

Uniform Statistical Reporting System

The 1991 Client Baseline Study
The 1993 Client Baseline Study



**Report 6:
Future Directions for
Mandatory Child-Custody
Mediation Services:
Considerations from Two
Studies of Court Users**

Statewide Office of Family Court Services
Administrative Office of the Courts
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Uniform Statistical Recording System

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Report 6

Future Directions for Mandatory Child-Custody Mediation Services: Considerations from Two Statewide Representative Studies of Court Users

Powerful social forces are transforming the American family and demanding innovative strategies from public institutions that serve children and their parents. In its 1993 report, the Commission on the Future of California Courts exhorted courts to respond to unprecedented demographic, fiscal, social, economic and technological trends that are forging new issues for families who come to court. Services can no longer operate from an antiquated stereotype of the typical family law case—one that envisions a divorcing middle class couple, flanked by attorneys as they work through a step-by-step process that will establish permanent orders for child custody and the division of assets. Fewer and fewer families conform to this image. Speaking before the U.S. Commission on Child and Family Welfare, the Honorable James Garbolino, Co-chair of the California Judicial Council's Standing Advisory Committee on Family and Juvenile Law, underscored the increased variety and complexity of family law cases at a time when parents can muster fewer and fewer resources to help them through the process. Statewide statistics about the families now using California's family courts can inform the planning of court procedures and services that best meet the needs of today's family law client.

Who is using family courts across California? What are the prevailing circumstances of clients? What should courts know in order to best serve a rapidly changing clientele? To address these questions, this report draws from the Uniform Statistical Reporting System (USRS) of California's Statewide office of Family Court Services. USRS begins tracking cases as they enter court-based mediation, the initial step in the court's child custody determination process. The objective of the USRS system is to provide rigorous statewide statistics that meet two fundamental criteria: (1) All eligible parties across the state have an equal opportunity to be included in the research (i.e., research is not restricted to particular programs, services, or geographic locations), thereby insuring representation of the full range of cases across the state; and (2) the research includes enough cases to permit reliable inferences from the data.

Statistics cited in this report are taken from two USRS surveys: The 1991 Client Baseline Study, a sample of 1,388 families comprising 82 percent of all court-based child-custody mediations across the state during the study period; and the 1993 Client Baseline Study, including 2,259 families representing 80 percent of all such cases.

FROM YESTERDAY'S STEREOTYPE TO TODAY'S REALITY

Rising caseloads

USRS statistics document rapid growth in the number of cases entering family court mediation to establish orders for child custody and visitation. In 1987, the estimated yearly case volume was 49,500, rising to 65,500 by 1991. In 1993, the estimated number of court-based mediation cases reached 73,250.

The uncharted course of child custody deliberations

In theory, the disposition of family law cases follows an orderly sequence of steps. California law accords parents the widest possible latitude to tailor child custody and visitation arrangements to fulfill the best interests of their children. Parents use court-based custody determination services only when they cannot reach agreement on their own or with the assistance of third parties, such as attorneys or private mediators. It is estimated that only a relatively small proportion of California families use court procedures to establish custody and visitation orders. For the minority who do, mediation is the initial step. If parents do not come to terms in mediation, subsequent dispute resolution procedures vary with local rules of the court. Financial aspects of the agreement, such as support or the division of assets, are not within the purview of court-based mediation and follow a different course of action. When final orders for custody and visitation are made, it is commonly assumed that they will remain in place for the child's minority.

There is a growing recognition that many cases that come into family court do not follow this stereotypic progression. Many cycle through different parts of the system on different aspects of the agreement or return to court to modify agreements that proved unworkable. In 1993, 28 percent of all cases seen in court-based mediation were seeking a modification of an existing court order concerning legal child custody, physical child custody, or the division of primary residence of the child. Existing orders could have been established using any of a number of methods, including self determination between parties, private attorneys or mediators, court-based mediation, mediator recommendations to the court, child custody evaluation and/or judicial determination.

