Evaluation and process of family law and divorce mediation in Polk County, Iowa

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Evaluation and process of family law and divorce mediation in Polk County, Iowa

by

Jill Roxanne Sudak-Allison

A dissertation submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of

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2001

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This is to certify that the Doctoral dissertation of

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has met the dissertation requirements of Iowa State University

Signature was redacted for privacy.

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For the Major Program
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ABSTRACT

Fifty percent of all marriages end in divorce prior to the seventh year of marriage (Bee, 1994; National Center for Health Statistics, 1991). As a result many young children live with one parent. The U.S. Census Bureau (1998) estimates this effects 19.8 million children. Children living in single-headed households are more likely to suffer social, emotional, economic, educational, health and psychological problems (Chase-Lansdale, & Heatherington, 1990; Emery, 1988). Parents also experience difficulties adjusting to the end of a relationship. Amato (1993) believes this transition phase of divorce lasts between 2 to 5 years. Family law/divorce mediation was created to lessen the negative effects of divorce (or the end of a relationship) on parents and their children. In Polk County, Iowa, family law judges began mandating mediation as of January 1, 2000. There were 399 family law cases mediated between February 2000 and January 31, 2001. Of this 798 surveys were provided to participants, 217 surveys were returned. Of the survey respondents, 6 ex-couples and their mediator offered their experiences of family law mediation in Polk County. Eighteen in-depth interviews were conducted to gain a better understanding of how mediators, judges/courts, and attorneys could improve services offered to participants. The findings indicated that a large percentage of participants reported that they would recommend mediation to others, felt mediation was fair, that they were satisfied with and benefited from mediation, and that their mediator did not take sides. All mediations involved custody and visitation issues and other family law issues. Some cases (domestic violence) entering mediation needed to be screened more effectively and waived as the outcomes are typically not favorable. Finally, participants brought up issues concerning when attorneys were to be involved in mediation and how well they felt they prepared them for mediation.
CHAPTER 1
INTRODUCTION

Overview of the Study

Since the 1960's businesses and individuals have used mediation successfully to resolve labor and/or property disputes. It was not until 1976, when O.J. Coogler (1978) developed an approach he used with couples seeking divorce called structured mediation and that mediation was applied to families. Coogler (1978) is credited with being the father of divorce mediation. He created an alternative method for families to utilize to reduce the negative effects of divorce. Since that time, many other family law mediation approaches have been developed and implemented in an attempt to facilitate a healthy divorce process, and/or resolve custody and visitation issues. Proponents of family law mediation state that this type of mediation combines the personal/relational and legal aspects of divorce (Folberg & Milne, 1988) by offering parties a confidential and cooperative problem-solving process.

Pagelow (1993) notes that in 1981, California was the first state to mandate mediation for custody and visitation issues. As of 1996, twenty-nine states court-order mediation to resolve family law issues (Jensen, 1997) and to lessen the overload of the court system (Shepard, 1994). Many states have been mandating divorce and family law mediation since participation in voluntary mediation is low. Pearson and Thoennes (1989) and Kelly and Duryee (1992) report that those who agreed to voluntarily mediation relative to family issues had more education, higher socioeconomic status, and higher incomes than did those who were court-ordered. Emery, Matthews, and Kitzmann (1994) assert clients who are mandated to mediation represent parties who have more complex issues and are more
acrimonious with one another than those who voluntarily seek mediation. Depner, Cannata, and Simon (1992) found that over 50% of parents from their statewide sample in which mediation was court-ordered were younger than thirty-five years old, had limited incomes (approximately 27% of their sample were unemployed), and had less education (13% had not graduated from high school). They studied mediations from 75 branch courts in 51 counties occurring in over a two-week period in June 1991. The majority of participants (62%) were Caucasian, 20% were Hispanic, 6% were Black, 3% were American Indian, Eskimo, Aleut, 3% were Pacific Islander and Asian, 3% were other, 3% did not answer, and 3% were from multiple ethnic backgrounds. Their children were typically between the ages one through nine. Sixty-seven percent of the parties mentioned problems with domestic violence and 33% reported problems with substance abuse. Jones and Bodtker (1998) reported similar demographic characteristics of their sample of participants court-ordered for custody-related mediation, this included: 48% with individual incomes less than $20,000 per year; 39% earned between $21,000 and $40,000; 10% reported earning $14,000 to $60,000; and 3% earned more than $60,000. Additionally, 12% of their sample had taken high school classes; 50% had graduated from high school; 22% had some college; 13% earned college degrees; and 4% reported earning a graduate degree. Ninety-two percent were Caucasian; 3% were African American; 2% were Hispanic; 1% were Asian American; and 2% were listed as other. Over half of the cases mediated (53%) involved children between the ages of six and under; 38% of the children were between the ages of 7-12; and 9% were 13 years old and over. These demographics were based on 169 mediated cases. Of the mediated cases, 85% had only one session, 11% had 2 sessions, 3% mediated for 3 sessions, and 1% had four
sessions. Since participant feedback forms were not completed on all of the mediation
sessions, the researchers used information only from the first session in cases where
participants had multiple mediation sessions.

Current Study

In 1971, the Iowa Legislature passed a bill in which residents no longer had to prove
"fault" to initiate dissolution of marriage. Many other changes effecting the family and
issues involving family law have taken place since that time. Most specifically, as of
January, 2000, in Polk County, Iowa, the most populous County in Iowa, family law judges
mandated mediation for marriage dissolution, and child custody issues, including
modification, temporary hearings, visitation, post high school educational support cases, and
child support that were not resolved after the pretrial conference. Exceptions to this rule
included cases where a history of domestic violence had resulted, or where direct physical
and/or emotional harm to the child, children and/or other parent may have occurred.
Mediators and the Program Administrator were trained in screening for and were required as
a part of this program to screen for domestic abuse. The Program Administrator,
participant's respective attorneys, and the mediators asked each party individually if
domestic abuse had occurred during the relationship. Many participants chose to mediate
even when they stated that domestic violence was a concern for them in their relationship.
Pearson (1997) found that 50% of participants from five court-based programs alleged claims
of domestic violence. Of this only 5% of the cases were waived from mediation.
Additionally, parties could be excluded if the respondent was in default. Mediation might
also be waived for parties, if they had already contracted to mediate, or had mediated in
regards to the pending petition, and/or resolved all issues and were in the process of settling the case. All costs for the custody and dissolution of marriage mediation were the responsibility of the parties involved. Families who were unemployed or whose income was low could apply for and were eligible for pro bono mediation. Eligibility requirements for individual parties who received mediation pro bono included those who had received assistance from Legal Aid or the Volunteer Lawyers Project, were on public assistance programs, such as FIP, Food Stamps or SSI, and/or were unable to work due to mental or physical disabilities. Eligible participants were required to pay a flat rate of $5.00 per hour to the mediator.

The following study is based on the implementation of the Iowa Code, Chapter 598, and sections 7a and 41. The goal of the Polk County District Court Mediation Program was to help reduce the backlog of court cases, and to provide an alternative method for families to deal with custody and/or family-related issues. The purpose of this study was to evaluate family law mediation in Polk County, Iowa in an effort to better understand the needs of families who were court-ordered to mediation. The mediation program through Polk County District Court was evaluated by participants to determine:

- If they perceived as a result of the services offered (brief mediation) satisfaction with the process.
- Improvement in their own lives and/or their children’s lives, and improvement in their method of communication and dispute resolution with one another regarding their children.
• The ability to make their own decisions on issues effecting their own lives and their children’s lives thus improving compliance with the court decrees.

• Reduced emotional damage endured by children experiencing parental conflict.

Additionally, mediators were interviewed to examine their approach to a particular mediation session to determine what factors contributed to the outcome of each case. The primary researcher reported participants’ and mediators’ comments, concerns, and questions to the Program Administrator in an effort to improve Polk County’s Mediation Program.
CHAPTER 2
REVIEW OF RELATED LITERATURE

Divorce

Prior to the adoption of the no-fault divorce law in California, 1969, it was difficult legally to end a marriage in the United States. One spouse or the other had to establish proof that the divorce should be granted based on a form of "fault", such as, incompatibility, cruelty, and/or unfaithfulness. Since that time, the number of divorces in the United States have increased exponentially. According to records from the Centers for Disease Control and Prevention/National Center for Health Statistics, the number of divorces in 1995 were 4.5 per 1,000 population compared to 1980 when divorce rates were as high as 5.2 per 1,000 in the United States (National Center for Health Statistics, 1995). In the state of Iowa, divorce rates are somewhat lower than the national average, although the rate of divorce has decreased similar to the pattern of the overall rate of the United States. For example, in 1980 divorce rates were as high as 4.1 per 1,000; in 1989, 3.8 per 1,000; and 3.9 per 1,000 in 1990. Although divorce rates have been decreasing since the 1980's where divorce rates reached an all time high, an increasing number of children are being raised in singled-headed households. Figures reported by the U.S. Bureau of the Census (1998) show that approximately 19.8 million children reside with a single parent. Most children who lived with one parent resided with their mother (84.1%) and of these children 40.3 % of their mothers had never been married. Births out-of-wedlock, divorce, and separation account for the large number of children living with one parent. A report from the U.S. Census Bureau released October, 1999 found that 33.6% of women between the ages of 15 – 44 gave birth to
their first child out-of-wedlock during 1990 through 1994 (Bachu, 1999). This number has increase twofold since the 1930’s.

Arbuthnot and Gordon (1994) and White (1990) estimate that 20% of all minor children will live with only one parent during their childhood. Wallerstein and Johnston (1990) believe this rate to be as high as 50%. According to Iowa’s census report for the year 2000, 18% of all families with children under the age of 18 were comprised of single-mothers as head of the household. Researchers have noted children living in single-headed households without their biological fathers are more likely to be poor (U.S. Bureau of Census, 1996; Harper & McLanahan, 1999), fail or drop out of school (Amato, 1993; McLanahan & Sandefur, 1994), become incarcerated (Harper & McLanahan, 1999), victims of child abuse, and/or suffer from social, emotional, educational, health, and psychological problems (Chase-Lansdale & Hetherington, 1990; Emery, 1988). Arbuthnot and Gordon (1994) suggest that thirty percent of the children affected by divorce will still be struggling with depression, loneliness, and dissatisfaction with their lives five years later. Amato (1993) and Simons, Lorenz, Wu, and Conger (1999) suggest that this may be due to parents experiencing their own problems, such as depression and antisocial behavior as a result of going through the divorce process and are unable to meet the needs of their children. They found that divorced mothers were more prone to experiencing symptoms of depression and withdrawal. Astone and McLanahan (1991) compared divorced and married mothers on their parenting and found that divorced mothers made fewer demands on their children and were less competent in their parenting practices. Wallerstein, Lewis, and Blakeslee (2000) believe that this happens in part due to the demands of work and the pursuit of another
relationship. Emery (1982) reports that parental conflict effects parenting and children's adjustment to divorce. Thus, children of divorce are left to deal with their own losses and traumas as a result of their parents divorcing one another. Beck and Biank (1997) argue that divorce mediation is one method to help children cope with the transition of divorce as they believe it shortens the length of time it takes to complete a divorce, empowers parents to resolve their dispute with one another (Folberg & Milne, 1988) by being able to express their concerns about their children to a neutral third party who will listen and offer them options in an attempt to help the parties achieve resolution (Kelly, 1996). Furthermore, parents who mediate report less conflict with one another during their divorce than those parents who chose the adversarial process (Kelly, 1993).

**Factors Effecting Children of Divorce**

Researchers have linked poverty and lack of involvement by one or both parents as factors contributing to children being at greater risk developmentally (Halle, Moore, Greene, & LeMenestrel, 1998; Roseby & Johnston, 1998). For example, Harper and McLanahan's study (1999), found boys whose fathers were not involved in their lives to be in jail twice as often as those boys who had two parents in their lives. They estimate that each year a child spends growing up in a fatherless family, his or her chance of being incarcerated rises approximately five percent. Simons, Lin, Gordon, Conger, and Lorenz (1999) note that boys are at a greater risk for experiencing depression when they are without their fathers due in part to their mothers increase in depression and decline in parenting. Delaney (1995) reports that boys show more impulsive behavior and girls are more likely to be depressed as a result
of their parents divorcing. According to the National Fatherhood Initiative (1998) approximately 40% of children have not seen their father in over a year (Arnaudo, 1998).

Meierding (1993) concluded from her survey results that fathers who were involved in parenting while they were married would remain involved with their children after the marital/couple relationship was over. Nord, Brimhall, and West (1997) noted that non-custodial parents become less involved with their children the longer they are separated and/or divorced from their children's mother. Halle, Moore, Greene, and LeMenestrel (1998) recommend encouraging low-income fathers to become more involved with their children other than merely through financial means.

Lamb, Pleck, and Levine (1987) argue that there are many different ways fathers can be involved with their children beyond paying child support, including becoming more accessible, engaged emotionally, and responsible in their children's lives. That is, fathers are important to their children in regards to the type of involvement they have with their children, such as, being a role model, providing discipline, demonstrating love and affection, as well as providing financial support (Simons, Conger, Lorenz, Gordon, and Lin, 1999). Many researchers believe these types of roles can be provided even when one parent resides outside of the home. Burrell, Narus, Bogdanoff, and Allen (1994) recommend mediation to help ex-couples co-parent as it provides parents (custodial and non-custodial) with opportunity to be involved in their children's lives by offering them the forum to continue to plan and make decisions about their children currently and in the future. Halle, Moore, Greene, and LeMenestrel (1998) believe non-custodial parents would like more access to their children, however, such issues as, unemployment or underemployment, the type of
relationship with the custodial parent, proximity, and the nature of the custody agreement, may impact their ability to have more contact.

Researchers have noted that non-custodial parents' compliance in paying child support and access to their children are related to one another. Chambers (1979) reported that fathers who paid 85% of their child support payments continued to be involved in their children’s lives after the divorce, while those who were not involved paid only 34%. Pearson and Thoennes (1996) identified factors which influence parental contact and payment of child support including, employment and level of education, physical proximity, parents relationship to one another, “de facto experience with time-sharing”, remarriage and the length of time since separation. Proponents of mediation contend that mediation offers families more options and greater flexibility than the adversarial court system as the process of mediation can help facilitate discussions around such issues as visitation, parents relationship with one another, child support, children’s developmental needs and parenting, dealing with a new step-parent, to name a few. For example, Kelly (1993) reports that when parents engage in lengthier mediation (more than one session) divorce mediation settlements typically provide non-custodial parents increased visitation and access, greater participation in parenting, reduced conflict among one another than those parents who choosing litigation.

Sorenson and Halpern (1998) noted that only 31% of all single mother families received child support in 1997, although 58% of families were eligible. They estimate that although efforts enacted by the government to change the amount of support received by custodial parents have been helpful, those mothers who have never been married are less likely to receive any type of support than divorced or separated mothers. Mediation may be
important to these families as never-married parents may not have a connection with one another and this may impact the non-custodial parent's willingness to be involved with their child. Additionally, mediation can negotiate the process of involving a parent who has never lived/been involved with his/her child in a manner that best meets the need of the child. Mediation can help these parents define their relationships with one another and also to determine what kind of relationship they want to have with their child/children in the future. Additionally, mediation is affordable as many court-mandated programs offer pro bono mediation for parents with limited means.

Weitzman (1985) and Fineman (1991) found divorced women and their children have experienced financial instability based on unequal and unfair divisions of property as a result of the legal divorce process. This has not been the case in mediation. Pearson (1991) found women who participated in extended mediation (two or more sessions) in which issues that were relational in nature were addressed, fared better financially. Kelly (1989) and Pearson (1991) reported that both men and women who used mediation felt their issues related to property settlements were fairer than those who had used the adversarial method to divorce. In addition, they found that when gender differences existed they tended to favor women although, men reported that they were equally satisfied with mediation. Kelly (1996) reported that parents who engaged in lengthier mediations communicated more often and were less adversarial with one another. Additionally, Marcus, Marcus, Stilwell, and Doherty (1999) compared mediated and litigated divorce cases during the years 1996 through 1998 in Connecticut and found no significant differences in family income and liability for women as a result of divorcing. Although, women who mediated received a greater amount of child
support and amount and length of alimony awarded than those women who litigated. These authors also concluded that mediated agreements settled more quickly than did those using litigation which was better for men, women and their children. Family law mediation offers an alternative, efficient, and more equitable approach to resolving custody and financial issues of divorce.

Demographics of Divorce

Fifty percent of all marriages end in divorce prior to the seventh year of marriage (Bee, 1994; National Center for Health Statistics, 1991). This statistic indicates that many women are divorced with young children. Jones and Bodtker (1998) reported 53% of their one hundred and sixty-nine mediated cases from the York County Custody Mediation Program in 1996, involved children under six years old, 38% of the children were between 7 and 12 years old, and 9% were 13 years or older. Divorces are more frequent among younger couples, who are less educated, and/or become pregnant prior to marriage (Norton & Miller, 1992). Some researchers argue that divorce should be considered as a part of a normal process of the family life cycle (Folberg & Milne, 1988; Walsh, Jacobs, & Simons, 1995) as more families are estimated to be comprised of step and/or single parent than nuclear.

