

Party Names: Peter Ed [redacted] (413-248-1888); T [redacted] D [redacted] (413-251-1888)

Date and Time of Scheduled Mediation: Wednesday, April 10th, 1:15-3:15

Date of Intake: March 27, 2019

WNEU Student completing intake summary: E [redacted] T [redacted]

General case context: Never-Married Parents

Parent Mediation Program Eligible: YES

Summary of Intake:

SAMPLE
Intake Summary
P.E. + T.D.

Never married parents have one child, A [redacted], age 2. Father wants joint-physical custody and joint-legal custody. Mom wants to keep full physical custody, she wants the father to continue have presence in their daughter life and she wants to finalize an agreement.

~~T [redacted]~~ Current parenting time schedule is that daughter lives full time with her. Mom takes care of morning time and drops daughter off to daycare at 9:00am. Dad picks up daughter from daycare around 4:00. Dad then has daughter until 8:30-9:00, until Mom gets off from work. Dad has daughter basically every week day from 4-8:30/9:00; then every other weekend, Friday 7:00-Sunday 8:30. Mom works Sunday-Thursday. T [redacted] is focused on her career and giving her daughter better opportunities. She feels eventually they will have to move out of Springfield to do this. Because of this, does not want to grant father joint physical custody because she does not want to be prevented from moving if she needs to, she needs flexibility. She feels like she has not given P [redacted] any reason to doubt his parental rights. She has never taken their daughter away from him. T [redacted] wishes to maintain their current arrangement and wants to keep P [redacted] involved and be an active parent no matter their future situations. They currently have a joint-legal custody agreement between themselves, it is not court ordered. They now communicate with each other about medical issues and P [redacted] is involved with daycare. T [redacted] expresses hesitation about shared physical custody further by saying that daughter is too young to be going back and forth. They currently have an out-of-court child support agreement. P [redacted] gives a weekly check to T [redacted]. This helps with daycare expenses. Any extra money leftover is for their daughter. T [redacted] says the communication between them at the current moment is okay.

P [redacted] Wishes to keep the current agreement but just wants it in writing in case relationship between him and mother changes. P [redacted] wishes to have shared joint and physical custody. Very important for him to be a present parent in his daughter's life. R [redacted] has expressed that he is just concerned about his parental rights and just wants it in writing. There has never been any co-parenting issue between them. P [redacted] says they agree with each other pretty well. P [redacted] currently is not considered with court paperwork as he was when he filed because they were in a different place then, then they are now. Believes that T [redacted] also agrees with him being granted shared physical and legal custody. No doubt that he is the biological father. Agrees with the current child support agreement (100/week) and does not want the court to get involved. Believes they can work on it themselves. Overall, P [redacted] wishes to share legal/physical custody and to get it in writing to be official.

1. Name of Parties: ~~Patricia Edwards~~, ~~Tamara Dineen~~
2. Name of student completing summary: ~~Kyle Chapman~~
3. Date/time/total length of session: April 10, 2019 at 1:45 pm
Started at 1:45 pm
Talked about parenting until 2:45 pm
Ended at 3:00 pm

SAMPLE
SESSION
SUMMARY
P.E. + T.D.

4. Amount of time spent on PMP eligible issues (any issue that relates to or could affect parenting time: i.e. parenting schedule, parenting concerns, transportation of child who cares, for child, communication between parents etc.) rounded to the nearest quarter hour.
 - 1.00 (one hour)
5. Amount of time spent on non-pmp issues, rounded to the nearest quarter hour (issues such as finances, child support-if not integrally connected to parenting schedule-, division of assets and debts, grandparent rights, etc.)
 - 0.25 (fifteen minutes)

Note: total times listed in #4 and #5 should add up to total session time. Introductions, reviewing the Agreement to Mediate, writing agreement, should all be incorporated into the pmp and non pmp-categories

6. Agreement reached? Yes No If yes, was it a Full, Partial or Temporary Agreement?
 - Yes, Full agreement was reached

7. Description of Session:

Parenting schedule:

- ~~Tamara~~ will drop the minor child off at day care (Monday-Friday) around 8:30 am
 - ~~Patricia~~ will pick the minor child up at 4:30 pm and keep her until 8:30 pm when ~~Tamara~~ picks up the minor child
- The parties will alternate weekends
 - On ~~Tamara~~'s weekends she will pick up the minor child from ~~Patricia~~ at 8:30 pm and keep the child until Monday at 8:30 am when the minor child is dropped off at day care

- On P█████'s weekends he will pick up the minor child from day care at 4:30 pm and keep the minor child until 8:30 pm on Sunday
- The parties agree that they will communicate to make arrangements about how and where the minor child will spend holidays

Custody:

- The parties agree they will have shared legal custody and T█████ have primary physical custody of the minor child

Child Support:

- P█████ will pay T█████ child support in the amount of \$100 per week by suspended wage assignment
 - This a deviation from the guidelines but the parties believe this is a fair amount because P█████ assists in paying extraordinary expenses

Health care:

- P█████ will continue to provide the minor child with health care insurance so long as he is able to do so through his place of employment

Income tax credits/ deductions:

- The parties agree that P█████ will claim the minor child on his taxes on even years and T█████ will claim the minor child in odd years

WNEU Mediation Clinic Intake Summary Form

Party names:

Date Scheduled Mediation:

Time of Scheduled Mediation:

Date of Intake:

WNEU Student completing intake summary:

General case context (underline/highlight one): Never-Married Parents, Post-Divorce, Divorce, Other:

Parent Mediation program Eligible? YES NO

Summary of Intake:

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WNEU Mediation Clinic
Mediation Session Summary Notes

