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To: Jim Greiner
From: Hasaan Munim
RE: Nancy Thoennes, *Permanent custody mediation: Lucas County Court of Common Pleas, juvenile division*, Center for Policy Research 85 (2001).
Date: August 15, 2018

Title: Permanent Custody Mediation
Authors: Nancy Thoennes, PhD
Location: Lucas County, OH
Sample: N = 163
Timeline: March 1999 to April 2001
Target group: Parents undergoing termination of parental rights proceedings
Intervention type: Mediation
Research papers: <http://cntrpolres.qwestoffice.net/reports/Lucas%20County.pdf>
Partners: Center for Policy Research, Lucas County Court of Common Pleas

Abstract

Before the state could put children in protective custody up for adoption, court proceedings to terminate the rights of the parents must have concluded, which delayed finding a permanent home for the child. The Lucas County Juvenile Court sought to test the efficacy of mediation in expediting court proceedings through analysis of court records and interviews in an experimental setting. Ultimately, researchers found positive, though weak, outcomes from mediation on expediting termination of parental rights proceedings.

I. Policy Issue

In child protection cases, proceedings to terminate parental rights delayed finding a permanent home for children placed in protective study. Until proceedings concluded, children moved from placement to placement in foster care and remained unavailable for adoption. Although federal lawmakers passed legislation in 1980 and 1997 to minimize the time children face in “foster care drift,” the proportion of children in foster care eligible for adoption remained at 20 percent. One would expect this proportion to rise in the case of effective legislation.

Termination trials often took months, notwithstanding appeals. Did mediation help avoid delays and appeals to expedite freeing children for adoption?

II. Context of Evaluation

The Lucas County Juvenile Court (“the Court”) began using mediation in child protection cases where the start sought temporary custody of children starting in 1997 and in permanent custody cases in 1998. Whereas permanent custody cases involving appeals often took over a year, mediation would hopefully bypass protracted litigation and expedite the process of finding children a permanent home. Although the Court supported the mediation program, the defense bar remained wary due to their belief that mediation would not benefit their clients. Rolling out permanent custody mediation necessitated addressing stakeholder concerns to form a consensus on its efficacy.

This study documented the results of the Court’s permanent custody mediation project, analyzing case specific data and qualitative interviews with stakeholders.

III. Details

The Court selected and trained four attorneys experienced in dependency actions to serve as permanent custody mediators. The grant proposed 20 permanent custody mediations in the first year, 30 in the second, and 40 in the third year to complete a total of 90 cases over the lifetime of the project. A magistrate managing the mediation service screened out cases where a parent had a mental illness, a criminal charge, or could not be found. In the first year, the court decided to allow mediation for cases where a parent did not appear.

Upon determination of eligibility, the researchers assigned the case to a mediation or control group. The control group followed normal court proceedings and the Court ordered mediation for the mediation group.

Mediation involved two groups of issues: the decision to grant custody, which was legally binding, and other, non-legally binding terms based on trust such as open adoption terms which would allow visitation. Upon coming to an agreement, the issue proceeded directly to court where the magistrate would confirm the stipulation to permanent custody.

The evaluation involved interviewing or surveying parents, attorneys, judges, magistrates, mediators, and individuals from professional groups involved in the custody legal process. Mediators completed data collection forms for each mediated case.

IV. Results and Policy Lessons

In 59.6 percent of cases, the parties were able to reach an agreement through mediation, and in 46.2 percent of cases, the parent(s) agreed to voluntary relinquish their parental rights.

Failure to Appear

One-third, or 27 cases, assigned to mediation did not receive the mediation treatment. In 81 percent of non-mediated cases, a parent did not appear. Failure to appear was significantly more likely for parents who faced prior terminations of parental rights (37.9 percent vs. 6.9 percent) ($p < .05$).

Relationship between parental problems and mediation settlement

Cases in which the mediator had knowledge of serious substance abuse by the parent(s) were significantly less likely to lead to settlement in mediation (48.3 percent vs. 68.8 percent) ($p < 0.10$), but not mental health issues, prior terminations, or domestic abuse. Physical abuse of child was significantly correlated with increased likelihood of settling in mediation (85.7 percent vs. 55.6 percent) but not sexual abuse or neglect ($p < 0.10$).

Mediation outcomes

Mediation cases resolved outside of court significantly more than the control cases (50.8 percent vs. 28.8 percent) ($p < 0.01$) and took significantly less time to reach a mediated agreement (2.2 months vs. 4.6 months) ($p < 0.001$). Cases where there was a failure to appear or failure to reach an agreement also took less time for the court to resolve (3.7 months vs. 4.6 months) ($p < 0.01$). The difference in outcomes in terms of termination of parental rights and in terms of custody arrangements was not significantly different between the mediation and control groups. In other words, both mediation and control groups effectively had the same custody outcomes, but the mediation intervention significantly shortened the time to resolution.

V. Quality of the Study

The study's randomization procedure merited clarification, as it only dedicated a sentence to indicate that the study was "essentially" random. Who randomized and how? The study indicated that the court "worked with the mediators to prevent more cases from being assigned than could be readily scheduled" -- this treatment was problematic because it enabled mediators to move participants between mediator and control groups.

The study's small sample size and limited scope hampered the credibility of its findings. Some of the key findings in the study weakly reached statistical significance, such as the reduction in time to resolution. Furthermore, because the study only looks at the short-term effects of legally binding agreements, statistics on longer term re-litigation and overall satisfaction with mediated agreements would provide a fuller picture of the effects of mediation on permanent custody outcomes.