## Family Mediation: Practice and Theory Jane C. Murphy and Robert Rubinson Lexis-Nexis (2009)

## **TABLE OF CONTENTS**

Preface	6
Chapter 1. An Overview of Family Mediation	9
A. Introduction	9
B. An Intellectual History of Mediation	
C. A History of Family Mediation	
Chapter 2. Models of Family Mediation	18
A. Introduction	18
B. Three Models of Family Mediation	18
C. "Facilitative" Mediation	
D. The "Facilitative" Versus "Evaluative" Debate	21
E. "Transformative Mediation" in Family Disputes	25
Chapter 3: An Overview of the Family Mediation Process	30
A. Introduction	30
B. The "Stages" of Family Mediation	30
1. Setting the Stage	31
a. Preliminaries	31
b. Seating Arrangements and Space	31
c. The Opening Introduction	
2. Gathering Information	34
a. Beginnings	34
b. What Is "Information"?	35
c. Who Goes First?	35
3. Identifying Issues and Interests	37
a. What's An Issue in Mediation?	37
b. Organizing Issues	38
c. Framing Issues	
d. Interests versus Positions	39
4. Generating Options	40
a. The Option Generating Process	40
b. Framing Options	41

5. Negotiation	42
6. Formalizing Agreements	
C. Joint Sessions and Private Caucuses	
1. The Joint Session	43
2. The Private Caucus	44
Chapter 4: Child Access Mediation	44
A. Introduction	48
B. Parent vs. Parent in Child Access Disputes	48
1. Parenting Plans	48
2. Joint Custody and Mediation	54
C. Parents vs. State in Child Access Disputes	65
1. What Is Meant by Child Welfare?	65
2. How Should Child Welfare Cases Differ from Private Dispute	
Resolution?	66
3. Critique of Child Welfare Mediation	72
4. Alternative Processes	
a. Family Team Decision-Making Meetings	
b. Family Group Conferencing	78
Chapter 5: Mediating Financial Issues	84
A. Introduction	84
B. Theoretical Models for Mediating Financial Issues	84
C. Implementing Approaches to Mediation of Financial Issues	
1. Mediating Child Support	
2. Mediating Marital Property and Alimony	
Chapter 6: Legal Regulation of Family Mediation	121
A. Introduction	121
B. Court-Connected Mediation	121
C. Family Mediator Qualifications	135
D. Judicial Regulation of Agreements in Family Mediation	139
1. Enforcement of Agreements Relating to Finances	139
2. Enforcement of Agreements Relating to Custody and Visitation	
E. Special Legal Issues in Family Mediation Involving Lesbian, Gay, Bis	sexual
and Transgender Participants	152
Chapter 7: Mediating Other Family Conflicts	155
Chapter 7. Medianing Omer Family Commets	133

A. Introduction	155
B. Care of Infirm Family Members	155
1. End of Life Decisions	155
2. Guardianship	158
C. Trusts and Estates	
D. Family Business Disputes	161
Chapter 8: The "Power Critique" and Family Mediation	163
A. Introduction	163
B. The Elements of Power	163
Preexisting Power Differentials among Parties Prior to Family  Mediation	164
2. Power Differentials at the Mediation Session	164
3. Does Mediation Itself Preserve Preexisting Power Imbalances?	165
C. Does Family Mediation Tend to Disfavor Women?	166
D. Pro Se Litigants	
1. Family Mediation and Access to Justice Issues Generally	
2. The "Pro Se" Phenomenon in Family Law	
a. Benefits of Family Mediation for Unrepresented Parties	
b. Dangers of Family Mediation for Unrepresented Parties	177
Chapter 9: Family Violence and Mediation	181
A. Introduction	181
B. What is Domestic Violence?	181
C. Is It Appropriate to Conduct Family Mediation in the Presence of	
Domestic Violence?	
D. Legislative and Judicial Response to Domestic Violence and Mediation	
E. Screening for Domestic Violence	
F. Child Abuse and Mediation	194
Chapter 10: Ethical Issues in Family Mediation	198
A. Introduction	198
B. Sources of Family Mediation Ethics	
General Sources of Standards Governing Mediation	
2. Model Standards of Practice for Family and Divorce Mediation	
C. Confidentiality and Its Exceptions	
1. Overview	
Confidentiality and Judicial Enforcement of Agreements in Fami Mediation	
3. Duties To Report Child Abuse	
4. Potential Death or Substantial Bodily Harm	
5. Speaking to Parties about Confidentiality	
D. Conflicts of Interest in Family Mediation	
2. Commets of interest in Laming Mediation	

E. Special Ethical Considerations for Lawyer-Mediators	212
Chapter 11: Representing Clients in Family Mediation	215
A. Introduction	215
B. Conceptualizing the Attorney's Role in Family Disputes	
C. Lawyers' Role Prior to and During Family Mediation	216
Counseling Clients about Mediation Option	
2. Preparing Clients for Family Mediation	
a. Establishing Goals in Mediation	
b. "Facts"	
c. Mediation Dynamics and Strategy	
3. Assessing How a Lawyer Should Approach Her Role in Mediation	219
D. "Collaborative Lawyering" in Family Law	243
<b>Chapter 12. International, and Comparative Perspectives in Family Mediation</b>	250
A. Introduction	250
B. Comparative Perspectives in Mediation	250
1. Roots of Modern Family Mediation	
2. Modern Family Mediation Outside the United States	
C. Cross-Cultural Mediation	
D. Mediating International Family Disputes	275
Appendix A: SELECTED FAMILY MEDIATION STATUTES AND RULES	278
California Family Code	278
Missouri Rules of Civil Procedure, Supreme Court Rules	278
Maryland Rules	279
Appendix B: SAMPLE PARENTING PLANS	284
Sample Parenting Plan Agreement Used at the Erickson Mediation	
<b>Model Parenting Plan Used in the Circuit Court</b>	
for Baltimore City	299
Appendix C: MODEL STANDARDS OF PRACTICE FOR FAMILY AND	
DIVORCE MEDIATION	321