

**Mediating Disputes Involving
Parenting Time & Responsibilities
in Colorado's 10th Judicial District
Assessing the Benefits to Courts**

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Purpose of the Study

The present study was undertaken in response to a request from the Office of Dispute Resolution (ODR) for information that would shed light on whether alternative dispute resolution (ADR) produces measurable benefits to the Colorado courts. Although ADR is used in a variety of civil and family cases in Colorado, the most common ODR case is a domestic relations case, either pre- or post-decree sent to mediation. Due to time and financial constraints, the research presented below focuses strictly on domestic relations mediation, and even more specifically, on those pre-decree cases with minor-age children and a dispute over issues of parenting time and responsibilities.

The research addresses the following questions, each of which has a potential impact on the time and resources expended by the courts in the resolution of cases:

- How effective is mediation in producing settlements in cases with disputes over parenting time and responsibilities?
- If used early and conducted properly, does mediation reduce the amount of time spent on these cases by courts?
- Does mediation reduce relitigation in mediated cases?

The Office of Dispute Resolution was created by the Colorado Dispute Resolution Act in 1983. The Office was charged with making dispute resolution services available in districts designated by the Chief Justice. ODR also provides assistance with ADR policymaking, monitors relevant ADR legislation, and provides information and technical assistance to courts and agencies throughout the state. Among the services available are mediation, arbitration, settlement conferences, parent education programs, and other interventions. In Fiscal Year 2002, an estimated 3,074 cases (domestic relations, civil, juvenile, dependency and neglect, and probate) received mediation or other ADR services.

ODR is located in the Judicial Branch as a part of the Office of the State Court Administrator. It is funded through client fees as prescribed by order of the Colorado Supreme Court.





Previous Research

Previous researchers have attempted to assess the impact that mediation has on the court system. Helping to relieve crowded dockets was a primary reason for the growth of court-affiliated alternative dispute resolution programs in recent decades. As researchers for the Urban Institute note:

The original impetus for establishing court-annexed ADR programs was the pressing need to address the increases in caseloads being experienced by the nation's courts. . . . The fundamental question . . . is whether court-annexed ADR programs are a cost-effective approach to reducing court dockets. That is to say, can a court's resources be conserved by diverting some of its cases from trials to ADR. . . .¹

Unfortunately, determining whether ADR results in cost avoidance for courts has proved to be difficult. Many factors must be considered, including:

- The stage at which cases are diverted to ADR;
- The percentage of relevant cases that are diverted;
- The cost of providing the ADR service;
- The percentage of cases using ADR that are resolved in this forum;
- The percentage of cases that would be resolved out of court in the absence of ADR;
- The cost to the court of resolving cases through traditional informal negotiations;
- The cost to the court of resolving cases through trial; and
- Differences in subsequent litigation patterns for cases resolved in trial, informal negotiations, or ADR.

While a few of these variables are relatively straightforward to measure (such as percent of cases sent to ADR that are resolved in this forum), most are not. Courts do not maintain information on the amount of the time expended on various types of cases by court clerks, magistrates, judges, law clerks, and other court personnel. As a result, some studies have acknowledged the difficulties involved in generating cost avoidance estimates, argued that ADR is unlikely to be more costly than other types of case resolution, and focused on more easily documented benefits of ADR. For example, in a report to the Legislature, the Alaska Child Visitation Mediation Pilot Project concluded:

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. . . it is unlikely that resolving visitation disputes through formal litigation is any less costly to the state than mediating.²

Similarly, a report to the Conciliation Court of the State of Arizona regarding mandatory divorce mediation concluded:

Although it is not possible to make accurate cost estimates, it is expected that the shift from ordered decrees to stipulated decrees should also be reflected in a cost savings for the court system. Approving agreements generally requires less court time than hearing testimony and making decisions.³

And, a 2002 study by the General Services Administration Office of Equal Employment Opportunity concluded:

One of ADR's most valuable attributes is its unique ability to resolve disputes whose greater obstacles proved to be personalities, egos and ill will between the entrenched people. . . . ADR tailors the general process to meet the individual needs of the parties in conflict. In doing so, the ADR approach has proven to be one of the rare methods capable of overcoming the human emotions or obstinance that stood in the way of progress and resolution. In such instances, the savings received cannot be precisely accounted for, nor fully appreciated.⁴

Measuring Savings in Time and Hearings

A few studies have attempted to draw conclusions regarding whether there are cost savings associated with court-affiliated ADR, despite the acknowledged difficulty of doing so. These studies have sometimes imputed cost benefits based on proxy measures of savings, such as the number of court hearings, trial rates, or numbers of motions filed.

In a 2002 review of these studies in civil, non-domestic cases, Roselle L. Wissler concludes:





The studies were fairly equally divided among whether mediated cases were resolved faster, slower, or in about the same amount of time as non-mediation cases. . . . The studies tended to find no difference in the number of motions filed or decided in mediation cases compared to non-mediation cases, although several studies reported fewer motions in mediation cases. Similarly, the studies tended to find no impact of mediation on the amount of discovery, although a few studies noted reduced discovery.⁵

On a similar note, Robert J. Niemic et al., note that, at least with respect to mediation in the federal courts, the research findings regarding ADR's effects on litigation time and costs have been so mixed that "one should probably not rely on them as a guide for particular case. . . ."⁶

One recent study conducted by the North Carolina Administrative Office of the Courts concluded that, while mediation did not change overall case processing time, mediation did produce significantly greater numbers of stipulations and significantly lower trial rates. The researchers concluded:

. . . on the whole, custody and visitation cases disposed when a mediation program is operative — without regard to the particular model of program administration — are significantly less likely to go to trial and significantly more likely to result in agreement, than are such cases disposed of when there is no mediation program in operation.⁷

This study also concluded that visitation arrangements produced in mediation are significantly more detailed and specific than orders produced through other means. The researchers recorded whether the order used the vague phrase "liberal visitation." They conclude that the results:

. . . indicate a very substantial difference, with only 4 percent of the [mediated] parenting agreements, but 21 percent of the consent orders [i.e., non-mediated stipulations], and 36 percent of the orders resulting from trial providing for visitation in this nonspecific way.⁸

The North Carolina study, like many others, also found high user satisfaction among those who produced agreements in mediation. They noted:





Finding greater satisfaction for mediation agreement than trial is perhaps not surprising, because trials are generally considered more adversarial, and therefore more stressful, than mediation. . . . The more interesting finding is that case satisfaction was greater for mediated agreements than for conventional agreements. This suggests that *mediation may be a superior way to negotiate a settlement of the parties' differences.*⁹

Impressions of Savings

A number of studies have reported impressionistic data related to cost savings. For example, Wissler's study of civil mediation in nine Ohio courts found that "judges felt that mediation saved them time by reducing the number of pre-trial hearings and conferences."¹⁰ A study by Barbara Meierhoefer of court-affiliated arbitration in ten district courts found that, in all but one of the sites, "the majority of the attorneys reported the arbitration procedures saved time and money."¹¹ An evaluation of an ADR intervention in a California Federal District Court using neutral parties to facilitate conferences and planning early in the processing of cases (known as Early Neutral Evaluation, or ENE) found that a third of the attorneys felt that the process saved money, a third thought that it had no impact, and a third thought that the process increased costs (however, the increases were far more modest than the estimated savings).¹²

Two studies of court-affiliated programs to mediate cases at the time of a termination of parental rights found that the legal professionals in mediation — court-appointed (publically paid) attorneys for parents and children, and attorneys for the child protection agency — often felt that mediation helped them to reduce the amount of time they needed to spend on a case. For example in one study, 78 percent of the attorneys appointed to represent children said mediation saved them time.¹³

Estimating Dollars Saved

Finally, a few studies have attempted to place dollar estimates on the savings produced by ADR programs. These studies typically caution that the numbers presented are only estimates, because court records of time expended on cases by various court personnel do not exist.





