's counsel) states, "The child's therapist should not participate in mediation"

Part A- Imagine Interests:

- *Kathy is concerned that child's therapist may feel cross-examined by the parents' attorneys*
- *Kathy is worried that the child's therapist may unintentionally disclose too much and thus compromise the child's treatment*
- *Kathy interviewed therapist & believes that she can adequately relay therapist's point of view*
- *Kathy disagrees with the therapist's assessment*

Part B- Draw Out Interests:

- *"Tell me more about your concern."*
- *"Are there some potential consequences or outcomes (of the counselor's presence in mediation) that make you uneasy? Can you say more about these concerns?"*

2. At the outset of mediation Toby (father) asserts, "I won't submit to jurisdiction."

Part A- Imagine Interests:

- *Toby thinks the petition is grossly inaccurate*
- *Toby is concerned that a submission will negatively impact his criminal court case*

- *Toby is worried that once jurisdiction established, he'll be stuck with an impossible case plan*
- *Toby believes that his family and friends will think a submission is an admission of guilt*

Part B- Draw Out Interests:

- *"What would you like to see happen around jurisdiction?" (explore likelihood w/ client and counsel)*
- *"Toby, has your attorney had a chance to chat with you about the possibilities at this stage of the process? How would you rate the alternatives that he/she has mentioned?"*
- *"Tell me more about your concerns."*

3. Marta (social worker) declares, "Tanya (mother) can't have any more visits with Angel (child)."

Part A- Imagine Interests:

- *Marta personally supervises visits and is very pressured to complete her other work*
- *Marta heard from the foster parent that the child "acts up" after contact with his mother*
- *Marta is concerned about the precedent that will be set if visits are increased- other parents may expect more*
- *Marta is aware of waiting list at supervision site*
- *Marta knows that the child's counselor does not advise more visits*
- *Marta only has authorization to offer __# visits*

Part B- Draw Out Interests:

- *"Marta, can you say more about your concerns around increasing visits?"*
- *"Can you help the group better understand your reluctance?"*

4. Ron (father) states, "I don't want my daughter taking that medication."

Part A- Imagine Interests:

- *Ron is in recovery and is worried that his daughter could develop an addiction*
- *Ron is concerned that others may make fun of his daughter if she takes psychotropic medication*
- *Ron thinks that prescription will mean his daughter is "crazy" and "weak"*
- *Ron believes that medicating his daughter is part of the "controlling" social worker's agenda*

Part B- Draw Out Interests:

- *"What would you like the group to understand about this issue for you?"*
- *"What are you hoping to avoid by having Melissa not take medication?"*
- *"What's at the heart of this issue for you?"*

PROBLEMATIC & PREFERRED MEDIATOR STATEMENTS: AVOIDING EVALUATIVE COMMENTS & LEGAL ADVICE PRACTICE EXERCISE[1]

As the distinction between the "reality testing" of an effective mediator and the inappropriate provision of legal advice can be difficult to discern, this exercise is intended to help mediators 1.) Recognize problematic mediator comments, and 2.) Practice developing appropriate responses.

Example: Avoid applying legal precedent to the specific facts of the dispute.

PROBLEMATIC: In separate orientation w/ mother- "While you exercised poor judgment by leaving Maggie (15 month-old daughter) in your younger sister's care, the situation described in the petition does not rise to the level of requiring formal court jurisdiction."

PREFERRED:

"Arlene (mom's attorney), what would you advise your client in this situation? Can you say more about the benefits and limitations of this approach?"

1. Avoid advising participants about their legal rights or responsibilities.

   PROBLEMATIC: "You are just the foster parent, not a party, and have no legal right to deny the mother visitation."

   PREFERRED:

   _____

   _____

2. Avoid offering a personal or professional opinion as to how the court will resolve the dispute.

   PROBLEMATIC: "It is unlikely that Judge Smith will order that the children be returned home right now."

   PREFERRED:

   _____

   _____

3. Avoid providing any personal or professional evaluation of the strengths or weaknesses of the case, either directly or implicitly.

   PROBLEMATIC: "Your claim that eating poppy seeds caused your urine test to be false positive is problematic."

   PREFERRED:

   _____

   _____

4. Avoid recommending a specific course of action.

   PROBLEMATIC: "It seems like you would do well to simply submit to the petition and get on with the process of reunifying with your children."

   PREFERRED:

   _____

   _____

[1] Adapted from "The Intersection of Evaluation by Mediators and Informed Consent: Warning the Unwary." Lela P. Love and John W. Cooley, Ohio State Journal of Dispute Resolution, Vol. 21:1, 2005 (pp. 56-57).

SAMPLE ANSWERS

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As the distinction between the "reality testing" of an effective mediator and the inappropriate provision of legal advice/evaluative comments can be difficult to discern, this exercise is intended to help mediators 1.) Recognize problematic mediator comments, and 2.) Practice developing appropriate mediator questions/responses.

1. Avoid applying legal precedent to the specific facts of the dispute.

   PROBLEMATIC: In separate orientation w/ mother- "While you exercised poor judgment by leaving Maggie (15 month-old daughter) in your younger sister's care, the situation described in the petition does not rise to the level of requiring formal court jurisdiction."

   PREFERRED: *"Arlene (mom's atty.) what would you advise your client in this situation? Can you say more about the benefits and limitations of this approach?"*

2. Avoid advising participants about their legal rights or responsibilities.

   PROBLEMATIC: "You are just the foster parent, not a party, and have no legal right to deny the mother visitation."

   PREFERRED: *"I understand that you are really concerned about how Rachinda behaves when she comes back from visiting her Mom. Would it help to talk with the social worker (or foster family agency) about the mother's rights, and how you might help prepare Rachinda for visits and help her adjust once she comes back to your home?"*

3. Avoid offering a personal or professional opinion as to how the court will resolve the dispute.

   PROBLEMATIC: "It is unlikely that Judge Smith will order that the children be returned home right now."

   PREFERRED: *"Imagine that Judge Smith does not return the children home right now. Why might the Judge make this order?"*

4. Provide any personal or professional evaluation of the strengths or weaknesses of the case, either directly or implicitly.

   PROBLEMATIC: "Your claim that eating poppy seeds caused your urine test to be false positive is problematic."

   PREFERRED: *"What are you hearing back from the other mediation participants when you mention that eating poppy seeds caused your urine test to be false positive? Given their skepticism, could it be more productive to approach this issue a different way?"*

5. Recommend a specific course of action.

   PROBLEMATIC: "It seems like you would do well to simply submit to the petition and get on with the process of reunifying with your children."

   PREFERRED: *"Julian, after chatting with your attorney, what are your thoughts about whether to admit to the petition, submit to the petition (as is or with modified language), or deny the petition? Tell me more about why that alternative makes sense to you."*

---

[1] Adapted from "The Intersection of Evaluation by Mediators and Informed Consent: Warning the Unwary." Lela P. Love and John W. Cooley, Ohio State Journal of Dispute Resolution, Vol. 21:1, 2005 (pp. 56-57).

Responsive Approaches to Impasse[1]

"…. impasse as both a challenge and opportunity…"[2]

1. Impasse is OK
   - Normalize impasses- they are to be expected in mediation.

2. People have good reasons for being at an impasse
   - Seek to understand the good reasons that an individual (from his/her perspective) may have for not resolving an issue.

3. Parties have to find their own way through an impasse
   - Mediators may provide process assistance, but participants themselves must determine their own readiness to resolve issues.

4. Anxiety and fear are not helpful
   - Decrease mediator and participant anxiety by simply seeking to understand perspectives. Fear creates rigidity and hampers creativity and problem-solving.

5. Impasse is a natural and often helpful part of the conflict process
   - Impasses may help participants more realistically reflect on their actual choices. They may also be the incentive to better understand the perspectives of others.

6. An impasse may not have an immediate solution, but people can usually find a constructive next step
   - Focus on a constructive next step instead of a complete solution to the conflict.

7. In an impasse, slower is usually faster
   - People under pressure are likely to feel overwhelmed and stuck. With enough time to thoughtfully reflect on options, participants may be more flexible, creative and practical.

---

[1] Headings developed by Bernie Mayer, The Dynamics of Conflict Resolution: A Practitioner's Guide, (2000), pp. 177-180

[2] Ibid, p. 188

Questions for Addressing Impasse[3]

A. What is the nature of the impasse?
   - Attempt to understand and articulate the impasse (analytical tools like the wheel of conflict may be helpful).
   - Can more information help? Does one person need to hear what other *really* saying?
   - Are the right people participating in the mediation? Are key people missing? Or are some involved that are negatively impacting the session and not critical to the process?

B. Is the right question being asked?
   - Has the issue been framed appropriately? Would an alternative question or framing offer a more constructive focus?

C. What are people accomplishing and risking by remaining in an impasse?
   - By asking clarifying questions, mediator and other participants may be better able to assess how to respond, encourage, or otherwise confirm what is going on.
   - Any hesitations, doubts, or ambivalence that may suggest some potential for flexibility.
   - Can participants meet their needs in other ways?

D. Is it better (at this time) for the parties to remain at an impasse?
   - It may be that the person has gone as far as he/she can, may need time to think about things, and may then find another way to resolve issues before contested hearing.

E. Have people faced their real options & taken responsibility for choosing among them?
   - Participants may need guidance (often from attorneys) when considering and evaluating realistic possibilities and alternatives.

F. What is the next best step that the parties can take?
   - Mediators and participants may be less overwhelmed and more productive when they are able to identify a constructive next step as opposed to solution to the entire conflict.

[3] Adapted from questions posed by Bernie Mayer, The Dynamics of Conflict Resolution: a Practitioner's Guide, (2000), pp. 180-188.

Post-Mediation Self-Assessment Inventory[1]
(Sample)

This self-assessment inventory is designed to be a learning tool for you (or for you and your co-mediator). It is intended to help you appreciate your strengths as a mediator, as well as to assist you with the ongoing process of improving your practice.

- ☐ Ensured that participants had a clear understanding of the goals and structure of the mediation process, the roles of the mediator and other parties, confidentiality & exceptions
- ☐ Established and maintained a respectful and balanced relationship with participants by: creating rapport, respecting participants, encouraging mutual respect among all participants, being objective & impartial in style, & modeling strong communication skills
- ☐ Demonstrated key mediator skills and qualities (e.g., listening, empathizing, observing, exploring, facilitating, intervening, etc.)
- ☐ Appropriately managed personal feelings, counter-transference and/or mediator bias
- ☐ Helped participants develop clarity about their concerns (empowerment)
- ☐ Assisted participants in constructively sharing and listening to one another's concerns
- ☐ Assisted participants with option building, broadening the number or scope of options
- ☐ Effectively managed impasses, resistance, difficult behavior and intense emotions
- ☐ Appropriately used joint meetings and caucus; managed safety issues (e.g., D.V.)
- ☐ Encouraged the participants' self-determination
- ☐ Assisted parties with evaluating potential agreements for their viability/practicality
- ☐ Drafted a clearly written, easily understood, neutrally worded, appropriately specific mediation agreement, if relevant
- ☐ Encouraged participants to complete an exit survey or mediation evaluation/feedback form

What worked well and why? _____

_____

What might you have done differently and why? _____

_____

Are there any issues that you would like to explore further; for example, by consulting with a colleague/supervisor, reviewing literature, or pursuing continuing education and training?

_____

_____

[1] Adapted from The Mediators' Institute of Ireland's "Role play Self-Assessment Form" For comprehensive form, see www.themii.ie/documents/Roleplay_Self_Assessment.pdf

Case Summary

Case Name (optional):_____ Date of Mediation (optional):_____

Number of Participants:_____ Age(s) of Children:_____

Mediator(s):_____ Mediation Outcome:_____

1. ***Stage of Court Process & Issues Addressed:***

2. ***Brief Background (e.g., removal date; placement; visitation; D.V.; substances, etc.):***

3. ***Emotional Dynamics of Parties:***

4. ***Opportunities for Empowerment (identify & express concerns) & Recognition (acknowledge other's view):***

5. ***Interventions/Strategies Utilized:***

6. ***Factors Leading to Agreement/Non-Agreement:***

7. ***New Understandings/Lessons Learned:***

8. ***Special Comments:***

Self-Assessment & Training Reflection

Unit D, Chapter 2: Multi-Party Dynamics and Collaborative Resolution Methods

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			----------PROFICIENT
My ability to create a collaborative atmosphere in mediation and effectively commence the session	☐	☐	☐	☐
My awareness of and ability to work effectively with typical challenges in multi-party mediation	☐	☐	☐	☐
My ability to monitor the mediation process and appropriately time interventions/process guidance	☐	☐	☐	☐
My ability to manage the communication process in mediation	☐	☐	☐	☐
My ability to utilize a variety of mediation techniques and interventions	☐	☐	☐	☐
My understanding of the difference between positions and interests and my ability to draw out participants' interests	☐	☐	☐	☐
My ability to avoid problematic evaluative conduct and legal advice when mediating	☐	☐	☐	☐

My ability to constructively explore mediation impasses	☐	☐	☐	☐
My habit of reflecting on my work as a mediator & my ability to assess my ongoing education and training needs	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit D:
Conducting a Dependency Mediation Appointment

CONTENTS

D.1. Orienting Participants to Dependency Mediation

D.2. Multi-Party Mediation & Collaborative Resolution Methods

D.3. Caucusing

D.4. Co-Mediation

D.5. Concluding Mediations Appropriately

Unit D, Chapter 3:
Caucusing

Presentation Methods: • Large Group Discussion • (OPTIONAL) Case Scenario Exercise & Discussion **Participant Materials:** • *Handout A* - "Potential Benefits & Drawbacks of Separate Discussions" • *Handout B* - "Tips & Suggestions for Separate Discussions" • *Handout C* - "D.3. Case Scenario Practice Exercise" • *Reflection Tool* - "Self-Assessment & Reflection Tool" **Suggested Pre-Session Reading:** • None	***Estimated Duration:*** *1 Hour* ***Optional*** *15 Minutes* *Case Scenario Exercise & Discussion: Complex Issues (For Mixed or Advanced Practitioners)*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***2 Minutes***
2. Introduction to Separate Discussions *(Large Group Discussion)*----------	***3 Minutes***
3. Potential Benefits of Separate Discussions - Case Preparation & Caucusing *(Large Group Discussion)*----------	***10 Minutes***
4. Potential Drawbacks & Challenges of Separate Discussions - Case Preparation & Caucusing *(Large Group Discussion)*----------	***10 Minutes***
5. Circumstances That Suggest Separate Discussions *(Large Group Discussion)*----------	***5 Minutes***
6. Tips & Suggestions for Separate Discussions *(Large Group Discussion)*----------	***15 Minutes***
7. Confidential or Non-Confidential Separate Discussions? *(Large Group Discussion)*----------	***10 Minutes***
8. (OPTIONAL) Complex Issues - For Mixed or Advanced Practitioners *(Case Scenario Exercise & Discussion)* ----------	***15 Minutes (Optional)***
9. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After concluding *Unit D, Chapter 3: Caucusing*, participants will be able to: a. Be knowledgeable about the potential benefits and drawbacks of separate discussions (case preparation & caucuses) b. Strategically time the use of separate discussions (caucuses) c. Utilize best practices when conducting separate discussions (case preparation & caucuses) d. Demonstrate an awareness of confidentiality issues and ethical considerations when conducting separate discussions	***2 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Introduction to Separate Discussions (Caucuses)

a. What is a caucus? *(Slide 2)*
   - The part of mediation in which the mediator meets privately and separately with each (or one) *party, group of parties, or "side" of the dispute
   - The portion of the mediation appointment in which direct communication between the participants is deliberately restricted
   - Typically caucuses can be called by the mediator or requested by one of the mediation participants

b. Are there other forms of separate discussions?
   - Yes. Pre-mediation case preparation is another element of the mediation process that often involves separate discussions

c. Reflect and share examples. *For facilitator or participants with some dependency mediation experience:*
   - Reflecting on your mediation practice, how often (e.g., approximate percent of cases) do you have at least some separate time- either on the phone or in person- with the mediation participants?
   - Thinking of a typical case in your practice - how much of the mediation appointment is likely to be conducted in caucus?
   - In your experience what is helpful and potentially problematic about caucusing?

3 Minutes
Large Group Discussion

PowerPoint Slide 2
****Facilitator Note – see comment, PP Slide 2***

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict* (2nd Edition), pp. 319-326.

Mosten, 1997. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, p. 420.

Spangler, 2003. "Caucus." *Beyond Intractability Website*. Conflict Research Consortium, University of Colorado, Boulder. Available online at:

http://www.beyondintractability.org/bi-essay/caucus

3. Potential Benefits of Separate Discussions

10 Minutes
Large Group Discussion

a. How might a mediator use separate discussions ***prior to*** mediation (e.g., case preparation or separate orientations) to help prime participants' readiness for mediation?

- Participant may feel heard & recognized if the mediator is able to give undivided attention to participant's conflict narrative
  - Feeling heard, each participant may be more likely to trust the mediator's process guidance in conjoint session
- Mediator can discern what the current conflict is about & intensity of feelings
  - Recognize both potentially "safe" and potentially "flammable" issues
  - Discuss flammable issues after rapport developed
- Understand conflict history (i.e., how the conflict arose)
- Understand participants' current feelings towards one another
- Explore previous attempts to resolve the conflict and what didn't work
- Prepare participants for potentially intense discussions
  - Anticipate with participants (esp. parents & non-professionals) the potentially challenging issues the other participants are likely to raise
  - Explore with participants their own imagined reactions to these remarks/concerns/points of view
  - If appropriate coach participants (e.g., how to avoid defensive remarks, share own perspectives appropriately, signal the mediator for a break)
- Explore with participants (esp. professionals) whether there is anything that they might share about another mediation participant (esp. a parent) that is complementary, recognizes effort/positive change/helpful attitude/family strength, etc.
- Provide reassurances about the collaborative goal of the appointment – i.e., working together to create the best solutions for the child and family

PowerPoint Slides 3-4

Facilitator Notes:

✓ *Remind participants that additional information can be found in Curriculum Unit D.1. "Orienting Participants"*

For More Information See:

Shapiro, 2006. "Preempting Disaster: Pre-Mediation Strategies to Deal with Strong Emotions" in *Handbook of Mediation: Bridging Theory, Research, and Practice*, pp. 309-325.

3. Potential Benefits of Separate Discussions (continued)

b. What are some potential **benefits** of separate discussions during the mediation appointment (**caucuses**)? *(Slides 3-4)*

1. Participant(s) able to express intense emotions without aggravating others
   - Limit destructive communication between participants (including distracting non-verbal behavior)
   - Diffuse tension esp. when readiness to mediate questionable
   - Remembering the concept of "negative affect reciprocity" (Unit D.2.), it can be helpful to separate participants to prevent negative communications from spiraling into a contagious epidemic
2. Mediator able to be more supportive than is acceptable in joint session
   - Uninterrupted listening and increased empathy help the mediator develop rapport with participants
   - When participants feel heard, respected and understood they are more likely to trust in the mediation process and listen to other participants
3. Mediator able to be more firm than is acceptable in joint session
   - Focus on underlying interests and propose hypothetical options
   - Conduct reality testing; question a party's judgment and create doubt about the viability of adhering to rigid positions
   - Clarify misperceptions
   - Help participant(s) evaluate strengths & weakness of own proposals
   - Help participant(s) acknowledge positive things about the "other side" and/or the "other side's" proposals
   - Appeal to common principles or superordinate goals (Moore, p. 320)
4. Enhanced information gathering
   - Separating the parties allows more open communication between the participant(s) in caucus and the mediator- allowing the mediator to more fully understand the participant's point of view
   - Privacy means participants are more likely to offer information about underlying interests, assumptions, and desire for recognition (implied)
   - Opportunity to explore a mediation participant's incongruence (e.g., participant's verbal and non-verbal communication do not match)
   - Opportunity to help reticent, less talkative participants share

10 Minutes
Large Group Discussion

PowerPoint Slides 3-4

Materials:

Handout A – *"Potential Benefits & Drawbacks of Separate Discussions*

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict* (2nd Edition), pp. 323.

Mosten, 1997. *The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice*, p. 250.

Bush & Folger 1994. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, pp. 270-271.

Spangler, 2003. "Caucus." *Beyond Intractability.* Available online at: *http://crinfo.beyondintractability.org/essay/caucus/*

3. Potential Benefits of Separate Discussions (continued)

10 Minutes
Large Group Discussion

Materials:
Handout A – "Potential Benefits & Drawbacks of Separate Discussions

5. Increased participant flexibility and creativity
   - Without the presence of the other participants, the individual in caucus is likely to be less tense, reactive and defensive, and more flexible and creative
6. Can disrupt negative session trends
   - Change unproductive negative behavior and/or session direction
7. Medium for participant coaching
   - Explore current (possibly unproductive) approach to communication and provide information about more promising negotiation strategies
   - Ask questions to help clarify interests and goals and to prevent premature commitment to a rigid position in joint session
8. Privacy to more fully explore important negotiation/substantive issues
   - Redefine interests and clarify positions
   - Identify new proposals and weigh proposals of others
   - Float and explore "trial balloons" and/or "test waters" for resolution
9. Tool to make spectrum of perspectives (within a team) more explicit
   - Separate meetings are a safer place to explore varying interests held by individuals within a "team" (diminished need to appear "unified")
10. Means for creating a sense of balance
    - If mediation is out of balance in terms of the number of representatives on each "side"- separate discussions can be used to create comfort for outnumbered individual(s)
    - Or, mediation can be used to help "side" with over-representation determine which individual(s) should participate in mediation
    - Separate sessions may also help non-system participants (and/or individuals of a different socio-economic status, educational level, cultural background, etc.) experience mediation as more balanced

3. Potential Benefits of Separate Discussions (continued)

11. Device to help involve lawyers appropriately
    - Consider separate meeting with just attorneys when an attorney is experiencing difficulty shifting from a litigation mindset (to prevent non-attorneys, such as social worker, from feeling cross-examined)
    - In caucus (and pre-emptive orientation) mediator can explain the philosophy and tone of mediation (cooperative, integrative and interest based approaches framed as the best way to assist clients)
12. Forum to assess mediation process
    - Opportunity to assess whether or not to convene joint session at all
    - Check-in and design new mediation procedures/strategies; e.g., What's working? What's not working? New approaches?

10 Minutes

Large Group Discussion

Materials:

Handout A – "Potential Benefits & Drawbacks of Separate Discussions

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict* (2nd Edition), pp. 323.

Mosten, 1997. *The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice*, p. 250.

Bush & Folger 1994. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, pp. 270-271.

Spangler, 2003. "Caucus." *Beyond Intractability.* Available online at: http://www.beyondintractability.org/bi-essay/caucus

4. Potential Drawbacks & Challenges of Separate Discussions

a. What are some **challenges** or potential **drawbacks** of separate discussions? *(Slides 5-6)*

1. Greater opportunity for mediator manipulation and control of settlement
   - Participants are unable to confirm the accuracy of the information relayed by the mediator when they do not have face-to face exchanges
   - Participants exclusively depend on what the mediator says to know what is acceptable to the other(s)
   - In caucus mediator has greater influence over participants as he/she can control, suppress, alter, and/or introduce new information
   - Mediator's opinion or subjective point of view is likely to have a greater impact on participants during separate (vs. conjoint) meetings
2. Greater possibility for mediator bias or alliance with one "side"
   - Privacy of caucus makes a greater degree of explicit or implicit mediator partiality possible
   - While an advantage of separate meetings is that the mediator is able to be more supportive than is appropriate in a joint session, mediator must be vigilant to not form a strategic alliance with any participant
3. Greater potential for distrust of the mediator/mediation process
   - Participants may become concerned with actual or perceived mediator partiality and this distrust may interfere with the ability to optimally utilize mediation
   - Some non-system participants (e.g., parents) may be suspicious of the system when "regulars" (professional participants) meet without them
4. Participants less likely to develop own resolution skills
   - Joint session participation offers parties the greatest opportunity to develop their own conflict resolution skills (e.g., mediator modeling)
   - Preparing stakeholders to handle future challenges is one measure of mediation success
5. Participants may be less truthful without others present (immediate accountability removed)
6. Mediator may unintentionally disclose private caucus information
7. Mediator may receive information in caucus that makes it inappropriate to continue or confounds session productivity
   - Critical information revealed but participant insists on non-disclosure

10 Minutes
Large Group Discussion

PowerPoint Slides 5-6

Materials:

Handout A – "Potential Benefits & Drawbacks of Separate Discussions"

Facilitator Notes:

✓ *Remind participants that Unit A.3 covers strategies to help safeguard mediator impartiality (and perceptions of impartiality) during separate discussions*

For More Information See:

Mennonite Conciliation Service, 2000. *Mediation and Facilitation Training Manual* (4th Edition), p. 196.

Practitioner Considerations:

A participant's reluctance to reveal information (outside of caucus) may indicate that the private information relates to an acutely important need that the party feels he/she cannot risk having unmet

4. Potential Drawbacks & Challenges of Separate Discussions (continued)

8. Shuttling between caucuses can be more time consuming than joint session
9. May interrupt the flow of mediation
10. Potentially unproductive down-time for non-caucusing participants

10 Minutes
Large Group Discussion

PowerPoint Slides 5-6

5. Circumstances That Suggest Separate Discussions

a. When you think about meeting with dependency mediation participants individually or in small groups, what thoughts do you have about the situations in which caucusing might be an effective tool?

- To explore topics and obtain information that participants seem unwilling to discuss in joint session
- To explore options for resolution and/or potential flexibility
- When participants appear to be at an impasse
- If any participants seem to distrust the mediator
- If you are concerned that a participant will be unable (or does not intend) to follow through on prospective agreements
- When the mediator needs time to reflect and strategize about the session
- When strong emotions and/or negative dialogue are escalating the differences between participants
- When a participant says that he/she is having difficulty thinking
- When a participant seems to want to get out of the room or get another mediation participant to stop talking
- When small issues suddenly become big issues
- When negative remarks are personal (not about issues) and/or hostile
- When participants seem to have lost focus of the issues to resolve
- Other ideas?

b. Determinations about when to call a caucus are made on a case by case basis. Some mediation appointments may benefit from numerous caucuses while other mediation appointments may not include any caucuses.

5 Minutes
Large Group Discussion

For More Information See:

Shapiro, 2006. *"Preempting Disaster: Pre-Mediation Strategies to Deal with Strong Emotions," pp. 309-325.*

Mennonite Conciliation Service, 2000. *Mediation and Facilitation Training Manual*, p. 194.

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict*, pp. 320-321.

Facilitator Notes:

✓ *See Curriculum Unit D.2 - "Factors to Consider When Determining If/When to Intervene" for non-verbal indicators that signal that caucusing could be useful*

5. Circumstances That Suggest Separate Discussions (continued) c. Christopher Moore reminds us that while a caucus can be held at virtually anytime during the mediation, the timing of a caucus is often associated with certain issues or tasks. • Caucuses held early in the mediation process typically focus on: o Expression of strong emotion o Designing procedures for the mediation process o Identifying issues and/or creating an agenda • Caucuses held in the middle of the mediation process typically focus on: o Avoiding rigid premature commitment to a position o Identifying interests (basic needs, concerns, desires, fears, etc.) o Brainstorming alternatives and generating options o Exploring bargaining ranges, possible resolution zones • Caucuses held late in the mediation process typically focus on: o Overcoming impasses o Creating or assessing proposals o Exploring criteria for resolution or a settlement formula o Obtaining a more complete psychological settlement (or emotional resolution)	***5 Minutes*** *Large Group Discussion* ***For More Information See:*** Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict*, pp. 320-321.

6. Tips & Suggestions for Separate Discussions

15 Minutes
Large Group Discussion

a. When you think about meeting with dependency mediation participants individually or in small groups, what ideas do you have about ways to introduce the option for these separate discussions? What tips and suggestions come to your mind? *(Slides 7-8)*

PowerPoint Slides 7-8

1. Provide information about this option at the onset:
   - At the beginning of the mediation educate participants about the purpose, benefits and possibility of a caucus sometime during process
   - Frame the caucus (or case preparation contact) as a way to help **all** participants get the most out of mediation
   - Inform participants about how confidentiality and exceptions to confidentiality apply to separate discussions
     - In particular, educate participants about whether or not information shared in caucus may be disclosed by the mediator to the other mediation participants
     - Prior to separate discussion, ensure that it is clear whether or not the mediator is a mandated reporter of abuse as other mandated reporters may not be present during the caucus
   - Educate participants about what will take place when the joint session is reconvened
2. Responding to participant concerns about caucuses:
   - A participant's reluctance to meet separately may be related to concerns about confidentiality, fear that the mediator may side with the other participant(s), or problems with how others will perceive the individual's participation in a separate meeting
   - Address participant concerns respectfully and use collaborative and consensus building techniques to avoid power-struggles around whether or not to caucus
3. Timing considerations:
   - Avoid utilizing caucuses prematurely, "when parties are still capable of working productively in joint session" (Moore, p. 321)
   - Avoid utilizing caucuses too late, after "unproductive hostile exchanges or actions have hardened positions." (Moore, p. 321)
4. Balance considerations:
   - Demonstrate equitable and impartial mediator behavior by meeting with individuals/small groups for the same number of caucuses and for close to same amount of time

Materials

Handout B – "Tips & Suggestions for Separate Discussions"

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict,* pp. 321-323.

6. Tips & Suggestions for Separate Discussions (continued)

5. Logistical considerations:
   - Privacy to speak candidly requires a separate room where participants can neither see nor hear each other
6. Duration considerations:
   - When possible, avoid having separate discussions last too long (perhaps 10-15 minutes) without checking in (or meeting separately) with the other mediation participants
   - The longer the duration of the caucus, the greater the likelihood that other participants will become anxious/suspicious about the caucus
   - It may be helpful to agree in advance to a specific caucus duration
   - Sometimes it is helpful for waiting participant(s) to be given a task to do while mediator talks with "other side" (a relevant distraction)
   - If a caucus is to take more than an hour, it is preferable to have a formal break in mediation as a courtesy to non-caucusing participants
7. Considerations related to which participants to meet with first
   - May meet first with initiator of dispute/mediation or caucus requestor
   - May meet first with the participant appearing most inflexible
   - May meet first with the participant(s) the mediator perceives to be most upset or alienated from the mediator/court process
   - Create smooth transition to separate discussions:
   - Sample language: "You have been discussing this issue together for quite a while. I believe that it may be helpful to take a break so that you can reflect on the available options in private. During this time, I would like to speak to each of you privately and explore whether there is any additional room for movement. I estimate that I will talk to each of you for about ten minutes." (Moore, p. 322).
8. Catching constituents/team members up:
   - If you are meeting with only part of a "team" (e.g., social worker without his/her attorney) have caucus participant update his/her "team member" (over a break or with the help of the mediator in another caucus) so that the absent individual understands the rationale for perspective changes, and is thus less likely to undermine agreements or resist "shifts"
   - Create smooth transition back to joint session:
   - Consider how to explain the results of the separate discussions

15 Minutes
Large Group Discussion

PowerPoint Slides 7-8

Materials
Handout B – "Tips & Suggestions for Separate Discussions"

For More Information See:

Moore, 1996. *The Mediation Process: Practical Strategies for Resolving Conflict*, pp. 321-323.

Practitioner Considerations:

If you are co-mediating and time constraints make it difficult to caucus, consider having each mediator meet separately with a different group of mediation participants. Be sure that participants know that even if mediators will not share caucus disclosures with the "other side" the mediator will update his/her mediation partner so that the co-mediation team can optimally design the mediation process.

6. Tips & Suggestions for Separate Discussions (continued)

15 Minutes
Large Group Discussion

- Consider which participant(s) should speak first after caucus
- Before reconvening, help participant(s) consider the optimal way to make offers after caucus (e.g., helping the other participant(s) save face or understand the new proposal's rationale)
- When concluding a caucus avoid both verbal and non-verbal language that the other party might interpret as mediator alignment (e.g., opening the door to the caucus room while laughing or smiling)

7. Large Group Discussion:

5 Minutes

PowerPoint Slides 9-10

Confidential or Non-Confidential Separate Discussions?

a. While most dependency mediation programs provide that information shared in separate discussions (whether case preparation or caucusing) may not be disclosed to other mediation participants without the speaker's explicit permission, there are some programs that take a **"no secrets"** approach to information shared in separate meetings. What do you imagine are the benefits and limitations of a **non-confidential** approach to information shared in separate discussions? *(PowerPoint Slide 9)*

   - Benefits:
     - Mediator is able to use all information he/she has to its best effect- not stuck with sensitive information that he/she is unable to use for the benefit of the mediation process
     - Highlights the fact that the mediator's allegiance is to the optimal process for all mediation participants; Mediator reserves right to use best clinical judgment re. caucus information to serve mediation unit
     - Need to defer or conclude mediation (due to problematic caucus disclosures) reduced
   - Limitations:
     - Participants less likely to "open up" and freely share with mediator
     - The missing information that is not being shared by mediation participants may be the exact information necessary for resolution

For More Information See:

- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), p. 323.*
- *Spangler, Brad. "Caucus." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: June 2003*
- http://www.beyondintractability.org/bi-essay/caucus

7. Large Group Discussion:

Confidential or Non-Confidential Separate Discussions? (CONTINUED)

- Important:
  - Mediation participants should be aware of how the information will be safeguarded or disclosed, ***before*** mediation begins.
  - How does your program handle caucus information - is it confidential or not? *(PowerPoint Slide 10)*
- Approaches to "No Secrets":
  - "As your mediator, I will not hold information that is revealed outside of the presence of the other mediation participants confidential from these missing individuals. In my l discretion and judgment, I may choose to disclose caucus information to other mediation participants as necessary for the benefit the mediation process."
  - If you utilize a "no secrets" approach to caucus information, consider having this policy included with your written confidentiality and exceptions to confidentiality form.

b. Within a framework of confidential separate discussions mediators have several strategies to help information from caucus be used to its best effect.

- Only information that participants specifically identify as confidential is kept private; "Is there anything that we have talked about that you would **not** like me to disclose?"
- Everything is treated confidentially unless participant gives specific permission for disclosure; To prevent misunderstandings, some mediators have parties list & initial issues that mediator has the authority to discuss
- Mediator can help participants assess what information they may want to share with the "other side" and embrace the rationale for the disclosure
- With the participant's approval, the mediator can float an idea as his/her own idea vs. an idea that originated with the participant
- Be prepared to evaluate whether or not you may need to defer/conclude the mediation because of the information shared with you in caucus.
- If you believe that the mediation should be concluded- consider whether you might be able to continue mediating for a period of time (keeping the information private) to explore with the participant whether he/she is willing (with additional time and understanding) to share his/her sensitive information.

CONTINUED

Misconception Alert:

While a mediator who receives information in caucus that makes continuing mediation inappropriate may be tempted to directly reconvene the joint session and announce the end of mediation, the mediator may be wise to instead find a way to conclude the session in a way that does not imply that sensitive information was revealed in caucus. See Unit D., Chapter 5

7. Large Group Discussion: **Confidential or Non-Confidential Separate Discussions? (CONTINUED)** o o Receiving sensitive information in caucus does not always mean that a mediation appointment must be concluded. In other words, not all revelations impede the mediator's ability to effectively conduct the mediation. If you are unable to articulate to yourself why the mediation appointment should be concluded, consider continuing the mediation process until you either feel more convicted about ending the session or more comfortable with proceeding. o In some instances it may be appropriate for the mediator to inform the mediation participant (who discloses information in a private caucus that impedes the mediator's ability to effectively and ethically proceed with the mediation) that the mediator's continued involvement in the mediation process depends upon the stakeholder disclosing this information to the other participant(s). o Follow your program's policies regarding confidentiality and exceptions to confidentiality and review these policies with participants if mandatory/optional disclosure issues arise. o As always, **consult** with colleagues and supervisors when you are in doubt about how to proceed!	***CONTINUED***

8. OPTIONAL Case Scenario Practice Exercise & Discussion: **Complex Issues (For Mixed or Advanced Practitioners)** a. While caucuses can be an immensely helpful tool in dependency mediation, challenging issues can arise. The following case scenario is provided to help training participants practice responding to difficult situations. o Instructions (Option A) ▪ Trainer role-plays or explains *"Case Scenario D-3"* to the group ▪ Individuals volunteer to role-play a response or suggest strategies ▪ Large group discussion follows o Instructions (Option B) *(PowerPoint Slide 11)* o Break into pairs where seated and read *"Case Scenario D-3"* o Pairs have 5 minutes to craft a response to the scenario o When formulating a response: • Include ideas about what the mediator might say or do • Suggest ways for the mediator to approach the case Discuss how the mediator should handle the information disclosed during the private caucus; Should the mediator conclude the mediation? Continue the mediation? How?	***OPTIONAL*** ***15 Minutes*** ***Participant Handout:*** • *D.3. Case Scenario Practice Exercise* • *Note – this is a very complex scenario for initial training.* ***PowerPoint Slide 11*** ***Facilitator Notes:*** *Option B instructions are on PowerPoint Slide 11 for training group to refer to during exercise*

o **Case Scenario D-3:** o You are mediating a termination of parental rights case in which the child (Jordan- age 5) is placed with his maternal grandmother (Shawnda) and step-grandfather (Marcus). In caucus with the mother (Leticia), Leticia's attorney (Alex), Shawnda and Marcus, Leticia states that (contrary to court order) her family regularly lets her have unsupervised visits, including overnights, with her son. Leticia further mentions that her mother and stepfather primarily want to adopt Jordan to receive adoption assistance funding. According to Leticia, Shawnda privately told her that after the adoption is finalized Leticia can spend unsupervised time with Jordan any time. Leticia, Alex, Shawnda and Marcus do not want this private caucus information disclosed to the social worker, county counsel and other mediation participants as they fear that Jordan may be removed from his grandparents and placed with strangers willing to adopt him.	
b. Is it possible for a mediator to maintain impartiality while collaboratively working with a participant to enhance the participant's capacity to mediate? o Addressing the issue of enhancing capacity, mediator/trainer James Melamed suggests that the role of the mediator is to "maximally assist each participant to most capably consider the situation and their options." *(Melamed, p. 3, citation on right)* o "Noting that parties to any given mediation have different personal needs, ideas, interests and abilities, Melamed supports the idea that the mediator is there to give 'comparably maximized assistance' to each of the parties. He argues that empowering parties to make their best decision can never be done in exactly the same way for different parties. It should be done in the best way possible according to the actual needs of the individual parties." *(Blank, p. 4, citation on right)*	*James Melamed, "Maximizing Mediation," See www.mediate.com/articles/melamed4.cfm)*

9. Summary & Close:	
a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit D.3. "*Self-Assessment & Reflection Tool*" and *"Training Reflection"* d. Encourage participants to provide feedback on the Unit D.3. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Participant Handouts:*** • *Self-Assessment & Reflection Tool* • *Training Reflection*

UNIT D., Chapter 3, Caucusing

REFERENCES

- *Bush, R. A. B. & Folger, J. P., The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition (1994), pp. 270-271.*
- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 319-326.*
- *Mosten, F. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, (1997), pgs 250, 420.*
- *Shapiro, D. "Preempting Disaster: Pre-Mediation Strategies to Deal with Strong Emotions" in Handbook of Mediation: Bridging Theory, Research, and Practice (2006), Herrman, M., Ed., pp. 309-325.*
- *Spangler, Brad. "Caucus." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: June 2003* http://www.beyondintractability.org/bi-essay/caucus
- *Melamed, J, "Maximizing Mediation," See www.mediate.com/articles/melamed4.cfm)*
- Mennonite Conciliation Service, 2000. *Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation*, (4th Edition), pgs 194, 196.

Juvenile Dependency Mediation

DRAFT Curriculum PowerPoint Presentation

Unit D.3.

Caucusing

What is a Caucus?

- Part of mediation in which the mediator meets privately & separately with each (or one)* party, group, or “side” of the dispute
- Portion of mediation in which direct communication between the participants is deliberately restricted
- Typically caucuses called by the mediator or requested by participant(s)

Potential Benefits of Caucusing

1. Participant(s) able to express intense emotions without aggravating others
2. Mediator able to be more **supportive** than is acceptable in joint session
3. Mediator able to be more **firm** than is acceptable in joint session
4. Enhanced information gathering
5. Increased participant flexibility & creativity
6. Can interrupt negative trends in session

Potential Benefits of Caucusing

7. Medium for participant coaching
8. Privacy to more fully explore important negotiation/substantive issues
9. Tool to make spectrum of perspectives (within a team) more explicit
10. Means for creating a sense of balance
11. Device to help involve lawyers appropriately
12. Forum to assess mediation process

Potential Drawbacks of Caucusing

1. Greater opportunity for mediator manipulation and control of settlement
2. Greater possibility for mediator bias or alliance with one “side”
3. Greater potential for distrust of the mediator/mediation process
4. Participants less likely to develop own resolution skills
5. Participants may be less truthful without others present

Potential Drawbacks of Caucusing

6. Mediator may unintentionally disclose private information from caucus
7. Mediator may receive information in caucus that makes it inappropriate to continue or confounds session productivity
8. More time consuming than joint session
9. May interrupt the flow of mediation
10. Unproductive down-time for non-caucusing participant

Tips for Separate Discussions

1. Prepare participants and frame use of caucus; be sure to address confidentiality
2. Graciously respond to participant concerns about caucusing
3. Appropriately time caucuses (not too early, not too late)
4. Demonstrate balance- same number of caucuses & aim for same duration of time
5. Ensure privacy- caucus room out of sight & hearing

Tips for Separate Discussions

6. Avoid having caucuses last too long (aim 10-15 min.); Consider task for those waiting
7. Thoughtfully determine who to meet w/ first
8. Create a smooth transition to caucus
9. Have caucus participants catch absent team members up
10. Create a smooth transition back to joint session

Confidential or Non-Confidential?

Benefits:

- Mediator able to use all info. to best effect
- Highlights fact that mediator's allegiance is to the optimal process for all participants
- Need to defer or conclude mediation (due to problematic caucus disclosures) reduced

Limitations:

- Participants less likely to share freely
- Missing info. may be essential for resolution

Your Court’s Mediation Program

- Insert information about how your program handles information from separate discussions (i.e., is caucus information confidential or not?)

