

Superior Court of the District of Columbia

Administrative Order 02-12

Whereas, The Adoption and Safe Families Act of 1997 stresses the need to improve child welfare systems, so that children do not grow up in foster care and other temporary arrangements due to lengthy court processes; and

Whereas, the Court now uses mediation to involve parties in early identification of issues and solutions, thereby affording an opportunity to approve or to order more permanent arrangements in the best interest of children at an earlier stage of the case; and

Whereas, the Court received a grant from the Council For Court Excellence which allows the Court to organize a model Child Protection Mediation Program to schedule mediation hearings for half of the families that come into the abuse and neglect system and allows funding for the National Council of Juvenile and Family Division Judges to provide an independent evaluation of that program; and

Whereas, a working group consisting of representatives from the Superior Court, Child and Family Services Agency, the Office of Corporation Counsel and other District of Columbia child welfare practitioners and stakeholders, developed goals and procedures for the implementation of the Child Protection Mediation Program.

Now, Therefore, it is, by the Court,

ORDERED, that, effective January 1, 2002 nunc pro tunc, there is hereby organized the Child Protection Mediation Program to provide mediation services in abuse and neglect cases filed on or after January 1, 2002; and it is further

ORDERED, the following procedures shall be applicable to all

cases that enter the Child Protection Mediation Program:

1. The Cases shall be randomly designated for mediation, and no entity, including the Court and the Office of Corporation Counsel, shall be permitted to select or reject a case designated for mediation without the permission of the Presiding Judge of the Family Court.

2. The Counsel For Child Abuse and Neglect shall promptly designate cases for members of every other family that comes into the Abuse and Neglect System after the effective date of this order as mediation cases, and shall notify the Juvenile and Neglect Branch, the Child Protection Mediation Program and the assigned attorneys of the cases so designated. All the cases not so designated will become part of a study control group unless otherwise exempted. The Juvenile and Neglect Branch will note on the case jacket that the case is assigned to the Child Protection Mediation Program.

3. Cases filed on Saturdays, Holidays and declared Emergency Schedule Days shall not be part of the Child Protection Mediation Program. Any case selected for mediation where the family is already active in the Court's abuse and neglect system, will only be included in the Child Protection Mediation Program if the older case is currently pending mediation.

4. The initial hearing for mediation cases will follow the existing procedures for new referral cases except as otherwise provided in this order. In lieu of scheduling a pre-trial hearing at the initial hearing, a mediation date will be scheduled within 30 days of the initial hearing date. A mediation calendar with available dates will be provided to the initial hearing courtroom clerk and updated daily. A scheduling order will be completed at the initial hearing, signed by the hearing officer and distributed to the parties. All parties and counsel specified in the Scheduling Order are required to appear on time and have set aside at least three hours to devote to the mediation process.

5. Court personnel, parties and counsel, are required to follow all procedures developed by the Court and the Child Protection Mediation Program staff.

6. For persons incarcerated locally who are needed for mediation, the attorney for the incarcerated person shall provide the Quality Control Office, currently located at JM-165, with a completed Come Up Request Form (available from the Juvenile Clerk's office and the Initial Hearing Courtroom). For persons incarcerated at remote facilities, the attorney for the incarcerated person shall provide the Quality Control Office with a completed Request for Telephone Conference Form (also available from the Juvenile Clerk's office and the Initial Hearing Courtroom). In either instance, the completed form **must** be filed no less than fourteen (14) days prior to the scheduled mediation.

7. Mediation Sessions will address the legal basis for court jurisdiction, the goals of the case, the case plan, and, where appropriate, a permanency placement for the child(ren). The assigned social worker for the case shall deliver to the Multi-Door Division of the Court a Mediation Social Report two days in advance of the mediation session. Each attorney who represents an individual party shall deliver to the Multi-Door Division a Mediation Statement two (2) days in advance of the mediation. To facilitate the mediation process, the Office of Corporation Counsel shall bring with them to the mediation session six paper copies and one electronic copy of a draft case resolution – for example, a stipulation or dismissal. Other counsel are encouraged to present their own draft stipulations. The drafts should address issues such as placement, visitation, custody, paternity and support, educational placements, parenting classes, therapeutic, and medical evaluations and/or treatment.

8. If a stipulation is reached, it will be presented to the judicial officer to whom the case was originally assigned. Where that individual is unavailable, the magistrate judge assigned to abuse and neglect initial

hearings will hear the matter. If neither is able to conduct the hearing, the Presiding Judge of the Family Court will designate an available judicial officer. This will occur on the same day as the mediation.

9. If a stipulation is not reached, the parties will complete a Joint Pretrial Statement and schedule a pretrial conference prior to leaving the mediation office. The pre-trial conference shall be scheduled between 15 and 30 days after the mediation session, depending on whether or not the child(ren) are in foster care.

10. In the event that any counsel or party named in the Scheduling Order becomes unavailable for the date on which mediation has been scheduled, counsel may present a praecipe, consented to and signed by all parties or counsel, rescheduling the mediation to a date within 30 days of the original scheduled date. A copy of this praecipe must be provided to all parties named in the Mediation Order, and to the Child Protection Mediation Program Manager in the Multi-Door Division. Where the unavailable party or counsel is unable to obtain consent from all parties or counsel, he or she must immediately file with the Judge assigned to the case, a motion to continue the mediation. A copy the motion must be provided to all parties and counsel named in the Mediation Order, and to the Child Protection Mediation Program Manager. Any party or counsel who fails to reschedule the mediation as provided in this section must appear at the originally-scheduled mediation or face possible sanctions from the Court.

11. Any party or counsel who believes that he or she has been mistakenly ordered to appear for mediation must file a motion to be excused with the assigned judge, with a copy provided to the Multi-Door Division. In the event the motion is not granted, such party or counsel will be required to participate fully in the mediation.

12. A party, who resides outside of the local metropolitan area, and who has been excused by the judge from attending mediation, may participate in the mediation by teleconference. Counsel must advise the

Child Protection Mediation Program Manager two (2) weeks in advance of the mediation of the need to coordinate any such teleconference, and provide the name, telephone number, and all other relevant information of the individual party or counsel who will be available by telephone.

13. Children may participate in mediation at the request of the Guardian *ad litem*, if they are age appropriate and upon the approval of the Child Protection Mediation Program Manager.

14. Good faith participation is required of all mediation participants. Good faith implies the obligation of full preparation prior to the mediation, including appropriate consultation with clients and other parties, performance of site visits, investigation, research, and preparation of all required reports.

15. Attorneys are to obtain copies of the social worker's "Mediation Report" from the Multi-Door Division prior to the mediation.

16. Child protection mediation is confidential. The participants will sign an Agreement to Mediate at the commencement of the session that confirms the confidentiality of the mediation session. All statements made by any party, attorney or other participants at the mediation are privileged, with the exception of any new allegations of child abuse, or threats of bodily harm.

17. Attorneys and parties who fail to comply with any provision of this Administrative Order will be scheduled to appear at a special status conference before the Presiding Judge of the Family Court or his designee to determine whether sanctions should be imposed.

SO ORDERED.

BY THE COURT
March 18, 2002

 /S/
Rufus G. King, III
Chief Judge

Copies to:

Judges
Magistrate Judges
Executive Officer
Clerk of the Court
Division Directors
Director, CCAN Office
Library