
Stanley S. Clawar, Ph.D., C.C.S.

RE: Testimony on House Bill #1260

Divorce Mediation

**Thursday April 16, 1992
Room 140
Main Capitol
House of Representatives
Commonwealth of Pennsylvania
Harrisburg**

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Introduction:

I am Dr. Stanley S. Clawar, Ph.D., C.C.S - certified clinical sociologist. My institutional affiliations include being an associate professor at Rosemont College where I am responsible for teaching, amongst other subjects: advanced courses in clinical sociology, seminars in marriage in the family and forensic sociology. I have also had academic affiliations with the Graduate School of St. Joseph's University, where I instructed graduate students on Stress and Crisis Intervention. I am an Adjunctive Staff Member of Northwestern Institute (previously, Northwestern Psychiatric Institute in Fort Washington Pennsylvania). I also serve as the Director of Walden Counseling and Therapy Center (an outpatient mental health facility in Bryn Mawr, Pennsylvania). I have written dozens of popular and scholarly articles on the topics of divorce, custody conflict and related themes. I have also given over fifty presentations to scientific and professional societies during past nineteen years.

My most recent publication that would be of interest to this committee would be the book entitled Children Held Hostage: Dealing with Programmed and Brainwashed Children. This was published by the American Bar Association. I co-authored this book with Brynne V. Rivlin, M.S.S. (who is also here today) and it is based on a sampling of 700 families.

During the past fifteen years, I have served in the capacities of an evaluator, expert witness, therapist, mediator/conciliator, friend of the court and consultant on approximately 1,500 cases involving domestic related issues.

During the past few years I have been traveling to various states in the United States offering training programs to professional societies including local, state and National Bar Associations. My most recent travels were to Lynchburg, Virginia where a presentation was given to judges, attorneys and mental health professionals. I also recently traveled to California where training sessions were presented for the Institute for Judicial Education and the conciliation courts of the State of California.

At this point I would like to make some specific comments in regard to issues stated in the law, as well as suggestions for your consideration that you may wish to have in regard to a final drafting of the law.

Status of Communications (page 2, line 3, letter b) -

Here you indicate that all communications relating to the procedures will be confidential and inadmissible. Some states have a split system on this. For example, California has about sixty percent of its mediators being permitted to have direct access to a judge in terms of recommendations and about forty percent of their mediators/conciliators do not. There may be special cases where some oral or written communications might be necessary to pass on to a judge. These would be cases where there is clear evidence of various types of physical and/or social psychological abuse or non-compliance by one or both parties. Some individuals who are high conflict types will not take mediation seriously if they feel that the mediator is not empowered. The concept of confidentiality/neutrality is a good one, but some consideration of power behind the mediator is also important. This is especially important in cases where parties are extremely litigious and tie-up systems for personal interests and not with issues that are related to "the best interest of the children."

Approval of Agreement (page 2, line 7, letter c) -

This section indicates that the agreement shall be signed by both parties, but it is unclear. If there are twenty items under consideration and seventeen have been agreed to, then it is unclear whether an agreement will be thrown out because of the lack of agreement on the remaining three. It may be appropriate to indicate that outstanding items of non-agreement may go back to the attorneys to refer to a judge, but that the other items of agreement will stand. This prevents individuals from blowing up an entire agreement because of one or a few outstanding items.

Family Mediation Services (page 2, line 18, item 2) -

The law reads that the Court of Common Pleas refer all parties to mediation. Does this mean that all parties, as a state mandate, must be involved in mediation?

Qualifications of the Mediator (page 2, line 24, letter a) -

In regard to qualifications, the law indicates that certain credentials are required. May I note that these credentials are not comprehensive enough. There are many other people with expertise at the masters level and beyond who do not fall within the disciplines specified. For example, there are pastoral counselors who have specialized training in family issues, certified clinical sociologists, psychiatrists

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(especially social psychiatrists) and others. Please do not exclude these disciplines, as they provide other disciplinary views and often have equal academic and experiential qualifications to those listed already.

Approval by the American Arbitration Association on page 3, line 1 you indicate that is part of the qualifications. Please note that there are other organizations of equal or greater power in the realm of mediation/conciliation. For example, the Association of Family and Conciliation Courts is probably the foremost organization in the United States. It has representatives in every state and publishes the main journal in the field (Family and Conciliation Court Review). Additionally, the Association of Family and Conciliation Courts has one of the most intensive, regular and focused training programs throughout the United States. Given the fact that this organization is a linking network for mediation/conciliation throughout the United States, it would be appropriate to mention it in your bill.