Practice Exercise Instructions

1. *Break into pairs where seated & read scenario*
2. *Pairs have 5 minutes to craft a response to the scenario*
3. *When formulating a response:*
   - *Include ideas about what the mediator might say or do*
   - *Discuss ways for mediator to approach the case*
   - *How should the mediator handle the information disclosed during the private caucus? Should the mediator conclude the mediation session? Continue mediation? How?*
   - *Prepare general tips & suggestions for cases in which sensitive information is disclosed in confidential caucus*
4. *Report back: Pairs have 2 minutes to share ideas w/ the large group (prioritize your remarks)*
5. *Group discussion: Discuss reactions & approaches to scenario*

Potential Benefits and Drawbacks of Separate Discussions

BENEFITS	DRAWBACKS
• Participant(s) able to express intense emotions without aggravating others	• Greater opportunity for mediator manipulation and control of settlement
• Mediator able to be more supportive than is acceptable in joint session	• Greater possibility for mediator bias or alliance with one "side"
• Mediator able to be more firm than is acceptable in joint session	• Greater potential for distrust of the mediator/mediation process
• Enhanced information gathering	• Participants less likely to develop own resolution skills
• Increased participant flexibility and creativity	• Participants may be less truthful without others present (accountability)
• Can interrupt negative trends in session	• Mediator may unintentionally breach caucus confidentiality
• Medium for participant coaching	• Mediator may receive information in caucus that makes it inappropriate to continue or confounds session productivity
• Privacy to more fully explore important negotiation/substantive issues	• Caucusing is more time consuming than joint session
• Tool to make spectrum of perspectives (within a team) more explicit	• Possibly interrupts the flow of mediation
• Means for creating a sense of balance	• Potentially unproductive down-time for non-caucusing participants
• Device to help involve attorneys appropriately	
• Forum to assess mediation process	

For more information see:

- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 323.*
- *Mosten, F. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, (1997), p. 250.*
- *Bush, R. A. B. & Folger, J. P., The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition (1994), pp. 270-271.*
- *Spangler, Brad. "Caucus." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: June 2003; http://crinfo.beyondintractability.org/essay/caucus/*
- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 196.*

Tips & Suggestions for Separate Discussions

1. Forewarning and preparation considerations:
   - At the beginning of the mediation educate participants about the purpose, benefits and possibility of a caucus sometime during the mediation process
   - Frame the caucus (or case preparation contact) as a way to help **all** participants get the most out of mediation
   - Inform participants about how confidentiality and exceptions to confidentiality apply to separate discussions
     - In particular, educate participants about whether or not information shared in caucus may be disclosed by the mediator to the other mediation participants
     - Prior to separate discussion, ensure that it is clear whether or not the mediator is a mandated reporter of abuse as other mandated reporters may not be present during the caucus
   - Educate participants about what will take place when the joint session is reconvened

2. Responding to participant concerns about caucuses:
   - A participant's reluctance to meet separately may be related to concerns about confidentiality, fear that the mediator may side with the other participant(s), or problems with how others will perceive the individual's participation in a separate meeting
   - Address participant concerns respectfully and use collaborative and consensus building techniques to avoid power-struggles around whether or not to caucus

3. Timing considerations:
   - Avoid utilizing caucuses prematurely, "when parties are still capable of working productively in joint session"[1]
   - Avoid utilizing caucuses too late, after "unproductive hostile exchanges or actions have hardened positions."[2]

4. Balance considerations:
   - Demonstrate equitable and impartial mediator behavior by meeting with individuals/small groups for the **same number** of caucuses and for close to **same amount of time**

5. Logistical considerations:
   - Privacy to speak candidly requires a separate room where participants can neither see nor hear each other

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[1] Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), p. 321.

[2] Ibid, p. 321

6. Duration considerations:
   - When possible, avoid having separate discussions last too long (perhaps 10-15 minutes) without checking in (or meeting separately) with the other mediation participants
   - The longer the duration of the caucus, the greater the likelihood that other participants will become anxious/suspicious about the caucus
   - It may be helpful to agree in advance to a specific caucus duration
   - Sometimes it is helpful for waiting participant(s) to be given a task to do while mediator talks with the "other side" (a relevant distraction)
   - If a caucus is to take more than an hour, it is preferable to have a formal break in mediation as a courtesy to non-caucusing participants

7. Considerations related to which participant(s) to meet with first:
   - May meet first with initiator of dispute/mediation or caucus requestor
   - May meet first with the participant appearing most inflexible
   - May meet first with the participant(s) the mediator perceives to be most upset or alienated from the mediator/court process

8. Create smooth transition to separate discussions:
   - Sample language: "You have been discussing this issue together for quite a while. I believe that it may be helpful to take a break so that you can reflect on the available options in private. During this time, I would like to speak to each of you privately and explore whether there is any additional room for movement. I estimate that I will talk to each of you for about ten minutes."[3]

9. Catching constituents/team members up:
   - If you are meeting with only part of a "team" (e.g., social worker without his/her attorney) have the caucus participant update his/her "team member" (over a break or with the help of the mediator in another caucus) so that the absent individual understands the rationale for perspective changes, and is thus less likely to undermine agreements or resist "shifts"

10. Create smooth transition back to joint session:
    - Consider how to explain the results of the separate discussions
    - Consider which participant(s) should speak first after caucus
    - **Before reconvening**, help participant(s) consider the optimal way to make offers after caucus (e.g., helping other participant(s) save face or understand new proposal's rationale)
    - When concluding a caucus avoid both verbal and non-verbal language that the other party might interpret as mediator alignment (e.g., opening the door to the caucus room while laughing or smiling)

[3] Ibid, p. 322.

D.3. Case Scenario Practice Exercise

While caucusing can be an immensely helpful tool in dependency mediation, challenging issues can arise. The following case scenario is provided to help mediators practice responding to difficult situations.

You are mediating a termination of parental rights case in which the child (Jordan- age 5) is placed with his maternal grandmother (Shawnda) and step-grandfather (Marcus). In caucus with the mother (Leticia), Leticia's attorney (Alex), Shawnda and Marcus, Leticia states that (contrary to court order) her family regularly lets her have unsupervised visits, including overnights, with her son. Leticia further mentions that her mother and stepfather primarily want to adopt Jordan to receive adoption assistance funding. According to Leticia, Shawnda privately told her that after the adoption is finalized Leticia can spend unsupervised time with Jordan any time. Leticia, Alex, Shawnda and Marcus do not want this private caucus information disclosed to the social worker, county counsel and other mediation participants as they fear that Jordan may be removed from his grandparents and placed with strangers willing to adopt him.

- *Instructions (Option A):*
  - *Trainer role-plays or explains the scenario to the group*
  - *Individuals volunteer to role-play a response or suggest strategies for approaching the case*
  - *Large group discussion follows*

- *Instructions (Option B):*
  - *Participants break into pairs where seated and individually read the scenario*
  - *Pairs have five minutes to craft brief responses to the scenario*
  - *When formulating a response participants:*
    - *Consider what mediation strategies/approaches might be helpful in the case scenario*
    - *Formulate general tips and/or suggestions for cases in which the mediator learns sensitive information in a private caucus*
  - *Participants report back: Pairs have 2 minutes to share their ideas*
  - *Large group discussion: Facilitator and other participants can respond and discuss possible responses to the scenario*

Training Self-Assessment

D.3. Caucusing

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My understanding of the potential benefits and drawbacks of separate discussions (case prep. & caucuses)	☐	☐	☐	☐
My ability to appropriately time the use of separate discussions	☐	☐	☐	☐
My knowledge and utilization of best practices for conducting separate discussions	☐	☐	☐	☐
My awareness of confidentiality issues and ethical considerations when conducting separate discussions	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit D:

Conducting a Dependency Mediation Appointment

CONTENTS

D.1. Orienting Participants to Dependency Mediation

D.2. Multi-Party Mediation & Collaborative Resolution Methods

D.3. Caucusing

D.4. Co-Mediation

D.5. Concluding Mediations Appropriately

Unit D, Chapter 4:
Co-Mediation

Required Instructional Materials:

- Computer
- PowerPoint Slides
- Projection Screen

Presentation Methods:

- Large Group Discussion
- OPTIONAL: Discussion in Pairs

Participant References:

Unit D.4. Participant Handouts

- Participant Handout A- *"Potential Benefits & Challenges of Co-Mediation"*
- Participant Handout B- *"Strategies for Effective Co-Mediation"*
- Participant Handout C- *"Enhancing Co-Mediator Collaboration"*
- Participant Handout- *"Self-Assessment & Reflection Tool"*

Suggested Pre-Session Reading & Exercises:

- None

Estimated Duration:

1 Hour

OPTIONAL

15 Minutes

Discussion in Pairs: Exploring Prospective & Enhancing Existing Co-Mediation Partnerships

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***2 Minutes***
2. Large Group Discussion: Introduction to Co-Mediation----------	***3 Minutes***
3. Large Group Discussion: Potential Benefits & Advantages of Co-Mediation----------	***10 Minutes***
4. Large Group Discussion: Potential Drawbacks & Challenges of Co-Mediation----------	***10 Minutes***
5. Large Group Discussion: Co-Mediation Variations----------	***5 Minutes***
6. Large Group Discussion: Strategies for Effective Co-Mediation----	***20 Minutes***
7. Large Group Discussion: Enhancing Co-Mediator Collaboration---	***5 Minutes***
8. OPTIONAL Discussion in Pairs: Exploring Prospective & Enhancing Existing Co-Mediation Partnerships----------	***OPTIONAL 15 Minutes***
9. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After Concluding Unit D.4. Participants Will Be Able To: a. Be knowledgeable about the potential benefits and challenges of co-mediation (for both mediation participants and mediators) b. Demonstrate an awareness of co-mediation variations c. Develop strategies for successful co-mediation d. Partner effectively and resolve differences with co-mediator(s)	***2 Minutes*** ***Facilitator Notes:*** • *Welcome participants* • *Review break time, end time, location of restrooms, etc.* • *Review learning objectives with participants*

2. Large Group Discussion:

Introduction to Co-Mediation

a. What is a co-mediation?
   - Co-mediation involves two or more mediators working together to assist the parties in dispute resolution." [1]

b. *For facilitator or participants with some dependency mediation experience:*
   - How often do you co-mediate dependency cases?
   - What has your experience been (both useful and challenging) with co-mediation?

c. If your program does not routinely utilize co-mediation for all dependency cases (e.g., limited resources or a preference for single mediator mediation practice), what thoughts do you have about the types of cases that might particularly benefit from co-mediation?
   - Cases involving allegations of domestic/family violence
   - High levels of conflict and volatility
   - Power imbalances
   - Complex issues
   - Non-mutuality of proceedings
   - Concerns that one party or "side" will sabotage mediation efforts
   - Adversarial posturing

d. Given that many of the above factors are present in virtually all dependency cases, how would you prioritize these criteria? What are your program's criteria for using co-mediation? *(PowerPoint Slides 2)*

3 Minutes

PowerPoint Slide 2

For More Information See:

- *Epstein, J. & Epstein, S., "Co-Mediation." The Colorado Lawyer, June 2006, Vol. 35, No. 6, pp. 21-23.*
- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 319-326.*
- *Mosten, F. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, (1997), pp. 161-172.*
- *Gold, L., Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice, 1988, Folberg, J. and Milne, A., Eds. pp. 220-221.*
- *Bush, R. A. B. & Folger, J. P., The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition (1994), p. 89.*

[1] *Epstein, J. & Epstein, S., "Co-Mediation." The Colorado Lawyer, June 2006, Vol. 35, No. 6, p. 21.*

3. Large Group Discussion:

Potential Benefits & Advantages of Co-Mediation

a. What are some of the potential benefits and advantages of co-mediation for **mediation participants**? *(PowerPoint Slides 3-4)*

- Mediation team may more reflect participants' diverse characteristics
  - For example, male & female, Caucasian & African American, attorney and mental health professional
  - Clients that feel threatened by a mediator of the opposite sex or experience fears about the mediator being more sympathetic to same-sex parties, are likely to appreciate a male/female co-mediation team
  - Diversity of mediator backgrounds/characteristics (e.g., original professional discipline, ethnicity, gender, age, sexual orientation, neighborhood of origin, culture, religious tradition, etc.) gives more authority to the process and makes it more complete
  - Potential for clients to experience mediation as more procedurally fair
- Greater likelihood participant will trust at least one of the two mediators
- Enhanced knowledge-base, insights and tracking capacity of mediators
  - Greater observational range and two points of view for developing hunches and strategies; Combined skills of two mediators
  - One mediator may direct the content of the session while the other is available to observe the process; Can reverse roles to enable observing mediator to comment on the process or re-direct the dialogue to an overlooked topic
- Co-mediators can model cooperative problem-solving and direct dialogue
  - Co-mediators work together with mutual respect, positive communication and effective problem-solving
  - Mediators can demonstrate autonomous and interdependent behavior

10 Minutes

Participant Handout:

- ***Handout A:*** *Potential Benefits & Challenges of Co-Mediation*

PowerPoint Slides 3-6

For More Information See:

- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 319-326.*
- *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, pp. 179-189.*
- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 170.*

3. Large Group Discussion:

Potential Benefits & Advantages of Co-Mediation (CONTINUED)

- More accountability to prevent mediator alignment with one "side"
  - Co-mediators may help each other identify and appropriately handle mediator bias and unproductive counter-transference
  - Mediator opinion/subjectivity less problematic (counterbalanced by second perspective)
- Allocating two mediators to dependency mediation sends a message to participants about both the degree of judicial recognition of the complexity of the issues and the high level of court/system investment in constructive resolution

b. What are some of the potential benefits or advantages of co-mediation for **mediators**? *(PowerPoint Slide 5-6)*

- Collegial support
- Mediators can efficiently divide many mediation tasks between themselves
  - Responsibilities such as case file review, pre-mediation case preparation, room and refreshment preparation, agreement drafting/processing, and data tracking/program statistics, can be shared between co-mediators
- Co-mediation provides training, learning, and enrichment opportunities for mediators
  - Co-mediators may learn new techniques and interventions from one another
  - Co-mediation can provide 'quality control' while mediators are receiving training
  - Mediators develop skill and confidence for solo practice
  - Co-mediators can provide one another with valuable feedback during post-session debriefing
- Co-mediation allows one mediator to take a risk, while the other mediator remains available to diplomatically intervene if necessary
- Co-mediation eases the load and stress of mediation, especially in emotionally intense multi-party cases
- Co-mediation provides added protection against errors, oversights, omissions and accusations of bias [2]
  - Opportunity for mediator to check perceptions and biases

CONTINUED

Participant Handout:

- ***Handout A:*** *Potential Benefits & Challenges of Co-Mediation*

For More Information See:

- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 319-326.*
- *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, pp. 179-189.*
- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 170.*

[2] *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: …" Mediation Quarterly, Vol. 13, Issue 3, Spr 1996, p188*

4. Large Group Discussion:

Potential Drawbacks & Challenges of Co-Mediation

a. What are some potential drawbacks or challenges of co-mediation for mediation **participants**? *(PowerPoint Slide 7)*

- Must discuss painful, humiliating, and/or delicate matters in presence of yet more people
- Working with co-mediators may complicate scheduling issues
- Participants "can experience what seems to be a 'divided mind' between the mediators about what should be happening in the process"[3]

b. What are some potential drawbacks or challenges of co-mediation for the **mediators** (or court/agency employing the mediators)? *(PowerPoint Slide 8-9)*

- Increased expense for co-mediators vs. sole-mediator
  - Limited/inadequate research about how co-mediation (in contrast to solo-mediation) impacts appointment duration and resolution rate
- When co-mediators are 'out of sync' or not well-matched, co-mediation can feel awkward and frustrating
  - Possible tension, conflict and/or competition between co-mediators
  - Co-mediators may experience difficulty sharing control
  - Co-mediators may have incompatible communication styles, intervention strategies and overall philosophies
- High level of coordination necessary for effective co-mediation can sometimes feel like it is more effort than it is worth
- Co-mediation format may lead to mediator passivity, 'laziness' or inattention
  - Perhaps in an attempt to avoid disapproval or stepping on each other's toes, mediators may be more hesitant to intervene than they otherwise would be when practicing alone
- Participants might try to divide and conquer the co-mediators by 'co-opting' the most sympathetic mediator, rather than focusing on the pair as a team

10 Minutes

Participant Handout:

- ***Handout A:****Potential Benefits & Challenges of Co-Mediation*

PowerPoint Slides 7-9

For More Information See:

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 170.*
- *Gold, L., Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice, 1988, Folberg, J. and Milne, A., Eds. pp. 209-224.*
- *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, p. 180.*

[3] *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: (2000), 4th Edition; p.. 170.*

5. Large Group Discussion:

Co-Mediation Variations

a. What are some types or models of co-mediation?
   - Co-mediators as co-equal peers
   - Lead/assistant
   - Mental health practitioner/attorney
   - Gender balanced team
   - Mentor/apprentice
     - Novice mediator can gradually move from "observer, to recorder, to back-up mediator to co-mediator, and finally to lead mediator under the supervision of the senior practitioner." [4]

b. Can you think of ways that co-mediators might structure caucus work?
   - Entirely conjoint co-mediation
     - Mediators are together all of the time (e.g., orientation, joint sessions, caucuses)
   - Conjoint and separate co-mediation
     - Co-mediators work together and separately (e.g., work together during large group sessions and facilitate caucuses separately)
       - Having co-mediators conduct separate caucuses at the same time is particularly helpful when time pressures are intense and/or meeting with several different caucus groups is indicated and sequential meetings require substantial non-caucus waiting time for participants)
       - If mediators anticipate that they will conduct separate caucuses it is important for them to clarify (at the outset of the mediation appointment) that mediators will share the content of separate discussions between themselves as mediators (even if this information is not disclosed to the other mediation participants)
       - Care must be taken so that if/when separate caucuses take place the mediator facilitating the separate caucus is not seen as the advocate for those caucus participants

5 Minutes

For More Information See:

- *Epstein, J. & Epstein, S., "Co-Mediation." The Colorado Lawyer, June 2006, Vol. 35, No. 6, pp. 21-23.*
- *Mosten, F. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, (1997), pp. 161-172.*
- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 194.*
- *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, pp. 179-189.*

[4] *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), p. 364.*

6. Large Group Discussion:

Strategies for Effective Co-Mediation

a. When you think about effective co-mediation, what strategies would maximize the advantages of co-mediation and avoid the potential challenges of teamwork? *(Unless otherwise indicated, quotes are from Love & Stulberg- citation on right)*

1. When possible, co-mediate with individuals with a similar vision of mediation and compatible strategies (p. 181)
   - If the goals and methods of co-mediators are too divergent, partnership can be challenging and effective mediation compromised
   - For example, tensions or confusion may arise if:
     - One mediator focuses on efficient issue settlement while colleague focuses on dialogue to help parties better understand one another
     - One utilizes caucuses routinely while the other only caucuses in special circumstances
     - One practices with attorneys highly involved while the other has attorneys present in a secondary or consultation role, co-mediators may be working at cross-purposes
   - Love and Stulberg write, "While it may be productive to *observe* and learn from a mediator with a different orientation and basic strategies, effective partnership requires a consonance in goals, objectives and strategies." (p. 181)
2. Spend time together before each mediation appointment
   - Set aside at least 15-20 minutes before each appointment to discuss, plan and strategize
3. Decide with your co-mediator who will be lead at any point in time (p. 182)
   - Prevents a power vacuum or situation in which neither mediator responds
   - Particularly helpful when co-mediators have not previously co-mediated with one another
   - Can have one mediator lead entire session or divide session into discrete segments
   - Lead mediator can gracefully provide session direction (for his/her segment) when conflicts between mediators arise

20 Minutes

Participant Handout:

- ***Handout B:*** *Strategies for Effective Co-Mediation*

PowerPoint Slides 10-12

For More Information See:

- *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, pp. 179-189.*
- *Gold, L., Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice, 1988, Folberg, J. and Milne, A., Eds. pp. 209-224.*
- *Gold, L., "The Psychological Context of the Interdisciplinary Co-Mediation Team Model in Marital Dissolution." Conciliation Courts Review, Vol. 20, No. 2, December 1982, pp. 45-53.*

6. Large Group Discussion:

Strategies for Effective Co-Mediation (CONTINUED)

4. Use initial remarks to set the right tone for the co-mediation (p. 184)
   - Co-mediators' opening statement should reinforce perceptions of a team
   - Use pronoun "we" vs. "I"
   - If one mediator gives entire orientation, he/she can ask co-mediator, "Is there anything that you would like to add?"
   - Alternatively, co-mediators can arrange to deliver different segments of the orientation/initial remarks
5. Strategically plan seating arrangements (pp. 182-184)
   - Co-mediators side by side
     - Advantages:
       - Unifies focus of discussion as parties look toward both mediators
       - Side conversations with one mediator less likely
       - Mediators can discretely communicate with one another
     - Disadvantages:
       - Mediators cannot easily see one another (making intra-team communication challenging)
       - Sitting side by side, both mediators remain "in focus" throughout the entire appointment (no psychological break)
   - Co-mediators across from one another (e.g., opposite ends of table)
     - Advantages:
       - Mediators able to see one another more easily
       - Mediators may have psychological break out of "line of fire" while colleague leads discussion
     - Disadvantages:
       - Participants may be more likely to attempt side-conversations with less active, observer-mediator
   - Seating considerations that foster balance of diversity (gender, ethnicity, culture, age, etc.)
     - For example, when both parents are involved in a dependency mediation appointment it may be helpful to have the mother sit by the male co-mediator and the father sit by the female co-mediator- reducing perception of same gender mediator advocacy
     - Of course there may be times when a participant benefits from the close proximity/support of the mediator who is similar in some way to the participant

CONTINUED

Participant Handout:

- ***Handout B**: Strategies for Effective Co-Mediation*

6. Large Group Discussion:

Strategies for Effective Co-Mediation (CONTINUED)

6. Consult with your co-mediator before making important decisions (p. 185)
   - Important decisions like developing the agenda or deciding to caucus are ideally made by mediator consensus (either subtle nods across table or in private discussion)
   - When in the lead role frequently ask your colleague: "Is there anything that you would like to add?" or "Is there anything that we should explore further before moving on." (L&S p. 185)
7. Divide tasks with your co-mediator for greater efficiency and productivity (p. 184)
   - Possible tasks to divide:
     - Case preparation (e.g., phone calls with professionals/parties)
     - Court file and document review
     - Managing administrative paperwork (referral orders, formatting agreement template, preparing forms and mediation case file)
     - Room and refreshment preparations (if relevant)
     - Greeting clients and distributing program forms (e.g., brochure, intake form, DV screening, confidentiality & exceptions)
     - Drafting agreements as they emerge in session
     - Processing signed agreements (e.g., presenting to court for signature or making copies for the parties once signed by judge)
     - Distributing and collecting exit surveys/program evaluation forms
     - Completing session statistics/data tracking for mediation program
     - Room clean-up
8. "Maintain a unified focus so that common understandings are reached" (p. 185)
   - Follow your colleague's line of inquiry (or discuss possible change with co-mediator privately) before pursuing a different approach to mediation appointment
   - The mediation appointment may develop an unsettling quality if neither co-mediator pursues the other's lead but instead brings up new material
   - Both mediators should participate in the same discussion, avoiding distracting side-conversations
     - Less active mediator can rivet attention on the speaking party-thus demonstrating unwillingness to be drawn into side conversations

CONTINUED

Participant Handout:

- ***Handout B**: Strategies for Effective Co-Mediation*

6. Large Group Discussion:

Strategies for Effective Co-Mediation (CONTINUED)

9. Consider whether helpful to assume complementary mediation postures or roles
   - For example, one mediator may skeptically help participants "reality test" options while the other is more supportive; One mediator adopts a practical/detailed focus while the other assumes a big picture view
10. "Adopt the principle of noncompetition among mediators" (p. 185)
    - It is not necessary for co-mediators to equally share speaking time
    - "Whatever works best" should be each mediator's guiding principle
11. "Use the diversity of the mediation team to maximum advantage" (p. 186)
    - While single mediators must guard against gender/culture/ethnicity identification and rapport based on similar characteristics between the mediator and a participant, diverse co-mediation teams can capitalize on these connections
    - If/when confrontation and limit setting are necessary, it is often more effective to have the mediator of the same sex/culture/ethnicity etc. intervene
      - "A client may be more willing to hear from the same-sex mediator because he or she feels less threatened and less concerned about mediator bias" (Gold, 1988, p. 216)
    - To help minimize sexual and other stereotyping have both mediators (regardless of gender/culture/ethnicity, etc.) empathize, validate and challenge mediation participants
    - Examples of capitalizing on benefits of co-mediation team diversity: a.) Sub-assertive mother in dependency case observes appropriately assertive female co-mediator and subsequently feels more legitimate about expressing her own interests and concerns; b.) Male co-mediator models appropriate openness and vulnerability to male mediation participant in preparation for issue resolution
    - When there is a (perceived) power imbalance between mediation participants, a matching power imbalance in the co-mediation team should be avoided
12. "Be flexible" (pp. 186-187)
    - Session circumstances change and co-mediators (like solo-mediators) must adjust and respond flexibly to shifting needs and conditions

CONTINUED

Participant Handout:

- ***Handout B:*** *Strategies for Effective Co-Mediation*

Advanced Practitioner Considerations:

Innovative mediation programs (like San Francisco's), have employed dependency court graduate parents as co-mediators. Not only is this practice hope-generating for parents, it also provides an important modeling opportunity as clients identify with and relate to a parent that has successfully concluded his/her dependency case.

6. Large Group Discussion:

Strategies for Effective Co-Mediation (CONTINUED)

CONTINUED

Participant Handout:

- ***Handout B**: Strategies for Effective Co-Mediation*

13. Develop a fall-back plan for unsuccessful co-mediation (p. 186)
    - Not all teams are a good match- especially when first collaborating
    - If co-mediation is not serving clients well and a mediator caucus does not solve the issues, consider having one mediator conduct the session while the other observes; Be sure to debrief after session
14. "Support each other" (p. 187)
    - Encourage and respect your co-mediator's contributions; Invite his/her comments frequently
    - Affirm strengths and be gracious with shortcomings, as all mediators are taking risks and continuing to develop professionally

Advanced Practitioner Considerations:

Noting various similarities between improvisational theater and co-mediation Ann McBroom writes, "Both [improvisational theater and co-mediation] involve two or more people, both are guided by a structure and set of principles, both occur 'in the moment,' and both engage around previously unknown subject matter." According to McBroom, one of the key principles of improvisational theater is 'acceptance.' McBroom writes, "Acceptance means that no matter what comes your way, your response is always 'yes…. and.' 'Yes, and…' adds to and multiplies the potential." Consider accepting what your colleague 'hands you' in mediation as a way to build trust with your co-mediator and develop constructive momentum in session.

McBroom, A., "Getting in Sync: What Improvisational Theater has to Teach Co-Mediators," Bellevue Neighborhood Mediation Program; See www.bellevuewa.gov/pdf/PCD/Improv_and_Mediation_Skills.pdf.

15. "Debrief after each co-mediation" (p. 187)
    - Spend at least 15-20 minutes after every appointment to debrief both the case and co-mediation partnership; share observations and provide one another with constructive feedback
    - Debriefing gives co-mediators an opportunity to troubleshoot areas for improvement (individually and as a team), and build on strengths
    - To maximize the value of your feedback be specific (vs. general impressions) and use examples
    - To ensure that recollections are fresh, debrief as soon after the mediation appointment as possible
    - All feedback should be provided in a spirit of improving individual and team performance
    - Be sure to include positive feedback as it leads to repetition of successful behaviors and creates more openness in the team

7. Large Group Discussion: **Enhancing Co-Mediator Collaboration** a. Imagine that two of your colleagues approach you for guidance about what to do if, in the middle of their next co-mediation, they are unable to partner effectively? What advice would you give your colleagues? [5] o Speak privately with your co-mediator and diplomatically describe the behaviors that you are uncomfortable with o While attentive to time, give each other a chance to identify: ▪ The hopes and intentions behind the behaviors ▪ How the words/actions fit or do not fit with the role of the mediator ▪ How the behaviors are impacting the work of the negotiating parties o Negotiate how to handle your differences in order to optimally serve mediation participants. Options include: ▪ Agreeing that the behavior is not ideally suited to the situation ▪ Proceeding with one mediator's selected method ▪ Experimenting with one approach and meeting privately to assess results ▪ "Meeting separately with the parties if your co-mediator feels something s/he has been doing at the table is still important, yet you feel it is inappropriate to do in joint session" (p. 197) ▪ If tension between co-mediators cannot be resolved, consider ending the session • Be sure to frame the termination of the mediation as a product of the co-mediators' joint concern about serving clients optimally- not the result of any failure on the part of mediation participant(s)	***5 Minutes*** ***Participant Handout:*** • ***Handout C:*** *Enhancing Co-Mediator Collaboration* ***For More Information See:*** • *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 197.* • *McBroom, A., "Getting in Sync: What Improvisational Theater has to Teach Co-Mediators," Bellevue Neighborhood Mediation Program.*

[5] *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 197.*

7. Large Group Discussion: **Enhancing Co-Mediator Collaboration (CONTINUED)** b. If (in the middle of a mediation appointment) you have a difference of opinion with your co-mediator and you want to explore your dissimilar perspectives (either in session or privately), what might you say to your colleague? Remember that tone of voice can make comments sound either supportive and constructive or belittling and critical. o "Interesting comment… Is that how you see this issue?" o "I could be off here, but I heard things a little differently…." o "I'm not following as well as I would like to. Can you help me better grasp the session direction/focus?" o "I'm thinking that __ might be helpful. What do you think?" o "… **And** I'm wondering if __ might be relevant, too." o "What do you think about exploring ___ with mediation participants?" o "Do you think it might be good timing for mediation participants to __?"	***CONTINUED***

8. OPTIONAL Discussion in Pairs: **Exploring Prospective & Enhancing Existing Co-Mediation Partnerships** a. Have participants meet in pairs with either prospective or existing co-mediation partners. Pairs can review and discuss Unit D.4. handouts and/or explore the dialogue topics below: *(PowerPoint Slides 13-14)* o How did you become interested in dependency mediation? o What do you enjoy (or anticipate that you will enjoy) about mediating dependency cases? o Describe your philosophy or vision of dependency mediation o How do you approach attorney involvement in the dependency mediation process? o How do you approach separate discussions/caucuses in dependency mediation (e.g., standard element to your practice, reserved for unusual circumstances, other)? o What positive experiences have you had with co-mediation? Alternatively, what do imagine that you will appreciate about co-mediation? o What have you dynamics have you found challenging about co-mediation? Alternatively, what do you imagine might be difficult for you about co-mediation? Or, what are some of your reservations or hesitations about co-mediation? o What ideas do you have about effective ways to partner with one another? o How would you like to approach one another when there are differences of opinion?	***OPTIONAL*** ***15 Minutes*** ***PowerPoint Slides 13-14*** ***Participant Handouts:*** • ***Handout A****:Potential Benefits & Challenges of Co-Mediation* • ***Handout B****: Strategies for Effective Co-Mediation* • ***Handout C****: Enhancing Co-Mediator Collaboration*

<u>9. Summary & Close:</u> a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit D.4. "*Self-Assessment & Reflection Tool*" d. Encourage participants to provide feedback on the Unit D.4. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***<u>Participant Handout:</u>*** • *Self-Assessment & Reflection Tool*

Juvenile Dependency Mediation

DRAFT Curriculum PowerPoint Presentation

Unit D.4.
Co-Mediation

California Administrative Office of the Courts

Your Mediation Program

- What are your dependency mediation program's criteria for using co-mediation?

Benefits of Co-Mediation for Participants

- Mediation team can represent participants' diverse characteristics
- Greater likelihood participant will trust at least one of the two mediators
- Enhance the expertise, insights and listening capacity of the interveners

Benefits of Co-Mediation for Participants

- Co-mediators can model cooperative problem-solving and direct dialogue
- More accountability to prevent mediator alignment with one “side”
- Important statement to participants concerning the level of judicial recognition of the complexity of the issues & investment in constructive resolution

Benefits of Co-Mediation for Mediators

- Collegial support
- Mediators can efficiently divide many mediation tasks between themselves
- Provides training, learning, and enrichment opportunities for mediators
- Allows mediators to take more risks, as colleague able to counterbalance or diplomatically intervene

Benefits of Co-Mediation for Mediators

- Eases the load and stress of mediation, especially in emotionally intense multi-party cases
- Provides mediators with added protection against errors, oversights, omissions and accusations of bias

Potential Co-Mediation Challenges for Participants

- Must discuss painful, humiliating, and/or delicate matters with yet more people
- Working with co-mediators may complicate scheduling issues
- Participants "can experience what seems to be a 'divided mind' between the mediators about what should be happening in the process" (Mediation and Facilitation & Training Manual, p. 170)

Potential Co-Mediation Challenges for Mediators

- Increased expense for co-mediators vs. sole-mediator
- When co-mediators are ‘out of sync’ or not well-matched, co-mediation can feel awkward and frustrating
- “Coordinating a case with another person can sometimes feel like more work that it is worth.” (Mediation & Facilitation Training Manual, p. 170)

Potential Co-Mediation Challenges for Mediators

- Co-mediation format may lead to mediator passivity, ‘laziness’ or inattention
- Participants might try to divide and conquer the co-mediators by ‘co-opting’ the most sympathetic mediator, rather than focusing on the pair as a team

Strategies for Effective Co-Mediation

- When possible, co-mediate with individuals with a similar vision of mediation & compatible strategies
- Spend time together before each mediation to plan & strategize
- Decide with co-mediator who will be lead at any point in time
- Use initial remarks to set the right tone for the co-mediation

Strategies for Effective Co-Mediation

- Strategically plan seating arrangements
- Consult with co-mediator before making important decisions
- Divide tasks for greater efficiency & productivity
- Maintain a unified focus so that common understandings are reached
- Consider assuming complementary mediation postures

Strategies for Effective Co-Mediation

- Adopt principle of non-competition among mediators
- Be flexible
- Develop a fall-back plan for unsuccessful co-mediation
- Use co-mediator diversity to maximum advantage
- Support each other
- Debrief after each co-mediation

Co-Mediation Partnership Dialogue

- How did you become interested in dependency mediation?
- What do you enjoy (or anticipate that you will enjoy) about mediating dependency cases?
- Describe your philosophy or vision of dependency mediation
- How do you approach attorney involvement in the dependency mediation process?
- How do you approach separate discussions/caucuses in dependency mediation (e.g., standard element to your practice, reserved for unusual circumstances, other)?

Co-Mediation Partnership Dialogue

- What positive experiences have you had with co-mediation? Alternatively, what do imagine that you will appreciate about co-mediation?
- What have you found challenging about co-mediation? Alternatively, what do you imagine might be difficult for you about co-mediation? Or, what are some of your reservations or hesitations about co-mediation?
- What ideas do you have about effective ways to partner with one another?
- How would you like to approach one another when there are differences of opinion?

Potential Benefits of Co-Mediation[1]

BENEFITS FOR PARTICIPANTS

- Mediation team can represent participants' diverse characteristics
- Greater likelihood participant will trust at least one of the two mediators
- Enhance the expertise, insights and listening capacity of the interveners (#3)
- Co-mediators can model cooperative problem-solving and direct dialogue
- More accountability to prevent mediator alignment with one "side"
- Allocating two mediators to dependency cases sends a message about both the degree of judicial recognition of the complexity of the issues & the high level of court investment in constructive resolution

BENEFITS FOR MEDIATORS

- Collegial support
- Mediators can efficiently divide many mediation tasks between themselves
- Co-mediation provides training, learning, and enrichment opportunities for mediators
- Co-mediation allows one mediator to take a risk, while the other mediator remains available to diplomatically intervene if necessary
- Co-mediation eases the load and stress of mediation, especially in emotionally intense multi-party cases
- Co-mediation provides added protection against errors, oversights, omissions and accusations of bias (#3, p. 188)

Potential Challenges of Co-Mediation

CHALLENGES FOR PARTICIPANTS

- Must discuss painful, humiliating, and/or delicate matters with yet more people
- Working with co-mediators may complicate scheduling issues
- Participants "can experience what seems to be a 'divided mind' between the mediators about what should be happening in the process" (#1, p. 170)

CHALLENGES FOR MEDIATORS

- Increased expense for co-mediators vs. sole-mediator
- When co-mediators are 'out of sync' or not well-matched, co-mediation can feel awkward and frustrating
- "Coordinating a case with another person can sometimes feel like more work that it is worth." (#1, p. 170)
- Co-mediation format may lead to mediator passivity, 'laziness' or inattention
- Participants might try to divide and conquer the co-mediators by 'co-opting' one mediator

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[1] *For more information see:*

1. *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 170;*
2. *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 319-326;*
3. *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'" Mediation Quarterly, Vol. 13, Issue 3, Spring 1996, pp. 179-189;*
4. *Gold, L., Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice, 1988, Folberg, J. and Milne, A., Eds. pp. 209-224.*

STRATEGIES FOR EFFECTIVE CO-MEDIATION [1]

1. WHEN POSSIBLE, CO-MEDIATE WITH INDIVIDUALS WITH A SIMILAR VISION OF MEDIATION AND COMPATIBLE STRATEGIES
   - If the goals and methods of co-mediators are too divergent, partnership can be challenging and effective mediation compromised

2. SPEND TIME TOGETHER BEFORE EACH MEDIATION APPOINTMENT
   - Set aside at least 15-20 minutes before each appointment to discuss, plan and strategize

3. DECIDE WITH YOUR CO-MEDIATOR WHO WILL BE LEAD AT ANY POINT IN TIME
   - Prevents a power vacuum or situation in which neither mediator responds
   - Particularly helpful when co-mediators have not previously co-mediated with one another
   - Can have one mediator lead entire session or divide session into discrete segments

4. USE INITIAL REMARKS TO SET THE RIGHT TONE FOR THE CO-MEDIATION
   - Opening statement should reinforce perceptions of a team; Use pronoun "we" (vs. "I")
   - If one mediator gives entire orientation, he/she can ask co-mediator "Is there anything that you would like to add?" (Alternatively, share different segments of the orientation)

5. STRATEGICALLY PLAN SEATING ARRANGEMENTS
   - When planning mediation seating arrangements consider: a.) ability of co-mediators to communicate with one another; b.) seating participants to maximize the benefits of the team's diversity; c.) unifying participants' focus; and d.) providing co-mediators with psychological breaks out of the 'line of fire' (i.e., not seated side by side)

6. CONSULT WITH YOUR CO-MEDIATOR BEFORE MAKING IMPORTANT DECISIONS
   - Important decisions like developing the agenda or deciding to caucus are ideally made by mediator consensus (either subtle nods across table or in private discussion)
   - When in the lead role frequently ask your colleague: "Is there anything that you would like to add?" or "Is there anything that we should explore further before moving on."

7. DIVIDE TASKS FOR GREATER EFFICIENCY & PRODUCTIVITY
   - Some possible tasks to divide: Administrative/paperwork tasks; Court file and document review; Case preparation calls; Room set-up and refreshment preparation (if relevant); Greeting clients and distributing forms; Drafting agreements as they emerge in session; Processing signed agreements; Distributing & collecting exit surveys/program evaluation forms; Recording data for mediation program statistics, and; Room clean-up

8. "MAINTAIN A UNIFIED FOCUS SO THAT COMMON UNDERSTANDINGS ARE REACHED"
   - Follow your colleague's line of inquiry (or discuss possible change privately) before pursuing a different approach to mediation appointment
   - Both mediators should participate in the same discussion, avoiding distracting side-conversations; When less active, rivet your attention on the speaker to avoid side talk

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[1] *Love, L. P. & Stulberg, J. B., "Practice Guidelines for Co-Mediation: Making Certain That 'Two Heads Are Better Than One.'"* Mediation Quarterly, *Vol. 13, Issue 3, Spring 1996, pp. 179-189*

9. CONSIDER ASSUMING COMPLEMENTARY MEDIATION POSTURES
   - For example, one mediator may skeptically help participants "reality test" options while the other is more supportive; One mediator adopts detailed focus & other big picture view

10. ADOPT PRINCIPLE OF NON-COMPETITION AMONG MEDIATORS
    - It is not necessary for co-mediators to equally share speaking time; Guiding principle- "whatever works best" for participants and process

11. USE CO-MEDIATOR DIVERSITY TO MAXIMUM ADVANTAGE
    - While single mediators must guard against gender/culture/ethnicity identification and rapport based on similar characteristics, diverse mediation teams can capitalize on them
    - If/when confrontation and limit setting are necessary, it is often more effective to have the have the mediator of the same sex/culture/ethnicity etc. intervene
      - "A client may be more willing to hear from the same-sex mediator because he or she feels less threatened and less concerned about mediator bias"[2]
    - To help minimize sexual or other stereotyping have both mediators (regardless of gender, culture, ethnicity, etc.) empathize with, validate and challenge mediation participants
    - When there is a power imbalance between mediation participants, a matching power imbalance in the co-mediation team should be avoided

12. BE FLEXIBLE
    - Session circumstances shift and change; Co-mediators (like solo-mediators) must adjust

13. DEVELOP A FALL-BACK PLAN FOR UNSUCCESSFUL CO-MEDIATION
    - Not all teams are a good match- especially when first collaborating
    - If co-mediation is not serving clients well, consider having one mediator conduct the session while the other observes; Be sure to debrief after session

14. SUPPORT EACH OTHER
    - Encourage and respect co-mediator's contributions; Invite his/her comments frequently
    - Affirm strengths and be gracious with shortcomings, as all mediators are taking risks and continuing to develop professionally

15. DEBRIEF AFTER EACH CO-MEDIATION
    - Opportunity to troubleshoot areas for improvement (individually and as a team), and build on strengths
    - Be specific and use examples (vs. impressions)
    - To ensure that recollections are fresh, debrief as soon after appointment as possible
    - Be sure to include positive feedback as it leads to repetition of successful behaviors and creates more openness in the team

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[2] *Gold, L., Lawyer and Therapist Team Mediation, in Divorce Mediation: Theory and Practice, 1988, Folberg, J. and Milne, A., Eds. p. 216*

ENHANCING CO-MEDIATOR COLLABORATION[1]

1. Speak privately with your co-mediator and diplomatically describe the behaviors that you are uncomfortable with
2. While attentive to time, give each other a chance to identify:
   - The hopes and intentions behind the behaviors
   - How the words/actions fit or do not fit with the role of the mediator
   - How the behaviors are impacting the work of the negotiating parties
3. Negotiate how to handle your differences in order to optimally serve mediation participants. Options include:
   - Agreeing that the behavior is not ideally suited to the situation
   - Proceeding with one mediator's selected method
   - Experimenting with one approach and meeting privately to assess results
   - "Meeting separately with the parties if your co-mediator feels something s/he has been doing at the table is still important, yet you feel it is inappropriate to do in joint session" (p. 197)
   - If tension between co-mediators cannot be resolved, consider ending the session
     - Be sure to frame the termination of the mediation as a product of the co-mediators' joint concern about serving clients optimally- not the result of any failure on the part of mediation participant(s)

SAMPLE LANGUAGE FOR DISCUSSING DIFFERENCES WITH A CO-MEDIATOR

Remember that tone of voice can make comments sound either supportive and constructive or belittling and critical.

a. "Interesting comment… Is that how you see this issue?"

b. "I could be off here, but I heard things a little differently…."

c. "I'm not following as well as I would like to. Can you help me better grasp the session direction/focus?"

d. "I'm thinking that __ might be helpful. What do you think?"

e. "… **And** I'm wondering if __ might be relevant, too."

f. "What do you think about exploring ___ with mediation participants?"

g. "Do you think it might be good timing for mediation participants to __?"