1. Name of Parties (and attorneys attending, if any):
2. Name of student completing summary:
3. Date ; time; total length of session: (i.e. 1/23/18; 9 – 11 am; 2 hours)
4. Amount of time spent on PMP eligible issues (any issue that relates to or could affect parenting time: i.e parenting schedule, parenting concerns, transportation of child, who cares for child, communication between parents, etc) rounded to the nearest quarter hour.
(i.e. 1.25 hours)
5. Amount of time spent on non-pmp issues, rounded to the nearest quarter hour (issues such as finances, child support – if not integrally connected to parenting schedule -, division of assets and debts, grandparent rights, etc)
(i.e. .75 hours)

Note: total times listed in # 4 and #5 should add up to total session time. Introductions, reviewing the Agreement To Mediate, writing agreement, should all be incorporated into the pmp and non-pmp categories)

6. Agreement reached? Yes No
If yes, was it a Full, Partial, or Temporary Agreement (circle or underline one)?
7. Description of Session:



326 Deerfield St
Greenfield, MA 01301-3267
413-774-7469

fax: 413-774-7264
email: mediation@communityaction.us
www.mediationandtraining.org

A Program of Community Action Pioneer Valley

Date

Name

Address

Dear ,

You are signed up for our On-Site Mediation Program being conducted through Western New England Law School Family Mediation Clinic ("The Clinic") at the Hampden Probate & Family Court on **Wednesday**, , from . In preparation for that session, I am sending you this packet of information to review. **I will also be contacting you by phone on Wednesday**, to explain the process of mediation, answer any questions you may have, and to hear from you about what issues you hope to address at this session. **If you are not available to receive this call on , or have a particular time that day when you would be available, please contact me immediately at (413)475-1502.**

The packet includes information about mediation, a description of The Clinic, and a copy of the Agreement To Mediate form you will be asked to sign at the beginning of the session

Please take some time to review these materials and please feel free to contact me if you have any questions or concerns. I can be reached at (413) 475-1502, or (413) 774-7469, extension 502, or ewilliams@communityaction.us. I have included my business card with the enclosed materials.

Your session is scheduled for **Wednesday**, at the Hampden Probate & Family Court. Your mediator's name is Oran Kaufman.

Sincerely,

Betsy Williams
Mediation Program Coordinator



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TMTC Divorce & Family Mediation Program: Party Evaluation Survey-1917

Will you help this program make sure that its mediation services continue to be high quality?
Your answers to the survey questions below are important to achieving this goal of maintaining high quality services. Your participation in this survey is voluntary and anonymous. Thank you for participating.

Case # _____ Date: _____ Mediator(s) name(s) _____

What was the outcome of the mediation session?

Full agreement Temporary agreement Partial agreement No agreement

1. How did you hear about this mediation program? Check as many as apply.

recommended by a judge information shared by court personnel
 ordered by a judge referred by family or friend
 recommended by court personnel internet
 other (please explain): _____

2. Prior to the mediation, did you receive clear information about the mediation program and the mediation process? Yes No

3. What is your current personal income? (Optional) Please check the most appropriate category.

Less than \$10,000 \$10,000 to \$19,000 \$20,000 to \$29,000 \$30,000 to \$39,000
 \$40,000 to \$49,000 \$50,000 to \$59,000 \$60,000 to \$65,000 \$65,000 or more

4. What is your race/ethnicity? (Optional). Please check as many as apply.

American Indian or Alaska Native White
 Asian Hispanic/Latino/Spanish
 Black or African American Native Hawaiian or other Pacific Islander
 Other race/ethnicity or combination of races/ethnicities

5. Why did you choose mediation? Please check as many as apply.

it was a better option than court it was free
 it was easily accessible I have heard positive things about mediation
 it was locally accessible I have previous experience with mediation
 other (please explain) _____

6. Was the mediation held at a time / location that was convenient for you? Yes No

7. How would you describe the level of conflict between you and the other party during this session?

Please check one answer.

High conflict Moderate conflict Low conflict No conflict

8. Did mediation help you achieve any of the following? Please check all that apply.

Improved my ability to discuss challenging issues with the other party
 Better day to day communication between me and other party
 Improved my understanding of the issues
 Reduced conflict between me and the other party
 Improved my skills in resolving conflict
 Increased my awareness of community services
 Reduced court involvement
 Helped improve my financial situation
 Other (please specify) _____

9. Did the mediator(s) help you in any of the following ways? Please check as many as apply.

Listened well to my needs and concerns Helped identify and clarify relevant issues
 Allowed me to make my own choices Helped write up the agreement
 Was fair and unbiased Helped us generate and consider options

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10. Please indicate how much progress was made through mediation in resolving the issues listed below. Please check all those that apply to your situation.

Issues	Fully resolved all issues	Substantial progress on resolving issues	Some progress on some of the issues	No progress	Not applicable
To produce an agreement or settlement for an uncontested divorce					
Alimony (spousal support)					
Division of assets/ property					
Other (please specify) _____					

11. If children are involved in the situation that brought you to mediation, please indicate how much progress was made through mediation in resolving the child-related issues listed below. Please check all those that apply to your situation. If children are not involved, please continue to next question.

Issues	Fully resolved all issues	Substantial progress on resolving issues	Some progress on some of the issues	No progress	Not applicable
Custody of child					
Child support					
Visitation					
Assignment of parent responsibilities					
Develop/revise a parenting plan					
Other (please specify) _____					

12. Were you satisfied with the mediation services? ___ Yes ___ No

13. Would you use this Program again? ___ Yes ___ No

14. Would you recommend this Program to others? ___ Yes ___ No

15. Please share any additional thoughts about the mediation process, mediator(s) and/or other suggestions for improving the program. _____

Thank you for your cooperation!

SAMPLE AGREEMENT: P.E. + T.D.

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

Probate & Family Court

Docket No. HD [REDACTED]

P [REDACTED] E [REDACTED],
Petitioner

Vs.

