

Family Law Education Reform Project

Mediation in Child Protection

ABSTRACT

This guide discusses the rationale for using consensus based approaches to child protection intervention and decision making in particular, child protection mediation (CPM) and family group conferencing (FGC). Barriers to the use of these approaches are discussed and several key issues that these programs face are also presented—including concerns about empowering families, providing needed services, encouraging professionals to play an appropriate and effective role, dealing with impairments to full participation such as substance abuse and cognitive problems, and dealing with system resistance.

ABOUT THE AUTHOR

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Dr. Bernie Mayer has worked since the late 1970's in the conflict resolution field as a trainer, mediator, mentor, facilitator, researcher, program administrator, and dispute systems designer. He has consulted on conflict management procedures and trained mediators, negotiators, and conflict resolvers throughout the United States and internationally. He has been recognized as an innovative leader in applying mediation and conflict resolution to human service arenas and particularly to disputes between public agencies and involuntary clients.

Mayer was the founder and co-director of the Child Protection Mediation Project, which was one of the first efforts to use mediation in child protection cases. He was a principal organizer of the Child Protection Decision Making Think Tanks—a series of meetings that have brought together leaders in child protection mediation and family group conferencing from across North America. Mayer is a widely published author. His works include *Dynamics of Conflict Resolution*, *Beyond Neutrality* and *Staying With Conflict*. He is the co-editor of the Special Issue on Mediation and Conferencing in Child Welfare Disputes of the *Family Courts Review* (January, 2009).

Mediation in Child Protection

Bernie Mayer, Ph.D.¹

Why this Topic is Important to Law Students

- Based on reports to child protection agencies that determined the existence of abuse, neglect, physical abuse, sexual abuse and psychological abuse, over 900,000 children are victims of abuse or neglect in the US, every year.¹
- Child protection agencies handle approximately 3.6 million reports of child maltreatment each year.²
- Creating a cooperative relationship between families and child protection services is critical to the effectiveness of intervention efforts.
- Families and child protection professionals are set up to be in an adversarial relationship by the nature of the investigation and ongoing assessment process (which can lead to the termination of parental rights).
- Child protection workers are asked to be investigators, counselors, evaluators, service providers, and case managers. The contradictions in these roles can generate suspicion and distrust from parents and other family members whose cooperation is essential.
- Child Protection Mediation (CPM) and Family Group Conferencing (FGC) are two consensus building processes that have proved to be effective in helping families, social workers, attorneys, and court personnel to come formulate effective intervention plans.
- In CPM, parents, other family members, child protection workers, attorneys, children's advocates and others involved in a child protection case meet with a mediator to work out agreements concerning treatment, supervision, placement, and other relevant legal and intervention issues.
- In Family Group Conferencing (sometimes called Family Group Decision Making), the extended family of children who are in need of protection are called in to plan for how the family might provide care, placement, or other services for children and parents.
- These processes have contributed to better communication among family members, professionals and others involved.

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- Research has shown high levels of satisfaction which child protection mediation programs, even when the result has been a voluntary decision to relinquish parental rights.³
- Child welfare mediation and related programs are increasingly prevalent and their use is mandated in many jurisdictions.

Current Relevant Issues

1. The purpose of mediation

- Many, sometimes inconsistent, goals underlie both CPM and FGC programs.
- One key goal of CPM is to arrive at a voluntary agreement that can become the basis for court orders. This can involve an agreement on an initial finding of child abuse or neglect, intervention plans, placement options, or treatment goals.
- FGC generally has the goal of arriving at an agreement first among family members and then with the child protection agency as to the best way to care for children. This too can become the basis for a formal placement plan and court order.
- Another purpose is to promote better communication among parents, families, and professionals. For many involved in these programs, establishing a well functioning team, which parents and other family members are an important part of, is at the heart of both CPM and FGC. The challenge is to create a team able to communicate effectively and collaborate with each other in support of reunification if possible or safe, appropriate and durable alternative placements if necessary.
- These two core goals can occasionally compete with each other. In trying to hammer out comprehensive agreements within limited time frames, effective communication sometimes suffers. On the other hand, courts and other funders want tangible results which they most often equate with agreements that can become the basis of court action and are not likely to be satisfied with the establishment of effective communication and teamwork in the absence of workable and actionable agreements.
- The point in the overall intervention when the CPM or FGC process takes place also affects the purpose and goal of the process as well. Early on, the emphasis is more on effective treatment and reunification, later on the emphasis shifts to permanency planning, adoption or other long term care.