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[1] *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; pp. 197.*

SHARING TASKS & RESPONSIBILITIES

Name of Assigned Mediator or Shared Responsibility	Dependency Mediation Task/Responsibility
	1. Managing administrative tasks (e.g., preparing mediation case file, filing referral orders, preparing forms, reserving room, etc.)
	2. Court file and document review
	3. Case preparation (e.g., phone calls with professionals/parties)
	4. Pre-formatting agreement template (i.e., entering names, case numbers, etc.)
	5. Room and refreshment preparations (if relevant)
	6. Greeting clients and distributing program forms (e.g., brochure, intake form, DV screening, confidentiality & exceptions)
	7. Facilitating participant introductions
	8. Orienting participants to dependency mediation
	9. Helping participants share initial perspectives/information and clarify issues
	10. Helping participants generate options
	11. Helping participants reality test and evaluate options
	12. Drafting agreements as they emerge in session
	13. Processing signed agreements (e.g., presenting to court for signature or making copies for the parties once signed by judge)
	14. Distributing and collecting exit surveys/program evaluation forms (from participants)
	15. Recording data from session for internal dependency program statistics
	16. Room clean-up
	17. Other?

Training Self-Assessment

D.4. Co-Mediation

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My knowledge of the potential benefits and challenges of co-mediation (for both mediation participants and mediators)	☐	☐	☐	☐
My awareness of variations of co-mediation	☐	☐	☐	☐
My development of strategies for successful co-mediation	☐	☐	☐	☐
My ability to partner effectively and resolve differences with co-mediator(s)	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit D:

Conducting a Dependency Mediation Appointment

CONTENTS

D.1. Orienting Participants to Dependency Mediation

D.2. Multi-Party Mediation & Collaborative Resolution Methods

D.3. Caucusing

D.4. Co-Mediation

D.5. Concluding Dependency Mediations

Unit D, Chapter 5:
Concluding Dependency Mediations

Required Instructional Materials: • Computer • PowerPoint Slides - • Projection Screen ***Presentation Methods:*** • Large Group Discussion • Case Scenario Practice Exercise & Discussion ***Participant References:*** Unit D.5. Participant Handouts • Handout A – "*Drafting Mediation Agreements: Considerations & Tips*" • Handout B- *"Reasons & Considerations When Concluding Mediation"* • Sample – *"Sample Mediation Agreement – generic form"* • Exercise 1- *"Case Scenario Practice Exercise: Concluding Mediations"* • Participant Handout- *"Training Self-Assessment"* • Participant Handout- *"Reflection Tool"* **Suggested Pre-Session Reading & Exercises:** • Handout A - "*Drafting Mediation Agreements: Considerations & Tips*"	***Estimated Duration:*** ***2.5 Hours*** ***Above time includes Optional Exercise: Mediation Observation and Drafting Exercise:*** ***15 - 30 Minutes***

Juvenile Dependency Mediation Curriculum

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***2 Minutes***
2. Large Group Discussion: Introduction to Concluding Mediations---	***5-10 Minutes***
3. Large Group Discussion: Closing with Full/Partial Agreements-----	***40 Minutes***
4. Large Group Discussion: Potential Reasons for Concluding Mediations----------	***20 Minutes***
5. Large Group Discussion: Considerations When Concluding Mediations----------	***15Minutes***
6. Large Group Discussion: Concluding Mediations in Other Circumstances----------	***10 Minutes***
7. Large Group Discussion: Sample Language for Collaboratively Concluding Mediation----------	***5 Minutes***
8. Large Group Discussion: Learning From Experience ----------	***5 Minutes***
9. Case Scenario Practice Exercise & Discussion: Concluding Mediations----------	***20-30 Minutes***
10. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After Concluding Unit D.5. Participants Will Be Able To: a. Demonstrate understanding of the purpose, format and closing techniques involved in drafting effective written agreements b. Be knowledgeable about possible reasons for concluding mediation without an agreement. c. Demonstrate an awareness of considerations (such as, concluding remarks, closure activities and final arrangements) to optimize the process of ending a mediation d. Develop strategies for concluding mediation appointments in other circumstances e. Utilize self-reflection questions to learn from mediation cases involving awkward, abrupt, or non-mutual terminations	***2 Minutes*** ***Facilitator Notes:*** • *Welcome participants* • *Review break time, end time, location of restrooms, etc.* • *Review learning objectives with participants*

2. <u>Large Group Discussion:</u> **Introduction to Concluding Mediations** a. *For facilitator or participants with some dependency mediation experience:* Discuss your experience concluding mediation appointments- both mediator and participant initiated and both with *and without* resolution. o Can you describe some of the cases that you chose to conclude for reasons other than the mutual agreement of all of the participants? o How often have you needed to terminate a mediation session for reasons other than session impasse? o Can you share about cases in which a mediation participant abruptly or unilaterally chose to end the mediation appointment? o What lessons have you learned from sessions that required early termination by the mediator or were ended abruptly by a participant?	***5-10 Minutes*** ***Facilitator Note*** *– introduce notion of how many ways mediations may end, and the role of the mediator in closing as appropriately as possible.*

3. Large Group Discussion: Closing Mediations with Full/Partial Agreements:

Available surveys of dependency (child protection) mediation programs in California and other states,[1] as well as other countries such as Canada, Ireland and New Zealand consistently report a 70% or higher rate of resolution of all (or most) issues in dependency mediation.

a. An effective agreement drafting process can serve several purposes. *(PowerPoint Slide 2)*
   - Procedural Satisfaction – that the process was experienced as fair
   - Psychological Satisfaction – parties felt heard
   - Substantive Satisfaction – agreement is clear, readable, realistic, and addresses (major) issues; sense of ownership.

b. What strategies might the mediator use to ensure that all parties are in agreement about each term in the mediation agreement? (PowerPoint Slide 3-4)

   Some ideas:
   - Keep track of agreements as they are made
   - Keep track of where participants are "in the mediation process"
   - Draft mediation agreement during session (asking all group members for suggested wording/language)
   - Mediator acts as scribe- using the words of the parties not his/her own, though in dependency proceedings, some of the legally-specific language may be required
   - Read each element of the mediation agreement out loud to parties and directly confirm each party's agreement (also addresses literacy issues)
   - Have all parties (and counsel) review and approve written agreement

c. Review and discuss participant handout *"Drafting Mediation Agreements- Considerations & Tips"*

40 Minutes

PowerPoint Slides 2-4

Participant Handout A: Drafting Mediation Agreements- Considerations &Tips

CRC5.518(d)(9)

Facilitator Note

To help mediation participants avoid buyer's remorse, Barbara Madonik suggests that mediators notice whether participants agree or disagree each term of the potential mediation agreement. In other words, is a decision supported by both the individual's verbal and non-verbal behavior? If not, mediator should explore potential ambivalence before proceeding.

Madonik, B., I hear what you say, but what are you telling me? The strategic use of nonverbal communication in mediation, (2001).

[1] N Thoenes, "What We Know Now: Findings for Dependency Mediation Research," Family Court Review (2009), v.47, 21.

3. Large Group Discussion: Closing Mediations with Full/Partial Agreements (Continued) d. Who should sign the mediation agreement? o CRC 5.518(d)(9) requires: that all (legal) parties indicate their agreement (and approval) in writing before submission to the court." o While the child is a legal party, generally it is not necessary to have the child sign the agreement, though effective where child is agreeing to something or taking some action. o It may be wise to have the child also sign the mediation agreement if the child is of an appropriate age, significantly participates in the mediation session, has certain obligations articulated in the mediation agreement, and/or the issues and context make it appropriate. o Some programs have non-party participants sign the agreement if they have agreed to help and are included in this agreement in some way (i.e., transport, exchange point, etc.) to demonstrate support.	***Continued***

Additional Practitioner Considerations: - Throughout California and nationally there are different protocols about **when** dependency mediation agreements are drafted and **who** drafts dependency mediation agreements.

As to **when,** some programs find that drafting the mediation agreement in session allows for the immediate clarification of agreement terms and ensures that parties are satisfied with the language utilized. Additionally, parties can immediately sign the document and, perhaps, directly put the agreement on the court record. Other programs find that it is cumbersome or time-consuming to use session time for agreement drafting. Circulating an agreement after the mediation session concludes allows the parties additional time to reflect on the content of the agreement. (Caution- may allow for continuing dispute). CRC 5.518(d)(9) requires review and approval in writing before being presented in court.

In reference to **who** drafts mediation agreements, some programs have opted to have legal counsel for one of the parties (county counsel or the child's attorney) draft the dependency mediation agreement. The selection of this protocol may be based on the attorney's familiarity with drafting legal documents and the time-saving benefit for mediators. This protocol may also reflect a program's effort to create stakeholder buy-in and comfort.

Other programs prefer that the mediator(s) draft the dependency mediation agreement. Attorney-mediator Forest Mosten remarks that the advantages of having the mediator draft the parties' agreement include: that the mediator is "intimately familiar" with the parties' agreement; that "being trusted as impartial", the mediator's attempts at neutral drafting may actually be very middle ground; and lastly, "even when lawyers are present at the sessions and are fully aware of the agreement terms, having the mediator do drafting increases the chances that a writing will be signed" (p. 281).

Mosten, F. The Complete Guide to Mediation: The Cutting Edge Approach to Family Law Practice, (1997).

4. Large Group Discussion:

Potential Reasons for Concluding Mediations

a. For sessions that do not result in an agreement: (*PowerPoint Slide 5)*

- Conclude the mediation without blaming or discouraging participants
- Summarize participants' different perspectives on unresolved issues; "For you _____, the primary concern is…. And for you…"
- Acknowledge effort; "I recognize how difficult it can be to participate in mediation. I commend you for effort and participation."
- Discuss what will happen next (e.g., settlement conference, hearing)
- If appropriate, schedule additional appointment (after important consultation has taken place or new case information available)

b. What are some possible other reasons for concluding a mediation appointment? *(PowerPoint Slides 6-8)*

1. Physical and emotional safety issues (for participants & mediator)
   - You sense that a mediation participant might be violent, vengeful or intimidating during or after mediation; or child's well-being compromised or abduction threatened
   - Janet Johnston[2] has articulated nine indicators of acute dangerousness. Consider these factors when determining whether terminating the mediation appointment is advisable- for example, pre-screening did not reveal danger signs but indicators emerge in session. (Ver Steegh & Dalton, citation right)
   - Threats and fantasies of serious harm
   - History of violence
   - Availability of weapons
   - Drug and alcohol use
   - High depression and rage
   - History of mental illness
   - Obsession with or possessive attitude toward the partner
   - Disregard or contempt for authority
   - Existence of a recent stressor
   - Generally multiple positive indicators signal higher risk; Some indicators are more important than others (e.g., threats/fantasies of homicide/suicide; history of extreme violence/serious injuries; and availability of weapons)

20 Minutes

Participant Handout B:

- *Reasons for Concluding Mediation*

PowerPoint Slides 5-8

For More Information See:

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 199.*
- *AFCC: Guidelines for Child Protection Mediation (2012) http://www.afccnet.org/Portals/0/Guidelines%20for%20Child%20Protection%20Mediation.pdf*

Facilitator Notes:

- *Remind participants that Curriculum Unit E.2. addresses domestic violence and safety issues in more detail*

[2] *Ver Steegh & Dalton "Report from the Wingspread Conference,", Family Court Review, Vol. 46 No. 3, July 2008, p. 458.*

4. Large Group Discussion:

Potential Reasons for Concluding Mediations (CONTINUED)

2. Abuse of mediation process
   - One party is covertly using mediation to gain an unfair advantage or elicit information that will be used against the other party, i.e., one party represented and other party not represented and attorney uses mediation as attempt to incriminate other party.
   - While participants cannot disclose what is said in mediation, less scrupulous attendees may try to use confidential information obtained in mediation to guide their search for documents/public records that are discoverable/permissible in the court process

3. Participant capacity issues **See Unit E.1 for detailed discussion**
   - Often, as a result of case preparation/orientation, a mediator is aware of participant capacity issues and is able to collaboratively design session accommodations to promote full participation
   - At other times participant capacity issues are not recognized until a mediation appointment is underway
   - Either way, start with session accommodations and only conclude mediation if process adaptations do not adequately enhance capacity
   - As discussed in Unit E.1, capacity to mediate is probably most accurately conceptualized as a matter of degree- a spectrum. What are some indicators that may signal that the "do not proceed with mediation" threshold is approaching or has been reached?
     - Participant's inability to understand:
       - How the mediation process works
       - Who the parties are
       - The role of the mediator
       - The parties' relationship to the mediator
       - The issues at hand
     - Participant appears unable to:
       - Assess options
       - Make and keep an agreement
       - Think abstractly about consequences and the impact of their behavior or decisions on themselves and others

CONTINUED

Participant Handout B:

- *Reasons For Concluding Mediation*

PowerPoint Slides 6-8

For More Information See:

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 199.*
- *Ver Steegh & Dalton "Report from the Wingspread Conference,", Family Court Review, Vol. 46 No. 3, July 2008, p. 458.*
- *Model Standards of Practice for Family and Divorce Mediation; Standard XI (see: www.afccnet.org/pdfs/**modelstandards**.pdf*

4. Large Group Discussion:

Potential Reasons for Concluding Mediations (CONTINUED)

4. Mediator receives information in confidential caucus that makes it inappropriate to continue or confounds the productivity of appointment
   - Critical information revealed but participant insists on non-disclosure
5. Procedural reasons
   - Critical parties/participants not present (often mediation is not commenced in this situation- esp. if missing party was ordered to participate in the process)
   - Participants are not authorized to make decisions
6. Proposed agreement is illegal, harmful to people who are not present at the mediation or unconscionable
   - While illegality is unlikely (as generally numerous "opposing" attorneys participate and judicial officer must review and ultimately approve agreement), it is a valuable reminder for the mediator to help participants monitor their agreements for ethicality/appropriateness
7. Fair agreement seems unlikely
   - A participant is so disempowered or desperate that outcome unlikely to be appropriate or balanced
   - For example, unrepresented prospective adoptive parent motivated to accommodate biological parent's unrealistic visit-intensive post-adoption contact proposal (despite reservations re. child's best interest) as a result of his/her desire to have adoption finalized
8. Co-mediation unsuccessful
   - Consider concluding session if tension between co-mediators cannot be resolved via either a co-mediator caucus or one mediator leading the session (solo or with co-mediator present)
9. Mediator's impartiality compromised
   - Mediator believes (or participant remains concerned) that mediator cannot impartially facilitate the mediation session
10. Participant abruptly/unilaterally ends the mediation session
    - Usually as a result of intense physiological arousal; Likely that process was not emotionally manageable for the individual
11. Session impasse
    - After good faith effort and thorough exploration, issues are not resolved

CONTINUED

Participant Handout B:

- *Reasons For Concluding Mediation*

Facilitator Notes:

- *Remind participants that Curriculum Unit D.3. covers issues related to confidential and non-confidential separate discussions.*

4. Large Group Discussion:

Potential Reasons for Concluding Mediations (CONTINUED)

c. What rule-of-thumb questions might mediators ask themselves to assess whether it is appropriate to end the mediation session? *(Mediation and Facilitation Training Manual, citation right) (PowerPoint Slide 9)*

- Can participants negotiate fairly and usefully?
- Does mediation process potentially endanger someone?

d. What does California Rule of Court 5.518(d)(8) say about terminating mediations?

- Mediation program protocols must include "A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation."

CONTINUED

Participant Handout B:

- *Reasons For Concluding Mediation*

PowerPoint Slide 9

For More Information See:

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 199.*

5. Large Group Discussion:

Considerations When Concluding Mediations

a. When you think about ending a mediation appointment, what considerations might help you close the session as well as possible? Reflect on concluding remarks, closure activities, and final arrangements that can optimize the ending of the mediation appointment. *(PowerPoint Slides 10-12).* ***Some of these considerations apply with and/or without agreement.***

1. Ideally conclude the session with the involvement of all participants
2. Review:
   - Issues that were discussed/negotiated and resolved; Summarize both new understandings and formal agreements
   - Issues that remain unresolved (discussed but no agreement)
     - Consider helping participants collaboratively identify their next steps/options for issue resolution
   - Unaddressed issues (e.g., topics that emerged during session that were either lower priority items that were not addressed due to time constraints or matters that were not directly related to the referral)
     - Consider helping participants decide if the issue needs to be covered in the remaining appointment time, at a subsequent mediation appointment, in a different venue, or at all
   - Necessary follow-up (e.g., taking contested hearing off calendar)
   - What happens next (e.g., court review of mediation agreement, receiving certified copy of agreement, next hearing date, etc.)
3. Address possible future misunderstandings and implementation problems
   - Example: You have worked together today to resolve many issues. Feel good about that. If part of mediation has involved a parent's complaint that social worker's voicemail is "always full", might ask parent how they might respond differently than before. If social worker is concerned about a parent's not staying in touch, you might ask social worker or parent about ideas about how not to get into tussles with each other in future.

15 Minutes

Participant Handout B:

- *Considerations When Concluding Mediation*

PowerPoint Slides 10-12

For Additional Information See:

- *Mennonite Conciliation Service, Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation, 4th Edition; p. 199.*
- *Bush, R. A. B. & Folger, J. P., The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition (1994), p. 89.*
- *Moore, C. W., The Mediation Process: Practical Strategies for Resolving Conflict, Second Edition (1996), pp. 315-317.*
- *Wilkinson, M., The Secrets of Facilitation: The S.M.A.R.T. Guide to Getting Results with Groups, 2004.*
- *Cloke, K., Mediating Dangerously: The Frontiers of Conflict Resolution (2001).*

5. Large Group Discussion:

Considerations When Concluding Mediations (CONTINUED)

4. Consider participants' perceptions and interpretations about why mediation is concluding
   - For example, don't abruptly terminate mediation immediately after caucuses- attendees may conclude a significant disclosure was made
   - Similarly, if possible, don't immediately terminate mediation following a participant's strong expression of opinion as participants may assume that the mediator disapproves of the party's comment
   - In certain circumstances (such as the mediator becoming aware of sensitive information in private caucus) it may be appropriate to frame the decision to conclude the mediation as a product of the mediator's concern about the mediator's inability to serve clients optimally- not the result of any failure on the part of participant(s)
   - Generally it is not necessary to be explicit about the reasons for the termination
5. Consider symbolic closure rituals as a way to solidify collaboration; not always appropriate- consider case context, culture, etc.)
   - Handshaking, formal document signing or symbolic speech
   - Token gift (e.g., magnet, pen) or note-card, if appropriate
   - Blessing or prayer, if acceptable, meaningful, and culturally appropriate for family (e.g., family's pastor shares closing prayer)
6. Be attentive to participant safety when concluding mediations (esp. in cases involving domestic violence allegations); Considerations below:
   - Have security personnel provide alleged victim an escort to car
   - Security/bailiff present nearby for deterrence/safety
   - Have participants use different exits and travel routes
   - Have alleged victim depart prior to the alleged perpetrator
   - Protect alleged victim's contact information; Do not leave court file and other paperwork unattended
7. Encourage participants to build on current collaborative effort/spirit
8. Suggest that honoring agreements is an effective way to build trust
9. Remind participants about the confidentiality of mediation- nothing discussed can be disclosed in subsequent court reports/hearings
10. Dispel concerns re. mediator disclosures to court; consider reviewing procedural information that court does receive (e.g., "outcome" form)
11. Distribute evaluations and encourage feedback (protocols differ)
12. Thank attendees for their participation (time, effort, concern for child)
13. When relevant, congratulate participants on their accomplishments!

CONTINUED

Participant Handout B:

- *Considerations When Concluding Mediation*

Facilitator Notes:

- *Remind participants that Curriculum Unit E.2. covers domestic violence and safety issues in more detail.*

Advanced Practitioner Considerations:

Often the mediation process helps make an overwhelming situation seem more manageable. By participating in constructive, problem-solving discussions, individuals may experience a sense of mastery and renewed hope for the future.

If, towards the end of an appointment, a mediator senses that a participant has a more optimistic outlook or improved sense of self-efficacy, it can be valuable to draw the client's awareness to this development.

6. Large Group Discussion:

Concluding Mediations in Other Circumstances

a. Sometimes there are unusual circumstances that add complexity to the process of concluding mediations. Can you think of situations that complicate the process of ending mediation? How should these situations be optimally handled? *(PowerPoint Slides 13-15)*

- For mediation sessions that are running over allotted time:
  - Starting and ending sessions on time shows respect for participants
  - When you first notice session falling behind share your concern with mediation participants (if possible, estimate additional time needed)
  - Request that participants assist with time management by keeping comments on topic and, when possible, summarizing their remarks
  - Alternatively, collaboratively develop a different plan of action (e.g., follow-up mediation appointment for less urgent matters or group agreement to work through a specific amount of the lunch hour)
  - Avoid speeding up as session may lose its value as a means to have participants feel heard/understood and faster pace may increase stress
  - Instead of increasing the pace of the discussion, ***reduce the scope***
- For mediation sessions in which there is a mediation participant significantly dissatisfied with the mediation process:
  - Listen to and acknowledge dissatisfied participant
  - Provide participant a written copy of program's complaint procedure
  - Generally, informal complaints involve the participant directly addressing his/her concerns with the mediator(s) (with or without the mediator's supervisor present)
  - Formal complaints involve the participant putting his/her concerns in writing to the mediator(s), dependency mediation program director, or court executive officer; Designated individual responds in writing within certain time frame of receipt of the complaint

10 Minutes

Participant Handout B:

- *Considerations When Concluding Mediation*

PowerPoint Slides 13-15

For More Information See:

- *Wilkinson, M., The Secrets of Facilitation: The S.M.A.R.T. Guide to Getting Results with Groups, 2004.*

6. <u>Large Group Discussion:</u> **Concluding Mediations in Other Circumstances (CONTINUED)** o For sessions that end abruptly; for example, a participant has an emotional outburst and then storms out of the room: ▪ Don't ignore a disruptive and premature exit ▪ Instead acknowledge the unexpected behavior- "Given the nature of dependency cases, it is not unusual for mediation discussions to sometimes be difficult. I imagine that some/many of you may feel awkward or uncomfortable as a result of what just happened. Can we take a minute to talk about what might be helpful, and then let me close the mediation with some last thoughts? [Reminder about confidentiality, as appropriate – though remember limits of confidentiality if that should apply.] Address process for going back to court, mediator to return a "no agreement" as outcome and nothing more to court. ▪ Debriefing should be neutral in tone (i.e., not derogatory about the individual that departed) ▪ If the participant that departed was *not* a party to the case and his/her presence was less critical to the discussion (e.g., grandparent or parent's significant other), an acknowledgement and a short break can help remaining participants refocus and constructively proceed with the remainder of the mediation appointment	***<u>CONTINUED</u>*** ***<u>Participant Handout B:</u>*** • *Considerations When Concluding Mediation* ***<u>Power Point Slide 15</u>***

7. <u>Large Group Discussion:</u> **Sample Language for Collaboratively Concluding Mediation** a. What language might a mediator use to conclude a mediation appointment? What phrasing might be appropriate to respond to a participant's suggestion to end mediation and how might the mediator introduce the idea of terminating mediation him/herself? o "I'm sensing that some of you may be ready to wrap up today's discussion. [because of sense of impasse] I would like to take just a short break and confer briefly with each (group) of you. Then, we can come back and decide where what next, okay?" o "You all seem to have resolved what you want at today's mediation - or are there some possibilities that have not yet been explored?" o "When you say this is pointless, can we talk more about what you think might help us move forward a bit?" o "You have given these issues significant thought. While a solution that is acceptable to each one of you has not, as yet, emerged, my sense is that you now have a significantly better understanding of one another's concerns and perspectives. Thank you for your effort and contributions to this valuable dialogue. I will leave it up to you if you would like to meet again once everyone has had some time to reflect on today's discussion." o "Where would you like to go from here… further dialogue, schedule a follow-up appointment, return to court?" o "It sounds like you might have reservations about continuing the mediation appointment. Can you say more about that?" o "You just suggested that mediation be concluded. What might keep everyone wanting to continue? What are other's thoughts? What do you need?"	***5 Minutes***

8. Large Group Discussion:

5 Minutes

Learning From Experience

Wise mediators learn from their experiences and sessions involving awkward conclusions may be particularly valuable teaching cases. After mediations terminate (while recollections are fresh) what questions might mediators consider? (Remind participants that post-session reflection can be done individually or with a co-mediator or supervisor.)

- What went well? What would you try again?
- What, if anything, would you do differently?
- Did you privately brainstorm with your co-mediator and/or utilize break time to think and strategize about the appointment?
- If the session ended without resolution, can you think of any interventions or techniques that might have changed the course of the dialogue?
- If the session ended abruptly were there additional steps that could have been taken to make the process more emotionally manageable for a participant?
- Was there anything that could have been handled more appropriately or could a premature termination have been avoided with additional screening, case-preparation and/or separate discussions?
- Was there anyone missing from the discussion that should have been present? Alternatively, was there anyone that was disruptive to the process that may not have needed to be present?
- Could program outreach and/or education help prevent similar problems in the future (e.g., cross department training on a certain issue)?
- Do you have the sense that the participants valued the process even if issues were not formally resolved? For example, would they try mediation again or recommend it to a friend? If not, what might be done in future appointments to high-light (non-agreement) session benefits such as:
  - The opportunity to personally share perspectives and concerns
  - The opportunity to be listened to by the mediator and the other parties on the case
  - The opportunity to participate in a respectful, collaborative, problem-solving dialogue
- For additional reflection tools see Unit D.2. Handouts- *"Post-Mediation Self-Assessment Inventory"* and *"Sample Case Summary Form"*

Facilitator Notes:

- ***Remind participants that Curriculum Unit D.2. includes information and handouts to promote post-session mediator reflection and growth.***

9. <u>Case Scenario Practice Exercise & Discussion:</u> **Concluding Mediation** a. Successfully drawing mediation sessions to a close takes practice, especially in challenging circumstances. The following exercise is designed to help mediators practice responding appropriately in both typical and difficult termination situations. *(PowerPoint Slide 16)* o Instructions (Option A) ▪ Facilitator or participant reads a scenario (from Participant Handout- "*Case Scenario Practice Exercise: Concluding Mediations Appropriately"*) to the group ▪ Individuals volunteer to role-play/rehearse a response or suggest strategies ▪ Large group discussion follows o Instructions (Option B) ▪ Participants break into pairs where seated and individually read assigned scenario(s) from Participant Handout- "*Case Scenario Practice Exercise: Concluding Mediations Appropriately"* ▪ Pairs have five minutes to craft brief responses to each assigned scenario ▪ When formulating a response have participants: • Consider what questions, remarks, closure activities and final arrangements might be helpful in the scenario situation • Formulate general tips and/or suggestions for similar cases ▪ Participants report back: Pairs have two minutes to share their ideas ▪ Large group discussion: Facilitator and other participants can respond and discuss additional/alternate responses to the scenario(s)	***20 – 30 Minutes*** ***<u>Participant Exercise 1:</u>*** • *Case Scenario Practice Exercise: Concluding Mediations* ***<u>PowerPoint Slide 16 (Option B Exercise)</u>*** ***<u>Facilitator Notes:</u>*** • *You may assign specific scenarios based on group training needs or utilize all of the scenarios for expanded practice.* • *Alternatively, you can assign each pair a different scenario.* • *Option B instructions on PowerPoint Slide 16 for training group to refer to during exercise*

Optional Exercise: Mediation Observation and Practice Drafting Agreements During your mediation observation note any agreements and understandings that the participants develop. Practice drafting the parties' agreement. o If you are working with a colleague in your own county (and there is time for this purpose), consider drafting the mediation agreement with your colleague's supervision and assistance o If you are visiting a different county (or your session time is limited), practice drafting the parties' agreement outside of the mediation session o Review your practice draft with the mediator that you observed ▪ Would your colleague write up any of the agreement terms differently? ▪ Does your colleague have any suggestions about your: • Language choice • Clarity and accuracy • Formatting During your mediation observations you may also want to reflect on the questions in the *"Mediation Observation Tool"*	***Optional Exercise: Mediation Observation*** ***Facilitator Note:*** ***Can make this part of earlier mediation observation as a pre-training exercise and then how they would do it differently after learning content. Or, could use a training video or role play.***
10. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit D.5. "*Self-Assessment & Training Reflection* d. Encourage participants to provide feedback on the Unit D.5. training e. Provide reminder of future meeting schedule & thank participants	***5-10 Minutes*** ***Participant Handout:*** • *Self-Assessment & Training Reflection*

Juvenile Dependency Mediation

DRAFT Curriculum PowerPoint Presentation

Unit D.5.

Concluding Dependency Mediations

Drafting Mediation Agreements

Written mediation agreement serves three important purposes:

- Fair process. Everyone participates in the drafting of the terms of the agreement
- Substantive Fairness. Everyone's participation ensures that each has had an opportunity to be heard on issues
- Emotional Satisfaction: a collaborative drafting effort enhances the likelihood the parties feel they "own" the agreement; Leading to a greater likelihood that the parties will abide by the agreement

Mediation Agreements - Tracking

- Mediator keeps clear track of process and issues discussion.
  - Develop good note-taking skills,
  - Continue to ask clarifying questions if anyone (or mediator) seems confused
  - Continue to summarize where mediation is “at”
- Throughout process, acknowledge tentative agreements.
  - Use visuals such as whiteboard, poster paper
  - Use images, (building blocks, building house, etc., so people can “see” where they are

Drafting Mediation Agreements – Tips & Considerations

- Effective Mediation Agreements
  - Cover the issues listed in the court referral, “agenda”
  - Describe any issues “not resolved”
  - Acknowledge “other concerns” that came up in mediation, and outcome
    - Agreed social worker (attorney) would talk more with parent (client)
    - Agreed not part of this mediation discussion, but a concern of a parent
  - Agreement language is clear, readable, realistic & balanced
  - Refer to Handout A – *Drafting Mediation Agreements* for continuing discussion.

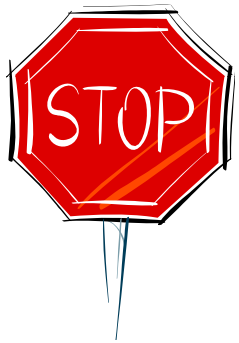
When There is No Resolution

- Conclude the mediation appointment without blaming or discouraging participants
- Summarize participants' different perspectives on unresolved issues; "For you the primary concern is…. And for you…"
- Acknowledge effort and involvement
- Discuss what will happen next (e.g., settlement conference, next court hearing)
- If appropriate, schedule further appointment

Potential Reasons for Concluding a Mediation

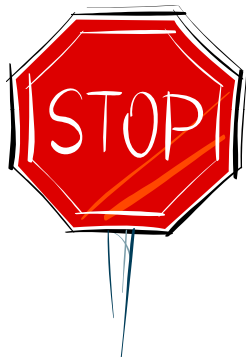
- Physical and emotional safety issues (for participants & mediator)
- Abuse of mediation process
- Participant capacity issues
- Mediator receives information in confidential caucus that makes it inappropriate to continue or confounds productivity of appointment (party insists on non-disclosure)

Potential Reasons for Concluding a Mediation



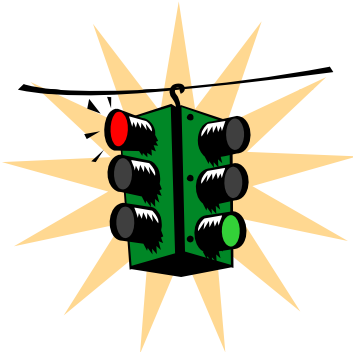
- Procedural reasons (e.g., critical person absent or not authorized to make decisions)
- Proposed agreement is illegal, unconscionable or harmful to people not present
- Fair agreement seems unlikely
- Co-mediation unsuccessful (not remedied by co-mediator caucus or one mediator lead)

Potential Reasons for Concluding a Mediation



- Mediator's impartiality compromised (or participant perception of same)
- Participant abruptly/unilaterally ends mediation
- Session impasse

Assessing Whether to End Mediation



Rule-of-thumb questions to assess whether it is appropriate to end the mediation session:

- Can participants negotiate fairly and usefully?
- Does mediation process potentially endanger someone?

Considerations When Concluding Mediation

- Ideally conclude session with involvement of all
- Review:
  - Issues that were discussed & resolved
  - Unresolved Issues (discussed w/o agreement)
  - Unaddressed issues (e.g., lower priority)
  - Follow-up steps (e.g., taking contested hearing off calendar)
  - What happens next (e.g., next court hearing)

Considerations When Concluding Mediation

- Predict future misunderstandings and implementation problems
- Develop constructive strategies to overcome anticipated challenges
- Consider symbolic closure rituals as a way to solidify collaboration, when case appropriate
- Be attentive to participant safety, esp. in cases involving domestic violence allegations
- Encourage participants to build on current collaborative effort/spirit

Considerations When Concluding Mediation

- Suggest that honoring agreements is an effective way to build trust
- Remind participants re. mediation confidentiality
- Consider reviewing procedural information that court does receive (e.g., “outcome” form)
- Distribute evaluations & encourage feedback
- Thank attendees for their participation (time, effort, concern for child, etc.)
- When relevant, congratulate participants on their accomplishments!

Other Circumstances: When Mediation is Running Over Time

- Solicit the agreement of participants before extending the allotted appointment time
- Avoid speeding up as session may lose its value as a means for participants to feel heard & understood
- Faster pace may also increase stress
- Instead, reduce scope and consider scheduling follow-up appointment (or different process) for less urgent issues

Other Circumstances: Participant is Very Dissatisfied

- Listen to and acknowledge the dissatisfied participant
- Provide the dissatisfied participant with a written copy of your program's complaint procedure

Other Circumstances: When Mediation Ends Abruptly

If a participant has an emotional outburst and then storms out of the room:

- Don’t ignore disruptive and premature exits
- Instead acknowledge the unexpected behavior and take a moment to debrief
- Keep debriefing neutral in tone and have participants avoid derogatory comments about the individual that departed

Case Scenario Practice Exercise Instructions

1. Break into pairs where seated & read assigned scenario(s)
2. Craft brief responses to each assigned scenario (5 min/ea.)
3. When formulating a response:
   - Consider what questions, remarks, closure activities & final arrangements might be helpful in scenario situation
   - Formulate general tips & suggestions for similar cases
4. Report back: Pairs have 2 minutes to share ideas
5. Large group discussion: Facilitator & participants respond and discuss additional/alternate responses to scenario(s)

Drafting Mediation Agreements: Considerations& Tips

Dependency mediation agreement should detail all of the session's important resolutions. The mediation agreement may be accepted by the court, and the basis of its orders in the case, so the agreement should use the language of the participants as much as possible, while keeping the legal context and effect clear. One of the benefits of dependency mediation is the opportunity to provide the details of the agreement, details that the court process is not always set up to provide. Take time drafting agreement so that it is clear, precise, and specific to the issues and people involved. Parties should have opportunity to experience the agreement as coming from them, reflecting their hard work, and a useful tool for them as they proceed through the dependency court system. The following are tips and considerations for agreement writing.

1. Use terminology and language that is easily understood by a layperson.
   a) Avoid acronyms or jargon.
   b) Keep the sentences simple and short.
   c) Use clear, concise language. Avoid ambiguous words such as "reasonable" or "soon."
   PROBLEMATIC: *Mr. Greg Bryant agrees to forward ICWA-010(A) to parent's GAL "asap".*
   PREFERRED: *Mr. Greg Bryant agrees to provide form ICWA-010(A), Indian Child Inquiry Attachment, to Ms. Mary Beck, Guardian Ad Litem for Ms. Susan Harris, by 5:00 p.m. September 1, 2009.*

2. Refer to the parties by name, not status.
   PROBLEMATIC: *The respondent agrees to submit to the Court's jurisdiction with the following changes to the petition language.*
   PREFERRED: *Ms. Susan Harris agrees to submit to the Court's jurisdiction with the following changes to the petition language.*

3. Clearly state all times and deadlines.
   PROBLEMATIC: *Mr. Bryant agrees to provide a list of acceptable treatment providers in a reasonable amount of time.*
   PREFERRED: *Mr. Bryant will provide Ms. Harris with a list of acceptable in-patient substance abuse treatment providers by September 1, 2009.*

4. Be specific about who is designated to carry out an action.
   Identify & omit provisions that depend on the actions of non-participants.
   PROBLEMATIC: *Ms. Harris' visitation with children, Tom H. and Henry H., will increase to 3 (one hour) supervised visits per week. Foster parent Ms. Pintar [not present at mediation] will transport the children to social services for visits.*
   PREFERRED: *Ms. Harris' visitation with children, Tom H. and Henry H., will increase to 3 (one hour) supervised visits per week. Social worker Mr. Bryant [present at mediation] will ensure that transportation arrangements are made for the children's visits.*

5. Be balanced: Reflect each party's contributions
   Try to avoid the appearance that one side is doing all the compromising. One way to do this is to alternate stating what each party/participant has agreed to do.
   PROBLEMATIC: *Ms. Harris agrees to participate in intensive case management and medication monitoring through Community Mental Health. Ms. Harris also agrees to participate in weekly individual therapy sessions with an appropriate provider... (Additional requirements for Ms. Harris enumerated).*
   PREFERRED: *Ms. Harris agrees to participate in intensive case management and medication monitoring through Community Mental Health. Mr. Bryant agrees to maintain bi-weekly contact with Ms. Harris' treatment providers at Community Mental Health. Mr. Bryant agrees to supply Ms. Harris with a list of acceptable individual therapy treatment providers by September 1, 2009. Ms. Harris agrees to participate in weekly individual therapy sessions with a therapist included on the agency's acceptable treatment provider list.*

6. Choose language carefully: Use impartial wording and avoid assessing blame.
   The purpose of mediation and the agreement is not about judging who was at fault in the past but rather what steps will create an effective future relationship that will contribute towards the best interest of the child.
   PROBLEMATIC: *Ms. Harris' failure to respond to Mr. Bryant's phone messages resulted in Ms. Harris losing her place on the housing waiting list. Accordingly, Ms. Harris agrees to be more prompt in the future.*
   PREFERRED: *Ms. Harris agrees that she will respond to Mr. Bryant's housing related phone messages within twenty-four hours. Mr. Bryant agrees that this time-frame will be acceptable and will help ensure that Ms. Harris' housing waiting list status is maintained.*

7. Spell out an agreed upon procedure for handling future disagreements.
   The parties have already successfully used mediation as a tool for resolving their dispute. Differences may occur as the parties try to carry out their agreement. It is useful to provide for an agreed upon mechanism for addressing these differences as they arise.
   PROBLEMATIC: *The agreement is silent about how the parties will resolve any future disputes.*
   PREFERRED: *If a dispute arises out of or relates to this agreement, the parties agree to try to resolve that dispute utilizing mediation before resorting to any other remedy.*

8. Agreement elements that are easily modifiable.
   There may be elements of the mediation agreement that parties would like to have written in a way that allows for easy modification.
   EXAMPLE: Increasing parent or sibling visitation

9. "Fallback/Back-Up" plans may be useful
   The parties may be reluctant to formalize a specific mediation agreement during mediation perhaps due to a desire for the maximum amount of flexibility or because all parties are congenial at the time of the mediation. However, if the mediator senses the potential for

future conflict then creation of a back-up plan can be useful, perceived as less threatening to participants, and appreciated by courts attempting to enforce vague agreements/orders.
EXAMPLE: In all but very unusual circumstances, encourage a "back-up plan" if the parties want a bio parent's post-adoption contact schedule "to be arranged by mutual agreement."