According to Wallerstein and Johnston (1990), divorce is process that begins when one or both partners experience unhappiness in their relationship, and begin moving toward separation and divorce. It is their belief that subsequent remarriage and divorce would be considered a part of this process because of the impact it has on children which would dispel
the notion that the impact of divorce is only temporary (Wallerstein, Lewis and Blakeslee, 2000).

Researchers have divided the process of divorce into three stages: The pre separation period, divorce transition period, and the post divorce period (Guttmann, 1993; Kaslow & Schwartz, 1987). Amato (1993) estimates that the divorce transition phase lasts between two to five years during which time couples will still be adjusting to the transition process and conflict with one another. Johnston, Campbell, and Tall (1985) report that most couples will have not resolved their issues with one another two years after separation and continue to battle with one another. This level of conflict and hostility not only impacts their ability to cope, deal with one another, but also their children.

Conflict and hostility among parents is often intensified after divorce (Bay & Braver, 1990; Emery, 1982). It has been shown that there are long-term, adverse effects for parents and families involved in highly conflictual relationships (Simons, Conger, Lorenz, Gordon & Lin, 1999). Studies suggest that parents who engage in high levels of conflict with one another, can cause emotional and behavioral disturbances and adjustment difficulties for children (Emery, 1982; Johnston & Campbell, 1988; Wallerstein, 1985), especially boys (Simons, Conger, Lorenz, Gordon & Lin, 1999; Wallerstein & Johnston, 1990); access and visitation disruptions (Ahrons, 1983); intermittent or nonpayment of child support (Pearson & Theonnes, 1988); and other divorce related adjustment issues. Mediation can reduce the conflict that exists among couples who are experiencing the negative effects of divorce. Parkinson (2000) recommends using a model of mediation for high-conflict couples in which the mediator structures the sessions by managing the conflict and reframing it into solutions.
Wallerstein and Johnston (1990) found long-term, negative effects of divorce on children especially those who were preadolescent and/or young adolescent during the time of divorce and ten years later. They would argue in favor of both parents having access to their children except under conditions in which there is ongoing conflict and hostility towards one another. They also report that divorcing did relieve some of the conflict between parents which was helpful to their children. Additionally, they reported children have more favorable outcomes when remarriage or the change in the family structure was a positive one.

Arbuthnot and Gordon (1994) report within five years after obtaining a divorce, 85% of these individuals will remarry. Martin and Bumpass (1989) found that almost 75% of those who are divorced would remarry within three years. Of those who remarry, 60% will divorce due to previously unresolved issues, step-parenting issues, new issues and changes in the family structure.

In a study completed by the Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement (1997), the authors report that noncompliance with visitation orders often escalates the conflict between parents. They note that problems can stem from the custodial parent refusing to allow the non-custodial parent access due to concerns about their children’s safety when with the other parent (Braver, Wolchik, Sandler, Fogas, & Zvetina, 1991). Pearson and Thoennes (1984) found forty to fifty percent of their sample had this concern. Other researchers question the validity of these claims and note that it may be the conflictual nature of the relationship between the custodial and non-custodial parent that feeds this belief. This belief can create a vicious cycle in which each parent blames the other, leaving the child with limited access to and support from the non-custodial
parent (Campbell, 1993). Halle, Moore, Greene, and LeMenestrel (1998) believe non-custodial parents would like more access to their children. Simons, Conger, Lorenz, Gordon, and Lin (1999) state that the quality and frequency of the contact between the non-custodial parent and child is very important to the well-being of the child.

In part, as a result of the above concerns, Congress has created a Welfare Reform law, Personal Responsibility and Work Opportunity and Reconciliation Act of 1996. One of the goals of this legislation is to increase non-custodial parents’ access to and visitation of their children by utilizing a variety of approaches including “mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring supervision and neutral drop-off and pick-up), and development of guidelines for visitation and alternative custody arrangements” (Arnaudo, 1998). In response to the legislative changes and funding allocated for this type of programming, many states are adopting task forces to review the problems and provide solutions concerning families of divorce, separation and out-of-wedlock births.

It is difficult to isolate the factors that cause/relate to the above issues, although, many studies have shown that both parents are important to the well being and adjustment of their children. Both parents are more likely to be involved with their children’s lives if they can agree with one another. Emery (1982) asserts that the most important factor in determining a child’s ability to adjust to divorce is dependent on the divorcing parents’ ability to cooperate with each other. Wallerstein (1987) supports maintaining relationships between non-custodial fathers and their children in regards to helping children adjust to the divorce process and beyond. Pearson and Thoennes (1990) believed children adjusted more
readily to divorce when the following factors were present, positive family relationships, reduced parental conflict, child’s age (younger), gender (female) and personal characteristics (flexibility), and financial stability. Additionally, researchers imply that if mothers were less depressed due to having support in parenting from their ex-partner that the children would be better off, especially boys (Simons, Conger, Lorenz, Gordon & Lin, 1999).

Pearson and Thoennes (1996) report that one method to help parents resolve their disputes with one another and improve their compliance with the divorce decree is through mediation. Since the process of mediation is based on cooperation rather than competition, parents have more voice throughout the process and the results are likely to mirror the overall needs of the changing family structure. Kelly (1990) reports that parties who mediate are more likely to follow the terms of their settlement than those who had reach agreements by using the adversarial process. Additionally, they are more likely to report that they felt the agreement was fair.

Mediation

As of 1996, twenty-nine states have created court-ordered divorce mediation statutes (Jensen, 1997). Pearson (1997) notes from statistics reported by the National Center of State Courts that approximately 205 mediation programs offer some type of mandated mediation for families seeking dissolution and/or custody type issues. Although, the practice of court-ordering certain family law cases to mediation may not be voluntary, the mediator takes on a neutral and impartial role, such that, the parties agreeing to mediate are expected to reach decisions voluntarily based on sufficient factual data and understanding of the issues presented. That is, they are not coerced by the mediator, the other party, or attending
attorneys, to reach an agreement (Umbreit, 1995). The mediator has an obligation to equal out any imbalances posed by either party.

Mediation is one process that provides divorcing parents the ability to negotiate their own settlement, instead of relying on a judge. The mediator who is usually an attorney, judge or a mental health professional offers impartial, nonjudgmental options while helping each side identify and discuss their terms in pursuit of resolving property and child custody issues (Severson, & Bankston, 1995). Mediators facilitate the resolution of a dispute by promoting voluntary negotiations, and exchange of information. The discussions are present and future oriented based on what both parties want to happen from the time of mediation and beyond. The sessions and the amount of time spent in mediation are limited in that the process is not a continuous one (Umbreit, 1995). Depending upon the preference of the participants, attorneys can attend the mediation session, be consulted with through phone conferencing, or not attend at all. Attorneys can also be consulted before, during and after mediation occurs. The process of mediation encourages clients to speak for themselves and not necessarily through their respective attorneys, as the attorneys role in mediation is primarily to offer his or her client legal information and protection. Mediation is confidential and the issues discussed during mediation cannot be used in subsequent litigation (Friedman, 1993). Participants do not need to have an attorney to attend mediation. Furthermore, mediation is less costly than pursuing divorce and/or custody issues through the adversarial system (Pearson & Thoennes, 1982; Kelly, 1990). Kelly (1988) reported that couples involved in divorce mediation spent approximately 134% less money than those utilizing litigation.
The process of mediation is informal, although it is structured by a series of stages (Taylor, 1988). Kessler (1978) divided the tasks of mediation in four stages to encompass the “theories of human growth and development, marital dissolution, and family systems” (Kaslow, 1984). These stages include the process of setting the stage, defining the issues, processing the issues, and resolving the issues of involved parties. Other theorists have defined the process of mediation as one of seven stages to resolve disputes (Taylor, 1988). Zumeta (2001) has identified the process of divorce mediation into 8 stages. As a facilitative mediator she believes that this approach allows participants to be able to get their “interest-based” needs met and come to agreements that are mutually satisfying to both parties. She has identified the stages as: pre-mediation separate screening interview, joint orientation, gathering information, framing the issues, developing options/considering alternatives, negotiation, finalizing (nailing down) agreement, and the final session with the children.

Each mediator has his or her own style and techniques that he or she uses in mediation in an attempt to help the parties reach a resolution. Lim and Carnevale (1990) randomly sampled active members of the Society of Professionals in Dispute Resolution (SPIDR) and assert that mediators use different tactics based on the contingent needs of a particular dispute. Kressel and Pruitt (1985, 1989) designated three types of tactics used by mediators: reflexive, substantive, and contextual. Reflexive tactics are those type of tactics used by a mediator to learn more about these issues involved in the dispute and to set the stage for what will happen next. Substantive tactics are tactics that are related to the problems and solutions pertaining to the dispute. Contextual tactics are tactics that assist in the process of parties finding their own solutions. Others report that the skill of the mediator
is one of the most important factors in determining whether participants feel satisfied with the outcome of mediation even if the parties are highly acrimonious and/or in highly conflictual relationships with one another (Schwebel, Gately, Renner, & Milburn, 1994).

**Types of Mediation**

Zumeta (Mediator and Mediation Trainer, Personal Communication, 2001) states that the three most widely used models of mediation include the transformative/recognition model, the facilitative model, and the evaluative model. These models are most often used in divorce mediation and to resolve custody issues.

**The Transformative/Recognition Model**

The transformative/recognition model focuses on recognizing the relationship between the parties involved in mediation and transforming the individual, their relationship and beyond to include society as well (Folger & Bush, 1994). Proponents of the transformative/recognition model of mediation use a non-directive, and informal style to transform the conflict. A transformative mediator does not direct the process nor structure the outcome of the mediation. This type of mediator empowers each party to define, determine, and handle their own problems on their own terms. Solving problems through the use of this method may be the result of what happens once the relationship has been transformed. Umbreit (1997) asserts that the transformation that occurs during mediation may have more lasting effects than the terms of the agreement itself, facilitative and transformative mediators would all agree on this. Thus, the goal of this type of mediation is not merely to reach a settlement.
The Facilitative Model

The facilitative model focuses on resolving the problem and facilitating the parties to take responsibility for the agreement by planning for the future through constructive problem-solving techniques (Folberg & Taylor, 1984). This type of approach is directive in structuring the process not the outcome. The goal of this model is to reach agreements/settlements that are mutually beneficial for all parties involved (Avruch & Black, 1990).

The mediator uses a variety of techniques such as reframing, defusing of anger, acknowledging and validating issues, and story telling to facilitate communication and analyze options between the participants (Kelly, 1983). One tool a mediator might use to facilitate movement among participants is to have them focus on the negative consequences of what will happen by not solving the problem. The mediator’s role in this approach is to ensure that both parties make their own and informed decisions based on understanding their options. In this approach, the mediator does not take responsibility for the outcome. Thus, participants may leave without an agreement, if they choose. Mediators focus on the interest of the parties and underlying interests rather than their positions to help them process their issues. Mediators using this approach typically meet jointly with all the parties together in order for both sides to be aware of the others viewpoint. Although, they also engage in caucusing as needed, these mediators typically begin mediation with separate sessions for each participant to find out if the case is appropriate for mediation. The facilitative model is based on understanding participants’ desires, their method of communication, and underlying needs and interests.
The Evaluative Model

Finally, the evaluative model is based on the mediator taking an active role to get the participants to agree on a stated goal. The approach used by mediators is to focus entirely on the facts and the issues, not emotions and the emphasis is placed on resolving the issues brought to mediation (Bahr, 1981). The mediator is directive and communication is directed through the mediator or through the use of individual caucusing. If the parties are unable to settle, the mediator is likely to offer a recommendation or to inform the parties what is likely to happen if they can’t reach a settlement on their own. In this approach, the mediator structures both the process and the outcome of the mediation.

Divorce Mediation and Child Custody

Donohue, Drake, and Roberto (1994); Donohue (1991) suggest that in general divorce mediation is focused around the following legal issues including: child and spousal support, child custody, access and visitation, and dissolution of property. According to Donohue, Drake, and Roberto (1994), both parties consider mediation successful when parents are able to discuss issues that are relational in nature. Proponents of mediation believe the process of mediation fosters better relationships among divorcing parents, and is less expensive than litigation. In addition, ex-couples are more likely to follow the terms of their agreement as they were more involved in the process. Furthermore, mediation saves time thus reduces the backlog of the court system as fewer cases go to and/or return to court (Rudd, 1996), but may return to mediation as their individual and family needs change over time. As a result parents feel like they have more control over the process and their lives (Beck & Biank, 1997). Beck and Biank argue that children need to be considered in the
mediation process. They assert that parents are often experiencing their own trauma as a result of seeking a divorce and may not be able to accurately assess their children’s needs. They recommend conducting a child assessment to determine what might be most helpful in meeting the needs of the child. Others support this view as they believe divorce and separation are emotionally and financially difficult times in a person’s life and that they may not be able to make the best decisions for their children or themselves during this time (Umbreit, 1995).

Divorce and Child Custody Mediation Outcomes/Satisfaction

Milne (1991) notes that only 10% of all divorce cases are referred to mediation, and of those that are mediated, 93% did not return to court. Mathis and Yingling (1990), estimate that over 25% of child custody cases decided by a judge are re-litigated due to parents’ dissatisfaction with the courts’ decision. In Emery and Jackson’s (1989) study, they found 77% of their court mediation cases were resolved through a written or verbal agreement. Only four out of their thirty-five mediation cases needed to be decided by a judge. They also found increases in joint/legal custody agreements. In general, mediated agreements were obtained in approximately four weeks, an average of three weeks sooner than litigated cases.

The Community Mediation Service in Colorado, a program that offers pro bono and/or low cost mediation to low income families, limits their divorce, child custody, visitation, and child support mediation sessions to 10 hours per case. They recommended implementing a time frame limiting the amount of sessions/hours that parties could use for mediation. They felt that this would encourage parties to be more involved in settling their issues, as their cases could not continue indefinitely (Coates & Damas, 1997). Emery,
Matthews, and Wyer (1991) report other programs offered an average of 2-3 mediation sessions per case. Kelly (1996) notes that mediation programs differ in length and the number of sessions provided. For example, mandated mediation averages approximately four hours per case whereas private mediation is typically lengthier. She did not find in her analysis of a decade of divorce mediation research any relationship between the parties' ability to settle their mediation issues and number of mediation sessions or hours mediated. Although, she reports that parents involved in lengthier mediations communicated more often and were less adversarial with one another. Additionally, Pearson (1991) found women who participated in extended mediation (two or more sessions) in which issues that were relational in nature were addressed faired better financially. In reviewing past studies Kelly (1996) found settlement rates of 50-85% (for studies using both brief and comprehensive mediation), and that divorce related issues were resolved in one-half the time for one-half the cost.

Kelly (1991) has found parents who are involved in mediation are more likely to comply with their agreements than are those who have chosen to litigate. Significant areas effected in positive ways include increases in compliance with child support payments, greater involvement with their children, and regular visitation (Bahr, Chappell, & Marcos, 1987). Furthermore, the negotiating skills taught and utilized during mediation can enhance parents' interaction with one another long after the settlement has been reached (Delaney, 1995).

Kelly and Duryee (1992) compared men and women's experiences of two different mediation programs, one program offered voluntary and comprehensive mediation services
and the other provided court-ordered, custody-only mediation. Those participants voluntarily attending mediation mediated their cases in 10 sessions with each session lasting about an hour-and-a-half over a 3 to 6 month period. The authors did not find any significant differences between men and women in regards to satisfaction with the process and results of mediation. They reported that 78% of men and 72% of the women who completed mediation stated that they were “somewhat” to “completely satisfied”. For those court-ordered to mediation, they attended approximately 2.5 sessions with each session lasting 3.2 hours. The authors found that over 50% of these men and 67% of these women were “mostly” to “very satisfied” with the process of mediation. However, men were less satisfied with the results of mediation. Only 48% of the men reported being satisfied. Most of the women (67%) reported being satisfied with the results of mediation.

Mediation outcomes vary in regards to the type of mediation offered the skill and experience of the mediator, by participant characteristics, and other factors (Schwebel, Gately, Renner, & Milburn, 1994), including attorney characteristics. In an evaluation of mediation approaches, the above authors note that although mediation varies by the following dimensions: the length of sessions, role and skill level of the mediator, issues raised, the number of mediators present, whether or not to mediate emotions during the session, issues regarding involving children, how attorneys are involved, and provisions for other types of agreements if mediation fails, overall, mediation has been found to have favorable outcomes for those involved. Schwebel, Gately, Renner, and Milburn (1994) would argue that the skill of the mediator and the style of mediation used would determine whether or not the participants’ feel the outcome is one they can adhere to and thus
successful. Kressel, Frontera, Forlenza, Butler, and Fish (1994) compared two styles of mediation, settlement-oriented (referred to earlier as evaluative) and problem-solving (referred to earlier as facilitative) and found that problem-solving mediation settlement rates to be more realistic and longer lasting than settlement-oriented mediation styles.

