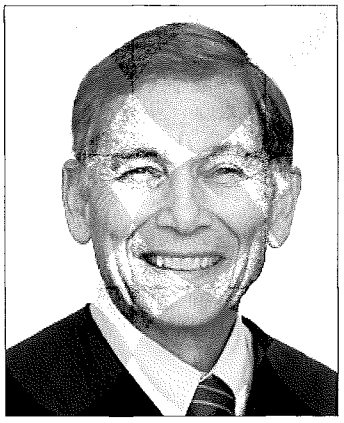

Judge Leonard Edwards (Ret.)
*Santa Clara Superior Court*

# ADR in Juvenile Dependency Cases

We prefer dependency cases to resolve short of trial. Alternative methods of case resolution save court time and result in presumably satisfactory outcomes for all parties.

Some misconceptions persist about different types of alternative dispute resolution practices in dependency cases. The most frequently used ADR practices are dependency mediation, family group conferencing, team decision making and family team meetings. All of these have been designated best practices, but only dependency mediation is under court control, and only dependency mediation directly benefits the juvenile court.

Family group conferencing, team decision making, and family team meetings are alternative dispute resolution protocols under the control of the children's services agency. That agency can choose to use any or all of these protocols to address issues that arise as social workers work with families. Of the three, family group conferencing gives the greatest power to the family. Originally created by the Maori people of New Zealand, family group conferencing brings families together to meet privately and create plans for the child who is the subject of court proceedings. A social worker or facilitator explains the circumstances that brought the child to the attention of child protection authorities and then lets the family meet alone to devise a plan for the child's care and safety. Thereafter, the social worker and juvenile court will have to approve of the plan. Family group conferencing was the only form of ADR singled out by the United States Congress in the Fostering Connections to Success and Increasing Adoptions Act of 2008.[1] Congress encouraged the states to use family group conferencing by offering implementation grants.

The Annie E. Casey Foundation created Team Decision Making (TDM) as a tool for social workers to use when making placement decisions if a child has to be moved from one home to another. TDMs are called on an emergency basis because placement decisions often require immediate action by the agency. Family members are contacted and meet with a social worker who explains the situation and asks for family input regarding placement options.[2] The meetings usually occur in the community. Some attorneys criticize TDMs because they are not invited or cannot attend due to their courtroom obligations. They are fearful that their clients will be making statements that may be used against them in subsequent court proceedings. Unlike family group conferencing, TDMs do not include an opportunity for the family meets privately.

Family Team Meetings also involve family members who meet with a social worker immediately after a legal petition has been filed and before a detention hearing is held in the juvenile dependency court. The goal of a Family Team Meeting is for the family members to identify a placement plan before the detention hearing, hopefully to minimize any trauma the child may experience from a placement change. Studies indicate that they increase the likelihood of placement with relatives, and that reunification with parents is increased.[3] Very few agencies use Family Team Meetings.

Some children's services agencies use all three of these ADR protocols, but TDMs are the most popular with the agencies and many only use TDMs. They involve the least amount of work for the agency, and the social worker has the greatest amount of control over the process.

All three ADR protocols convene and engage the family in decisions regarding their

*Continued on page 22*

**Trial and Error** – *continued from page 5*

learn." In this regard, we face two obstacles. First, we are expected to know everything, which is ridiculous enough except that after a few years on the job we start to think that we actually might. Yikes! Second, if our assignment is feeling somewhat routine, we might think that there is no more opportunity to learn. *Obviamente,* there is always something to learn about the law, procedure, the participants, or ourselves. As Judge Caskey advises, "When all else fails, read Mark Simons' book on Evidence." So, what have we learned today? Remember, a little bit is better than *nada.*

