



FAMILY COURT SERVICES
MEDIATION / CHILD CUSTODY
RECOMMENDING COUNSELING
MODELS

Data and Analysis Report

September 24, 2019

Introduction

California law provides for two basic models of mediation in contested child custody cases; both models begin with mediation between the parties. In the Confidential Mediation model, cases that are at impasse following mediation are referred to a judge. In Child Custody Recommending Counseling (CCRC), the CCRC makes a recommendation to the judge if the dispute cannot be resolved by the parties. In practice, courts offer supplemental services to assist parties in reaching an agreement.

In April 2017, the Commission on the Future of California's Court System (Futures Commission) sent an extensive report to Chief Justice Tani Cantil-Sakauye, providing recommendations for improving and streamlining court processes. Some of the most important and personal decisions in the lives of Californians are made in family law courts such that safe, responsive, court connected services are essential.

To improve the handling of contested child custody matters, the Futures Commission recommended the following:

1. Providing mediation without recommendations as the first step in resolving all child custody disputes.
2. Exploring, through pilot projects or otherwise, whether additional services and procedures, including tiered mediation, would be effective in complex or contentious cases.

The Family Court Services (FCS) survey was designed to learn more about additional services and procedures used to facilitate case resolution in California courts. The survey collected responses from FCS Directors, Managers, Supervisors, and Court Administrators on September 10, 2019. Consistent with the Futures Commission recommendation #2, this survey gathered information about the various service models used in FCS throughout California.

Surveys were sent to all 58 counties with a response rate of 86% or 50 counties. Approximately 17 counties have more than one model of confidential mediation/CCRC services and an additional eight (8) counties expressed interest in offering a mixed model approach.

Types of Mediation Services Provided

The following services defined below can be provided in a variety of sequences and may include interviews with children:

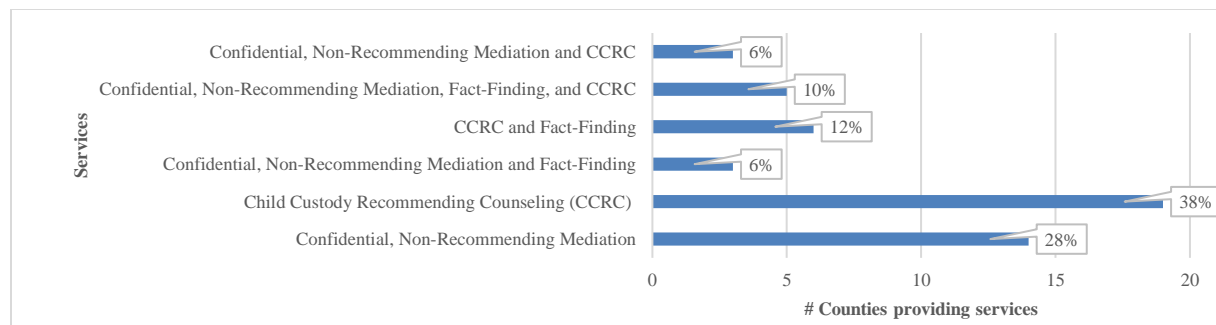
Confidential Non-Recommending Mediation: parents make a custody/visitation agreement through the mediation process and the agreement is submitted to court;

Child Custody Recommending Counseling: the mediator is a child custody recommending counselor who will conduct mediation and will write a report with recommendations that will go before the court -when parents do not reach an agreement in mediation;

Fact Finding: When an agreement is not made, in whole or in part and where there may be issues and allegations that need to be researched through investigations or evaluations with reports to court.

The following chart identifies the total number of counties offering each array of services.

1-1 Number of Counties Providing Each Array of Services



It is worth noting that generally survey respondents providing more than one type of mediation service do not use the “tier” terminology because it implies families will go through a linear process, whereas the actual process tends to be more fluid, depending on the needs of the family.

Child Custody Recommending Counseling Mixed Models

CCRC is by far the most commonly offered model in courts providing single and mixed models. Thirty eight percent of courts surveyed offer CCRC only and another 34 percent offer CCRC as one service in their mixed model approach. Three counties reported offering both confidential, non-recommending mediation and CCRC. Seven of the eight counties use different mediators/CCRCs when a family participates in both confidential mediation and CCRC. Fourteen counties identified fact-gathering as either a second or third service offered. Only one county reported using the same mediator/CCRC for all models, which is notable because it does not match the Futures Commission recommendation that a different mediator/CCRC provide the service. It is important to note that courts with only one mediator/CCRC do not have the capacity to implement more than one model.