**Mediation and Never-Married Parents**

According to the U.S. Census Bureau, the number of unmarried or never-married parents is on the rise. In the year 2000, 48% of all heads of house were not married. Raisner (1997) compared a total of 441 cases of parents; 191 were never-married and 216 were married one time and were court-ordered to mediation for custody and visitation issues. Parents were referred for two or three, 2-hour mediation sessions. The author examined such factors as mediator expectations, mediation outcomes and impact of domestic violence on outcomes, and issues unique to never-married parents and ways to meet their needs better across each group. Raisner found that never-married parents may have different needs and issues than once married parents including relationship building (if there were no prior relationship), working through anger and fear (if relationship renewal is suggested by the courts), introducing the child/children to the non-custodial parent (if previously there had been little or no contact), and/or having to work through their feelings that mediation is another barrier needed to be dealt with in their lives. She found mediation outcomes to be similar for never-married (84% agreement rate) and once married parents (85% agreement rate) when mediation occurred. Additionally, the rate at which cases were not able to be mediated was also similar for both groups. When considering all cases reviewed, it appeared that there were differences between the two groups (never-married - 59% rate of agreement;
once married - 66% rate of agreement) however, the difference was that never-married parents showed up for mediation less often (19%) than did those who were once-married (12%) to the mediation session.

**Mediation and Domestic Violence**

Mediators and researchers have found domestic violence to be quite frequent among participants utilizing court-based mediation programs. In Depner, Cannata, and Simon's (1992) study in California 39% of their participants alleged that domestic violence had occurred during their relationship. Ellis and Stuckless (1992) and Pearson (1997) reported that domestic violence was reported in approximately 50% of their mediation cases.

Pearson (1997) evaluated five court-based settings to determine how mediators and Program Administrators were dealing with domestic violence in their divorce mediation programs. This author reported that court-based programs use many screening tools to determine if domestic violence is a factor in the relationship. She found the most widely used approach is the face-to-face interview and that 80% of the programs surveyed screened individuals separately. Of this only 5% were waived from mediating. In this study, the Program Administrator ask parties at the time they are calling to set up their mediation questions to determine if domestic violence has been/is currently an issue in his/her relationship. The Program Administrator asked both men and women these types of questions. If the attorney had set up the mediation, the Program Administrator asked the attorney if he or she is concerned about this issue and reminded the attorney that mediation can be waived. If domestic violence was/is an issue, the Program Administrator informs the parties that they have a right to waive the mediation process either by filing a motion or
having their lawyer do so. In general, mediators providing mediation for the Polk County District Court do not offer a pre-screening session to participants to determine if their case is appropriate for mediation.

Kelly (1996) reports that most courts and agencies screen for violence and allow mediation to be waived if the abused party so chooses. Notar (1997) notes at least 13 states have statutes protecting those individuals (battered women) who have experience and/or been involved in domestic violence. Thoennes, Salem, and Pearson (1995) report that National Center on Women and Family Law (1993) found 16 states have legislation waiving abused women from mediating.

Domestic violence/victim advocates argue that mediation should never be used when a power imbalance exists within the relationship or there is evidence of domestic violence (Gagnon, 1992) as the neutrality of the mediator may further support the inequity of the relationship. Others are concerned that the process of mediation does not hold the abuser accountable and may provide the abuser with an opportunity that will compromise their partner’s safety (Pearson, 1997).

Neumann (1992) a feminist, asserts that divorce mediators can effectively deal with power imbalances between men and women in order to achieve a fair settlement, although she is not necessarily applying this to situations where domestic violence has occurred. She argues that the impact of the crisis of divorce changes the power imbalance within the relationship and this combined with the power dynamics brought on by the mediator and the process of mediation can offer both parties a fair outcome. Ellis (1994) also agrees that female partners are empowered at the time of separation. Neumann (1992) would not
recommend mediation in situations where one party is more vulnerable to abuse by the other party or in situations in which a power imbalance exists. She would suggest that safety features be built into mediating with a family who has been violent in order to protect both parties. Such as, offering pre-screening, individual caucusing and having advocates in the mediation session to support the battered women (Erickson & McKnight, 1990).

The Need for the Study

Although there is an abundance of literature regarding the effectiveness of mediation programs in general, Kelly (1996) reports that most mediation research has been focused on outcome studies including the following issues: Is mediation effective, is it less expensive and time consuming than litigation (Rudd, 1996), do mediation and alternative dispute methods differ from one another (Emery & Jackson, 1989; Kitzmann & Emery, 1994; Marcus, Marcus, Stilwell, Doherty, 1999), are parents more likely to comply with their agreements and use less subsequent litigation (Kelly, 1991; Kelly & Duryee, 1992; Rudd, 1996), how do clients and mediators evaluate the mediation process and outcomes (Jones & Bodtker. 1998), does mediation reduce conflict and increase (cooperative) parenting among participants (Dillon & Emery, 1996), does it improve psychological adjustment to divorce among children, and under what circumstances should parties participate in mediation or be excluded (Pearson, 1997)? The methods utilized to study the above questions have mostly been through survey questionnaires and quantitative analysis. This study will be unique in that it will not only match participants to their mediator as Slater, Shaw, and Duquesnel (1991) did but will differ as the measures will be qualitative and quantitative. The qualitative component of this study will be used to evaluate participants’ perception of the mediation
services offered by Polk County and to better understand the needs of families utilizing these types of services.

Furthermore, many mediators assert that families who would benefit from divorce and family law mediation typically do not participate when the process is voluntary. Mediators believe it may be difficult to educate parents, therapists, lawyers and other professionals involved with families who engage in high levels of conflict to utilize divorce mediation as a method to resolve their issues with the other parent. Therefore, the families who may benefit most from this kind of program may be mistrustful of the process and the other parent, therefore, they may never engage in the mediation process. Researchers have argued that those individuals who voluntarily choose mediation as an option to resolve divorce, custody, and child support disputes differ on a variety of dimensions from those who are mandated to use mediation. In Polk County, voluntary mediation has been available to residents since 1995, however, only a few families have chosen this option. Thus, this study was based on families being court-ordered to mediate issues of custody, divorce and child support. A qualitative format was applied to gain a better understanding of participant’s perceptions of the mediation process and the services provided by their mediator. It also studied how closely this process aligned with the mediators perception of the family’s experience to help inform and improve the services offered to families. The role of the researchers was to consult with and monitor the process of divorce and family law mediation as delivered by the Polk County District Court and lay the groundwork for a formal evaluation of the process. A future study may include examining whether differences exist
between those who are court-ordered and those who voluntarily seek mediation whether they are self-referred, referred by attorney, and/or through a mental health professional.

**The Purpose of Study**

The purpose of this study was to evaluate family law mediation in Polk County, Iowa by building a detailed description of how couples and mediators experience the process of mediation. Mediation provided was designed to facilitate families' adjustment before, during and following a divorce, separation and/or change in a parenting relationship. The goal of this mediation program was to minimize the adversarial nature of the legal divorce process and mediate reasonable and logical divorce decrees designed to promote the best interests of all parties involved.
CHAPTER 3
METHODOLOGY
Assumptions and Rationale

Qualitative Research

Qualitative research has been used to explore social science phenomenon. Moon, Dillon, and Sprenkle (1990) advocate that qualitative research designs are an appropriate way to study and understand individuals and families and their ever-changing and complex interactions with one another. Qualitative research designs are rooted in phenomenology (Bogdan & Biklen, 1998; Moon, Dillon, & Sprenkle, 1990; Stainback & Stainback, 1984b). Phenomenologists, in part, are interested in understanding the complex experiences and multiple realities of the participants of study, in their natural context and based on their worldview. Qualitative research design methods accomplish this task by applying indicators of rigor (or trustworthiness), which are criteria used to evaluate how scientifically aligned the data are with the subject of study (Guba, 1981). Indicators of rigor as it relates to this study were addressed in detail later in this chapter (See Data Analysis).

Qualitative methodology is inductive, views human systems holistically, and is based on a theoretical orientation of systems theory. The design in qualitative research is constantly emerging. Researchers who conduct qualitative studies do not concern themselves with absolute truths, rather the focus is on developing hypotheses that can be used to understand similar phenomenon in other settings (Brotherson, 1993). The data gathered through this type of research are descriptive and the focus is to understand the multiple worldviews of the participants of study and the researchers as the direction of the research is
governed by what is most important to the informant and previously unknown to the researcher (Bogdan & Biklen, 1998). Furthermore, this type of study is grounded in the experiences of the participants and researchers and the meaning of their interaction with one another. Thus, the model is one that is developed using the process of qualitative interviewing through participant observation (Joanning, Newfield, & Quinn, 1987; Moon, Dillon, & Sprenkle, 1990).

Sample

The informants involved in this study were participants seeking mediation through the Polk County District Court Mediation Program and their mediators. For this study, participants were selected using purposive sampling, that is, informants were those who had mediated and who met study criteria.

Participants

Seven hundred and ninety-eight surveys (See Apparatus section in this chapter) were sent to mediation participants. Two hundred and seventeen mediation participants returned their survey questionnaires. Of those who returned their surveys, twelve participants (6 mothers and 6 fathers who had previously been married or cohabitating) and six mediators (their mediator) were interviewed.

A range of participants was included containing mothers and fathers, young and old, married and never-married, with varying levels of education, socioeconomic status, and number of children. Of the participants completing the survey questionnaire 86 or 43.9% reported being male and 110 or 56.1% were female. Two hundred and seventeen participants who attended mediation and returned surveys ranged from 18 years old to 68 years old. The
average age of participant mediating was 39 years old. Of those participants agreeing to be interviewed, 6 of the participants were 35 years or older. They ranged in age from 20 years old to 54 years old. Only 2 of the participants were in their early 20’s. The other four were between the ages of 31 through 34.

Participants completing the survey reported being married or in a relationship as few as 9 months and as long as 48 years. The average number of years that participants were together was 11.8 years. Out of the 6 sets of participants interviewed for the qualitative portion of the study, three of them had been married. The length they had been married varied from 21 years, 14 years and 3 ½ years. The other three couples had not been married and the length of their relationships had been 8 years, 6 years and 2 years.

Participants’ education levels varied greatly with most having earned a high school diploma or greater. Of the survey respondents, only 14 or 7.5% reported earning less than a high school diploma. Seventy-three or 39.2% reported graduating from high school. Fifty-one or 27.4% reported taking some college courses. Thirty-eight or 20.4% reported graduating from college. Seven or 3.8% of the respondents reported earning their master’s degree and 3 or 1.6% received their doctorate. Of those interviewed, six of the twelve had earned a high school diploma, four had college degrees (33%) and two had their master’s degree (17%).

Additionally, a large percentage of the survey respondents who were involved in mediation had children. Only 23 participants or 12% reported that they did not have any children. Fifty-seven or 29.8% reported having one child; 79 or 41.4% reported having two children; 25 or 13.1% reported having three children; 6 or 3.1% reported having 4 children;
and 1 or .5% reported having 5 children. Of those interviewed, one ex-married couple reported having three children together, ages 16, 14, and 12. Two other ex-married couples reported having two children together. One family’s children were ages 19 years old and 12 years old. The other family’s children were 2 ½ years old and 3 months old, at the time of the interview. Two other unmarried parents reported having one child together and other children from past and present relationships. The ages of the children were 5 in one family and 4 ½ and 9 ½ in the other family. The third unmarried ex-couple had one child together who was 19-months old.

Among the families who interviewed, there were a total of eleven children, 10 of those were minor children at the time of the interview. One child was 19 years old. Five of the children were under the age of 5 and five of the children were ages 9 ½ through 16 years old.

The majority of the participants attending mediation and completing the survey were Caucasian (157 or 94%). Seven participants or 4.2% were Black; 2 participants or 1.2% were Hispanic; 1 participant or .6% reported being other. All twelve of the participants who agreed to be interviewed were Caucasian. The ethnicity of the mediation participants was representative of the majority of the population of the County in which the mediation program was being offered.

Participants involved in mediation reported a range of incomes. Sixteen or 8.3% earned between $0 and $10,000; 51 or 26.6% earned between $10,001 and $25,000; 82 or 42.7% earned between $25,001 and $50,000; and 43 or 22.4% earned between $50,001 and $75,000+. Of those interviewed, two or 17% earned between $0 - $10,000; four or 33%
earned between $10,001 and $25,000; five or 42% earned between $25,001 and $50,000; and one participant earned between $50,001 and $75,000+ annually.

Mediators

What is known about the mediators is that 41 or 60% were male and 27 or 39% were female. Almost all of the family law mediators were attorneys, 64 or 94%; 2 or 2.9% reported being social workers/mental health therapists; and 2 or 2.9% reported their primary profession was legal assistant. Of the six mediators interviewed for the qualitative portion of the study, three of the mediators were female and three were male.

Procedure

The following section provides an overall description of the study procedures chronologically. It also includes a description of the context of the study.

As of January 1, 2000, family law judges were offering mediation to families seeking divorce, custody/visitation, spousal support and/or financial issues. Exceptions were included if families (and/or their lawyer) chose to waive their mediation session due to concerns of domestic violence.

Participants learned about mediation through one of three ways: mediation education and an informational brochure, mediation of temporary issues involving custody or visitation, mediation of unresolved issues after the pre-trial conference, through their personal attorney, and/or by contacting the Program Administrator of the Polk County District Court Mediation Program. Mediation education was provided for parents at “The Children in the Middle”, a class in which parents with minor children are required to attend pursuant to a court order.
During this class, parents were presented with educational information about mediation, which lasts approximately 15 minutes. In addition, participants were also given an informational brochure about the benefits of mediation. Individuals not required to attend the class had received information about mediation through the informational brochure. Both the brochure and the information presented in the class was designed to provide divorcing couples with information about non-adversarial approaches to dispute resolution, approaches designed to reduce the negative effects of divorce for families, and encourage a future parenting relationship. The class and brochure encouraged parties to seek legal counsel and inform their attorney and the Program Administrator if they have concerns about their safety/domestic violence.

Upon filing of petition for temporary matters/setting the hearing, the parties were required to set up a mediation session within seven days. They initiated this through the Program Administrator of the Polk County District Court Mediation Program and/or selected a mediator of their choice on their own. Mediation sessions for a temporary hearing needed to be completed at least two days prior to the hearing date. For all other general divorce mediation issues, the mediation needed to be completed sixty days prior to the trial date.

Once the mediation session was scheduled, the parties were sent a letter containing information regarding what they could expect to happen during mediation. This included a copy of the “Agreement to Mediate” which explained the role of the mediator, information about consulting with an attorney, confidentiality, and the cost of mediation (See Appendix A). Parties were informed that prior to mediating, they were required to sign the “Agreement to Mediate”. Additionally, parties were informed that their role in mediation was to come
prepared to be involved in the process and work to resolve their case. Parties and/or their attorneys representing them were requested to bring pre-trial paperwork and previous settlement proposals. Any unresolved issues, such as, marital dissolution, application to modify custody, visitation and post high school educational support cases after the pretrial conference was ordered to mediation.

Participant Protocol

Prior to any data collection, the study protocol and consent forms was approved by the Iowa State University's, Human Subjects Review Committee and the Polk County District Court Mediation Program. Participants were provided an informed consent form which explained the expectations, risks, benefits of their participation in this study, and how confidentiality was maintained (See Appendix D). Participants were also informed that their participation was voluntary and they could withdraw from the study at any time. In addition, they were informed that the results of the survey responses would be used to better understand the effectiveness of family law mediation and for this research study. Confidentiality was maintained by using a blind coding of all verbal data.

After screening for domestic violence/safety concerns and informed consent obtained by the participants, the parties were offered divorce/family law mediation. In this study, the Program Administrator asked parties at the time they were calling to set up their mediation questions to determine if domestic violence has been/is currently an issue in his/her relationship. The Program Administrator asked both men and women these types of questions. If the attorney had set up the mediation, the Program Administrator asked the attorney if he or she was concerned about the issue and reminded the attorney that mediation
can be waived. If domestic violence was an issue, the Program Administrator informed the parties that they have a right to waive the mediation process either by filing a motion or having their lawyer do so. Mediation was waived for those individuals who requested it to be waived based on concerns/allegations that abuse had occurred or if screening identified that a participant was currently a victim of violence currently needed further protection. In general, mediators providing mediation for the Polk County District Court do not offer a pre-screening session to participants to determine if their case is appropriate for mediation.

