

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).

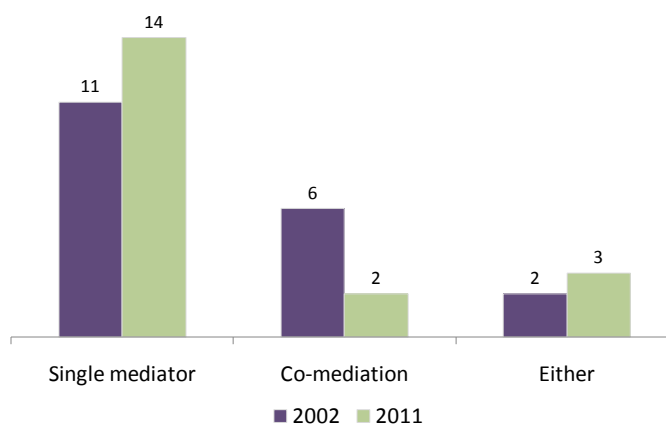
Table 1: Program Structure

	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
<i>Total</i>	<i>20</i>

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

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

	N
Single mediator	14
Co-mediation	2
Either	3
Missing	1
<i>Total</i>	<i>20</i>



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
<i>Total program staff*</i>	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
<i>Total</i>	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
<i>Total</i>	<i>19</i>

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
<i>Total</i>	<i>20</i>

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
<i>Total</i>	<i>19</i>

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
<i>Total</i>	<i>20</i>

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
<i>Total</i>	<i>20</i>

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
<i>Total</i>	<i>20</i>

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
<i>Total</i>	<i>19</i>

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
<i>Total</i>	<i>20</i>

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