T [REDACTED] D [REDACTED],
Petitioner

STIPULATION OF THE PARTIES FOR JUDGMENT

Now come the parties and agree to the following

- A. Legal Custody: P [REDACTED] and T [REDACTED] shall have joint legal custody of the minor child. As joint legal custodians P [REDACTED] and T [REDACTED] shall equally share the rights and responsibilities for making all major decisions concerning the child's health, education, welfare and upbringing, including counseling decisions, travel and extracurricular activities. Prior to making any decisions, P [REDACTED] and T [REDACTED] shall confer with each other and shall be guided primarily by consideration of the child's best interests.
- B. Physical Custody: T [REDACTED] shall have primary physical custody of the minor child. It is their intent to maximize the amount of time each parent spends with their daughter taking into consideration their schedules and their daughter's schedule. P [REDACTED] and T [REDACTED] agree on the parenting schedule set forth below.
- C. Parenting Plan: The parties agree that the minor child will live primarily with T [REDACTED]. From Monday through Thursday, T [REDACTED] will drop the minor child off at day care at 9:00 AM and P [REDACTED] will pick up the child from day care at 4:30 PM and will keep the child until 8:30 PM when he will drop the child off with T [REDACTED]. Every other weekend P [REDACTED] will have the minor child

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from 7:00 PM on Friday until Sunday at 9:00 PM when he will drop the child off at T's. On alternate weekends, the minor child will be with T.

In arriving at a parenting plan, P and T recognize that their parenting plan will be an evolving process based on ongoing dialogue between them taking into consideration their child's growth and development and their own respective situations.

D. Holidays/Vacations: P and T believe that they can make arrangements for time spent with their child during holidays and vacations without having a specific schedule. They recognize that if in the future they are not able to agree on such matters, they might need to modify their agreement to set forth a specific schedule.

E. Parental Cooperation:

1. P and T shall consult together from time to time, (by correspondence or by telephone, if a personal conference is impracticable,) in an effort to mutually agree on significant matters pertaining to their child's health, welfare, education, and upbringing, with a view to arriving at a mutually harmonious policy. The primary consideration should be the child's welfare rather than the desires or convenience of either parent. Neither party shall attempt, directly or indirectly, to prejudice the child against the other parent or members of his or her family but, on the contrary, shall at all times encourage and foster in their child respect and affection for both parents. To the extent possible, the parties shall consult with each other verbally concerning major issues of the child and shall attempt to resolve those issues harmoniously. Such consultation shall occur directly between the two parents, and the child shall not be used as an intermediary. Each party shall respond in a timely manner to issues raised by the other parent. The parties acknowledge their mutual desire to avoid the possible stress and conflict resulting from Court procedures in favor of counseled, mediated results. Therefore, if verbal communication fails to

resolve any conflict concerning the child, the parties shall submit the matter to mediation. In the event of an emergency or to enforce the terms of this Agreement, the parties are excused from the provisions of this paragraph as they relate to mediation.

2. The parties shall give each other timely notice of all school events and activities involving the minor child. The parties shall, to the extent possible, arrange for notices of all events and activities and for notices of school progress and report cards to be sent directly to both parties. If the school will only send a notice to one party, that party shall have the obligation of forwarding a copy of any such notice to the other parent within 48 hours of receipt of such notice or report. Each party shall have the right to meet with the minor child's teachers for conferences.

3. Each parent shall have all those rights generally afforded a custodial parent to have direct access to professional persons dealing with the child, to review medical and dental records of the child, to consult with the individuals who provide medical, psychological, or dental services to the child, to review educational records of the child, to consult with those providing educational services for the child, and to act as custodial parent to give authorization for the providing of emergency medical treatment for the child.

F. Child Support: Commencing on April 12, 2019 and continuing until the child is emancipated, P [REDACTED] will pay child support to T [REDACTED] in the amount of \$100.0 per week by suspended wage assignment. This is a deviation from the Massachusetts Child Support Guidelines, but the parties agree that because of P [REDACTED]'s financial assistance with other aspects of the minor child's life including uninsured medical expenses, the parties agree that this is a fair amount.

G. Tax Dependency/Exemptions: The parties agree that P [REDACTED] will claim the minor child as a tax dependent/exemption and associated tax credits on even years and T [REDACTED] will claim the minor child on odd years.

H. Healthcare Insurance: P has agreed to continue to carry the minor child on his health insurance plan provided by his employer for as long as it is available to him through his employment and under federal and state law. If there is a change in availability in the future, the parties agree to discuss available plans that best meet the child's needs.

I. Emancipation: For the purposes of this Agreement, A S-S shall become emancipated upon the first to happen of the following:

1. Attaining the age of eighteen (18) years or graduation from high school, whichever occurs last, however, emancipation shall be delayed if she attends college/university/trade school and is still dependent on her parents for support. In that event, emancipation shall occur when she reaches the age of 23 years old or graduates from a college/university/trade school, whichever occurs first.
2. The death of the child;
3. The marriage of the child;
4. The child becoming independent of parental support (provided that neither part-time employment while pursuing an education nor full-time employment during school vacations shall be deemed emancipation);
5. The child entering full-time military service, provided that emancipation shall be deemed to terminate upon discharge from such service, and, thereafter, emancipation shall be determined in accordance with other applicable provisions of this paragraph;
6. The child obtaining permanent full-time employment

WITNESS our hands and seals this 10th day of April, 2019.

Date:

P [REDACTED] E [REDACTED]

Date:

T [REDACTED] D [REDACTED]

Statistics for TMTC 2016 Hampden Probate & Family Court Statistics

Fifty-eight cases were referred to TMTC mediation in 2016.