10. Address administrative/procedural issues in the agreement.
    EXAMPLES: Parties agree to vacate a contested hearing, or parties request that a review hearing be rescheduled

11. Generally there are no expiration dates
    Typically mediation agreements remain in effect until they are changed/replaced (via court order or signed agreement of all parties & subsequent order)

Possible Reasons for Concluding Mediation

1. Physical and emotional safety issues (for participants & mediator)
2. Be attentive to participant safety, esp. in cases involving domestic violence allegations
3. Abuse of mediation process
4. Participant capacity issues
5. Mediator receives information in confidential caucus that makes it inappropriate to continue/confounds productivity of appointment & participant insists on non-disclosure
6. Procedural reasons (e.g., critical person absent or not authorized to make decisions)
7. Agreement seems unlikely
8. Mediator's impartiality compromised (or participant perception of same)
9. Participant abruptly/unilaterally ends mediation
10. Session impasse

Closing Considerations When Agreements reached

(Concluding remarks, closure activities, and final arrangements to optimize the ending of the mediation)

a. Ideally conclude the session with the involvement of all participants
b. Review Agreements:
   - Issues that were discussed & resolved (both new understandings and formal agreements)
   - Issues that remain unresolved (discussed but no agreement)
   - Unaddressed issues (e.g., lower priority items that were not addressed due to time constraints or matters that were not directly related to the referral)
   - Necessary follow-up steps (e.g., taking contested hearing off calendar)
   - What happens next (e.g., how agreement gets to court, court review of agreement, next hearing date, etc.)
c. Remind participants about the confidentiality of mediation- nothing discussed in mediation can be disclosed in subsequent court reports/hearings
d. Encourage participants to build on current collaborative effort/spirit; honoring agreements builds trust
e. Troubleshoot anticipated challenges and discuss constructive strategies to meet challenges ("Plan B Thinking", i.e., if parent missing group therapy sessions, be upfront with attorney, social worker, and discuss how to get back on tract. (May be a transportation issue, etc.)
f. Offer return to mediation if parties want if future misunderstandings arise and agreement is at risk.
g. Consider symbolic closure rituals as a way to solidify collaboration; not always appropriate- consider case context, culture, etc.
h. Distribute evaluations and encourage feedback
i. Thank attendees for their participation (time, effort, concern for child, etc.)
j. When relevant, congratulate participants on their accomplishments!

Concluding/ Terminating a Mediation

A. For sessions that do not result in an agreement:

- Conclude the mediation appointment without blaming or discouraging participants
- Summarize participants' different perspectives on unresolved issues; "For you _____, the primary concern is…. And for you…"
- Acknowledge effort and involvement; "I recognize how difficult it can be to participate in mediation and I sincerely commend you for effort and participation."
- Discuss what will happen next (e.g., settlement conference, next court hearing, etc.)
- If appropriate, schedule additional appointment (after important consultation has taken place or new case information available)

B. For mediation sessions that are running over allotted time:

- Solicit the agreement of participants before extending the allotted appointment time
- Avoid speeding up as session may lose its value as a means to have participants feel heard and understood and faster pace may increase stress
- Instead of increasing the pace of the discussion, reduce the scope and consider scheduling follow-up appointment (or different process) for less urgent issues

C. For mediation sessions in which there is a mediation participant significantly dissatisfied with the mediation process:

- Listen to and acknowledge the dissatisfied participant
- Provide the dissatisfied participant with a written copy of your program's complaint procedure

D. For sessions where mediator terminates the mediation:

- If safety concerns are immediate, terminate clearly, concisely, and provide for safety escort, etc. (Bailiffs may be available). BE FAMILIAR with how to contact sheriff/officer in an emergency
- Mediator states reasons for terminating/concluding mediation, acknowledge efforts and inform participants that matter will return to court for further hearing. Resist getting into any extended conversation and do not respond to charges of bias, unfairness, but do provide information about how to make a complaint

E. For sessions that end abruptly; for example, a participant has an emotional outburst and then storms out of the room:

- Don't ignore disruptive and premature exits
- Instead acknowledge the unexpected behavior and take a moment to debrief
- Keep debriefing neutral in tone and have participants avoid derogatory comments about the individual that departed

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

[Address or other court required format]

IN RE Minors: **Name** **Date of Birth** **Action #** **Name of Child(ren)**	**For Court Use Only**
	Department:
JUVENILE DEPENDENCY MEDIATION OUTCOME **Mediation Date:**	**Next Court Date:** **Time:**

MEDIATION RESULTS: ☐ **Agreement, see attached**

☐ **Partial Agreement, see attached. Unresolved issues listed**

☐ **No Agreement** ☐ **Cancelled. No Appearance by**

☐ **Mediation Terminated** ☐ **Mediation continued, Date:**

Mediator_____, _____ Court Dependency Mediation Services

PARTICIPANTS:

NAME	RELATIONSHIP TO CHILD
	Mother
	Father
	Child Welfare Worker
	Child Welfare Supervisor
	Attorney for Child
	Attorney for Mother
	Attorney for Father
	County Counsel
	CASA
	[Paternal aunt, Maternal uncle, cousin, community member, other “interested party”]

Agenda: [Referral Issues]

Next page……..

The Parties agree as follows:

[Insert the language of agreement…..]

[If mediation required use of a bilingual interpreter, make a note that agreement was read in English and in [----language---]

The participants approve the disclosure of this agreement and intend for it to be reviewed by all counsel for the parties, and request the court approve as a court order.

Agreed by:

Parent	Date	Attorney for Parent	Date
Parent	Date	Attorney for Parent	Date
Child Welfare Worker	Date	County Counsel	Date
Child Welfare Supervisor	Date		
CASA	Date	Attorney for Minors	Date

SO ORDERED:

_____Date_____

Judge/Commissioner of the Juvenile Court

Prepared by [Dependency Mediator] [or other as appropriate, court requirement]

Training Self-Assessment

D.5. Concluding Dependency Mediations

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My knowledge of the possible reasons for terminating a mediation	☐	☐	☐	☐
My awareness of considerations (such as, concluding remarks, closure activities and final arrangements) to optimize the process of ending a mediation	☐	☐	☐	☐
My development of strategies for concluding mediation appointments in special circumstances	☐	☐	☐	☐
My utilization of self-reflection questions to learn from mediation cases involving awkward, abrupt or non-mutual terminations	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit E:

Special Issues in Dependency Mediation

CONTENTS

Chapter 1 Capacity to Mediate

Chapter 2 Domestic Violence and Its Impact on Mediation

Chapter 3 Substance Abuse, Mental Health & Dual Diagnosis

Chapter 4 Cultural Issues

Unit E, Chapter 1:
Participant Capacity to Mediate

Required Instructional Materials: • Computer • PowerPoint Slides • Projection Screen **Presentation Methods:** • Large Group Discussion • Lecture Presentation • Small Group Discussion **Participant References:** Unit E.1. Participant Handouts • Participant Handout A- *"Capacity to Mediate: CRC, AFCC & ADA Mediation Guidelines"* • Participant Handout B- *"Enhancing Capacity to Mediate: Process Adaptations & Accommodations"* • Vignette E.1 - *"Case Scenarios"* • Assessment - *"Self-Assessment & Reflection Tool"* **Suggested Pre-Session Reading:** • Participant Handout A- *"Capacity to Mediate: CRO, AFCC & ADA Mediation Guidelines"* • Participant Handout B- *"Enhancing Capacity to Mediate: Process Adaptations & Accommodations"*	***Estimated Duration:*** ***60 Minutes*** ***OPTIONAL*** ***30 Minutes*** *Complex Issues for Mixed? or Advanced Practitioners*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives----------	***5 Minutes***
2. Lecture Presentation & Large Group Discussion: What is Capacity to Mediate? ----------	***5 Minutes***
3. Large Group Discussion: Indicators That May Signal Diminished Capacity to Mediate ----------	***5 Minutes***
4. Large Group Discussion: Potential Accommodations and Process Adaptations to Enhance Participant Capacity ----------	***20 Minutes***
5. Small & Large Group Discussion: Responding to Vignettes --------	***20 Minutes***
6. OPTIONAL Large Group Discussion (for Mixed or Advanced Practitioners): Complex Issues----------	***OPTIONAL 30 Minutes***
7. Summary & Close----------	***5 Minutes***

1. Learning Objectives: After Concluding Section E.1. Participants Will Be Able To: a. Understand the concept of "capacity to mediate" and recognize issues related to informed consent. b. Recognize indicators that may impact a participant's capacity to mediate. c. When possible, collaborate with participants to provide mediation accommodations designed to enhance participant capacity. d. Summarize and remain in compliance with the California Rules of Court related to informed consent and participant capacity. e. Appropriately postpone or terminate mediation session when unable to adequately assure participant capacity.	***5 Minutes*** ***Facilitator Notes:*** • *Welcome participants* • *Review break time, end time, location of restrooms, etc.* • *Review learning objectives with participants*

2. Lecture Presentation & Large Group Discussion:

What is Capacity to Mediate?

a. How would you define the phrase "capacity to mediate"? *(PowerPoint Slide 2)*

b. Review and Discuss the California Rules of Court related to informed consent and capacity to mediate. *(See Participant Handout A- "Capacity to Mediate: CRC, AFCC & ADA Mediation Guidelines")*

c. What do your court's mediation protocols or local court rules say about informed consent and capacity issues? *(Power Point Slide 3)*

d. *For facilitator or participants with some dependency mediation experience to share with the group:* Have you (or your colleagues) ever been referred a mediation case in which you (or your colleagues) had a concern about the ability of one of the parties' to understand the mediation process? How was this handled?

e. Historically how has the field of mediation handled concerns about a participant's diminished capacity? What, if anything, has changed? *(PowerPoint Slides 4 & 5)*

f. Disability is one area for accommodation. What are other issues that may impact a participant's capacity to informed consent?
   - Developmental delay
   - Significant mental health diagnosis, current and/or history
   - Substance abuse & dependence
   - Victim of domestic violence (concern about fear and/or coercion)
   - Language barrier
   - Literacy barrier
   - Significant side effect to prescribed medication
   - Dementia or traumatic injury (brain or body)
   - Parent distracted caring for a young child during mediation appointment
   - Chronic lack of sleep
   - Hearing or visual impairment

5 Minutes

PowerPoint Slides 2-5

Participant Handout:

- ***Handout A****: Capacity to Mediate: CRC, AFCC & ADA Mediation Guidelines*

Facilitator Notes:

- *It may be helpful to mention to participants that judicial officers, attorneys and other parties are often aware of participant capacity issues. Mediators may receive referrals for which appropriate accommodations have already been made. At other times a participant's diminished capacity to mediate may have gone unnoticed until the mediation appointment. It is at this point that the mediator will want to assess a participant's capacity to mediate.*

For More Information See:

- *Judith Cohen, "ADA Mediation Guidelines: An Ongoing Endeavor," See www.mediate.com/pfriendly.cfm?id=1246*

3. Large Group Discussion:

Indicators that May Signal Diminished Capacity to Mediate

a. Capacity to mediate is probably most accurately conceptualized as a matter of degree - a spectrum. What are some indicators that may signal that the "do not proceed with mediation" threshold is approaching or has been reached, or a Guardian Ad Litem (GAL) is necessary? *(PowerPoint Slide 6)*

- Participant's inability to understand:
  - How the mediation process works
  - Who the parties are
  - The role of the mediator
  - The parties' relationship to the mediator
  - The issues at hand
- Participant appears unable to:
  - Assess options
  - Make and keep an agreement
  - Consider the consequences and impact of their behavior or decisions on themselves and/or others
- Other ideas?

Misconception Alert:

While it may be attractive for mediation programs to develop exclusionary referral criteria that automatically proscribe certain cases from entering mediation, *it is important that participants not be excluded from mediation based on a medical or mental health diagnosis alone.*

The ADA Mediation Guidelines indicate that while mediators and provider organizations must determine whether parties in a mediation have the capacity to "understand the process and the options under discussion and to give voluntary and informed consent to any agreement reached," the guidelines go on to say that "In making such determinations, **neither the mediator nor the provider organization should rely solely on a party s medical condition or diagnosis**. Instead, they should **evaluate a party's capacity to mediate on a case by case basis**, if and when a question arises regarding a party's capacity to engage in the mediation process and enter into a contract."

5 Minutes

PowerPoint Slide 6

For More Information See:

- *Christopher Moore, The Mediation Process: Practical Strategies for Resolving Conflict, 1996, pp. 141-160.*
- *For the complete "ADA Mediation Guidelines" see http://keybridge.org/practice-standards-for-ada-mediators/*
- *Patricia Porter, "Maximizing Effective Participation," See www.mediate.com/pfriendly.cfm?id=1334*
- *Judith Cohen, "ADA Mediation Guidelines: An Ongoing Endeavor," See www.mediate.com/pfriendly.cfm?id=1246*

3. Large Group Discussion: **Indicators that May Signal Diminished Capacity to Mediate (CONTINUED)** b. Interviewing mediation participants using a formal **mental status exam** questionnaire is not encouraged. However, dependency mediators may find it helpful to casually observe an individual's mental status while mediating (and/or while providing an orientation to mediation). Mental status exams do typically focus on an individual's: o Appearance (e.g., hygiene, grooming, style of dress) o Behavior (e.g., general activity level, tremors, eye contact) o Orientation (to person, place and time) o Mood (individual's self report) o Affect (e.g., appropriateness, intensity, range- based on observation of individual's non-verbal behavior) o Speech (e.g., loudness, rate, quantity) o Thought process (e.g., tempo and coherence) o Thought content (e.g., ideas, beliefs, delusions) o Perception (sensory experiences, hallucinations, illusions) o Cognition (e.g., attention, concrete thinking, distractibility, executive functioning, memory) o Insight (e.g., recognition of problems) o Judgment (e.g., impulsiveness, ability to make responsible decisions and plans) If, through regular mediation conversation and informal observation, the mediator perceives significant constraints in any of the above domains, the mediator may want to further assess the participant's capacity to mediate.	***CONTINUED*** ***PowerPoint Slide 6***

4. Large Group Discussion:

Accommodations and Process Adaptations to Enhance Participant Capacity

a. Child protection mediations may involve a higher percentage of participants struggling with significant mental health issues, substance abuse issues, family violence concerns and other challenges. Can you think of any other types of mediation (or contexts for mediation) where there might be similar levels of challenge?

- Disability, Probate & Guardianship, Health Care, Others?

b. If you have a sense that a mediation participant may benefit from process adaptations how should you proceed?

- Don't make assumptions about a participant's capacity
- Explore with the participant (and attorney) his/her abilities and limitations
- Collaborate with the participant (and attorney), prior to the mediation session to determine the most appropriate options for accommodating the mediation process

c. Does a case need to rise to the level of an "official" disability under the law before process adaptations are made?

- No. Accommodate as necessary to assure "informed consent" to and participation in appropriately modified mediation process

d. Should a judicial determination of incapacity automatically exclude a participant from mediation?

- ADA Mediation Guidelines (Section I., D.): An adjudication of legal incapacity is not the same as capacity to mediate…. Capacity is a decision-specific concept. Capacity to mediate may not be the same as capacity to make financial or health care decisions, to vote, to marry, or to drive. A party with a judicial determination of incapacity may still be able to participate in mediation. Conversely, a party without such a determination may not have the ability or understanding to participate.

e. IMPORTANT: If there is an adjudication of legal incapacity how should consent/approval of a potential mediation agreement be handled?

- ADA Mediation Guidelines (Section I., D.): A mediation agreement signed by a person without legal capacity may require co-signing by a surrogate to ensure its enforceability.
- A surrogate may be a Guardian Ad Litem (GAL) or Legal Guardian. It is important to understand the surrogate's areas of decision-making. His/her decision-making authority may only apply to certain types of issues.

20 Minutes

PowerPoint Slide 7

Participant Handout:

- ***Handout B****: Enhancing Capacity to Mediate: Process Adaptations & Accommodations*

For More Information See:

- *Patricia Porter, "Maximizing Effective Participation," See www.mediate.com/pfriendly.cfm?id=1334*
- *Judith Cohen, "ADA Mediation Guidelines: An Ongoing Endeavor," See www.mediate.com/pfriendly.cfm?id=1246*
- *Kirshbaum, M., Taube, D. O., & Baer, R. L., "Parents With Disabilities: Problems in Family Court Practice," Center For Families, Children & The Courts Journal, Volume 4, 2003, pp. 27-48.*

4. Large Group Discussion: **Accommodations and Process Adaptations to Enhance Participant Capacity (CONTINUED)** f. What accommodations or process adaptations might a mediator consider to maximize a participant's capacity to mediate? **Pacing & Timing:** o Prior to or between sessions- providing participants with a list of key issues to be discussed in session (increase readiness and preparation without session anxiety) o Having shorter mediation sessions to improve a participant's ability to concentrate, remain alert and retain information from session o Mediator initiating frequent breaks (increase likelihood of participants remaining alert and focused) o Encouraging participants to ask for breaks and clarification as needed o Changing the location or timing (e.g., morning v. afternoon) of the mediation session o Provide time (during or in-between sessions) for parties to reflect on important decisions (decrease pressure and avoid rushing) **Summarizing & Checking for Understanding:** o Mediator summarizing frequently o Asking participants to summarize or verbalize their understanding of mediation resolutions o Caucusing frequently to clarify interests and check for understanding **Advocates, Coaching & Consultation:** o Including a support person or legal surrogate, such as a guardian-ad-litem (GAL) in session o Utilizing separate sessions for mediator coaching- assisting all participants to identify and constructively express needs o Suggesting that parties consult experts (attorneys, therapists or others) for additional information, coaching, advocacy, etc. **Visual Aids, Language & Reading**: o Utilizing visual tools (such as a dry erase board or flip chart) to document important discussion points/agreements o Using straightforward language and avoiding professional jargon, acronyms and complicated terminology (all mediation participants) o Reading a mediation agreement out loud and checking for understanding of each element (also addresses literacy issues)	***CONTINUED*** ***PowerPoint Slide 7*** ***Participant Handout:*** • ***Handout B****: Enhancing Capacity to Mediate: Process Adaptations & Accommodations*

5. <u>Small & Large Group Discussion:</u> **Responding to Vignettes** a. If your training group is larger than six people have participants break up into smaller groups. Small groups can review the scenarios in "*Vignettes E.1.*" and discuss the topics below. Reconvene the large group after about fifteen minutes and have participants share their observations. o What accommodations might the mediator collaboratively consider with the participant to enhance the participant's capacity to mediate? o How should the mediator respond if another party to the mediation believes that the mediation process adaptations provide an unfair advantage to the party with diminished capacity? o If, after implementing the mediation process adaptations considered above, it becomes apparent to the mediator that the participant is having a difficult time fully participating in session, how might the mediator proceed? o Which, if any, scenarios might lend themselves to postponing or rescheduling the mediation appointment? o If the mediation is postponed or rescheduled what needs to occur before (or be different at) the reconvened mediation appointment? o Are there any scenarios that lead you to believe that mediation should not be undertaken or commenced in the first place- even with process adaptations?	***20 Minutes*** ***<u>Participant Handout:</u>*** • ***Vignettes E:***.*Case Scenarios* ***<u>Facilitator Notes:</u>*** • *Remind participants that Unit D.5. addresses the topic of terminating mediation in more depth* **<u>Practitioner Considerations:</u>** As there are often logistical obstacles and inflexible court time lines that make rescheduling multi-party dependency mediation appointments challenging, consider minimizing the need to reschedule by enhancing your pre-mediation case preparation.

6. Large Group Discussion:

Complex Issues (For Mixed or Advanced Practitioners)

OPTIONAL

30 Minutes

a. Is it possible for a mediator to maintain impartiality while collaboratively working with a participant to enhance the participant's capacity to mediate?

- Addressing the issue of enhancing capacity, mediator/trainer James Melamed suggests that the role of the mediator is to "maximally assist each participant to most capably consider the situation and their options."[1]
- "Noting that parties to any given mediation have different personal needs, ideas, interests and abilities, Melamed supports the idea that the mediator is there to give 'comparably maximized assistance' to each of the parties. He argues that empowering parties to make their best decision can never be done in exactly the same way for different parties. It should be done in the best way possible according to the actual needs of the individual parties."[2]

b. How can a mediator effectively balance the tension between welcoming disputants of diminished capacity into the process of mediation (promoting access) with ensuring that informed consent is not compromised?

c. Is there a way to resolve the tension between mediator codes of conduct that include clauses about terminating mediation if a party cannot participate due to a "physical or mental incapacity" (written before the ADA) and more recent understandings of the mediator's obligation to, when possible, accommodate disputants? (Code language from *Model Standards of Practice for Family and Divorce Mediation*, Standard XI.25.3, See www.abanet.org/family/reports/mediation.pdf)

For More Information See:

- *James Melamed, "Maximizing Mediation," See www.mediate.com/articles/melamed4.cfm*
- *Kathleen Blank, "It is Not a Disability Issue," See www.mediate.com/adamediation*
- *Judith Cohen, "ADA Mediation Guidelines: An Ongoing Endeavor" See www.mediate.com/pfriendly.cfm?id=1246*
- *Judith Cohen, "ADA Mediation-Important Challenges Remain" See http://www.mediate.com/ADAMediation/editorial3.cfm*

Practitioner Considerations:

An ethical dilemma may arise for a mediator when an individual of diminished capacity participates in mediation with the assistance of a guardian or surrogate who is not acting in the individual's best interest. For a discussion of this complicated issue of mediator responsibility see Ellen Waldman's article, *"Lessons from the Bioethics Field,"* at *www.mediate.com/adamediation*.

[1] *James Melamed, "Maximizing Mediation,", page 3 - see full cite at right column*
[2] *Kathleen Blank, "It is Not a Disability Issue, page 4, (full citation in right column)*

<u>7. Summary & Close:</u> a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit E.1. *"Self-Assessment & Reflection Tool"* d. Encourage participants to provide feedback on the Unit E.1. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***<u>Participant Handouts:</u>*** • *Self-Assessment & Reflection Tool* • *Training Reflection*

California Juvenile Dependency Mediation Curriculum

Unit E: SPECIAL ISSUES

Chapter 1:
Capacity to Mediate

California Administrative Office of the Courts

Participant's Capacity to Mediate

In order for the mediation process to work, the parties must be able to:

1. Understand the process
2. Understand the options under discussion
3. Give voluntary & informed consent to any agreement reached

Your Mediation Program

- Insert the section of your mediation program protocol (or local court rules) that addresses issues related to informed consent and/or a mediation participant’s capacity to mediate

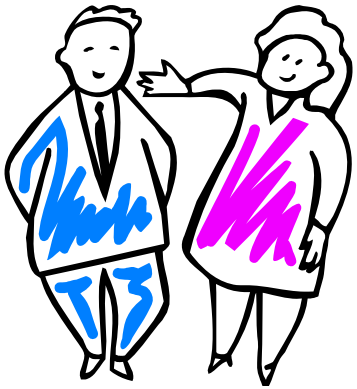
Participant's Capacity to Mediate

"In mediation's infancy, concern that parties of diminished capacity would be subject to manipulation led mediators to set a high bar for entry into the process.

- Cognitive deficiencies
- Physical illness
- Drug dependency, and
- Domestic violence

presumptively raised the red flag of incapacity and were viewed as grounds for exclusion." Waldman, E, 2003 at http://www.mediate.com/articles/waldmane1.cfm

Participant's Capacity to Mediate



<u>The Americans with Disabilities Act</u>

Raised mediator consciousness re:

- The rights of people with disabilities to access mediation services
- The obligation of mediation providers to creatively modify their services to allow for greater participation

Consider Not Mediating* When Participant Unable To:

Spectrum of Capacity

- Understand how mediation process works
- Understand who the parties are
- Understand the role of the mediator
- Understand parties' relationship to mediator
- Understand issues at hand
- Assess options
- Make and keep an agreement
- Understand consequences
- Understand impact of their behavior/decisions on themselves & others

Maximizing Participant Capacity:
Process Adaptations & Accommodations

- Detailed Orientation Process
- Pacing & Timing
- Summarizing & Checking for Understanding
- Support Persons & Legal Surrogates
- Coaching & Consultation
- Visual Aids, Language & Reading

California Rules of Court Relating to Informed Consent & Capacity to Mediate

CRC Code Section	California Rule of Court- Text (Emphasis Added)
CRC 5.518(c)(1)(D)	Each court that has a dependency mediation program must ensure that: Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to **due process** and a timely resolution of the issues;
CRC 5.518(c)(2)(E)	Each dependency mediator must: (E) Treat all mediation participants in a manner that preserves their dignity and self-respect;
CRC 5.518(c)(2)(I)	Each dependency mediator must: Promote the participants' understanding of the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation; and
CRC 5.518(d)(4)(B)(i)	The [domestic violence] protocol must require: The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of: (i) **Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;**
CRC 5.518(d)(5)	All local protocols must include the following: An oral or written orientation that facilitates participants' safe, productive, and **informed participation** and decision making by educating them about:
CRC 5.518(d)(8)	All local protocols must include the following: A procedure for **suspending or terminating** the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any **party is unable to participate in an informed manner** for any reason, including fear or intimidation.
CRC 5.518(d)(9)	All local protocols must include the following: A procedure for **ensuring that each participant clearly understands any agreement** reached during the mediation….
CRC 5.518(j)(10)	Mediators must: Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, **absence of bargaining ability**, or unconscionability.
CRC 5.518(j)(12)	Mediators must: **Terminate** any session in which an issue of **coercion**, **inability to participate**, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.

Excerpts- ADA Mediation Guidelines:[1]

B. DISABILITY ACCESS TO MEDIATION

Mediation providers have obligations to make their services accessible to persons with disabilities. These obligations are articulated in the ADA Title III (Public Accommodations) under which mediation providers would be considered as "Service Establishments," in Title II (Public Service) if they are state or local government entities such as publicly funded court or community mediation programs….

1. ADA mediation providers should make all aspects of mediation ranging from training to mediation sessions -- accessible to persons with disabilities, including parties and other mediation participants, staff, volunteers, and mediators. For these purposes, the broadest definition of disability should be applied, including chronic conditions, episodic symptoms and temporary disabilities. This is in keeping with generally accepted mediation principles that the parties be able to participate fully in the process. Persons conducting intake or case development should notify the mediator of a case of any disability accommodation required to enable a party s participation in the mediation. **

2. Mediation provider organizations should have in place policies and procedures concerning accessibility for persons with disabilities. Essential components include procedures for requesting a disability accommodation, procedures for grieving the denial of accommodations, and a non-discrimination policy that includes disability. The policies and procedures should be communicated to the parties, to mediation participants, to mediators, and to staff and volunteers.

D. PARTY CAPACITY

1. In order for the mediation process to work, the parties must be able to understand the process and the options under discussion and to give voluntary and informed consent to any agreement reached. Mediators and provider organizations, therefore, should determine whether the parties in mediation have the capacity to do so. In making such determinations, neither the mediator nor the provider organization should rely solely on a party s medical condition or diagnosis. Instead, they should evaluate a party's capacity, to mediate on a case by case basis, if and when a question arises regarding a party s capacity to engage in the mediation process and enter into a contract.
   This evaluation should be based on several factors. The mediator should ascertain that a party understands the nature of the mediation process, who the parties are, the role of the mediator, the parties' relationship to the mediator, and the issues at hand. The mediator should determine whether the party can assess options, and make and keep an agreement. An adjudication of legal incapacity is not necessarily determinative of capacity to mediate. ** However, a mediation agreement signed by a person without legal capacity may require co-signing by a surrogate to ensure its enforceability.
   Capacity is a decision-specific concept. Capacity to mediate may not be the same as capacity to make financial or health care decisions, to vote, to marry, or to drive. A party with a judicial determination of incapacity may still be able to participate in mediation. Conversely, a party without such a determination may not have the ability or understanding to participate.

2. If a party appears to have diminished capacity or if a party's capacity to mediate is unclear, the provider organization or the mediator should determine whether a disability is interfering with the capacity to mediate and whether an accommodation will enable the party to participate effectively. If so, the provider organization or the mediator should offer such an accommodation.

3. The provider organization or mediator should also determine whether the party can mediate with support. If a representative, such as attorney or support person, is present or participating, the party with diminished capacity remains the decision-maker in any agreement.

4. If, despite support, a party lacks capacity to participate in the mediation, mediation should not proceed unless a surrogate participates in the process to represent the interests of the party and make the mediation decisions in place of the party. Surrogates are defined according to state law, and might be agents under durable and health care powers of attorney, guardians, or family members. The surrogate and the person represented by the surrogate should be present and participate when possible. The mediator should encourage the surrogate to express the party's interests, values and preferences.

[1] For the complete ADA Mediation Guidelines document see http://keybridge.org/practice-standards-for-ada-mediators/ "The Guidelines provide direction for mediators, administrators, funders and consumers of ADA mediation. They also provide direction for disability access in any type of mediation involving persons with disabilities, such as family, commercial or labor mediation."

Excerpts- AFCC Child Protection Mediation Guidelines:[2]

1.3 History and Mission

The goals of these CPM Guidelines are to:

- Articulate the principles and philosophy that guide effective CPM;
- Provide program developers and managers with a template for creating and evaluating successful programs;
- Offer a standard that can be taken to funders, court systems, child welfare agencies, legislators, and others to promote high quality services;
- Help judges, social workers, lawyers, mediators and other professionals evaluate their approach to CPM and improve their skills and programs.

5.4 Mediation: Safety and Capacity

CPM sessions are structured and conducted so as to address safety and capacity concerns, provide appropriate accommodation, and promote engagement of individuals with diminished capacity and/or disabilities. This notwithstanding, if an individual is unable to exercise self-determination, or if another impediment to mediation exists that cannot be remedied, a case may need to be excluded from mediation. Mediators should continue the safety and capacity assessment process throughout the course of mediation

5.4.3 Capacity

The mediator should assess whether a person is able to meaningfully participate and exercise self determination and informed decision making on his or her own behalf as well as the mediator's ability to accommodate the participation and engagement of all participants. A determination of incapacity need not preclude a person from participating in mediation, as it may be possible to include a court appointed guardian, surrogate or other advocate to provide support for the incapacitated person. In addition, some forms of incapacity may be resolved if mediation is adjourned and rescheduled for a later session. Some factors to consider when determining a party's ability to exercise self-determination and meaningfully participate in mediation include whether he or she is able to understand the dispute, the facts relevant to the dispute, assess consequences to alternatives, freely make decisions, understand the mediation process, and be motivated to seek a positive outcome.

[2] Association of Family & Conciliation Courts: Guideline for Child Protection Mediation, 2012. View the complete AFCC Guidelines document at http://www.afccnet.org/Portals/0/Guidelines%20for%20Child%20Protection%20Mediation.pdf

Enhancing Capacity to Mediate:
Process Adaptations & Accommodations

Pacing & Timing:

- Having shorter mediation sessions to improve a participant's ability to concentrate, remain alert and retain information from session
- Mediator initiating frequent breaks (increase likelihood of participants remaining alert and focused)
- Encouraging participants to ask for breaks and clarification as needed
- Changing the location or timing (e.g., morning v. afternoon) of the mediation
- Prior to or between sessions- providing participants with a list of key issues to be discussed in session (increase readiness and preparation without session anxiety)
- Provide time (during or in-between sessions) for parties to reflect on important decisions (decrease pressure and avoid rushing)

Summarizing & Checking for Understanding:

- Mediator summarizing frequently
- Asking participants to summarize or verbalize their understanding of mediation resolutions
- Caucusing frequently to clarify interests and check for understanding

Advocates, Coaching & Consultation:

- Including a support person or legal surrogate, such as a guardian-ad-litem (GAL) in session
- Utilizing separate sessions for mediator coaching- assisting all participants to identify and constructively express needs
- Suggesting that parties consult experts (attorneys, therapists or others) for additional information, coaching, advocacy, etc.

Visual Aids, Language & Reading:

- Utilizing visual tools (such as a dry erase board or flip chart, or lists) to document important discussion points/agreements
- Use foam blocks (or colored index cards) to make visual piles of pros and cons for alternatives considered (helpful in cases of cognitive impairment)
- Using straightforward language and avoiding professional jargon, acronyms and complicated terminology (all mediation participants)
- Reading a mediation agreement out loud and checking for understanding of each element (also addresses literacy issues)

Vignettes E.1. Case Scenarios

1. The Amber M. Case:

The Amber M. case is referred to mediate both jurisdiction and disposition. Amber is 3½ years old. Her parents, Susan and Jack, are both developmentally delayed. Susan and Jack separated when Amber was approximately nine months old. Recently Susan moved in with her boyfriend Tom who is also developmentally delayed. When Susan's regional center worker noticed that Susan had bruises in the form of bite marks on her arms and legs, adult protective services was called. Susan reluctantly shared that Tom had been biting her during arguments. Similar bite marks were discovered on Amber as well as a bruise across Amber's legs where Tom had allegedly strapped her to a chair with a belt for discipline. There is no history of domestic violence between Susan and Jack. You know that Jack is very angry about Tom abusing Amber and that he believes that the courts always favor moms. Both Susan and Jack have received numerous services to assist them in caring for Amber independently. Child protective services removed Amber from Susan when it became clear that Susan was not willing to separate from Tom in order to provide a safe home for Amber. In the course of your pre-mediation case preparation contact with professionals, Susan's attorney expressed concern about Susan's limited ability to understand and retain information related to the legal case. Susan is distressed, confused and tearful at the time of the mediation appointment. While Jack is substantially cooperative, you sense that he may be prickly if he perceives mediation to in any way "favor" Susan. You also anticipate that Susan will need more accommodations (than Jack) to fully participate in dependency mediation.

2. The Kyle S. & Lyla S. Case:

The Kyle S. and Lyla S. cases are referred to address jurisdiction and disposition. Kyle is 3 months old and was removed from his mother Lyla (almost 16 years old) for neglect. Lyla is also a dependent child who was removed from her mother (Tanya) for neglect. The family came to the attention of Child Protective Services (CPS) at the time of Kyle's birth. Lyla did not seek any medical care when she was pregnant, occasionally abused alcohol and marijuana while pregnant, and did not have any supplies, residence or plans for her son at the time of his birth. (Lyla was estranged from her mother Tanya at the time of Kyle's birth). When CPS investigated they found that Tanya (diagnosed with major depressive disorder) had not been: 1.) stocking the house with food; 2.) keeping the house minimally hygienic; or 3.) providing any parental structure/limits for Lyla. As a result Lyla did not live at home or attend school, but instead spent the bulk of her time on the street and in a local park. At the time of Kyle's birth Tanya and Lyla entered a voluntary case plan with CPS. However, once it was discovered that neither Tanya nor Lyla were following the terms of their voluntary case plan, a formal petition was filed. Subsequently Lyla was found in a local park with several homeless young adults. At the time that she was located, Lyla was high and newborn Kyle was dirty, cold and hungry. When Lyla arrived (with her mother Tanya) for the mediation appointment, she was immature, volatile and preoccupied with the whereabouts of Kyle's 19 year old father, Rick. You understand from the case file that Lyla has a history of histrionic behavior and suicidal ideation. You sense that the stressor of her most recent break-up with Rick is further diminishing her coping skills.

3. The Alex A. Case:

Alex (age 7) and Toby (age 5) were removed from their parents when it was discovered that Alex and Toby had bruises in the shape of strap marks across the backs of their legs. The children's father (Hank) just returned from active military duty and is suffering from post-traumatic stress disorder. While Hank considers himself a strong disciplinarian, he concedes that he has been sporadically overly harsh recently. Shelly (mom) is supportive of Hank but is forthright about her concerns for their family. When Hank and Shelly appear for mediation Hank appears tired, is easily startled and has blood-shot eyes. He cups his head in his hands and says, "I just can't think straight right now."

Training Self-Assessment

E.1. Participant Capacity to Mediate

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My understanding of the phrase "capacity to mediate" and ability to recognize issues related to informed consent	☐	☐	☐	☐
My ability to identify red flags that may indicate a participant's diminished capacity to mediate	☐	☐	☐	☐
My ability to collaborate with participants to provide mediation accommodations designed to enhance participant capacity	☐	☐	☐	☐
My awareness of and conformity w/ California Rules of Court related to informed consent and participant capacity	☐	☐	☐	☐
My ability to appropriately not commence, postpone or terminate mediations when unable to adequately enhance participant capacity	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit E:
Special Issues in Dependency Mediation

CONTENTS

E.1. Capacity to Mediate

E.2. Domestic Violence and Its Impact on Dependency Mediation
(Intended to *Supplement* Mandatory Training Requirements)

E.3. Substance Abuse, Mental Health & Dual Diagnosis

E.4. Cultural Issues

Unit E, Chapter 2:
Domestic Violence & Impact on Dependency Mediation

Intended to supplement continuing mandatory training requirements

Required Instructional Materials: • Computer • PowerPoint Slides • Projection Screen **Presentation Methods:** • Large Group Discussion **Participant References:** Unit E.2. Participant Handouts ***1.*** *Handout A*- "California Rule of Court & Domestic Violence" ***2.*** *Handout B*- "Sample Domestic Violence Screening" *3.* "Self-Assessment & Reflection" **Suggested Pre-Session Reading & Exercises:** *1.* *Handout A*- "California Rule of Court & Domestic Violence" *2.* *Handout B*- "Sample Domestic Violence Screening"	***Estimated Duration:*** *90 Minutes*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives _____	***5 Minutes***
2. Large Group Discussion: Introduction & Practicing in Compliance with the California Rules of Court (And Local Court Rules & Protocols) Addressing Domestic Violence _____	***10 Minutes***
3. Large Group Discussion: Screening for Domestic Violence ____	***20 Minutes***
4. Large Group Discussion: Appropriate Mediation Procedures in Domestic Violence Cases _____	***20 Minutes***
5. Large Group Discussion: Helping Parties Match Families with Appropriate Services in Domestic Violence Cases _____	***10 Minutes***
6. Large Group Discussion: Specific Considerations for Domestic Violence Cases in Juvenile Dependency Mediation _____	***10 Minutes***
7. Large Group Discussion: Appropriately Not Commencing, and Terminating Mediation Due to Domestic Violence Concerns ___	***10 Minutes***
8. Summary & Close _____	***5 Minutes***

1. Learning Objectives: After Concluding Unit E.2. Participants Will Be Able To: • Recognize indicators of domestic violence and family violence • Be aware of compliance requirements of California Rules of Court and local protocols (or court rules) related to domestic violence screening and mediation session safeguards • Demonstrate an awareness of specific considerations for domestic violence cases in juvenile dependency mediation • Effectively screen for domestic violence • Implement appropriate mediation procedures in domestic violence cases - • Assist parties in selecting a mediation process that accommodates the case variables and characteristics- with special care in cases involving domestic violence allegations • Recognize and utilize available case consultation resources and assess when to not commence or terminate a mediation session due to domestic violence concerns	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Practicing in Compliance with the California Rules of Court (and Local Court Rules & Protocols) Addressing D.V.

10 Minutes

Large Group Discussion

PowerPoint Slides 2-5

Participant Handout:

- *CRC & Domestic Violence*

a. What is domestic violence or intimate partner violence?

b. How is domestic violence different from family violence?

c. Research literature emphasizes that not all domestic violence is the same and that differentiating the types of violence is critical. Kelly and Johnson (citation on right), for example, note that "A growing body of empirical research has demonstrated that intimate partner violence is not a unitary phenomenon and that types of domestic violence can be differentiated with respect to partner dynamics, context, and consequences" [1]

d. **OPTIONAL:** *For facilitator or participants with some dependency mediation experience:* Can you describe different types or patterns of intimate partner violence? Four patterns listed below.[2]

- Coercive Controlling Violence
  - Violence paired with ongoing pattern of coercion and control; Forms of control:
    - Intimidation, emotional abuse, isolation, minimizing, denying, blaming, use of children, asserting male privilege, economic abuse, coercion and threats
    - On average violence is more frequent & severe
    - Higher likelihood victim injured
    - In most cases men offenders & women victims
    - Sometimes coercive control so effective perpetrator may not use violence, esp. if there is a history of violence in the past
- Violent Resistance
  - Violence that takes place as an immediate reaction to an assault
  - Intended primarily to protect oneself or others from injury
  - Perpetrators of VR are most often women
  - Sometimes called "self defense"

For More Information See:

- *Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: The need for differentiated approaches to parenting plans. Family Court Review, 46, 500-522.*
- *Kelly, J. B., & Johnson, M. P. (2008). Differentiation among types of intimate partner violence: Research update and implications for interventions. Family Court Review, 46, 476-499.*

[1] *Kelly, J. B., & Johnson, M. P. (2008), Differentiation among types of intimate partner violence: 46 Family Court Review, p. 476.*

[2] *Kelly, J. B., & Johnson, M. P. (2008),Differentiation among types of intimate partner violence: Research update and implications for interventions. 46 Family Court Review, 476-499.*

2. Practicing in Compliance with the California Rules of Court (and Local Court Rules & Protocols) Addressing D.V.

- Situational Couple Violence
  - Most common type of violence in general population
  - Perpetrated by men and women
  - Results from situations/arguments that escalate on occasion into physical violence; Limited conflict resolution/anger mgt. skills, impulse control issues
  - Violence not embedded in a relationship-wide pattern of power, coercion & control
  - Generally lower frequency of occurrence & less severe forms of violence compared to CCV (e.g., pushing, shoving, grabbing, etc.)
  - Also known as "Conflict Instigated Violence"
- Separation-Instigated Violence
  - No prior history of violence
  - Seen symmetrically in both men and women
  - Unexpected, uncharacteristic violent acts
  - Isolated; often 1-2 episodes early separation
  - Mild to more severe forms of violence
  - Neither partner reports feeling intimidated, fearful, or controlled by other
  - Violence triggered by stress during traumatic separation/divorce
  - Perpetrator ashamed; More likely to acknowledge behavior & comply with restraining order

e. The California Rules of Court suggest many guidelines and mandated practices for mediation cases involving allegations of domestic violence. What are some of these provisions? (*See Handout A: "CRC & Domestic Violence").*

f. What does your local protocol say about providing mediation in cases in which domestic violence or violence perpetrated by a mediation participant has, or allegedly has, occurred?

g. What is a "differential domestic violence assessment" and what is its purpose? *(See CRC 5.518(b)(4) and CRC 5.518(d)(4)).*

h. What is a domestic violence support person? Who can provide this function and what is their role in mediation? *See CRC 5.518(d)(2)(E).*

CONTINUED

Large Group Discussion
***Handout A**: "CRC & Domestic Violence"*

PowerPoint Slide 5

Misconception Alert:

It is important for dependency mediators to remember that while they may have a great deal of education and training around domestic violence issues, their role in mediation is not that of domestic violence expert- but instead that of *effective process convener*. All screening is for the purpose of *creating the structure for as safe and balanced a mediation session as possible*. Alternatively, the screening may help the mediator determine whether it is necessary to discontinue mediation when safety issues cannot be adequately addressed with

2. Introduction & Practicing in Compliance with the California Rules of Court (and Local Court Rules & Protocols) Addressing D.V. i. How would an alleged victim of domestic violence become aware of her/his right to be accompanied by a support person and/or to have sessions with the mediator separate from the alleged perpetrator? j. *For facilitator or participants with some dependency mediation experience*: Discuss your experience mediating cases involving a history or allegations of domestic violence. For example: • How do you become aware of the existence and degree of domestic violence? • How do you conduct the mediation session to preserve participant safety? What suggestions or tips (about mediating cases involving allegations of domestic violence) do you have for developing colleagues? *k.* What is a domestic violence support person? Who can provide this function and what is their role in mediation? *(See CRC 5.518(d)(2)(E)).* • A mediation participant can select person of their choosing to be support person (no qualifications/special training required to be a support person) • A support person ***may not actively participate*** in mediation; His/her role is to be present as a source of emotional support for the alleged victim • Presence of the support person does not waive the confidentiality of the process; Support person is bound by the confidentiality of the process l. How would an alleged victim of domestic violence become aware of her/his right to be accompanied by a support person and/or to have sessions with the mediator separate from the alleged perpetrator? • Dependency mediators must inform participants of this right in a verbal or written orientation (See CRC 5.518(d)(5)(D))	***CONTINUED*** *Large Group Discussion* ***Facilitator Note:*** ***Remind trainees about previous chapters about how Mediator becomes aware of DV issues in a case. See Unit D., Chapter 1***

m. Can the mediator exclude a participant's domestic violence support person? • Yes, the mediator may exclude a participant's domestic violence support person *if that individual is being disruptive or is providing legal advice,* but is not the participant's attorney. *(See CRC 5.215(h)(2). While this code applies to Family Court Services- the provision about excluding a disruptive support person is generally accepted practice in dependency mediation, as well).* The mediator may not exclude a participant's domestic violence support person if that individual is also the participant's attorney n. *For facilitator or participants with some dependency mediation experience*: Discuss your experience mediating cases involving a history or allegations of domestic violence. For example: • How do you become aware of the existence and degree of domestic violence? • How do you conduct the mediation session to preserve participant safety? • What suggestions or tips (about mediating cases involving allegations of domestic violence) do you have for developing colleagues?	***CONTINUED*** *Large Group Discussion* ***Facilitator Note:*** *Remind trainees that the laws and regulations around domestic violence and legal proceeding come initially from criminal protective orders, and family law related matters. In practice, dependency mediation follows the family law rules of court, with limited adaptation.*

3. Screening for Domestic Violence[3]

a. What are some ways/methods to screen for domestic violence? A multi-method screening process is recommended.

