

## **SPECIAL GUEST EDITORS' EDITORIAL NOTES**

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### **GUEST EDITORS' NOTES**

Bernie Mayer and Kelly Browe Olson

We are delighted to bring you this special volume of *Family Court Review* (FCR). In 1997, *FCR* published the first special volume focused on child welfare mediation. At the time it was a relatively new field gaining ground in a number of states and provinces. Since then mediation and other alternatives to traditional and adversarial child welfare proceedings have been emerging and evolving across the United States, Canada, and the world. In this follow-up to the first special volume, the articles trace the history of the development of mediation and family group decision-making programs in the child welfare arena. The authors examine how far mediation and other alternative processes have come and where they may go in the future.

The impetus for this volume stems from a two-year effort to distill the lessons learned by child welfare mediation programs from across North America. During the summer of 2007, child welfare mediation programs were surveyed and follow-up interviews were conducted with agency personnel, researchers, and court staff. The results were summarized in a report that was used to inform and energize two Think Tanks on Child Protection Decision Making in September 2007 and May 2008. Summaries of the survey results and the two Think Tanks can be found on the Association of Family and Conciliation Courts' Web site. Many of the issues discussed in this volume reflect concerns and insights that emerged from this process.

The articles in this volume range from reflections and research on child welfare mediation in general to concerns and successes in individual programs. There are examples of programs that have succeeded and failed, as well as advice on creating, developing, and reinvigorating programs. Several articles show how the alternative theories and practices have evolved over time. We are honored to have contributions from talented authors who have left their mark through program development, research, and consulting or who have worked with and for families in juvenile court and agencies for years.

The first article is written by one of the co-editors and an early developer of the child welfare mediation movement. Bernie Mayer writes about how consensus approaches to child protection decision making have become increasingly widespread since they were first initiated over twenty-five years ago. This article is a reflection on the paradoxes that have grown as mediation programs have evolved. While some programs have grown and thrived, others have been forced to cut back on services or been eliminated all together. Bernie discusses what the child welfare system and programs just starting out need to learn from past programs. He includes important suggestions on where these programs need to go from here. The article is an important examination of the overall trends and paths taken in child welfare mediation.

The second article is by one of the foremost researchers in mediation practices and the leading authority in child welfare mediation research, Dr. Nancy Thoennes. She is the associate director of the Center for Policy Research and has been analyzing research data in child welfare mediation programs for over twenty years. She discusses how many of the initial questions about how mediation would work in this area have been answered, as well as how the research has generated even more questions. She shares significant research findings and suggests important questions that still need to be examined, including the successes that are not reflected in settlement rates and how to measure the impact of multiple types of decision-making and dispute resolution processes.

The third article is written by two well-known practitioners and contributors to the field. Marilou Giovannucci was a contributor to *FCR* in 1997 and she has continued to be an important leader in child protection mediation. She and her coauthor Karen Largent, who has been a key figure in the development of innovative and effective alternative dispute programs and mediation in child welfare cases in Alaska, have written an article that provides an eloquent twenty-five-year perspective on key elements that have contributed to the success of child protection mediation programs. They discuss the elements that are necessary, such as support, buy in, and ongoing assessment while at the same time warning readers about potential pitfalls.

The fourth article is a reflection on the history and development of Family Group Conferencing processes that engage families in issue development, decision making, and individualized and appropriate resolutions of child welfare cases. Written by the other co-editor of the volume, Kelly Browe Olson, this piece delves into the programmatic elements that make Family Group Conferencing an important and positive alternative for families.

We are honored to have two judicial perspectives on mediation in child protection in this volume as the fifth and sixth articles. These judges have each played a large role in helping to make child welfare mediation succeed in their own courts and nationally. The first piece is by Judge Leonard Edwards. Judge Edwards is a retired yet active former judge from Santa Clara County, California. Judge Edwards is not an uninterested observer; he speaks with the passion of a leader of the mediation movement. He saw, before many others did, the powerful and positive changes that mediation could provide for the children and families in his court. He has closely monitored the changes in the California court system and writes about them here. He writes skillfully of the development of the mediation movement in juvenile cases in California.

The Honorable Patricia M. Martin, the presiding judge in the Child Protection Division of the Circuit Court of Cook County, Illinois, writes with a current and no less passionate interest in helping the families that appear before her. Judge Martin points out the lessons that the mediation program in Cook County has provided to the mediation staff and the larger court staff. As Judge Martin compellingly points out:

It should be a goal of every jurisdiction across the country to continuously search for innovative and creative ways to serve families and to move every child's case through these systems by the most efficient, most humane, and least destructive means possible.<sup>1</sup>

Through her intervention and continued support, Cook County has found that mediation is one way to accomplish this.

The next piece is cowritten by three of the architects of the successful program that relies upon alternatives to litigation in British Columbia, Canada. M. Jerry McHale, Irene

Robertson, and Andrea Clarke have written an article that shows how their program was established, how the multiple layers of processes work, and where the program is headed. The authors discuss how and what they learned from an earlier unsuccessful attempt to establish a mediation program. This is an important look at a program that uses multiple processes and will continue to succeed by following carefully thought out short- and long-term planning approaches.

Greg Firestone is a well known consultant who has contributed to the establishment, development and success of numerous child welfare programs. His article on the challenges and importance of empowering parents is an enlightening piece for practitioners and program coordinators. One of the concepts that is most talked about and may be the least understood in mediation circles is empowerment. In his article, Greg discusses the difficulties inherent in creating an environment that empowers parents. He has important recommendations to help mediators provide real empowerment and bring parents further into the discussions and decision-making processes.

Finally, we have two pieces from students. The first piece is an important analysis of a national survey of child welfare mediation programs that was created for the Think Tank on Child Protection Mediation. Joan Kathol, who recently received her Master's degree in dispute resolution from the Werner Institute of Creighton University, has produced a piece that captures the input that was solicited from many constituent groups. The survey provided themes that were discussed and evaluated at both Think Tanks. Joan participated as a reporter at the first Think Tank and, in addition to detailing the survey and interview results, she was able to include some brief comments from the Think Tank in her analysis. She also includes thoughts about future research in child welfare conflict resolution.

In addition, this issue also contains a student Note written by Jesse Lubin, Hofstra Law School class of 2008. He has written about Family Group Conferencing and how it should be mandatory for use in neglect cases. His article discusses how Family Group Conferences could help parents who are impoverished to receive the services and support they need to be able to parent their children without state interference. He suggests mandating the use of these processes to help families and children.

Child protection mediation and family group decision-making programs are efforts to address an essential dilemma in child protection intervention. How can the vital role of families and parents be respected during the complex and intrusive process of child protection intervention? This challenge is critical to effective work with children and families in crisis. We believe that the discussion in this special issue offers important insights and perspectives on how best to meet this challenge.

## NOTE

1. Judge Patricia Martin, *Child Protection Mediation: The Cook County Illinois Experience—A Judge's Perspective*, 47 FAM. CT. REV. 81, 84 (2009).