One such study of a publically funded community mediation program in Michigan estimated that ADR saved the state an estimated \$897,700 annually in averted court costs related to Special Education.¹⁴ A study of the Early Neutral Evaluation found that attorneys placed estimates of increased costs associated with the intervention at approximately \$39,000, while estimated savings were over \$4,890,000.¹⁵

An early study of custody and visitation mediation used estimates from court administrators in California, Colorado, and Oregon on the amount of bench time required to handle contested and non-contested custody and visitation cases. Depending upon the jurisdiction, the analysis projected savings of \$560 - \$2,700 for each custody or visitation dispute diverted to mediation.¹⁶

A study of child protection mediation the San Francisco Juvenile Court produced estimated savings of \$2,931 for each successfully mediated case.¹⁷ A similar study in Colorado's Fourth Judicial District projected savings of 13 percent for each case sent to mediation,¹⁸ and a study in the Hamilton County, Ohio, Juvenile Court estimated the mediation program saves the court an average of \$5,993 for each case that is mediated.¹⁹

Benefits to the Parties

In addition to research on the benefits mediation may provide to the court system, there has been considerable previous research on the costs and benefits to the disputants. A full review of this literature is beyond the scope of this study — which focuses on the effects of mediation on the court. However, most research in this field suggests that mediation is more likely to be perceived by the parties as “fair” than are other settlement forums. For example, in a four-state study of court-based divorce mediation, researchers at the National Center for State Courts concluded:

The primary benefit of court-based mediation lies in its effects on the litigants' perceptions of procedural and distributive justice. . . .²⁰





In a similar vein, the evaluators of custody and visitation mediation in the North Carolina courts noted:

Finding greater satisfaction for mediated agreement than for trial is perhaps not surprising, because trials are generally considered more adversarial and therefore more stressful, than mediation. . . . The more interesting finding here is that case satisfaction was greater for mediated agreements than for conventional agreement.²¹

The same North Carolina study found that almost three-quarters of the surveyed Family Law Section attorneys also believed that mediation reduced the costs to their clients. However, other studies conclude that mediation only saves money for divorcing parties if a settlement is reached through the process.²²

Methodology

Identifying the Scope of the Study

Although the Office of Dispute Resolution is interested in the overall impact of ADR on Colorado courts, time and budget constraints necessitated that the study be far narrower in scope. The study could not include all types of ADR, it could not consider all the types of cases utilizing ADR in Colorado, it could not include ADR provided through the private community as well as ODR, and it could not be statewide in scope.

Rather, the study focuses on the most common type of case served by ODR: domestic relations cases, and more narrowly, cases with disputes related to children and parenting time and responsibilities. The study also focuses on the most commonly used type of ADR: mediation. For example, in Fiscal Year 2000, the total ODR caseload was 2,557, and of those, 2,481 were mediation cases (97%). Of the 2,481 mediation cases, 1,776 were domestic relations (72%).





Further restrictions on the study include the use of a single jurisdiction, the need to rely solely to retrospective data, and the lack of a randomly assigned control group (the latter point is discussed in greater detail below).

Site Selection

In selecting a single jurisdiction to study, efforts were made to find a location with the following characteristics:

- A sufficient volume of relevant domestic relations cases to allow samples of mediated and non-mediated cases to be generated from cases filed within one or two years.
- A well-run mediation program with strong judicial support. Struggling programs, and those without a committed bench, will not provide data on the true potential of mediation to produce savings in time for the court.
- The recent introduction of mediation, thus allowing for a comparison of mediated cases with those not exposed to mediation, but processed in the very recent past when similar court rules and legislation were in effect.^a

After consultation with the Director of the Office of Dispute Resolution, and discussions with several administrators in urban courts, it proved to be impossible to find a site that met all the requirements. Those with recently introduced mediation typically lack case volume and/or judicial support. Established, high-volume programs have all had mediation in operation for a lengthy period of time.

^a Even this approach is a compromise. Experimental design calls for the random assignment of a case to a treatment (mediation) or a control group. This was not possible given that the time available required us to collect retrospective data. However, even if time had allowed for prospective data collection, it would be difficult to find a court willing to allow cases to be randomly assigned to mediation or no mediation. Courts that have strong mediation programs are unwilling to suspend the use of the program even for a short while. In addition, giving the growing use of ADR among the general public, cases that were not randomly assigned to receive mediation through ODR might still have used a private mediation provider in the community.





For example, mandatory mediation has been operating in the 4th Judicial District since at least 1991 and in the 18th Judicial District since 1995. Some jurisdictions, such as the 2nd, have nominally had mandatory mediation since 1984, but still do not seem to use the process systematically.

In the end, the selection of the 10th Judicial District (Pueblo) represented a compromise with the greatest potential to yield meaningful data.

The 10th Judicial District has a volume of domestic relations mediation cases sufficient to generate a sample from a relatively compressed time frame. For example, in FY2001, the 10th mediated 283 cases. In comparison, the 2nd Judicial District (Denver) had mediated 147 cases, and the 18th (Arapahoe County) had 383. The mediation program operating in the 10th has strong judicial support and is a well-organized and well-respected program.

Generating a Mediation and Comparison Group

We considered several different approaches to generating a comparison group.^b As noted above, we were constrained by the fact that we needed to generate a retrospective sample. We did not have time, and it would probably not have been practical, to generate experimental and control groups by randomly assigning cases to mediation or no mediation as they were filed with the court.

The possibility of generating a sample of non-mediated cases from another jurisdiction was considered, but ultimately rejected. Project advisors at the Colorado Judicial Department felt that the jurisdictions that do not use mediation are different from the 10th Judicial District in many ways that would have made it difficult to draw comparisons.

On the other hand, mediation has been part of the legal landscape in the 10th Judicial District for far too long to allow a comparison between cases recently mediated and cases processed prior to the introduction of mediation. Such a comparison would require a sample of pre-mediation cases to be generated from around 1990. There have been far too many changes in the past decade in court rules,

^b Sampling procedures are discussed in greater detail in Appendix A.





domestic relations legislation, and case volume for a comparison of cases processed in 1990 and 2000 to be meaningful. There have also been too many changes in the mediation program in the last decade to allow us to generalize from a sample of cases mediated in 1991 or 1992 to the benefits afforded by the program today.

Given the many constraints, this study chose not to compare cases processed pre- and post-mandatory mediation. Instead, it focuses on a comparison of (1) a court using early, systematic use of mediation, versus (2) the same court at a different time point when it made only sporadic use of mediation, typically late in the case, if at all.