At the completion of their mediation session, all clients agreeing to participate in mediation were given a questionnaire by their mediator to evaluate his or her experience of mediation. Participants received their surveys in one of two ways: participants who attended mediation without their lawyers were sent survey questionnaires directly; participants who attended mediation with their attorneys were given their surveys by the mediator when they completed mediation. The Program Administrator initially had sent the survey questionnaires to parties attorneys (if they had a lawyer) but found that the response return rate for these cases was low. Since making this change, more participant survey questionnaires have been returned. All participants were provided a survey questionnaire. Each client was asked to complete the form and return it in a self-addressed stamped envelope addressed to the Program Administrator. The survey questionnaire disclosed to the participant that the information provided is confidential, was used in this study, and allowed the respondent an opportunity to provide more information about their experience using mediation with his or her consent. Participants were given an opportunity to request the researcher contact them to provide further information about his or her experience by
providing their name, signature, telephone number, and that they would liked to be contacted by phone. The researcher contacted those participants and provided information about the study. Parties agreeing to be interviewed after learning more about the study by telephone were then scheduled for a face-to-face ethnographic interview. Furthermore, all parties involved in a particular mediation session, which contained no less than the mediator, the mother, and the father, must have been willing to discuss their experience of mediation in separate ethnographic interviews. Face-to-face interviews were audiotaped with the clients' consent, and his or her responses to the grand tour and other questions as they develop were recorded until no new information was gained. All participants were informed regarding his or her rights as a research subject and the purpose of the study.

A total of twelve participants utilizing mediation were interviewed. This included six matched sets of parents/husband and wives from a family who both agree to be interviewed separately about their experience of mediation, who were satisfied or dissatisfied with the experience, and who were willing to provide information about his or her experience. Participants evaluated their mediator and the mediation process, initially, through the use of the survey questionnaire and then for those willing through the use of a face-to-face interview, to determine if they perceived the mediator to be impartial and neutral, allowed all parties to express their opinions, and whether they successfully facilitated the resolution of their issues.

**Ethnographic Interviews**

The primary researcher interviewed participants within three months after completing their mediation. This time frame was chosen to reduce history as a threat to internal validity
(Cook & Campbell, 1979). The threat of history might have become an issue in this study if other significant life events occurred following the mediation session and before participants were interviewed about their experiences of their mediation session. This approach of interviewing participants soon after their mediation session was done in an effort to minimize the chance that what might be observed was unrelated to what was being studied.

Both parties were interviewed separately. Participants were encouraged to express both positive and negative experiences with the program. Each ethnographic interview continued for approximately 60 to 90 minutes or until saturation had occurred; that is, until no new information was gained. Ethnographic interviews were conducted at the researcher’s office, and/or participants’ homes depending on his or her preference, and were scheduled at times convenient to participants. All interviews were audiotaped. The primary researcher conducted member checks during and at the end of the interview when the researcher requested clarification and verification of respondents’ responses and by a follow-up telephone as needed. Individual participants were asked to comment on the accuracy of summary comments. The researcher continued to interview participants until she had gained information from six complete sets of mediation sessions or a total of 12 participants.

The researcher summarized the transcript derived from these sessions and sent a copy to the informants, requesting they make any necessary changes that are not representative of their experiences. Initially, most of the participants did not return the summary provided by the researcher so instead, she contacted the participants by telephone and reviewed their responses. Participants provided clarifications and the researcher made the appropriate
changes. This method helped ensure that the analysis of their responses mirrors their worldview.

Individual participants volunteering to be contacted after completing the survey were asked the following grand tour and follow-up questions:

**Grand Tour Question**

1. What has it been like to be in this mediation program?

**Follow-up Questions**

2. What, if any, specific differences has using mediation made in your lives? In your children’s lives?

3. What aspects of the program would you suggest be continued, what aspects should be changed?

4. What characteristics of your mediator were most helpful to you?

5. What characteristics of your mediator were least helpful to you?

6. Would you recommend mediation to others? Why or why not.

7. What barriers were most difficult to deal with in mediation?

8. If you reached a settlement, how likely are you to follow the terms of the agreement reached through mediation?

As each informant was interviewed and their responses analyzed, new questions were added to gain a greater understanding of participants’ perceptions of mediation.

**Mediator Protocol**

Mediators who are part of this study were required to attend either a one-day or three-day training in family law mediation in February 2000. Those who completed this
training were added to a roster from which the Program Administrator, attorneys, and participants selected mediators for their case. The approach that was taught was based on the facilitative model. The Program Administrator chose to bring in mediators who taught a facilitative approach to mediation as he felt that most of the current mediators on the roster were conducting their mediations using more of an evaluative style of mediation. He reported that he wanted the mediators to be exposed to many different styles of mediation. In addition, he wanted to provide mediators the opportunity to meet the minimum training requirements set by the Academy of Family Mediators (40 hours) which may become a requirement for all court-approved mediators in Iowa. The mediator's who attended the training were attorneys, retired judges, social workers, legal assistants, and/or mental health professionals. Mediators who had previous experience working with the courts and did not need extensive training were offered a one-day advanced course. The mediators who had the one-day training had gone through training approximately three years before and at that time had been taught a more directive style in which most of their sessions were conducted through caucusing (evaluative model of mediation). The mediators in the one-day training stated that they handled most of their cases by caucusing, although, after attending the training reported that they saw the value of utilizing parts of the new approach. Others were appreciative of learning something different and gaining perspectives from their colleagues regarding their experiences. Still others questioned whether the facilitative approach would be productive in helping families move through the complex divorce process in the time allotted. While maintaining confidentiality regarding the identified mediators, the Program Administrator was informed about the outcome of mediation through the Mediator Status
Report (See Appendix F) which was completed by mediators after each mediation and also by telephone based on the individual needs of the mediator (to discuss a particular case).

Mediators who agreed to be interviewed for the qualitative portion of the study were asked about their style and/or theoretical model/philosophy of mediation, background and training, experience, and tactics used in the session. Furthermore, these mediators were asked to provide demographic information. These mediators were chosen based on whether both of the participants from the same mediation were willing to be interviewed. The primary researcher explained the study to the mediators and requested if they would be willing to be interviewed in person. All mediators that were asked to be interviewed agreed and were informed regarding their rights as research subjects, including their right to withdraw from the study at anytime. The interviews were audiotaped and the primary researcher took extensive notes during the interviews. At the time of the study, there were sixty-eight mediators eligible to provide mediation through the Polk County District Court Mediation Program. These mediators were comprised of attorneys, judges, mental health therapists, social workers, and legal assistants. There were more attorneys represented on the roster than from any other occupation.

**Ethnographic Interviews**

Six mediators who have been providing mediation through the Polk County District Court Mediation Program were selected to be interviewed about their experience as a mediator for the couples they represented for this mediation program. Mediators were selected if the couples they had mediated had both agreed to be interviewed and if the mediator was willing to participate. If both participants from a particular mediation session
had agreed to be interviewed, their mediator was also selected to be interviewed to create a complete set. Mediators were provided information about the purpose of the study and asked if they would be willing to participate. All six mediators who were asked agreed to be involved. Mediators were informed of their rights as a participant of this study (See Appendix E). Although all of the mediators chosen to participate in the study were attorneys they varied in amount of experience, the type of background they had brought to mediation, how they structured their mediation, and in gender. Of those participating in the qualitative interviews, three mediators were men and three were women. Five out of the six mediators were practicing attorneys for over 15 years. In addition, they had extensive experience mediating family law cases. One of the mediators did not have a lot of experience as an attorney nor as a mediator. Out of the sixty-eight, Polk County mediators, 41 were men and 27 were women. Sixty-one mediators were attorneys, 2 were social workers/mental health therapists, and two were legal assistants. Due to the poor response rate of the mediator surveys, no other information about the mediators could be gathered.

Upon gaining his or her consent, the mediator was asked the grand tour question and all other relevant questions until no new information was gained (See Appendix B). The researcher continued to conduct ethnographic interviews until she had gained six complete sets of three (mediator, mother and father of a family). The ethnographic interviews lasted approximately 1 to 1 ½ hours each and explored the mediator’s experience in working with the program. Mediators were interviewed at their office. All ethnographic interviews were audiotaped (See Appendix E). During and at the completion of the interviews, the primary researcher conducted member checks with each mediator. She did this by checking and
clarifying their responses to ensure accuracy of her summary responses. She made changes based on the responses from the mediators.

The following exploratory, qualitative research questions are those that guided this study (See Appendix B). The questions used were open-ended to encourage the mediators to guide the direction of the interviews. As each ethnographic interview developed and new information was generated, other questions were added. Mediators were asked to provide demographic information and to address the following grand tour (lead) question and follow-up questions:

**Grand Tour Question**

1. Please describe the process this family went through for divorce mediation from the beginning to the time they had ended with you.

**Follow-up Questions**

2. What, if any, changes had you observed occurring in these parents/couple during the mediation sessions?

3. What if any, barriers/challenges had you experienced in providing divorce mediation to this family? Which ones were you able to overcome?

4. What, if any, is your theoretical approach/philosophy/style of mediation? How did you apply this when working with this family?

5. What, if any, strategies or tactics did you apply to facilitate the resolution dispute?

6. What, if any, professional skills were the most valuable to you during the mediation session when working with this family?
7. What, if any, skills do you believe were most important to the man/father? To the woman/mother? To the family?

8. How likely is this family to follow the terms of the agreement they made through mediation (if one was settled)?

9. What is your main role in the mediation sessions?

10. What are the “grand lessons” you’ve learned while being a mediator?

**Indicators of Rigor**

Guba (1981) and Lincoln and Guba (1985) have developed four indicators of rigor to evaluate the trustworthiness of data collected through naturalistic inquiry. They are credibility, transferability, dependability, and confirmability. These will be discussed in terms of their applicability to this study.

**Credibility**

Credibility refers to the truth-value of truthworthiness, that is, how closely the researcher and informant view the system being studied (Guba, 1981). Credibility is similar to internal validity in quantitative research. Credibility was addressed in this study in various ways. The researcher conducted peer debriefings by consulting with the other member of the research team, and the Program Administrator of Polk County District Court Mediation Program to test this researcher’s interpretations of the data. Peer debriefings occurred continuously throughout the study as the primary researcher met and consulted with the Program Administrator as often as on a weekly basis to initially develop the survey questionnaire and later to check out findings and discuss issues brought up by participants and mediators.
Member checks refer to the researcher taking the information provided by the informants and verifying whether the conclusions made were representative of their viewpoint. Member checks occurred during and at the end of each ethnographic interview by clarifying informants' responses and seeking confirmation that the summary was accurate.

Furthermore, a journal/field notes was kept throughout the study. The researcher recorded observations and thoughts while interacting with the participants, mediators and the Program Administrator. This method allowed the researcher to document her thought processes, biases, and insights, and provided a double description of the experiences recorded. The information gathered was reviewed by the Program Administrator and the researcher's committee chair to assist in the analysis of the data and to use the data to make improvements in the mediation program.

Triangulation refers to using a combination of methods, sources, and/or investigators to study the research in question in an effort to reduce bias. Triangulation was achieved by comparing information received from the ethnographic interviews, survey questionnaires, and the literature review of mediation and related topics, in an attempt to increase the truth-value of the data being reported. When themes or information arose that did not fit the design, a negative case analysis was performed to determine if the findings were significant or not.

**Transferability**

In quantitative research, researchers want to know if their findings/data can be applied to different settings/contexts/samples. In qualitative research, this is referred to as transferability. Transferability refers to the notion that the generalizability of data are context
bound. This researcher chose informants based on purposive sampling, to gain an understanding of how participants utilizing mediation services perceive their experiences about the mediation process and their mediator. In addition, the mediator’s perceptions about their clients’ experiences were examined to evaluate how closely the mediator’s perceptions are aligned/isomorphic with the clients that they served. Furthermore, the final report includes a thick description or full description of the context studied so that other researchers may be able to transfer the findings to other contexts. In this study, thick description is important as the subjects’ demographic characteristics, nature of relationship with their children’s other parent, issues mediated, and family situation differs for each informant.

Dependability

Dependability refers to the stability and consistency of the data collected and analyzed using an emergent design and is similar to the concept of reliability in quantitative research. The researcher conducted a process audit and audit trail by describing how the study evolved and how the data were analyzed. For example, journal notes included how the primary researcher contacted the Program Administrator and set up the study, the reasons chosen for the research questions, reasons why the survey questions were included, personal reactions to the research being studied and the information learned throughout the process. The Program Administrator, mediators, secondary and tertiary researcher was consulted throughout the study for the purpose of a dependability audit and to help reduce the bias in the study. In addition, multiple methods and overlapping methods were conducted, such as, collecting data through the survey questionnaire, attending mediation training and consulting
with mediators on the roster, interviewing through face-to-face and/or telephone calls, reviewing pertinent literature, and requesting demographic information.

**Confirmability**

Confirmability refers to basing research on the experiences and perceptions of the informants and not on the bias of the researcher. As mentioned previously, triangulation occurred by using multiple methods and researchers. The researcher engaged in practice reflexology by revealing her biases in the report. In addition, all informants were asked to perform a stakeholder review to assess how well the research summary mirrors the informants' perception and realities. This occurred by obtaining feedback from informants during ethnographic interviews and follow-up telephone calls.

**Apparatus**

*Parents/Divorcing Parties, Survey Questionnaire.*

The survey questionnaire for the quantitative portion of the study was made up of multiple choice, Likert and opened-ended style questions to allow for ease of use and maximum information to be collected from participants about their mediation experience. Participants were asked to provide demographic information about themselves, including ethnicity, income, age, and length of relationship/marriage, number of children, and highest level of education attained. Additionally, participants were asked a number of questions related to their experiences in mediation, satisfaction with the process of mediation, their mediator, techniques used by their mediator, attorneys, costs, being prepared for mediation, feeling safe to mediate, issues mediated, number of hours they spent mediating, impact that mediation had on their lives and their children’s lives, if they reached an agreement or not,
whether they would recommend others to mediation, and open-ended comments about mediation in general which will be evaluated at the end of this chapter (see Appendix C).

Mediator Status Report

All sixty-eight mediators who are part of the Polk County District Court Program were required to complete and return to the Program Administrator, a mediator status report after each case that they mediated (See Appendix F). The mediator status report helped inform the court about what type of cases were being mediated and offered mediators the ability to report their comments and/or concerns about each case they mediated. The primary researcher and Program Administrator read these comments and entered them into SPSS 10.0 Windows Student Version to analyze frequencies and distributions. This information was gathered to gain a greater understanding of cases mediated in Polk County, Iowa.

Data Analysis

Data collection and analysis occurred continuously throughout the project. All returned questionnaires were entered into SPSS 10.0 Windows Student Version and then frequencies and distributions were conducted for all demographic information obtained on participants and mediators. At the end of each ethnographic interview, the researcher transcribed and summarized the data using a combination of Spradley’s (1979) domain analysis format, Developmental Research Sequence, Tesch’s (1990) steps for developing an organizing system for unstructured qualitative data, Joanning and Keoughan’s (1998) qualitative methods for understanding human phenomena, and Glaser and Strauss’s (1967) constant comparison analysis. The researcher used the above procedures to summarize each interview that includes the following process:
1. As soon as the first interview was transcribed, the researcher read the transcript a number of times to gain familiarity with the information provided.

2. The researcher used AutoSummarize in Microsoft Word to assist in highlighting key words and phrases to get a feel for the main ideas from this first transcript and then she recorded summaries of informants comments in the margin as recommended by Tesch (1990). See Appendix G for a sample transcript that illustrates how the transcript was initially analyzed.

3. The researcher followed the above steps for all of the ethnographic interviews.

4. After the second interview was transcribed, quotes were highlighted, and margin notes summarizing informant's comments were made, the results from the first interview were compared to the notes from the second interview using Glaser and Strauss's (1967) constant comparison method. The researcher identified data that were similar and unique to individuals and the group. Each interview was compared to the next interview until all interviews were completed. The method of constant comparison was utilized to identify the data that were similar and different from one another.

5. The researcher then put the data into categories that contained related quotes and margin notes. She did this to create a higher order of abstraction from the initial data. From these categories the data were grouped into clusters.

6. Clusters are named collections or taxonomies (Keoughan & Joanning, 1997). The clusters were divided into three groups by name and topic. The first sets of clusters were divided into categories that were similar to one another across the
six interview sets. The second sets of clusters were those that were unique to an interview set and/or individual and were important in understanding the subject of study. The third set of items were those that were leftover and unable to fit into the other clusters. Those phrases and responses that were different from the groups were compared to the rest of the data to make sure that it was leftover data.

7. Clusters were analyzed and gathered into larger themes in order to better understand the subjects being studied (Sturtevant, 1974). The cluster names that were gathered into overarching themes were called Domains of Meaning. Each Domain was given a name that was written beside the statement on the initial transcribed interview. The list of Domains selected were used to begin organizing the data, and were applied to each new set of data being analyzed. Domains were coded and the codes were applied to help discover new topics and/or how well the current topics match the data.

