



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

**Annual Report on North Carolina's
Child Custody and Visitation Mediation (N.G.G.S. § 7A-494 / § 50-13.1)
and Permanency Mediation Programs (§ 7B-202.)**

State Fiscal Year 2009-2010

Court Programs Division

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	PAGE 3
II. N.C. CHILD CUSTODY AND VISITATION MEDIATION PROGRAM	PAGE 3
A. GOALS OF CHILD CUSTODY AND VISITATION MEDIATION	
B. PROGRAM DEVELOPMENT – Custody Mediation	
C. PROGRAM OPERATION– Custody Mediation	
D. PROGRAM ADMINISTRATION AND PERSONNEL	
E. PROGRAM OUTCOMES – Custody Mediation	
F. PROGRAM IMPROVEMENTS FOR FISCAL YEAR 2009-2010	
III. N.C. PERMANENCY MEDIATION	PAGE 11
A. GOALS OF PERMANENCY MEDIATION	
B. PROGRAM DEVELOPMENT – Permanency Mediation	
C. PROGRAM OPERATION – Permanency Mediation	
D. PROGRAM ADMINISTRATION AND PERSONNEL	
E. PROGRAM OPERATION – Permanency Mediation	
IV. CHILD CUSTODY AND VISITATION MEDIATION PROGRAM AND PERMANENCY MEDIATION PROGRAM FUNDING	PAGE 13
V. CUSTODY MEDIATION ADVISORY COMMITTEE	PAGE 13
VI. TRENDS AND FUTURE DIRECTIONS	PAGE 14
VII. SUMMARY	PAGE 15
VIII. APPENDICES	
A. LEGISLATION FOR CUSTODY MEDIATION	PAGE 16
B. LEGISLATION FOR PERMANENCY MEDIATION	PAGE 19

I. EXECUTIVE SUMMARY

Pursuant to § 7A-494 and § 7B-202, the N.C. Administrative Office of the Courts (NCAOC) is required by statute “to provide statewide and uniform services in accordance with G.S., 50-13.1 in cases involving unresolved issues about the custody or visitation of minor children” and to provide permanency mediation services in “cases in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed.” These two mandates authorized the Director of the NCAOC to establish the Child Custody and Visitation Mediation Program and the Permanency Mediation Program. (See **Appendix A & Appendix B** for legislation referenced)

The Child Custody and Visitation Mediation Program, first established in 1983, now comprises 41 court-based district mediation programs across the state. The Custody Mediation Program provides a neutral third party to help the parties develop a consensual parenting agreement, which when signed by a judge, becomes an order of the court. During Fiscal Year 2009-2010, custody mediators conducted 9,415 mediation sessions and drafted 5,982 parenting agreements, resolving issues in more than 60 percent of the cases sent to mediation.

The Permanency Mediation Program, initially funded in 2006, is operational in five judicial districts. A contract mediator is selected by district officials to conduct the mediation session, addressing crucial issues of adjudication, child placement and provision of services in cases alleging abuse or neglect of children. During State Fiscal Year 2009-2010, permanency mediators conducted 166 mediation sessions, created 102 case plans for families, and helped provide stability for over 211 children.

The purpose of this report is to discuss the development of the N.C. Custody Mediation Program and Permanency Mediation Program, goals achieved and impact on families, costs and benefits to the courts, and goals for the future.

II. N.C. CHILD CUSTODY AND VISITATION MEDIATION PROGRAM

A. GOALS OF CHILD CUSTODY AND VISITATION MEDIATION

Custody mediation is a process in which a professionally-trained neutral third-party individual assists parents in developing an agreement that provides for the care of their child(ren) during and after separation. The goal of the mediation process is to provide the parents a forum to discuss parenting issues and the continuing care of their child(ren). The agreement focuses on the children's needs while recognizing the rights and responsibilities of both parents. The mediator provides a process for parties to discuss about how the child(ren) will be cared for by each parent in the future. Parents are encouraged to be focused on the future rather than dwell on past events, which have been difficult for them.

B. PROGRAM DEVELOPMENT - Custody Mediation

The trend towards alternative methods of dispute resolution took root in the 1970s and early 1980s as a response to overburdened court dockets, part of a larger movement toward judicial reform. Disputes of separating and divorcing parents proved to be especially appropriate for mediation, in part due to the importance of establishing time-sharing routines for children quickly, and because of the continuing nature of the co-parenting relationship. Extensive litigation in cases involving children creates an environment of stress, distrust and animosity between the parents and, by extension, for children.

