

Timing is Everything

“Evaluating the Appropriate Timing of Case Referrals to Dispute Resolution Services: A Comparative Study”. A study of family mediation in two Virginia counties during a 12-month period in 1999-2000 which was funded by the State Justice Institute.

Executive Summary

The Judge of the Juvenile and Domestic Relations District Court for the City of Williamsburg and the County of James City in conjunction with the Director of James City County Mediation Program submitted a grant application to the State Justice Institute (SJI) in Alexandria in the spring of 1999 to fund a comparative analysis of the appropriate timing of referral of custody and visitation matters to mediation. The project entitled “Evaluating the Appropriate Timing of Case Referrals to Dispute Resolution Services: A Comparative Study” was funded by SJI in the amount of \$40,000 on August 1, 1999.

The study was designed to take a look at two demographically similar counties, James City County and York County, Va., in the Ninth Judicial District to determine whether or not there was any empirical evidence to suggest that early intervention mediation resulted in a greater number of successfully mediated cases than the more traditional approach of summoning the parties to Court for a preliminary hearing prior to a referral to mediation. The genesis of the mediation program in James City County had clearly been driven by necessity brought on by a lack of a courtroom facilities and burgeoning caseloads per Judge. Except for these disparities both jurisdictions would have been operating in the more traditional manner of summoning the parties to Court for a preliminary hearing. James City County’s experience in designing a mediation program that essentially included everyone as a candidate for mediation, subject to a screening for domestic abuse issues, suggested that the preliminary hearing tended to polarize the litigants into an adversary relationship from which it was difficult to recover with a successful mediation.

Of the 176 petitions for child custody or visitation files docketed in James City County between September 1, 1999 to August 31, 2000, 59.7% used mediation; whereas of the 262 petitions filed in York County, 38 (14.5%) went through mediation. This represents an almost 4 to 1 ratio and seems to support the thesis that less mediation takes place after a preliminary hearing. The 105 petitions accepted for mediation in James City County resulted in a mediated agreement in 72.9% of the cases, but only 39.5% of the cases in York County resulted in a mediated agreement. Of the 105 petitions in James City County that accepted mediation, 15 (14.3%) were eventually adjudicated by the Court, five (4.8%) had a guardian ad litem appointed and eight (7.6%) had a home evaluation performed. York County, on the other hand, had 59% of the mediated cases being adjudicated by the Court, 47.4% had a guardian ad litem appointed, and home evaluations were scheduled in ten cases. The inference that can be drawn from these statistics is that significantly more resources were devoted to litigation in York County than James City County. This again seems to validate the premise that the preliminary hearing actually promoted litigation and not mediation.

An important by-product of the comparative study was a look at the number of hearings actually taking place in each jurisdiction. Of the 105 cases accepted for mediation in James City County, there was an average of 0.4 court hearings per case and 1.2 mediation sessions per

case; whereas in York County there was an average of 1.9 court hearings among the cases earmarked for mediation and 1.7 mediation sessions per case. In conclusion, York County had almost five times more court hearings than James City County.

Another interesting area of the study looked at is the processing times of the two jurisdictions. The median number of days in James City County from petition for custody to the mediation orientation session was only 22 days, whereas the median time between a petition for custody in York County and the preliminary hearing was 43 days. The time from the initial petition until the final order in James City County averaged 48 days in duration, whereas York County took almost twice as long at 92 days. The length of time for scheduling the first mediation session was also significantly shorter in James City County. The first session was scheduled on average 6.5 days from the date of the mediation orientation, while the first mediation session in York County was scheduled 22 days from the date of the preliminary hearing.

In conclusion, an examination of all contested custody and visitation petitions filed in a 12 month period (September 1999 through August 2000) shows that the early intervention mediation program implemented in James City County results in a significantly higher percentage of cases being ordered to mediation, fewer number of hearings and mediation sessions per case, a greater percentage of cases successfully completing mediation in a shorter amount of time, and a dramatically lower percentage of cases being adjudicated by the court in James City as compared with York County. In addition, the statistics indicate that getting litigants to the mediation table as quickly as possible, as opposed to allowing the parties to endure a lengthy wait for the first mediation session, increases the likelihood of a successful mediation outcome. A significant inference that can be drawn from the empirical data is that the preliminary hearing rarely results in a meaningful event for Court administrative purposes and, more importantly, is possibly a significant impediment to a successful mediation.