

**TESTIMONY RELATING TO SENATE BILL 432 ON CUSTODY MEDIATION**

**Presented to the Subcommittee on Courts of the House Judiciary Committee**

**Pennsylvania General Assembly**

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**Presented by**

**Helene Borke, Ph.D., Mediator**

**on behalf of the**

**Pennsylvania Psychological Association**

I would like to thank Chairman Clark and the members of the Subcommittee on Courts of the House Judiciary Committee for giving me the opportunity to testify today. My name is Helene Borke and I live in Pittsburgh. I have a Ph.D. Degree in Psychology and have been a Divorce and Custody Mediator for the past thirteen years. I am a Practitioner Mediator of the Academy of Family Mediators and an officer of the Family Mediation Council of Western Pennsylvania. I am speaking as a representative of the Pennsylvania Psychological Association in support of Senate Bill 432 on mediation in divorce and custody matters.

### **What Is Divorce/Custody Mediation?**

Divorce/Custody mediation is a cooperative problem solving process during which a professionally trained mediator helps couples agree on issues of spousal and child support, custody, and division of property. Custody mediation focuses primarily on the parenting arrangements for the children. The goal of divorce/custody mediation is to reach agreements that are in everyone's best interest. The mediation helps divorcing couples to communicate more clearly with each other about their needs and their children's needs. When children are involved, their healthy growth is threatened if divorce destroys the family. Mediation nurtures the development of the post-divorce family so that the parents continue to co-parent their children.

**The goal of the parents is to divorce one another, not to divorce the children. Through mediation it is possible to have a constructive divorce which leads to better adjusted children.**

### **What Are The Advantages of Mediation?**

- o Mediation is a non adversarial process that helps couples avoid bitter litigation and stay in charge of their own lives.*
- o Mediation takes less time and costs less money than going to court.*
- o Mediation reduces the burden on the judicial system for resolving divorce and custody issues.*
- o Mediation benefits the children by helping to nurture and preserve parent-child relationships after divorce.*

### **How Many States Have Passed Mediation Laws?**

At the present time over twenty states have enacted laws legalizing court related mediation programs for divorcing couples. Some of these states are California, Colorado, Connecticut, Florida, Hawaii, Indiana, Maine, New Jersey, North Carolina, and Ohio. The most recent state to pass such legislation for family law cases is Rhode Island. Family Court Chief Judge Jeremiah S. Jeremiah, Jr. of Providence was the prime mover behind this legislation. Judge Jeremiah said he supported mediation because of the reports he had read of the success of mediation programs in other states and because of his own conviction that "people who participate in their own settlement tend to cooperate and comply" (ABA Journal, March 1995, p. 32).

### **Why Should the House Judiciary Committee support Senate Bill 432?**

Senate Bill 432 permits Family Courts to establish mediation programs for resolving custody issues. The State would not be required to fund these programs. Instead the Bill provides that a county where the court has established a mediation program can fund the program by imposing an additional \$20 filing fee on all divorce and custody complaints brought to the attention of the court. The court may also assess additional mediation costs on either party.

Senate Bill 432 further states that judges may order parties to attend an orientation session to explain the mediation process. By this means divorcing parties will become aware that mediation is a viable alternative to litigation and a constructive option for resolving child custody issues. At the same time Senate Bill 432 exempts families from being ordered to attend an orientation session if spousal or child abuse has been reported within the previous two years.

Qualifications of mediators, confidentiality and other matters related to the administration of the mediation program will be determined by local rule. Senate Bill 432 further provides that the Supreme Court of Pennsylvania shall monitor the mediation programs established by courts of common pleas throughout the State of Pennsylvania and shall set up procedures for evaluating the effectiveness of these programs.

### **Why Should Confidentiality of Mediation Communication and Documents Be Guaranteed?**

Although the committee is not currently considering Senate Bill 619, I would like to note that this bill provides for the confidentiality of mediation communications and documents. Except for certain specified situations, Senate Bill 619 establishes the privileged nature of all mediation communications and documents. Since mediation is an alternative to legal action and, if unsuccessful, might result in a court hearing or trial, it is essential that all mediation communication and mediation documents be considered confidential except for those situations specified in Senate Bill 619. This confidentiality should apply to both court ordered and private mediation. The assurance that nothing said in mediation can be used in subsequent court action is of the utmost importance to ensure the free exchange of opinions and information essential to arrive at a meaningful and satisfactory mediation agreement.

Based on my professional experience as a mediator, I am convinced that mediation is the best way to resolve divorce and custody issues. By providing a forum to communicate and make decisions, mediation not only helps people take charge of their own lives, but also helps ensure the long term well being of their children. Therefore, I urge you to support Senate Bill 432.

This concludes my testimony. Thank you again for this opportunity to appear before you. I am available to answer any questions you might have.