North Carolina courts began to mandate mediation in cases involving child custody in 1983, when a pilot program was initiated in the 26th Judicial District (Mecklenburg County). The 1983 General Assembly authorized the pilot and granted funding until 1985. Mediation services were provided on contract by United Family Services, a United Way agency. The program was considered a success by both judges and attorneys, and was extended in the 1985 legislature for another two years, and in 1986 the pilot was extended into Gaston County as well. The 1987 General Assembly gave the NCAOC a mandate to determine whether custody mediation should be recommended for statewide expansion, or be allowed to expire.

Over the period of a year, an eight-member advisory committee of judges researched and analyzed various court-based mediation systems and provided a final recommendation for statewide expansion. In 1989, the enabling legislature governing the N.C. Child Custody and Visitation Mediation Program was enacted. As recommended by the committee, custody mediation was authorized as a mandatory practice, with oversight and administration to be developed by the NCAOC with substantial operational decision-making left to judicial district discretion.

Gradually the Custody Mediation Program was implemented across the state, with the first programs enacted in metropolitan areas such as Buncombe County (Asheville), Wake County (Raleigh) and Cumberland County (Fayetteville). Many of these programs initially functioned as contract-based partnerships with local community mediation programs.

Over time, the districts have become more uniform in mediation culture and operations, and have replicated Local Rules. The NCAOC has developed a Best Practices Guide for Child Custody Mediation in North Carolina (2010), revised and updated training standards, Uniform Rules, and Standards of Practice for Mediators to guide and support the local district programs. At publication of this Annual Report, 20 years after the Legislature established the N.C. Custody Mediation Program, only one district in the state does not offer mandatory child custody mediation as a public service.

C. PROGRAM OPERATION - Custody Mediation

According to the legislative mandate (G.S. 50-13.1 and G.S. 7A-494) all cases involving contested custody and visitation issues must be sent to mediation before those issues are tried in court. The only exceptions are cases waived for good cause, generally those cases involving serious allegations of domestic violence, child abuse or substance abuse. Some courts also waive cases in which a party lives more than 50 miles from the court.

The mediation process allows the parties to discuss the child-related issues with the assistance and guidance of a neutral, professional mediator in a structured and confidential setting. The goal of the process is to facilitate discussion and negotiation of custody and living arrangements, ideally to assist the parties to create a parenting agreement that is mutually satisfactory to the parents. Above all, it is hoped that mediation will minimize the stress and anxiety for the parties and their child(ren), as they are able to resolve their differences without acrimony or extended litigation.

Parties with child custody and visitation issues are referred first to an orientation session. This group presentation is designed to provide participants with more information about the mediation program, the logistics of the scheduling and creation of the parenting agreement, and general advice concerning parenting from two homes. Parties watch an award-winning video, "Putting

Children First,” and are usually given the opportunity to hear from the mediator and ask questions. During orientation, parties are scheduled for mediation.

In the mediation session, the mediator helps the parents or parties identify, clarify and articulate their concerns, discuss points of disagreement, brainstorm options and plan schedules that function for the parents. The mediator remains balanced and non-judgmental in mediation, facilitates the dialogue, explores possibilities with the parties and helps them remain focused on the best interest of the child or children. N.C. statute requires custody mediators to have an advanced degree in a human relations discipline, so many come from counseling or therapy backgrounds, but they clearly distinguish their roles as mediators and facilitators from that of the helping professions.

If parties are able to reach agreement on the issues in mediation, the mediator prepares a draft Parenting Agreement, sends it to the parties and their attorneys and allows them at least 10 days to review it. Once the parties sign the agreement, it is signed by the judge and becomes an enforceable order of the court. Parties do not return to court, although they may continue with litigation or private mediation on other matters. More than 60 percent of the cases sent to mediation result in a drafted parenting agreement.

D. PROGRAM ADMINISTRATION AND PERSONNEL - Custody Mediation

As of October 2010, Child Custody Mediation is operational in 41 of the 42 state judicial districts and in 97 of 100 counties. Currently, 43 District Court staff mediators are employed across the state and two contract mediators provide emergency coverage and assist in understaffed districts. Support staff, defined as Secretary I or II or Judicial Assistant I or II, are employed in 14 judicial districts.

