

**TESTIMONY OF
HONORABLE ESTHER R. SYLVESTER, ADMINISTRATIVE JUDGE
FAMILY COURT DIVISION
BEFORE THE HOUSE JUDICIARY COMMITTEE
ON TUESDAY, AUGUST 29, 1995**

**Good Afternoon Members of the Subcommittee on Courts of the House Judiciary
Committee:**

On behalf of the Judges of the Family Court of Philadelphia, I thank you for giving us an opportunity to testify with regard to Senate Bill 432 (mediation in divorce and custody matters).

In April of 1993, I promulgated Administrative Regulation 93-1 which adopted procedures and forms for Custody Mediation in Philadelphia County. This Court regulation embraced the concept of mediation as a desirable alternative method for the resolution of custody disputes. We urged practitioners to avail themselves of the program. A copy of Administrative Regulation 93-1 is enclosed as Attachment "A" for your information and review.

As we reviewed our local custody mediation program and Senate Bill 432, it differs in only two respects. (1) We do not have a general orientation session, but this appears to be an option under 3901(b) and (2) we do not assess additional costs of mediation on either party.

But we have a unique situation in Philadelphia. When the Family Law Section of the Philadelphia Bar Association through Judith Drasin, Esq., Joyce Mozenter, Esq. and Edward Blumstein, Esq. (Co-chairs of the Custody Mediation Program) approached the Court about instituting a custody mediation program, it was with the concept of volunteer attorneys and mental health professionals. The model in place in Philadelphia utilizes a team concept: a trained lawyer mediator and a mental health professional serve together as mediators on a case. I have attached a list of the volunteers as Attachment "B". Without their services, the Court, because of budget constraints, would have been unable to implement this custody mediation program. We agree with the concept of establishing program guidelines and evaluations. Our local Custody Mediation Committee saw the need to evaluate our program and are in the process of designing an Exit Survey for mediation participants.

We have noted an increase in the use of the program this year over 1994 which was the first full year of the program.

	<u>New Petitions Filed</u>	<u>Custody Modifications Filed</u>	<u>Mediation Cases</u>
<u>1993</u>	6,098	1,137	0
<u>1994</u>	5,822	1,064	72
<u>January</u> to <u>June 1995</u>	3,162	704	53

Our experience in developing a Child Custody Mediation Program in Philadelphia has lead us to understand that differences in opinion exist regarding the best mediation model to pursue. For example, some professionals in the mediation area are invested in the team concept utilizing the services of a family law attorney and a mental health professional as we did in Philadelphia. Others believe that a single trained mediator irrespective of professional orientation is sufficient. While the tradition has been to exclude domestic violence cases from mediation, there appears to be an emerging trend to explore the feasibility and appropriateness in applying child custody mediation services to domestic violence cases once the underlying protection has been addressed. I mention this because it illustrates our disappointment that the so-called "perfect model" may yet not exist no matter how well-intended proponents for mediation may be. Nevertheless, there can be no disagreement regarding the consensus that mediation in child custody disputes empowers the parties to hopefully work together toward the best interest of the children involved in the resolution of the custody dispute. In conclusion, I urge the legislature to closely study the need for child custody mediation as a best practice and permit the Supreme Court to design a uniform process which will serve all citizens and children of the Commonwealth of Pennsylvania.

FAMILY COURT OF PHILADELPHIA

ADMINISTRATIVE REGULATION 93-7

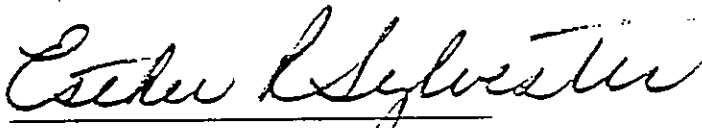
PROMULGATION OF CUSTODY MEDIATION PROCEDURES AND FORMS

In the interest of encouraging the use of mediation techniques in child custody cases, the Philadelphia Family Court hereby adopts procedures set forth hereafter for the operation of the court's Custody Mediation Program. Subject to the conditions described below, the court regards mediation as a desirable alternative method for the resolution of custody disputes. Practitioners are urged to avail themselves of this program, which offers various advantages over traditional adversarial proceedings in this sensitive area of Family Law.

Set forth below are the procedures and forms which will govern the operation of this program and a summary of information on custody mediation.

BY THE COURT:

Date: April 27, 1993


ESTHER R. SYLVESTER, A.J.
FAMILY DIVISION

VII. All interim and final mediated agreements are to be filed with the Clerk's office in Room B-16 on the date mediation concludes, utilizing the form attached. The Administrative Judge or her designee shall approve mediated agreements. All said Orders shall be forwarded to the Clerk's Office who shall forward copies of the Court Order to the parties and counsel of record.

VIII. In the event mediation is unsuccessful, the assigned mediators shall file with the Clerk's office, a certification in the form attached for an expedited Court listing. Notice of the scheduled hearing will be forwarded to both parties and counsel of record. All cases in which certification for listing have been filed shall be listed promptly.