What are the implications for court services? Parents seeking modifications may require special services tailored to families who have already had an agreement in place. Procedures for all clients must recognize, and if possible anticipate, points at which custody and visitation agreements are most vulnerable to change. Parent education can be an essential tool, giving mothers and fathers the skills to adapt to changing needs of the child.

The culturally competent family court

Court-based mediation programs must be prepared to serve a multicultural clientele. The pattern of ethnic diversity among mediation clients closely matches the composition of the California population. Both the 1991 and 1993 surveys found that 85 percent of all mediation clients were U.S. born. In both years, over one third of all clients were people of color (35 percent in 1991 and 36 percent in 1993). Hispanics were the largest minority group, at 20 percent in 1991, 21 percent in 1993, followed by Blacks (6 percent in 1991 and 7 percent in 1993), Asian or Pacific Islanders (3 percent in each year), American Indians, Eskimo, and Aleut (3 percent in 1991; 2 percent in 1993) and individuals of multiple heritage's (3 percent each year). In each year, 62 percent of the clients described their ethnic background as "white".¹

What are the implications for courts? The statistics do not signal major problems in access to mediation services, but accentuate the need for culturally competent services. The close correspondence of the ethnic breakdown of mediation clients and the statewide population suggests that each ethnic group uses the courts in proportion to its representation in the state population. There is no indication that any particular ethnic group underutilizes or overutilizes the service. At the same time, the ethnic diversity found among mediation clients demands a broad repertoire of mediation skills. Cultural or racial issues are key factors in 8 percent of all custody decisions, rising to 13 percent among minority families. Parents come from different ethnic backgrounds in 22 percent of all cases. Among these couples, mediators report that custody disputes echo differences in cultural traditions governing parental roles and/or involve contention about the culture in which the child will be raised.

Shrinking resources for families

The stereotypic family law case depicts a middle class couple with sufficient resources to hire assistance to form plans for custody and visitation. USRS statistics replace this stereotype with evidence that most mediation clients negotiate the complicated family law system alone and with very limited resources.

In most families, at least one party appears in pro per

Increasing numbers of family mediation clients are entering the system without legal representation. Families in which both parents had attorneys shrank from 45 percent in 1991 to 38 percent in 1993. Smaller changes were observed in the proportion of families in which both parties appear in pro per (25 percent in 1991; 28 percent in 1993) and families in which fathers were the only represented party (12 percent in 1991; 14

¹Clients reported their own ethnic identification. Category labels were taken from the U.S. Census.

percent in 1993). The proportion of cases in which the mother was the only party with an attorney remained constant at 13 percent. Increasing numbers of families appear in mediation with at least one client in pro per (50 percent in 1991; 55 percent in 1993). When only one party is represented, neither mothers nor fathers are more likely to have attorneys.

Programs should be geared for the high-school educated client

Parents with no formal education beyond high school are the fastest growing segment of the mediation client population, increasing from 41 percent in 1991 to 52 percent in 1993. Most of the change was in the proportion of high school graduates. In 1991, 28 percent of the parents in mediation had a high school degree only, a figure that increased to 37 percent in 1993. Parents without a high school degree were 13 percent in 1991 and 15 percent in 1993.

The education levels of mothers and fathers are roughly equivalent; although the gender gap is a bit wider in the 1993 statistics. In 1991, 42 percent of mothers and 42 percent of fathers had no education beyond high school. In 1993 the figures were 54 percent for mothers and 49 percent for fathers.

Unemployment and poverty are common

A high proportion of parents are not employed when they come to family court. In 1991 the figure was 27 percent, rising to 30 percent in 1993. In contrast to statistics for education, sizable discrepancies in the employment status of mothers and fathers are found in both years. In 1991, 36 percent of the mothers, but 17 percent of the fathers were not employed. In 1993 the figures were 39 percent and 20 percent, respectively. This gender gap is only partly attributable to the homemaker responsibilities of mothers. A higher proportion of mothers (17 percent) than fathers (2 percent) who were not employed said they had full time homemaking responsibilities. Equivalent proportions of mothers (11 percent) and fathers (10 percent) were unemployed and seeking work. A higher percentage of mothers (9 percent) than fathers (3 percent) were not employed and in school.