**4. Know your weakness.** Hon. Ed Sturgeon, aka "The Genius," talks about the importance of being a good self-monitor. "You have to know your biases. You need help with your blind spots. You have to know when you're not being patient and respectful. You have to know what you don't know." This, perhaps, is the hardest of all to do. Yet scientific studies show that excellence is attained by those who conscientiously work to eliminate their weaknesses. One study on the making of an expert quotes golf champion Sam Snead, who said it best: "It is only human nature to want to practice what you can already do well, since it's a hell of a lot less work and a hell of a lot more fun." This study concludes, "Moving outside your traditional comfort zone of achievement requires substantial motivation and sacrifice, but it's a necessary discipline." [1]

It's usually not hard to figure out what we don't know or do well. It tends to be what we least enjoy doing and what we most avoid. Perhaps it is an area of law—CEQA writs, child custody disputes, probate procedures? Or perhaps a type of litigant—pro pers, unprepared lawyers, obstructive defendants? Once the weakness is identified, an easy way to gain expertise is to find a colleague who excels in the area and consult with her. For demeanor issues, "The Genius" has a practice of sitting down with a trusted friend for a heart-to-heart. Other judges have developed methods of deliberate self-study. What can we do today to move outside our traditional comfort zone? *¡Que valiente!*

Excellence takes dedication and perseverance. "The journey to truly superior performance is neither for the faint of heart nor for the impatient." Ibid. Studies show that it takes 10,000 hours and years of "deliberate practice"—practice that focuses on surpassing our current level of competence and comfort. Happily, the good news is that these studies prove that experts are made, not born. Unhappily, that means we can no longer claim we weren't born with the stuff our mentors were made of, that we need to actually do the work if we want to get there. Gulp!

And in the case of my *español,* it means at least another seven years of humiliating mistakes and excruciating verb conjugations. Fluency? *¡En sus sueños!* Only in my dreams.

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**ENDNOTES**

1 Harvard Business Review, July 2007, *http://hbr.org/2007/07/the-making-of-an-expert/ar/1.* This is an excellent, well-researched article on achieving excellence in any field.

**The Juvenile Court Corner** – *continued from page 6*

child. Using these protocols social workers hope to draw upon family strengths to create a workable plan for the child. However, none of these involves attorneys, and none addresses legal issues that arise in the court process. Only dependency mediation focuses upon the legal issues that a court must decide and, in particular, the language of the petition and access to the child by parents and family members.

Dependency mediation serves the needs of the juvenile court as well as those of the parties. It resolves legal disputes, modifies petitions so that all parties are in agreement, sets visitation guidelines for parents and family members, and identifies services for parents and the child. As the time of dismissal, it can create Juvenile Custody Orders that give detailed custody and visitation plans that provide guidance for the parents and save time for the family court judge.[4] When a Juvenile Custody Order comes before the Family Court, there will be fewer contested hearings because the parents helped create these agreements regarding custody, visitation, and services. Research studies of dependency mediation in California indicate high agreement rates, party satisfaction with the mediation process, fewer contested hearings, benefits to children, and faster resolution of cases including shorter time to permanent placement or reunification.[5]

Judges should encourage all forms of alternative dispute resolution in the children's services agency. Regular juvenile court training sessions should feature the agency's best practices in resolving family issues informally. However, judges should realize that agency-based ADR is no substitute for court-based mediation. Perhaps that is why the legislature encourages all juvenile dependency courts to have a mediation program.[6]

**ENDNOTES**

1 P.L. 110-361 (2008)

2 Edwards, L., & Sagatun-Edwards, I., "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," *Juvenile and Family Court Journal,* Vol. 58, No. 1, at pp 1-16, at p. 4. This article is also available at *judgeleonardedwards.com.*

3 Family Team Meeting: Process, Outcome, and Impact Evaluation, Phase II Report: August. 2006, American Humane Association, at p. 1.

4 Edwards, L., "How to Tackle the Problems Involved When a Case Moves From Juvenile to Family Court," The Bench, Spring 2012, at pp 9-12; also available at *Judgeleonardedwards.com.*

5 Research Update, "Juvenile Dependency Mediation in California: An Overview", AOC, CFCC, February 2012, at p. 15.

6 Welfare and Institutions Code section 350(a)(2).