Table 1 lists the judicial districts with the year the program became operational, total number of mediator hours assigned to the district, and support staff if applicable.

Table 1: Custody Mediation Program effective date and mediation hours

Districts	Counties Served	Effective Date	Staff Hours-Mediator	Administrative Support Hours**
*1	7	2008	30	
*2	5	2008	20	
3A	1	1996	30	
*4	4	1993	40	20
*5	2	1998	30	
*6A/6B	4	1998	30	
*7	3	2007	40	
*8	3	1999	30	
*9/9A	6	1998	35	
10	1	1994	110 (40-40-30)	40

Table 1 Districts	Counties Served	Effective date	Staff Hours-Mediator	Administrative Support Hours
*11	3	1996	40	10
12	1	1990	70 (40-30)	40
*13	3	1999	40	
14	1	1998	35	
15A	1	1996	30	
*15B/19B	5	1995/97	56 (40-16)	20
*16A	2	1997	10	
16B	1	2007	25	
*17A/17B	3	1996/98	40	
18	1	2004	60 (30-30)	40
19A	1	1993	30 (20-10)	10 (JA)
19C	2	1993	40 (20-20)	10 (JA)
*20A	3	1999	20	
20B	4	1999	30 (20-10)	20
21	1	1996	40	10
*22A/B	4	2007	40	10
*23	4	2005	40	
*24	5	2007	20	
*25	3	1996	50 (30-20)	40
26	1	1984	120 (40-40-40)	40
*27A/27B	3	1987/98	30	10
28	1	1992	50	10
*29A	2	2006	20	
*29B	3	2006	30	
*30	7	2006	35	
Total Districts 41	Total Counties 97		Total Mediators 43	Administrative Support Hours **15

**Districts where travel between counties required. **Administrative support hours are allocated to a district Custody Mediation Program when there is at least one mediator working 40 hours.*

E. PROGRAM OUTCOMES – Custody Mediation

During State Fiscal Year 2009-2010, over 16,000 cases were referred to the mediation program. Some cases are not referred to mediation because of distance between the parties or because of domestic violence or other issues which make it inappropriate for mediation. Mediators met with parties for at least one session in over 50% of the cases referred to custody mediation; cases not mediated are generally deemed inappropriate or parties reconcile or reach resolution by other means. In 57 percent of the mediated cases, an agreement is drafted, spelling out the details of the parties' resolution of issues. Although not all agreements are signed in the mediator's office, these drafts represent significant movement toward resolution and often provide the framework for more comprehensive court orders completed by parties' attorneys. It is evident that many individuals drop out of the court system after mediation, having resolved the conflicts that initiated the court action.

Although statistics reflecting court savings can be difficult to capture, judges regularly voice their belief that mediation alters parties' perceptions about their responsibilities and parenting role and increases their propensity to negotiate and compromise. Both judges and lawyers reflect that parties are more willing to settle on other issues, such as child support and property distribution, after they have been through the custody mediation process. Other benefits of the mediation program are an improvement in parties' communication skills, a renewed focus on the child or children, and less litigation-related stress and instability.

An important component of quality assurance is assessment of program operation and data collection. Annual site visits, along with review and discussion of the statistics, is an integral part of the ongoing assessment of the program.

1. Monthly Statistics

The State Office collects monthly statistics to provide information to assess the outcomes of the program. Mediators or support staff collect case data and report those to the NCAOC on a monthly basis, tracking the number of cases that close each month, whether they were mediated or not, how many cases ended with the drafting of a parenting agreement, and how many agreements were signed. During State Fiscal Year 2009-2010, all districts staff submitted complete and accurate statistics.

Statistics for State Fiscal Year 2009-2010 are shown in **Table 2**.

Table 2: Caseload, cases mediated and agreements drafted.