Employed mediation clients reported an average net monthly income of \$1,676 (\$1,331 for mothers, \$1,957 for fathers) in 1991. In 1993 the average net income was \$1,692 (\$1,404 for mothers, \$1,922 for fathers). More than one mediation client in ten reported a net monthly income below the poverty line in both years (14 percent in 1991, and 17 percent in 1993).² Substantially more mothers than fathers found themselves

²The poverty threshold used in this analysis is \$800 net income per month. The figure is net of taxes and includes all income sources, such as employment, unemployment benefits, social security, disability, and spousal support from previous relationships.

Although this threshold provides our best approximation of poverty status indicators used by the U.S. Census, it can be regarded only as a rough gauge of poverty, because USRS income measurement methods do not correspond with those employed by the U.S. Census. Specifically, USRS measures exclude sources included by the Census, such as AFDC, Welfare, SSI, and child support. USRS measures income net of taxes, whereas the Census uses pre-tax dollars.

employed but earning wages below the poverty level. Rates for mothers were 21 percent in 1991 and 24 percent in 1993; for fathers they were 9 percent and 11 percent for the two time periods.

In 1991, 11 percent of all mediation clients were receiving AFDC at the time of the mediation. Among 1993 clients, the figure was 13 percent. Most of the AFDC recipients were mothers (19 percent in 1991 and 22 percent in 1993).

Meeting the needs of today's family court clients

Custody arrangements for never-married parents

Additional USRS statistics erode the stereotypic mediation case even further. Debate about child custody and visitation policy usually considers divorcing couples; but federal child support assurance initiatives are increasing the number of family court clients who have never been married. Parenting agreements about child custody and visitation must now incorporate issues unique to mothers and fathers who may never have thought of themselves as a family. In 1991, 16 percent of the cases involved never-married parents. The figure rose to 22 percent two years later.³ Most of the never-married parents had, however, lived together at one time. Parents had never cohabited in only 5 percent of all cases.

Serving multiproblem families

Perhaps the greatest disservice of the stereotypic family law case is that it masks the range of serious family problems commonly raised in court-based mediation sessions. 1993 USRS statistics show that in 54 percent of all sessions, parents raised concerns about child abuse, neglect or abduction, substance abuse, domestic violence, or other criminal activities. In 32 percent of all cases, more than one such matter arose, usually in the form of counter-allegations between parents. The statistics cover a wide range of circumstances, running the gamut from documented incidents to concerns that a problem might arise; so they are not accurate indicators of the prevalence of these family problems. What they do measure with great precision is the frequency with which serious, often multiple, family problems enter the mediation session. In more than half of all mediation

The threshold used in this analysis is a conservative measure, designed to minimize the number of false positives. That is, it is unlikely that individuals designated as below the poverty line are, in fact, above it using Census standards. However, it is more likely that the group of individuals designated as above the poverty line includes some who might qualify for poverty status using the Census definition.

³Improvements in the questionnaire reduced the proportion of clients who skipped this question, so some of the year-to-year differences may be attributable to improved methods. Nonetheless, it is likely that the direction if not the magnitude of the change is accurate, as federal requirements for paternity determination and child support orders become increasingly common for parents who never married.

sessions, mediators must be equipped to deal with far more than the disposition of parental time with children.

For many families, custody deliberations spark concerns about parental behavior toward the child. 1993 USRS statistics show that one mediation in five involves concerns about child neglect (5 percent of the sessions raise this concern alone; 16 percent in conjunction with other family problems). Physical abuse of the child is raised in 9 percent of all sessions (1 percent alone; 8 percent in combination with other issues). Sexual abuse of the child came up in 5 percent of all mediations (1 percent as a sole issue; 4 percent with other issues). Parental abduction of the child was a concern in 6 percent of all cases (1 percent as a sole issue, 5 percent associated with other issues).