If mediation is to produce the maximum possible savings of time, it logically must be used early in the case. The longer a contested case is allowed to remain in the litigation track before being diverted to mediation, the greater the potential it has to utilize court resources. This fact is commonly noted in research. Wissler's study of civil mediation Ohio courts determined:

The present findings that cases with earlier mediation referrals and sessions had filed fewer motions and had conducted less discovery again suggests the impact that mediation timing can have on mediation's effectiveness in reducing costs.²³

There is also some evidence that the longer a case waits from filing to mediation, the less the likelihood of settlement. For example, Wissler's study also concluded, "Cases were more likely to settle if mediation was held soon after the case had filed."²⁴

The experimental group cases:

- Were dissolution cases filed in the 10th Judicial District in 1999-2000. During this period, early referral (generally 45 days post-filing) was the norm and participation in mediation was fairly well enforced.
- Participated in mediation and dealt with parenting time and parental responsibility issues in mediation. The cases may also have involved disputes over child support, property, debts, or other financial issues.





The comparison group is composed of:

- Dissolution cases filed in the 10th Judicial District in 1996-1997.
- Cases where parenting issues appear to be in dispute on child-related issues, given the Response filed and/or the passage of four or more months from filing without a stipulation being entered. As with the mediation group, there may also have been disputes over financial matters.

In 1996-1997, case handling in the 10th looked much like current case processing in many Colorado jurisdictions — most cases were never sent to mediation; a few cases did receive mediation, but typically only late-stage mediation, after being in the system for many months. Between 1997 and 2000, a new coordinator in the local ODR, new judges, and growing acceptance of mediation by the legal community changed the system into one that stresses the early, routine use of mediation.

In both the mediation and comparison group, cases were eliminated from the sample if the case was closed by dismissal or failure of the parties to prosecute. Cases were also eliminated if they were given a waiver from mediation. The final sample consists of 92 cases that were filed in 1999-2000 and exposed to mediation and 100 cases filed in 1996-1997.

The primary difference in the legal climate during these two time points was the change in the law regarding “custody.” In 1999, the term “custody” was changed to “parental responsibilities.” It is not known whether this change made a difference in the nature of child-related disputes experienced by divorcing parents.

The Data

The Center for Policy Research designed a data collection form to gather data on cases mediated in 1999-2000 and comparison group cases. The form was developed with the assistance of the primary mediator in the 10th Judicial District, the Director of the Office of Dispute Resolution, and staff in the Division of Planning and Analysis of the Colorado Judicial Department.





The goal was to design a relatively brief form that collects data on variables that can be used as proxy measures for the amount of time and resources the court expends on a case. Such variables might include, but would not be limited to:

- The number of motions filed;
- Whether the case was resolved by stipulation or trial;
- The amount of time elapsing between filing and resolution; and
- The number of post-decree motions filed.

A few additional pieces of information were collected to allow us to determine whether there are any systematic differences between the mediation and comparison group, such as the legal representation of the parents in each case, the number and ages of children, evidence of the complexity of the case, evidence of disputes related to parenting time, and evidence of disputes over financial issues. A copy of the data-collection instrument is located in Appendix B.

Baseline Comparability of the Samples

The analysis begins with a comparison of the cases in the experimental and mediation group on selected variables to determine whether they appear to be generally comparable cases. If the two groups are greatly dissimilar, it will be difficult to attribute any observed differences in outcomes solely to the different processing procedures used in the two groups — especially early referral to mediation in the mediation group — rather than other factors.

Table 1 provides an economic comparison of the two groups based on the financial affidavits filed by the parents at the time of their dissolution filing. The Table shows no statistically, or practically, significant differences between the mediation and comparison group. Fathers in both groups were quite comparable, as were mothers in both groups. Annual earnings for fathers averaged about \$25,000 and for mothers, slightly less than \$17,000.





Table 1. Monthly Earnings at Filing of Mediation and Comparison Cases

	Mediation Group	Comparison Group
Fathers' monthly earnings from financial affidavit filed with dissolution		
Average	\$2,172	\$2,066
Median	\$1,953	\$1,993
\$0 - \$1,000	10%	13%
\$1,001 - \$2,000	39%	37%
\$2,001 - \$3,000	28%	30%
\$3,001 - \$4,000	13%	7%
\$4,001 or more	10%	13%
	(87)	(95)
Mothers' monthly earnings from financial affidavit filed with dissolution		
Average	\$1,355	\$1,472
Median	\$1,300	\$1,106
\$0 - \$1,000	38%	45%
\$1,001 - \$2,000	42%	34%
\$2,001 - \$3,000	16%	14%
\$3,001 - \$4,000	3%	3%
\$4,001 or more	1%	4%
	(90)	(100)

Table 2 provides basic background information about the marriage and children. It demonstrates no differences between the two groups with respect to the length of the marriage, the number of children, or the age of the children. There is some difference in the residence of the children at the filing for dissolution. Although not greatly different, there were more parents in the comparison group than in the mediation group still living together at the time of the filing. If still-cohabiting parents are excluded from the analysis, there is no variation between the two groups with respect to the children's residence at the filing of the petition.





Table 2. Marriage and Children of Mediation and Comparison Cases

	Mediation Group	Comparison Group
Average number of years between marriage and dissolution filing	8.9	8.0
Average number of children	1.7	1.7
Percent with a child under age 5 years	58%	55%
	(92)	(100)
Residence of child at the filing of the petition		
With mother	82%	72%
With father	10%	8%
Parents still living together	6%	18%
Split (some with mother, some with father)	2%	2%
	(92)	(100)

Chi square is significant at .12.

There were also no differences between the mediation and comparison group with respect to which parent filed for a marital dissolution. In both groups, 61 percent of the petitioners were female, 35 percent were male, and 4 percent were co-petitions.

Table 3 shows that about 34 percent of the mediation group and 24 percent of the comparison group had at least one parent who was totally without legal counsel. Both parents were represented (for at least some of the time the case was active) about 66 percent of the time in the mediation group and 76 percent of the time in the comparison group. In both groups, mothers were more likely to have had at least some legal representation than were fathers.

Table 3. Legal Representation of Mediation and Comparison Cases

	Mediation Group	Comparison Group
Both parents had an attorney (for at least some part of the case)	66%	76%
Only mother had an attorney	20%	16%
Only father had an attorney	5%	6%
No legal representation for either parent	9%	2%
	(92)	(100)





As noted, it is not a straightforward matter to determine whether there are issues in dispute in a marital dissolution case. There is nothing equivalent to a checkoff in the court record or in the filings by the parties to indicate that there is a disagreement about parenting issues, child support, or other financial matters. Perhaps the best indicator of a dispute is the filing of a Response (or a counter petition) to the initial filing.

Table 4 indicates that approximately 70 percent of the respondent parents in both groups did file a Response or provide some indication of disagreement with the petition. In cases with a Response, identical percentages in both the mediation and comparison group (86%) indicated there was a disagreement over decision making about or the residence of the children.

Table 4. Evidence of Disputes in the Mediation and Comparison Groups			
		Mediation Group	Comparison Group
The Respondent Parent or Respondent Parent’s Attorney filed:			
	Response to the petition	67%	68%
	Counter Petition	4%	2%
	None of the above	29%	30%
		(92)	(100)
If a Response or Counter Petition Was Filed			
	Response indicated disagreement with petitioner over residence of or decision making regarding children	86%	86%
		(66)	(69)





Results

The purpose of the study was to address the following questions:

- How effective is mediation in producing settlements in cases with disputes over parenting time and responsibilities?
- If used early and conducted properly, does mediation reduce the amount of time spent on these cases by courts?
- Does mediation reduce relitigation in mediated cases?

