Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution

Effectiveness of Mediator Strategies in Custody Mediation

Maryland court rules require judges to refer all contested child custody cases to attend mediation, except in situations of abuse. Statistical analysis of actual mediations revealed four groups of mediator strategies for study. **Mediators often use more than one set of strategies: the groupings described are strategies commonly used together. These are not labels for types of mediators.**

Reflecting Strategies:
- Reflecting emotions & interests
- Clarifying topics to work on
- Reflecting what participants say (LT)
- Open-ended questions (LT)

Directing Strategies:
- Introducing & enforcing guidelines
- Explaining one participant to another
- Advocating for one participant's ideas

Eliciting Strategies:
- Asking participants to think of solutions
- Summarizing solutions
- Asking how solutions might work for them

Telling Strategies:
- Sharing opinions
- Offering solutions
- Assessing legal options
- Introducing topics

Reflect

The greater percentage of reflecting strategies used, the more likely it is that participants will:
- Say the other person listened & understood
- Become more able to work together
- Develop more personalized agreements

The less likely it is they will:
- Dismiss the other's perspective
- Reach an agreement

Long Term Results (LT)
Six months after mediation, the greater percentage of reflective strategies used, the more likely it is that participants will:
- Become more able to work together
- Prioritize their children's needs and consider the other parent's perspective

Direct

The greater percentage of directing strategies used, the less likely it is that participants will:
- Report the mediator listened to them and respected them

Long Term Results (LT)
Twelve months after the mediation, the greater percentage of directive strategies used, the more likely it is that participants will :
- Return to court and file an adversarial motion and the more adversarial motions they are likely to file

Elicit

The greater percentage of eliciting strategies used, the more likely it is that participants will:
- Reach an agreement
- Say the other person listened & understood
- Become clearer about their desires
- Say the underlying issues came out
- Become more able to work together

Tell

This strategy was not statistically significant in any positive or negative outcomes.

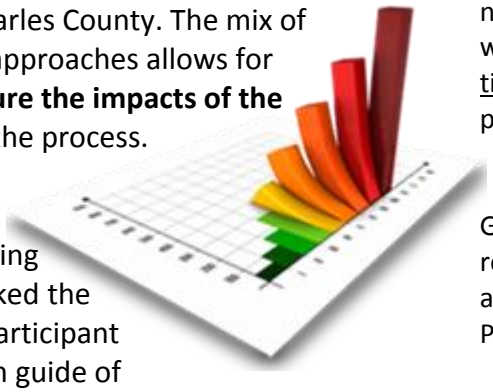
When Reflecting and Eliciting are combined:

Participants are more likely to: report a positive shift in their ability to work together, say that the other person listened and understands them better, indicate that the underlying issues came out, and **reach a personalized agreement**.

Full report: http://www.mdcourts.gov/courtoperations/adrprojects.html

Data Collection

Data for this study were collected in the Family Court mediation programs in Anne Arundel County, Baltimore County, and Charles County. The mix of programs and mediation approaches allows for enough diversity to **measure the impacts of the different component**s of the process.



Trained researchers observed 135 cases including 270 participants, and tracked the mediator strategies and participant behaviors using a common guide of 35 possible behaviors.

Many survey questions were asked of participants both before and after the mediation, to measure their change in attitude. Researchers also reviewed each court case file to examine the final parenting agreement, consent order or court decree relating to custody.

The Maryland Judiciary has a long-term commitment to building ADR programs in Maryland. The Administrative Office of the Courts commissioned this study to be conducted by independent researchers in its ongoing effort to provide the highest quality service to Marylanders.

Additional Findings

In addition, this research found that participants who reported that they found the location of the mediation to be convenient were more likely to reach an agreement. This finding underlines the importance of holding mediation sessions in convenient locations.

Impact of Caucusing

The impact of caucusing is interesting in that it leads to positive reports about the mediator but negative outcomes for participants' ability to work together. The greater the percentage of time spent in caucus, the more likely the participants were to report the mediator respected them and did not take sides.

Greater percentage of time in caucus also resulted in the following changes in participants attitudes from *before to after the mediation*. Participants were

- -More hopeless about the situation
- -Less likely to believe they could work with the other participant
- -Less likely to believe there are a range of options for resolution

What it Means

In family mediation, mediators can engage with parents in ways that support parents making their own decisions, by seeking to understand parents' values and by asking them about their ideas for possible outcomes. Alternatively, mediators can engage ways that assume parents need the mediators' ideas and suggestions.

Our research found that when mediators seek to understand parents and elicit their ideas, parents believe they can work together and make decisions for their family. The mediator strategies of eliciting parents' ideas are also the only strategies that were more likely to reach an agreement and consent order.

This research, commissioned by the **Maryland Judiciary**, is part of its Statewide Evaluation of Court ADR. The project was led by the Administrative Office of the Courts, and funded in part by a grant from the State Justice Institute. Salisbury University and the University of Maryland worked on the statewide study under memoranda of understanding with AOC. The research for this portion of the study was conducted by the Community Mediation Maryland, and the Bosserman Center for Conflict Resolution at Salisbury University. Lorig Charkoudian, PhD, served as lead researcher. Additional information about the research methods, data collection tools, and statistical analyses, and the full study can be found in the full report at: http://www.mdcourts.gov/courtoperations/adrprojects.html

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