District	Caseload*	Cases Mediated	Agreement Drafted
1	239	187	117
2	121	76	82
3A	269	150	98
4	743	372	210
5	648	355	174
6A	118	74	54
6B	92	42	25
7	245	128	207
8	294	219	190
9	148	120	68

District	Caseload*	Cases Mediated	Agreement Drafted
9A	66	57	32
10	1515	830	466
11	628	311	138
12	1508	449	244
13	385	346	304
14	431	192	90
15A	251	195	123
15B	168	159	116
16A	28	25	10
16B	217	175	155
17A	124	91	50
17B	185	162	84
18	930	648	424
19A	276	153	108
19B	472	296	185
19C	333	231	150
20A	250	142	103
20B	320	173	112
21	490	314	170
22A	135	56	48
22B	155	72	57
23	229	157	95
24	187	122	83
25	738	443	260
26	1,492	787	492
27A	326	154	95
27B	293	140	48
28	832	387	260
29A	164	109	90
29B	262	183	91
30	316	133	74
TOTALS	16,623	9,415	5,982

* Caseload includes new cases filed and cases pending from previous year.

2. Site Visits

Beginning in April 2008 the NCAOC Custody Mediation Program began to conduct site visits in the field, gathering local operation information and concerns of mediators, judges and support staff, and beginning a process of mediation evaluation. For State Fiscal Year 2009-2010, 28 site visits were conducted, comprising 30 of the of the 41 district mediation offices. During site visits, the state office staff discussed with the mediator changes or issues with mediation office space and mediation rooms, analyze case management and filing practices, conduct an observation of the mediator and review travel schedules, agreements writing practices, relationships with court personnel and training needs. During State Fiscal Year 2009-2010, state office staff began a process of observing mediators during site visits and discussed mediation program operations with each Chief District Court Judge.

F. PROGRAM IMPROVEMENTS DURING FISCAL YEAR 2009-2010

The NCAOC Custody Mediation Program focused attention on enhancing oversight, support and quality improvement to local custody mediation programs. With the changes to the Uniform Rules, the new Best Practices document, and new information regarding policies and procedures, NCAOC began a revision of the Procedures Manual, a further step in the institutionalization of professionalism in mediation services and efficient operations in the courts. Other accomplishments of the year include development of a performance appraisal specifically for mediators and a comprehensive Workload Study completed by the NCAOC Department of Research and Planning.

1. NCAOC Workload Study

In response to the challenge of estimating district mediation needs, the Custody Mediation Advisory Committee requested a workload study for custody mediators. Beginning in early summer, NCAOC Research and Planning, using the methodology of the National Center for State Courts, created and conducted a survey to gather data about case management activities. Using this information, Research and Planning was able to determine the appropriate number of mediation hours needed in each district. NCAOC consulted with a Work Group consisting of custody mediators and an Advisory Committee of chief district court judges both before and after conducting the study. The methodology used in the study included the following steps:

- Designing a workload survey based on input from the Work Group and the Advisory Committee which describes the work completed by custody mediators;
- Deploying the workload survey to collect and analyze each district's data;
- Computing an average number of minutes to process mediation cases (adjusting for outlier data, staff vacancies and other anomalies in data collection);
- Determining the number of mediation cases referred filed for the past fiscal year for each Custody Mediation district and;
- Analyzing current custody mediator staffing per district and comparing it to the additional staff recommendations produced by the formula.

The Workload Study indicated need for additional mediation hours to be allocated in 11 different districts.

2. Mediation Assessment

An essential element of the oversight of any mediation program is the assessment of its mediators. The NCAOC Custody Mediation Program conducted formal assessments of mediators during site visits. The assessments allowed for an in-depth analysis of the mediator's techniques, strengths and challenges. Mediators responded positively to the assessments and confirmed that it was a useful exercise. Some mediators requested the assessment tool to use in their own reflective practice. The assessments were noted in site visit reports sent to Chief District Court Judges.

3. Performance Evaluation

In conjunction with the NCAOC Human Resources Department, the NCAOC Custody Mediation Program developed a new performance appraisal form specifically used to evaluate the Custody Mediators. The appraisal form reflects the important work of the mediator with orientation and mediation listed as primary responsibilities. It is expected that Chief District Court Judges may begin using the new performance appraisal in November of State Fiscal Year 2010-2011.

4. Training – Spring Conference

In May 2010, the NCAOC Custody Mediation Program hosted an in-service workshop at the NC Judicial Center featuring a motivational interviewing consultant as the primary speaker. He shared his knowledge of motivational interviewing with an interactive training that focused on questioning and listening skills relevant to Custody Mediators. The training also featured a "new mediator" workshop, a Domestic Violence presentation by local psychologist and a legal information clinic co-presented by NCAOC staff.