- Document review
- On-site written questionnaires (completed separately)
- Face-to-face separate interviews
- Continued watchfulness and assessment throughout process (e.g., carefully track participants' non-verbal for signs of fear and intimidation)
- Another option- phone screening

b. In preparing for a dependency mediation appointment what documents might you want to review?

- Current and previous dependency court file(s)
- Other court records- e.g., criminal court records, family law records, restraining/protection orders
- Police records
- CPS records (e.g., D.V. allegations in cases referred out/unsubstantiated)

c. What are some advantages and disadvantages of a documentary review?

- Advantages
  - Can be reviewed prior to session
  - May show violent pattern (sociopathic behavior, disregard for law)
  - May show separation violence
  - May reflect level of dangerousness (seriousness of injuries, weapons)
  - Easy way for courts with high caseloads to do initial screening
  -

20 Minutes

PowerPoint Slides 7-11

Participant Handout:

- ***Handout B****: Sample Domestic Violence Screening*

For More Information See:

- *Ver Steegh & Dalton, "Report from the Wingspread Conference," Family Court Review, Vol. 46 No. 3, July 2008, p. 460.*
- *Girdner, L., Domestic Abuse and Custody Mediation Training for Mediators, Instructor's Guide, ABA Center on Children and the Law (1999), Module 3, p. 4.*

[3] Adapted from *Ver Steegh & Dalton "Report from the Wingspread Conference," Family Court Review, Vol. 46, 2008, p. 460.*

3. Screening for Domestic Violence (CONTINUED)

- Disadvantages
  - Documentation represents the tip of the iceberg
  - Absence of documentation not reliable indicator of absence of abuse
  - Presence of allegations of D.V. in pleadings, temporary protection orders, and arrests are *not in themselves evidence* that abuse occurred
  - Many forms of exercising power and control do not constitute criminal behavior and would not appear in records
  - Limitations on information access limitations for non-court personnel

d. What are some important characteristics of an on-site written questionnaire? (i.e., questionnaire given to party to fill out while at court, or just before a mediation)

- Should be in accessible language (avoid jargon, complex wording)
- Must be completed in a safe place- independent of the other party
- Includes explanation of the use of the information, its confidentiality and exceptions
- Asks about existence of violent, abusive and controlling behaviors and fear thereof

e. What are some advantages and disadvantages of an on-site written questionnaire given to a party just before mediation?

- Advantages
  - Efficient
  - Cost-effective
  - Can rule out some cases or identify them for more detailed screening
- Disadvantages
  - Lack of rapport established to ask questions of this nature and expect full disclosure
  - Party may fear use of information to their disadvantage and, therefore, not be forthcoming
  - Absence of responses revealing abuse is not reliable indicator that abuse does not exist
  - Use of mainly close-ended questions less likely to result in disclosure

CONTINUED

Large Group Discussion

Information Adapted from following sources:

- *Ann Milne,"Mediation and Domestic Abuse" in Divorce and Family Mediation (2004), Eds. Jay Folberg, Ann Milne and Peter Salem.*
- *Ver Steegh & Dalton, "Report from the Wingspread Conference," Family Court Review, Vol. 46 No. 3, July 2008, pp. 454-475.*
- *Domestic Abuse and Custody Mediation Training for Mediators, Instructor's Guide, Linda Girdner, Ph.D., ABA Center on Children and the Law (1999).*
- *Ellis & Stuckless, "Domestic Violence, DOVE, and Divorce Mediation," Family Court Review, Vol. 44 No. 4, Oct 2006, pp. 658-671.*
- *Ellis, "Divorce and the Family Court: What Can Be Done About Domestic Violence?" Family Court Review, Vol. 46 No. 3, July 2008 531-536*
- *Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: The need for differentiated approaches to parenting plans. Family Court Review, 46, pp. 506 & 519.*

3. Screening for Domestic Violence (Continued)	***CONTINUED***
f. What did you find useful about the in-person interview questions developed by Ann Milne (included in the ***Handout B:*** "Sample Domestic Violence Screening")?	*Large Group Discussion*
g. Potency, Pattern and Primary Perpetrator (PPP) Screening • Much of the information for the PPP can be obtained during case preparation (e.g., court file review and phone interviews), thus it may not be necessary to pose all questions directly to participants • Generally multiple positive indicators signal higher risk and some indicators are more important than others (e.g., #1, #2, #3)	

h. What are some important guidelines for in-person interviews? *(PowerPoint Slides 8-12)*
• Screen EACH party
• Screen each party SEPARATELY
• Out of sight and hearing distance of other party & not in public place
• Explain that screening and assessment are standard procedures
• Remind participate that about mediation confidentiality and exceptions to confidentiality
• As many victims do not identify themselves as victims ask specific questions about behavior
• Move from general to specific questions
• Define abusive behaviors
• As screening is designed to help the mediator appropriately structure the mediation appointment, questions should not be overly-intrusive
• Suggest possible ways to structure the mediation appointment and help the party reflect on her/his ability to mediate with session safeguards
• Screening & assessment continue throughout the mediation process- they are not one time events
  o Use of open-ended questions allows greater possibility of disclosure
  o Non-verbal communication added dimension not present in other screening methods
  o Ability to use self as barometer; does mediator feel pressured, manipulated, threatened, demeaned, charmed, etc.?
	PowerPoint Slides 8-11

i. What are some advantages and disadvantages of separate, face-to-face interviews?
• Advantages
  o Can develop rapport
  o Ability to understand couple dynamics from each party's perspective
  o Able to ask follow-up questions to pursue topics in greater depth
  o Able to assess degrees of which parties attempt to control process and mediator or expect mediator to advocate and make decisions for them
• Disadvantages
  o More time-consuming
  o May put a vulnerable party at risk if not handled carefully
	CONTINUED
	
	Large Group Discussion

4. Appropriate Mediation Procedures in Domestic Violence Cases

20 Minutes

PowerPoint Slides 9-11

a. What are some possible session safeguards in D.V. cases? *(PowerPoint Slides 13-15)*

- Separate sessions (entirely separate days & times)
- Shuttle/staggered mediation (i.e., caucus)
- Telephonic and on-line mediation
- Separate waiting rooms (waiting areas not visible to one another)
- Different entrances/exits and travel routes
- D.V. support person present
- Security/Bailiff present nearby
- If not conducting entire mediation session separately meet separately w/ parties prior to finalizing any mediation agreement in order to ensure that the alleged victim is not feeling intimidated, coerced, manipulated, etc. (IF you do, how to integrate back into mediation session?)
- For custody/visitation orders at dismissal (or other stages of the case)- avoid terms/expectations about "cooperative co-parenting"
    - If custody/visitation orders are part of dismissal, Inform parties about timeline in which mediation agreement become a court order, and how final orders are forwarded to family court. (Process information, not advice
- Alleged victim and alleged perpetrator arrive/depart at different times; e.g., arrange for alleged victim to depart mediation immediately, and arranging for alleged perpetrator to wait 15 minutes. Use resources of social worker, and/or parent's attorney.
- Consider providing written referrals and/or safety plan for alleged victim (e.g., contact information & directions to services); If living with alleged perpetrator assess wisdom of printed information
- Develop a private signal with the alleged victim to alert the mediator if distressed, uncomfortable, so that mediator can take break or other appropriate intervention.
- Protect alleged victim's contact info- keep court file and other paperwork with you when leave mediation room
- Terminate mediation session as necessary

Practitioner Considerations:

The National Council of Juvenile & Family Court Judges' (NCJFCJ) Family Violence Department's 1998 publication *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (AKA The Green Book) states that certain safeguards must exist for mediation to be appropriate in a child protection case in which there are allegations of domestic violence. See Green Book recommendation number 48 (pp. 90 &91) for these requirements. **http://www.thegreenbook.info/documents/Greenbook.pdf**

4. Appropriate Mediation Procedures in Domestic Violence Cases b. What are some topics that should not be discussed in mediation? • Reconciliation (particularly when multiple reconciliations have occurred and safety remains an issue); Possible exceptions if D.V. history "less severe," or treatment completed with actual behavioral change • Whether or not abuse occurred (or was warranted/justified) • Dropping charges or ending protective/restraining orders • Other manipulative "if… then" scenarios such as "if I can have the kids overnight, then I won't object to the kids being returned to your care…" c. What are some ways that a mediator can assist a D.V. victim to consider options and possible agreements? • Has the alleged victim had an opportunity to discuss issues with her/his D.V. support person and/or attorney? • Confer with attorney and alleged victim as to legal requirements d. Review mediation ground-rules regarding behavior in mediation. Discuss zero tolerance policy of all courts towards violence, threats of violence, intimidation/coercion. Solicit participants' agreement to follow mediation ground-rules. e. If relevant, ensure that both the alleged perpetrator and alleged victim understand appropriate restraining order behavior o For example, sometimes there is confusion about if/when contact is permissible- review documents and have attorneys for the parties provide clients with clarification f. Confirm that the alleged victim has worked with a support person, advocate or social worker to develop a safety plan for parent and child, and may refer to **court** domestic violence advocates in family law, or self-help centers.	***CONTINUED*** *Large Group Discussion*

5. Large Group Discussion:

Facilitating the discussion /development of resources between parent and social services, attorneys, CASA, family members etc.

10 Minutes

a. The mediation process provides for discussion of ideas, resources, etc., and mediators can help participants explore important variables when they are discussing/making decisions about appropriate services. Possible variables for mediation participants to consider are:[4]

- Frequency of violence, intensity and occurrence timeline
- Presence of sexual coercion or abuse
- Existence of nonphysical coercive strategies including verbal abuse, threats, isolation, and financial control
- Extent to which the violence is consistent with a recognized pattern with proven implications for ongoing risk or the utility or impact of particular interventions or determinations
- Presence of an established history of violence, criminal history, substance abuse, or mental health issues
- The determination of "who is afraid of what"
- The needs, interests and well-being of children & history of child maltreatment
- Family strengths and protective factors

For More Information See:

- *Ver Steegh & Dalton, "Report from the Wingspread Conference," Family Court Review, Vol. 46 No. 3, July 2008, p. 457.*
- *Ellis & Stuckless, "Domestic Violence, DOVE, and Divorce Mediation," Family Court Review, Vol. 44, No. 4, p. 665*

Practitioner Considerations:

When a parent's regular and unsupervised access to a child is restricted it can be helpful to assist the parties in articulating:

- Explicit goals with behavioral criteria that need to be met in order for the parent to graduate to less restricted contact with the child
- When a review of progress might take place to determine if contact can be safely modified
- Which treatment providers will be consulted for credible reports of successful progress and/or program completion

For more information see: Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N., Custody disputes involving allegations of domestic violence: The need for differentiated approaches to parenting plans. *Family Court Review* (2008), 46, p. 510.

[4] *Ver Steegh & Dalton, "Report from the Wingspread Conference," Family Court Review, Vol. 46 No. 3, July 2008, p. 457*

5. Large Group Discussion:

Helping Parties Match Families with Appropriate Services in Domestic Violence Cases (CONTINUED)

b. Range of possible services[5]

- Risk/Lethality assessment
- Safety planning
- Batterers' treatment programs
- Alcohol and drug treatment
- Dual-diagnosis consultation and treatment
- Victim support and treatment
- Posttraumatic stress groups
- Crisis counseling
- Grief groups
- Individual therapy
- Parent-child counseling (for alleged victim and child)
- Supervised visitation by agency
- Therapeutically supervised contact
- Treatment for traumatized children
- Parenting without violence classes
- Parent education, skills training and coaching
- Protective orders & removal of weapons
- Court orders with triggers
- Immigration services & interpreter services
- Advocacy including referral to legal resources/assistance

CONTINUED

Large Group Discussion

For More Information See:

- *Ver Steegh & Dalton, "Report from the Wingspread Conference," Family Court Review, Vol. 46 No. 3, July 2008, p. 462.*

Facilitator Notes:

- *For a county specific list of service providers, as well as additional resources on domestic violence, refer participants to California Dependency Online Guide (Caldog) www.courtinfo.ca.gov/dependencyonlineguide*

[5] Ibid, p. 462

6. <u>Large Group Discussion:</u>
Specific Considerations for Domestic Violence Cases in Juvenile Dependency Mediation
 	
a. As a mediator (of a dependency case involving allegations of domestic violence) what checklist of issues might you keep in mind during the mediation, so that the following topics are described and clear:
▪ Need for petition and/or removal of the child
  ▪ Without formal court intervention/jurisdiction, is the alleged victim able to protect the child from the emotional harm of witnessing domestic violence? Is there evidence that the alleged victim is responsible for child neglect? Does the harm resulting from D.V. exposure substantially outweigh the potential harms associated with removal & foster care?
  ▪ Has removing the abuser from the home been considered prior to removing the child from the alleged victim?
▪ The child's placement and any safety plan
  ▪ If relevant, is the alleged victim able to interact safely with the proposed placement provider?
▪ Visitation
  ▪ Are visitation arrangements clear and detailed?
  ▪ Are exchanges safe?
  ▪ Are visitation environments safe? (e.g., supervised visits for perpetrator)
▪ Confidentiality of alleged victim address and contact information, visitation schedule etc
▪ Case plans
  ▪ Each parent in dependency has separate case plans, even if overlap
  ▪ Unless specifically deemed safe and appropriate, has the case plan avoided "couples counseling," "family counseling," or "co-parenting classes" for the alleged victim and alleged perpetrator?
  ▪ If appropriate, have the times and locations of the alleged victim's services remained confidential from the alleged perpetrator?
	10 Minutes
	
	<u>For More Information See:</u>
	• *<u>Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice</u> (1998) Recommendations from the National Council of Juvenile & Family Court Judges Family Violence Department; (AKA The Green Book)*
	• *Ambrosio, Z. D., Advocating for comprehensive assessments in domestic violence cases. <u>Family Court Review</u>, Vol. 46 No. 4, October 2008, pp. 654-669.*

6. <u>Large Group Discussion:</u> **Specific Considerations for Domestic Violence Cases in Juvenile Dependency Mediation (CONTINUED)** b. As child protection mediations involve multiple parties, it is not unusual for there to be a history of violence between other mediation participants (i.e., not just the child's parents). Care must be taken to assess for all forms of family violence such as violence between the child's parent and grandparent; grandmother and grandfather; parent and aunt or uncle, etc.	***<u>CONTINUED</u>*** *Large Group Discussion*

7. Large Group Discussion:

Whether domestic violence issues impact on mediation is to decline the mediation or once commenced, to be terminated.

1. What are some factors that a mediator might want to consider when determining if a case is ***not*** appropriate for mediation? Janet Johnston's nine indicators of acute dangerousness below[6] Threats and fantasies of serious harm
2. History of violence
3. Availability of weapons
4. Drug and alcohol use
5. Severe depression and rage
6. History of mental illness
7. Obsession with or possessive attitude toward the partner
8. Disregard or contempt for authority
9. Existence of a recent stressor

- Generally multiple positive indicators signal higher risk;
- Some indicators are more important than others (e.g., threats/fantasies of homicide/suicide; history of extreme violence/serious injuries; and availability of weapons)

b. DOVE (Domestic Violence Evaluation) is a 19-item instrument "designed to assess and manage the risk of domestic violence between partners during and following their participation in divorce mediation." While child protection mediation differs from divorce mediation and DOVE was not designed for the child protection mediation context, the instrument may still be of value.

5 Minutes

PowerPoint Slides 12-13

See Unit D., Chapter 5

Facilitator Notes:

- *Remind participants that Curriculum Unit D.5. addresses 'Terminating a Mediation"*

For More Information See:

- *Ver Steegh & Dalton "Report from the Wingspread Conference,", Family Court Review, Vol. 46 No. 3, July 2008, 458.*
- *Ellis & Stuckless, "Domestic Violence, DOVE, and Divorce Mediation," Family Court Review, Vol. 44 No. 4, Oct 2006, 658-671.*

[6] Ibid, p. 458.

7. Large Group Discussion: **Whether domestic violence issues impact on mediation is to decline the mediation or once commenced, to be terminated. (CONTINUED)** c. Of the four types or patterns of intimate partner violence reviewed earlier (Section 2.d.), which type/pattern of violence might particularly contraindicate mediation? o According to Kelly and Johnson (2008), mediation is more problematic where "Coercive Controlling Violence" has been identified (p. 493) d. When unsure whether (or how) to proceed with mediation CONSULT with supervisors and/or colleagues.	***CONTINUED*** *Large Group Discussion* ***For More Information See:*** • *Kelly, J. B., & Johnson, M. P. (2008). Differentiation among types of intimate partner violence: Research update and implications for interventions. Family Court Review, 46, 476-499.*

8. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit E.2. *"Self-Assessment & Reflection Tool"* d. Encourage participants to provide feedback on the Unit E.2. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Participant Handout:*** • *Self-Assessment & Reflection Tool*

Juvenile Dependency Mediation

DRAFT Curriculum PowerPoint Presentation

Unit E.2.

Domestic Violence & Its Impact on Dependency Mediation

jencrawley@earthlink.net

Domestic Violence

Domestic Violence is a concept with various names, such as:

- Spouse abuse
- Intimate partner violence
- Battering, or
- Partner abuse

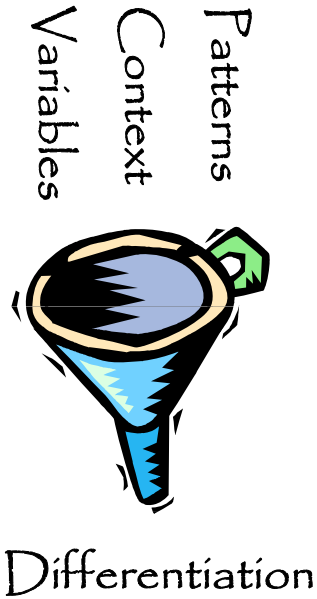
Domestic Violence

Domestic violence typically does <u>not</u> include:

- Child abuse
- Child-to-parent violence
- Sibling violence

Considered forms of family violence- a broader concept

Types or Patterns of D.V. or Intimate Partner Violence



- Coercive Controlling Violence
- Violent Resistance
- Situational Couple Violence
- Separation-Instigated Violence

Your Mediation Program

- Insert your program’s domestic violence protocol or local court rules that address domestic violence

Screening for D.V.

A multi-method screening process is recommended

- Document review
- On-site written questionnaires
- Face-to-face separate interviews
- Continued watchfulness and assessment throughout process

Screening for D.V.

Guidelines for in-person interviews

- Screen each party
- Screen each party SEPARATELY
- Explain that screening and assessment are standard procedures
- Define abusive behaviors
- Move from general to specific questions

Screening for D.V.

Guidelines for in-person interviews

- Explain confidentiality & exceptions
- Ask specific questions about behavior as many will not identify themselves as victims
- Discuss options for structuring the appointment with alleged victim
- Screening & assessment continue throughout the mediation process- they are not one time events

Session Safeguards in D.V. Cases

- Separate session (entirely separate days & times)
- Shuttle/staggered mediation
- Telephonic & on-line mediation
- Separate waiting rooms (not visible to one another)
- Different entrances/exits & travel routes
- D.V. support person attends session

Session Safeguards in D.V. Cases

- Security/Bailiff present nearby
- If not conducting entire mediation separately- meet parties separately prior to finalizing agreement
- Avoid terms & expectations about “cooperative co-parenting” (in dismissal/exit orders, for example)
- Escort to car for alleged victim

Session Safeguards in D.V. Cases

- Different arrival & departure times (e.g., alleged victim departs first)
- Consider providing written referrals and/or safety plan for alleged victim
- Develop a private signal w/ alleged victim to covertly indicate distress
- Protect alleged victim's contact info.
- Terminate mediation as necessary

Mediation May Not Be Appropriate When…

- Threats & fantasies of serious harm
- History of violence
- Availability of weapons
- Drug and alcohol use
- High depression and rage

Mediation May Not Be Appropriate When…

- History of mental illness
- Obsession with or possessive attitude toward the partner
- Disregard or contempt for authority
- Existence of a recent stressor
- Victim states she/he is afraid of mediating

California Rules of Court Relating to Domestic Violence

CRC Code Section	California Rule of Court- Text
CRC 5.518(b)(3)	"Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following: (A) The role of domestic violence in creating a perceived or actual threat for the victim; and (B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.
CRC 5.518(b)(4)	"Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and the fear of prospective violence.
CRC 5.518(c)(1)(B)	Each court that has a dependency mediation program must ensure that: (B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;
CRC 5.518(c)(1)(F)	Each court that has a dependency mediation program must ensure that: (F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;
CRC 5.518(c)(2)(A)	Each dependency mediator must: (A) Attempt to assist the mediation participants in reaching a settlement of the issues consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants;
CRC 5.518(c)(2)(B)	Each dependency mediator must: (B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member;
CRC 5.518(c)(2)(F)	Each dependency mediator must: (F) Promote a safe and balanced environment for all participants to express and advocate for their positions and interests;
CRC 5.518(d)(2)(E)	All local protocols must include the following: (2) A policy on who participates in the mediation, according to the following guidelines: (E) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, a support person may not actively participate in the mediation except to be present as a source of emotional support for the alleged victim.

CRC 5.518(d)(4)	All local protocols must include the following: (4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. This protocol must include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators. The protocol must also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol must require: (A) A review of case-related information before commencing the mediation; (B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of: (i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement; (ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed; and (iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members; and (C) A mediation structure designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, which structure must include: (i) An option for the victim to attend the mediation session without the alleged perpetrator being present; and (ii) Permission for the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator.
CRC 5.518(d)(5)(D)	All local protocols must include the following: (5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about: (D) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.
CRC 5.518(d)(8)	All local protocols must include the following: (8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.
CRC 5.518(j)(6)	Mediators must: (6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process and encourage the formulation of settlements that preserve these values.
CRC 5.518(j)(10)	Mediators must: (10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.
CRC 5.518(j)(12)	Mediators must: (12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.

Sample **Domestic Violence Screening**[1]

- General Questions:

  I'd like to ask you some general questions about your relationship.

  - How were decisions made in your relationship/marriage?
  - What happens when the two of you fight?
  - How does your partner respond when angry?
  - How do you?
  - How would I know if you are angry?
  - How would I know if the other person is angry?
  - Has anger ever risen to a level where someone is afraid?

- Specific Questions:

  I'd like to ask you some questions about what some people do when they are angry:

  - Have any of these occurred in your relationship: Shouting? Name calling? Pushing? Hitting? Choking? Slapping? Biting?
  - Have weapons ever been used, or threatened to be used against someone in your household?
  - Does your partner control any of your day-to-day activities to the point that you don't feel free to come and go?
  - Do you feel that you can disagree with your partner without fear?
  - Do you have access to money without having to ask permission?
  - Has your partner ever used your child/children to threaten you or convince you of something you considered not acceptable?

- Questions About Participating in Mediation:

  Now I'd like to ask you some questions about participating in the mediation process:

  - Do you have any concerns about participating in mediation?
  - Do you feel that you can freely put your concerns/issues on the table?
  - If mediation starts going in a direction that you are not comfortable with, what would help you feel comfortable?
  - Is there anything that worries you about your partner being in the mediation?
  - Do you have any suggestions about how we might best meet?
  - Do you have any questions about the process?

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[1] Adapted from Ann Milne's chapter "Mediation and Domestic Abuse" in Divorce and Family Mediation (2004), Eds. Jay Folberg, Ann Milne and Peter Salem, pp. 322-323.

Training Self-Assessment

E.2. Domestic Violence and Its Impact on Dependency Mediation

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My ability to recognize indicators of domestic violence	☐	☐	☐	☐
My ability to summarize and remain in compliance w/ CRCs and local protocols related to D.V. screening and mediation session safeguards	☐	☐	☐	☐
My ability to effectively screen for domestic violence	☐	☐	☐	☐
My ability to design and implement appropriate mediation procedures in domestic violence cases	☐	☐	☐	☐
My ability to assist parties to select services that match each family's unique variables & characteristics- w/ special care in D.V. cases	☐	☐	☐	☐
My awareness of the use of and availability of case consultation resources & my ability to assess when to not commence or terminate a mediation session due to D.V.	☐	☐	☐	☐
My awareness of specific considerations for D.V. cases in juvenile dependency mediation	☐	☐	☐	☐

Training Reflection

Unit/Chapter:_____ Topic:_____ Date:_____

Directions: After each section, use the following prompts to assess your understanding of the material.

1. What is the most important idea that you learned today?

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit E:
Special Issues in Dependency Mediation

CONTENTS

Chapter 1 Capacity to Mediate

Chapter 2 Domestic Violence and Its Impact on Mediation

Chapter 3 Substance Abuse, Mental Health & Dual Diagnosis

Chapter 4 Cultural Issues

Unit E, Chapter 3:
Substance Abuse, Mental Health & Dual Diagnosis

Estimated Duration:

90 Minutes

OPTIONAL

Trainee presentations

(Time will depend on number of trainees and depth of presentations)

Required Instructional Materials:

- Computer
- PowerPoint Slides
- Projection Screen

Presentation Methods:

- Large Group Discussion
- Lecture Presentation
- OPTIONAL Trainee presentations

Participant References:

Unit E.3. Participant Handouts

- Handout A- *"Effective Treatment & Intervention in Addiction"*
- Handout B- *"Practice Tips- Cases Involving Substance Use Issues"*
- Exercise 1- *"Problematic & Preferred Mediator Responses"*
- Exercise 1- *"Sample Answers- Problematic & Preferred Mediator Responses"*
- Handout C- *"Practice Tips- Cases Involving Psychiatric Disorders & Dual Diagnosis"*
- Assessment - *"Self-Assessment & Reflection Tool"*

Suggested Pre-Session Reading & Exercises:

- Handout-A *"Effective Treatment & Intervention in Addiction"*
- Handout-B *"Practice Tips- Cases Involving Substance Use Issues"*
- Exercise 1- *"Problematic & Preferred Mediator Responses"*
- Handout- C *"Practice Tips- Cases Involving Participants with Psychiatric Disorders & Dual Diagnosis"*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives _____	***5 Minutes***
2. Introduction to Substance Abuse & Dependence in Child Welfare: Lecture Presentation & Large Group Discussion _____	***5 Minutes***
3. Experiencing Addiction: Lecture Presentation, Large Group Discussion & OPTIONAL Trainee Presentation _____	***10 Minutes***
4. Treatment for Substance Abuse/Dependence: Lecture Presentation & Large Group Discussion _____	***20 Minutes***
5. Substance Abuse/Dependence & Dependency Mediation Practice: Lecture Presentation & Large Group Discussion: _____	***20 Minutes***
6. Introduction to Psychiatric Disorders & Dual Diagnosis in Child Welfare: Lecture Presentation & Large Group Discussion _____	***10 Minutes***
7. Psychiatric Disorders, Dual Diagnosis & Dependency Mediation Practice: Lecture Presentation, Large Group Discussion & OPTIONAL Trainee Presentations _____	***15 Minutes***
8. Summary & Close _____	***5 Minutes***

1. Learning Objectives: After Concluding Section E.3. Participants Will Be Able To: • Define and differentiate substance abuse and substance dependence. • Be familiar with commonly abused drugs and their intoxication effects. • Be aware of addiction risk factors and the four primary causes of craving • Be familiar with recommended court and case management practices, involving parental substance abuse • Demonstrate awareness of addiction treatment progress/lack of progress indicators (and understand the role of the mediator in mediation session. • Identify common co-occurring psychiatric disorders and discuss the negative synergy of dual diagnosis • Develop intervention strategies for mediation cases that include parties with addiction issues and/or psychiatric illness	***5 Minutes*** ***Facilitator Notes:*** ✓ *Welcome participants* ✓ *Review break time, end time, location of restrooms, etc.* ✓ *Review learning objectives with participants*

2. Introduction to Substance Abuse & Dependence in Child Welfare:

a While dependency mediators DO NOT function as substance abuse counselors in a mediation session, having a basic understanding of chemical dependency and drug addiction treatment may help mediators grasp the context of child welfare mediation.

Furthermore, mediators are better able to plan and tailor mediation interventions, session structure, and other process considerations to varying party needs when they have a general familiarity with addiction issues, as well as specific information about an individual participant's diagnosis and level of functioning.

Lastly, it is important for child protection mediators to develop credibility with dependency court professionals. Given that the majority of child protection cases involve addiction issues, mediators build trust with stakeholders when they are perceived as knowledgeable about substance abuse and dependence, and ask pertinent questions.

Below you will find some statistics on the intersection between substance abuse and child welfare.

- According to a 2005 report by The National Center on Addiction and Substance Abuse, substance abuse is a factor in **at least 70 percent** of all reported cases of child maltreatment *(American Humane, citation right)*
- Child maltreatment is 3.6 times more likely in substance abusing (vs. non-substance abusing) families *(Faller,)*
- In chemically dependent families, 65% of maltreatment occurs when the parent is actively using substances *(Faller,)*
- Children of substance abusing parents are 4.5 times more likely to be placed in foster care for neglect than for abuse *(Faller,)*

b *For facilitator or trainees with some dependency mediation experience-* Reflect on the child protection mediation cases that you have facilitated:

- About how many involved substance abuse issues?
- What substances are likely to be abused in your area?
- In your experience, do mediation cases involving parental substance abuse have any commonalities? What are they?
- In terms of mediating dependency cases involving parental substance abuse, what practical advice do you have for your developing colleagues?

5 Minutes

Lecture Presentation
Large Group Discussion

PowerPoint Slides 2-5

For More Information See:

For American Humane's statistics, see www.americanhumane.org

Faller, K.C., "Child Welfare Issues in Cases With Parental Substance Abuse, Domestic Violence, and Mental Health Problems," (undated article) available at online.

http://141.211.23.139/public/currentprojects/icwtp/integrative/a-cooccur2.pdf

(Continued….)

2. Introduction to Substance Abuse & Dependence in Child Welfare:

c Together the set of factors below are known as the **bio-psycho-social model** of addiction risk. The first three items listed are particularly critical in a person's predisposition to addiction:[1]

- Genetics
  - Single most prevalent risk factor for substance dependence (51 chromosomal regions associated with increased probability of addiction)
- Childhood trauma
  - Sexual abuse (especially potent risk factor), physical abuse, verbal abuse, and exposure to domestic violence
- Mental illness
  - Major depression and other mood disorders like bipolar disorder
  - Anxiety disorders (including post-traumatic stress disorder)
  - Personality disorders (e.g., borderline, narcissistic, histrionic, anti-social)
  - Learning disabilities
  - ADHD (without intervention over 75% of children with ADHD will struggle with addiction; with appropriate treatment risk drops to 24%)
- Other risk factors include
  - Age of onset (mental illness) or substance use (e.g., before age 16)
  - Properties of the drug/drugs used (i.e., some drugs more addictive)
    - Potency of drug and route of administration (injection & smoking predict greater risk of physical dependence than snorting)
  - Presence of enabling system (e.g., user protected from consequences)

d The Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, Text Revision (DSM) (2013) is the current medical reference text used in the diagnosis of substance related disorders and psychiatric disorders, and mediator should be conversant with DSM terminology

[1] Stalcup, S. A., "The Disease of Addiction And Its Treatment," 2007

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

Stalcup, S. A., "The Disease of Addiction And Its Treatment," pending publication. (From "Basic Dependency Law for Attorneys" at Beyond the Bench, December 12-14, 2007, available on Caldog)

Diagnostic and Statistical Manual of Mental Disorders V, American Psychiatric Association, (2013.

(Continued….)

2. Introduction to Substance Abuse & Dependence in Child Welfare:	***CONTINUED***
e What is substance ***abuse***? *(DSM V, 2013) (PowerPoint Slide 2)* *	*Lecture Presentation* *Large Group Discussion*
• "A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested *by one (or more) of the following, occurring within a 12-month period.*	
o Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)	
o Recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)	
o Recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)	
o Continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights)	
f What is substance ***dependence***? *(DSM, 2013) (Power Point Slide 3)*	
• "A maladaptive pattern of substance use, leading to clinically significant impairment or distress, *as manifested by three (or more) of the following, occurring at any time in the same 12-month period:*	
1. Tolerance, as defined by either of the following:	
a. A need for markedly increased amounts of the substance to achieve intoxication or desired effect	
b. Markedly diminished effect with continued use of the same amount of the substance	
2. Withdrawal, as manifested by either of the following:	
a. The characteristic withdrawal syndrome for the substance	
b. The same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms	
3. The substance is often taken in larger amounts or over a longer period than was intended	*(Continued….)*

2. Introduction to Substance Abuse & Dependence in Child Welfare: 4. There is a persistent desire or unsuccessful efforts to cut down or control substance use 5. A great deal of time is spent in activities necessary to obtain the substance (e.g., visiting multiple doctors or driving long distances), use the substance (e.g., chain smoking), or recover from its effects 6. Important social, occupational, or recreational activities are given up or reduced because of substance use 7. The substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance (e.g., current cocaine use despite recognition of cocaine-induced depression, or continued drinking despite recognition that an ulcer was made worse by alcohol consumption)"	***CONTINUED*** *Lecture Presentation* *Large Group Discussion*
3. Experiencing Addiction: a. What is ***craving***?[2] • Craving is generally understood as a compelling desire to use • Craving is a consequence of changes in the brain resulting from repeated over stimulation of the brain's pleasure producing chemical pathways • Craving produces feelings of "anger, anxiety, and frustration, a feeling of entitlement, depression and mood swings… [and at more intense levels] elevations in blood pressure, pulse, sweating, and dysphoria"	***10 Minutes*** *Lecture Presentation* *Large Group Discussion* ***PowerPoint Slide 6*** *(Continued….)*

[2] Ibid, p. 7

3. Experiencing Addiction:

- There are four primary causes of craving:
  1. Environmental cueing (most robust cause of craving)
     - The "people, places, and things" associated with drug use invariably generate overwhelming levels of craving
     - Responsible for 50% of relapses within first 30 days of sobriety
  2. Unpleasant withdrawal process
     - Acute withdrawal (pain, cramps, diarrhea, sweating) is an intensely negative experience and can be life threatening & post-acute withdrawal (dysphoria & boredom) may last months/years
     - Detoxification services are not readily available
  3. Mental illness
     - Untreated/insufficiently treated mental disorders are a major cause of relapse- individual self-medicates to escape psychic pain
     - See Section 8.c. for common co-occurring psychiatric disorders
  4. Stress
     - Biological stressors (e.g., hunger, fatigue), psychological stressors (e.g., loneliness, anger), and crises (e.g., divorce, death, job loss, loss of custody) stimulate craving

b. According to Dr. Neva Chauppette[3] (PowerPoint, 2009), the core elements of addiction are:

- "Obsession,"
- "Compulsion,"
- "Defense Mechanism- denial, minimization, rationalization, and justification,"
- "Guilt,"
- "Shame"

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

National Institute on Drug Abuse's, "Commonly Abused Drugs" (available Online.)

"Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals." Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 2004. (available Online)

Stalcup, S. A., "The Disease of Addiction And Its Treatment." [pending publication]

For key concepts, addiction treatment see the National Institute on Drug Abuse's, "Principles of Drug Addiction Treatment"

For "A Quick Guide to Finding Effective Alcohol and Drug Addiction Treatment," see SAMHSA's webpage.

[3] Chauppette, N., "Addiction, Dual Diagnosis & Parenting Part I, Part II", (FDR Statewide Conference, April 2009.)

4. Treatment for Substance Abuse/Dependence:[4]

a. In direct response to the **craving** factors listed above (Section 3.b.), contemporary treatment of addiction centers on:

- Reducing contact with environmental cues
- Successfully managing withdrawal symptoms
- Treating psychiatric disorders concurrently with substance related disorders
- Providing greater support during crises and stressful life events

b. According to Dr. Stalcup, addiction treatment consists of two discrete but intersecting stages:

- Initiation of abstinence (stopping use) focuses on 4 issues:
  1. "Control of exposure to environmental cues"
  2. "Treatment for drug withdrawal symptoms"
  3. "Establishment of a balanced daily schedule"
  4. "Management of mental illness symptoms"
- Relapse prevention also focuses on 4 issues:
  1. "Ongoing avoidance of environmental cues"
  2. "Development of a consistent, structured lifestyle"
  3. "Use of 'tools' or behaviors to dissipate craving"
  4. "Continued management of withdrawal and/or mental illness symptoms"

c. In their article, "Effective Management of Parental Substance Abuse in Dependency Cases," Milliken and Rippel (2004) advocate for specialized substance abuse case management services and comprehensive judicial oversight for chemically dependent families involved in the child welfare system. The authors share lessons learned from San Diego's SARMS (Substance Abuse Recovery Management System) experience. For San Diego effective intervention involved:

- "Thorough assessments"
- Immediate treatment options"
- "Clear court orders"
- "Motivational substance abuse case management"
- "A compliance reporting system"
- "Sanctions for noncompliance"

[4] ibid

20 Minutes

Lecture Presentation
Large Group Discussion

PowerPoint Slides 7-11

Materials:

Handout- A Effective Treatment & Intervention in Addiction

For More Information See:

Stalcup, S. A., "The Disease of Addiction And Its Treatment," pending publication. (From "Basic Dependency Law for Attorneys" at Beyond the Bench, December 12-14, 2007, available on Caldog)

See detailed information at Milliken, J. R., & Rippel, G., "Effective Management of Parental Substance Abuse in Dependency Cases," Journal of the Center for Families, Children & The Courts, Vol. 5, pp. 95-107. Year?

(Continued….)

4. Treatment for Substance Abuse/Dependence:

d. As mediation participants decide about appropriate services, mediators can help parties tailor treatment choices to the unique needs of each individual/family. To truly individualize treatment, the National Institute on Drug Abuse (NIDA) suggests considering the proposed treatment recipient's "age, race, culture, sexual orientation, gender, pregnancy, parenting, housing, and employment, as well as history of physical and sexual abuse and other trauma" (NIDA, 1999). Participants may consider many other factors as well, such as substance(s) used, length of use, previous recovery attempts, and insurance limitations. **Caution:** These discussions may occur in a setting where agency may have policies they follow.

e. A frequent, core discussion in dependency mediation involves case plan services regarding dependency/abuse treatment. For this reason, it is helpful for mediators to be aware of treatment settings and services for individuals with substance related disorders.

Below is a checklist of some treatment options that might be discussed in mediation: With these discussions, it may be helpful to ask details about the intensity, structure, and possible sequencing of various treatments. Note: Details in mediation agreements and benefits. Unit D, Chapter 5.

1. Medically managed intensive inpatient treatment
- Comprehensive round the clock care in a medically managed setting
- May include detoxification, medical oversight of significant (possibly lethal) health problems related to drug withdrawal, and/or medications to discourage substance use (pharmacotherapies)- as an aside, pharmacotherapies are not limited to medically managed inpatient treatment

2. Residential or inpatient treatment
- Residential setting that provides stability and cultivates recovery skills
- May allow the child to be placed with the parent in the program
- Include residential treatment facilities, therapeutic communities, and transitional living facility (from most to least intensive)

3. Intensive outpatient treatment or partial hospitalization services
- Structured day or evening program (may accommodate client's work or school schedule); Typically greater than 9 hours of services/week

4. Outpatient treatment
- Organized, professionally facilitated, non-residential services; Typically less than 9 hours of services/week

5. Sober living home
- Affordable, alcohol and drug free communal living environment characterized by peer group support for recovery and self-support

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

National Institute on Drug Abuse. (1999). Principles of drug addiction treatment: A research based guide. Rockville, MD.

"Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals." Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 2004. Available ONLINE.

Chauppette, N., "Addiction, Dual Diagnosis & Parenting Part I" and "Addiction, Dual Diagnosis & Parenting Part II," PowerPoint (FDR Statewide, April 2009, available on Moodle).

(Continued….)

4. Treatment for Substance Abuse/Dependence:

6. Counseling/psychotherapy (e.g., individual, family, group)

7. 12 Step (e.g., AA & Narcotics Anonymous) and other support groups

8. Sponsor (accessible mentor for support and coaching)

9. Harm reduction programs

- Minimize collateral damage of HIV, hepatitis C, STDs, etc.

