Getting Past "Yes" As the Measure of Success

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Getting Past “Yes” as The Measure of Success

ACR Presentation
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Introductions: Why brought you here?

- Mediation experience and areas of practice
- Family court mediation & family cases
- Experience with institutional pressures and opportunities
- Tensions between professionalization and best practices (?)
Learning Objectives

Goals

Overview of how mediation became court intervention tool

Identify how settlement became a key success measure in a simpler context

• Mediation as court trial substitute – now a mandatory option in most family courts

So what? Research findings from a family court mediation program

Discussion: Pressures to settle & Alternative Measures of Success

• Professional pressures & choices
• Institutional and grant pressures (is settlement needed to prove the worth of mediation?)
• Party (parent) pressures – what are parents expecting & how to respond
Why is mediation here – in family court?

Getting past *Kramer vs. Kramer* [https://www.youtube.com/watch?v=OFZS03hWtIE](https://www.youtube.com/watch?v=OFZS03hWtIE)

Self-determination & adversarial, fault based divorce

Mediation Pilot Studies: Mediation vs. Court; mediation in the shadow of the law

- Emery and Wyer (1987)
- Pearson and Thoennes (1984, 1986)

Mediation Meta-Analysis: Mediation vs. Court

- Kelly (2004); Shaw (2010) – divorce mediation (vs. family court mediation)
Why has mediation remained – family court reform

“Velvet Revolution” - from adversarial/fault based to negotiated/best interest standard:

- [https://www.youtube.com/watch?v=UIUYFoDU4_w](https://www.youtube.com/watch?v=UIUYFoDU4_w)

Kramer vs. Kramer is now Kramer & Kramer

- divorce as a process, not an event
- never married parents – Social Security Act, IVD

Mediation vs. court is now mandatory mediation in the shadow of family friendly courts

Empirical research has lagged since showing mediation benefits

- Can mediation today be usefully compared with experimental, pre-“revolution” era divorce mediation studies?
- Note that amicable parties today often have private mediation and “self-help” as an option- not part of court med caseload

Settlement measure in context of amicable negotiation, co-parenting, best interests standards
Milwaukee County Study

Milwaukee Family Court Mediation Services

- About 800 mediation cases per year; PA outnumber FA
- About ½ of mediations result in agreement
- 2012: 874 referrals, 386 mediations, 191 agreement (42 w/o mediation); 55% med agreement

Evaluation research design – with ethnographic expansion

Study sample

- 42 mediation cases; 14 divorce, 12 post-divorce, 16 never married
- 23 agreements, 19 terminations (54.7% agreement)
- 11 mediator interviews; 36 parent interviews (15 pairs from mediation)
Mediation agreement as limited success measure

Mediation agreement as part of processes, not an event

- Getting to “yes” in mediation – only to fail later
- Mediation failure – only to become part of settlement success
- Mediation as part of court and part of “making family”
  - Where is party autonomy & self-determination?
    - Unexpected: “getting justice, getting even” – and upholding court orders

Common parent response post mediation: “Yes, But ----"

- Yes to family friendly court in theory but in my case...
  - parties who seek court judgment, primary or sole parenting
Bargaining in the Shadow of a Family Friendly Court

Mediation as court based “alternative”

- Family court mediation is funded by courts to help resolve cases
- Mediation is evaluated through court measures: case settlement
  - Mediation as court tool (and speed bump) rather than alternative

Mediation as voluntary, promoting self-determination

- Mandatory mediation most states
- Shared parenting presumption (varies by state law)
Settlement and Success

Your experiences

• Court and/or other institutional pressures (such as grant funding pressures)
• Disputant pressures (have you been asked your “success rate”?)

Is settlement the best measure of professional practice?

• Alternative measures
• Marketing for others
• Self evaluation and ongoing improvement

What are professional best practices in wake of settlement pressure?
Bigger Picture in Mediation Success

- Mediating pressures – from those who pay you
- Framing & setting expectations
- Knowing context that disputants bring: legal, personal, other
- Taking a long view
- Failure as step to success
- Settlement as a process
- Other ideas?