

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

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

## Alternative Dispute Resolution

Thomas A. Bishop, *Outside the Adversary System: An ADR Overview*, 14 Family Advocate 16 (1992) (briefly discussing the benefits of alternative processes with an overview of standards and qualifications of facilitators).

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

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

Stephen K. Erikson, *ADR and Family Law*, 12 Hamline J. Pub. L. and Pol'y 5 (1991) (suggesting that mediation is a better means of resolving family disputes because it focuses on "interests-based" rather than "rights-based" resolutions).

Jon T. Ferrier, *The Role of Referees in Domestic Relations Cases*, 69 Mich. B.J. 128 (1990) (detailing the Michigan program and its statutory authorization).

Ann M. Haralambie, *Alternatives to Litigation*, 12 Fam. Advoc. 52 (1990) (presenting an advising attorney guide to selecting the appropriate process for a divorcing client).

George B. Murr, *In the Matter of Marriage of Ames and the Enforceability of Alternative Dispute Resolution Agreements: A Case for Reform*, 28 Texas Tech. L. Rev. 31 (1997) (discussing the lack of agreement among Texas courts over binding effects of ADR agreements).

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

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Thomas E. Carbonneau, *A Consideration of Alternatives to Divorce Litigation*, 1986 U. Ill. L. Rev. 1119

## Arbitration

Alfred R. Belinkie, *Matrimonial Arbitration*, 65 Conn. Bar J. 309 (1991) (providing an overview of benefits of arbitration for domestic disputes; advocates the application of arbitration statutes to such cases).

Marvin Comisky and Frederick Cohen, *Proposal to Accelerate Disposition of Domestic Relations Matters: Use of Special Arbitrators for Common Law Arbitration*, 62 Penn. Bar Assoc. Q. 97 (1991) (detailing the

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

Note, *Who's Watching Out for the Children? Making Child Custody Determinable by Binding Arbitration*, 1996 J. Disp. Resol. 225 (discussing the *Dick v. Dick* case from Michigan upholding the binding nature of an arbitrator's award in a child custody case).

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

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Robert Coulson, *Family Arbitration-An Exercise in Sensitivity*, 3 Fam. L.Q. 22 (1969).

Jean E. Fawe, *The Arbitration Alternative: Its Time Has Come*, 46 Mont. L. Rev. 199 (1985).

Melissa Philbrick, *Agreements to Arbitrate Post-Divorce Custody Disputes*, 18 Colum. J.L. & Soc. Probs. 419 (1985).

Janet M. Spencer and Joseph Zammit, *Mediation-Arbitration: A Proposed for Private Resolution of Disputes Between Divorced or Separated Parents*, 1976 Duke L.J. 911

Janet M. Spencer and Joseph Zammit, *Reflections on Arbitration Under the Family Dispute Services*, 32 Arb. J. 111 (1977).

## **Mediation**

### *Domestic Violence*

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

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

Desmond Ellis & Noreen Stuckless, *Preseparation Abuse, Marital Conflict Mediation, and Postseparation Abuse*, 9 Mediation Q. 205 (1992) (reporting a study designed to investigate the effects of preseparation abuse and evaluation of the mediation process on postseparation abuse).

Stephen K. Erickson and Marilyn S. McKnight, *Mediating Spousal Abuse Divorces*, 7 Mediation Q. 377 (1990) (outlining special procedures for assuring successful mediated outcomes in cases involving spousal abuse).

Karla Fischer, Neil Vidmar & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117 (1993) (arguing that the ideology and practice of mediation are incompatible with a culture of battering).



Andree Gagnon, *Ending Mandatory Divorce Mediation for Battered Women*, 15 Harvard Women's L.J. 272 (1992) (advocating for an end to mandating mediation for abuse victims because it puts them at further risk, contributes to their further disempowerment and protects the assailants from legal sanctions).

Robert Geffner, *Guidelines for Using Mediation With Abusive Couples. Special Issue: Psychotherapy in Independent Practice: Current Issues for Clinicians*, 10 Psychotherapy in Private Practice 77 (1992) (providing guidelines for identifying abusive relationships, addressing safety issues, determining the appropriateness of mediation and conducting modified mediation).