2. Giving families a genuine voice at the table

- A key goal of CPM and FGC is to give families an important role in decision making. This is important for several reasons: it is best for children to remain with their own families if possible; families often have important untapped resources; if parents are involved in decision making about case planning, they are more likely to cooperate with these plans.

- Many obstacles exist to giving families and parents an effective voice in decision making:
 - In mediation, for example, there are likely to be multiple professionals involved (e.g., child protection workers, attorneys for the state, for parents, and for the children, court appointed special guardians).
 - Families are often unfamiliar with the system, from a different ethnic or class background, and personally vulnerable.
 - Professionals are not used to families having a powerful voice except through their attorneys.
 - The language used is often full of jargon and loaded with intimidating terms (permanency, termination of parental rights, reasonable efforts), and often families are not fluent in English.
 - And of course, there are the problems that led to the need for intervention to begin with, such as substance abuse, mental health issues, domestic violence, the lack of resources, economic stress, and inadequate housing.
- CPM and FGC are both designed to give families and parents a significant voice, but they do so in very different ways.
- FGC seeks to put families at the center of decision making, so that the family in essence drives the process. A critical part of most FGC efforts is an opportunity for families to meet alone to formulate a plan for the care of children which they will then present to the child protection agency.
- In CPM, the goal is to bring families and workers together to cooperatively arrive at a plan for intervention or permanency. In CPM, mediators have to work to insure that the family's voice is heard and that the family is not marginalized by the professionals in the room.
- All of this is complicated by the legal framework which requires that children and families either be reunified or that an alternative permanent plan is adopted within 15 months (this varies a bit by states but is in no case longer than 18 months). While this makes sense in terms of the developmental needs of children, it is often too short a time for parents to address deeply entrenched problems. This has the effect of further disempowering parents and limiting their options.
- Different specific approaches have been found to be effective in giving parents an effective voice at the table. In CPM, for example, it is often useful for the mediator to meet with parents prior to the mediation session, to give parents the first opportunity to raise their concerns and questions when mediation starts, to insure that the use of jargon is kept to a minimum and to work with parents and their attorneys to clarify the precise role parents will play in mediation.

3. When to mediate?

- Mediation has been successfully applied at almost all points in the child protection process. Mediation has been used to work out a voluntary treatment plan before any court action has occurred:
 - to agree to an initial court finding about abuse or neglect
 - to plan for temporary placement of children out of home
 - to agree on treatment plans and plan revisions during the course of intervention
 - to work out details for reunification
 - to agree on a permanency plan when reunification is not possible
 - to arrive at a voluntary termination of parental rights
 - to agree (where legal) on the terms of an open adoption
 - to work out problems that might come up in implementing permanent plans or post adoption interactions
 - and to work out issues between children and parents (particularly adolescents) and more.
- Research findings⁴ indicate that mediation can be effective at all of these points in the process.
- Most practitioners agree that the earlier in the process mediation occurs, the bigger difference it can make -- in obtaining important services, arriving at effective intervention plans, obtaining family support and buy-in, and promoting more effective relationships.
- Programs are often structured to emphasize intervention at a particular point in the process, and local jurisdictions are often more supportive of intervention at one time than another. Sometimes funding is limited to a particular point in the process. But as programs become established, making mediation and conferencing available throughout the process seems desirable.

4. The role of professionals

- In CPM, professionals are an essential part of the process. They are full participants in mediation. While different programs have different approaches, generally parents' attorneys, children's attorneys, agency or state attorneys, and child protection workers are present throughout the mediation.
- The challenge for mediators is to help insure that this process works for often over committed professionals while making sure that there is adequate time for parents and other family members to understand their options, to discuss their concerns, and to develop approaches that will work for them.
- In practice this can sometimes mean that professionals want to cut a deal as quickly as possible while families need considerable more time to process what is going on.

- Some programs emphasize the relationship between child protection workers and families, placing limits on the active role of lawyers in the process, but most administrators have felt that the role of attorneys is critical to successful mediation and to maintaining program credibility.
- In FGC, professionals are seen as information providers to families. Most approaches include a step that involves a meeting between family members and professionals to brief them on the situation, the legal parameters, and available resources.
- In some models, the family then meets on its own. In others, either a facilitator or a resource person is present. The next step involves a presentation of the family's plan to the child protection agency followed by a discussion of viability and implementation.
- In all approaches the challenge is to make appropriate use of professionals while respecting the role of families and the challenges to bringing them into the process in a meaningful way.