III. N.C. PERMANENCY MEDIATION PROGRAM

A. GOALS OF PERMANENCY MEDIATION

The purpose of the Permanency Mediation Program is to provide mediation services to resolve issues in cases in which a juvenile is alleged or has been adjudicated to be abused, neglected or dependent, or in which a petition or a motion to terminate a parent's right has been filed. Like custody mediation in domestic court, the abuse and neglect cases from juvenile court sent to permanency mediation involve many sensitive family issues. Issues addressed may include parenting education and/or counseling, appropriate behavioral expectations of children and identification of family members to provide stability for children at times of parental crisis. Serious issues of substance abuse, domestic violence, physical and sexual child abuse, and mental illness are common in juvenile court cases.

The primary goal of permanency mediation is to facilitate the permanent placement of children in a timely manner. Other goals include improving the parties' understanding of juvenile proceedings, clarifying the issues for all participants, enhancing the quality of the case plans, and reducing the number of court hearings and relitigation. The development and implementation of a permanent plan for a child who has been removed from parents becomes paramount in terms of adherence to federal guidelines which are linked to funding for social service agencies.

B. PROGRAM DEVELOPMENT – Permanency Mediation

Federal legislation during the early 1980s forced courts to conduct reviews and follow time frames in cases involving children removed from their homes. With an emphasis on the “best interest of the child” and on procedural protections of parties involved in child protection hearings, the Federal legislation increased the adversarial nature of the process and highlighted delays in case resolution and permanency and stability for children.

Expanding on the burgeoning mediation movement of the time, three state courts began to use alternative dispute resolution in child protection cases. The success of mediation in ameliorating the complexity of these cases and increasing time to permanency led many other state courts to follow. Today, many states have court-referred or court-connected dependency or child protection mediation programs.

In 2006, pursuant to G.S. 7B-202, the North Carolina General Assembly mandated that the NCAOC establish a Permanency Mediation Program to provide statewide services for court cases involving juveniles adjudicated to be dependent, abused or neglected. The NCAOC was authorized to use lapsed salary funds to contract to provide for the services of skilled, trained mediators to assist parties in resolving the contested issues before the case is heard in court.

The Custody Mediation Advisory Committee made recommendations regarding the implementation of the Permanency Mediation Program. NCAOC Custody Mediation Program staff developed principles and technical guidelines for implementation of the Permanency Mediation Program. The process for initiating permanency mediation services includes several stages of planning, pre-implementation and implementation. Final authorization of a Permanency Mediation Program, however, is dependent on availability of funds.

Over the course of three years, the NCAOC encouraged chief district court judges to begin implementation of the program. As of June 2009, five judicial districts have authorized Permanency Mediation Programs. Several districts are in varying stages of planning and preparing to implement a Permanency Mediation Program.

C. PROGRAM OPERATION – Permanency Mediation

The primary goal of a permanency mediation session is to establish stability of placement for the child or children involved. In doing so, permanency mediation may also address the adjudication of the allegation against parents, provision of services for children and/or parents, the arrangement of visitation for parents and/or other family members, and occasionally the termination of a parent’s rights. Cases identified as appropriate for permanency mediation are typically ordered to mediation by the judge at the first court hearing after removal of the child from the home. In other cases, Guardian ad Litem, a parent attorney or Department of Social Services (DSS) may request permanency mediation.

It is expected that a permanency mediation session will include many participants. The typical mediation session includes the parent or parents, all parents’ attorneys, the Guardian ad Litem attorneys for the child or children, DSS social workers and DSS attorneys and in some cases, extended family members and foster parents. Children do not attend the mediation unless there is some benefit to their participation and the child is able to express him or herself. The participation of the child must also be considered necessary by the judge or by the child’s attorney advocate. Educating, scheduling and responding the various stakeholders and participants are important and necessary elements of program operation.

Two permanency mediators work in tandem to conduct the sessions, due to the large number of participants and the required composition of the agreement at the mediation table. Mediators do not make any of the decisions, but they try to ensure that all parties, especially parents who may feel themselves overwhelmed by the process, are able to voice their concerns. The mediators provide a structured, less formal process for negotiating for the best interest of the child while assisting in the expression of the needs and concerns of all parties, including parents, the participating agencies, the child advocate and the attorneys.