8. The researcher repeated the above steps many times to allow for new information to be analyzed. The final report contains detailed information, a “thick description” including quotes to accurately represent the experiences of the participants.
The final analysis summary was organized as follows:

**Domains of Meaning**
(Overarching themes made up of related clusters)

/  

**Clusters**
(Named collections of related categories)

/  

**Categories**
(Related quotes and margin notes)

The second researcher, a professor in the Department of Human Development and Family Studies, reviewed the transcripts and the categories, clusters, and domains that the primary researcher assigned to the data to increase dependability. He read the notes taken by the researcher and made comments relevant to his experience and in instances where he and the researcher disagreed, they continued to discuss their differences until they came to a consensus. He was involved in all phases of formulating and in the implementing of the research design including reviewing research questions, survey questionnaires, and the researcher’s journal.

**Researcher as Instrument**

In qualitative research, the researchers become the main instruments, in regards to data collection. Therefore, it is important that the researchers make known their biases, values and expectations of the subject being studied. By providing information about myself
and my experiences of my interactions with those involved in this mediation process, the 
reader can make his or her own interpretations.

Primary Researcher

The author of this study is a 38 year-old, married mother of one child who is seven 
years old. This researcher has been married one time to her current husband for over 9 years. 
The conflict they have experienced throughout their married and dating life has been 
manageable. Additionally, she and her husband share child rearing responsibilities and they 
have seen the value of having both parents involved in the development and growth of their 
child. She has not experienced divorce and/or remarriage through her immediate family and 
her husband’s sister was divorced with no children involved prior to the time she entered into 
the family. Her parents at the time of this study had celebrated their 46th wedding 
anniversary and appear to have a supportive and loving relationship built on communication, 
trust and a lifetime of shared experience. Her husband’s parents have been married for 43 
years and also seem to have a solid relationship.

This researcher has provided therapy to parents, families, and children experiencing 
divorce and believes unresolved conflict between parents has negative effects on those 
involved. Her philosophical stance of therapy is based on a postmodern paradigm and she 
believes collaborating with clients through shared inquiry by inviting them to provide their 
expertise and experience of their life. Additionally, she believes that the most effective styles 
of mediation for custody arrangements are those that help transform the relationship between 
parents into a relationship in which they are able to effectively identify and meet the needs of 
their children. This researcher’s bias is that mediators providing a more directive mediation
style or mediation where parties do not have the ability to speak for themselves will not offer participants the ability to change their future relationship with one another, which she believes will be helpful to them in their role as parents. Additionally, she believes that too much caucusing during the mediation does not allow for the client’s voice to be heard and might lead to less satisfaction with the process of mediation. Furthermore, she believes that the process of mediation can offer a more effective approach to resolving family law issues as the process allows for interest-based needs to be expressed as well as rights-based needs.

The Research Team

Secondary Researcher

The other member of the research team who assisted in conducting the study is a university professor with 25 years of experience conducting field research. He has a doctorate in a mental health field and is a highly experienced marriage and family therapist. This researcher is licensed in psychology and marriage and family therapy. At the time of the study the researcher was in his early 50’s and married. The male researcher has had considerable experience doing research regarding the divorce process. He has been consulted with throughout this research study as the dependability auditor.

Based on his experience as a martial therapist and mediator, this researcher believes that mediation can be helpful to divorcing couples especially if emotionally laden issues are addressed satisfactorily. In short, this researcher believes that mediation should be more than just divorce settlement because simple settlement does not address emotional issues that will continue to strain the parenting relationship. Further, this researcher’s bias is that he believes that attorneys conducting mediation would benefit from basic training in marital therapy and
that mental health workers conducting divorce mediation would benefit from basic training in divorce settlement.

**Tertiary Researcher**

The third researcher involved in this study is an attorney, mediator, trainer and facilitator who has been practicing law for 26 years. She has been a mediator for 20 years. She has practiced and trained mediators using the facilitative approach. As a facilitative mediator, her approach is that the role of the mediator is to structure the process of mediation so that the parties can reach a mutually beneficial agreement. She believes that the role of the mediator is to help the participants obtain information and understanding so that “the parties to have the major influence on decisions made, rather than the parties’ attorneys.” She asserts that the techniques used by facilitative mediators is to get parties to understand their own and the other party’s positions. She believes brief mediation is less effective than comprehensive mediation for family law issues. In addition, she believes that it is important for mediators to conduct individual pre-mediation screening sessions to determine if a case is appropriate for mediation and then meet jointly if appropriate.

This researcher’s role in this study was to review and critique the research document and provide her expertise in the area of mediation, divorce and the law.

**Program Administrator**

The Program Administrator has been involved in mediation for 16 years. He has mediated a variety of family law cases as well as property settlements and small claims. Additionally, he has experience in training and setting up training for volunteers, attorneys, judges, and social workers in providing mediation. He developed the family law mediation
program for Polk County and modeled it after the 6th Judicial District's (Cedar Rapids, Iowa City area) mediation program in Iowa. The Program Administrator made modifications based on the needs of Polk County, the concerns of the judges, attorneys, mediators, and participants involved in the mediation program. The Program Administrator was consulted with on a weekly basis by this researcher. The researcher spent time during their meetings discussing information gathered from the mediators and participants during qualitative interviewing, evaluating participant and mediator survey questionnaires, organizing and entering data into the computer, and discussing ways to improve participants' and mediators', mediation experience and outcomes.

The Program Administrator sees his role in mediation as one whom "gets the parties into the door (to mediate)". He is aware that not every case can be mediated or reach a settlement, however, he wants the family law mediation program to be accessible and utilized by individuals who have issues concerning divorce and custody, temporary matters, post-high school, property and financial issues, and child support, to name a few. Additionally, he believes mediation offers individuals the ability to reach their own settlement, is less expensive, more satisfying, and faster than the typical court process. He believes that mediators with more experience and training will be better able to meet the varied and complex needs of the families utilizing the mediation program.

**Quantitative Analysis**

Results from the participant and mediator surveys were analyzed and reported in a quantitative format (frequencies and distributions) and compared to the results gained from the qualitative portion of this study. Results were provided for both the participants and
mediators and divided into frequencies and distributions and separated by gender. The researcher used the results from the quantitative analysis as another method to support and/or disprove the conclusions she arrived at while interviewing the participants and mediators. In some cases, participants and mediators did not complete their survey and/or did not complete a response therefore, some data were not reported. Others added more information and this information was reported in Appendix H.

**Demographics**

For the participant surveys, the demographic section of the questionnaire consisted of seven questions. The questions were designed to determine who was using family law mediation and included information about gender, age, number of children, length of relationship/marriage, ethnicity, and education and income level.
CHAPTER 4

RESULTS

Qualitative Results

Introduction

The goal of this chapter is to provide a “thick description” or detailed summary of the findings from this study. The first section describes how participants were selected for the qualitative part of the study and the issues that brought them to mediation, including demographic information, amount of time spent in the relationship, the issues facing the participants, and the impact they believe mediation has had on their lives. Furthermore, mediator’s experiences of the ex-couples and the mediation process were explored. Also, included is the identification and examination of the domains, clusters and categories that have emerged from analyzing all the responses from those involved in this study. The second part of this chapter summarizes and integrates the results from the survey questionnaires.

Out of a total of 399 family law cases mediated between February 2000 and January 31, 2001, two hundred and seventeen or 27% of 798 participant surveys sent out were returned to the Program Administrator. Upon receipt of the surveys, each was given a number (code) and entered into the computer using SPSS student version 10.0 to assist in analyzing the data. To date, participant surveys continue to be collected and evaluated by the Polk County District Court Program, however, this researcher stopped collecting and analyzing new surveys for this study once she had the last mediation case selected and the participants agreed to be interviewed. The researcher chose to collect survey data until the end of the month (January) in which the last mediation took place. Any participant surveys
that were returned after January 31, 2001, but had gone through mediation prior to February 1, 2001, were also included in the results. Some respondents did not complete all of the questions on their survey form and thus some data are missing.

The interviews began in May, 2000 and concluded in February, 2001. Twelve participant interviews were used for this study, although 13 interviews were conducted. (One of the participant’s interviews was excluded as her ex-husband declined to be interviewed after initially agreeing to be interviewed). Seven participants were interviewed at their homes. Four were interviewed at their workplace and two were interviewed at the researchers’ place of work. All of the mediators interviewed for the qualitative portion of this study were attorneys, although, four of the sixty-eight mediators on the roster for the Polk County District Court Program were not attorneys. All mediators agreed to be interviewed at their offices. There were 3 male mediators and 3 female mediators. Of the six mediation cases used for the qualitative portion of this study, one case reached a settlement at the end of mediation. This mediation had both attorneys present. Five out of the six mediators had extensive experience in family law mediation and had been practicing law for 15 or more years. Only one mediator was a new attorney who had less than five years experience, and even less experience as a family law mediator.

Initial information about participants using mediation was gathered through the use of a survey questionnaire. Additionally, mediator completed a survey, the mediator status report after completing mediation. For full details of the instruments used in this study, the reader may return to pages 41 through 47.
Demographics of the Participants

Twelve of the participant interviews and six of the mediator interviews were used for this study. Initially, there were 13 participants and 7 mediators interviewed however, one participant was excluded because her ex-husband declined to be interviewed. In addition, one of the mediators interviewed was excluded after both husband and ex-wife failed to appear for their scheduled meetings.

Of the six mediations used for the qualitative part of this study, five of the mediations were court-ordered and one the participants' attorney recommended they resolve their differences in mediation. The mediators used an evaluative model to resolve issues in four out of the six mediations. One mediator used techniques resembling those of the facilitative and another the transformative/recognition model. In one of the mediations both parties agreed to mediate based on the recommendation of one of the participants' attorney. In three out-of-the-six mediation cases, both of the participants' attorneys were present in the mediation session. In another mediation, attorneys were present at the pre-trial mediation but not at the second mediation. The other two mediations did not have any attorneys present at either mediation. According to Polk County records, such variation is typical of mediation.

Attorneys Present

Most mediators stated that they preferred attorneys to be present in the mediation to provide legal information to their client, to help settle the case at the end of the session, and provide "a dose of reality for their client". Two mediators believed attorneys were helpful if both attorneys present were knowledgeable about the case and were skilled in family law issues and had prepared their clients to resolve issues in mediation. Participants' attorneys played a role in the outcome of mediation, both favorable and unfavorable. Five of the
twelve participants, two from the same mediation and three others from different mediations, felt that one or both attorneys got in the way of being able to settle their case by not allowing them to talk with one another and/or not being prepared. Four others reported that their attorney was helpful to the process by speaking for them or understanding the legalese of mediation. In another mediation, the ex-husband and his ex-wife remarked that if they had their attorneys present, the mediation might have gone better. One participant did not have an attorney representing her in mediation and was searching for another. She reported that she felt it was essential to have an attorney present during mediation to help protect her interest and in this case her interest was to maintain custody of her four-year-old daughter.

Number of Mediations

Three sets of participants had been through mediation one time prior to the current mediation. In one case, the first mediation involved issues relating to their divorce and they were returning for a modification. For the other two cases, the first mediation was a pre-trial/temporary order before the final decree and the second mediation was for issues pertaining to the final decree. In cases where participants had gone through mediation more than one time, the researcher collected information about both mediations, however, she used the date and data pertaining to the last mediation for this study to reduce the effects of history and to match the time of the legislative changes effecting the Polk County residents. Two sets of participants that had mediated more than once reported feeling positive about the process of mediation and what mediation had to offer. These legislative changes required that all divorce and family law cases occurring in Polk County to be court-ordered to mediation. The other three participants had not gone through family law mediation before.
Mediation Issues

All of the mediations evaluated involved issues relating to custody/visitation and parenting schedules. In one of the six cases, allegations of domestic violence were brought up as an issue. In another case, alleged drug/alcohol abuse and custody evaluation was entered into the mediation. A third case involved financial issues relating to property previously sold.

Length of Mediation

The mediation sessions of those participants who were interviewed ranged from approximately 30 minutes to four and one-half hours. Only one case reached a settlement at the end of mediation, this was a divorce case involving custody/visitation and financial issues (Mediation #6).

Ages of Children whose Parents Mediate

The results from the qualitative part of this study in which 46% of the participant’s children are similar in age to Jones and Bodtker's (1998) findings that fifty-three percent of their cases mediated involved children under the age of six.

Educational Achievement

In regards to educational status achieved among the mediation participants interviewed there was quite a range and higher than indicated by past research including Depner, Canata, and Simon’s (1992) study suggesting that individuals court-ordered to mediation are typically less educated than those who agreed to go on their own. In their sample, 13% of participants had not graduated from high school, 25% had received their high school diploma, and 20% had earned their college degree and/or completed some postgraduate training. Of those interviewed for this study, six of the twelve participants
(50%) had earned high school diploma's, four had college degrees (33%), and two with master's degrees (17%). Although, the two participants who had their master's degrees were the couple who agreed to attend mediation in an effort to resolve their family-related issues without being court-ordered.

**Employment and Income Earned**

All of the participants were employed at the time of the study except one. The range of income earned and number of the participants employed is higher than similar information reported in previous studies (See Depner, Cannata, & Simon, 1992).

**Mediation Analysis**

**Introduction to Respondents**

Each mediation case and the parties involved will be described below. The cases will be assigned to and referred to by their number and the individuals by a letter, A for the mother, B for the father, and C for the mediator, to maintain confidentiality of those who participated in the interview process.

**Mediation #1**

This couple was court-ordered to mediation to determine custody, financial obligations and issues pertaining to the final divorce decree. The mediation lasted over three hours with both attorneys' present during the mediation. The mother and father were never married. They were the youngest participants interviewed. At the time of the interview, the mother (A) was 20 years old and living with the minor child, 19 months old, in an apartment and had temporary custody.

The mother (A1) reported that she wished her sons' father would take more responsibility in parenting and supporting his child. The mother reported that she felt
awkward trying to explain in the time frame allocated for their mediation, what she was going through with her ex-fiancée and the issues related to custody/visitation and child support. She felt that three hours was not enough time to settle a custody battle. She reported that she wanted her ex to spend more time with their child, to receive health insurance and child support. The father (B1) was 21 years old and living with his parents. He had his son every other weekend. He had recently obtained a new attorney and did not have a strong understanding about what mediation could offer him prior to mediating. He contended that he went into mediation without believing it would make a difference in regards to resolving issues relating to his son. He reported that the biggest problem was that he and his ex could not get along with one another. He reported being concerned about how his son was being raised.

The mediator remarked that the father's attorney and the father came unprepared to mediation and subsequently that the father was ill prepared to settle any issues. The mediation ended without a settlement. The mediator (C1) reported that he thought that the ex-couple were still emotionally connected and he felt this got in the way of the parties being able to resolve the custody issues. The method described by the mediator in regards to type of approach that he had used with the parties in this mediation most resembled the evaluative model. He reported splitting them up into separate rooms after initially meeting together. While meeting with each one separately he provided information about what might happen in court if they were unable to settle. This mediator reported needing to structure the process and the outcome of mediation.
Mediation #2

Mediation #2 involved divorce, custody/visitation and financial issues. A2 and B2 were married for 3 years and at the time of mediation, they had recently just had their second child. Their children were one of the youngest of the parents who participated in the qualitative portion of this study, ages 2 ½ years old and 3 months old at the time of the interview.

The wife (A2) alleged that her estranged (B2) husband had difficulty dealing with his stress level and she was concerned that he needed supervision when seeing his children. She utilized the mediation session to discuss her concerns about this in regards to his ability to care for their children. A2 reported that she felt good about the process of mediation in that she felt that she could discuss her concerns however, this couple was referred to therapy after the mediation without any finalization of the divorce and/or custody issues at the time of the interviews. B2 admitted to initially having a hard time dealing with the divorce, however, at the time of the mediation, he was prepared to end the relationship. He had believed that the purpose of their mediation was to finalize their divorce and resolve custody and visitation issues, not to fight for custody, which he reported, was what he did throughout the mediation session. He reported being surprised by his ex’s position that he was not capable of caring for his children and that he needed to fight for visitation. Additionally, he stated that he did not want attorney’s involved in the mediation session as he wanted to work out these issues with his estranged wife on their own terms. He reported that his attorney told him she was coming to mediation.

The mediator (B2) felt that the age of the children and the mother’s desire to not be away from them had an impact on her allegations against the husband and thus the mediator
referred them to counseling to address the mother’s concerns. At the time of the interview with this researcher, the parents had attended counseling but no settlement had been reached. The father reported that he was finally getting to see his children more often and overnight but was still reeling from the negative effects of being accused by his estranged wife in regards to his ability to parent. The mother reported feeling frustrated that things were not resolved and that she felt that they were “back to square one with no immediate resolution in sight”.

The mediator reported that she felt custody issues are the most difficult to deal with in mediation as she believed that you cannot separate a child like an object. The model this mediator used most was facilitative. The mediator allowed time for the parties to express their emotions, needs and interests many times throughout the mediation session and attempted to reframe and defuse negative communication between the parties in order for them to see more options. She was directive in structuring the process but not the outcome.