5. The lack of resources

- The best decision making approach cannot overcome the inadequacy of resources to assist children and families through what is inevitably a difficult process.
- Child protection services and more generally child welfare services are chronically underfunded and many needed resources are often unavailable.
- For example, many parents are in need of substance abuse treatment programs to which they can bring their young children, but these are seldom available. Parenting programs are often either non-existent or available only sporadically or in inconvenient locations. Transportation is often an obstacle to parents to getting to the services that are available. Legal services for parents are often limited and not infrequently parents report not having met their lawyers until just a few minutes before their court hearing.
- Child protection workers usually have large caseloads and are often inadequately trained. The turnover rate among line workers is generally quite high.
- Placement alternatives, foster care, adoptive homes, and group homes are often limited, full, or inadequate.

6. Dealing with substance abuse, cognitive impairment and other impediments to full participation

- A high percentage of child protection intervention involves working with someone who has a substance abuse problem, a cognitive impairment, a mental health issue or who has been a victim of domestic abuse as an adult or a child.

- While there are many ways to handle these issues, they raise the question of how able a parent or other family member is to advocate for their own interests, to understand their choices, or to effectively participate in the process.
- Some of the key factors that need to be considered include the presence of advocates, the immediacy of the problem (e.g. is someone under the influence, are they properly medicated, are they still living in an abusive relationship, are family members who have previously abused them part of the mediation or conference), the degree to which the process can create programmatic safeguards (e.g., separate meetings, screening procedures, safe locations), and the training of the mediators or facilitators to deal with these concerns.
- It is at a minimum important that the process chosen does not itself contribute to the problem by, for example, encouraging parents to deny the extent of their problems in order to arrive at a favorable outcome.

7. The coordination of different approaches

- In concept, CPM and FGC are compatible processes. The one emphasizes the role of family, and parents in particular, in being part of the intervention team. The other works on the role of the family in taking responsibility for the care of children. In some jurisdictions (e.g., Alaska), considerable success has been achieved in implementing both of these approaches in a coordinated and complementary way.
- More frequently, however, jurisdictions emphasize one or the other approach. This may be due to limited resources, the difficulty of implementing too many new approaches at once, or different programmatic goals or needs.
- CPM programs are more likely to be under the administrative or financial purview of the court system, whereas FGC is more likely located or sponsored by the child protection agency. As a result, the different and sometimes competitive cultures of these two systems are sometimes reflected in the competition or choice about which of these approaches to use.
- This is a major area for innovative work and research that many program administrators have identified as a long term goal.

Additional Resources

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Olson, K. B, (2003). Lessons Learned From a Child Protection Mediation Program, *Family Court Review* Vol. 41 No. 4., Sage Publications, Inc., 480-491

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Useful Websites:

The **US Children’s Bureau**, an agency of the US Department of Health and Human Services, maintains a website that is a very useful resource on child abuse and neglect. It provides a good summary of the symptoms, extent, and resources available, on state and federal law, and on agency policies: available at

<http://www.acf.hhs.gov/programs/cb/fri/index.htm#can>

American Humane established the National Center on Family Group Decision Making in 1999 and has been a leader in promoting this approach. Their website provides considerable information about this approach: available at <http://www.americanhumane.org/protecting-children/programs/family-group-decision-making/>

The **Association of Family Conciliation Courts** has been a co-sponsor of a series of Think Tanks on FGC and CPM. The results of this effort and the working papers that informed them are posted on their website: available at http://www.afccnet.org/resources/resources_professionals.asp

The January, 2009, issue of the **Family Courts Review** is a special issue on CPM and FGC. Articles in this issue summarize relevant research, the overall experience of the past 25 years, best practices for operating effective programs, judicial perspectives, coordinating different approaches, and many other relevant topics. This issue is available online at:

<http://www3.interscience.wiley.com/journal/118499535/home>

The **Center for Policy Research** in Denver, Colorado, has conducted some of the most extensive research on CPM and FGD throughout North America. Much of their research is available at their website: http://www.centerforpolicyresearch.org/child_abuse_publications.htm

ENDNOTES:

¹ <http://www.acf.hhs.gov/programs/cb/pubs/cm06/chapter3.htm#subjects..>

² Ibid.

³ Thoennes, N. "What We Know Now: Findings From Dependency Mediation Research." Pp 21-37 in *Family Court Review*, January, 2009.

⁴ Ibid.