More common are concerns about a parent's lifestyle or behavior. These rarely come up as single problem issues. Frequently, there were multiple or counter allegations. In 1993, problems with alcohol or drugs affected custody deliberations for one family in five. In 20 percent of all families, alcohol abuse was an issue (3 percent of the time as a sole issue, 17 percent of combination with other problems). Drug abuse was an issue in 21 percent of all families (3 percent as a sole issue; 18 percent combined with other problems). Parents in 29 percent of all families brought up concerns about domestic violence in their custody deliberations (8 percent alone, 21 percent in combination with other issues), and 6 percent of all sessions included concerns about other criminal activities (fewer than 1 percent of the families raised this issue alone).

Effective case disposition for multiproblem families demands an unprecedented range of expertise from the courts. Under the Family Court Assistance Program, California's Statewide Office of Family Court Services (FCS) offers individual courts technical assistance and services to help meet the need. The 1993 report from The Commission on the Future of the California Courts recognizes the critical need for access to a broad range of human resource services. It recommends an advocacy role for the courts in the mobilization of community services for families.

Widespread concerns about safety

Mediators report that parents bring up domestic violence concerns in one session in three. A still larger proportion—half of all cases—enter court-based mediation with a current or previous domestic violence restraining order preventing one parent from coming near the other. In 1991 at least one parent in 51 percent of the families said that such an order had been in effect. In 1993, the figure was 48 percent. Concern about violence in family law cases has prompted a re-evaluation of policies and procedure that govern services to families. *The Uniform Standards of Practice for Court Connected Child-Custody Mediation for the State of California* invoke safeguards, such as separate mediation sessions and the inclusion of support persons. The *Standards* also make provisions for mediator training in the area of domestic violence. Each year since 1987, FCS has provided specialized training to court mediators, evaluators, and investigators. Special protocols for families with a history of violence are currently in place in a number of courts and a *Statewide Task Force on Effective Service Models* is developing a specific *Protocol for Cases in Which Domestic Violence is Alleged*.

Consequences for children: The new imperative

Mediation deliberations affect nearly 100,000 California children every year (an estimated 91,130 in 1991 and 95,264 in 1993). For many of these children, plans for custody and visitation will span most of their childhood years. Nearly half (43 percent of both years) of all mediations concern a preschool child; an equivalent proportion (43 percent in 1991 and 45 percent in 1993) involve children between 5 and 13 years old. A relatively small proportion of mediating families (9 percent in 1991 and 12 percent in 1993) have adolescent children (13 years of age or older). The high proportion of very young children covered in mediation plans also raises issues about age-appropriate child custody arrangements. Since little research is available to guide these deliberations, the experience and judgment of court mediators is particularly critical to the fate of children.

About half of all court-based mediation cases involve custody and visitation plans for one child (51 percent in 1991 and 50 percent in 1993). Another third of the families have two children (34 percent in 1991 and 36 percent in 1993). In both years slightly more than one family in ten (15 percent in 1991; 14 percent in 1993) had three or more children.

Only a small minority of families come to mediation to work out visitation across long distances. Statistics from both years show that parents who come to mediation live within close geographic proximity. In nearly a third of all cases seen in mediation (28 percent in 1991; 29 percent in 1993) parents lived within 15 minutes of each other. In over half of all cases, parents lived within 30 minutes of each other. Only 10 percent of parents in each year reported that they lived more than two hours apart.

Concerns about the child's well-being

Serious concerns about a child's well-being come up in over half of all mediation sessions. Emotional adjustment of the child was the most common issue (31 percent of all sessions), followed by discussion of the developmental needs of the child (18 percent of the sessions). Also commonly considered (15 percent of the sessions) were behavioral problems of the child. School performance of the child was reviewed in conjunction with residence and visitation in 13 percent of the sessions and medical needs in another 5 percent of the sessions. The child's substance abuse was a concern raised in 2 percent of the sessions. Nine percent of sessions discussed a child's refusal to visit while other preferences of the child regarding residence and visitation were discussed in 6 percent of the sessions.