The analysis, which was organized around these issues, is presented below.

How effective is mediation in producing settlements?

The first step in producing settlements in mediation is getting couples to appear for mediation. During the time period in which the comparison group was drawn (dissolution filings in 1996-1997), mediation was technically available to disputants, and in fact, 69 percent of the comparison group did receive an order to attend mediation. However, none of the comparison group couples followed through and set a mediation appointment. Clearly, during the comparison group time period, the program was not effective in diverting cases to mediation.

Among the cases mediated in 1999-2000, 39 percent left the mediation session with a complete agreement on all issues. Another 52 percent reached an agreement on some, but not all issues, and another 3 percent (also classified as “partial” in Figure 1) left with a proposed settlement and a deadline for accepting or rejecting it. Six percent of the couples reached no agreement in mediation.





Mediation Outcome for Cases Mediated in 1999-2000

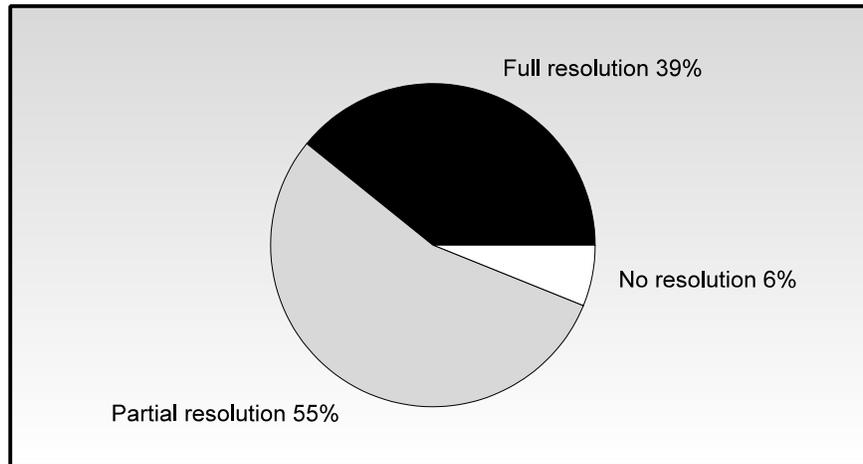


Figure 1

Does mediation reduce the amount of time spent on these cases by courts?

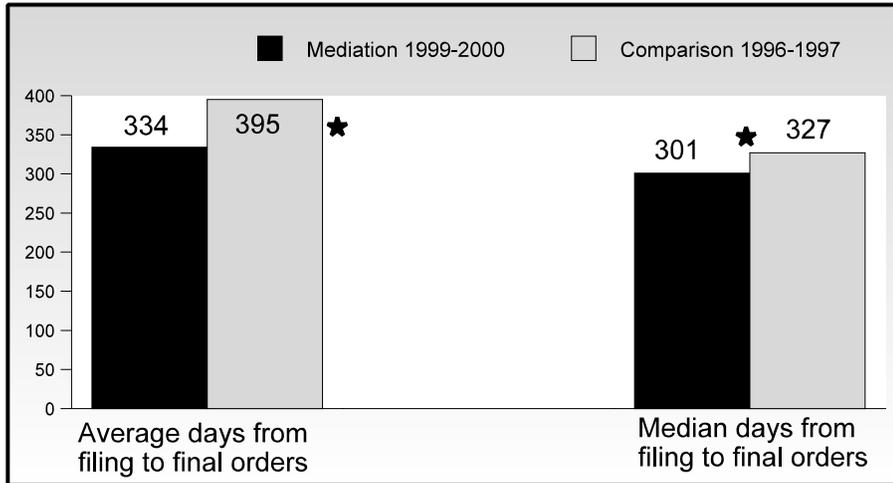
If used early, and conducted properly, does mediation reduce the amount of time spent on a case by the court? Unfortunately, there is no single indicator of the amount of time the court spends on a given case. As a result, the answer to the question has to be inferred by comparing the 1996-1997 sample and the 1999-2000 sample on a number of variables that should be indicators that the court spent time on the case.

There are a number of possible indications that a mediation program that is fully implemented and routinely used will result in a more efficient use of court time. One rough indicator of the amount of resources consumed by a case may be the amount of time that the case remains open at the court. Figure 2 shows that the amount of time elapsing between filing and final orders is 334 days, on average, in the mediation group, and 395 days in the comparison group. The difference in the average number for each group is statistically significant at .05.





Amount of Time From Filing to Final Orders

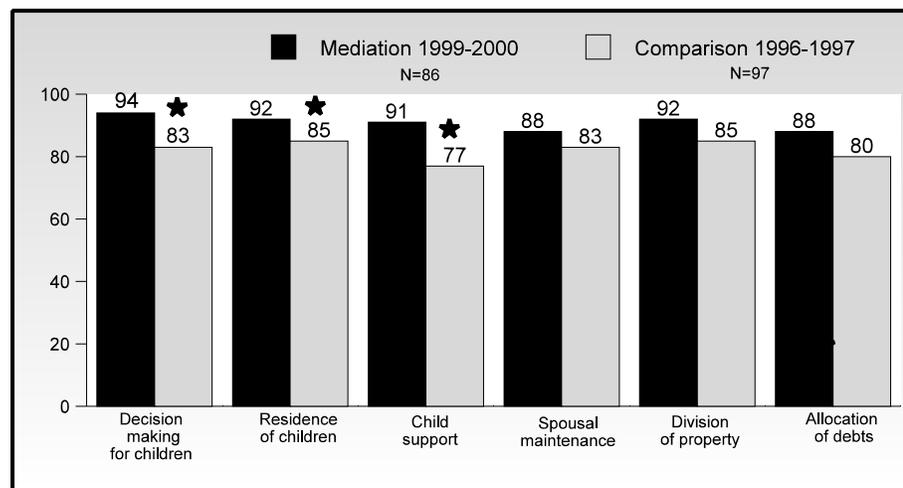


★ Differences between mediation and comparison are statistically significant at .05.

Figure 2

Another possible indicator that the court is spending less time on a case is evidence of stipulations on the issues in a dissolution. Figure 3 shows the percentage of couples mediating in 1999-2000 who were able to present a stipulation to the court on various aspects of their dissolution case. The figure also shows the comparable percentages for comparison group parents who filed for a dissolution in 1996-1997 but did not use mediation. The pattern is for mediation cases to be more likely than

Percent of Cases Presenting Stipulations to the Court



★ Differences between mediation and comparison are statistically significant at .1.