**Mediation #3**

The purpose of the next mediation was to finalize and put in writing custody/visitation and child support issues regarding the participant’s son. A3 and B3 had never-married and had one biological child together who was currently 5 years old. They had been apart for over two-and-a-half years at the time of mediation. A3 had been married to her husband for approximately one year and reported that she had hoped mediation would have resolved the issues she and her ex had so that she could move forward with her new life.

One position that surprised the ex-girlfriend (A3) and was reintroduced into this mediation involved a sale of a house that she used to own and that her ex used to live in with her while they were together. The house had been sold approximately a year before
mediation. A3 reported that she was not prepared to deal with this issue in mediation. She reported that she and her ex-boyfriend were already living a workable agreement in regards to parenting issues and needed the legal backing to move forward. This created a barrier that could not be worked out during the session. The ex-girlfriend reported that she was not prepared to deal with this issue. She reported that she wanted things finalized and was disappointed that the other issues with her ex could not be resolved at this time.

He (B3) reported that he and his ex had a good parenting relationship with one another and had been following their own agreement. He reported that the money from the sale of the house had recently become an issue as the laws have changed since they had split up over three years ago and had not legally resolved custody/visitation and the financial obligations of their son. He stated that he was involved in his son’s life, wanted to continue to be involved in his life, and believed he should not have to pay child support since both he and his ex spend approximately equal time with their son.

He reported that he felt his attorney was too verbose. Both parties felt that their mediation session would have gone better if they would have been able to do more of the talking themselves rather than their having their attorneys talk for them. They both remarked that the father’s attorney was especially dominant. The issues of child support and the house could not be resolved during the mediation, however directly after their mediation sessions, both participants went out together to try to work out their own settlement.

A3 reported that they got along with one another well after the mediation but she was frustrated based on the issue of the house being brought up and nothing was settled, not even custody, the issue for which they originally went to mediation. She reported that she did not want to have to go to court and provide information to one more person about their lives.
She stated that she would do this if she had to, to get things resolved. She found that she could compromise and that “it was not the end of the world.” She felt mediation was helpful to have her ex hear things from the attorney’s and the mediator that she had been saying to him regarding custody/visitation and child support that she reported he did not believe when she told him. She also reported that she wished mediation had been around when she was divorced 10 years earlier, as she wondered if she would have handled things like she did during this mediation. She felt like she was less reactive and proud of the way that she described this change in herself and the positive impact that this carried over to her son and the way she and his father parent him. She commented that she did not know if this was due to age or experience.

The mediator (C3) reported feeling that both parents contributed positively to their son’s life and stated that this was one of the easiest mediations he had facilitated since they seemed to have resolved their emotional issues and were living their agreement. He reported that he thought the parties were one of the most amiable that he had ever worked with and felt that the mediation went well as they were both good parents. He was unaware that the case had not settled. The ex-girlfriend reported that she wished the mediator or attorney would have taken a more active role in resolving their case and that she felt like the mediator did not say much during mediation. The model used by the mediator was most similar to the transformative/recognition model. It appeared from his definition of how the process of this mediation played through that he was neither directive in shaping the process or outcome of the mediation. Parties remained together throughout the entire mediation. The mediator was non-directive in attempting to facilitate the resolution. In interviewing the ex-girlfriend (A3)
after the mediation she reported feeling and handling things differently, on her own terms and aware of this change in herself.

**Mediation #4**

In another mediation involving a modification of custody/parenting schedules, participants were able to resolve their issues on their own a few weeks after their unsuccessful mediation session. This ex-couple decided to attend mediation on the advice of the ex-wife’s attorney. They had gone through mediation before at the time they were divorcing. They both reported that their first mediation was a positive experience and influenced their decision to go through mediation again.

A4 and B4 had been married to each other for fourteen years and divorced for three at the time of their second mediation. This couple had three children together and the primary issue of this mediation was that the mother (A4), felt that her ex-husband (B4) was putting his interests above their children and this impacted her when he was tied up with work or coaching, he relied on her to help watch their children.

The participants came to mediation without their attorneys. The mother walked out of mediation as she felt that the mediator was not helpful or skilled enough to deal with custody issues. The father reported that even though mediation was not successful, he and his ex were able to come to an agreement on their own a few weeks later. The father stated he thought the mediator did a good job and was pleased that he and his ex-wife had come up with a workable solution.

Both participants’ report feeling good about the arrangement they agreed upon and the process of mediation (what mediation has to offer versus going to court), however, the ex-wife (A4) walked out of the second mediation due to her dissatisfaction with the mediator.
and she stated that she did not feel that the mediator had helped them facilitate a resolution. She reported that she felt the mediator was unprofessional, was not skilled, did not feel she was neutral or listened to her concerns. The mediator (C4) felt that no matter what technique she used or how neutral she tried to be the ex-wife was too angry at the time of mediation to work on an agreement. The ex-husband (B4) reported feeling grateful that he and his ex-wife came up with a workable solution. He reported being amazed by how simple the solution for them turned out to be. He had to pay the mediator for both he and his ex-wife because she refused to pay.

The mediator reported that she felt that without the mediation being court-ordered that there was no incentive for the mother to move beyond her anger. The mother recommended that mediation should be entered into people’s lives as early as possible to avoid adversarial relationships rather than waiting until the parties were unable to deal with their issues on their own. The mediator in this case most likely followed the evaluative model by taking an active role in continually offering them different solutions to their scheduling issues. The mediator did not focus on the ex-wife’s need to be acknowledged by her ex-husband for what she was sacrificing for his hobby.

Mediation #5

Custody/visitation, child support, and financial issues were the primary concerns of a third mediation. B5 and A5 had never-married and had been together for approximately six years. They have one child together, 4 ½ years old and another child by A5’s previous relationship. Participants in this mediation had previously attended a pre-trial mediation that had helped to resolve some of the issues on a temporary basis. B5 reported that the first mediation was a good experience. He reported that they were able to discuss and put into
writing issues about temporary visitation and custody. Between the first and second mediation, a custody evaluation was ordered and the results favored the father having custody. The second mediation was scheduled after the custody evaluation and before the trial date. Both parties had made allegations about the others' use of drugs and alcohol.

The second mediation was unsuccessful and lasted approximately 30 minutes. The participants had to go to trial the day after the second unsuccessful mediation and custody was awarded to the father. At the time of the interview, the mother was petitioning to go back to court. The mother (A5) attended mediation on her own as she had recently dismissed the attorney representing her. She has recently hired another attorney to help her continue to fight for custody.

The mother reported that she thought both mediations were a waste of time. She reported that both of her mediators were great but that she did not feel her attorney supported her and felt that the "system had failed her". The mediator (B5) reported that he let her know what the likely outcome would be if she did not settle the custody/visitation issues in mediation. He reported that he informed her that a judge would most likely follow the recommendations made by the psychologist who conducted the custody evaluation, and that the evaluation was not in her favor. The second mediator remarked that he believed the mother understood the consequences of pushing the issues to trial rather than resolving them in mediation. He believed that it was more important for her to fight and have her rights taken away by a judge's orders than to give up without a fight.

After he was awarded custody, the father reported feeling good about the mediation process as he did not want to go to court. He felt mediation was successful and was satisfied with the outcome.
The mediator (C5) kept these parties separate from one another throughout the mediation session by caucusing. He used an evaluative model of mediation to move them towards a settlement. This mediator was directive with both parties about what would happen if they were unable to settle and wanted to ensure that they clearly understood the consequences of not settling in mediation. He structured the process and the outcome and ended the mediation session when he felt no progress would be made.

Mediation #6

A6 and B6 had been married for 21 years and had two children, one 19 years old and the other, 12 years old. One child was away at college and the younger child was living with her mother and had visitation with her father. This couple was court-ordered to mediation after many attempts to resolve their divorce, financial, and child custody issues through their attorneys. The primary issue of this divorce centered on the financial debt incurred by the mother throughout the relationship.

The husband and wife were still emotionally involved in each other's lives and in their children's lives. Both reported that the divorce was very difficult. The mediation lasted about 4 hours and ended with a settlement on all issues presented. Their mediation occurred only days before the trial date. Both attorneys were present for mediation. The wife (A6) did not feel she received a fair settlement, although, she agreed to the terms and also reported that she will follow the terms of the agreement. Both she and her husband (B6) felt that his attorney manipulated the parties to reach a settlement. The husband reported that he was glad to avoid going to court and that getting divorced was difficult for him as he still had strong feelings for his wife.
The mediator (C6) felt that the wife's expectations may have been unrealistic about her husband's responsibility for her after being divorced was unrealistic and believed it was important to push for resolution because the case had been going on for a long time. The mediator felt a judge would have not given a substantially different settlement to this family.

The mediator (C6) reported that she kept the mediation going as she felt it would do more damage to this couple to end mediation without a resolution and have to bring all of their history to court. She reported that they were still emotionally connected to one another. Thus, she was directive in structuring the process and the outcome and practiced the evaluative mediation model. Parties were separated throughout the mediation and the mediator by-passed the emotional conflict that slowed down the resolution between them. Both parties reported feeling upset by the process.

Grand Tour Responses

Each participant interview started out with the same question. What has it been like to be part of this mediation program? Each had their unique response but some were similar based upon whether or not they were court-ordered. Initial reactions were apprehension based on not knowing what to expect and being court-ordered to go through the process. A few participants felt uncomfortable about bringing up personal and private issues in front of strangers. Others reported that they really did not understand how mediation could help them in their situation.

Mediation #1; Participant-A1 "It was awkward. It was the first time that me and my ex and his lawyer and my lawyer actually sat down. It was the first time that me and my ex had talked for awhile, civilly. It is hard trying to explain to a perfect stranger what we were going through."
Mediation #1; Participant- B1 “I didn’t care to be there. I felt like mediation was for people who can get along then I felt it would be for you.”

Mediation #3; Participant- B3 “I was a little uncertain at the beginning of it. I wasn’t really thrilled about going. I didn’t feel like it was anybody’s business about what was happening between the two of us. I felt pressured, I don’t like being ordered to do anything, and I didn’t think it would be very beneficial to helping resolve the situation I had going on. The concerns I had were that everybody I had talked to about mediation said that it is for a divorce. And I wasn’t going through a divorce. The issues I had were involving my son.”

In general, participants stated that they understood the process of mediation as it was explained to them during the “Children in the Middle” class, by the Program Administrator of the District Court Program, and/or their attorney. However, two participants reported that they were surprised by their ex’s positions on issues brought up during mediation and felt mediation was used in a manipulative manner in attempt to introduce these issues. Participants reported that this was a negative experience and did not feel prepared to deal with their ex’s positions on these issues and believed that not knowing about this prior to the mediation affected the outcome and prohibited them from reaching a resolution. A man from one mediation (Mediation #2) and a woman from another mediation (Mediation #4) both commented that they would have liked to have known that this was going to occur prior to mediation so that they could have been better prepared to deal with their positions.

Mediation #2; Participant – B2 “It was confusing at first because there was a communication gap as to the reason to why we were there as opposed to what actually transpired. The issue we started out with was visitation. We were going to do the whole divorce proceedings right there and get it all done. My lawyer and myself were not prepared
for what was to occur. Everything was supposed to be all done. There were allegations that we didn’t know of and we were floored. And because of my outbursts with the divorce, my ex’s lawyer said that they were not going to grant me visitation at all. Instead of ending the whole divorce, we end up battling visitation with my own children. It ended up being a 3-hour battle from no visitation to less than 12 hours a week. We were prepared to move forward for the divorce, not to battle for visitation.”

Mediation #3; Participant - A3 “Before I arrived there I did not want to do it. It was not anything that I had previously done before and I wasn’t really sure exactly how it was going to go, especially knowing that we were all in one room with each other. I went in thinking we were going to be discussing our son’s issues, which we did. Then another issue was brought up which I wasn’t prepared to discuss. It was brought up apologetic to myself and my attorney because there was no forewarning or anything like that. I felt like the session was used for that purpose or that opportunity to bring up other things then what I was led to believe.”

Another participant reported that she did not remember being told that she would have to pay for her share of the mediation at the end of the session. She remarked that she was able to meet those costs without any notice, however, she felt most people would not have that ability.

Mediation #2; Participant – A2 “I didn’t know that I had to pay for it on the spot. I wish I had known what the costs would have been beforehand. I mean there weren’t any big surprises. I knew that we could try it and if it didn’t work out, it wasn’t like I couldn’t back out. I was told it was something that we had to do and that it would be good to avoid going to court that would be better for everyone.”
The second participant from another case reported that she looked forward for the opportunity to mediate and also felt that she and her ex could work out their scheduling/visitation issues with only a mediator, rather than court and/or in front of a judge. This participant ended up walking out on the mediation session based on her dissatisfaction with the mediator. Her ex-husband also reported wanting to mediate as it had worked well for them at the time of their divorce. He reported that before he would mediate without his attorney he clarified with his attorney prior to mediation that the issues being mediated was about the scheduling problems they had been having not custody. He reported that the issue of scheduling did not require their attorneys to be present, as this would not effect his livelihood or his ability to see his children.

Mediation #4; Participant – A4 “The skills of the mediator I thought were not there. It was as if she was not listening. We went to this mediation without our attorneys. It didn’t seem like it was anything difficult to do. But the two of us at the time needed a neutral party because we were at each other’s throats. She said it was the first mediation that she had done without attorneys present.”

Mediation #4; Participant – B4 “My position on the second mediation was if there was any issues related to custody that I wanted my attorney there. After getting clarification with the attorneys, it was decided that there wasn’t going to be any custody issues brought up just the scheduling concerns. So, I decided that we did not need the attorneys.”

Attorney’s Influence on the Outcome of Mediation

Both participants and mediators reported that attorneys influenced the mediation both positively and negatively. Three participants either reported that an attorney played too great
of a role by speaking for them or by dominating the outcome and/or the process. This complaint was usually against their ex-partner’s attorney.

Mediation #2; Participant – B2 “It was confusing, the class, ‘Children in the Middle’ said not to bring your lawyers to mediation and my lawyer insisted on attending. Our mediation ended being the battle of the lawyers. I would not have had lawyers there. The attorney’s influenced the mediation 100%.”

Mediation #4; Participant – A4 “What I disagree with is having three attorneys in the room instead of just one. It does not make sense to me to have an attorney that you hired and for the other party to have an attorney that he or she has hired and then to bring almost all the time it is another attorney in to the factor, to be paying three attorneys. I have real disagreement with that piece of that process. Some issues came up this summer that I thought needed to be addressed, so I went to my attorney and once again she recommended mediation. The sole purpose of it was to renegotiate the joint physical care agreement because *, my ex and I had gotten to a point that we could not work out ourselves”

Mediation #6; Participant – A6 “The mediator was very good. She was neutral. I thought she did the best that she could in the situation. I thought my ex-husband’s attorney was overpowering to the point where he even told my ex-husband, ‘No. You don’t have to do that, we can take this to trial. Put your coat on.’ I mean he played the game, put your coat on and look like you are going. I believe my lawyer did the best he could.”

Mediation #3; Participant – B3 “I know that every situation is different. I know in my situation that we don’t need a judge and if we could have talked this through two or three years ago it would have been over. I would have preferred attorney’s not be there, mine or hers for that matter. My attorney is very vocal and very loud. She seems to do more talking
than I do. She expressed legal views. She was doing it based on legality instead of talking about what we were trying to resolve and those kinds of things.

Mediation #6; Participant – B6 “When he (her attorney) walked in with my ex-wife, I wanted to go up and kiss her. He kept her away from me. It was soon evident to me that we were not going to be in the same room for mediation. I was disappointed. I thought it was something that we had worked out between us the night before. The attorneys were going to be in the way of getting at what we were going to do.”

Another participant reported that he was grateful that the attorney’s were not at mediation due to the nature of the issues being discussed. He reported that he felt any legal matter pertaining to the mediation could be discussed by phone afterwards. He though this was helpful to save time and money.

Mediation #5; Participant – B5 “I don’t think attorneys would have been helpful. I think it would have only added pressure. Added more to the cost and trying to get this thing done in time. The issues needed to be resolved were between her and I, not on a legal standpoint but on an emotional standpoint, the child between us. It would have been two attorneys working something out which would have been worked out on legal terms. I felt it was best not to have them there.

Another comment was that the attorneys did not take an active enough role in formalizing the agreement and resolving the case.

Mediation #3; Participant – A3 “Well, okay we have agreed to dates and times just to get on paper. It wasn’t something that * and I felt like that we had to adhere to, to the tee. Because we had already been working out these visitations times, anyway. It was just to get something on paper. But neither his attorney nor my attorney were willing to step up and say
well I’ll go back to my office and put it on paper and let’s be done with it. So, I spoke up and said to my attorney, ‘Just put what we discussed down on paper and I’ll review it and we’ll go from there. Then you can send it off to them. So, I can get this over and done with because this is ridiculous, 2 and 1/2 years, I mean it should be done’’.

On the other hand, other parties reported that they would not recommend participating in mediation without an attorney as they felt they needed an attorney there to represent their interest and avoid negative consequences. Additionally, these participants felt the mere presence of an attorney helped keep things fair.