The mediators facilitate productive discussion, often separating the session into a two-part process. The first phase of the mediation is used to define and clarify the legal issues, open up communication, explore ideas and options, and reach agreements concerning the facts alleged in the petition. During the second phase of the session, the mediators assist in negotiating and developing individualized case plans designed to achieve a permanent plan for the child. Permanency mediation agreements are typed, printed, copied, and signed during the mediation session. Once all parties sign the agreement, the DSS attorney takes the original agreement to the court. Once signed by the judge and adopted by the court, the agreement becomes an enforceable court order.

Permanency Mediation improves service provision to children and families, minimize the number of hearings and time to adjudication, increase communication among involved parties, and facilitate the permanent placement of children into safe, stable homes more quickly. Significantly, it has been shown that in cases going through permanency mediation, children more often achieve permanent placement and are more often reunited with their parents.

Statistical results from the five permanency mediation programs are summarized in **Table 4** below:

Table 4: State Fiscal Year 2009-2010: Permanency Mediation Program outcomes

District	Referrals	Cases Mediated	Children Served	Case Plans Developed
10	7	7	15	7
12	7	1	N/A	1
26	103	85	152	63
27A	40	33	44	27
28	9	9	N/A	4
Totals	166	135	211+	102

C. ADMINISTRATION AND PERSONNEL – Permanency Mediation

As of July 2009, Permanency Mediation is operational in five districts. During State Fiscal Year 2009-2010, NCAOC entered into contracts with 16 permanency mediators to provide services.

Table 5 lists the judicial districts with authorized Permanency Mediation Programs, the year the program became operational and number of contractors.

Table 5: Permanency Mediation Programs, effective date and contractors available

District	Effective Date	Contract Mediators
10	2007	5
12	2007	2
26	2001	7
27A	2004	3
28	2006	5

IV. CHILD CUSTODY MEDIATION AND PERMANENCY MEDIATION PROGRAM FUNDING

The N.C. Administrative Office of the Courts facilitates the development, implementation, oversight and support of Custody and Visitation Mediation Program and Permanency Mediation Program through the Court Programs Division. The N.C Child Custody and Visitation Mediation Program is one of six core programs within the Court Programs Division that includes Family Court, Drug Treatment Court, Juvenile Court Improvement and Interpreting Services. The Division uses a team approach to integrate and coordinate services for these six core court programs and focuses on specific and measurable strategies to achieve its goal of increasing access to justice and improving efficiency and effectiveness for the N.C. court system.

The majority of funding for the N.C. Child Custody and Visitation Mediation Program provides for salaries and benefits for mediators and support staff positions. Funds also support required new and continuing training. For State Fiscal Year 2009-2010, the authorized budget was \$3,043,220. The Permanency Mediation Program's authorized budget was \$150,000.

V. CUSTODY MEDIATION ADVISORY COMMITTEE

The Custody Mediation Advisory Committee (CMAC) is currently chaired by the Honorable Gary S. Cash, Chief District Court Judge in the 28th Judicial District. Members of the CMAC include Chief District Court Judges Jay Corpening (District 5), Alfred Kwasikpui (District 6B), and Randy Pool (District 29A), Court of Appeals Judge Wanda Bryant, District Court Judge Menefee (District 21), Trial Court Administrator Todd Nuccio (District 26), UNC Professor Cheryl Howell, Alice Stubbs, Esq., Executive Director Beth Froehling (Coalition Against Domestic Violence), Family Court Administrator Nancy Butler (District 19B), and Custody Mediator Bryan Hurley (District 19A). The CMAC held one in-person meeting during State Fiscal Year 2009-2010 and addressed the following issues:

- The CMAC, after discussing the issue of "enforcement clauses," statements mandating the intervention of law enforcement personnel to implement the agreement, recommended that as a best practice these clauses should not be included in mediated Parenting Agreements.
- The CMAC requested feedback about the influences of technology in the work of the custody mediators. A survey of the mediators showed that cell phone use and disagreements about the Internet were primary issues of concern for parties. Use of online visitation scheduling software was in increasing popularity, especially with high conflict couples.