10. Early intervention programs

- Counseling and education for lower level psychoactive substance user

f. While mediators do NOT make determinations about a parent's progress in treatment, it is helpful for mediators to know the combination of factors that decision makers are likely to focus on when making this assessment.

Can you name some factors that could indicate that a parent is succeeding in treatment? Alternatively, what criteria might signal that a parent needs additional treatment?[5] Stalcup suggests:

- Treatment success involves:
  - "Engagement with work, school, and parenting"
  - "Negative drug test results"
  - "Compliance with testing"
  - "Treatment for mental illness"
  - "Keeps all appointments"
  - "Adheres to schedule"
  - "Home environment drug free"
- Additional treatment is advisable when the individual:
  - Has "No plans for work, school [or] parenting"
  - Has "Positive drug test results"
  - "No show[s] for testing"
  - Has "Symptoms of mental illness"
  - "Doesn't keep appointments"
  - "Lives chaotic lifestyle"
  - "Associates with users"

[5] Ibid

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

Stalcup, S. A., "The Disease of Addiction And Its Treatment," pending publication. (From "Basic Dependency Law for Attorneys" at Beyond the Bench, December 12-14, 2007, available on Caldog)

5. Mediation Practice- Substance Abuse & Dependence:

a. As noted above, a very high percentage of dependency court parents struggle with substance abuse and dependence. A preliminary issue related to mediating child protection cases involving a substance abusing parent is recognizing when NOT to proceed with mediation.

Generally it is advisable to postpone or terminate mediation if ***at the time of the mediation appointment*** a mediation participant is under the influence of a substance or experiencing problematic withdrawal symptoms. How would a mediator know if a mediation participant was high or experiencing withdrawal symptoms during mediation? What indicators might the mediator observe?

Misconception Alert:

Use caution when drawing conclusions about whether or not to terminate/postpone mediation as it is possible for an individual to meet a criterion below without being intoxicated or in withdrawal- in other words, there are alternate explanations for many of the below symptoms, including that a psychiatric disorder exists or is resurfacing as the individual achieves sobriety.

- Atypically energetic/lethargic (compared to individual's baseline*)
- Unusually slow movements, speech, and/or reaction time (compared to individual's baseline*), fatigue
- Pressured speech, loud speech
- Restless, agitated, irritable, excitable
- Anxious, experiencing panic attacks
- Confused, disoriented
- Pupils dilated or constricted
- Slurred speech
- Staggered gait, impaired balance and coordination
- Dizziness
- Poor judgment
- Poor concentration
- Apathetic, unresponsive, glazed over/checked out
- Dysphoric mood (or euphoric mood)
- Individual's breathe smells of alcohol, marijuana, etc.
- Paranoid, delusional, psychotic, and/or experiencing hallucinations

** An individual's baseline can be assessed in conversation with someone who has had previous (sober) contact with the individual. For example, consider asking the parent's attorney for his/her perspective.*

20 Minutes

Lecture Presentation
Large Group Discussion

PowerPoint Slides 12-13 [reference to concluding mediation section]

Materials:

Handout B: *Practice Tips- Cases Involving Substance Use Issues*

Exercise 1: *Practice Exercise- Problematic & Preferred Mediator Responses*

Sample Answer:- *Exercise 1- Sample Answers- Problematic & Preferred Mediator Responses*

Facilitator Notes:

- ✓ *For additional information about terminating mediation see Unit D.5.*
- ✓ *For additional information about Capacity to Mediate see Unit E.1.*

Advanced Practitioner Considerations:

The term 'physical dependence' is used when a substance dependent (tolerant) person experiences changes in physical function. Interestingly, "Drug withdrawal is always the exact mirror image of the drug's effects: if the drug lowers blood pressure, it is increased during withdrawal." (Stalcup, article, 2007)

(Continued….)

5. Mediation Practice- Substance Abuse & Dependence:

- Aggressive, threatening, and/or violent behavior
- Individual reports experiencing cravings
- Individual reports experiencing headaches, diarrhea, hypertension, sweating, nausea, vomiting, accelerated heartbeat
- Individual experiencing seizures, weakness, delirium tremens

b. It is not unusual for parents with substance abuse histories to struggle with short and/or long-term impairments as a result of their chemical dependence. Mediator may want to collaboratively explore with the individual any **process adaptations** that might optimize the individual's participation in mediation. Can you describe some strategies or ways that the mediator might make mediation more accessible for a mediation participant with short or long-term substance related impairments? *(See Unit E.1.)*

c. When relevant, again without assuming the role of specialist, dependency mediators may help mediation participants explore whether a parent is struggling with a substance **use episode** or actual **relapse**. [6]

- When an individual has a **use episode** (or **lapse**) he/she makes efforts to regain sobriety
  - The individual (and other parties) may want to consider intensifying treatment to address the stimulus that triggered the use episode
- When an individual **relapses**, he/she stops trying to maintain sobriety and may abandon treatment and resume drug use
  - This risky period in the addicted person's life may warrant stronger interventions that re-motivate participation in treatment and recovery

d. While it is important for the mediator to be genuine, frank and objective when having conversations with a mediation participant about addiction issues, the mediator should avoid being confrontational, judgmental or paternalistic.

e. As domestic violence is prevalent in substance abusing families, mediators must remember to screen substance-related cases for a family violence issues. *(See Unit E.2)*

[6] Ibid

CONTINUED

Lecture Presentation
Large Group Discussion

Misconception Alert:

At one time many child protection professionals believed that an addict must admit guilt/use to benefit from intervention. While client insight is always desired, child welfare system participants now focus on objective, observable behavioral change. For example, is the client attending scheduled visits, holding a job, providing negative ("clean") drug tests, meeting with the social worker, using community resources, etc.? When mediation participants consider a client's treatment progress, these types of factors are often more useful than whether or not the client admits guilt/use.

(Continued….)

5. Mediation Practice- Substance Abuse & Dependence:

f. Dependency mediators often help mediation participants make difficult decisions about optimal visitation arrangements in child protection cases that involve parental substance abuse. Addressing the issue of parent-child contact, Dr. Pablo Stewart (2008) reminds dependency system participants that "Visitation is for the child's benefit." He suggests that:

- Visitation should never be withheld to punish a non-treatment-compliant parent or a parent that does not admit to having a problem with substances
- Visitation should not be automatically suspended as a result of a positive urinalysis- toxicology screens are one of many factors that should be considered when making decisions about appropriate parent-child contact

g. Direct trainees to complete the *"Exercise 1- Problematic & Preferred Mediator Responses*." (Alternatively, trainees may have completed this exercise prior to the training session.) Using the *"Sample Answers"* as a guide, review and discuss trainee responses and answers to this exercise.

h. Most of the child welfare system's focus on addiction is directed to parental substance abuse. As a result, *the substance related service needs of dependent children* may be easily overlooked. Mediators can help participants deliberate on the child's need for assessment and treatment by considering the following potential impacts on the child:

- Prenatal alcohol and drug exposure
- Household and neighborhood subculture of drug use/sales
- Pattern of maltreatment that includes involving the child in drug use/sales (consider possible delinquency system involvement)
- Child uses drugs/alcohol (children of substance abusing parents are high risk for addiction- early intervention is critical)
- Child has a psychiatric disorder (e.g., depression, anxiety disorder, conduct disorder, ADHD, learning disorder, developmental delay, etc.)
- Child has developed co-dependent behaviors

i. There are protective factors that foster resilience to drug addiction. It is important that mediators offer participants an opportunity to discuss a child's resilience and strengthening services According to Dr. Stalcup[7] factors that promote resilience to drug addiction include:

- "Good mental health" (consider child assessment and treatment)
- "Academic competence" (consider IEP, tutoring, etc.)

[7] Ibid

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

Stewart, P. "Methamphetamine-Related Dual Diagnostic Issues for The Child Welfare Professional," PowerPoint (2008). (From JDM Winter Meeting, December 10, 2008- prior to 2008 Beyond the Bench

Facilitator Note:

Remember, Dr. Stalcup, focus is "custody mediation" and family court settings.

(Continued….)

5. Mediation Practice- Substance Abuse & Dependence: • "Positive relationship with an adult" (consider CASA, Big Brother/Sister) • "Family eats dinner together 5 days/week" • "Peer group participation (clubs)" • "Participation in sports" • "Participation in music, drama or dance" • "Involvement in faith-based activities" • "Taking care of pets" • "Volunteer activities" • "Social acceptance" (consider school-based and peer group treatments) • "Immediate, appropriate scaled consequences for alcohol/drug use" • "Early intervention for alcohol/drug use" j. Family and support system participants. These individuals usually have some personal experience with the individual struggling with substance abuse, and may or may not be helpful. Mediators must remain alert to session dynamics and sensitive to different perspectives about the identified individual's substance use. • For example, grandparents and siblings may feel exasperated by their perception of the addict's chronic irresponsibility and pattern of lies. These family members may be angered by a diplomatic mediator's apparent sensitivity to the individual struggling with substance abuse. Additionally, they may fear that the mediator (and/or mediation participants) will be 'taken in' by the addict's "deceit." • Alternatively, an addict's co-dependent significant other may enable the addict and feel annoyed when mediation participants suggest that the individual's problematic substance use be addressed prior to reunification. • Either way, attentive mediators foster constructive dialogues among all mediation participants- regardless of perspective. (For practice responding to provocative statements in mediation see Unit A.3. Worksheet- "Impartial Phrasing Practice Exercise" and Unit D.2. Practice Exercise- "Crafting a Mediator Response") k. The interventions below may be helpful in cases involving addiction: • Convey empathy • Nurture individual's recognition of how substance abuse/dependence may be interfering with personal goals • Foster individual's appreciation of the discrepancy between his/her present actions and desired behavior	***CONTINUED*** *Lecture Presentation* *Large Group Discussion* *(Continued….)*

5. Mediation Practice- Substance Abuse & Dependence:

- Encourage the belief that change is possible with help
- While many of the above strategies can be helpful, it is important that the mediator use an facilitative approach (i.e., asking client to self-reflect and make his/her own observations and conclusions)
- When individuals are defensive and reluctant to acknowledge substance use, exercise additional care to maintain perceptions of impartiality
  - For example, the mediator may say, "I understand that you are concerned about the accuracy of your recent drug test. In my experience, unless the court has evidence that there was some procedural mistake with the testing, it is likely that the court will consider the test results. (Let's check with your attorney about this, too.) Given this likelihood, would it be helpful to talk about the drug test methodology or how to best move forward from here?"

Advanced Practitioner Considerations:

Dr. Stalcup (2007) challenges the former view of substance dependence, i.e., addiction as a moral and character weakness. He explains, "Addiction is now understood to be a disease of the brain (neurochemical) pathways that render sobriety intolerable." Because an addict's drug use is compulsive (a part of the disease process) and not volitional, Stalcup suggests that it is more accurate to say, "she lost control and used, even knowing she could lose her children" than to say, "she chose drugs over her children."

How do you view addiction? How do the other dependency court stakeholders look at chemical dependency? Would a system-wide training on substance dependence be helpful to update attitudes and reduce stigma?

CONTINUED

Lecture Presentation
Large Group Discussion

6. Introduction to Psychiatric Disorders & Dual Diagnosis in Child Welfare:

a. As discussed above, the bulk of child protection cases involve an individual with some form of substance use disorder. In a great many of these substance impacted cases, individuals will also meet the criteria for a psychiatric disorder. (Dual diagnosis is the term used to describe individuals with concurrent psychiatric and substance use disorders.)

Mental health disorders are also prevalent in child welfare cases that are not impacted by addiction. This portion of the curriculum will address psychiatric illness- both in conjunction with substance related illness and independent of substance related illness.

b. Some mental health statistics for the United States:

- In a given year, approximately 1 in 4 adults in the United States has a diagnosable mental disorder *(National Institute of Mental Health [NIMH] at www.nimh.nih.gov)*
- 45% of adults with any diagnosable mental disorder meet the criteria for 2 or more disorders *(NIMH at www.nimh.nih.gov)*
- Approximately 9% of U.S. adults have a personality disorder and many of these individuals have a concurrent major mental disorder

c. As many mental health disorders are psychologically painful, it is not unusual for untreated individuals to use drugs to mask or reduce psychological pain. In this way, mental illness is a risk factor for substance abuse. As the category of "substance induced disorders suggests," substance abuse is also a risk factor for mental illness.

- According to NIDA about 60% of individuals with a substance use disorder also have mental health disorder *(citation right)*
- Mental health symptoms generally resurface with intensity when individuals pursue sobriety

d. When substance addiction and mental health disorders do coexist, the conditions aggravate one another and a negative synergy develops.

- Dr Stalcup writes[8], "Not only does mental illness predispose the individual to a more severe presentation of addictive disease, but the person with untreated mental illness develops addiction at a younger age, progresses more rapidly, and does less well in treatment, unless the co-occurring mental illness is effectively treated along with the addiction."
- Consider here the age of dependency parents, generally, and reunification periods, and generally accepted time frames for recovery. Not the same.

[8] Ibid, p. 11

10 Minutes

Lecture Presentation
Large Group Discussion

PowerPoint Slides 14-16

For More Information See:

National Institute of Mental Health [NIMH] at www.nimh.nih.gov

NIMH Science Update, "National Survey Tracks Prevalence of Personality Disorders in U.S. Population" October 18, 2007.

National Institute on Drug Abuse (NIDA), 1999). Principles of drug addiction treatment: A research based guide. Rockville, MD.

(Continued….)

6. Introduction to Psychiatric Disorders & Dual Diagnosis in Child Welfare:

CONTINUED

Lecture Presentation
Large Group Discussion

e. *For facilitator or trainees with some dependency mediation experience:* It is not uncommon for parents and children involved in child protection cases to have diagnosable mental disorders. In the cases that you have mediated, what diagnoses have been common? How has client mental health impacted the mediation process? Have you noticed additional case complexities when mediations involve dually diagnosed individuals?

f. Can you name some psychiatric disorders that commonly co-occur with substance use disorders? (NOTE: The mental disorders listed below are also frequently diagnosed in individuals involved in the child welfare system that do not have a concurrent substance related illness.)

- Depression (major depressive disorder)
- Bipolar disorder (bipolar I and bipolar II)
- Anxiety disorders (including post-traumatic stress disorder- PTSD)
- ADHD/ADD
- Personality disorders (including borderline, histrionic, narcissistic, and anti-social personality disorders)
- Learning disorders (e.g., reading, math, written expression)
- Psychotic disorders (including schizophrenia & schizoaffective disorder)

g. Section 5.a. included a list of possible indicators of substance intoxication and/or withdrawal. Review the signs cataloged in section 5.a. Which indicators, if any, might suggest that a psychiatric disorder exists?

h. Individuals that meet criteria for both substance abuse and psychiatric disorders often share the below characteristics[9]:

- Erratic behavior
- Repeated hospitalization
- Diminished effectiveness of medication treatment
- Poor prognosis
- Impaired judgment
- Poor impulse control
- ***Note****: Are there any other reasons to explain some behaviors: any socio-economic, environmental, concurrent medical issues?*

[9] Alterman, D., "Substance Abuse: Parental Competency and Children's Mental Health" 2007, (available on Moodle)

7. Mediation Practice- Psychiatric Disorders & Dual Diagnosis:

a. Child welfare system involvement and child removal are very stressful life experiences and often reflect or precipitate a crisis for the family. Mediators (and other system participants) do well to remember that most families feel overwhelmed by their involvement in child protection system. The anxiety and physiological arousal ("flooding") that individuals typically experience when participating in dependency mediation may be significantly amplified for individuals who already meet the criteria for a mental health disorder and/or substance abuse disorder. With compromised internal resources and limited external support to manage this taxing life experience, these individuals will likely need **enhanced support and structure** to optimally participate in dependency mediation.

b. Often individuals with the same mental health diagnosis function at vastly different levels- in other words there is a spectrum of ability/disability for individuals that share a diagnosis. Given this variability, in the child welfare mediation context where discussions regularly focus on a parent's ability to be safe and appropriate with the child, it may be helpful for the mediator to assist mediation participants in focusing on the parent's daily functioning and **parenting capacity**. For example, how adequate are the parent's parenting skills? Social interactions? Ability to complete instrumental tasks of daily living? Capacity to provide stable housing, food, etc.? If attention is only given to an individual's diagnosis, ability to provide adequate care for a child may go unseen.

Misconception Alert:

While many mediators are licensed mental health professionals (with the training and experience to diagnose mental disorders), it is NEVER appropriate for mediators to diagnose mediation participants. The mediator's impartiality would be compromised by this practice and mediation participants would likely be puzzled by the mediator's role-confusion.

Mediators use their clinical skills to optimize the mediation process (e.g., plan effective mediation interventions and determine ideal session structure, elicit information by asking questions, listening, re-framing etc).

15 Minutes

Lecture Presentation
Large Group Discussion

OPTIONAL

Trainee presentations (Time will depend on number of trainees and diagnoses explored)

PowerPoint Slides 17-20

Materials:

Handout C: *Practice Tips- Cases Involving Participants with Psychiatric Disorders & Dual Diagnosis*

Facilitator Notes:

✓ *For training groups with more time, the optional exercise in section 7.f. may be desired as information from self-directed learning is typically retained well.*

(Continued….)

7. Mediation Practice- Psychiatric Disorders & Dual Diagnosis:

- Below are some sample general tips and strategies to help mediators optimize the participation of all dependency mediation participants- including those with mental health diagnoses and/or chemical dependency issues. For the complete list of suggestions see the participant ***Handout C:*** "Practice Tips- Cases Involving Participants with Psychiatric Disorders & Dual Diagnosis."

Note: keep in mind details and language for agreements

- Help participants know what to expect, e.g., "first we're going to __ then ___."
- Develop an objective yet supportive mediation relationship
- Validate the mediation participant (not the position or complaint)
- Establish clear expectations about appropriate behavior in mediation
- Focus on the goals of mediation and the tasks to complete in session
- Avoid arguing with an angry/distressed client about his/her logic
- Focus on future decisions (regardless of who is right/to blame, etc.)
- Acknowledge painful feelings without shifting the session focus to opening, surfacing or processing emotions
- When necessary, set limits in an objective, straightforward manner
  - Logical consequences are in response to client behavior and are not expressions of mediator's global disapproval of the client as a person
- Express your positive hopes for the client
  - For example *(said supportively)*, "Charlie, let me stop you for a moment *(from making derogatory remarks)*. I am confident in your ability to resolve these issues…. can you say that a different way? "

c. Mediators benefit from knowing that the standard of care for the treatment of dual diagnosis individuals is to treat both conditions at the same time (i.e., concurrent vs. sequential treatment of co-occurring mental health and substance use disorders).

d. **Safety Alert.** If you are concerned that a mediation participant might be suicidal or homicidal, directly and supportively ask the individual whether he or she has thoughts about hurting himself/herself or someone else. Asking questions in this manner does not increase the likelihood that the individual will follow through on suicidal or homicidal ideation. *(See Unit A.2. "Confidentiality" for the danger to self or other exception to confidentiality.)** The how/when you do this is strategically crucial. As mediator, you may also be setting the path to concluding mediation respectfully.*

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

William A. Eddy, "Managing Cases Involving High Conflict Personalities" PowerPoint, CJER/AOC Family Law Institute, April 20, 2007.

Misconception Alert:

When dialogue about a mediation participant's mental health is necessary, courtesy and effective mediation suggest that discussions are not shame inducing, insensitive or overly intrusive, and monitor for any signs of increasing stress or discomfort. Overly intrusive discussions may increase an individual's stress and unnecessarily risk a fragile client's decompensation. PAY ATTENTION.

(Continued….)

7. Mediation Practice- Psychiatric Disorders & Dual Diagnosis:

e. **OPTIONAL:** While a detailed review of mental disorders is not within the scope of this curriculum AND mediators do not function as therapists within the mediation context, facilitators may nonetheless find it useful to have trainees research and prepare comments about a specific commonly diagnosed mental disorder's:

- Prevalence
- Course
- Prognosis
- Typical features
- Associated conditions
- Optimal treatments
- Implications for mediation- e.g., practice tips for cases involving a client with a specific diagnosis

8. Summary & Close:

a. Review learning objectives & briefly summarize content covered

b. Provide between session assignment (OPTIONAL)

c. Encourage participants to complete the Unit E.3. "Self-Assessment & Reflection Tool" and "Training Reflection"

d. Encourage participants to provide feedback on the Unit E.3. training

e. Provide reminder of future meeting schedule & thank participants

CONTINUED

Lecture Presentation
Large Group Discussion

For More Information See:

For NIDA statistics visit the NIDA website.

Stewart, P. "Methamphetamine-Related Dual Diagnostic Issues for The Child Welfare Professional," PowerPoint (2008)

Alterman, D., "Substance Abuse: Parental Competency and Children's Mental Health" PowerPoint, 2007.

Page, K., "The Invisible Havoc of Prenatal Alcohol Damage," Journal of the Center for Families, Children & the Courts, Vol. 4, Page 67, 2003.

5 Minutes

Materials:

Assessment*: Self-Assessment & Reflection Tool*

REFERENCES

Alterman, D., "Substance Abuse: Parental Competency and Children's Mental Health" PowerPoint, 2007, (available on Moodle, See 2007 FDR Statewide Conference materials).

American Humane Association, child abuse statistics. Available at: http://www.americanhumane.org/children/stop-child-abuse/fact-sheets

Chauppette, N., "Addiction, Dual Diagnosis and Parenting Part I" and "Addiction, Dual Diagnosis and Parenting Part II," PowerPoint (FDR Statewide, April 2009.)

Diagnostic and Statistical Manual of Mental Disorders IV- Text Revision, American Psychiatric Association, (2000).

Faller, K.C., "Child Welfare Issues in Cases With Parental Substance Abuse, Domestic Violence, and Mental Health Problems." Available at: www.ssw.umich.edu/public/currentProjects/icwtp/integrative/a-cooccur2.pdf

Milliken, J. R., & Rippel, G., "Effective Management of Parental Substance Abuse in Dependency Cases," Journal of the Center for Families, Children & The Courts, Vol. 5, pp. 95-107.

National Institute on Drug Abuse (NIDA), "Commonly Abused Drugs." Available at: *www.nida.nih.gov/DrugPages/DrugsofAbuse.html*

National Institute on Drug Abuse's, "Principles of Drug Addiction Treatment" For key concepts and addiction treatments, please see: www.nida.nih.gov

National Institute on Drug Abuse. (1999). Principles of drug addiction treatment: A research based guide. Rockville, MD. Available at: *http://www.drugabuse.gov/PODAT/PODATIndex.html*

National Institute of Mental Health [NIMH]. Available at: *www.nimh.nih.gov*

NIMH Science Update, "National Survey Tracks Prevalence of Personality Disorders in U.S. Population" October 18, 2007. Available at: *http://www.nimh.nih.gov/science-news/2007/national-survey-tracks-prevalence-of-personality-disorders-in-us-population.shtml*

Page, K., "The Invisible Havoc of Prenatal Alcohol Damage," Journal of the Center for Families, Children & the Courts, Vol. 4, Page 67, 2003. (available on Caldog)

Note: Remember: "Moodle" is a secure site, and users will require permissions from the court in order to follow up on reference.

Stalcup, S. A., "The Disease of Addiction And Its Treatment," [pending publication] (Presented at the "Basic Dependency Law for Attorneys," Beyond the Bench Conference, December 12-14, 2007, available on Caldog: http://cadependencyonlineguide.info/. Substance Abuse and Mental Health Services Administration's (SAMHSA), "A Quick Guide to Finding Effective Alcohol and Drug Addiction Treatment." Available at: *http://www.samhsa.gov/* Stewart, P. "Methamphetamine-Related Dual Diagnostic Issues for The Child Welfare Professional," PowerPoint (2008). (From JDM Winter Meeting, December 10, 2008- prior to 2008 Beyond the Bench) "Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals." Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockville, MD, 2004. (For information about substance abuse treatment settings and services see the table, "Treatment Settings, Services & Locations" pp. 79-80 of PDF version of tutorial). Available at: *www.ncsacw.samhsa.gov/tutorials/tutorialDesc.asp?cid=3* William A. Eddy, "Managing Cases Involving High Conflict Personalities" PowerPoint, CJER/AOC Family Law Institute, April 20, 2007. (Available on Moodle).	

Juvenile Dependency Mediation Curriculum

Unit E: Special Issues

Chapter 3:

Substance Abuse, Mental Health & Dual Diagnosis

Risk Addiction
Bio-Psycho-Social Model

- Genetics
  - Single most prevalent risk factor for addiction
- Childhood trauma
  - Sexual abuse (esp. potent risk factor), physical abuse, verbal abuse, & DV exposure
- Mental illness
  - Depression, bipolar disorder, anxiety disorders (including PTSD), personality disorders, ADHD, learning disabilities

Risk Addiction
Bio-Psycho-Social Model

- Other risk factors include:

  - Circumstances of first use
  - Early onset of use (e.g., before age 16)
  - Properties of drug(s) used (some more addictive)
    - Potency of drug
    - Route of administration (injection & smoking predict greater dependence risk vs. snorting)
  - Presence of enabling system (e.g., user protected from consequences)

DSM Definition

Substance Abuse

- Maladaptive pattern of substance use leading to significant impairment or distress, as manifested by ≥1 of the following, within a 12 month period

  - Recurrent substance use resulting in a failure to fulfill major role obligations at work/school/home
  - Recurrent substance use in situations in which it is physically hazardous (driving intoxicated)
  - Recurrent substance-related legal problems (arrests for substance-related disorderly conduct)
  - Continued substance use despite social/inter-personal problems caused by substance's effects
- Never met criteria for dependence

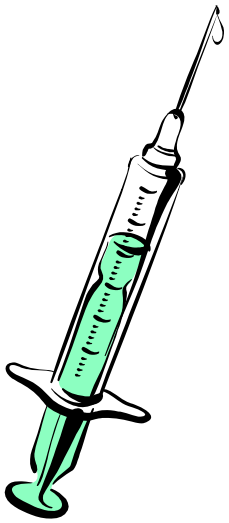
DSM Definition

Substance Dependence

Maladaptive pattern of substance use, leading to significant impairment or distress, as manifested by ≥ 3 of the following in same 12 months:

1. Tolerance (need more drug for same effect)
2. Withdrawal
3. Use more over longer time than intended
4. Persistent desire to cut down or control use
5. Lots of time spent obtaining, using, & recovering
6. Important social, occupational, or recreational activities are given up or reduced
7. Continued use despite physical or psychological problems caused by substance

Four Primary Causes of Craving



1. Environmental cueing (most robust cause of craving)
   - People, places, & things associated w/ drug use
2. Unpleasant withdrawal process
   - Acute withdrawal (pain, cramps, diarrhea, etc.) intensely negative & possibly life threatening
   - Post-acute withdrawal (dysphoria & anhedonia) may last months to years
3. Mental illness
   - Untreated &/or insufficiently treated disorder
4. Stress
   - Biological stressors (e.g., hunger, fatigue), psychological stressors (e.g., loneliness, anger), and life crises (e.g., divorce, death, job loss)

Effective Treatment Addresses Four Causes of Craving

1. Reduces contact with environmental cues
2. Successfully manages withdrawal symptoms
3. Treats psychiatric disorders concurrently with substance related disorders
4. Provides greater support during crises and stressful life events

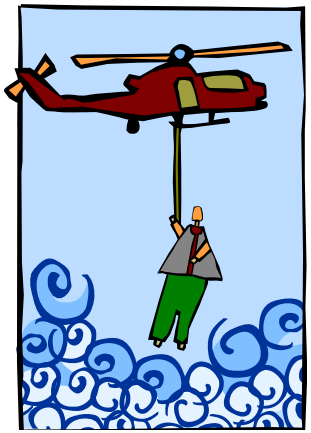
Two Stages of Addiction Treatment

1. <u>Initiation of abstinence</u> (stopping use)
   - "Control of exposure to environmental cues"
   - "Treatment for drug withdrawal symptoms"
   - "Establishment of a balanced daily schedule"
   - "Management of mental illness symptoms"
2. <u>Relapse prevention</u>
   - "Ongoing avoidance of environmental cues"
   - "Development of a consistent, structured lifestyle"
   - "Use of 'tools' or behaviors to dissipate craving"
   - "Continued management of withdrawal and/or mental illness symptoms"

Effective Management of Cases w/ Parental Substance Abuse

1. “Thorough assessments”
2. “Immediate treatment options”
3. “Clear court orders”
4. “Motivational substance abuse case management”
5. “A compliance reporting system”
6. “Sanctions for noncompliance”

Services for Substance Abusing Families



- Medically managed intensive inpatient tx.
- Residential or inpatient treatment
- Intensive outpatient /partial hospitalization
- Outpatient treatment
- Sober living home
- Psychotherapy (e.g., individual, family, group)
- 12 Step and other support groups
- Sponsor
- Harm reduction programs
- Early intervention

Treatment Progress Indicators

Treatment Success	**More Treatment Advisable**
“Engagement with work, school, and parenting”	Individual has “No plans for work, school [or] parenting”
“Negative drug test results”	“Positive drug test results”
“Compliance with testing”	“No show for testing”
“Treatment for mental illness”	“Symptoms of mental illness”
“Keeps all appointments”	“Doesn’t keep appointments”
“Adheres to schedule”	“Lives chaotic lifestyle”
“Home environment drug free”	“Associates with users”

Practice Tips: Cases Involving Substance Abuse

1. Postpone or terminate mediation if ***at the time of the mediation appointment*** a mediation participant is under the influence
2. Collaboratively explore process adaptations (accommodations) for individuals w/ substance related impairments
3. **Help participants consider appropriate substance abuse treatment services**
4. When relevant, help mediation participants distinguish between a substance ***use episode*** and a ***relapse***.
5. Be genuine, frank and objective when discussing addiction issues & avoid being confrontational, judgmental or paternalistic

Practice Tips: Cases Involving Substance Abuse

6. Screen substance-related cases for a family violence issues
7. **Help mediation participants consider basing visitation decisions around the child's needs (vs. parental punishment) & many factors (vs. toxicology screen only)**
8. Draw attention to the substance related service needs of dependent children
9. Help participants enhance a child's resilience to drug addiction by incorporating services & activities- like sports & mentoring (protective factors) into child's plan

Misconception Alert

- While many mediators are licensed mental health professionals (with training & experience to diagnose mental disorders)-
- **It is NEVER appropriate for mediators to diagnose mediation participants**
- Mediator's impartiality would be compromised & mediation participants would be puzzled by mediator's role-confusion

Dual Diagnosis- Negative Synergy

- Mental illness predisposes individual to more severe presentation of addictive disease
- The symptoms of co-existing substance addiction and mental health disorders aggravate one another
- Person w/ untreated mental illness:
  - Develops addiction at a younger age
  - Progresses more rapidly
  - Does less well in treatment (unless psychiatric disorder effectively treated along with addiction)

Common Co-Occurring Psychiatric Disorders

- Depression (major depressive disorder)
- Bipolar disorder
- Anxiety disorders (including PTSD)
- ADHD/ADD
- Personality disorders (including borderline, histrionic, narcissistic & anti-social)
- Learning disorders (e.g., reading, math)
- Psychotic disorders (including schizophrenia & schizoaffective disorder)

Dual Diagnosis- Standard of Care

Treat both conditions (substance abuse disorder and psychiatric disorder) **at the same time** (i.e., concurrent vs. sequential treatment).

Practice Tips: Participants w/ Psychiatric Disorders & Dual Diagnosis

1. Listen to individual's anger & fear without getting stuck in story & emotional presentation
2. Help participants know what to expect
3. Help mediation participants anticipate & prepare for difficult discussions
4. Develop an objective yet supportive relationship
5. Validate the mediation participant (not the position or complaint)
6. Establish clear expectations about appropriate behavior in mediation
7. Contain strong emotions

Practice Tips: Continued

8. Focus on the goals & tasks of mediation
9. Be consistent throughout the mediation process
10. Choose your battles- ignore less problematic behavior
11. Supportively help participants examine cognitive distortions
12. Encourage participants to ground concerns & conclusions with concrete examples
13. Avoid direct criticism
14. Avoid arguing with an angry/distressed participant about his/her logic

Practice Tips: continued.

15. Avoid challenges about a participant's "truth," instead acknowledge perspectives and possibilities
16. Focus on future decisions
17. Acknowledge painful feelings without shifting session focus to opening, surfacing or processing emotions
18. Give all participants your E.A.R. (empathy, attention, respect)
19. When necessary set limits in an objective, straightforward manner
20. **Align with** the mediation participant by expressing your positive hopes for him/her

Services for Substance Abusing Families[1]

While mediators do NOT make decisions about appropriate substance abuse treatment for clients, mediators often facilitate these discussions. For this reason, it is helpful for mediators to be aware of treatment settings and services for individuals with substance related disorders.

1. Medically managed intensive inpatient treatment
   - Comprehensive around the clock care in a medically managed setting
   - May include detoxification, medical oversight of significant (possibly lethal) health problems related to drug withdrawal, and/or medications to discourage substance use (pharmacotherapies not limited to medically managed inpatient treatment)
2. Residential or inpatient treatment
   - Residential setting that provides stability and cultivates recovery skills
   - May allow child to be placed with the parent in the program
   - Include residential treatment facilities, therapeutic communities, and transitional living facilities (from most to least intensive)
3. Intensive outpatient or partial hospitalization services
   - Structured day or evening program (may accommodate client's work or school schedule)
   - Typically greater than 9 hours of services/week
4. Outpatient treatment
   - Organized, professionally facilitated, non-residential services
   - Typically less than 9 hours of services/week
5. Sober living home
   - Affordable, alcohol and drug free communal living environment characterized by peer group support
6. Counseling/psychotherapy (e.g., individual, family, group)
7. 12 Step (e.g., AA & Narcotics Anonymous) and other support groups
8. Sponsor (accessible mentor for support and coaching)
9. Harm reduction programs
   - Minimize collateral damage of HIV, hepatitis C, sexually transmitted diseases, etc.
10. Early intervention
    - Counseling and education for lower level psychoactive substance user

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[1] *For more information see: "Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals." Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), Rockville, MD, 2004 (in particular see table titled, "Treatment Settings, Services & Locations" pp. 79-80).*

Effective Management of Parental Substance Abuse[2]

Specialized substance abuse case management services and comprehensive judicial oversight are recommended for chemically dependent families involved in the child welfare system. Based on San Diego's SARMS (Substance Abuse Recovery Management System) experience, authors Milliken and Rippel suggest that for child protection cases involving parental substance abuse effective intervention involves:

1. "Thorough assessments"
2. "Immediate treatment options"
3. "Clear court orders"
4. "Motivational substance abuse case management"
5. "A compliance reporting system"
6. "Sanctions for noncompliance"

Treatment Progress Indicators[3]

While mediators themselves do not make determinations about an individual's progress in treatment, mediators often help mediation participants reflect on relevant criteria when assessing treatment progress. The case implications of treatment progress (or lack of progress) are also regularly considered in mediation.

Treatment Success	***More Treatment Advisable***
• "Engagement with work, school, and parenting"	• Individual has "No plans for work, school [or] parenting"
• "Negative drug test results"	• "Positive drug test results"
• "Compliance with testing"	• "No show for testing"
• "Treatment for mental illness"	• "Symptoms of mental illness"
• "Keeps all appointments"	• "Doesn't keep appointments"
• "Adheres to schedule"	• "Lives chaotic lifestyle"
• "Home environment drug free"	• "Associates with users"

[2] *Milliken, J. R., Rippel, G., "Effective Management of Parental Substance Abuse in Dependency Cases," Journal of the Center for Families, Children & the Courts, Vol. 5, pp. 95-107.*

[3] *Stalcup, S. A., "The Disease of Addiction and Its Treatment," pending publication, PowerPoint, 2007.*

Practice Tips

Mediation Cases Involving Substance Use Issues

Below are some general tips and strategies to help mediators optimize the participation of all dependency mediation participants - including those with substance use issues.

1. Postpone or terminate mediation if at the time of the mediation appointment a mediation participant is under the influence of a substance or experiencing problematic withdrawal symptoms.

2. It is not unusual for parents with substance abuse histories to struggle with short and/or long-term impairments as a result of their chemical dependence. In these circumstances collaboratively explore with the parent process adaptations that might optimize the parent's participation in mediation.

3. Help participants explore, evaluate and select appropriate substance abuse treatment services.

4. When relevant (without assuming the role of specialist or advocate), ask mediation participants to describe difference between an individual's substance ***use episode*** and actual ***relapse***. The case implications of a *use episode* and *relaps*e can also be explored.

5. While it is important for the mediator to be genuine, frank and objective when having conversations with a mediation participant about addiction issues, the mediator should avoid being confrontational, judgmental or paternalistic.

6. As domestic violence is prevalent in substance abusing families, mediators must remember to screen substance-related cases for a family violence issues.

7. When helping mediation participants make difficult decisions about optimal visitation arrangements in child protection cases that involve parental substance abuse, (without jeopardizing perceptions of impartiality) raise awareness about the recommended practice of basing visitation decisions around the child's needs (vs. parental punishment). Similarly, mediation participants can be encouraged to consider many factors (in addition to toxicology screens) when making determinations about whether or not to suspend parent-child contact.

8. As most of the child welfare system's addiction-focus is directed towards parental substance abuse, mediators can help draw attention to the substance related service needs of dependent children.

PRACTICE EXERCISE: PROBLEMATIC & PREFERRED MEDIATOR RESPONSES

As the distinction between effective dependency mediation session-facilitation and inappropriate mediator comments and oversights can be difficult to discern, this exercise is intended to help mediators 1.) Recognize problematic mediator comments and missed facilitation opportunities, and 2.) Practice developing preferred responses in challenging substance related child protection mediations.

Example: Even if you (mediator) are knowledgeable about substance abuse treatment options in your area, avoid giving the impression that you are the expert about the program or treatment approach that mediation participants should select in any given case.

PROBLEMATIC: "After reading the court file, I suggest that Wyatt may need to complete Crossroad's residential treatment program in order to successfully reunify with Alex."

PREFERRED: *"Wyatt, you mentioned your commitment to making some lifestyle changes in order to reunify with Alex. Would it be helpful to hear about some of the treatment options in our area? What program, services and/or supports will best equip you to have Alex returned to your care? What do other mediation participants think about Wyatt's preference for ___ service/program?"*

1. Assist mediation participants in differentiating substance **use episodes (lapses)** and **relapses**- i.e., help decision makers consider the full context of the substance use.

   PROBLEMATIC: After county counsel (Brenda) comments, "Vicky (mom), your (one) positive test tells me that we need to change the case goal from reunification to adoption," the mediator does not solicit alternative perspectives from the other mediation participants and only Brenda's point of view is considered.

   OR "Your (one) positive drug test tells me that you cannot safely visit Casey (child) and that your contact should be indefinitely suspended."

   PREFERRED:

   _____

   _____

   _____

   _____

2. Avoid being confrontational, judgmental or paternalistic when discussing addiction issues.

   PROBLEMATIC: "I am concerned by your lack of motivation for treatment. If I had a child in foster care I would do everything in my power to get my child back."

   PREFERRED:

   _____

   _____

   _____

3. Assist mediation participants in exploring optimal visitation arrangements for substance abusing parents and their children- giving adequate attention to the child's needs.

   PROBLEMATIC: After the social worker announces to the parent (Toby), "I'll know you're ready to start visits when you are able to acknowledge that your addiction impaired your parenting and endangered your child," the mediator does not facilitate further discussion and mediation participants are not forthcoming with additional ideas.

   PREFERRED:

   _____
   _____
   _____
   _____

(SAMPLE ANSWERS) PRACTICE EXERCISE:
PROBLEMATIC & PREFERRED MEDIATOR RESPONSES

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>
> **OR** "Your (one) positive drug test tells me that you cannot safely visit Casey (child) and that your contact should be indefinitely suspended."
>
> PREFERRED: *Mediator- "Brenda, I'm wondering whether it would be helpful to find out more about the circumstances surrounding Vicky's positive test. Vicky, it seems like Brenda could use some additional information as she considers (from her perspective) what an appropriate response to your recent positive test should be. Would you be willing to help Brenda (and other mediation participants) develop a better understanding of the context of your recent positive test? … I know that the positive test was pretty recent, have you had a chance to talk to your treatment provider about the factors that triggered your use? How are you doing with your treatment program- have you been participating in group meetings? Have you had any unexcused absences? How are your visits with Casey? (In this way the mediator can help participants explore the parent's consistency with treatment program participation, drug testing, visitation, work commitments, sponsor contact, support group attendance, etc. to create a more comprehensive picture of the parent's use.)*

2. Avoid being confrontational, judgmental or paternalistic when discussing addiction issues.

   PROBLEMATIC: "I am concerned by your lack of motivation for treatment. If I had a child in foster care I would do everything in my power to get my child back."

   PREFERRED: *"I can appreciate how uneasy you might feel right now. It is not unusual to feel ambivalent about entering substance abuse treatment. I also remember you saying that you really want to be present to mother your children. Do you have any questions about these programs and/or the child welfare process in general that will help you with these decisions?*

3. Assist mediation participants in wisely exploring optimal visitation arrangements for substance abusing parents and their children- giving adequate attention to the child's needs.

   PROBLEMATIC: After the social worker announces to the parent (Toby), "I'll know you're ready to start visits when you are able to acknowledge that your addiction impaired your parenting and endangered your child," the mediator does not facilitate further discussion and mediation participants are not forthcoming with additional ideas.

   PREFERRED: *Mediator- "Alyssa (social worker), I appreciate you raising the issue of visitation. Appropriate parent-child contact is an important aspect of every dependency case. What do mediation participants think about whether or not Sawyer (child) would benefit from contact with Toby (father) at this stage of the case? Do you (minor's counsel, CASA, etc.) have a sense about (or have information from Sawyer's therapist about) what Sawyer's needs around visitation might be?"*

   The mediator can also add (perhaps in caucus), "Alyssa, it makes sense to me that you would like to see Toby acknowledge the impact of substance abuse on his parenting. It is great when parents are accountable and have insight into their addiction. Factoring in your desire for parent insight as well as what the others have said about Sawyer missing his father and feeling anxious about this separation, do you have any new ideas about initiating parent-child visitation?"

