

Interdisciplinary Settlement Conferences: Utilizing Volunteer Mental Health Professionals and Family Law Attorneys to Settle Challenging Cases

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Family Courts face tremendous challenges in their attempts to deal with high conflict and complex custody cases. Though the absolute numbers of these cases may comprise a relatively small percentage of matters heard by the court, families in protracted conflict consume a disproportionate amount of court time. These families return to court with great frequency, often demanding or requiring custody trials and hearings. Recognizing this phenomenon, and seeing the need to find alternative means of helping these families come to better and more sustaining solutions, Judge Verna Adams and Steven Sulmeyer, J.D., Ph.D. initiated an innovative pilot program in Marin County, California in 2007. The program, which has since been formalized by the court, involves inviting a seasoned mental health professional (MHP) with expertise in working with high conflict divorcing families and an experienced family law attorney, to participate in a judicial settlement conference prior to a scheduled trial. This program has been very successful in terms of achieving excellent settlement rates, facilitating a creative interdisciplinary approach to settlement and providing gratifying experiences for the professionals who have donated their time.

In Marin County, divorcing parents attend mandatory county mediation. Should they fail to come to an agreement regarding custody issues, the mediator will offer a set of recommendations. Other families may also opt for a private child custody evaluation. When parents do not agree to the recommendations, there is a mandatory settlement conference facilitated by a judicial officer, prior to a custody hearing. The judicial officer who presides over the settlement conference may or may not be the trial judge. Historically, the bench officer would work with the attorneys, the parties, and sometimes the custody evaluator, to see if settlement could be achieved. If a settlement could not be reached, the case would then be set for trial.

The need for a fresh approach: From the vantage point of the bench, settlement efforts have become more challenging in recent years. Perhaps in part due to changing economic circumstances, the court has seen more complex cases such as relocation cases and those involving serious allegations, and far more cases in which at least one parent is self-represented. In 2007, approximately two-thirds of the cases before the bench included at least one party who was *pro per*. It was Judge Adams' vision that having the input of a neutral and experienced MHP and a skilled family law attorney could be a way to provide high level support both to the judicial officer and the families, even in some of the most

contentious and complex cases. These professionals willingly donate, on average of once a quarter, a half day of their time, and the collaboration with the court has proven to be highly successful.

How the program works: Most frequently, the judge determines whether a case would benefit from panelists participating in the settlement conference. There is always one MHP and one attorney panelist. Clients, through their attorneys, may also request such a settlement conference, but ultimately the judicial officer's judgment prevails. The selected cases tend to be either highly complex matters or may include serious mental health issues such as concerns about child abuse, domestic violence, substance abuse, very young children, children with special needs or mentally ill parents. The Court maintains a list of MHP and attorney panelists who have met qualifications established by the court. A call goes out to potential panel members to determine availability and ensure that there is no conflict with the parents or their attorneys. It should be kept in mind that the following individuals will be present at the Interdisciplinary Settlement Conference: the judicial officer, the parties, their attorneys (if they have one) and the panelists. The panelists are appointed by the court as §730 experts, which provides them with quasi-judicial immunity. Prior to the actual conference, the panelists are provided with reports, pleadings or other material selected by the judicial officer. Prior to the conference itself, the judicial officer meets with the panelists to discuss their thoughts about the materials reviewed and to plan the best approach for working with the family. The approach may be influenced by a variety of factors such as the judge's prior experience with the parties in court, whether there are attorneys involved, what issues require resolution, and whether one parent is having difficulty integrating the findings of an evaluation or mediator's report.

ISC process: While the actual conference can take many forms, some structures have evolved. The conference starts in the courtroom or in a conference room, frequently with the judicial officer introducing the process and the participants. After parents are given the opportunity to air their perspective, the judges often allow the panelists to take the lead in terms of working with the parents and their attorneys. The actual approach with the parents can be highly tailored to the issues in the case and may include parent education, mediation or brainstorming. For example, the authors of this article, both MHPs, have offered impromptu education on overnight visitation with young children, the impact of conflict on children, social and emotional needs of children at different developmental stages, and a myriad of other topics that commonly arise following divorce. Mediation efforts may include looking for

compromises, creating steps towards an eventual schedule or looking for ways to monitor concerns about a parent's functioning. The attorney panelist may provide feedback about how the court would likely view the ongoing disputes and proposals offered by the parties. It is not unusual for the panelists to meet with one client and his or her attorney, and then talk with the other, in a kind of "shuttle diplomacy." At other times, the panelists might split up, with the MHP talking with one side and the attorney conferring with the other. Judicial officers vary in terms of how much they participate in this process. Some are in on virtually all of the discussions, while others find it helpful to step out of the room, believing this can facilitate a more open and relaxed atmosphere. It is important to remember that all of this is taking place "off the record." Parents are encouraged to be creative, open-minded and to explore options, while they are also supported and structured by the panelists. If the parties reach settlement, the agreements are then read into the court record. In some cases, partial settlement may occur, which reduces the issues that will need to be resolved at trial. Sometimes a temporary agreement is made with a plan to reconvene in several months, to determine whether the agreement is working. In these cases the panelists typically are willing to participate in the follow-up conference.

Program outcomes: Since its inception, the ISC program has been specifically aimed at high conflict cases. Though relatively large geographically, Marin County has a population of about 250,000 people. In 2007, 543 cases were referred to Family Court Services for mediation. This was about the same in 2008. During that year, 19 high conflict cases were referred to the ISC program. One case settled prior to the conference, 16 cases settled at the ISC conference and two cases were set for contested hearings. Both of these cases settled prior to trial. Thus the Court believes that this process has been very successful from several vantage points. Not only does it save valuable court resources, but it helps parents make sound decisions about their own children. Parents who have been actively involved in settlement efforts are more likely to accept and follow through on the agreements they work hard to achieve.

Thus far, the ISC program is benefitting a range of families. Lower income families are able to have access to the input of experienced attorneys and MHPs they might otherwise not be able to afford. All families experience a team of professionals working in collaboration, and putting children's needs in the forefront. The judicial officers voice the advantages of having immediate access to experts who have no stake in the outcome but a wealth of experience and knowledge. For those of us who have participated in the program, it has been a deeply rewarding and gratifying experience. It requires thinking on one's feet, working quickly and efficiently, and using both clinical and forensic skills.

This is a program that could be adopted in other jurisdictions. This year, for example, some members of Family

Court in San Francisco have begun a similar program. Judge Verna Adams has taken the lead in our county and is now in the process of establishing a similar program for selected civil cases. We are pleased to say that she has found a willing and able group of experienced panelists who have found that participating in the program has both benefitted parents and children and has further enriched their own professional lives.

President's Message

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The conference will give us a chance to listen and learn from one another so we can become more effective and better informed in the work that we do. It is also my hope that the conference will stimulate policy makers and researchers to address the topic of alienation. The objective is always to better assist the children and families we serve.

I am excited about the many opportunities the 47th Annual Conference presents to all of us. I am looking forward to it and to seeing you in Denver.

It is with sincere regret that we accepted Janet Johnston's decision to resign as Associate Editor of the Family Court Review. As with everything Janet Johnston does, her service to FCR has been nothing short of outstanding and her shoes will be difficult to fill. Thank you, Janet, for your years of service - and then for so generously donating your honorarium to the AFCC Scholarship Fund.

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