Figure 3

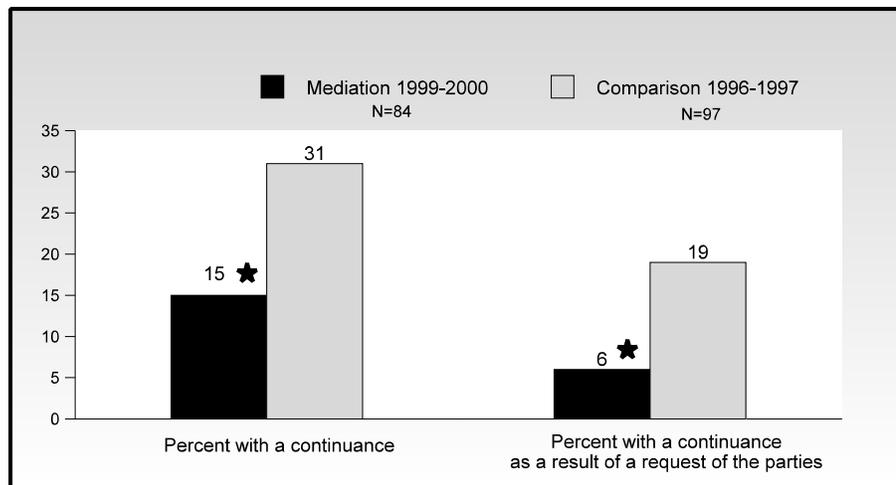




comparison cases to present a stipulation. In the areas of parental responsibilities, residence of the child, and child support, the difference between the mediation and comparison group are statistically significant.

Still another way that cases use court time is through continuances. Continuances that are the result of a request of the parties are especially disruptive to the court, since time that has been allocated for the case will not be used for this case and another time will have to be found. Figure 4 shows that the mediation group was significantly less likely than the comparison group to have a continuance and significantly less likely to have a continuance that was the result of a request by the parties.

Percent of Cases with Continuances to Hearings



★ Differences between mediation and comparison are statistically significant at .01.

Figure 4

Although activities such as filing motions may have a less dramatic impact on the court than do hearings, they still consume time and resources. Table 5 shows that mediation cases filed fewer motions than did the comparison group. Over the life of the case, the comparison group averaged 3.6 motions, and nearly a quarter of the cases had more than 5 motions filed. In the mediation group, the average was 2.4, and only 12 percent had 5 or more motions.





Table 5. Motions Filed in the Mediation and Comparison Groups

	Mediation Group	Comparison Group
Average number of motions filed	2.4	3.6
No motions filed	21%	8%
	(91)	(99)

T-test comparison of means is significant at .00.

Finally, the most direct measure of the amount of time expended by the court on a given case is the amount of hearing time scheduled. This figure, although the most direct, is presented last because it is available for fewer cases. This information is typically found on the Minute Order, and it is available for about a quarter of all mediation cases and about a third of the comparison group cases. Although not all cases require the amount of time indicated by the Minute Order (cases may even present a stipulation at the time of the hearing), the court is setting this time aside, and this speaks directly to the efficient usage of the scarcest of court resources: judicial time.

The results, presented in Table 6, show significantly more time being scheduled in the comparison group relative to the mediation group. An average of 3.6 hours was to be set aside to hear the comparison group case, versus 2.0 hours in the mediation group. By contrast, less than 5 percent of the mediation group had hearings scheduled for a full day (seven or more hours), compared with nearly a quarter of the comparison group.





Table 6. Time Scheduled for Hearings in the Mediation and Comparison Groups

	Mediation Group	Comparison Group
Average number of hours scheduled ⁱ	2.0	3.6
Hours scheduled		
One	48%	30%
Two	29%	20%
Three	19%	13%
Four	0%	13%
Seven or more	4%	24%
	(21)	(30)

ⁱ T-test comparison of means is significant at .02.

Does mediation reduce relitigation in mediated cases?

The final question to be addressed has to do with the incidence of relitigation among mediation and comparison group cases. To the extent that cases return to the court, they continue to cost the court in time and money. Some returns to court are neither avoidable nor time consuming. For example, as the children grow older, the parties may choose to allocate the child’s time differently. As with the initial dissolution proceedings, it is difficult to determine whether a request for a modification is simply the entry of a new stipulation or a request for hearing time to resolve an issue in dispute.

Despite these limitations to the data, there is evidence that comparison group cases experience more relitigation relative to mediation cases. The analysis of relitigation is restricted to filings within the first two years following the promulgation of final orders. This controls for differences in the amount of time that comparison and mediation cases had in which to experience subsequent action resulting from differences in their filing dates (1996-1997 versus 1999-2000).

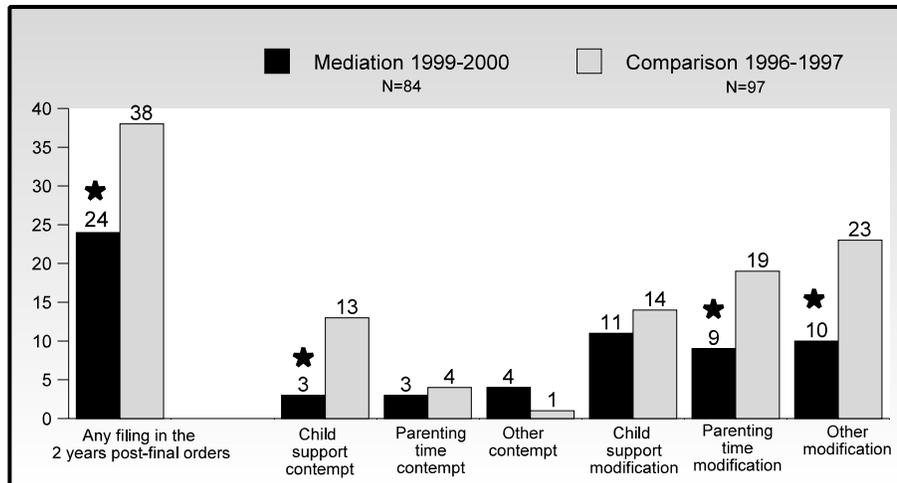
The results are summarized in Figure 5. In the two years following the receipt of final orders, 38 percent of the comparison group had been back to court, while 24 percent of the mediation group had





experienced a subsequent filing. The mediation group had significantly fewer post-decree filings related to child support contempt, modifications of parenting time and other types of modifications.

**Percent with Relitigation
in the 2 Years Post-Permanent Orders**



★ Differences between mediation and comparison are statistically significant at .015.

Figure 5

What is the Influence of Legal Representation on Outcomes?

The sample sizes in the present study are too small to allow for a detailed analysis of patterns for subgroups of disputants. Indeed, as was noted earlier, the small sample size was the very reason the maximum amount of uniformity as possible was built into the mediation and comparison groups through sampling (for example, using only pre-decree cases and only marital dissolution cases).

However, this section of the report does briefly explore the influence that legal representation has on the outcome patterns noted above. Table 7 shows slight differences between the mediation and comparison groups with respect to legal representation. Specifically, the comparison group has a somewhat greater number of cases with attorneys for either one or both parents. Is it possible that the comparison group had more continuances, lengthier hearings, more motions, and greater relitigation





simply because they were more likely than the mediation group to have an attorney? While we cannot be certain of the answer, there is little evidence to support this theory.

We re-analyzed each of the major outcomes using only the cases in which both mothers and fathers had an attorney for at least some part of their case. A total of 66 percent of the mediation and 76 percent of the comparison cases fell into this category. The results, summarized in Table 7, show that mediation cases continue to score better on most measures, indicating reduced work and time for the court.