Ninety percent of the referred cases (or 52 of 58 cases) proceeded to mediation. One case out of the 52 was open/pending during 2016.

Parties' feedback about the mediation process and the impact of the process was obtained in surveys completed by 65 parties, representing 71% of the cases that were mediated (36 out of 51 mediated cases).

Over 3/4 (or 76%) of 65 responding parties self-identified as white (29 or 45%) or Hispanic/Latino/Spanish (20 or 31%). The remaining parties were either American Indian/Alaska Native (5%), Asian (9%), Black/African American (8%), or other (7%).

A majority of responding parties were lower income – 59% of 61 responding parties had annual incomes below \$30,000. A plurality or 23% of the 61 parties earned less than \$10,000 per year. Seven percent were higher income, with incomes of \$60,000 or more.

The vast majority or 77% of 65 surveyed parties heard about the mediation program from judges: mediation was ordered by a judge for 48% of parties while judges recommended the program to 29% of parties.

Among the reasons that motivated 65 responding parties to participate in mediation, the most popular – for 32% – was their view of mediation as preferable to going to court. Mediation's positive reputation motivated 23% of parties, and 17% were attracted by the free mediation services.

Before mediation, 92% of 64 responding parties received clear information about the program and the mediation process. Ninety-six percent of 47 responding parties found the services provided by TMTC staff/coordinator were excellent (60%) or good (36%). No one considered the service poor.

According to 46 responding parties, roughly equal numbers of mediation sessions were characterized by high (14 sessions or 30%), moderate (15 or 33%), or low (14 or 30%) levels of conflict. TMTC described 24 (47% of 51) mediated cases as high conflict, 27 (53%) as intermediate conflict, and 6 (12%) as low conflict.

For a majority of surveyed parties, mediation led to positive outcomes in reaching agreements, interacting with the other parent, and reducing court involvement.

According to 33 responding parties, two-thirds reached an agreement, either in full (12 or 36%) or in part (10 or 30%). Agreements about parenting plans were also achieved by a majority of surveyed parties: parenting plans were developed by 69% of 45 respondents (in full for 27% and in part for 42%) and revised for 54% of 39 respondents (fully for 26% and partially for 28%).

As for verbal interactions between parties, a majority of surveyed parties considered that mediation helped them make progress in improving communication between each other (full progress for 15% and partial progress for 51% of 47 responding parties), with increasing civility between themselves (fully for 17% and partially for 40% of 47 respondents), and with better expression of parenting expectations to the other parent (fully for 26% and partially for 30% of 46 respondents).

The conflict situation between the parties was improved to some extent for most mediation participants. Progress in reducing conflict between the parties was achieved by 65% of 48 respondents (in full for 21% and in part for 44%). Improved skill in resolving conflict between parties was advanced 65% of 48 responding parties (fully for 17% and partially for 48%).

Sixty percent of 47 responding parties saw a reduction in court involvement. Full progress in reducing court involvement was achieved for 28%. Another 32% of these parties indicated that partial progress was made in reducing court involvement.

Most of 62 surveyed parties found mediators were helpful because they listened to their needs and concerns (73%), were fair and unbiased (71%), and assisted with identifying and clarifying issues (63%), with writing up the agreement (58%) and with generating ideas and considering options (56%). A small minority of twenty-nine percent indicated that mediators helped them obtain more control over decision-making.

Responding parties were nearly unanimous in their approval of the program. Ninety-one percent of 65 respondents would use the program again and 97% of 64 respondents would recommend the program to others.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

HAMPDEN DIVISION

DOCKET NO. [REDACTED]

[REDACTED], Plaintiff

v.

[REDACTED] Defendant

ORDER TO ATTEND MEDIATION

Your case has been assigned to a mandatory free two-hour mediation session on February 27, 2019 at 11:15 a.m. at the Probate and Family Court located at 50 State St., Springfield, Massachusetts. This free mediation session is part of the Western New England Law School Family Mediation Clinic (see enclosed second page for more details). Please check in on the second floor across from the elevators. The mediator will meet you there at your scheduled time.

Mediation provides an opportunity for people in a dispute to meet face to face to discuss their issues with the help of a trained, neutral mediator. The mediator does not take sides or judge who is right or wrong, but helps to make sure each person has a chance to be heard and understood. The mediator will help you consider options and consider what information you might still need in order to reach an agreement. If you are able to reach agreement, the mediator can help you draft a written agreement which may be presented to the Court.

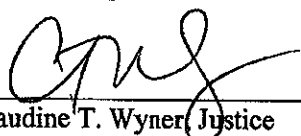
If you reach agreement at your mediation session, you *may* be able to see a judge the same day. If you do not reach an agreement, the Court will schedule a pre-trial conference in your case. There is no penalty for failing to reach an agreement.

You will receive some additional information in the mail, and will be contacted by a mediator by phone before the mediation on February 27, 2019. If this date and/or time does not work for you, please contact Betsy Williams at 413-774-7469. If your address, email or phone number have changed, or if you have any questions about this order, please contact Assistant Judicial Case Manager Jocelyn Axelson at (413) 748-7749 or Assistant Judicial Case Manager Kristina Bordieri at (413) 748-7786.

IT IS ORDERED THAT:

All parties (and their counsel if they so choose) and any court-appointed attorneys shall attend this mediation session. Both parties shall complete the enclosed financial statement and bring it with them on the day of mediation. Failure of any counsel or party to appear **on time** at the session, or failure to comply with any of the provisions of this Order, may result in the imposition of such sanctions as the Court deems appropriate, including dismissal of the action or ordering the case to immediate trial.