Knowledge of Other Resources (page 3, line 8, Roman Numeral iii) -

It would be helpful to specify examples of other resources in the community. Does this mean local MH/MR centers of counseling, shelters for battered woman, knowledge of courses in parenting, local educational institutions and the like?

On-going participation (page 3, line 10, Roman Numeral iv)-

It would be helpful to further specify some minimum of continuing education. For example, a minimum of one-half day or full day seminar per year (in California, continuing education takes place a few days, twice a year). Again you mention the American Arbitration Association. It would be helpful to mention here the Association of Family and Conciliation Court, American Arbitration Association or other like professional organizations. Please note, that today many of the mental health organizations, themselves, are offering courses related to custody conflict and its resolution as well as related domestic themes.

Approval of Agreement (page 3, line 19, letter c) -

In regard to the court approving the agreement, it would be useful to specify a time line from the time an agreement is reached to the time an agreement is finalized by the court. The reason for this is that there are often on-going conflicts, issues and scheduling problems which will continue and/or get worse if there is not some time line. A reasonable time frame from the date of filing of divorce, beginning of mediation, completion of mediation, and finalization of the mediation report should be considered. Otherwise, parties who do not have good faith will drag on the mediation ad infinitum. Even if this is not present, back log in courts

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can let these agreements sit, which, in effect, invalidates their legal status. When mediation is not reached (page 3, line 24, number 2), this is important to know in terms of good faith. However, it may also be helpful to note that as part of holding parties in contempt of court (page 4, line 2) that contempt citation can include assessing the individual financial costs, changing custodial arrangements or other serious actions that may be in the best interest of the children.

Confidentiality (page 4, line 3, number 3) -
Again the issue of confidentiality is raised in terms of admissibility. This needs to be considered carefully, as there may be times when mediation materials are appropriate for the court to be privy to.

Additional Commentary -

In addition to reacting to the above references that are already noted in the Bill, I would like to have the committee consider the following:

- 1) Director of Regional Training/Coordination -
Because on-going training is necessary for the quality control of mediators throughout the system, some director (State-wide and/or regional) should be appointed in order to coordinate the training process.
- 2) Fees and Responsibility -
It seems appropriate to consider the relative responsibility of the party in regard to mediation fees. Is this service to be paid for directly from State funds? If mediation is not complete by a certain point, then the parties may need to assist in contributing to the fees. This will encourage them to complete by a certain point.
- 3) Frequency of Continuing Education -
As noted above, it is a good idea to specify how frequent continuing education is to be for the mediators.
- 4) Training for Attorneys and Judges -
It is recommended that the House Bill 1260 include a strong recommendation that attorneys and judges experience some review seminars so they understand the process, up close.
- 5) Mediation Procedures -
In regard to the item in the Bill (page, 4, line 7, letter d), it might be appropriate to indicate that once

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these procedures are set up by the local courts that they would want to include certain basics such as: Knowledge of crisis intervention, conflict resolution, diagnostic skills, capacity to write a clear and readable report, issues of ethics and related matters which have already been address by other states who have pursued this route.

6) Ethics/Disciplinary Board -

It is recommended that, for each local area and on a state-wide basis, there be a standard/ethics/disciplinary board. This will ensure quality control and will also serve as a grievance procedure. Local directors may serve in this capacity if you deem it appropriate.

7) Emergency Cases -

If mediation is to be required in all divorce cases, then there still needs to be some avenue for immediate access (relief) in cases of emergency relating to the special needs of children.

8) Child Custody Priority -

The Bill indicates that mediators may, in fact, be involved in issues in addition to child custody. It is strongly recommended here that bill 1260 specify that child custody mediation take priority. In other words, that couples should not and can not mediate support, property settlement and the like until child custody is resolved first. This protects the children in the sense that this issue is resolved early and the children can not be held hostage in regard to other issues.

9) The Term Mediation -

It is strongly recommended that the term mediation read mediation/conciliation. Many other states refer to conciliators and, by using the joint term, Pennsylvania will indicate that it is aware of the fact that mediators/conciliators are one and the same. Additionally, some professional organizations prefer the term conciliators and some of the research literature so references them.

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I would like to thank the committee for the opportunity to present these recommendations as I feel that mandatory mediation will go a long way toward assisting many children and parents. Additionally, it should reduce the log jam of cases before the court and, in the long run, reduce financial outlay.

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