Robert Geffner and Mildred D. Pagelow, *Mediation and Child Custody Issues in Abusive Relationships*, 8 Behavioral Sciences and the Law 151 (1990) (summarizing the concerns of mental health professional over changes in the law which negatively impact victims of domestic violence).

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

Linda K. Girdner, *Mediation Triage: Screening for Spouse Abuse in Divorce Mediation*, 7 Mediation Q. 365 (1990) (describing a conflict assessment protocol for identifying parties' patterns of power and control in the relationship and the appropriateness of mediation).

Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 Yale L.J. 1545 (1991) (criticizing mandatory child custody mediation as dangerous for women).

Barbara J. Hart, *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation*, 7 Mediation Q. 317 (1990) (arguing that mandatory custody mediation is inappropriate in the context of wife abuse).

Randal Kandel, *Squabbling in the Shadows: What the Law Can Learn From the Way Divorcing Couples Use Protective Orders as Bargaining Chips in Domestic Spats and Child Custody Mediation*, 48 S.C. L. Rev. 441 (1997) (studying the exact language used by couples arguing over these issues).

Douglas D. Knowlton & Tara Lea Muhlhauser, *Mediation in the Presence of Domestic Violence: Is it the Light at the End of the Tunnel or is a Train on the Track?* 70 N. D. L. Rev. 255 (1994) (summarizing the pros and cons of mediation in the presence of domestic violence).

Holly A. Magana and Nancy Taylor, *Child Custody Mediation and Spouse Abuse: A Descriptive Study of a Protocol*, 31 Fam. & Conciliation Cts. Rev. 50 (1993) (reporting a study of one hundred mediation cases using a protocol that provides protection to the alleged victims of violence through use of assessment interviews, co-mediation with a male-female team and the development of arrangements that provide for protection and security).

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

Anne E. Menard & Anthony J. Salius, *Judicial Response to Family Violence: The Importance of Message*, 7 Mediation Q. 293 (1990) (summarizing the changes in attitude towards family violence brought about by Connecticut's Family Violence Prevention and Response Act).

Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7 Mediation Q. 347 (1990) (reviewing the research that documents the harm to

children resulting from exposure to interparental violence and advocating for a focus on children's rights after divorce).

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

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

Joshua Rosenberg, *In Defense of Mediation*, 33 Ariz. L. Rev. 467 (1991) (responding to Trina Grillo's criticism of mediation as unfair to women).

Donald T. Saposnek, *Clarifying Prospectives on Mandatory Mediation*, 30 Fam. & Conciliation Cts. Rev. 490 (1992) (responding to the criticisms of mandatory mediation made by Trina Grillo).

Ann V. Yellott, *Mediation and Domestic Violence: A Call for Collaboration*, 8 Mediation Q. 39 (1990) (offering guidelines for establishing a community based program for domestic violence intervention that includes mediation).

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Charles A. Bethel & Linda R. Singer, *Mediation: A New Remedy for Cases of Domestic Violence*, 7 Vermont L. Rev. 15 (1982)

Lisa G. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 Harv. Women's L.J. 57 (1984).

Dianna R. Stallone, *Decriminalization of Violence in the Home: Mediation In Battering Cases*, 2 Law & Ineq. J. 493 (1984).

Laurie Woods, *Mediation: A Backlash to Women's Progress on Family Law Issues*, 19 Clearinghouse Rev. 431 (1985)  
*Ethical Issues*

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

Richard A. deMayo, *Practical and Ethical Concerns in Divorce Mediation: Attending to Emotional Factors Affecting Mediator Judgment*, 13 Mediation Q. 217 (1996) (making recommendations for mediators for maintaining sound mediation practices within the context of emotionally provocative circumstances).

William A. Eddy, *Mediating Economic Issues in Divorce: An Ethical Debate in Three Acts*, 31 Fam. and Conciliation Cts. Rev. 354 (1993) (a play in three acts that involves a mediator and an advocate discussing the advantages and disadvantages of using mediation to resolve the economic issues of a divorcing couple).

