



One of the first things that a new juvenile court judge notices is that the dependency court is different. Of course the laws, time-lines, and oversight of children's services actions are different, but perhaps in no way is the court more distinct than in the non-adversarial environment that the legislature has mandated dependency courts to follow. Section 350(1) of the W & I Code states in part that

Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal non-adversarial atmosphere with a view to obtaining the maximum cooperation of the minor upon whose behalf the petition is brought and all persons interested in his or her welfare with any provisions that the court may make for the disposition and care of the minor.

The statute does not stop there. It goes in subsection (b) to encourage each juvenile court

...to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening.

The statute further permits any interested party to recommend to the judicial officer that confidential mediation take place and that the mediation is intended

to develop a plan in the best interests of the child, utilizing resources within the family first and within the community if required.

These considerations and others led the California Blue Ribbon Commission on Foster Care to recommend that alternative dispute resolution processes be available for all families in the juvenile dependency system. Recommendation 2E states in part that:

Mediation and other forms of alternative dispute resolution be available in all courts.

All of this makes good sense. Dependency court is primarily about working with families so that they can provide safe homes for their children. It is about persuading parents to address their substance abuse, domestic violence, mental health, and related problems so that they can be safe, nurturing caretakers of their children. A court can order parents to participate in services, but there are some psychological issues involved here. A better approach is to have the parents and other family members involved in the planning. When parents, social workers, attorneys and other interested parties all come to an agreement, there is a greater likelihood that the parents will follow through with the plan. It is, after all, a plan that they helped create, not one that was imposed on them.

Which brings me to the purpose of this column. Why aren't more Superior Courts using child protection mediation? And why aren't those courts using this type of mediation, using it more extensively - at any time in during the life of a case when there is a signif-

icant contested issue? It is not because mediation's effectiveness is unproven. Studies have demonstrated that mediation is effective in resolving even the most hotly contested issues, that mediated plans are more durable because they are more detailed and nuanced, and that parents and others in the process prefer mediation to litigation.<sup>1</sup> Studies have also demonstrated that mediation is most effective when used at the beginning of a case, before adversarial stances have been assumed by the parties.<sup>2</sup>

There are two primary reasons why dependency mediation has not been used more extensively in California's juvenile courts. First, lawyers and judges often believe that mediation is not as effective as the court process. They believe that the court can resolve matters more effectively and quickly. They also are often distrustful of alternative dispute resolution processes. After all, they were trained in law schools where the adversarial method is taught, and in the court process lawyers and judges are in control. Second, there is no funding stream supporting mediation. Any mediation that takes place must come from resources outside of the juvenile court, usually "borrowed" from Family Court Services and the family court mediation program or from the Superior Court's general fund.

I believe that the lawyer and judicial resistance to mediation can be overcome. Judges have learned from colleagues how useful mediation can be. The many successful mediation programs across the country were spearheaded by judges.<sup>3</sup> These judges recognized that mediation saved court time, avoided contested hearings, produced better and longer lasting results, and was preferred by all of the parties. However, without resources to support such a program, it is difficult to persuade court administrators and colleagues to get one started. At one time in California a small portion of the money collected for birth certificates was used to support dependency mediation. When that source dried up, nothing took its place.

So I am looking for some creative idea of how dependency mediation can be funded. Any suggestions? Contact me at [Leonard.edwards@jud.ca.gov](mailto:Leonard.edwards@jud.ca.gov) And if you want one of the new DVD's describing dependency mediation, send me an email with your address and I'll mail you one. It is a great DVD and will inspire people in your court system to figure out a way to start up a mediation program or re-energize your existing program.

<sup>1</sup> Edwards, L., "Mediation in Child Protection Cases," *Journal of the Center for Families, Children & the Courts*, Vol. 5, 2004, pp 57-70; Edwards, L., et.al, "Perspectives on Juvenile Dependency Court Mediation," *Juvenile and Family Court Journal*, Vol. 53, No. 4, Fall 2002; "Evaluation Results for Child Dependency Mediation (2001, 2002, and 2003), Mecklenburg County Child Dependency Mediation Program, August, 2004 (a copy is available from me).

<sup>2</sup> Anderson, G. & Whalen, P., *Permanency Planning Mediation Pilot Program: Evaluation Final Report*, Michigan State University School of Social Work, Ann Arbor, 2004.

<sup>3</sup> Edwards, L., "Dependency Court Mediation: The Role of the Judge," *Family and Conciliation Court Review*, Vol 35, No. 2, 1997 (at pp 160-163).