Dated: February 5, 2019



Claudine T. Wyner, Justice

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The Western New England Law School Family Mediation Clinic

The Western New England Law School Family Mediation Clinic is a joint venture between Western New England Law School, the Hampden Probate and Family Court and The Mediation & Training Collaborative (TMTC). Your mediation will be conducted by a mediation team composed of an experienced TMTC divorce & family mediator and a law student. The lead mediator has over 20 years experience mediating, is an approved court-connected mediator pursuant to the laws established by the Massachusetts Supreme Judicial Court and is on the approved provider list with TMTC. The students who will be involved in your mediation have taken a semester long family mediation class and will be supervised by the lead mediator.

Prior to your mediation at the court, you will receive in the mail some informational materials about mediation from TMTC. The TMTC mediation coordinator will also be contacting you by phone to tell you more about the mediation process, answer your questions, and hear more about the issues that have brought you to court. A law student may be participating in that call as well. **Please note the day/time of the call indicated in the order you received from the court so that you can be sure to be available for this important step.**

In addition to the student co-mediator, there may be another student in the mediation room who will be taking notes and observing. The notes provided by the observing student will be helpful in the event that the mediation is successful and an agreement needs to be drafted. Because this is a law school clinic, the role of the observing student is also helpful in the students' continued learning and improvement as mediators. As will be discussed in greater length during your telephone intake and at the beginning of your mediation, the mediation sessions will be confidential.

We are hopeful that the Mediation Clinic will be helpful to your family and help you arrive at an agreement. We are also appreciative of your participation because in addition to helping you with your case, this pilot program is also helping to train mediators.

For more information on mediation or the mediation providers approved to work with the Hampden Probate and Family Court, you may contact:

TMTC
attn: Betsy Williams
277 Main St., Suite 401,
Greenfield, MA 01301-3267
(413) 774-7469
www.communityaction.us/mediation.html

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Hampden Mandatory Mediation program statistics for 2019 through 9/5/19

	Scheduled	Happened	NOA	Settled	Partial/TO	No Agree	Might Agree
	283	248	17	119	60	62	12
Clinic	123	114	4	72	25	14	4
Non-Clinic	160	134	13	47	35	48	8

Overall settlement rate (full/partial): 72%

Clinic settlement rate (full/partial): 85%

Non-Clinic settlement rate (full/partial): 61%

"Clinic" refers to Western New England University Law School Clinic which runs from January through April.

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THE HAMPDEN PROBATE AND FAMILY COURT

ON-SITE MEDIATION PROGRAM

The Hampden Probate and Family Court is creating a pilot program in which certain qualifying cases will be selected for mandatory participation, subject to court and provider screening, in a two-hour introductory mediation session, pursuant to Rule 4(c) of the Supreme Judicial Court Uniform Rules on Dispute Resolution.

Eligible Cases

Beginning in the autumn of 2014, judicial staff will identify appropriate cases for participation in this pilot program. For pilot selection purposes, the cases initially chosen will primarily be those assigned under individual calendar to the Hon. David M. Fuller (due to his impending retirement), as well as cases so assigned to Hon. David G. Sacks (due to his ADR committee membership). Judicial staff will prioritize cases where both parties are self-represented and where there would otherwise be a delay in scheduling a court date.

Because the mediation will be free of charge, the funding source requires the cases selected to involve a dispute about parenting and that the underlying action be one of the following:

- Paternity
- Custody-Support-Visitation
- Divorce
- Separate Support
- Modification of previous Agreements/Judgments
- Contempt
- Guardianship of Minor

Court staff will check cross-references and will not select any cases with an open or previous restraining order between the parties or any cases where it appears that a party may lack capacity to enter into an agreement. If either party needs an interpreter, court staff will ensure that these language requirements can be accommodated before the case is chosen. If a party is known to reside a long distance away, that case will not be selected.

Providers

The Mediation and Training Collaborative (TMTC) has been approved to provide dispute resolution services in the Hampden Probate and Family Court. Initially, TMTC will provide mediators for two half days per month (so that there will be 2 two-hour mediation slots available every other week). Quabbin Mediation, a dispute resolution provider already approved in other Probate and Family Court divisions,

is expected to apply for approval as another mediation provider for the Hampden County pilot. If Quabbin Mediation is approved, they will provide mediators for two mediation slots every other week, on alternate weeks as TMTC. TMTC and Quabbin have already demonstrated successful cooperation as the two providers of mediation services for the Franklin and Hampshire on-site pilot mediation programs.

Description

Once cases have been selected, court staff will schedule a date for the mediation session and an order will issue notifying the parties of the date, time and location of their mediation session. It is anticipated that most sessions will take place in the private conference rooms outside courtrooms 3 and 4. Should these rooms be unavailable, the court will schedule the sessions in another room in the building that would also provide complete privacy for the process.

The notice will inform the litigants that the mediation provider will contact them in advance of the session. The order will state that although the parties are required to participate in the two-hour mediation session, they are not required to resolve their dispute and do not have to settle their case. Parties will also be notified that sanctions may be imposed for failure to attend this scheduled mediation, including but not limited to dismissal of the action. Either party may bring a motion to be relieved of the obligation to participate in mediation upon good cause shown; however, unwillingness to participate shall not be considered good cause. (It will ultimately be the Court's obligation to deal with any such refusals.)

Court staff will timely forward the parties' contact information and basic information about the case to the provider which will be conducting mediation on the day the matter is scheduled. Providers will contact the parties and conduct an initial screening and intake by telephone to identify cases that are inappropriate for inclusion (for reasons including but not limited to a history of domestic violence between the parties). Providers will also ensure that the case falls within the funding criteria (i.e. that there is in fact a parenting dispute). If the provider becomes aware of a need for an interpreter that was not already known to court staff, the court will use best efforts to ensure that an interpreter will be available for the mediation session.

If the provider screens a case out of mediation, there will be no sanction imposed on the parties. However, the fact that either party does not want to participate in mediation should not be a sufficient reason for the case to be screened out.