- The CMAC recommended a change to language in the legislation (G.S 50-13.1c) regarding waiver of mediation in cases where a party “resides more than fifty miles from the court.” Rather than stating that this situation “shall” be considered good cause, the legislation should state it “may” be considered good cause.

VI. TRENDS AND FUTURE DIRECTIONS

In Child Custody and Visitation Mediation

Feedback gathered by the Custody Mediation Program, as reflected in surveys, site visits and general mediator input, reveal the following trends:

- Many mediated cases return to their local mediator for modification, saving the court substantial time and money that might otherwise be spent in re-litigation.
- Mediators are seeing more pro-se clients in mediation and must be prepared for unrealistic assumptions about court procedures and outcomes.
- Many of the parties in mediation have recently separated. Timing is everything in mediation, and mediators must be able to assess and address parties’ readiness to mediate.
- Mediation programs across the state vary in their capacity to provide safe, appropriate space and security measures for mediation. Providing Judges and clerks with the *Space and Safety Standards and Recommendations* and suggestions of state staff during site visits has led to many improvements in mediator’s offices and available security measures.
- Mediators increasingly deal with more diversity in families. Custody mediators should be prepared to deal with unmarried parents, same sex parents, interracial families, step-parent issues and grand-parent involvement.

In Permanency Mediation

Feedback from the five active Permanency Mediation Programs reveals the following trends:

- Substantial problems exist for creating and supporting a Permanency Mediation Program, including shortage of local administrative resources, but programs identified and addressed challenges and expanded services.
- NCAOC’s support of the Permanency Mediation Program is primarily routed through reimbursement of contracted mediators. The support provided for State Fiscal Year 2009-2010 was approved several months late, and the delay caused difficulties for the district programs, as stakeholders returned to traditional resolution methods.
- After recovering from funding delays, the district permanency programs then saw a decline in petitions filed as the Department of Social Services implemented more conservative policies. The end of the year statistics reflected this in a decrease in referrals in the most active district.

- Once well-established in a district, permanency mediation becomes part of the accepted culture among the multiple stakeholders, including GAL and DSS lawyers, parent attorneys and agency representatives. It is important to continue uninterrupted services so that the expectations of these stakeholders may be maintained.

In a period of budget shortfalls, one of the most salient issues is the continuation of support and training for mediators. During the State Fiscal Year 2009-2010 the NCAOC continued to utilize online resources to continue training and meetings. Limited travel prevented the NCAOC from offering the usual workshops and quarterly meetings that help keep mediators connected and motivated professionally. With constraints on training and travel, NCAOC was only able to provide a 2 day training opportunity for all mediators. The Custody Mediation Clinics, initiated in the summer of 2010 allows NCAOC to provide mediators with an opportunity to observe and learn from one another in a regionally based, one-day co-mediation setting.

Program assessment is an important part of administration that is complicated by the diverse and ambiguous methods of data collection used in the state. NCAOC Custody Mediation Program continues to encourage the use of CaseWise to increase uniformity and details in statistical collection.

VII. SUMMARY

When Charlotte first initiated the mediation pilot in 1983, some doubted the effectiveness of mandatory mediation. Twenty-six years later, mandatory mediation is generally accepted as a viable way to provide alternative dispute resolution to parties embroiled in custody disputes, and the N.C. Custody Mediation Program has been initiated and accepted into 41 of N.C.'s 42 judicial districts.

As custody mediation has taken root across the state in both metropolitan and rural judicial districts, there is an overwhelming sense that mediation of family issues, especially custody and visitation matters, is preferable to a litigated outcome. Judges, lawyers and participants claim that the process transforms relationships and the dynamics of conversation in the majority of the cases mediated. Ultimately the primary goal of mediation, "to reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child," leads to the corollary goals of reducing litigation and generally preparing parties to negotiate more amicably about other matters. While cost efficiency is difficult to measure, studies show that mediated cases have a greater propensity to settle without litigation, and mediated parenting agreements reduce the number of cases returning to court.

Although Permanency Mediation provides substantial cost savings to the court and social service providers, these benefits are overshadowed by the significant positive impact of mediation upon the families involved. Providing individualized and negotiated case plans allows for appropriate levels of service provision and better rates of family reunification, and the increased communication between stakeholders improves compliance, settlement and stabilization for children.

Appendix A: Complete Legislation for Custody Mediation.