Table 7. Summary of Outcomes Measures for Mediation and Comparison Cases With Attorneys Representing Both Parents		
	Mediation Group (n=59)	Comparison Group (n=72)
Percent stipulating on		
Decision making regarding children	93%	86%
Residence of children	93%	87%
Child support	91%	81%
Average number of motions filed	3.0	4.4
Average number of hours scheduled for hearings	2.2	5.1
Percent with filings in the 2 years post-final decree	17%	43%
i Difference between groups is significant at .05.		





Summary and Discussion

The purpose of the study was to address the following questions:

- How effective is mediation in producing settlements in cases with disputes over parenting time and responsibilities?
- If used early and conducted properly, does mediation reduce the amount of time spent on these cases by courts?
- Does mediation reduce relitigation in mediated cases?

There can be no definitive answers to these questions given the limitations of this study, including the lack of a true control group, the small sample sizes, and the limited information available in court files. However, this study does offer evidence that mediation produces benefits for courts. The study found:

- About 39 percent of all parents who mediate in the 10th Judicial District are able to produce a full agreement on all the issues in dispute. Another 55 percent produce partial agreements. Given that some parties had financial disputes and all had disputes over parenting issues, the fact that 94 percent made progress or resolved their problem is noteworthy.
- Mediation is associated with less time elapsing between filing and final orders. In the mediation group, an average of 334 days passed between these two events, while the average in the comparison group was 395 days.
- The mediation group was more likely than the control group to present stipulations to the court on child-related issues, which places fewer demands on judges. Even after statistically controlling for legal representation, mediation cases were more likely than comparison cases to stipulate on child support and equally likely as the control group to stipulate on all other issues.
- Mediation cases have fewer continuances relative to control group cases and fewer continuances due to a motion by one of the parents. This suggests that mediation produces a smoother, more timely flow of cases, with fewer unexpected delays and interruptions.





- Mediated cases file fewer motions. While just over 20 percent of the mediation group filed no motions, this was true for only 8 percent of the comparison group. Although motions may not always require judicial time, they do place another demand on court staff.
- Mediation cases are scheduled for less court hearing time than are comparison cases. The mediation group was scheduled, on average, for 2.0-hour hearings, compared to 3.6 hours in the comparison group.
- Two years post-decree, the mediation cases were twice as likely to have stayed out of court. Over a third (38%) of the comparison group had filed some type of action in the two-years post-decree, compared to only 24 percent of the mediation group.

All of these patterns suggest that mediation can be a valuable tool to courts seeking to relieve crowded dockets and move cases efficiently.



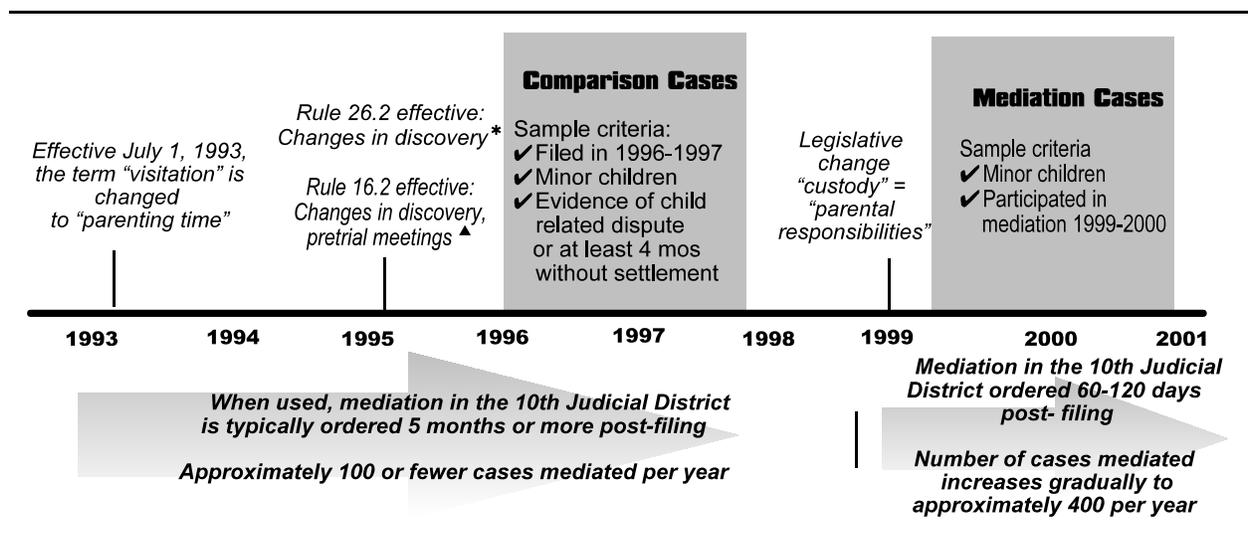


Appendix A:

Additional Information Regarding Methodology

The chart below shows the major legislative and rule changes in domestic relations cases and the growth of mediation in the 10th Judicial District. Superimposed over this time line are the proposed groups of mediated and comparison cases to be generated during this study.

Both the comparison and experimental cases are drawn from a point in time when Rules 16.2 and 26.2 were in effect. This is important because attorneys who practiced in the 10th prior to and following the enactment of these rules feel they did a great deal to speed case processing.



[†] Rule 26.2 General Provisions Governing Discovery, effective July 1, 1995. The Rule applies in juvenile matters involving child custody, parenting time, child support, and related matters. Although the Rule covers a number of items, the most relevant with respect to impact on case processing times is the requirement that, without awaiting a discovery request, parties shall provide financial information such as pay stubs, copies of income tax returns, etc.

^{*} Rule 16.2 Case Management (Domestic Relations), effective July 1, 1995. With some exceptions, the Rule requires that discovery be completed not later than 30 days before a hearing. It also requires, among other things, a pretrial meeting no later than 20 days before a hearing. The meeting is to deal with both child and financial issues.





Unfortunately, it was not possible to pull both the comparison and experimental samples from a time period either before or after enactment of legislation moving from custody to parental responsibility. In July 1993, the term “custody” was replaced by “parenting time.” Effective February 1999, the term “custody” was changed to “parental responsibilities.”

We cannot be certain what, if any, impact the change in legislation had on either the number or types of disputes concerning time with children. It may well be that the legislation simply changed the dispute semantically from one about “custody” to one about “parental responsibilities.” However, it is impossible to rule out the possibility that some or all of the observed differences between the mediation and comparison group might be due to changes in the laws governing “custody.”

The sample sizes for both the mediation and comparison group simply reflect the maximum number of appropriate cases that were available for review. We were constrained both by the number of cases filed/mediated during the specified time periods and by the amount of time available for data collection.

Because the sample sizes were necessarily small, we attempted to keep the experimental and comparison groups as similar as possible so that statistical controls would not have to be introduced to take into account differences between pre- and post-dissolution cases, or cases that were non-marital versus marital.

The universe of mediation cases was identified from billing sheets submitted by the mediators to the Office of Dispute Resolution. To pull the comparison group, it was possible to use the computerized system to narrow the range of cases to consider manually. The computer system helped to identify cases with minor children, cases with mediation waivers, and the length of time a case was open. Cases that appeared to be appropriate were pulled and reviewed to determine whether the case fully met the sampling criteria.





Appendix B:

Data Collection Instrument

Domestic Relations Mediation in Colorado's 10th Judicial District

A Study of Court Benefits

Date of case review: ____/____/____

Case Type:

- 1 - Mediated case
- 2 - Comparison case

Information on the Parties:

Mother is:

- 1 - Petitioner
- 2 - Respondent
- 3 - Co-petitioner

Mother's Date of Birth ____/____/____

Did mother have legal counsel?