When parties appear on their scheduled mediation date, an introductory two-hour session will be conducted. If the parties are able to resolve their dispute about parenting in the introductory session, they may reach an agreement that, after review by court staff, can be allowed administratively (so that the parties need not come back to court if said agreement resolves all of the issues in the litigation; however, in the case of adjudications of paternity, attempts will be made to locate an available judge to take the agreement the same day if at all possible). If the parties are unable to resolve their dispute during the initial two hours, the case will be scheduled for a pre-trial conference.

The Hampden Probate and Family Court will collect data on the outcomes of the cases selected for mediation and will routinely evaluate the pilot program for quality and efficacy. For instance, court staff will measure the compliance rate with the order for mandatory mediation, the number of cases that reach agreement during the introductory session, and will seek to identify best practices for future mandatory mediation programs. If the pilot program is successful (as measured both qualitatively and quantitatively), court staff and mediation providers will work together to expand the number of available mediation slots so that the other Hampden County judges can direct cases to mediation.

Contact

A contact person at each mediation provider will be identified.

Court staff contacts will be: Assistant Judicial Case Manager (and local ADR coordinator) Jocelyn Axelson, Esquire, 413-748-7749 jocelyn.axelson@jud.state.ma.us; Assistant Judicial Case Manager Kelly Flynn, Esquire, 413-748-7784 kelly.zawistowski@jud.state.ma.us; and Judicial Secretary Patricia Silk, 413-748-7772 patricia.silk@jud.state.ma.us.

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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203

Paula M. Carey
Chief Justice of the Trial Court

August 28, 2014

Honorable Angela M. Ordonez
Chief Justice
Probate and Family Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Dear Chief Justice Ordonez,

I am in receipt of the revised Hampden County ADR project. I appreciate the changes and approve the pilot project. I look forward to hearing about the results and would ask that metrics be established and data collected to help support resource allocation decisions in the future.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "Paula M. Carey", written over a horizontal line.

Paula M. Carey
Chief Justice of the Trial Court

Cc: Honorable David Sacks

(12)



326 Deerfield St
Greenfield, MA 01301-3267
413-774-7469

fax: 413-774-7264

email: mediation@communityaction.us

www.mediationandtraining.org

A Program of Community Action Pioneer Valley

MEDIATION FACT SHEET

Does mediation make sense for you?

Mediation is a voluntary, confidential process for resolving disputes with the help of a neutral third party. The mediator(s) will help the parties in dispute come up with solutions which meet the needs of everyone involved. The mediator(s) will not take sides or prescribe solutions. The mediators will not take any actions on behalf of either party against the other party in any current or future litigation or other dispute resolution process.

There are three fundamental principles of mediation that are important to understand before beginning mediation:

1. **Mediation is voluntary.** Mediation only happens when all parties agree to use it.
2. **Mediation is confidential.** The Mediation & Training Collaborative will not share any information from the mediation or the intake process without the written consent of all parties. The only exceptions to this confidentiality are: (a) if we hear about child abuse, (b) if we hear about someone who is going to harm him/herself or someone else, or (c) if we hear about someone who plans to commit a crime. We also require all parties to sign an agreement that neither TMTC, nor its mediators or records will be brought into any legal, judicial or other proceeding outside of the mediation.
3. **Mediators are neutral.** Your mediator(s) will not be acting as advocate(s) for any party in the dispute. They are facilitators of your negotiating process, setting ground rules, keeping the conversation on track, asking clarifying questions, helping interpret when communication breaks down, and helping draw up any written agreements. This means all parties must be able to negotiate on their own behalf. Mediators are trained to help manage the difficult dynamics of a conflict situation, but each person needs to be able to express his/her own needs and wants. Any resolutions which come out of mediation are created by the mediation participants themselves.

During the winter semester at Western New England Law School, law students trained in mediation are offered a course called the "Mediation Clinic". This course allows these law students the opportunity to work with an experienced Divorce & Family Mediator to observe and assist with "real life" mediations at the court. If your mediation is scheduled between January and April, you may have law student mediators working with you, under the supervision of the experienced mediator.

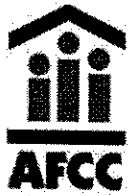
The mediation process begins with each party completing an intake with the Case Coordinator. This aids the case coordinator in gathering enough information to understand the situation, determine whether or not the case is appropriate for mediation, and brief the mediator in advance of the session. Once intakes have been completed with both parties, the case coordinator briefs the mediator on the case.

The mediation is usually set up in two-hour sessions. At the end of the first session, the parties decide whether or not to schedule another session. If they choose to continue in mediation, they arrange the time for the next session with the mediator. The mediation process continues until the parties resolve the issues or believe mediation is no longer useful to them.

The Mediation & Training Collaborative provides these “On-Site” sessions at the Probate Court free of charge to the participants. Should parties choose to continue in mediation beyond this initial free session, there may be fees charged. TMTC charges fees based on the type of mediation being provided. Most fees are charged on a sliding-scale basis. The case coordinator will discuss fees with you during intake. Payment is expected at the end of each mediation session unless a payment plan or invoice process has been agreed upon with the case coordinator prior to the mediation. All written agreements and other documents must be paid for before or at the time of receipt.

A typical mediation includes the following stages, which may occur during one or over the course of several sessions:

1. **Beginning** - In an initial joint session, each party has an opportunity to express his/her concerns, needs and views about the situation which has brought him/her to mediation.
2. **Defining the issues** - Additional information is gathered during the joint session and/or in private sessions in order to identify all the issues that need to be addressed.
3. **Exploring the issues** - During joint and/or private sessions, the mediator(s) help each party examine the issues and clarify underlying needs.
4. **Resolving the issues** - The mediator(s) help parties generate as many options as possible for resolving each issue, examine the consequences of each option and decide upon solutions fair to everyone.
5. **Writing an agreement** - The mediator(s) write up the agreements made by the parties. This agreement preparation may be done during or after the session, depending upon the complexity of the document.