Domestic Violence Prevention Act (DVPA) Matters

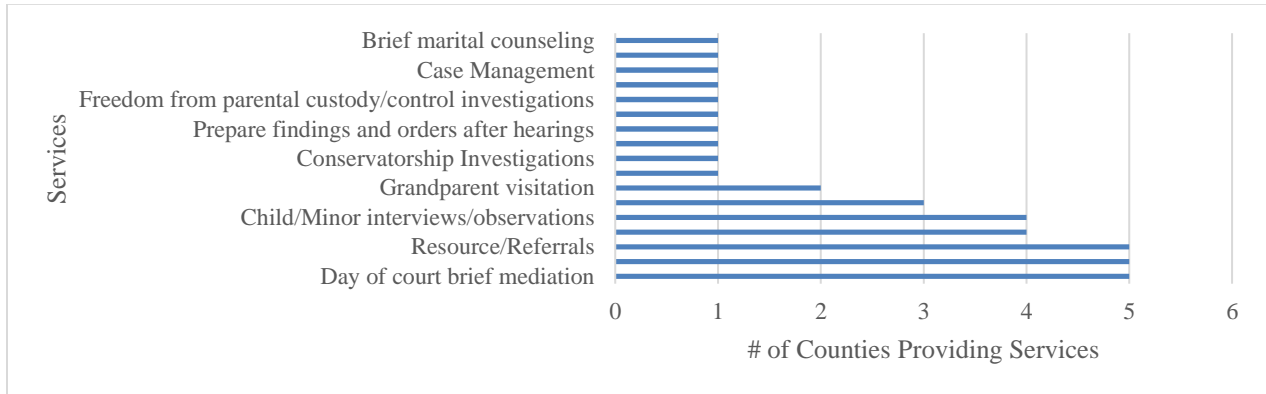
Statewide, there are a number of factors that affect when DVPA matters are addressed in the courts, including the number of court rooms, number of days per week, and/or times per day when DVPA cases are heard. Sequencing order is typically a temporary restraining order (TRO) or DVPA calendar prior to mediation, and DV screening may take place at any time during the court process but also varies from trial court to trial court. Day of court mediation, a process offered in some counties that allows parties to participate in mediation and try to reach an agreement the day they appear in court, happens during some DVPA calendars.

Additional Family Court Services Provided

A range of additional family court services are offered throughout the state. The vast majority of counties that participated in the survey offer some type of mediation orientation, either online, in person, or both. The number of courts providing other services is shown in chart 2-1.

Services offered less frequently include brief marital counseling, case management, Freedom from Parental Custody/Control Investigations, and prepare findings and orders after hearings.

2-1 Additional Services Provided



FCS Management Satisfaction and Mediation Program Challenges

When asked to rate their service models, most counties reported they were “somewhat” to “very” satisfied, indicating a strong commitment to current models attuned to local operations and needs. Nonetheless, some interest in changes to a mixed mediation model was expressed, to help address the challenge of overworked staff with high volume and challenging caseloads; to expand services to include a custody evaluation component; or provide recommendations in the most difficult cases when only confidential mediation is available.

Program leaders also expressed interest in increased collaboration with justice partners, citing the benefits of joint educational programs with the local family law section of the bar, supervised visitation providers, and domestic violence advocates.

Family Court Services across the state, are among the many court services adversely affected by resource constraints. The FCS Management responses are in keeping with the Futures’ Report, which included reference to the 2008 Elkins Family Law Tasks Force recognition of funding deficits leading to delays in case processing. Like other areas of the judicial branch, FCS Leaders shared a commitment to systems change to draw upon California’s diverse population to improve equity and representation. Also raised was the need for technological advancements such as online scheduling systems, updated mediation orientation programs, electronic resources and filings, and implementation of the Innovations Grant pilot project to offer mediation by Skype.

Summary

The survey data demonstrates a variety of ways in which FCS programs across California offer mediation and CCRC. The varied approaches taken to provide services are fluid and influenced by the nature of the case. Programs are designed to meet the needs of families served in their counties while following California statutes and rules of court. FCS is the primary court service required to focus on the best interests of children, who are the most impacted by parenting plans and custody and visitation orders. There appears to be a trend toward offering more than one of the three types of mediation identified in the Futures Commission recommendations. Five to 10 years ago most courts offered confidential non-recommending mediation or CCRC. As noted in the report, 17 courts now offer more than one type and another eight expressed interest in adopting a mixed model approach. FCS leaders report satisfaction with the models currently used in their respective courts. CCRC continues to be the most prevalent model and when available following confidential mediation resulting in partial or no agreement, provides additional information to judicial officers in making decisions in the best interests of the children.

Counties have implemented a multi-phased approach to mediation, but there are distinct differences from the tiered mediation outlined in the Future's Commission recommendation. Specifically, courts with three service models do not have clients go sequentially from one service to another. Confidential, non-recommending mediation, fact-gathering, and child custody recommending counseling do not have to take place in a fixed consecutive order, nor are they required in all of the cases with or without agreement reached in confidential mediation. Regardless of type of services offered, there is overall satisfaction with mediation services across the state.