ESTHER R. SYLVESTER
ADMINISTRATIVE JUDGE
FAMILY DIVISION

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FAMILY COURT DIVISION

CUSTODY MEDIATION PROCEDURES

I. Cases are eligible for Child Custody Mediation Program subsequent to the filing of a Petition for Custody/Partial Custody or Visitation. Cases shall be referred to the Child Custody Mediation Program (1) by stipulation of the parties and counsel; (2) by a Hearing Officer with the agreement of both parties and counsel; or (3) by a judge presiding over the case with the written agreement of both parties and counsel.

II. All referrals for the Custody Mediation Program are to be filed with the Clerk of Family Court, Room B-16, at 34 S. 11th Street, Philadelphia, Pa. utilizing the child custody mediation referral form attached hereto which must be signed by the parties and counsel.

III. The Clerk will assign the case to a mediation team consisting of an attorney experienced in family law matters and a family clinician. A formal notice will be sent to the parties, counsel of record, if any, and the designated mediators, utilizing the form attached hereto.

IV. The time and date for mediation session will be determined by the mediators. No substitute date will be assigned unless agreed to by the mediators. Participants' attendance shall be confirmed with the mediators.

V. The mediation session shall occur within 30 days of the referral. Mediation shall be completed within 60 days of the referral unless by order of the Court. All interim mediated agreements shall designate a date and time for final mediation.

VI. The following cases are not deemed appropriate for mediation:

1. Where there is an outstanding Protection from Abuse Order involving a child or spouse;
2. Where the evidence clearly establishes substance and/or alcohol abuse;
3. Where the anger and discord between the parties is of such intensity that they refuse to communicate with each other.

V. WHAT WILL MY ATTORNEY'S ROLE BE?

Your attorney can be present at the mediation but may not participate in the process. Your own attorney will continue to represent you and provide legal advice to you during this process.

VI. WILL THE MEDIATOR MAKE A REPORT TO THE COURT?

The only information given to the Court by the mediators will be whether or not an agreement has been reached. If an agreement has been reached, it will be forwarded to the Court for approval as a Court Order.

VII. WHAT IF CUSTODY MEDIATION DOES NOT WORK?

In cases where mediation does not result in an agreement, the case will be returned to the Court for a priority listing and Court hearing upon certification of the mediators.

VIII. IS MY MATTER APPROPRIATE FOR MEDIATION?

In any case where there has been a history of spousal or child abuse which is recorded and where there are documented incidents of abuse, the matter is not appropriate for mediation. In the event that there is documented evidence of substance abuse,

II. WHEN CAN YOU BEGIN CUSTODY MEDIATION?

You can choose to begin custody mediation at any time before or during the court process. Upon agreement of the parties, Your case may be placed in mediation by any of the following:

- 1) Stipulation by Counsel - signed by both parties
- 2) Hearing Officer Referral with a signed agreement by both parties
- 3) Court Referral with a signed agreement by both parties.

III. WILL CUSTODY MEDIATION WORK FOR YOU?

Mediation develops new ways of communication for couples in their parenting roles. These new communication skills will aid couples in the future to avoid conflict. Successful mediation requires parental commitment to the welfare of the children.

Another benefit of this process is that because the parties themselves determine the parenting arrangements, they can often establish a more satisfactory arrangement than one imposed by the Court.

IV. HOW LONG DOES CUSTODY MEDIATION TAKE?

The number of sessions anticipated will be a maximum of two, two hour sessions which may vary depending upon the complexity of the issues and the attitudes of the parties. The average mediation must be completed within that time frame and may be completed in one session.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

**FAMILY COURT DIVISION
ESTHER R. SYLVESTER**

ADMINISTRATIVE JUDGE

CUSTODY MEDIATION INFORMATION

I. WHAT IS CUSTODY MEDIATION?

When a couple's relationship ends, what happens to their children is one of the most important decisions they have to make. Custody Mediation is a cooperative approach to resolving the complex emotional and practical issues of custody and visitation. Through the use of tested techniques of conflict resolution, trained mediators help the parents reach a mutually acceptable and lasting agreement on these issues.

Custody Mediation recognizes that although the couple's relationship is ending, the parental role continues. The goal is to help parents look at their needs and the needs of their children, and make decisions that would be most beneficial for all concerned.

Many courts are now making mediation a part of all custody disputes. The Philadelphia Family Court has now instituted the Custody Mediation Program where trained mediation teams are provided consisting of an attorney and a mental health professional who are trained mediators as an alternative to painful and costly custody litigation.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

PETITIONER : FAMILY COURT DIVISION
: CIVIL ACTION
: CUSTODY
VS. : PARTIAL CUSTODY
: VISITATION
:
RESPONDENT : D. R. NO.

CHILD CUSTODY MEDIATORS' CERTIFICATION
FOR COURT HEARING

TO THE JUDGES OF THE SAID COURT:

The undersigned mediators hereby certify that mediation has been unsuccessful and respectfully request the matter be given a priority listing for hearing before the Court.