Steven H. Hobbs, *Facilitative Ethics in Divorce Mediation: A Law and Process Approach*, 22 U. Rich. L. Rev. 325 (1988) (proposing standards that allow attorneys to employ a facilitative approach, for helping divorcing parties to establish financial, social and emotional security post dissolution).

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

Alison Smiley, *Note, Professional Codes and Neutral Lawyering:*

*An Emerging Standard Governing Nonrepresentational Attorney Mediation*, 7 Georgetown J of Legal Ethics 213 (1993) (advocating for amendments to the Model Rules that would support the role of a neutral attorney-mediator).

Alison Taylor, *Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence, and Transformative Process*, 14 Fam. & Conciliation Cts. Rev. 215 (1997) (examining the factors that influence how mediators view neutrality and offering an approach to the practical application of neutrality).

#### *Mediator Qualifications*

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

Nancy J. Foster and Joan B. Kelly, *Divorce Mediation: Who Should Be Certified?*, 30 U.S.F.L. Rev. 665 (1996) (describing the history and development of divorce mediation; perceived problems associated with non-lawyers as mediators and making recommendations for ensuring mediator competence).

Nichol Schoenfield, *Turf Battles and Professional Biases: An*

*Analysis of Mediator Qualifications in Child Custody Disputes*, 11 Ohio St. J. on Disp. Res. 469 (1996) (identifying advantages and disadvantages of attorney-mediators versus mental health professional mediators and assessing the qualifications most conducive to effective mediation of child custody disputes).

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

#### *Power Imbalances*

Margaret F. Brinig, *Does Mediation Systematically Disadvantage*

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

Becky Hoover Hernstein, *Women and Mediation: A Chance to Speak and Be Heard*, 13 Mediation Q. 229 (1996) (advocating for the use of mediation to address a myriad of legal problems facing women).

Scott H. Hughes, *Elizabeth's Story: Exploring Power Imbalances in Divorce Mediation*, 8 Geo. J. of Legal Ethics 553 (1995) (questioning the viability of divorce mediation because of the difficulty in identifying and addressing power imbalances).

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

Joan B. Kelly, *Power Imbalances in Divorce and Interpersonal Mediation: Assessment and Intervention*, 13 Mediation Q. 85 (1995) (presenting a framework for identifying power in salaries and discussing appropriate interventions for dealing with them).



Edward Kurk, *Power Imbalances and Spouse Abuse in Divorce Disputes*, 12 International J. of Law, Policy and Family 1 (1998) (presenting a model used by Canadian family mediators).

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

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

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

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Albie Davis & Richard Salem, *Dealing With Power Imbalances in Mediation of Interpersonal Disputes*, Mediation Q. (Dec. 1984) at 17.

Carol Lefcourt, *Women, Mediation and Family Law*, 18 Clearinghouse Rev. 266 (1984)

Isolina Ricci, *Mediators Notebook: Reflections on Promoting Equal Empowerment and Entitlement for Women*, 83 J. Divorce 49 (1985).

### *Process and Strategies*

Margaret F. Birinig & Michael Alexee, *Trading at Divorce: Preferences, Legal Rules and Transaction Costs*, 8 Ohio St. J. Disp. Resol. 279 (1993) (analyzing the effect of changes in legal rules on bargaining at divorce).

William P. Evans and Michael J. Havercamp, *An Analysis of Mediation Assumptions: Strategies to Help Mediators in Child Custody Disputes*, 11 Mediation Q. 229 (1994) (challenging assumptions such as mediation always reflects a win-win situation and that mediation is fair).

Sarah Childs Grebe, *Building on Structured Mediation: An Integrated Model for Global Mediation of Separation and Divorce*, 12 Mediation Q. 15 (1994) (reviewing the development of family mediation in the United States and offering a new model).

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

Lenard Marlow, *A Divorce Mediator’s Responsibility*, 22 Am. J. Fam. Therapy 208 (1994) (attempting to set forth guidelines for defining a mediator’s obligation).