- 1 - Yes, private attorney from filing to disposition
- 2 - Yes, private attorney, not at filing but later in case
- 3 - May have been involvement of legal aid
- 4 - No evidence of legal representation
- 5 - Other _____

Based on mother's financial affidavit, what is her gross monthly pay: \$ _____ Check here if no information in file

Father is:

- 1 - Petitioner
- 2 - Respondent
- 3 - Co-petitioner

Did father have legal counsel at Petition/Response or Counter Petition filing?

- 1 - Yes, private attorney from filing to disposition
- 2 - Yes, private attorney, not at filing but later in case
- 3 - May have been involvement of legal aid
- 4 - No evidence of legal representation
- 5 - Other _____

Based on father's financial affidavit, what is his gross monthly pay: \$ _____ Check here if no information in file

Children Number of children _____

Child 1 Date of birth ____/____/____

Child 2 Date of birth ____/____/____

Child 3 Date of birth ____/____/____

Child 4 Date of birth ____/____/____

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Petition

Was the Petition for:

- 1 - Dissolution of Marriage
- 2 - Legal Separation

Date filed: ____/____/____

Date married ____/____/____ Date separated: ____/____/____

Residence of children at time of the Petition:

- 1 - Mother
- 2 - Father
- 3 - Both, parents still living together

Restraining orders in past two years:

- 1 - None
- 2 - Temporary
- 3 - Permanent
- 4 - Criminal

If there have been restraining orders, what was the subject matter?

- 1 - Domestic abuse
- 2 - Other _____

IF PARTIES ARE CO-PETITIONERS, TREAT MOTHER AS PETITIONER AND FATHER AS RESPONDENT IN ANSWERING THE ITEMS BELOW:

Arrangements Presented in Petition:

Allocation of parental responsibilities

- 1- No agreement/no mention/none
- 2 - Agreed to share responsibility

Residence of children:

- 1 -No agreement/no mention/none
- 2 - Agreement children reside with Petitioner
- 3 - Agreement children reside with Respondent
- 4 - Agreement on Plan for sharing
- 5 - Other _____

Support of children

- 1 - No agreement/no mention/none
- 2 - Agreement to set support pursuant to guidelines
- 3 - Other agreement

Attorney's fees for petitioner

- 1 - No agreement
- 2 - Agreement that Petitioner fees will be paid by Respondent
- 3 - Agreement that each party pays own
- 4 - Other agreement _____

Maintenance of a spouse

- 1 - No agreement/no mention/none
- 2 - Agreement that there will be no maintenance
- 3 - Agreement on temporary maintenance
- 4 - Agreement on permanent maintenance
- 5 - Agreement on temporary and permanent maintenance

Property and payment of debts:

- 1 -No agreement/no mention/none
- 2 - Agreement on property
- 3 - Agreement on debts
- 4 - Agreement on property and debts

Requested in Petition:

Decision-making regarding children

- 1 - Requests Joint
- 2 - Requests that Court determine
- 3 - Requests Other _____
- 4 - Sole to petitioner
- 9 - No mention

Residence of the children

- 1 - Request to reside with Petitioner
- 2 - Requests that Court determine
- 3 - Requests Other _____
- 4 - Split
- 5 - With respondent
- 9 - No mention

Support of children

- 1 - Requests support be set pursuant to guidelines
- 2 - Requests that Court determine
- 3 - Other specific request _____
- 9 - No mention

Attorney's fees for petitioner

- 1 - Request for fees to be paid by Respondent
- 2 - Requests that each party pays own
- 3 - Requests that Court determine
- 4 - Requests Other _____
- 9 - No mention

Maintenance of a spouse

- 1 - Requests no maintenance
- 2 - Requests temporary
- 3 - Requests permanent
- 4 - Requests temporary and permanent
- 5 - Requests that court determine
- 9 - No mention

Disposition of property rights and debts

- 1 - Requests that Court determine
- 2 - Requests Court order proposed distribution of assets
- 3 - Requests Court order proposed distribution of debts
- 4 - Not applicable, no debts or property

9 - No mention

Counter Petition /Response/Request for Permanent Orders

Did the Respondent or Respondent's attorney file:

- 1 - Response to the Petition....Date ____/____/____
- 2 - Counter Petition ...Date ____/____/____
- 3 - Request for Permanent Orders ...Date ____/____/____
- 4 - None of the above **[go to Discovery below]**

Support of children

- 1 - Respondent in agreement with Petitioner
- 2 - Requests support be set pursuant to guidelines
- 3 - Requests support arrangement other than that proposed by Petitioner
- 4 - Requests that Court determine
- 5 - No mention

Requested:

Decision-making regarding children

- 1 - Respondent in agreement with Petitioner
- 2 - Requests that Court determine
- 3 - Requests other than that proposed by Petitioner
- 4 - No mention

Attorney's fees

- 1 - Agreement with Petitioner
- 2 - Requests that Petitioner pay Respondent's fees
- 3 - Requests that Court determine
- 4 - No mention
- 5 - Each pay own

Residence of the children

- 1 - Respondent in agreement with Petitioner
- 2 - Requests that Court determine
- 3 - Requests other than that proposed by Petitioner
- 4 - No mention

Disposition of property rights and debts

- 1 - Agreement with Petitioner
- 2 - Requests that Court determine
- 3 - Requests other than that proposed by Petitioner
- 4 - No Mention
- 5 - As law instructs

Other: _____

Discovery

Are there financial affidavits in the file for:

- 1 - Mother 3 - Both
- 2 - Father 4 - Neither
- 3 - Both
- 4 - Neither

Is there evidence of full discovery pursuant to 26.2 and 16.2?

- 1 - No 2 - Yes

Is there any evidence of discovery beyond 26.2 and 16.2?

- 1 - No 2 - Yes, requests for Interrogatories, Production, Admission, or other evidence

Temporary Orders

Other than requests made in the Petition, Counter Petition, Response or Request for Permanent Orders,

Did the mother file a motion(s) for Temporary Orders?

- 1 - No
- 2 - Yes filed on ____/____/____ ____/____/____

What did these Motions for Temporary Orders cover? (circle all that apply)

- 1 - Temporary child support
- 2 - Temporary maintenance
- 3 - Temporary arrangements for responsibilities for debts
- 4 - Temporary possession of property
- 5 - Temporary possession of residence
- 6 - Temporary allocation of parental responsibilities
- 7 - Temporary allocation of parenting time
- 8 - Temporary insurance
- 9 - Other _____

Did the father file a motion for Temporary Orders?

- 1 - No
- 2 - Yes filed on ____/____/____ ____/____/____

What did these Motions for Temporary Orders cover? (circle all that apply)

- 1 - Temporary child support
- 2 - Temporary maintenance
- 3 - Temporary arrangements for responsibilities for debts
- 4 - Temporary possession of property
- 5 - Temporary possession of residence
- 6 - Temporary allocation of parental responsibilities
- 7 - Temporary allocation of parenting time
- 8 - Temporary insurance
- 9 - Other _____

Emergency Motions

Did either the Petitioner or Respondent ever file an Emergency Motion?