ASSOCIATION OF
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eNEWS

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The Hampden Probate and Family Court Mediation Program: A Successful Collaboration Between a Probate Court, Law School, and a Community Mediation Program

Oran Kaufman, JD, Amherst Mediation Services

In January of 2016 we began an experimental mediation clinic at the Hampden County Probate and Family Court. The clinic was a collaboration between the Hampden Probate and Family Court, Western New England University School of Law (WNEU), and the Mediation and Training Collaborative (TMTC), a court-approved, community mediation center in Greenfield. The clinic built upon a pilot mediation program which had been running at the Hampden Probate Court since the fall of 2014, and was administered by TMTC. Under this pilot, the court referred 4 cases per month (2 cases on 2 separate dates). TMTC scheduled mediators to conduct the sessions, and conducted intakes and screening in each case prior to the scheduled date.

Starting in January 2016, the court referred two cases per week to the clinic. The litigants were required to attend the clinic, which provided free mediation to the participants. I was the mediator charged with conducting each session. I supervised two WNEU law students who had previously taken a semester-long family mediation class I teach at the law school, and although they had had a great deal of experience with role play mediation, this was the students' first experience with "real life" mediation situations. In addition to participating in the court mediations which occurred every Wednesday, the students also worked with Betsy Williams, Clinic Coordinator with TMTC on the intakes for the cases. Prior to the mediations, TMTC called and spoke with each participant to give them information about mediation, screen for domestic violence or other issues that could make mediation inappropriate, and to obtain relevant background information for the mediation.

Although attendance was mandatory, theoretically the litigants could have attended the mediation, sat down for 5 minutes and ended the session and they would have been in compliance. In practice, not only did this never happen but in almost all the cases mediated, whether high or low conflict, the parties actively participated in the mediation to its conclusion. The clinic was a success on multiple levels and resulted in many surprises and unexpected results.

First, from the standpoint of the students, there is nothing like real world experience. Students experienced clients with strong emotions, clients with little affect or emotion, clients with mental illness, clients struggling with poverty, clients with high conflict, and clients with seemingly no conflict, clients who were highly articulate and other clients who were difficult to understand. Initially, they observed me mediating. Each Wednesday, following the mediation, we met for an hour to debrief about the mediations. The students were also required each week to submit a self-reflection paper with their observations about that week's mediations. As the semester progressed, students took on a more active role, starting with making the opening statement to the parties, explaining ground rules, confidentiality, voluntariness etc. The students then progressed to information gathering and issue spotting. By the end of the semester, each week the students would alternate taking the lead as co-mediator under my supervision. There was a similar progression for students' involvement with the intake process. They began by listening in on the intake/screening calls being conducted by Betsy (with full knowledge of their presence by the clients), then started providing some of the opening information, and ultimately were charged with conducting the intake altogether, with Betsy still on the call to fill in any gaps, as necessary.

One of the biggest surprises of the clinic was the fact that not a single participant ever objected to the students' participation. Participants were gracious about the law students' presence. At times it even felt that having the students in the room added some lightness to the atmosphere. The students' presence seemed to calm the clients a bit. There were times when after we had reached an agreement and I had gone upstairs to check in with the clerk about the agreement, I came back and the law students and clients were talking casually. Participants were asked to fill out evaluations after their session. In addition to the evaluations being almost universally positive, no mention was made in any of the evaluations complaining or negatively commenting on the students' participation.

From an educational perspective, I believe the students received an experience that in many ways exceeds what they can get in a classroom. While I ultimately would have liked for them to have had more experience being the lead mediator, we also had to be mindful of the fact that this program was also for the benefit of the court and the litigants, and needed to uphold the quality standards for the provision of ADR services in a court-referred case. So, the education that the students received, including possibly the education of blowing a mediation completely (which has its benefits didactically) had to be balanced with the fact that ultimately, we were trying to help the clients settle their cases successfully. Nevertheless, the students experienced having to think on their feet and come face to face with the real-life problems clients faced. As is the case with experienced mediators, students learned how to balance being facilitative and directive when necessary.

From the court's perspective, I can only assume that the program on many levels was helpful and successful. We had 13 weeks of cases with 2 cases per week. Although I was not keeping a tally of success and failure, my general recollection is that we helped settle approximately 22 or 23 out of 26 cases. In almost all cases, we were able to write up an agreement during the session and parties saw the judge that afternoon and their

agreement was approved or the agreement was approved administratively. In one case, a divorce action, the parties reached an agreement on most of the aspects of their divorce, we wrote up an agreement following the mediation, sent it via email to the parties and after a few minor edits, they had the agreement approved as part of their divorce. So, as a result of the clinic there were 23 fewer cases that needed pre-trials, case management conferences, trials, judges' time, clerks' time, and the court's time.

Much of the success was due to the choice of cases sent to the clinic by the judges and judicial case managers. The cases that did not settle often involved a client or clients who were dug in. Or, in several cases we were dealing with a client who was likely suffering from mental illness or drug abuse. In one case, one client simply did not care, was not interested in engaging with his ex-partner and was absolutely unwilling to engage in the mediation in any productive way.

Many of the cases that did settle had certain similarities. They often involved young parents who were never married and had a young child together. Many of these cases involved two young people who simply were not good at communicating with one another. A common element was a new boyfriend or girlfriend and animosity between the parent and the other parent's new partner. When given a chance to have a conversation in a safe setting, facilitated by a neutral third party, these litigants almost always resolved the issue which had brought them to court. Sometimes it was hard to even think of them as litigants. What they needed was a forum where they could be heard, where they were given full attention, and where they had more than the five minutes they would receive in a busy motion session. Many times, the young parents just needed some ideas (some of which seemed so basic and commonsensical) about how to communicate with each other. "He never answers my texts," "Her boyfriend is sending me nasty text" , "She is badmouthing me on social media." Many of these cases involved the mediators helping the clients come up with communication protocols and ground rules.