When concerns such as these entered custody deliberations, it was more common for multiple issues to be raised. In 25 percent of all cases, just one concern was raised; in 30 percent, multiple concerns were raised. For example, 7 percent of sessions concerned emotional problems alone and 24 percent looked at emotional problems in conjunction with other concerns about the child. Developmental concerns were considered alone in 4 percent of the cases, and combined with other concerns in another 14 percent. Behavioral concerns alone were addressed in 1 percent of the cases and with other concerns in 14

percent. School performance was discussed alone in 2 percent of the cases and associated with other problems in 11 percent. Medical needs come up alone in 1 percent of the sessions, but combined with other factors in 4 percent of the cases. Substance abuse was the only concern in less than one percent of the cases and listed with other concerns in 2 percent of the cases. A child's refusal to visit was a sole concern in 3 percent of the cases but connected with other child related concerns in 6 percent of the cases. Other preferences of the child were discussed alone in 3 percent of the cases, but in association with other concerns in 3 percent.

Child Protective Services investigations

Statewide statistics also showed that Child Protective Services investigated a rising proportion of families seen in child-custody mediation. According to parents in 1993, Child Protective Services has investigated a report about children in 33 percent of all mediating families. In 1991, the figure was a 22 percent.

Witness to interparental violence

Statewide statistics also reveal that, in half of all families seen in mediation, at least one parent reports that a child has witnessed violence between parents. The figure remained constant across the two years, at 50 percent.

CONSIDERATIONS FOR FUTURE PLANNING

USRS statistics offer evidence of radical departures from the stereotypic image of the family court client that guided policy and service development in the past. The data document the volume, complexity, and diversity of cases entering today's family courts. What are the implications for future planning? USRS data underscore the need for several key competencies in the contemporary family court.

- Courts should anticipate steady growth in the volume of family law cases.
- A substantial proportion of cases will return to court for modifications of previous custody and visitation orders.
- Court-based mediation programs must be competent to serve a multicultural clientele. They must be equipped to deal with custody deliberations that reach impasse on cultural issues and/or involve disputes about the cultural traditions in which the child will be raised.
- Courts will be forging new directions, working with unprecedented numbers of clients who do not fit the stereotype commonly envisioned in child custody research and policy deliberations. Increasing numbers of custody disputes involve parents who have never been married. Forty-three percent of all mediations concern a preschool child.

- Safety is a critical issue in many custody decisions. Over half of all clients entering mediation are now or have once been protected by a domestic violence restraining order. Court security must be adequate to insure the safety of clients and court staff.
- Courts must be geared for the pro per client. Over half of all cases currently include at least one client who is not represented—and this number is on the rise.
- Family courts must be equipped to serve clients who have limited personal resources. Many clients, particularly mothers, lack basic financial resources. A growing sector of clients has no formal education beyond high school.
- A substantial segment of cases entering family court require referrals or orders to ancillary human services. A high proportion of families cite issues involving child neglect, abuse and abduction as well as parental problems with substance abuse. This increases the need for investigation, referrals, and/or monitoring.
- Custody determination in the courts will continue to involve a high proportion of cases in which there are serious concerns about a child's well-being. Currently, one third of all families express concerns about a child's emotional well-being. Child Protective Services has investigated a report about children in 33 percent of all mediating families. Children in half of all families have witnessed domestic violence. The courts face the challenge of protecting the best interests of the next generation.

APPENDIX I

California Statewide Office of Family Court Services (FCS)

California's Statewide Office of Family Court Services, Administrative Office of the Courts, is a staff agency to the Judicial Council of California, the body responsible for the state's judicial procedures and policies. Under Family Code sections 1850-1852, the California Statewide Office of Family Court Services is mandated to (1) assist counties in implementing mediation and conciliation proceedings; (2) administer a program of grants for research, study, and demonstration projects in the area of family law; (3) conduct a training program for court personnel involved in family law proceedings; (4) carry out research on the effectiveness of current family law for the purpose of shaping future public policy; and (5) establish and implement a uniform statistical reporting system.

The Statewide Office maintains The Family Court Assistance Program, which offers technical assistance and services for family courts, family court services and mediation programs in the areas of domestic violence, substance abuse, child abuse and neglect, and other areas of service.