- 1 - No
- 2 - Yes, Emergency Motion(s) filed on ____/____/____ ____/____/____



What did these Emergency Motions cover? (circle all that apply)

- 1 - Physical custody
- 2 - Parenting time
- 3 - Child support
- 4 - Debts
- 5 - Other _____

Mediation

Were the parties ordered to participate in mediation?

- 1 - No **[go to next page]**
- 2 - Yes, date of the order ____/____/____

Date of first scheduled mediation: ____/____/____

Was this mediation held?

- 1 - Yes **[go to next column]**
- 2 - No, parties failed to appear
- 3 - No, attorneys failed to appear
- 4 - No, other reason

If the mediation was not held, was it rescheduled?

- 1 - No **[go to next page]**
- 2 - Yes



If yes, how many times was it rescheduled? _____

Last date rescheduled or held: ____/____/____

Was mediation ever held?

- 1 - Yes **[go to next column]**
- 2 - No, parties failed to appear
- 3 - No, attorneys failed to appear
- 4 - No, other reason



If mediation was held...

Who provided the mediation?

- 1 - ODR
- 2 - Other

Does it appear that attorneys attended?

- 1 - Mothers's attorney attended
- 2 - Father's attorney attended
- 3 - Both attended
- 4 - Neither attended
- 5 - Cannot determine
- 6 - Both pro se

What was the outcome of mediation?

- 1 - Case completely resolved in mediation
- 2 - Case was mediated and settled after mediation
- 3 - Case was partially resolved in mediation
- 4 - Mediation was held but no issues were resolved
- 5 - Case was returned as inappropriate for mediation
- 6 - Case settled before mediation
- 7 - Parties decided not to mediate
- 8 - Judge reversed order
- 9 - Parties left with proposal and response deadline

Did mediation result in a Memorandum of Understanding?

- 1 - No **[go to next page]**
- 2 - Yes



If there was an MOU, what issues did it cover?

- 1 - Parenting time/residence of children
- 2 - Parental decision making
- 3 - Distribution of assets
- 4 - Distribution of debts
- 5 - Attorney's fees
- 6 - Child Support
- 7 - Spousal maintenance
- 8 - Other (including non-legal issues, e.g., communication, etc.) _____

Were there still issues for the Court to resolve?

- 1 - No
- 2 - Yes, child issues
- 3 - Yes, financial issues

Was the MOU presented to the court?

- 1 - No
- 2 - Yes, presented on ____/____/____



Did Court accept the MOU?

- 1 - No
- 2 - Yes
- 3 - Other _____
- 4 - Yes, but only partial agreement

Court Orders



Temporary Orders

Did the Court issue any temporary orders?

- 1 - No
- 2 - Yes, on ___/___/___ ___/___/___

Indicate all issues that were the subject of Temporary Orders:

- 1 - Parenting time
- 2 - Residence of child
- 3 - Child support
- 4 - Maintenance
- 5 - Property or other financial issues
- 6 - Other _____

Were any temporary orders the result of a hearing (s)?

- 1 - No hearing
- 2 - Hearing(s), total held _____

Is there evidence that the following parties were present (circle all that attended):

- 1 - Mother
- 2 - Mother's attorney
- 3 - Father
- 4 - Father's attorney
- 5 - Other _____



Emergency Orders

Did the Court issue any orders as a result of an Emergency Motion?

- 1 - No
- 2 - Yes, on ___/___/___

Indicate all issues that were the subject of Emergency Orders:

- 1 - Parenting time
- 2 - Residence of child
- 3 - Child support
- 4 - Maintenance
- 5 - Property or other financial issues
- 6 - Other

Were any emergency orders the result of a hearing(s)?

- 1 - No hearing
- 2 - Hearing(s), Total number _____

Is there evidence that the following parties were present (circle all that attended):

- 1 - Mother
- 2 - Mother's attorney
- 3 - Father
- 4 - Father's attorney
- 5 - Other _____

Custody Study

Did the Court order a custody study/evaluation?

- 1 - No, no custody study
- 2 - Not court ordered, but a custody study was completed

3 - Yes, ordered on
____/____/____



Permanent Orders

Did the Court issue permanent orders?

- 1 - No
- 2 - Yes, on ____/____/____ ____/____/____
- 3 - All issues resolved and approved by court on ____/____/____

Is there evidence that the parties presented a stipulation to the Court on the following?

	No	Yes	Cannot determine
Parenting time	1	2	3
Residence of children	1	2	3
Child support	1	2	3
Maintenance	1	2	3
Division of assets	1	2	3
Division of debts	1	2	4
Other _____	1	2	3

Were any of these permanent orders the result of a hearing?

- 1 - No hearing
- 2 - Hearing(s), total _____

Is there evidence that the following parties were present (circle all that attended):

- 1 - Mother
- 2 - Mother's attorney
- 3 - Father
- 4 - Father's attorney
- 5 - Other _____

Any indication of the length of the Permanent Order Hearings:

Minute Orders report hearing was scheduled for _____ hrs.

Other indication _____

Check here if no indication

Other Motions

Indicate type and date of all additional motions:

Parenting time and residence of child:	Number _____	....	Dates	____/____/____	____/____/____
Child support	Number _____	....	Dates	____/____/____	____/____/____
Maintenance	Number _____	....	Dates	____/____/____	____/____/____
Assets/property	Number _____	....	Dates	____/____/____	____/____/____
Debts	Number _____	....	Dates	____/____/____	____/____/____
Other	Number _____	....	Dates	____/____/____	____/____/____

Summary

Estimated number of Motions: _____

Estimated total number of Court Hearings: _____

Total number of Continuances to Hearings: _____ Number requested by parties: _____

Number due to court
rescheduling: _____

Post-Judgment Activity

Have any motions been filed post-decree?
1 - No
2 - Yes, Total number: _____

If yes, indicate the dates of subsequent filings and the action on them:

Filing 1.

Date: ____/____/____

Who filed?

- 1 - Mother
- 2 - Father

Issue(s):

- 1 - Contempt over child support
- 2 - Contempt over parenting time, requests for enforcement
- 3 - Other contempt _____
- 4 - Request for child support modification due to change in circumstances
- 5 - Request for changes in parenting time or allocation of parental responsibilities due to change in circumstances (age of child, emancipation, move, etc)
- 6 - Request for parental allocation of responsibilities or parenting time due to conflicts and problems with order
- 7 - Other _____

Total motions related to the filing: ____

Total hearings related to the filing(s): ____

Current status of the filing:

- 1 - Pending
- 2 - Resolved on ____/____/____

Filing 2.

Date: ____/____/____

Who filed?

- 1 - Mother
- 2 - Father

Issue(s):

- 1 - Contempt over child support
- 2 - Contempt over parenting time, requests for enforcement
- 3 - Other contempt _____
- 4 - Request for child support modification due to change in circumstances
- 5 - Request for changes in parenting time or allocation of parental responsibilities due to change in circumstances (age of child, emancipation, move, etc)
- 6 - Request for parental allocation of responsibilities or parenting time due to conflicts and problems with order
- 7 - Other _____

Total motions related to the filing: ____

Total hearings related to the filing(s): ____

Current status of the filing:

- 1 - Pending
- 2 - Resolved on ____/____/____

Use the space below to describe anything else about the case that you feel we should know:



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