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

Julien D. Payne and Eileen Overend, *Divorce Mediation: Process and Strategies: An Overview*, 28 Fam. and Conciliation Cts. Rev. 27 (1990) (reviewing how mediation is practiced in North America).



Donald T. Saponsek, *The Art of Family Mediation*, 11 Mediation Q. 5 (1993) (discussing a basis for viewing the more advanced practice of mediation as an art form).

Andrew I. Schwebel, David W. Gately, Maureen A. Renner, Thomas W. Milburn, *Divorce Mediation: Four Models and Their Assumptions About Change in Parties' Positions*, 11 Mediation Q. 211 (1994) (identifying four different models into which divorce mediation approaches and case studies fit: legal, labor-management, therapeutic, and communication and information).

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

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Linda Campbell & Janet Johnston, *Impasse Directed Mediation With High Conflict Families in Custody Disputes*, 4 Behavioral Sci. & L. 217 (1986).

Richard W. Evarts & Frances H. Goodwin, *The Mediation and Adjudication of Divorce and Custody: From Contrasting Premises to Complimentary Processes*, 20 Idaho L. Rev. 277 (1984)

Jay Folberg, *Mediation of Child Custody Disputes*, 19 Colum. J. L. & Soc. Probs. 413 (1985).

Joseph P. Folger & Sydney E. Bernard, *Divorce Mediation: When Mediators Challenge the Divorcing Parties*, Mediation Q. (Dec. 1985) at 5.

Joan Kelly, *Mediation and Psychotherapy: Distinguishing the Differences*, Mediation Q. (Spring 1983) at 39.

Hugh McIsaac, *Court-Connected Mediation*, 21 Fam & Conciliation Cts. Rev. 49 (1983).

Janet Rifkin, *Mediation from a Feminist Perspective: Promise and Problems*, 2 Law and Ineq. 21 (1984)

David Saposnek, *What is "Fair" in Child Custody Mediation?* Mediation Q. (June 1985) at 9.

Andrew Shepard, Melissa D. Philbrick and Dvora W. Rabino, *Ground Rules for Custody Mediation and Modification*, 48 Albany L. Rev. 625 (1984).

### *Research*

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

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

Nancy A. Burrell, Leonard Narud, Katherine Bogdamoff & Mike Allen, *Evaluating Parental Stressors of Divorcing Couples Referred to Mediation and Effects on Mediation Outcomes*, 11 Mediation Q. 339 (1994) (reporting on a study that affirmed the importance of refocusing parental concerns away from self and to the interests of the children).



Jeanne A. Clement & Andrew I. Schwebel, *A Research Agenda for Divorce Mediation: The Creation of Second Order Knowledge to Inform Legal Policy*, 9 Ohio St. J. Disp. Res. 95 (1993) (reviewing current literature and suggesting topics for future research)

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

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

Joyce Hauser, *An Analysis and Feasibility Study of Divorce Mediation and a Program for Its Marketing*, 11 Mediation Q. 171 (1994) (suggesting a marketing plan for mediation services).

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

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

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

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

Joan B. Kelly and Mary A. Duryee, *Women's and Men's Views of Mediation in Voluntary and Mandatory Mediation Settings*, 30 Fam. and Conciliation Cts. Review 34 (1992) (refuting many criticisms of mediation by some feminist critics of the process).

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

Elizabeth J. Koopman, E. Joan Hunt, Francine G. Favretto, Laurie S. Coltri & Tracy Britton, *Professional Perspectives on CourtConnected Child Custody Mediation*, 29 Family and Conciliation Cts. Review 304 (1991) (reporting on results of a survey completed by judges, attorneys and court mediators on the efficacy of child custody mediation).

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





Morris L. Medley & James A. Schllenberg, *Attitudes of Indiana Judges Towards Mediation*, 11 *Mediation Q.* 3 (1994) (reporting on survey sent to Indiana judges regarding mediation in general).

Nina R. Meierding, *Does Mediation Work? A Survey of Long-Term Satisfaction and Durability Rates for Privately Mediated Agreements*, 11 *Mediation Q.* 157 (1994) (measuring the longterm satisfaction and compliance with mediated agreements in a private, voluntary mediation setting).