Mediation # 5; Participant – A5 “Had my attorney been there with me, we wouldn’t have had to went to trial. I wouldn’t have had to go without an attorney. I wouldn’t have had to go to the second mediation. None of this would have played out. It was explained to me through my new attorney. had my attorney at the time, prior to the original mediation filed with the courthouse, some kind of form that he (my ex) tested positive for marijuana on this date, supervised visitation would have been set up and he would have never been able to pursue custody any further than at that point. Then we would have been done.”

Mediation #1; Participant – B1 “It was, it put me at ease (having my attorney there). It really did. I guess just between me and her and my mediator, it would have been okay, but nothing really would have been resolved With the attorney’s there at least everything was kept under control. I don’t know. I guess I just felt at ease if I started to say something then she could just catch me. She has the experience, she knows what is to be expected and stuff. I hadn’t actually been there before. It helps you relax a little bit, at least for me because I knew she was there.
Mediation #6; Participant – A6 “In defense of my lawyer, he did the best he could. He didn’t think that I would fair any better going to court.”

In many cases, mediation is designed to offer parties the opportunity to negotiate their own agreement, in two situations, participant’s attorneys were encouraging their clients to do this on their own without them in the session, based on the issues presented. One party reported feeling mistrustful of her first attorney and her recommendation that she go on her own (and subsequently fired this attorney), so she reported that she blocked any opportunity for an agreement. The mediator of the above case reported that this participant was going to do things her way and was not willing to listen to the facts.

Mediation #5; Participant – A5 “The first mediation, I went there without my attorney which I thought was a direct red flag, right then. My attorney, at the time, said ‘We want to give you guys the opportunity to work this out’. So, we went and she never told me any further what it was going to be about. When we got there the mediator asked why we were there and I said, ‘I would like to know the reason, too’. I had no idea. I told the mediator that I was completely uncomfortable in being there without my attorney. I had no idea what we were doing there as far as I knew it was to work out a standard visitation schedule. Child support was one of the issues that we were supposed to deal with and I wasn’t even going to go there because he had his own business and juggled money around and he would make $40,000 - $50,000 but he is only showing $20,000 and all the deductions.”

Another participant would make a determination whether to include his lawyer or not depending on the type and complexity of issues he was mediating.
Mediation #4; Participant – B4 “It depends on what the issues are and how complex and dear to your heart. Scheduling issues don’t involve my livelihood. I could not have done the first mediation which involved our divorce without my attorney present.”

The mediators most often reported that they would like participant’s attorneys to be in attendance if they were prepared. Mediators reported that attorneys often utilize mediators in ways that help bring ‘a dose of reality’ to participants who are stuck on a particular issue without damaging the client attorney relationship.

Mediation #2; Mediator – C2 “One thing that I thought would be helpful is to have the attorney’s give their client’s a sense of: ‘Have you discussed with your lawyer what you think is a likely outcome if you tried this and make them tell you what you think would happen if the judge decides this? And make them tell you what the worst thing that you think that could happen if the judge decides this?’ So you get them to see some of the down side. You know what they want and what is likely to happen and then what is the worst scenario that can happen to get them to be real a little bit.”

Mediators interviewed were sensitive to power imbalances and reported that they preferred attorney’s there to help with these types of concerns.

Mediation #3; Mediator – C3 “Like I say most of them have their attorney’s there so that there isn’t that power imbalance. Sometimes, attorneys want help in telling their client without harming their attorney client relationship too badly that their client has unreasonable expectations. I can help with that.”

Mediation #5; Mediator – C5 “The biggest plus is to have attorney’s involved in mediation because in every marriage there is a giver and a taker. The attorney being there keeps the giver from giving everything away. It forces the giver to have a backbone and say,
“no”. I need those things to live and we have to come up with a solution that we may not like but we can live with it. I have never had a mediation that I was unhappy to have the mediators there.”

One mediator reported that the husband’s attorney was manipulative in the tactics he used to influence the other party to resolve the mediation.

Mediation #6; Mediator – C6 “His attorney was very manipulative. He would say to his client, ‘Come on, put your coat on let’s go.’ He did this three times during the mediation session.”

Often mediators are concerned that the parties in mediation will view them as an authority figure much like a judge. Mediators are required to inform the parties that their role is to offer a process where they can resolve and negotiate their own agreement not act as a decision-maker. Additionally, two mediator’s reported that they felt participant’s attorneys could help their client’s understand that they had no decision-making authority as a mediator.

Mediation #3; Mediator – C3 “That is why I like having the lawyers there, they know too (that mediators are not judges and are not decision-makers in the mediation sessions). But, everyone I have done when the lawyers are both there. The lawyers seem to want to get it resolved as well. I haven’t sense anybody who has thought, I want to get through this process and say we can’t mediated so we can go to court.”

Mediation #2; Mediator – C2 “They want to look at you like a decision-maker and you’re not. And I try to say that in mediation. I don’t decide for you, I’m not a judge. You don’t have to sway me. But I think they still feel like you have to walk in their shoes, a little bit so that when you try to help them that there grievances and concerns are valid on both
sides. Or their grievances that the other one has been unjust in someway. So you have to get enough of that background and you can’t cut them off.”

Mediators most often felt attorneys were needed in mediation to be able to get to a resolution and/or help move their clients towards understanding the process before and during mediation.

Mediation #2; Mediator – C2 “I don’t think it necessarily matters if they (attorney’s) are there or not. The only thing I like about the idea, it is just like having settlement authority there, they have their resource there. So, they don’t feel like, they’ve agreed to something that they would regret later on. If their lawyers there they are going to be able to discuss it with them.

Mediation #1; Mediator – C1 “The father was resentful and did not want to be there (at the mediation). He had a chip on his shoulder and no intention of trying to budge. Given the nature of their issue (custody), I pushed. I was hoping that his attorney would talk to him, to get him to understand. I don’t think there was a lot of communication between the client and the attorney. His attorney needed to be forthright and provide to his client an honest evaluation of what might happen with custody. His attorney needed to be better prepared for the mediation to have accomplished anything.

Mediation #6; Mediator – C6 “I pushed hard for a resolution. I knew that this is what would be best for this couple and even though, his attorney used certain tactics I didn’t necessarily like, I felt that it helped push them towards an agreement. You could tell that they were still emotionally involved with one another but needed to settle to move forward.”
Satisfaction with the Process of Mediation

Most participants were satisfied with the process of mediation, even though, only one of the six cases settled. Most reported that they felt that they were able to express their needs and concerns during mediation based on the process and having a neutral third party to listen to their concerns. Most reported that they felt the mediator was neutral, skilled and allowed both sides to express their views.

Mediation #1; Participant - A1 “It was a good thing to get it out in the open. But it was difficult to make them understand.”

Mediation #2; Participant - A2 “It worked out well for us. For starters the credentials of the person doing it. I believe she had a law degree. She had five kids. She had some degree in child development. We were there for issues regarding our children. She was highly qualified. Had I not believed in her, I don’t think it would have gone well. I never felt rushed. They gave me time to think it through. The decisions I was making could potentially effect my kids for the rest of their lives. I was able to be heard.”

Mediation #3; Participant - A3 “You know when I went through my first divorce they did not have anything like this, no mediation, and no “Children in the Middle”. I wished they would have this back then. Like I said, I was a lot younger. I don’t know if it would have been such a positive experience back then. I learned a significant amount in “Children in the Middle” class. I also found in the mediation that I did compromise. I didn’t like all the things I compromised on but I learned that it wasn’t the end of the world either.”

Mediation #4; Participant - B4 “It kept us from being in a tremendous adversarial role and probably would still be reeling from the scars as it would have been ugly.”
Mediation #5; Participant – B5  “What I liked about mediation is being able to meet with a third party who is in the middle but not related to the process or outcome in any way, shape or form. The mediators in both situations were neutral.”

Two participants felt the process of mediation impacted the amount of visitation they had gotten and reported that their mediation session turned out to be adversarial and they would have gotten better results by going in front of a judge. One reported that he would rather go to court than move on his position in regards to custody.

Mediation #2; Participant – B2  “The mediation failed. It failed for me. Today, post-mediation five to six weeks, I am back to square one. If I went in front of a judge I’d have more visitation then I do now.”

Mediation #5; Participant – AS  “Only reason I went (to the second mediation) was because it was court-ordered. It was explained to me that they (my ex) didn’t want to go to trial.”

Mediation #1; Participant – B1  “There is no way that I would give up and there’s no way that I would go with what the mediator was suggesting. No way. Because, basically he was just telling me that I should probably look and make a settlement with what she wants. Because you have to look at what you have to gain and what you have to lose. And as of now, I have nothing to lose. A judge is not going to do me worse than what they were trying to offer me at mediation. A judge will not do me worse. A judge will actually do me better.”

Mediation #4; Participant – A4  “I think that the whole system is set up to be adversarial. I think as family law and society evolve I think there are many divorces that are not adversarial. I would have been perfectly been very happy from the very beginning to just go to one mediator and do away with the legal system situation. Again it is a process thing.
there are times when settlements get adversarial and I think there are doing things backward, it starts out adversarial, they can’t reach an agreement so they recommend mediation. I think the mediation should come first with a single neutral party and if things do not get work out then it should be stepped out to a more adversarial position. I don’t know. Because in two hours time in our original mediation we were able to work out that we couldn’t for seven months.”

This participant in this mediation was not comfortable with the process of her mediation session as she felt that the tactics that her husband’s lawyer had used made her feel that her needs were not met in mediation, although she felt supported by her attorney and the mediator. She reported that she did not benefit from mediation.

Mediation #6; Participant – A6 “The mediation I had ended two weeks ago and my lawyer is male, his lawyer was male and the mediator was female. I thought the mediator did the best that she could do given the situation. My husband’s lawyer was very manipulative. What happened to me, not getting as much as I expected to get had I taken it to court, it probably would have been a mess dragging in all the financial statements.”

Mediation Outcomes

One participant stated that if the mediation would have resulted in the way that she had agreed to at the end of the session, then she would have felt good about the outcome of mediation. She reports that the difficulty occurred based on the information provided to the person she and her husband were referred. She reports that her understanding of what was to occur and what did occur was very different.

Mediation #2; Participant – A2 “Had we came out of the mediation and it been executed the way I thought I was agreeing to then, I think it would have been fine. I think it
would have been avoided (not settling) if we would have gotten the draft (of our agreement) before we left because my attorney or myself would have definitely found that paragraph that we thought was in there and made sure it was there. Also, that the mediation information would have gone to the therapist so she would have known before we were there, why we were there.

Three participants from different mediations stated that they felt good about trying mediation and possibly avoiding court. Also, neither felt like they had anything to lose as they could go to court if nothing was resolved.

Mediation #2; Participant – A2 “I knew that we could try it and if it didn’t work we, it wasn’t like I couldn’t back out and say we just can’t agree. I was told it was something that we needed to do to try to avoid going to court and if we can agree it would be better for everyone. If we could agree on our own, it seemed like the logical thing to do.”

Mediation #5; Participant – B5 “We were there to try and resolve the whole thing before it went any further. It was our second mediation. Joint custody, primary physical care was the main issue. I thought that going through mediation, to avoid going to court was a great idea. If we could save the court time and energy and we could save her and I time, energy and money. The attorney’s time, energy and money. I thought, great. The good thing was we were able to resolve visitation on a temporary matter.”

Mediation #6; Participant – B6 “Mediation benefited me because it did allow us to resolve, we reached a settlement without having to go to court. That is how it benefited me.”

One participant from the fourth mediation case reported that he and his ex-wife needed to go through mediation to get to a resolution. He reported that the mediation was
unsuccessful, although, it helped him understand what his ex-wife was wanting from him and subsequently helped him get what he needed from her.

Mediation #4; Participant – B4 “It finally dawned on me about a week after mediation that what she really needed was appreciation and I thought about and came up with a way to show her if she was going to keep the kids longer. The solution was just way to simple. I don’t think we could have gotten down the road without mediation. We didn’t have enough of the pieces in place at that time. Even though, the actual mediation was unsuccessful. The court process would have been brutal.”

Another participant reported that she decided to settle during mediation as she reported that she was influenced by her attorney to try to settle as the participant thought it would be messy to go to court. She did not know if she would have done better in front of a judge as she did not feel she had gotten her fair share.

Mediation #6; Participant – A6 “I don’t know if I would recommend mediation to others. I don’t know what going to court would be like. I think you are frightened enough, at least I was. My lawyer is saying that you are going to have to go back a number of years. They scare you into not going to court. They try to mediate and get it solved so you don’t have to head to court and say what you are going to say. I felt pressure to make it work. I wish I could say that I felt good coming out of it, but I didn’t.”

Techniques Used

There were many different techniques that participants and mediators were able to identify that helped move the mediation along. Some mediators caucused to reduce the negative impact on the relationship between the parents and to facilitate reaching a resolution.
Mediation #1; Participant – A1 “Separate rooms helped but it slowed down the process. The mediator had to go back and forth into the separate room, which is how we got the most accomplished. We both have flaring tempers.”

Mediation #4; Mediator – C4 “Depending about how I feel about the chemistry about the two of them, if it appears that they are reasonable people and they come from reasonable positions then I typically try to keep them in the same room. If one person is very defiant and very critical and not concerned about the other person’s feelings. And especially when they are very derogatory towards one another, I separate them.”

Mediation #5; Mediator – C5 “I had hoped that once I separated them and I talked with her alone, I thought she was positioning herself when we were together. I hoped that she would be more flexible when I separated them. She had zero flexibility and I felt bad for her, as she was inflexible to the point of being brittle.”

Another mediator kept the parties together due to his belief in their ability to be civil and resolve their own issues. In addition, the mediator reported that he felt this ex-couple had moved past their emotional issues and were ready to mediate. He reported that this case was one of the easiest he had mediated.

Mediation #3; Mediator – C3 “They were more cooperative with one another then most people seem to be, their issues were more crystallized or distilled and they weren’t worlds apart and it didn’t seem like there was tons of baggage that they each wanted to talk about before we could get to the process. This one was atypical. It happened quickly. Both parties were reasonable nobody was out in left field. For the good of the child involved, there was a 5 ½ year old, sounded like a pretty good deal for that child and their ability to get along.”
Another mediator used reality testing and education to try to get parties to understand what they are arguing for.

Mediation #3; Mediator – C3 “One technique I have used, it seems to work. If people are arguing in terms of cash and child support which is a big issue. They believe the other side is getting a big bonus. Husband is paying ex-wife money, “she is just living off my money”. Or she is saying, “he has so much extra money”. If you go through and show the net effect of what the parties have to spend on the parties and the children they have to support, sometimes, you will get them to realize that it is not the same. They will focus on a gross income of this much. ‘Wait a minute this person has to pay a higher rate of income tax than you and then they pay support which is not tax deductible. So, lets take all those things out and get down to the net dollars that they actually have to spend on groceries and rent and all that. Let’s take a look at your net dollars. You make this, which is half of what they make but your tax is much less, so you take home more and you get ‘X’ dollars in support. So, your net dollars are available are this. You make them realize. It is fairly typical for one to think that the other makes twice as much as available money. When you actually work it out it is not usually the case.”

All mediators discussed different strategies that they used to deal with emotions in the mediation session. Most acknowledge that they needed to give parties time to get to the underlying issue. One mediator reported that she allows time for the parties to process their emotions especially when they are involved in mediation early on in their separation from one another.

Mediation #2; Mediator – C2 “Especially these temporary ones. They are just separated and they are at the height of anger or the hurt. Somebody has left the other person
and they feel bewildered and hurt, and abandoned, and overwhelmed with parenting, broke, and their world is collapsing. Or one has had an affair. They are hurt and angry over that. So with caucusing, you don’t get those sparks flying back and forth. Maybe they are going to cry and vent in a way that is not going to get the other side going because they are not together.”

Others report that you need to be flexible to facilitate movement.

Mediation #1; Mediator – C1 “You have to be very flexible as a mediator and try to go with whatever will work. Honesty is also important. The other thing you have to do is to try to get people to talk and also listen. Then you will get some place.”

Length of Mediation

This program was based on a brief mediation model, which primarily consisted of scheduling one, three-hour session. Although, participants and mediators could request and/or suggest another mediation session based on the needs of the parties, most parties and mediators attempted to resolve all issues within one sitting. Some participants reported that one-mediation session was enough. Others reported that for the issues involved that one-session would not meet their needs. Some reported that the decision of rescheduling was left to the parties that this did not take place and they felt like they had started all over at the end of an unresolved mediation.

There were many variations on the amount of time used during the mediation and the number of sessions scheduled, although, the majority of cases were one session. In the qualitative portion of the study, mediation sessions were as short as 30 minutes and as long as four-and-one-half hours. In regards to the shorter mediation sessions from the qualitative research, two that lasted less than an hour ended acrimoniously, one participant was
dissatisfied with the mediator; another was unhappy with her options in regards to custody and believed she would have faired better through the court system. Some reported that they attended one-mediation session because they were court-ordered to do so but were not going to get involved in the process of mediation, that is, they were going to attend, however, they were not going to participate to work on a resolution.