Practice Tips[1]

Cases Involving Participants with Psychiatric Disorders & Dual Diagnosis

Below are some general tips and strategies to help mediators optimize the participation of all dependency mediation participants- including those with mental health diagnoses and/or chemical dependency issues.

1. While listening to an individual's anger and fear with care and objectivity, avoid getting stuck in the story, emotional presentation, and other triggers
2. Help mediation participants know what to expect, e.g., "first we're going to __ then ___."
3. Help mediation participants anticipate and prepare for difficult discussions
4. Develop an objective yet supportive mediation relationship
5. Validate the mediation participant (not the position or complaint)
6. Establish clear expectations about appropriate behavior in mediation
7. Contain strong emotions
8. Focus on the goals of mediation and the tasks to complete in session
9. Be consistent throughout the mediation process
10. Choose your battles- ignore less problematic behavior
11. Supportively help participants examine cognitive distortions when flawed thinking interferes with constructive problem-solving
12. When emotional reasoning prevails, encourage participants to ground their concerns and conclusions with concrete examples
13. Avoid direct criticism
14. Avoid arguing with an angry/distressed client about his/her logic
15. Avoid challenges about a person's "truth," instead acknowledge perspectives and possibilities ("you may be right")
16. Focus on future decisions (regardless of who is right/to blame/a better person, etc.)
17. Acknowledge painful feelings without shifting the session focus to opening, surfacing or processing emotions
18. Despite provocative behaviors, give all clients your E.A.R. (empathy, attention, respect)
19. When necessary set limits in an objective, straightforward manner
20. Align with the mediation participant by expressing your positive hopes for him/her

[1] *Adapted from Eddy, W. A., "Managing Cases Involving High Conflict Personalities" PowerPoint, CJER/AOC Family Law Institute, April 20, 2007 (available on Moodle).*

Self-Assessment & Training Reflection

Unit E: – Self-Assessment & Reflection Tool

E.3. Substance Abuse, Mental Health & Dual Diagnosis

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

Directions: Check the appropriate box to indicate your degree of expertise with each of the following elements.

LIMITED----------PROFICIENT

My ability to define and differentiate substance abuse and substance dependence	☐	☐	☐	☐
My familiarity with commonly abused drugs and their intoxication effects	☐	☐	☐	☐
My awareness of addiction risk factors and the four primary causes of craving	☐	☐	☐	☐
My familiarity with recommended court and case management practices, and optimal treatment approaches for cases involving parental substance abuse	☐	☐	☐	☐
My awareness of addiction treatment progress/lack of progress indicators	☐	☐	☐	☐
My ability to identify common co-occurring psychiatric disorders and discuss the negative synergy of dual diagnosis	☐	☐	☐	☐
My ability to use effective mediation strategies in cases that include clients with addiction issues and/or psychiatric illness	☐	☐	☐	☐

1. What is the most important idea that you learned today?

Self-Assessment & Training Reflection (continued)

Unit E: – Self-Assessment & Reflection Tool

2. What was the most confusing topic today?

3. What important questions remain unanswered for you?

4. What resources will help answer your questions or provide more information about this topic?

5. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?

Unit E:
Special Issues in Dependency Mediation

CONTENTS

Chapter 1 Capacity to Mediate

Chapter 2 Domestic Violence and Its Impact on Mediation

Chapter 3 Substance Abuse, Mental Health & Dual Diagnosis

Chapter 4 Cultural Issues

Unit E, Chapter 4:
Cultural Issues

Required Instructional Materials: Computer PowerPoint Slides Projection Screen **Presentation Methods:** Large Group Discussion Lecture Presentation Individual Exercise Pairs Discussion/Small Group Discussion **OPTIONAL** Panel Discussion In-Service **Participant References:** Unit E.4. Participant Handouts • *Handout A* – "Continuum of Cultural Variables" • *Handout B* – "Attitudes, Suggestions & Tips" • *Handout C* – "Reducing Implicit Bias" • *Practice Exercise 1* – "Impact of Poverty Exercise" • *Practice Exercise 2* – "Sample- Impact of Poverty Exercise" • *Assessment* – "Self-Assessment &Training Reflection Tool" **Suggested Pre-Session Reading:** • *Handout A* – "Continuum of Cultural Variables" • *Handout B* – "Attitudes, Suggestions & Tips" • *Practice Exercise 1*– "Impact of Poverty Exercise"	***Estimated Duration:*** *2 Hours, 10 Minutes* ***OPTIONAL*** ***1 Hour*** *Facilitated Panel In Service: Understanding Local Cultures*

OUTLINE:	***Estimated Duration:***
1. Review Learning Objectives _____	***5 Minutes***
2. Introduction to Cultural Issues: *(Large Group Discussion)* _____	***15 Minutes***
3. Cultural Variables & Possible Implications for Mediation *(Large Group Discussion)* _____	***25 Minutes***
4. Cultural Issues Warm Up: *(Large Group Discussion)* _____	***10 Minutes***
5. Enhancing Self-Awareness: (*Individual Exercise & Pairs/Small Group Discussion)*_____	***20 Minutes***
6. Attitudes, Approaches & Tips: *(Large Group Discussion)* _____	***10 Minutes***
7. Families in Poverty: *(Individual Exercise, Pairs/Small Group Discussion & Lecture Presentation)* _____	***15 Minutes***
8. Sexual Orientation, Gender Identity & Dependency Mediation: *(Large Group Discussion)* _____	***10 Minutes***
9. Making Mediation Language Accessible: *(Lecture Presentation)* _____	***5 Minutes***
10. Complex Issues: *(Large Group Discussion)* _____	***10 Minutes***
11. Understanding Local Cultures: *(OPTIONAL Panel Discussion In-Service)* _____	***OPTIONAL*** ***1 Hour***
12. Summary & Close _____	***5 Minutes***

1. Learning Objectives:
 	
After Concluding Section E.4. Participants Will Be Able To:
 	
• Understand basics of the terms "culture" and "cultural competence"
 	
• Identify multiple cultural variables and their possible implications for mediation
 	
• Practice with more self-awareness of the mediator's cultural assumptions and comfort zone
 	
• Understand and appreciate some of the strengths and typical constraints for families in poverty
 	
• Demonstrate awareness of and sensitivity to age, sex, sexual orientation and gender identity issues
 	
• Move towards a more culturally competent mediation practice
  • Adopting an attitude of curiosity about culture
  • Developing practical and respectful ways to explore with mediation participants the impact of culture on dependency mediation
  • Incorporating self-reflection and debriefing in one's mediation practice
• Take steps to ensure that dependency mediation is language accessible.
 	
• Develop a better understanding of cultures represented in the local community.
	5 Minutes
	
	Facilitator Notes:
	✓ *Welcome participants*
	✓ *Review break time, end time, location of restrooms, etc.*
	✓ *Review learning objectives with participants*
	
	OPTIONAL IN-SERVICE PANEL

2. Introduction to Cultural Issues:

a. How would you define *culture*? *(Slide 2)*

- "[C]ulture may be considered as the enduring norms, values, customs, and behavioral patterns common to a particular group of people." [1]
- Socially transmitted principles and beliefs that are more or less shared by group members
- Broader than race and ethnicity
- Includes groups that we're born into (like gender, race and generation) and groups that we become a part of (like religion and occupation, sexual orientation, deafness, etc)
- Sometimes framed as the "software of the mind" or the "lens" or "filter" through which an individual/group views the world (see footnote)
- Culture influences an individual's:
  - Communication style
  - Attitudes toward conflict, negotiation and conflict resolution
  - Attitudes towards time and task completion
  - Approaches to decision-making
  - Attitudes toward privacy and self-disclosure
  - Approaches to knowing
  - Attitudes towards law enforcement, legal system and other authorities

b. Individuals are simultaneously members of many identity groups and subgroups at the same time. Can you think of some of the ways that people categorize themselves and others? *(Slide 3)*

- Race/Ethnicity
- Gender
- Age/Generation
- Region/Neighborhood (e.g., east/west side)
- Language
- Religion
- Sexual orientation and gender identity
- Socio-economic status (SES)
- Level of education
- Citizen/Immigrant

[1] Mayer, B., (2000). The Dynamics of Conflict Resolution: A Practitioner's Guide, p 72

15 Minutes

Large Group Discussion

PowerPoint Slides 2-7

For More Information See:

Mayer, B., (2000). The Dynamics of Conflict Resolution: A Practitioner's Guide.

Cloke, K., (2001). "Mediating Dangerously: The Frontiers of Conflict Resolution."

Augsburger, D. W., (1992). Conflict Resolution Across Cultures: Pathways and Patterns.

Paul Ladehoff, "Cross-Cultural Issues in Mediation" [PowerPoint]

Meierding, N., R., (2009). The Impact of Culture and Gender on Negotiation & Mediation.

"Cultural Competency: Working With Southeast Asian Youth and Their Families," PowerPoint Slides 53-55. http://cadependencyonlineguide.info/

(Continued….)

2. Introduction to Cultural Issues: (CONTINUED)

- Occupation (e.g., farmers & police officers- strong work-related identity)
- Able-Bodied/Disabled

Given this diversity every interaction is in some ways cross-cultural.

c. *For facilitator or participants with some dependency mediation experience:* Reflect on your experience mediating cases involving participants from different backgrounds. How did culture impact the mediation process?

d. What is *cultural competence*? *(Slides 5-6*)

- Cultivating the ability to competently and respectfully work with people from all cultural backgrounds
- Attempting to understand the common cultural norms, values, customs, practices and behavioral patterns (prototypes) of various groups of people
  - Prototype- think of a research based bell curve that identifies trends or generalizations for a certain culture (i.e., information that is often true but not always true)
- Rejecting stereotypes (assumptions that *everyone* of a certain cultural background *always* believes/acts a certain way)
- Viewing and responding to each person as a unique individual
- Being aware that an individual's cultural "categories" may not be obvious or readily discernible, (Consider, for example, bi-racial individuals that do not visibly appear to be from a certain cultural background)
- Being aware that an individual may prefer to not disclose his/her cultural "categories," (Consider, for example, gay/lesbian/bi-sexual individuals that choose not to reveal their sexual orientation- i.e., are not "out")
- Cultural competence is not something that is quickly achieved or ever totally accomplished (i.e., it is a continuous process of learning); Nor is cultural competence simple book learning about people's beliefs/practices

CONTINUED

Large Group Discussion

For More Information See:

Misconception Alert:

Remember that despite typical within culture commonalities (or tendencies), there are enormous individual variations within cultures. Do not overlook the outer edges of the bell curve!

(Continued….)

2. Introduction to Cultural Issues: (CONTINUED)

e. Why is *cultural competence* important?

- California's population is tremendously diverse
  - See California Juvenile Dependency Data, RESEARCH UPDATE December 1, 2003, AOC, Ctr. for Families, Children & the courts
- California Juvenile Dependency Data Children (and families) of color are disproportionately represented in the child welfare system. According to a recent research update:[2]
  - Blacks and American Indians are the two most overrepresented racial/ethnic groups in the child welfare system
  - Blacks represent 36.6% of the child welfare population and 15.1% of the general population (disproportionality rate- 2.43)
  - American Indians represent 2.6% of the child welfare population and 1.2% of the general population (disproportionality rate- 2.16)
  - Hispanic, White, and to an even greater degree Asian/Pacific Islander populations are underrepresented in the child welfare system (disproportionality rates: Hispanics- .79, Whites- .76, Asian/PI- .39)
- According to CRC 5.518(e)(3)(I), dependency mediators must receive training that enhances "awareness of differing cultural values, including cross-generational cultural issues and local demographics"
- A mediator's cultural competence helps to ensure that all mediation clients experience mediation (and the court system) as accessible and fair
- All mediation participants (professionals and family members) benefit when culturally competent mediators 1.) Effectively communicate with all mediation participants and, 2.) Capably 'translate' cultural issues between participants

f. How does one develop cultural competence? *(Slide 7)*

- By developing self-awareness *(See Section 5)*
- And by developing an awareness of others *(See Section 4)*

CONTINUED

Large Group Discussion

Link:
http://www.courts.ca.gov/documents/JSA_Dep_FS1.pdf

Link:

http://www.cssp.org/reform/child-welfare/other-resources/synthesis-of-research-on-disproportionality-robert-hill.pdf

[2] Hill, R.B., Synthesis on Research on Disproportionality in Child Welfare (2006), see link in right column

Practitioner Considerations:

The "conscious competence theory" postulates that individuals progress through several learning stages when developing new competencies (abilities, behaviors, techniques, etc.). These levels of competency can be applied to the process of becoming an increasingly proficient cross-cultural mediator. Reflecting on your own cultural competence where would you locate yourself in this progression?

- *Unconsciously unskilled: Stage in which you are not even aware that you do not have a particular competence or skill; Existence and relevance of skill area not recognized; Deficiency not acknowledged*
- *Consciously unskilled: Stage in which you are aware that you do not have a particular competence or skill; Deficiency acknowledged and value of developing skill recognized*
- *Consciously skilled: Stage in which you possess a certain competence or skill but execution demands a great deal of conscious effort and attention; Skill not yet automatic or second nature*
- *Unconsciously skilled: Stage in which you finally master a new competence or skill and you no longer need to devote a great deal of attention to your task (for example, you are able to effortlessly drive a car, ride a bicycle or touch-type)*

Some suggest that a fifth category be added to the model capturing an advanced practitioner's ability to reflect on his/her unconscious skill- in order to teach and train, for example.

While the origins of the conscious competence theory are not entirely known, some credit William Howell (The Empathic Communicator, 1986, p. 29) and others credit Noel Burch (of the Gordon Training International organization).

3. Cultural Variables & Possible Implications for Mediation:

a. Dependency mediators must be able to work effectively in intercultural situations. Cultural competence requires that mediators recognize the ways that cultures vary along many dimensions. While there is an almost indefinite number of ways in which cultures vary, in this section of the curriculum seven dimensions of cultural variability are explored. Each variable is conceptualized as a continuum.

Review and discuss the cultural variables below. (See participant Handout A *"Continuum of Cultural Variables"*). Be sure to explore:

- The characteristics of each variable
- The potential implications of each variable on the mediation process; For example, what should the mediator:
  - Be sensitive to
  - Avoid doing or do more of

CAUTION: Remember that there is enormous within-culture variation and that mediators are wise to establish a dialogue with each family about its unique cultural values and practices. *(Slides 8-21)*

25 Minutes

Large Group Discussion

PowerPoint Slides 8-21

Materials:

Handout A – Continuum of Cultural Variables

(Continued….)

3. Cultural Variables & Possible Implications for Mediation: (continued)

***Note: The section titles and descriptions from the sources noted Handout A. Focus on the examples described rather than awkward language of the topical statements.**

See Handout A for detailed examples:

1. Time orientation/processing style
2. Low context communication to high context communication
3. Individualistic culture to collective culture
4. Low power distance to high power distance
5. Low uncertainty avoidance to high uncertainty avoidance
6. Low to high comfort with physical contact
7. Direct to Indirect Eye Contact

CONTINUED

Large Group Discussion

Handout A – Continuum of Cultural Variables

For More Information See:

Storti, C., (1999) Figuring Foreigners Out: A Practical Guide.

Hall, E.T., (1990) The Hidden Dimension.

Dodd, C.H., (1997) Dynamics of Intercultural Communication.

Hofstede, G., (2001) Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations.

Meierding, N., R., (2009) "The Impact of Culture and Gender on Negotiation & Mediation."

Paul Ladehoff, "Cross-Cultural Issues in Mediation" [PowerPoint]

(Continued….)

3. Cultural Variables & Possible Implications for Mediation: (CONTINUED):

CONTINUED

Large Group Discussion

b. What is acculturation?

- Acculturation is the process by which the views and behaviors of people from one culture are altered as a result of contact with a different culture
- Cross-cultural researchers Berry, Segall and Kagitcibasi (1997) suggest that there are four possible outcomes of acculturation:
    1. Assimilation (adopting the dominant culture's values)
    2. Integration (combining the values of two cultures or biculturalism)
    3. Separation (rejection of the dominant culture's values and reaffirmation of one's traditional culture)
    4. Marginalization (estrangement from both cultures)

For More Information See:

Berry, J. W., Segall, M. H. & Kagitcibasi, C., Handbook of Cross-Cultural Psychology, Volume 3, 2nd Edition, 1997.

c. For a fun overview of social customs to observe and behavior to avoid consider browsing and discussing Michael Powell's "Behave Yourself: The Essential Guide to International Etiquette" (2005).

4. Cultural Issues Warm Up:

g. OPTION A: Have trainees reflect on the following: Imagine a time when someone assumed that they knew important things about you. Perhaps a person mistakenly believed that she/he knew what you were thinking, feeling or believing based on your ethnicity, gender, religion, socio-economic status, sexual orientation, disability, etc.

- What was this experience like for you?
- Were any of this person's assumptions about you inaccurate or missing important nuances?
- Did this person's assumptions lead you to you feel more or less understood?

10 Minutes

Large Group Discussion

(Continued….)

4. Cultural Issues Warm Up:

h. OPTION B: Have trainees identify stereotypes about their own cultures and discuss the inaccuracies and lack of complexity/completeness of these stereotypes.

i. OPTION C: In past experience as mediator, facilitator, interviewer, etc., describe time when you missed cultural clue(s) or otherwise "Misinformed" yourself about a person's background, language or understanding.

j. Given your experience with the above exercise(s), what advice do you have for dependency mediators working with diverse clients?

- Approach others with an attitude of curiosity and openness
- Even if you think you know about another person's thoughts, beliefs, ideas, etc., do not assume that you are right- instead tentatively check out your hypotheses so that they can be confirmed/disconfirmed
  - In other words, let others teach you about who they are
- Approach cultural differences non-judgmentally- i.e., different but not better or worse

CONTINUED

Large Group Discussion

Facilitator Note:

Be thoughtful about which "warm up" exercise you select. Trainees will have different comfort levels with this topic. If you sense that trainees feel awkward, defensive or vulnerable (especially when discussing personal experiences), keep the discussion on a more theoretical and less personal level- for example, by focusing more directly on effective work with court clients.

5. Enhancing Cultural Self-Awareness:

a. Section 3 above explored several dimensions in which cultures vary. In addition to gaining familiarity with common ways that cultures differ, effective cross-cultural collaboration requires that mediators develop *cultural self-awareness*. As cultural knowledge is largely tacit (i.e., not explicitly discussed, but instead unconsciously absorbed), individuals (including mediators) often have a difficult time stepping outside their cultural frame to appreciate their judgments and perceptions as reflections of their own culture-specific socialization. The below exercise is designed to help mediators more intentionally reflect on their own cultural assumptions.

INSTRUCTIONS:

1. Depending on the size of your group and training needs, have trainees break up into pairs or small groups of three to four people.
2. Trainees have five minutes to individually complete the exercise at the beginning of ***Handout A****:"Continuum of Cultural Variables"*.
3. After trainees have completed the individual exercise, provide pairs/small groups with 10 minutes to discuss:

20 Minutes

Individual Exercise
Pairs
Small Group Discussion

Materials:

Handout A – Continuum of Cultural Variables

(Continued….)

5. Enhancing Self-Awareness:

- Self-reflections and personal observations that they are comfortable sharing with their colleague(s)
  - For example, where did trainees find themselves on the spectrum?
  - Can trainees think of examples of how this trait/value manifests itself in their dependency mediation practice?
- Ways that the mediator's cultural comfort zone and tendencies might come into conflict with those of dependency mediation clients
- Ways that the cultural values and practices of various mediation participants (e.g., social worker & family) may collide

Practitioner Considerations:

Social psychologists postulate that shortly after birth humans begin categorizing information. We develop mental maps or schemas based on our life experiences and perceptions about how the world works. Over time these schemas help us process information automatically (without attention or awareness). While automatic processing can be helpful and efficient (for example, when reading or driving a car), it can also be problematic and lead to errors (for example, when relating to culturally different others).

In his article, "The Lens of Implicit Bias," Shawn Marsh writes, "Implicit bias is a preference- positive or negative- for a group based on stereotypes or attitudes we hold and that tend to develop early in life. In contrast to explicit bias, whereby we are aware of our biases toward a group, implicit bias operates outside our awareness: we don't even know it's there. We can think of implicit bias as a lens through which we view the world. It automatically filters how we take in and act on information. It is always present." (p. 18)

Social psychologists believe that implicit bias is universal (a function of race, gender, age, and other categories). ***Recognizing implicit bias is critical to effective dependency mediation practice as dependency mediators regularly facilitate sessions involving diverse individuals and children and families of color are disproportionately involved in the child welfare system.***

To become more aware of your implicit bias consider completing one of the Implicit Association Tests (available at https://implicit.harvard.edu/implicit/). These tests measure the test-taker's latent response or reaction times when pairing concepts of good (e.g., 'honest') and bad (e.g., 'violent') with white and black faces (young/old faces, slender/overweight faces, etc.). Remember that awareness of implicit bias is a first step toward reducing implicit bias. For additional strategies to reduce implicit bias see the handout "Reducing Implicit Bias."

Marsh, S, C., "The Lens of Implicit Bias" Juvenile & Family Justice Today, summer 2009, pp. 16-19.

CONTINUED

Individual Exercise & Pairs

Small Group Discussion

Facilitator Notes:

To minimize training time, the "Continuum of Cultural Variables" individual exercise can be assigned prior to session.

For More Information See:

Harry, B., "Developing Cultural Self-Awareness." See http://projectlaunch.promoteprevent.org/resources/developing-cultural-self-awareness

For a workbook full of numerous exercises to develop cultural self-awareness see: Storti, C., Figuring Foreigners Out: A Practical Guide, *1999.*

Materials:

Handout C – Reducing Implicit Bias

6. Attitudes, Approaches & Tips:

a. Some lessons, tips and suggestions for working with individuals from different cultures[3]

1. Whenever possible mediators should be representative of local demographics (e.g., racial, ethnic, linguistic, religious, socioeconomic & other designations)
2. Different expectations are to be expected
   - Take very little (if anything) for granted
   - Ask participants what they expect from the mediator (e.g., mediator's role) and the mediation process
   - Ask mediation participants about how they resolve conflict, family history of same
3. Do not presume that you are being understood
   - Mediator's words may have different meaning/connotation for each participant (especially if the speaker and listener do not share the same first language)
4. Do not presume that mediation participants share your (or each other's) beliefs, values and behavioral patterns
   - Examples of culturally bound beliefs:
     - Faith in science/scientific method **and** faith in spiritual interventions/solutions
     - Belief that physical/psychological anomalies/disabilities should be corrected (whenever possible) **and** belief that physical/psychological "deviance" is normal and acceptable
5. Actively listen (attend to both verbal and non-verbal communication)
   - By using active listening (restating and reflecting frequently), the mediator can ensure that he/she (and the other mediation participants) understand the speaker to the greatest extent possible
   - Ask questions like, " Can you say more?" "What does that mean to you?"
6. Help participants listen carefully to each other & check for understanding
   - Consider asking mediation participants to restate their understanding of each other's concerns
7. When possible, be sensitive to participants' preferences for the time, place, and formality of the mediation appointment
8. Model respect for and appreciation of cultural differences

10 Minutes

Large Group Discussion

PowerPoint Slides 22-23

Materials:

Handout B– Attitudes, Suggestions & Tips

For More Information See:

Augsburger, D. W., (1992). Conflict Resolution Across Cultures: Pathways and Patterns.

Cloke, K., (2001) Mediating Dangerously: The Frontiers of Conflict Resolution.

Mayer, B., (2000). The Dynamics of Conflict Resolution: A Practitioner's Guide.

[3] *Adapted from: Jan Jung-Min Sunoo as cited in Ladehoff, and Ken Cloke, Mediating Dangerously, 2001*

7. Families in Poverty:

a. "The effect of poverty on parenting and familial relationships" is one of the subject areas dependency mediators are required to have reviewed in their initial 40 hours of training (CRC 5.518(e)(3)(H)). This segment of the curriculum is included in Unit E.4. "Cultural Issues" as dependency mediators will benefit from understanding the common issues that many families in poverty face. This portion of the curriculum will explore the impact of poverty on children and families, as well as survey the pathways by which *economic hardship* puts children and families at risk for a cascade of adverse consequences.

It is hoped that this segment will equip trainees to better understand how poverty can impact a family's *ability* to participate in services and successfully complete a case plan. This understanding may assist dependency mediators in helping mediation participants craft practical ("do-able") service plans.

Lastly, trainees may also benefit by being able to more accurately differentiate between other cultural variables (e.g., ethnicity) and qualities that are more precisely linked to economic hardship.

b. Many American children live in poverty. According to the U.S. Census Bureau's statistics (as reported on www.childstats.gov), 18% of all children ages 0–17 lived in poverty in 2007. More precisely, in 2007:

- 10% of White children lived below the poverty line
- 29% of Hispanic children lived below the poverty line
- 35% of Black children lived below the poverty line
- Among other factors, consider the impact of:
  - Female headed households;
  - The inter-generational legacy of racism and slavery (for Blacks) ; and
  - The low-income work typically available to many U.S. immigrants.

c. Social work professor and researcher, Kathleen Faller[4] shares some sobering research. An advocate for support services for low income families, Faller suggests that poverty is a neglected underlying issue in child abuse and neglect cases. While **poverty does not cause child maltreatment**, Faller cites multiple research studies that document a strong correlation between poverty and being identified as a maltreating parent.

15 Minutes

Individual Exercise
Large Group Discussion
Lecture Presentation

Materials:

Practice Exercise 1– "Impact of Poverty Exercise"

Practice Exercise 2 – Completed Sample- Impact of Poverty Exercise

Facilitator Notes:

To minimize training time, the "Impact of Poverty Exercise" can be assigned prior to session.

Misconception Alert:

The "Families in Poverty" portion of the curriculum is included to help trainees better understand the many challenges that economically disadvantaged families (regardless of cultural background) face.

NOTE: *Not all families living below the poverty line struggle with the difficulties discussed in this section. Caution against making assumptions*

[4] Faller, K.C., "Child Welfare Issues in Cases With Parental Substance Abuse, Domestic Violence, and Mental Health

(Continued….)

Problems," (not dated). See citation at end of chapter.

7. Families in Poverty:

Faller notes that low income is a particularly significant predictor of neglect- by far the most common maltreatment allegation in child welfare.

d. It is important to remember that families in poverty have multiple strengths. Consider, for example, the active involvement of extended family members that is characteristic of many immigrant families and/or a parent's necessary resourcefulness when stretching limited funds to meet family needs.

However, despite numerous resiliencies, many families in poverty experience significant constraints. For those who have not personally experienced the burden of poverty, the constraints associated with economic hardship may be difficult to recognize. The following exercise is designed to help trainees reflect on how poverty can make the successful completion of a case plan (and thus reunification) more challenging.

INSTRUCTIONS:

1. Provide trainees with 10 minutes to individually complete the *Impact of Poverty* exercise. See handout for directions.
2. After trainees have completed the individual exercise, facilitate a large group discussion in which trainees share their ideas about poverty's potential impacts on a family's successful case plan completion. To seed ideas you may refer to the *Completed Sample- Impact of Poverty Exercise* handout.

e. The above exercise was designed to help trainees better appreciate the many impacts of poverty. Remembering the above lessons about the context of poverty, trainees will now explore The Family Stress Model (FSM) of economic hardship (Conger, 2005).[5] The FSM is empirically validated with diverse populations and suggests that:

1. *Economic hardship* leads to *economic pressure* within the family
   - Indicators of *economic hardship* include:
     - Low income (below official poverty guidelines)
     - High debts relative to assets
     - Work instability
     - Negative financial events (i.e., increasing economic demands and fewer material resources)
   - Indicators of *economic pressure* include:
     - Unmet material needs involving necessities such as adequate food and clothing
     - The inability to pay bills or make ends meet

[5] Conger, R. D., "The Effects of Poverty and Economic Hardship across Generations" July 2005. .

CONTINUED

Large Group Discussion
Lecture Presentation

For More Information See:

Faller, K.C., "Child Welfare Issues in Cases With Parental Substance Abuse, Domestic Violence, and Mental Health Problems."(not dated)

Conger, R. D., "The Effects of Poverty and Economic Hardship across Generations" July 2005. *Center for Public Policy Research, University of California, Davis.*

Practitioner Considerations:

According to the December 2008 Beyond the Bench "Basic Dependency Law for Attorneys" presenters, "Children from families with incomes below $15,000 are 22 times more likely to be maltreated than those from families with incomes above $30,000." (Available on Caldog.)

(Continued….)

7. Families in Poverty:

- Having to cut back on even necessary expenses (e.g., health insurance and medical care)
- *Economic pressure* "captures the psychologically meaningful aspects of economic hardship" (Conger, 2005, p. 13).

2. *Economic pressure* leads to *parent emotional distress*
   - Indicators of *parent emotional distress*:
     - Depression
     - Anxiety
     - Anger
     - Alienation
     - Substance abuse
     - Anti-social behavior
3. *Parent emotional distress* contributes to *inter-parental conflict* and (to a lesser degree) *disrupted parenting*
   - *Inter-parental conflict* includes conflict within any form of care-giving dyad, such as married biological parents, unmarried biological parents, a parent and a stepparent, same sex parents, boyfriends and girlfriends, or a mother and a grandmother raising a child together)
   - Indicators of *inter-parental conflict*:
     - Increased conflict (and/or withdrawal)
     - Reduced warmth and support between parents/caregivers
   - Economic pressure related family conflicts often include children
   - For single parent families, *parent emotional distress* directly predicts *disrupted parenting* (instead of primarily contributing to *inter-parental conflict* which in turn contributes to *disrupted parenting*)
4. *Inter-parental conflict* contributes to *disrupted parenting*
   - Indicators of *disrupted parenting*:
     - Harsh, punitive or inconsistent disciplinary practices
     - Relatively uninvolved parenting
     - Parenting low in nurturance, affection and warmth
     - Parenting high in hostility
5. *Disrupted parenting* leads *to poor child and adolescent adjustment*
   - Indicators of *poor child and adolescent adjustment*:
     - Decrease in positive adjustment
       - Self-confidence

CONTINUED

Large Group Discussion
Lecture Presentation

For More Information See:

- For descriptive phrases that capture the many difficulties of economic hardship consider reading John Scalzi's 2005 web-posting "Being Poor." See link: http://www.scalzi.com/

Advanced Practitioner Considerations:

For a vivid portrayal of the daily (as well as generational) challenges of families struggling with poverty, consider viewing and discussing Jennifer Dworkin's 2002 film, "Love & Diane"

Documentary filmed over a ten year period

Available at http://www.wmm.com/loveanddiane/

7. Families in Poverty:

- Cognitive ability
- Social competence (e.g., supportive relationships with peers)
- School success
- Attachment to parents
- Increases in internalizing problems
  - Depression
  - Anxiety
- Increases in externalizing problems
  - Conduct problems
  - Aggressive behavior
  - Anti-social behavior

f. Again remembering the day to day constraints of poverty, it is easy to appreciate the validated (but less extensively studied) Investment Model (IM) (Conger, 2005). The IM suggests that:

- Economic resources help families invest in their child's development
- Disadvantaged families are less able to invest in their children as scarce resources must be used for immediate family needs

1. *Investment* involves elements such as:
   - Learning materials available in the home (e.g., books, magazines, toys and games to stimulate learning)
   - A parent engaging child in conversation, learning activities and discussions of daily life (direct involvement in child's learning)
   - A parent supporting tutoring and special lessons outside of the home
   - The family's standard of living (i.e., adequate food, housing, clothing, medical care, etc.)
   - Residing in a location that fosters child's competent development
2. Research demonstrates that family income has a long term positive impact on child development. Children from economically advantaged homes:
   - Complete more years of schooling
   - Less likely to face teenage pregnancy and other life changing events
   - More likely to have sufficient income in adulthood

CONTINUED

Large Group Discussion
Lecture Presentation

For More Information See:

Conger, R. D., "The Effects of Poverty and Economic Hardship across Generations," July 2005. Center for Public Policy Research, University of California, Davis.

8. Sexual Orientation, Gender Identity & Dependency Mediation:

10 Minutes

Large Group Discussion

a. Throughout this chapter trainees have been exploring identity groupings and their impact on dependency mediation. This section of the curriculum will provide an overview of sexual orientation and gender identity in the context of dependency mediation.

b. The lesbian, gay, bisexual, transgender and questioning (LGBTQ) community is involved/participates in California's child welfare system. This may include LGBTQ youth, birth parents, extended family members, foster parents, adoptive parents and professionals (e.g., judges, attorneys, social workers, etc.).

- It is estimated that LGBTQ youth make up between 5 and 10 percent of the foster youth population [6]
- LGBTQ youth are in foster care in disproportionate numbers- often as a result of a parent's rejection, physical abuse, or demand that the child leave home (Sullivan et al, 2001)
- In the U.S., 6% of foster children (in non-kin care) are being cared for by a lesbian or gay foster parent. California is likely to have a much higher percent of gay and lesbian parents than the 6% national average.[7]
- California has the highest number of adopted children living with lesbian, gay and bisexual parents of any state (over 16,000). According to Badgett et al, (2007), 9.8% of adopted children in California are living with lesbian and gay parents. (Estimates include all adoption types, e.g., foster care adoptions, private national and international adoptions, etc.)
- California law asserts that sexual orientation cannot be a basis to prevent gay, lesbian and bisexual people from adopting

c. LGBTQ youth in foster care are often vulnerable to mistreatment, discrimination, isolation/segregation, differential treatment, absence of appropriate services, failed placements and elusive permanency.

- According to Rudy Estrada and Jody Marksamer (2007), "The types of harassment that LGBT youth experience include verbal abuse, such as derogatory name calling, demeaning and insulting comments and threats of physical or emotional acts or negative consequences (including religious condemnation); physical abuse, including destroying property, pushing, hitting, and other acts of violence; sexual abuse, including unwanted sex acts, touching, pantomime and threats; and emotional abuse such as shunning or isolation." (See citation right)

For More Information See:

Badgett, M.V. L., Chambers, K., Gates, G.J., & Macomber, J. E., (2007). "Adoption and Foster Care by Gay and Lesbian Parents in the United States"

Estrada, R. & Marksamer, J., "Lesbian, gay, bisexual, and transgender young people in state custody: Making the child welfare and juvenile justice systems safe for all youth through litigation, advocacy, and education." Temple Law Review, (2007), Vol., 79, Issue 2, pp. 415-438.

Wilber, S., Ryan, C., & Marksamer, J., Child Welfare League of America, (2006). "Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care."

Sullivan, C., Sommer, S. & Moff, J., Lambda Legal Defense and Education Fund, (2001). "Youth in the margins: The unmet needs of lesbian, gay, bisexual, and transgender adolescents in foster care."

[6] Sullivan, C., Sommer, S. & Moff, J., Lambda Legal Defense and Education Fund, (2001). "Youth in the margins"

[7] Badgett, M.V. L., Chambers, K., Gates, G.J., & Macomber, J. E., (2007). "Adoption and Foster Care by Gay and Lesbian Parents in the United States"

8. Sexual Orientation, Gender Identity & Dependency Mediation:

d. AB 458, The California Foster Care Non-Discrimination Act, protects foster children (as well as their caregivers and service providers) from harassment and discrimination based on actual or perceived sexual orientation or gender identity AND requires foster parents, group home administrators, and department licensing personnel to obtain training about safe and non-discriminatory care for LGBTQ youth.

- W&IC § 16001.9(a)(23), states that all children in foster care have the right: To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of **actual or perceived** race, ethnic group identification, ancestry, national origin, color, religion, sex, **sexual orientation, gender identity**, mental or physical disability, or HIV status.

e. Effective dependency mediation practice requires that mediators:

- Practice dependency mediation in an inclusive and respectful manner (regardless of the sexual orientation and gender identity of participants)
  - Mediators must consider their own attitudes, prejudices and training needs surrounding sexual orientation and gender identity issues
  - Maintain the privacy of a participant's sexual orientation or gender identity and never (without permission) disclose a participant's perceived or stated sexual orientation or gender identity; It is the individual's right to make his/her own decisions about being "out"
- Ensure that dependency mediation participants do not experience harassment and/or discrimination while participating in mediation
  - LGBTQ individuals should never be referred to as deviant or pathological
  - Parenting capacity is not related sexual orientation or gender identity
- Assist participants in making sensitive and appropriate decisions about placement, services, etc. on behalf of (with) LGBTQ youths and adults
  - Treatment for the purpose of changing a youth's sexual orientation or gender identity is not appropriate

CONTINUED

Large Group Discussion

For More Information See:

National Center for Lesbian Rights, (2006) "AB 458 Fact Sheet: Foster Care Non-Discrimination Act."

National Center for Lesbian Rights, (2006). "LGBTQ Youth in the California Foster Care System: A Question and Answer Guide."

Lambda Legal Defense and Education Fund, (2006). "Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth- Getting Down to Basics Tool Kit."

8. Sexual Orientation, Gender Identity & Dependency Mediation:

- Explore whether counseling, education or other support services might assist birth/foster parents in accepting LGBTQ youth- in order to make reunification/a preserved foster care placement possible
- Sexual orientation and gender identity are one aspect of an individual's personality and the individual's treatment and/or other needs may or may not be related to sexual orientation/gender identity

CONTINUED

Large Group Discussion

Practitioner Considerations:

Mediators may wish to obtain further education and training about sexual orientation and gender identity issues. See, for example, brochures and research available from The American Psychological Association:

- Lesbian, Gay, & Bisexual Concerns Office, "Lesbian and gay parenting," 2005. [Retrieved from www.apa.org/pi/parent.html.]
- "Answers to your questions: For a better understanding of sexual orientation and homosexuality" (2008). Washington, DC: Author. [Retrieved from www.apa.org/topics/sorientation.pdf.]
- "Answers to your questions about transgender individuals and gender identity" (2006). [Retrieved from www.apa.org/topics/Gender3.pdf.]
- Just the Facts Coalition, "Just the facts about sexual orientation and youth: A primer for principals, educators, and school personnel" (2008), Washington, DC: Author. [Retrieved from www.apa.org/pi/lgbc/publications/justthefacts.html.]

9. Making Mediation Language Accessible:

1. One aspect of culture is language and language access is fundamental to informed participation in mediation. The guidelines below are designed to help mediators ensure that mediation participants have every opportunity to fully participate in mediation.[8] At referral the court should identify the language needs of parties referred to mediation (or note language needs at intake), and provide for court certified interpreter assignment to mediation session.
2. Track language needs throughout the process (and in advance) so that an interpreter is available for all mediation appointments/court events
3. **Best practice**: It is ideal to have a **bilingual mediator** of the same cultural background as the clients
   - California Rule of Court 5.518(c)(1)(G): "Whenever possible, dependency mediation is conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session"
4. If this is not possible, become comfortable working with an interpreter (in order of preference)
   - Court certified interpreter
   - Bilingual support staff who has been tested and qualifies to interpret
5. Anticipate additional time for mediation interpretation
6. Avoid having a youth or family member interpret
7. Best practice: All brochures, forms and documents should be translated for participants
   - If this is not possible ensure that all written materials (including mediation agreements) are orally interpreted for participants

5 Minutes

Lecture Presentation

For More Information See:

"Cultural Competency: Working With Southeast Asian Youth and Their Families," PowerPoint, slides 53-55 (available on Caldog).

[8] *Adapted from: Cultural Competency: Working With Southeast Asian Youth and Their Families*

10. Complex Issues:

1. Imagine that in the course of a dependency mediation appointment a parent angrily accuses county counsel of being racist. How would you handle this situation as the mediator? [9]
   a. Use neutral language to reframe the accusation:
   - "So you believe that _____'s perceptions of you (as an African American woman, Mexican American man, etc.) are impacting this discussion."
2. Explore parent's concern as an issue:
   - "How you are treated (as an African American woman/Mexican American man) is an important issue here."
3. Focus on interests:
   - "It's important that you are treated with dignity and respect."

a. *For Female Trainees*: Imagine that at the outset of a dependency mediation appointment you learn from the father's attorney that the father (who is from a different ethnic and religious background than you) believes that women should not be in positions of authority vis a vis men. You understand that the male participant believes that mediators are in a position of authority. Furthermore, you are told that the father will likely react negatively to the fact that you are wearing pants (vs. a dress/skirt).
   - How might you optimally approach this case?
   - What if co-mediation with a male colleague is not an option at this time? What else might you consider?

b. *For Male Trainees*: Imagine that at the outset of a dependency mediation appointment you learn from the mother's attorney that in the mother's country of origin (and religion), it is inappropriate for a man to gaze at or speak directly to woman to whom he is not related.
   - How might you optimally approach this case?
   - What if co-mediation with a female colleague is not an option at this time? What else might you consider?