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

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

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

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Robert Levy, *Comment on the Pearson-Thoennes Study and on Mediation*, 17 *Fam. L.Q.* 525 (1984).

Jessica Pearson and Nancy Thoennes, *Divorce Mediation: An Overview of Research Results*, 19 *Colum. J. of Law & Soc. Prob.* 468 (1985).

Jessica Pearson and Nancy Thoennes, *Mediating and Litigating Custody Disputes: A Longitudinal Evaluation*, 17 *Fam. L.Q.* 497 (1984).

Linda Girdner, *Adjudication and Mediation: A Comparison of Custody Decision-Making Processes Involving Third Parties*, 8 *J. of Divorce* 40 (1985).

#### *Role of Attorney*

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

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

Judy C. Cohn, *Custody Disputes: The Case for Independent Lawyer-Mediators*, 10 *Georgia State U.L. Rev.* 487 (1994) (asserting the benefits of having lawyers serve as mediators).

Rose L. Ferstenberg, *Mediation Versus Litigation in Divorce and Why a Litigator Becomes a Mediator*, 20 *Am. J. Fam. Therapy* 266 (1992) (describing the differences between traditional family practice and a family mediation practice).

Susan W. Harrell, *The Mediation Experience of Family Law Attorneys*, 20 *Nova L. Rev.* 479 (1995) (reporting on a study of 150 attorneys experience with mediation in Florida).

Susan W. Harrell, *Why Attorneys Attend Mediation Sessions*, 12 *Mediation Q.* 369 (1995) (reporting on Florida study indicating that attorneys most often attend mediation sessions to facilitate agreements and protect clients).



Sheila D. Isbell, *The Attorney's Role in Mediation and Conciliation of Domestic Disputes: An Overview*, 12 Law and Psychology Review 167 (1988) (providing a brief overview of family mediation practice).

C. Terrence Kapp, *Divorce Mediation: What You Should Tell Your Clients*, 8 Compleat Lawyer 38 (1991) (providing a check list for attorneys of items to be discussed with clients before and during mediation).

John Lande, *How Will Lawyering and Mediation Practices Transform Each Other*, 24 Fla. St. U. L. R. 839 (1997) (describing an emerging "mediligation" culture in which mediation becomes the routine way to end litigation).

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

Craig A. McEwen, *Lawyers, Mediation, and the Management of Divorce Practice*, 28 Law and Society Rev. 149 (1994) (reporting on how family law practice in Maine has been transformed by mediation).

Craig A. McEwen, Nancy H. Rogers and Richard J. Maiman, *Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation*, 79 Minn. L. Rev. 317 (1995) (describing a study of Maine family mediation practice in which lawyers customarily attend mediation sessions with clients).

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

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

Linda C. Neilson, *Mediators' and Lawyers' Perceptions of Education and Training*, 12 Mediation Q. 165 (1994) (reporting on a British study of mediators and lawyers critiquing the training received by practicing mediators).

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

Mary Pat Treuthart, *In Harm's Way? Family Mediation and the Role of the Attorney Advocate*, 23 Golden Gate U. L. Rev. 717 (1993) (focusing primarily on the role of the attorney advocate when a client is compelled to mediate, with particular attention to the special concerns of representing battered women).

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Richard Crouch, *Divorce Mediation and Legal Ethics*, 16 Fam. L.Q. 219 (1982)

M. Dee Samuels & Joel A. Shawn, *The Role of the Lawyer Outside the Mediation Process*, Mediation Q. 13 (December 1983) at 13.

#### *Other Considerations*

Dorothy Della Noce, *What Is a Model for Mediation Practice? A Critical Review of Family Mediation, Contemporary Issues* 15 Mediation Q. 133 (1997) (summarizing the current state of mediation practice).

Mary A. Duryee, *Mandatory Mediation: Myth and Reality*, 30

Fam. & Conciliation Cts. Rev. 507 (1992) (criticizing Trina Grillo's article on the dangers of mediation for women by suggesting that it is not supported by available research).

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