Most of the cases we had were not complex financial cases or high conflict child custody cases. They were cases that probably never should have been in court in the first place but for the fact that as a result of poor communication, the parties had no other way to resolve their dispute. On the other hand, we only had 2 hours with the parties so the cases that were most amenable to mediation were cases where there was one or maybe two issues. Although we were able to help two couples reach a full divorce, full divorces were the exception. Most of the cases involved unmarried couples who had a parenting issue.

From my perspective as a full time private mediator, I had an opportunity to work with a population that I rarely see in my private practice. The vast majority of the cases involved unmarried parents, usually under age 30, most of them at or below the poverty line. I appreciated the challenge of working in unfamiliar territory including poverty, disability and mental illness. In addition, the vast majority of cases I handle as a private mediator are not already in litigation but rather result in an agreement which is then filed as a 1A divorce. Cases that are already in litigation have a different flavor and require different approaches which I had the opportunity to try out. As a teacher, I struggled with, but appreciated the challenge of balancing my desire to give my students

experience and opportunity to succeed and fail, with my internal pressure to get the case settled for the court. Finally, this was the first time I had the experience of having people other than my clients see me conduct a mediation. It was a wonderful learning experience to hear from my students what they observed me doing, what worked and what didn't.

Some things I learned and was surprised about:

1. If these cases were any indication, there are many cases clogging up the court system which simply do not belong or could be avoided with early intervention. Some of these cases really did not involve a conflict. Litigation, however, was the only way that one party could communicate with or force some action from the other party. I don't know how else to say it, but that's just crazy.
2. In a few cases we struggled with what to do in the cases where one party was pro se and one party had an attorney. We opted for allowing the attorney to sit in on the mediation. In both cases where that occurred, we asked the pro se party if he or she had an objection to the presence of the other party's attorney. In one case, the client and her attorney opted for not having her attorney in the mediation. When the attorneys did participate (even in the case where there were two attorneys) they were very helpful to the mediation. They helped give their clients a reality check when it was necessary. They were also helpful in explaining things that their clients were having difficulty understanding. As long as the ground rules were established at the outset and followed, having one or two attorneys in the room was very helpful.
3. I was surprised that despite the fact that the mediation had been ordered by the court, there was no resentment of that by the clients (except in one instance). Again, with perhaps that one exception, when the parties walked into the mediation room, they were ready to engage in the process rather than complain about it. The concept of mandatory mediation is still a subject of debate in the mediation community, with some practitioners opining that mandatory mediation is a contradiction in terms. Before this clinic, I probably would have agreed with that sentiment. I have a different view now. Most of the people we saw were below the poverty line. Most of the parties we saw had at most a high school education. Private mediation was out of reach for most of the participants because of the cost. Community mediation programs with sliding fee rates may have been an option but I suspect that other than through court, most of the litigants would have had no access to or knowledge about these community mediation options. Ultimately, at least in this small sample, the fact that the participants were being ordered to attend got them in the door. They all participated, not a single participant complained about being mandated to attend and there was a high settlement rate for the program. This was after clear communication at the beginning of each mediation that explained that although they were mandated to attempt mediation, settlement was voluntary and they were in control of the outcome.
4. No one ever complained about the fact that there were three of us in the room (the two students and myself). When setting up the program, I fretted over whether we should have both students in the room or just one student and me. No one seemed to

be bothered by having three extra people in the room and in fact, as stated above, it may have helped calm the mediation in an unexpected way.

Conclusion

This particular program came about as a result of a perfect storm of sorts. A law school that was interested in and committed to providing its students with externships and real-world experience connected with a busy probate court with many pro se parties and a judge who is committed to the expansion of alternative dispute resolution in the courts in general and in the Hampden Probate and Family Court in particular. In addition, we were fortunate to be able to partner with a community mediation organization that has a lot of experience providing mediation services in the probate court, the administrative skills necessary to run the program, and the flexibility to make the adjustments essential to make the program work. And finally, this was all combined with the willingness of the Chief of the Probate and Family Court who was prepared to give the program the go ahead.

In retrospect, while I cannot speak for others involved in the program, I recognize that I may have been somewhat naïve in structuring the program. That is, I agreed to plug the law school clinic into a mandatory mediation program before really understanding and exploring the pros and cons of the mandatory mediation model. As I have begun to read more about mandatory mediation programs around the country and about mandatory mediation in general, I realize that there were a number of issues that I did not consider. For instance, should there be sanctions for non-participation or should parties be entitled to opt out. Should cases referred to mediation be chosen randomly or be handpicked by the judge or court personnel? And how much information should the court have about what transpired in the mediation? This is in addition to the more philosophical and theoretical (but still important) questions like "Is mandatory mediation antithetical to the whole notion of self-determination of the parties?" There are a multitude of scholarly articles on the topic of mandatory mediation. An excellent article that delves into many of these issues is Peter Salem's article entitled, "The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation?" 47 Fam. Ct. Rev. 371 (2009). On the other hand, sometimes ignorance is bliss. Had we tried to address all of these issues in the first year, we may never have gotten the program off the ground. From a purely anecdotal standpoint, it appears that the clinic was a great success. As we enter our second year, we will start to address some of the above issues and others as they become or appear appropriate. For now, our experiment has been a success in almost all respects. It has benefitted clients (as reported by the clients), benefitted the courts by reducing caseload, and benefitted the law students by providing real world experience mediating.