[9] *Adapted from Paul Ladehoff, "Cross-Cultural Issues in Mediation"*

10 Minutes

Large Group Discussion

For More Information See:

Paul Ladehoff, "Cross-Cultural Issues in Mediation"

10. Complex Issues: c. What if a party is racist/sexist/ageist/homophobic/religiously intolerant etc.? • Establish ground-rules at the outset of mediation ▪ Everyone must be treated with respect (regardless of cultural background, personal beliefs, etc.) • Don't attempt to change underlying attitudes- which is likely to generate more resistance • Instead focus on outward behavior (whether or not there is a change in the individual's internal belief-system) o Example of a statement that a mediator might make (either in caucus or conjoint session): "I'm not telling you what to think- obviously that's entirely up to you. What is important, however, is that all mediation participants behave respectfully towards one another in mediation. On the most basic level that means that derogatory comments about a participant's cultural background, belief system, values, etc. will not be tolerated." • If relevant, appeal to a participant's interest in a successful mediation o Explore how problematic behavior impacts both the target of the inappropriate behavior and the negotiation process (e.g., creates defensiveness, disengagement, and decreases likelihood of resolution) o Example of a mediator statement: "I'm wondering if you noticed how Said rejected your proposal right after you called him that name." • Meet with participants separately if constructive conjoint dialogue cannot be maintained • How might pre-session orientation alert mediator to possible issues?	***CONTINUED*** *Large Group Discussion*

11. Understanding Local Cultures:
 	
a. Reflect on the cultural communities that are represented in your dependency court jurisdiction. Perhaps there is a large Vietnamese, American Indian, or Middle-Eastern population in your county. If possible have your Presiding Juvenile Court Judge invite cultural leaders and/or representatives from the agencies that serve this community to a brown bag lunch to share about cultural values, identities, practices and strategies to best serve clients of this culture.
 	
b. Cultural leaders/spokespersons can be asked to share about their culture's:
• Language(s)
• Religion(s)
• Demographics in local community
  o Percent of total local and national population
  o Percent of local cultural group that are foreign born, first generation, second generation, etc.
• Family structure (traditional and on acculturation continuum)
  o Parenting styles
  o Gender roles
• Challenges for this cultural group in the local area (e.g., discrimination, unemployment, poverty, tension between generations around acculturation/assimilation, language barrier, alcohol and drug use, loss of home/status, etc.)
• Cultural norms, values, customs, practices and behavioral patterns
• Views on conflict and approaches to conflict resolution
• Beliefs about law enforcement and external authority
• Practical advice and strategies to better serve clients of this cultural background
 	
c. Consider inviting other dependency court stakeholders (e.g., attorneys, social workers, CASA volunteers) to attend the panel discussion/in-service
 	
d. Select a panel facilitator; Ensure that facilitator is culturally competent and able to introduce, interact with and respond to guests in a culturally appropriate manner
	OPTIONAL
	60 Minutes
	Panel Discussion In-Service

12. Summary & Close: a. Review learning objectives & briefly summarize content covered b. Provide between session assignment (OPTIONAL) c. Encourage participants to complete the Unit E.4. *"Self-Assessment & Reflection Tool"* d. Encourage participants to provide feedback on the Unit E.4. training e. Provide reminder of future meeting schedule & thank participants	***5 Minutes*** ***Materials:*** *Self-Assessment & Reflection Tool*

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California Juvenile Dependency Mediation Curriculum

Unit E, Special Issues

Chapter 4: Cultural Issues

Culture

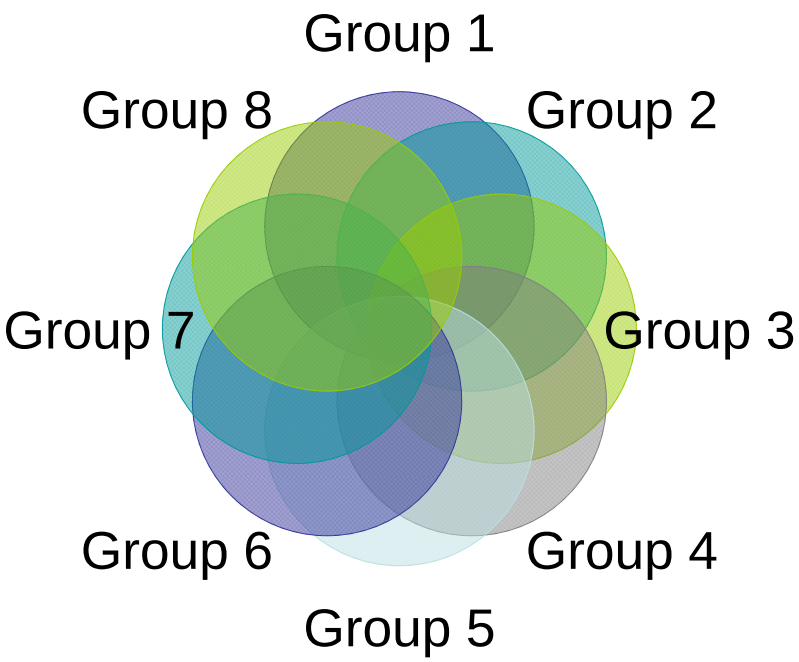
- “Enduring norms, values, customs, and behavioral patterns common to a particular group of people.” (Mayer, citation in notes)
- “Socially transmitted values, beliefs and symbols that are more or less shared by members of a social group.” (Avruch, citation in notes)
- Broader than just race and ethnicity
- Includes groups we’re born into and groups we become a part of
- Software of the mind
- Lens/filter through which we view the world

Categorizing Ourselves & Others

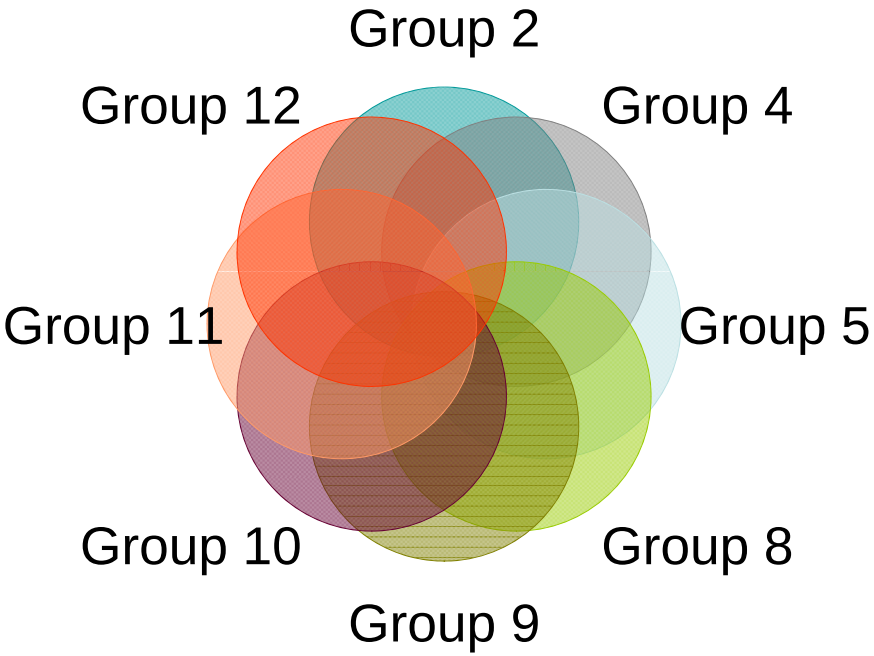
- Race/ethnicity
- Gender
- Age/generation
- Region/neighborhood
- Language
- Religion
- Sexual orientation
- Socio-economic status
- Level of education
- Citizen/immigrant
- Occupation
- Able-bodied/disabled

Culture & Multiple Identity Groups

Mediation *Participant A's*
Culture & Identity Groups



Mediation *Participant B's*
Culture & Identity Groups



What is Cultural Competence?

- Cultivating the ability to competently and respectfully work with people from all cultural backgrounds
- Attempting to understand the common cultural norms, values, customs, practices and behavioral patterns (prototypes) of various groups of people
  - Prototype- Think of a research based bell curve that identifies trends or generalizations for a certain culture (i.e., info often true but not always true given enormous within culture variation)

What is Cultural Competence?

- Rejecting stereotypes (assumptions that *everyone* of a certain cultural background *always* believes/acts a certain way)
- Viewing and responding to each person as a unique individual
- <u>NOT</u> something that is quickly achieved or ever totally accomplished (i.e., it is a continuous process of learning)
- <u>NOT</u> simple book learning

How Does One Develop Cultural Competence?

- By developing self-awareness
- And by developing an awareness of others

Monocrhonic Time Orientation

Characteristics:

- Deal with one thing at a time & tasks seen as separate
- Linear view of time & prefer sequential order
- Time is something to save or lose (emphasizes promptness & schedules)

Possible Implications for Mediation:

- Individual may want an outline of issues to be discussed
- Individual may want to discuss one issue at a time
- Individual may want time to be used wisely/not wasted
- Individual may be frustrated if other(s) bring up seemingly unrelated issues

Polycrhonic Time Orientation

Characteristics:

- Simultaneously processes many issues
- Non-linear (more holistic) approach to thinking & discussing
- View of time more personal based on the needs of the situation/people (less scheduled)

Possible Implications for Mediation:

- Individual may be late (more relaxed about time)
- Individual may raise multiple issues for discussion
- Individual may be more likely to link (or log-roll) elements in working toward an overall agreement
- Individual may be annoyed by other's more deliberate style

Low Context Communication

Characteristics:

- Rules & expectations clearly articulated
- Speaker relies heavily on verbal messages (info explicit)
- Speaker typically speaks directly, frankly & literally

Possible Implications for Mediation:

- Individual may prefer clear protocol, agenda & ground rules
- Individual may prefer detailed written agreements
- Low context individual may perceive high context individual's lack of directness as avoidance or deceit
- Low context individual may be frustrated by high context individual's indirectness

High Context Communication

Characteristics:

- Speaker may talk around subject; Avoid direct approach
- Speaker relies heavily on listener's ability to sense context (message is implicit & assumption listener understands)
- May perceive direct communication as tactless & offensive

Possible Implications for Mediation:

- Individual may not directly state wants & what individual says may/may not be what he/she means
- Direct questions may not result in direct answers
- Active listening skills essential to ensure true understanding
- Individual may perceive low context person as rude & blunt

Individualistic Culture

Characteristics:

- Emphasizes the individual
- Values indiv. initiative, private decisions & independence
- Self-interest outweighs group-interest

Possible Implications for Mediation:

- Individual may be almost exclusively focused on own goals & have difficulty valuing others' concerns & interests
- Individual may prefer quid pro quo exchange (trade-offs)
- Competitive strategies may be more likely
- Individual may be focused on "winning" as validation of individual's negotiation skills

Collective Culture

Characteristics:

- Values “we” consciousness, group affiliation & conformity
- Social & economic mobility less likely
- Individual gain not encouraged (perceived as selfish)
- Collective gain (gain for group) valued above individual gain

Possible Implications for Mediation:

- Individual may focus on group goals & satisfaction for all
- Preventing public shame (“saving face”) may be important
- Individual may be reluctant to make decisions without the support of his/her group

Low Power Distance

Characteristics:

- Believe in maximizing equality within society
- Less emphasis on obedience to authority

Possible Implications for Mediation:

- Sense of equality with mediator and proposals of participants and mediator weighed comparably
- Individual may be comfortable with use of first names and more informal atmosphere
- Group problem-solving preferred over being provided answer by authority

High Power Distance

Characteristics:

- High regard for authority and compliance
- Hierarchy and top down decisions typical
- Family relationships may be stratified by gender & age

Possible Implications for Mediation:

- If mediator is perceived as person of high power
  - Individual may defer to mediator & solicit solution advice
  - Individual unlikely to disagree w/ mediator
- If mediator is perceived as person of lower power (and participant high power)
  - Individual may challenge & ignore mediator (and staff)

Low Uncertainty Avoidance

Characteristics:

- Comfortable w/ broad guidelines (vs. precise guidelines)
- Culture that is more comfortable with risks & change

Possible Implications for Mediation:

- Individual likely to be more relaxed about details, contingencies and consequences
- Individual may prefer more general language in agreement
- Individual may be offended by high uncertainty avoidant individual's desire to have everything very specifically addressed in writing (may perceive as a lack of trust)

High Uncertainty Avoidance

Characteristics:

- Culture marked by anxiety about the unknown & future risk
- Aversion to risk taking & desire for clear expectations & detailed directions

Possible Implications for Mediation:

- Individual may prefer detailed written agreement that addresses many possible contingencies
- Individual may want agreement to address enforcement procedures and mechanisms to deal w/ future conflict

Low Physical Contact

Characteristics:

- Physical contact during communication may be seen as unnecessary or intrusive
- Need for greater amount of space between self & others

Possible Implications for Mediation:

- Individual may prefer greater distance between self & other
- Individual may appreciate having a table in mediation
- So as not to insult mediation participants, mediators must be aware of (and match) each participant's comfort level w/ physical contact

High Physical Contact

Characteristics:

- Touch oriented culture that is comfortable w/ greater level of physical contact
- Physical contact is important part of communication
- Less distance between self and others necessary

Possible Implications for Mediation:

- Individual may be comfortable with two handed handshakes, occasional light touch on arm, or pat on back
- CAUTION: Mediators must be aware that there may be different rules for physical contact with men & women; If in doubt- be conservative w/ touch

Direct Eye Contact

Characteristics:

- Direct eye contact signals attention, honesty, sincerity, interest & forthrightness

Possible Implications for Mediation:

- Individual may interpret indirect eye contact as a sign of lack of interest, dishonesty, insincerity, or shyness

Indirect Eye Contact

Characteristics:

- Minimal eye contact, averted eyes & downward gaze signal respect (not evasion)

Possible Implications for Mediation:

- Individual may perceive mediator or other's direct eye contact as insulting, aggressive or intimidating

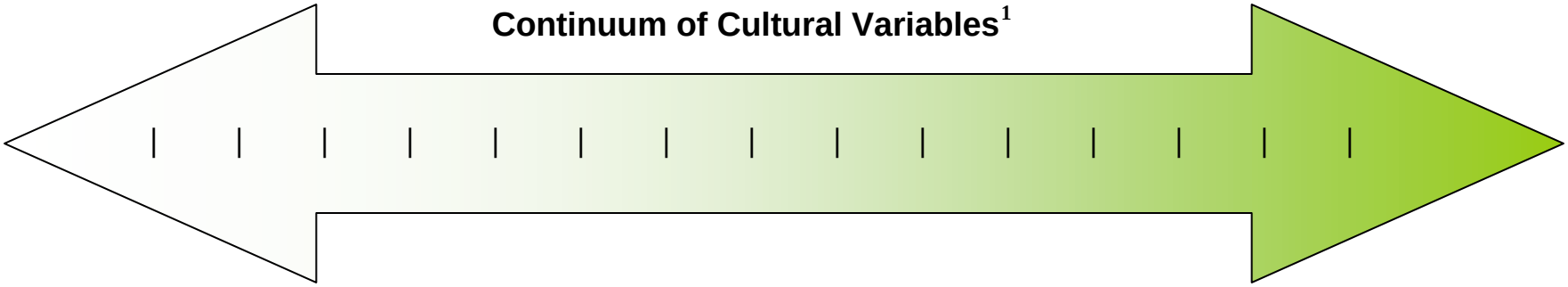
Attitudes, Approaches & Tips

- Whenever possible mediators should be representative of local demographics
- Different expectations are to be expected
- Do not presume that you are being understood
- Do not presume that mediation participants share your (or each other's) beliefs, values and behavioral patterns
- Listen actively (attend to both verbal and non-verbal communication)

Attitudes, Approaches & Tips

- Help participants listen carefully to each other & check for understanding
- Ensure that mediation is language accessible
- When possible, be sensitive participants' preferences for the time, place, and formality of the mediation appointment
- Adopt a posture of humility, patience and willingness to learn
- Model respect for and appreciation of cultural differences

Continuum of Cultural Variables[1]



Dependency mediators must be able to work effectively in intercultural situations. Cultural competence requires that mediators: 1.) Recognize the ways that cultures vary along many dimensions, and 2.) Develop *cultural self-awareness*. This handout explores seven cultural variables. After a discussion of these variables and their implications for dependency mediation, trainees are encouraged to participate in an individual exercise and pairs/small group discussion to enhance self-awareness *(directions below).*

INSTRUCTIONS (Individual Exercise & Pairs/Small Group Discussion):

1. *Take 5 minutes to individually reflect on each cultural variable and place a circle around the tic mark on each variable's continuum that best represents your personal cultural comfort zone and/or tendencies. (Tip: While you may feel that you have propensities on both ends of the spectrum, try to select a position that asserts a stronger preference one way or another.)*
2. *Take 10 minutes to break up into pairs (or small groups of 3 to 4 people) and discuss:*
   a. *Self-reflections and personal observations that you are comfortable sharing with your colleague(s); where did you find yourself on the spectrum? Can you think of examples of how this trait/value manifests itself in your work as a dependency mediator?*
   b. *Ways that the mediator's cultural comfort zone and tendencies might come into conflict with those of dependency mediation clients*
   c. *Ways that the cultural values and practices of various mediation participants (e.g., social worker & family) may collide*

[1] The following authors developed or adapted the concepts found in this handout:

- Hall, E.T., The Hidden Dimension (1990). *(Concept of monochronic/polychronic time orientation, and high/low context communication)*
- Hofstede, G., Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations (2001). *(Concept of individualistic/collective cultures, high/low uncertainty avoidance, and high/low power distance)*
- Dodd, C.H., Dynamics of Intercultural Communication (1997). *(Discusses high/low context communication)*
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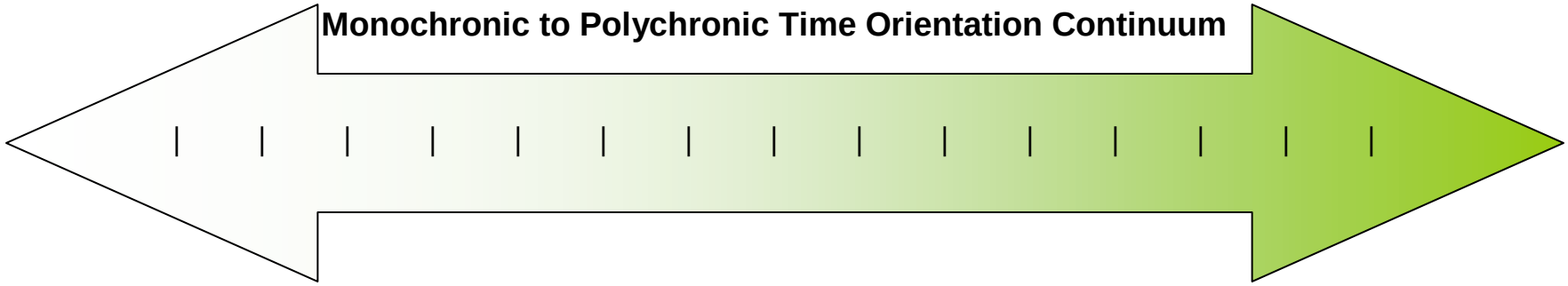
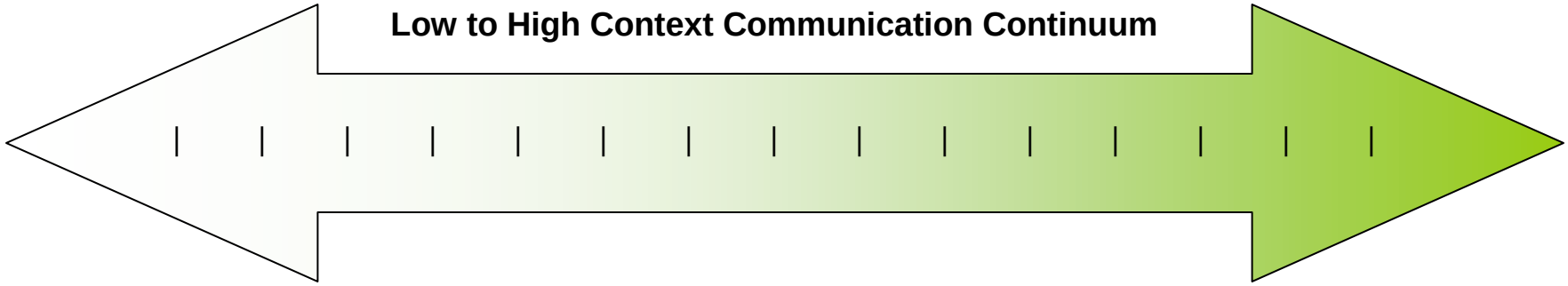


Monochronic Time Orientation/Processing Style

- Characteristics:
  - Deal with one thing at a time & tasks seen as separate
  - Linear view of time & prefer sequential order
  - Time is something to save or lose
  - Emphasizes promptness & schedules
- Possible Implications for Mediation:
  - Individual may arrive prepared with documents
  - Individual may want an outline of issues to be discussed
  - Individual may want to discuss and have closure on one issue at a time
  - Individual may want time to be used well/not wasted
  - Individual may be frustrated if other(s) bring up seemingly unrelated issues

Polychronic Time Orientation/Processing Style

- Characteristics:
  - Simultaneously processes issues (many things at the same time)
  - Non-linear (more holistic) approach to thinking & discussing
  - Juggles topics without difficulty
  - View of time more personal based on the needs of the situation/people (less scheduled)
- Possible Implications for Mediation:
  - Individual may be late (more relaxed about time)
  - Individual may multi-task during mediation
  - Individual may raise multiple issues for discussion
  - Individual may prefer to finalize individual agreements once all issues have been discussed and resolved
  - Individual may be more likely to link (or log-roll) elements in working toward an overall agreement
  - Individual may be annoyed by monochronic's deliberate style



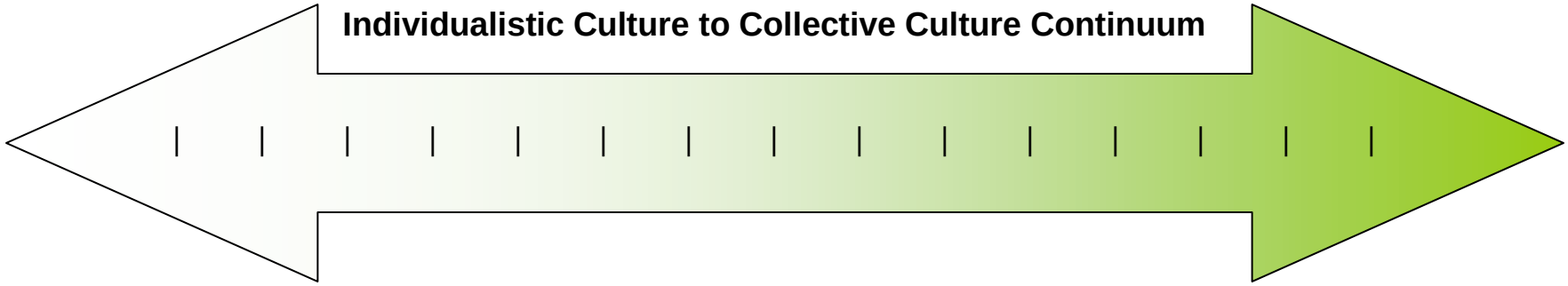
Low/High Context Communication- Addresses the amount of information contained in the context/setting vs. transmitted in the message itself

Low Context Communication

- Characteristics:
  - Rules and expectations are clearly articulated- more information in the transmitted message and very little is assumed
  - Speaker relies heavily on verbal messages (info. is explicit)
  - Speaker typically speaks directly, frankly & literally- gets to point quickly
  - Speaker may perceive indirect communication as vague, inefficient and evasive
- Possible Implications for Mediation:
  - Individual may prefer clear protocol, agenda and mediation ground rules (e.g., provided during orientation or opening statement)
  - Low context individual may perceive high context individual's lack of directness is avoidance or deceit
  - Individual may prefer detailed written agreements that cover many contingencies
  - Low context individual may be frustrated by high context individual's indirectness

High Context Communication

- Characteristics:
  - Speaker relies to a greater degree on listener's built-in understanding of what is customary within speaker's culture (i.e., listener relied upon to sense the context of speaker's communication; expectation of shared knowledge; info. implicit)
  - Speaker may talk around a subject; Avoid direct approach
  - May perceive direct communication as tactless and offensive
- Possible Implications for Mediation:
  - Mediator may need to focus on active listening skills to ensure true understanding of participant's point of view
  - Individual may not directly state wants
  - What individual says may or may not be what he/she means; Individual may be used to listeners "reading" other cues/context for "real" answer (e.g., a person from Japan may say "that will be difficult" and mean "no")
  - Direct questions may not result in direct answers
  - High context individual may perceive low context person as rude and blunt

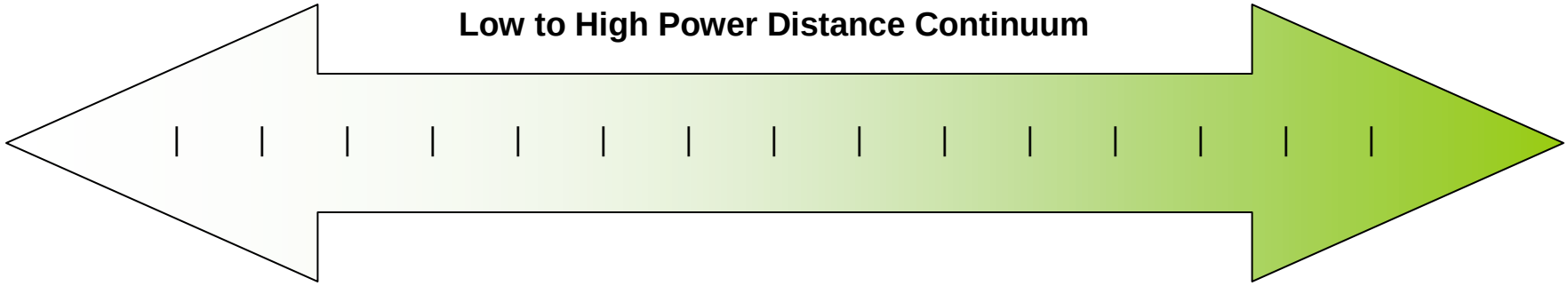


Individualistic Culture

- Characteristics:
  - Emphasizes the individual
  - Values individual initiative, private decisions, and independence
  - Self-interest often outweighs group-interest
- Possible Implications for Mediation:
  - Individual may be almost exclusively focused on own goals and have difficulty valuing others' feelings, concerns, and interests
  - Individual may prefer a quid pro quo exchange of concessions
  - Competitive strategies may be more likely
  - Individual may be focused on "winning" as validation of individual's negotiation skills

Collective Culture

- Characteristics:
  - Values "we" consciousness, group affiliation & norm conformity
  - Social and economic mobility are less likely
  - Individual gain not encouraged; May be perceived as selfishness
  - Collective gain (gain for group) is valued above individual gain
- Possible Implications for Mediation:
  - Individual may be focused on group goals and satisfaction for all
  - Preventing public shame ("saving face") may be important (especially for men); Individual may reject a "reasonable" offer if it means losing face
  - Individual may be more likely to adopt a collaborative, problem-solving and interest-based approach to mediation
  - Individual may be reluctant to make decisions without the support of his/her group



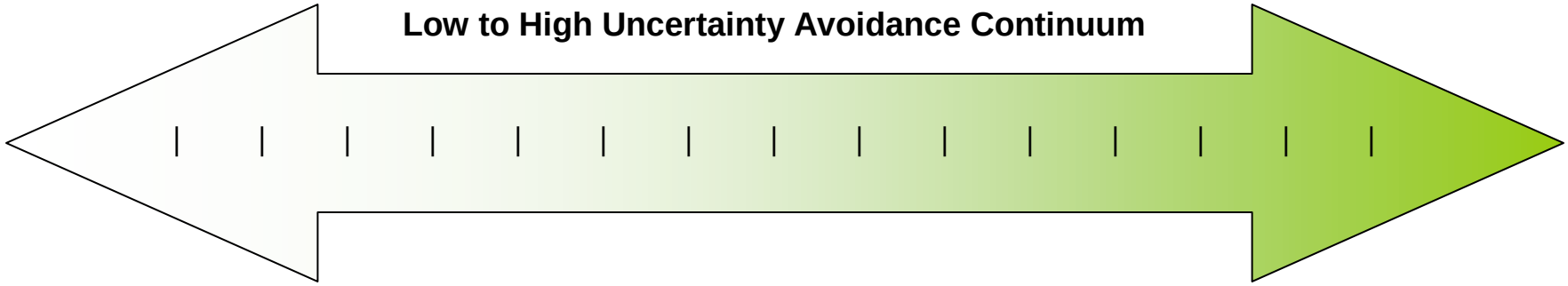
Power Distance- Measure of personal power or influence between two parties, as perceived by the less powerful of the two parties- G. Hofstede

Low Power Distance

- Characteristics:
  - Believe in maximizing equality within society
  - Less emphasis on obedience to authority
- Possible Implications for Mediation:
  - Sense of equality with mediator and proposals of parties and mediator weighed comparably
  - Individual may be comfortable with use of first names and more informal atmosphere and group problem-solving

High Power Distance

- Characteristics:
  - High regard for authority and compliance
  - Hierarchy and top down decisions typical
  - Family relationships may be stratified based on gender & age
- Possible Implications for Mediation:
  - If mediator perceived as person of high power
    - Individual may defer to the mediator & solicit advice/recommendations/decisions from mediator
    - Individual unlikely to disagree with the mediator & may agree to mediator generated proposal despite reservations
  - If mediator is perceived as person of low power (and participant as high power)
    - Individual may challenge/be disrespectful/ignore mediator
    - Individual may be demanding towards mediator & staff

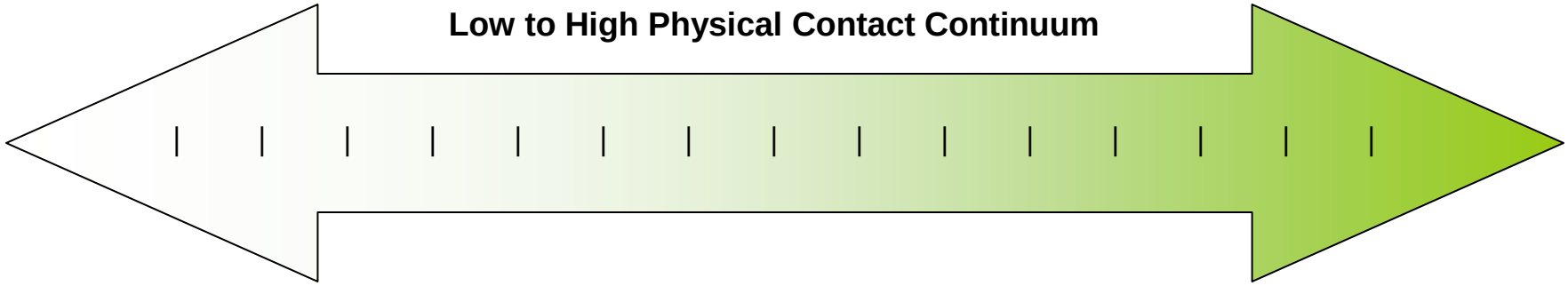


Low Uncertainty Avoidance

- Characteristics:
  - Comfortable with broad guidelines (vs. very precise/detailed instructions/guidelines)
  - Culture that is more comfortable with risks and change
- Possible Implications for Mediation:
  - Individual likely to be more relaxed about contingencies and consequences
  - Individual may prefer more general language
  - Individual be comfortable without enforcement procedures addressed in agreement
  - Individual may be offended by high uncertainty avoidant individual's desire to have everything very specifically addressed in writing (perceive as a lack of trust)

High Uncertainty Avoidance

- Characteristics:
  - Culture marked by anxiety about the unknown and future risk
  - Aversion to risk taking and desire for clear expectations and detailed directions
- Possible Implications for Mediation:
  - Individual may prefer detailed written agreements that address many possible contingencies
  - Individual may want agreement to address enforcement procedures and mechanisms to deal with future conflict; i.e., what to do in the event that agreement is not followed and/or there is a future disagreement

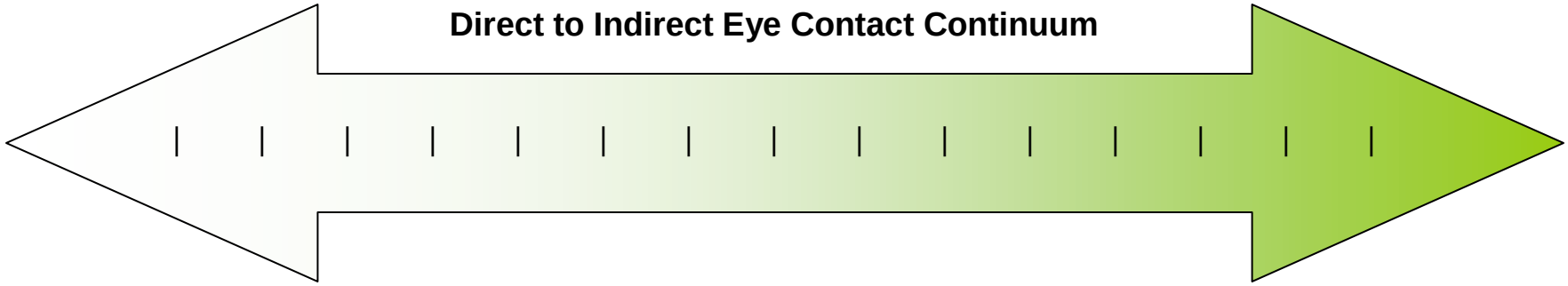


Low Physical Contact

- Characteristics:
  - Physical contact during communication may be seen as unnecessary or intrusive
  - Need for greater amount of space between self and other(s)
- Possible Implications for Mediation:
  - Individual may prefer greater distance between self and other
  - Individual may appreciate having a table at mediation (increased distance and formality)
  - So as not to insult mediation participants, mediators must be aware of (and match) each participant's comfort level regarding physical contact

High Physical Contact

- Characteristics:
  - Touch oriented culture that is comfortable with a greater level of physical contact
  - Physical contact is an important part of communication
  - Less distance between self and other(s) necessary
- Possible Implications for Mediation:
  - Individual may be comfortable with two handed handshakes, occasional light touch on arm, or pat on back
  - CAUTION: Mediators must be aware as there may be different rules for physical contact for men and women- e.g., it may not be appropriate for a male mediator to physically greet (shake hands with) an Islamic woman



Direct Eye Contact (Looking in the Other's Eyes)

- Characteristics:
  - Direct eye contact signals attention, honesty, sincerity, interest and forthrightness
- Possible Implications for Mediation:
  - Individual may interpret indirect eye contact as a sign of lack of interest, dishonesty, insincerity or shyness

Indirect Eye Contact (Averting/Lowering Eyes)

- Characteristics:
  - Minimal eye contact signals respect (not evasion)
- Possible Implications for Mediation:
  - Individual may perceive mediator or other's direct eye contact as insulting, aggressive or intimidating

Attitudes, Suggestions & Tips[1]

(For Working with Individuals from Different Cultures)

1. Whenever possible mediators should be representative of local demographics (e.g., racial, ethnic, linguistic, religious, socioeconomic & other designations)

2. Different expectations are to be expected
   - Take very little (if anything) for granted
   - Ask participants what they expect from the mediator (e.g., mediator's role) and the mediation process
   - Ask mediation participants about how conflict is resolved in their family/culture and, when possible, co-design a culturally appropriate mediation process

3. Do not presume that you are being understood
   - Mediator's words may have different meaning/connotation for each participant (especially if the speaker and listener do not share the same first language)

4. Do not presume that mediation participants share your (or each other's) beliefs, values and behavioral patterns

5. Listen actively (attend to both verbal and non-verbal communication)

6. By using active listening (restating and reflecting frequently), the mediator can ensure that he/she (and the other mediation participants) understand the speaker to the greatest extent possible

7. Ask questions likely to elict more information, "Can you say more about what that means? "Would you talk about how that is a priority (high value)?"

8. Help participants listen carefully to one another & check for understanding

9. Ensure that mediation is language accessible

10. When possible, be sensitive to participants' preferences for the time, place, and formality of the mediation appointment

11. Adopt a posture of humility, patience and willingness to learn

12. Model respect for and appreciation of cultural differences

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[1] *Suggestions adapted from Jan Jung-Min Sunoo (as cited in Ladehoff, C. ,"Cross-Cultural Issues in Mediation" PowerPoint (See cms.missouri.edu/Cross-Cultural%20Issues.ppt) & Ken Cloke, Mediating Dangerously (2001)*

Impact of Family Poverty on Case Plan Participation Exercise

DIRECTIONS: A non-exhaustive list of common case plan requirements is provided. In the right hand column write short phrases that describe how living below the poverty line might impact a parent's ability to participate in and/or successfully complete the related case plan requirement. Some items to consider:

1. *Neighborhood/Geography*
2. *Transportation*
3. *Educational background*
4. *Relationships with family, friends, neighbors*
5. *Quality or quantity of service providers*
6. *Other requirements of the case plan*
7. *Material needs (access to clothing, food, computer/internet, etc)*
8. *Additional factors?*

A. Obtain & maintain a legal source of income	
B. Obtain and maintain suitable housing	
C. Keep family home appropriately clean	
D. Attend 2 Alcoholics Anonymous support groups weekly	
E. Complete drug treatment program & participate in random drug testing	
F. Visit with child 3 times per week (supervised)	
G. Attend weekly parent education class	
H. Participate in weekly individual therapy and/or family therapy	
I. Attend child's medical, dental, IEP and other appointments	
J. Obtain & utilize appropriate child care	

Impact of Family Poverty on Case Plan Participation Exercise

SAMPLE ANSWERS

1. *Neighborhood/Geography*
2. *Transportation*
3. *Educational background*
4. *Relationships with family, friends, neighbors*
5. *Quality or quantity of service providers*
6. *Other requirements of the case plan*
7. *Material needs (access to clothing, food, computer/internet, etc)*
8. *Additional factors*

A. Obtain & maintain a legal source of income	2. Limited access to public transportation or reliable car to attend job interviews or dependably commute 3. GED or low level of education leads to limited qualifications and limited job opportunities. May have low literacy and therefore difficulty filling out applications. 7. Lack of access to appropriate clothing for job interviews, limited access to internet for job search, lack of computer for developing/printing resumes
B. Obtain and maintain suitable housing	1. High crime neighborhood is difficult to find housing that is safe and appropriate 4. May consider continuing a relationship based on housing 5. Long waiting list for subsidized housing (Section 8)
C. Keep family home appropriately clean	1. Poor neighborhood may be difficult to find appropriate home: mold, rodents, etc. 6. Challenge to keep house clean when commuting to/from case plan appointments 1. Out of home laundry facility may be difficult to access and in an unsafe location 7. Low income prevents parent from opening a checking account, causing a challenge to paying utility bills 8. Parental depression may also be considered
D. Attend 2 Alcoholics Anonymous support groups weekly	1. Transportation constraints (e.g., gasoline is expensive, car is unreliable, bus commute is time intensive, and relying on friends for rides is often inconsistent) 1. AA meeting may be far from home or work or child's placement/school
E. Complete drug treatment program & participate in random drug testing	6. Completing a drug treatment program may require that parent discontinue employment, which in turn, may impact housing
F. Visit with child 3 times per week (supervised)	2. Child may be placed far away from home 6. Supervised visitation meeting times conflict with schedule for available employment and/or required counseling appointments
G. Attend weekly parent education class	5. Facilitator not sensitive to cultural and socio-economic issues and their impact on parenting
H. Participate in weekly individual therapy and/or family therapy	5. Inadequate resources for optional mental health services (prior to system involvement) 5. Low-fee agencies tend to be understaffed and have high turn-over rates 6. Psychotropic medications costly and unpleasant side effects
I. Attend child's medical, dental, IEP and other appointments	2. Hospital, school, and other appointments for the child may be spread across a geographic area, without dependable public transport or access to a reliable car. 3. Low level of education may challenge parent's ability to advocate for the child-especially when child's school district/community is under-resourced 5. Long lines at community clinics 6. Can't risk time off work to attend appointments
J. Obtain & utilize appropriate child care	5. Limited number of local, affordable child care providers 6. When child is sick and parent needs a "sick day" to care for ill child, parent's employment may be jeopardized

Reducing Implicit Bias[1]

Education: Know that implicit bias exists and is a normal part of being human

Cognitive Load: Reduce your cognitive load (i.e., the amount and complexity of information that you need to process at any given time); adequate time helps to minimize the influence of implicit bias

High Effort Processing: Carefully consider the information that you are processing; do not operate on autopilot but instead very intentionally reflect on potential thinking errors

Mindfulness: Develop awareness; Purposely reflect on what and how you think; Stay in the moment and avoid being distracted by your next task

Exposure: Spending time with diverse people can help counteract implicit bias; it may also be helpful to think in a focused manner about culturally different others that do not fit your stereotypical beliefs about that cultural group

Environment: Evaluate your physical environment for negative cultural stereotypes; Remove culturally insensitive artifacts that may subtly influence your thinking/behavior

Organizational Review: Thoroughly assess the court/mediation department; is the staff representative of the local community? Are services truly accessible to all segments of the population?

Checklists: Checklists (that encourage more systematic and less biased thinking) can help court professionals more objectively and methodically reflect on their thinking and behavior

Debiasing: Assume that implicit bias occurs; Next develop a system of checks and balances (such as co-mediation, regular case reviews, and/or data tracking) to help safeguard or correct for implicit bias

Look to Other Fields: Other fields (such as business, education and medicine) may offer further insight into the topic of implicit bias as well as potential methods to reduce the influence of implicit bias

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[1] Marsh, S, C., "The Lens of Implicit Bias" Juvenile & Family Justice Today, Summer, 2009, pp. 16-19. https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=261622

California Juvenile Dependency Mediation Curriculum

Self-Assessment & Training Reflection

Unit E: – Self-Assessment & Reflection Tool

E.4. Cultural Issues

This self-assessment and reflection tool is provided to assist you in candidly evaluating your mastery of the training material. You will not be asked to submit this form.

1. Check the appropriate box to indicate your degree of expertise with each of the following elements.

	LIMITED----------			PROFICIENT
My understanding of the terms “culture” and “cultural competence”	☐	☐	☐	☐
My ability to identify cultural variables and their possible implications for mediation	☐	☐	☐	☐
My ability to practice with self-awareness about my own cultural assumptions and comfort zone	☐	☐	☐	☐
My appreciation of strengths and understanding of typical constraints for families in poverty	☐	☐	☐	☐
My awareness of and sensitivity to sexual orientation and gender identity issues in the context of dependency mediation	☐	☐	☐	☐
My movement towards a more culturally competent mediation practice	☐	☐	☐	☐
My ability to ensure language access in mediation	☐	☐	☐	☐
My understanding of the terms “culture” and “cultural competence”	☐	☐	☐	☐
My ability to identify cultural variables and their possible implications for mediation	☐	☐	☐	☐
My recognition of the child welfare system’s potential impacts on children.	☐	☐	☐	☐

2. What is the most important idea that you learned today?

Self-Assessment & Training Reflection (continued)

Unit E: – Self-Assessment & Reflection Tool

3. What was the most confusing topic today?

4. What important questions remain unanswered for you?

5. What resources will help answer your questions or provide more information about this topic?

6. What are the implications of this information for your work? Is there anything that you would like to start doing, stop doing, do less of, or do more of?