1. § 7A-494. Custody and Visitation Mediation Program Established.

(a) The Administrative Office of the Courts shall establish a Custody and Visitation Mediation Program to provide statewide and uniform services in accordance with G.S., 50-13.1 in cases involving unresolved issues about the custody or visitation of minor children. The Director of the Administrative Office of the Courts shall appoint such NCAOC staff support required for planning, organizing, and administering such program on a statewide basis.

The purposes of the Custody and Visitation Mediation Program shall be to provide the services of skilled mediators to further the goals expressed in G.S. 50-13.1 (b.)

(b) Beginning in July 1, 1989, the Administrative Office of the Courts shall establish in phases a statewide custody mediation program comprised of local district programs to be established in all judicial districts of the State. Each local district program shall consist of: a qualified mediator or mediators to provide mediation services; such clerical staff as the Administrative Office of the Courts in consultation with the local district program deems necessary. Such personnel, to be employed by the Chief District Court Judge of the district, may serve as full-time or part-time State employees or, in the alternative, such activities may be provided on a contractual basis when determined appropriate by the Administrative Office of the Courts. The Administrative Office of the Courts may authorize all or part of a program in one judicial district to be operated in conjunction with that of another district or districts. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district; such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate rules and regulations necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of mediation programs under this Article shall be administered by the Office of the Courts.

2. (c) For a person to qualify to provide mediation services under this Article, that person shall show that he or she:
3. Has at minimum a master's degree in psychology, social work, family counseling, or comparable human relations discipline; and
4. Has at least 40 hours of training in mediation techniques by a qualified instructor of mediation as determined by the Administrative Office of the Courts; and
5. Has had professional training and experience relating to child development, family dynamics, or comparable areas; and
6. Meets such other criteria as may be specified by the Administrative Office of the Courts. (1989, c. 795, s.15.)

§ 7A-495. Implementation and Administration

(a) Local District Program - The Administrative Office of the Courts shall, in cooperation with each Chief District Court Judge and other personnel, implement and administer the program mandated by this Article.

(b) Advisory Committee Established - The Director of the Administrative Office of the Courts shall appoint a Custody Mediation Advisory Committee consisting of at least five members to advise the Custody Mediation Program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State board and commissions generally. (1989, c. 795, s.15.)

§ 50-13.1. Action or proceeding for custody of minor child.

(a) Any parent, relative or other person, agency, or organization, or institution claiming the right to custody of a minor child may institute an action proceeding for the custody of such child, as hereinafter provided. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both.

(b) Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody and visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in motions for contempt or for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court. Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. The purposes of the mediation under this section include the pursuit of the following goals:

- To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;
- The development of custody and visitation agreements that are in the child's best interest;
- To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about custody and visitation;
- To provide a structured, confidential, non-adversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected: and
- To reduce the relitigation of custody and visitation disputes.

(c) For good cause, on motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or spouse abuse; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause.

(d) Either party may move to have the mediation proceedings dismissed and that the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground.

(e) Mediation proceedings shall be held in private and shall be confidential. Except as provided in this Article, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court. The mediator may assess the needs and interest of the child, and may interview the child or others who are not parties to the proceedings when he or she thinks appropriate.

(f) Neither the mediator nor any party or other person involved in the mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation session; provided, there is no privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of G.S. 7A-543 or G.S. 108A-102.

(g) Any agreement reached by the parties as a result of the mediation shall be reduced to writing, signed by each party, and submitted to the court as soon as practical. Unless the court finds good reason not to, it shall incorporate the agreement in a court order and it shall become enforceable as a court order. If some or all of the issues as to custody or visitation are not resolved by mediation, the mediator shall report the fact to the court.

(h) If an agreement that results from mediation and is incorporated into a court order is referred to as a "parenting agreement" or called by some similar name, it shall nevertheless be deemed to be a custody order or a child custody determination for the purposes of Chapter 5A of the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appears. (1967, c.1153, s 2;1989, c795, s.15 (b).)



Appendix B: Complete Legislation for Permanency Mediation.

§ 7B-202. Permanency mediation.

N.C. General Statutes - Chapter 7B 7

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court order.

If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court. (2006-187, s. 4(a).)

N.C. General Statutes - Chapter 7B 8

§§ 7B-203 through 7B-299. Reserved for future codification purposes.