MEDIATOR

DATE

MEDIATOR

DATE

MEDIATED (INTERIM) AGREEMENT
PAGE -2-

II. The following issues have not been resolved in mediation, and are referred for determination by the Court:

MEDIATOR

PETITIONER

MEDIATOR

RESPONDENT

ORDER OF COURT

NOW, this day of , 199 , upon presentation of the foregoing Agreement, said Agreement is approved and made part of this Order of Court.

BY THE COURT:

J.

ATTACHMENT "A"

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FAMILY COURT DIVISION

PETITIONER : **CUSTODY**
: **PARTIAL CUSTODY**
: **VISITATION**
RESPONDENT : **DR NO.**

MEDIATED (INTERIM) AGREEMENT

AND NOW, this day of , 199 , it is agreed by and between the parties that the Court enter a mediated custody determination and order as follows:

I.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

PETITIONER : FAMILY COURT DIVISION
: CIVIL ACTION
: CUSTODY
VS. : PARTIAL CUSTODY
: VISITATION
:
RESPONDENT : D.R. NO.

CHILD CUSTODY MEDIATION NOTICE

Date

Dear

Your case has been referred to the Child Custody Mediation Program. Your scheduled mediation session is on _____, from _____ to _____, before the mediators indicated below.

Mediation will take place at the Family Court Building, 34 S. 11th Street, Room 256.

Your attendance at this session is mandatory. You must confirm your attendance with the mediator two (2) weeks prior to the scheduled mediation date. Please be prompt.

Very truly yours,

Allan L. Tereshko, Judge
Family Division
Room 203
(215 686-

Assigned Mediators

cc: , Esquire
, Esquire

ATTACHMENT "A"

this matter may not be appropriate for mediation. Any allegations of spousal abuse, child abuse or substance abuse that are not documented, should be discussed with the mediators at the first session.

**IX. WHO DECIDES WHETHER I ATTEND A MEDIATION
SESSION?**

Both parties must be willing to participate in and attend the mediation session(s) prior to any mediation session and will be required to sign a child custody mediation referral form to have their case enter the program.

ESTHER R. SYLVESTER
ADMINISTRATIVE JUDGE
FAMILY DIVISION

CUSTODY MEDIATION TEAMS:

ATTORNEY

NANCI O. WEBER, ESQ.
CAROL CARDONICK, ESQ.
EDWARD BLUMSTEIN, ESQ.
SAMUEL ROSSITTO, ESQ.
MICHAEL L. VIOLA, ESQ.
JUDITH DRASIN, ESQ.
JOYCE MOZENTER, ESQ.
S. JERRY WEISSMAN, ESQ.
DOUGLAS N. FRENKEL, ESQ.
SUSAN V. EDWARDS, ESQ.
ELIOT D. MOSKOWITZ, ESQ.
SARA LEE GOREN, ESQ.
SARA LEE GOREN, ESQ.
STEPHEN J. ANDERER, ESQ.
ARNOLD L. GROSS, ESQ.
SHARON ECKSTEIN, ESQ.
CHERYL J. BAFFA, ESQ.
MARY K. HANNA, ESQ.
EARL G. MEDLINSKY, ESQ.
GORDON WASE, ESQ.
ELIZABETH VASTINE, ESQ.
BETSY WAHL, ESQ.
BETSY WAHL, ESQ.
LESLIE L. ENGLE, ESQ.
JUDITH MUSTELLE, ESQ.
PATRICIA COCHRAN, ESQ.
DONNA SNYDER, ESQ.

THERAPIST

BRENDA BYRNE, PHD
DEBORAH VAUGHAN, M.A.
PATRICIA B. WISCH, PHD
DR. FAYE KAHN
DR. KAREN EDELSTEIN
DR. ROBERT TANNENBAUM
ILDA M. FICHER, PHD
DR. KAREN LINDENBAUM
MERLE KRIMSKEY, M.S.
VINCENT J. GIOE, PHD.
DR. WAYNE DIAMOND
NANCY CARPENTER
JOHN J. GUERIN, PHD
SUSAN E. ANDERER, PSY.D
DOLORES L. WALTHER, PHD
ADRIENNE GIOE, PHD
ARLYN H. MILLER, EDD
PATRICIA A. RANIERI, ESQ.
ELIZABETH T. HEY, ESQ.
LAURAINÉ DAVIS, M.S.
DR. CANDICE TAYLOR
DR. STEFFI HAMARMAN, M.D.
DEBORAH VAUGHAN, M.A.
SPENCER RAND, ESQ.
JOYCE MC BRIDE, L.S.W.
DR. STEVEN COHEN
CHARLES HOLMES

TRAINED ATTORNEYS NOT TEAMED WITH A THERAPIST

RACHEL MUNAFO, ESQ.
FRED RUBIN, ESQ.
RENEE LEVINE COHEN, ESQ.
DENISE B. MAZER, ESQ.