Mediation #1; Participant – A1 “For the time period that we had there was no way to let them know what was going on. You can give them the outline but you don’t know if they really understand. In order for both people to tell their story it takes awhile. Time was a big factor; a lot of it has to do with our mediation being over a custody battle. 3 hours is not enough time to settle a custody battle”.

Others felt that the time allocated was long enough to resolve issues of custody and visitation.

Mediation #2; Participant – A2 “Three- and one half hours was enough for us. I would have hated going in thinking that there was a time limit. I never felt rushed.”

Mediation #3; Participant – A3 “Concerning our son it was plenty long enough. Because okay. Actually, I could have done it in a half-an-hour. But he needed to hear that you are not going to get physical custody. And he needed to hear that from my attorney and his attorney.”

Mediators also feel that the brief model of mediation, that is one session and providing three hours to mediate helps set the stage for the parties to get things resolved.

Mediation #2; Mediator – B2 “Sometimes, by the time you are getting to that three hours. It is kind of good that you are wearing out according to the original training I have had because people are more likely then to make agreements. They are almost done, a little
more compromising one way or the other will finalize and able to walk away without having a trial and have it over with. I have them before when they are spread out and had two or three sessions and sometimes what you have is buyer's remorse, they come to the second session they have talked to their neighbor, their mother and they got more child support. He only got to see them one weekend a month and they start second-guessing and the gap losing more momentum of it."

Custody as an Issue

Mediators and participants all reported that they believed custody to be the most difficult issue to mediate. One mediator succinctly stated that it is difficult to split a child unlike property. Another mediator reported that in most circumstances the parents want equal time with their children. Mediators often report that their role is to help them feel like neither one is losing their child/children. Mediators argue that couples who have children need to maintain a relationship with one another after their relationship ends. They believe mediation is an avenue to assist with this task. Participants in all mediations stated that they wanted what was best for their child. How each one understood this concept and the avenues they took to achieve this type of outcome varied greatly.

Mediation #1; Participant – A1 "It was very emotional. My main disappointment was that I felt pressure to give more and more and all I wanted was child support and health insurance. I was feeling pressure from his my attorney and the mediator."

Mediation #2; Mediator – C2 "A couple with no children. Once they have been divorced, they never have to see each other again and you can destroy their relationship in the divorce process by being so adversarial. Long-term there is no relationship necessary. When there are kids, divorce or no divorce there is a certain amount of relationship that they
need to maintain and the better you can preserve that by not being so adversarial. This also
better for the kids."

Mediation #3; Mediator – C3 “Custody is the most difficult type of case to mediate. Custody is not something that you can convert into dollars and cents. When it is truly a custody issue. Remember there are times the dollars and cents do come into play because whoever gets custody there is a big swing in the amount they will be paid or received. When it truly is an issue about custody and who is a better parent and there is situation where there is one parent that is a drug addict and they will be sent off to prison, and they still want custody that is a no-brainer. I haven’t had that. But if you have two decent people and they both want custody, those are tough.”

Allegations and founded reports of domestic violence and/or drug abuse further complicate emotional and physical issues related to custody/visitation and child support. Parties who had concerns about their ex-partner or participants who were accused were less likely to settle their mediation cases in a single mediation.

Mediation #5; Participant – A5 “He wanted full custody and wanted to put me on a specific schedule and dictate when I could see her. He needs to drop this custody thing. The first mediation was a waste of time. When I started questioning my (first) attorney, she requested to be released from the case. I went to Legal Aide and requested help. They gave me this attorney and I had a mediation date set for that Tuesday. I spoke to the assistant director at Legal Aide and he said that he didn’t feel he had anyone that I would feel comfortable enough putting on this case this far along or somebody that would be able to handle this type of situation. He said that they had young attorneys that come in right out of
school and the intake attorneys and they basically take done information and give information.”

Mediation #2; Mediator – C2 “Custody is always the hardest part. You can always do things with property and you can always kind of even it out. Who gets or doesn’t get custody is always a big issue. It is just a dilemma that you have to figure out. One thing too, with this case. It was helpful that I was a mother, too. Because I could understand * that she was a point in which she was very protective, nurturing and bonding. This was a newborn. Even if it doesn’t make sense where she would leave the newborn with a baby sitter and not her spouse. I understand the reluctance to leave a newborn with somebody you consider unsafe. Whatever reason, she thought he was unsafe. She thinks that he has a violent tendency and he needs anger control and there were episodes that she explained that he didn’t handle like he should have and there were outbursts. That made her concerned. That coupled with having a tiny baby made her fearful.”

Additionally, another mediator reported that in the case he mediated, that he believed he was unable to get the parties to resolve their issues based on the mother’s unwillingness to let the father have primary custody, even though, a psychologist had evaluated them and recommended this outcome.

Mediation #5; Mediator – C5 “He seemed like a pretty nice guy. She was defensive and already aware that the expert was going to go against her. My job was to help them come to an agreement. It was an impossible task as she was unwilling to acknowledge to herself that her daughter would be better off with the father and until she could come to grips with that there was nothing that would happen. She evidenced a behavior pattern of women.
Women feel that they have the duty to be the custodial parent. Society expects you to be the custodial parent. She had real societal pressures that effected the outcome of mediation."

Mediator Characteristics

Mediators also had a strong influence on participants, the process and the mediation itself. One participant reported that the mediator's experience and credentials made a difference in regards to her comfort level as she was deciding the fate of her children's lives for the next 16 - 18 years.

Mediation #2; Participant - A2 "She waited for me to speak. And there were times when in trying to agree on certain times or issues, I said, "I need a moment to think it through." We were talking about things that could effect my children for the rest of their lives."

Two participants who came into mediation believing that it would not make a difference in their situation felt like the mediator had helped them be more open to the process and in mediation.

Mediation #1; Participant - B1 "I liked our mediator. He was a pretty nice guy. He was straightforward with you. He was open. He made it easy to talk to. So, I felt it was a plus. You are supposed to go and talk to somebody you don't know. You want somebody that is going to be kind of open. Otherwise you are not going to open up to anybody. You're not going to talk to them. I thought he was good. He made it really easy to talk to."

Mediation #5; Participant - A1 "We were all in this little room and we couldn't have been there more than 40 minutes. We were in there together for 15 minutes and then the mediator asked J to leave the room and he was kicked back and relaxed and said, 'you are
screwed'. He gave me enough information and told me a story and he said the judge is going to look at the evaluation of the psychologist and asked me what was I going to do."

Mediation #6; Participant – A6 "The mediator was very good. She was neutral. I thought she did the best she could given the situation. The mediator was female, the attorney's were male."

Another participant reported that he felt good about being able to clarify his own feelings and concerns with the mediator, even more than with his attorney. He reported that she validated his feelings about being able to live with what he was offering as a settlement to his ex-wife. He reported that he still had feelings for her and this complicated matters during mediation.

Mediation #6; Participant – B6 "I felt like the mediator would be more likely to tell me the truth since she represented both me and my ex-wife, than my own attorney. To me that was the most positive to reinforce my feelings and I feel fine about what I did."

One participant felt that the mediator was unqualified to help resolve her situation. She reported that she felt the mediator did not have any understanding of children's issues or any ability to assist in problem solving. This participant voluntarily attended mediation on the advice of her attorney who is also a mediator. She had gone through mediation one time before and reported that that experience was a positive one. He ex-husband felt that the mediator was helpful even though, their mediation was unsuccessful.

Mediation #4; Participant – A4 "What she lacked was, she completely lacked any ability to empathize with child issues. She was absolutely unwilling to listen to any feeling things. In custody battles, when it comes to problem solving, you got to deal with the feeling things before you can problem-solve. Those are two different parts of the brain, unless you
work through the feelings, you will not get to logic. We just started with the issues and by­
passed the feelings, and she didn’t listen, you know, she just saw 2+2 as four. “

Mediation #4; Participant – B4 “Our mediator was getting us to think and talk about
what was important to us and have the other person hear that.”

Another participant reported that he believed that if the mediator would have taken a
more active role in the mediation that his mediation might have gotten resolved.

Mediation #3; Participant – B3 “The mediator that I had before for a job issue
seemed to do a whole lot more talking that the mediator in this mediation did. I think a
different mediator could have made a difference in the outcome of this one that we just came
out of.”

Two participants from the same mediation reported that they appreciated their
mediator being truthful and saving them money by ending the mediation as neither party was
willing to make any movement. They had court the next day and the father was awarded
custody.

Mediation #5; Participant – B5 “The second mediation only lasted about 40 minutes.
The mediator was honest and blunt about the fact that neither one of us was willing to
change our mind about custody. He had separated us and then came in and told me that she
wasn’t going anywhere and that we might as well end to save us time and money.”

Issues Regarding Never-Married Parents

Some mediators reported that the difference in mediating with parents who have
never been married and have not been together for a long time is that the task at hand is to
create a relationship where one had not previously existed and that depends on the
willingness of each party. Mediators in this case would argue that the first step is to
determine what kind of relationship each party wants to have with their child, if any prior to
mediation. Participants also reported that not being together very long and never being
married to one another had effected their relationship and it effected the outcome of
mediation.

Mediation #3; Participant – A3 "It definitely complicated some of the other things
(never being married to one another). But to me, concerning the child custody thing, us
being married didn’t make a difference. He is still his dad and that is just it. That didn’t
make any difference. The other issue, the house did (make a difference in regards to us not
being married to one another)."

Mediation #1; Participant – B1 “You get a couple like my parents, they have been
married 14 or 15 years or something. If something happened between them, and they split
up, if they’d be able to get along and go to mediation and then the situation would be
completely different from somebody who is 21 and his ex-partner/ex-fiancée was 20 and they
couldn’t get along or anything. When they split up they absolutely hated each other. The
situation was completely different.”

Mediation #1; Mediator – C1 “Custody is the most emotional issue. How do you
compromise your child? You can’t divide the child up. He needed to have the label of
primary physical care. It didn’t matter to him that the arrangement that I tried to work out
would give him 180 days with his son a year. I also think that the age of the child had a lot
to do with the difficulty. He was very young.”

Participant Recommendations

Participants had a plethora of comments regarding recommendations to improve
family law mediation services. A few recommended that it would have been helpful to get
something in writing before they left the mediation session. Some argued that what they thought they had agreed to on the day of mediation had changed when they saw it in writing a few weeks later. One participant reported that some things were left out that she was sure that they had agreed upon. Additionally, another participant reported that he would have liked to have mediation not to have occurred so close to the trial date as he would have liked to participate in more than one mediation session.

Mediation #2; Participant – A2 “We did ours later in the day. So by the time we ended and all went our separate ways. We had met at the office of the mediator and her staff had gone home. It was later when we had finished. She had taken notes and then read them back to us what she was going to type up. I was disappointed when I finally got the draft copy there was something that my husband thought was in there that wasn’t and there was something that I thought was supposed to be in there that wasn’t and granted it was just a draft, but it has caused us a big headache in therapy. I guess if I could have changed anything, it would have been nice to stay there another 30 minutes to have had that draft typed up and read it because I think for sure I would have caught it and things would be different now.”

Mediation #6; Participant – B6 “Our mediation should have not be so close to the trial date. I felt a lot of pressure and stress to try to get it done. I felt this climax. I would have liked to have a few sessions to work out our issues.”

Others recommend that they would not attend mediation without their attorney’s present.

Mediation #5; Participant – A5 “Both mediations were a waste of time but I do feel and I strongly that there has got to be some law or moral line or whatever you want to call it
that you do not go to mediation without legal representation. It has to be there. Granted in the United States you can represent yourself. The judge tried to help me. You have to have an attorney, period.”

Some believed that neither attorneys nor the court system should be involved in family issues. One participant felt that he and his son’s mother could have resolved their own issues more quickly and efficiently without the attorney’s present and if they would have resolved their issues when they first ended their relationship. Another participant would like to mediate alone and then consult with the attorney’s as needed.

Mediation #6; Participant – B6 “Here is a wild idea. If I could change the process, it would be to have the mediator and the man and the woman in there without the attorneys. The attorney could be in the other room. The way we felt about each other, we could have done it on our own. You need the legal guidance with some way to work it out where the attorney’s were accessible but not in the same room.”

Mediation #3; Participant – A3 “I think they should do away with the court system altogether. I recommend that they do more mediation type things. I would say it is easier to get two parties together without attorneys and talk through things.

Other participants reported that mediators who mediate family law cases should have training and experience in regards to the developmental and emotional needs of children. This seemed especially important when the party’s children at the time of mediation were very small. Two sets of mediation cases had children involved who were 2 ½ years or younger. In one case, one child was only 3 ½ months old.

Mediation #1; Participant – B1 “I don’t know if a mediator is going to provide mediation about children, they need to have dealt with children or been around children long
enough. If the mediator had that experience or had that knowledge, it probably would have helped out, too.

**Mediator Recommendations**

Mediators are aware that their role as a mediator is to remain neutral while being aware that they cannot consciously allow an unfair resolution that biases on side over the other.

Mediation #3; Mediator – C3 “*Letting them know in advance, the role of the mediator, I think is helpful, although, I go over it in mediation. I think the parties are cognizant that there is no decision-making authority on my part although, they tend to look to you for an answer or a decision of how you think it might go. I can’t think of a time when it hasn’t come up several times throughout the process, ‘I don’t make the decisions, I am not the judge. Only a judge or an arbitrator can. This is what I think you might find.’ When I suggest, ‘I think you might get this kind of result.’ It is way into the process. I don’t at all start this way.*”

One mediator reported that unless parties have some incentive whether it is negative or positive, to resolve their issues they would be less likely to cooperate with one another.

Mediation #4; Mediator – C4 “*They did not have anything pending. Both of them had attorney’s. Neither one of their attorney’s came to mediation. But their attorney’s said, ‘before we file an application to modify maybe you guys should just try mediation and we can save you money down the road if you can get it worked out. We can just do up the agreement and save you a lot of costs.’ So, from that standpoint they didn’t have anything looming over their head, I think it impacted mediation greatly. Typically, when people know if I don’t cooperate to help find a reasonable solution with each other and I have to go to court next*
Tuesday and I don't want to take off work. I don't want to go through the stress. If they don't have that looming over their head they don't have as strong of incentive to cooperate for a workable solution for the both of them."

Another mediated reported that participants have to have some flexibility in order to achieve a resolution. In one case, the mediator reported that one party was inflexible, even though, her inflexibility would cost her custody of her daughter, which was the very issue she was fighting her ex-fiancée over.

Mediation #5; Mediator - C5  "When one party or both are inflexible, I find that you have to separate them as with her, it was my way or get out of my way. There was no way that I could keep them together."

**Being Prepared to Mediate**

Whether this was an issue of the participant not understanding the process or digging their heels in this had a lot to do with the outcome of the case. Two mediators reported that they felt one party wanted to use mediation to fix the other party. One participant in one case reported feeling like her concerns were heard by the mediator, and the mediator reported that she felt like she could empathize with the participant. In another mediation, the mediator felt like she could understand the other parties needs, too, however, she felt like the ex-wife expected something else from her.

Mediation #4; Mediator - C4  "I think she could tell that I understood her ex-husband's priorities and I think she resented that. You are supposed to convince him to not do that and you are supposed to convince him to be with the kids. She didn't care for me at all. I think part of the reason why she didn't was that she didn't understand what my role was. She thought that I was going to fix him. It was to come up with a solution."
Mediation #2; Mediator – C2 “That’s the quote * had given me that the wife had said. ‘I thought we were here for you to fix him’. The real purpose of sending them there was to work on a co-parenting agreement. And then for her to refer out, we wanted a professionals judgement about whether there was therapy needed for anger management or individual therapy needed for either parent to deal with the issues. We want a professional for co-parenting and then refer them out if they needed it. That is how we structured the purpose of them going there. It wasn’t to fix anybody it was to help everybody.”

One mediator reported that he believed the mediation failed as the attorney failed to be prepared and failed to prepare the participant to successfully mediate his issues.

Mediation #1; Mediator – C1 “One attorney came in with no idea about the issues and he did not have any of the numbers down, nothing prepared and was relying on the other attorney’s information. I saw the frustration in the mother. The father was unbending, he had his mind made up. This case should have never gone to mediation. Both client and the attorney should have been better prepared.”

Participants and mediators provided many insights in regards to their feelings about mediation and the impact it has had on their lives. Although only one case settled, the participants from this mediation reported that they were not happy with the outcome (mediation #6). This might had a lot to do with the aggressiveness of the husband’s attorney and the mediator’s determination to settle the case. Mediation #1 was unsuccessful based on the claim of the mediator who believed that the father was unprepared to mediate. In an another mediation, the ex-wife (A4) walked out of mediation but a few weeks later she and her ex-husband (B4) worked out the custody and visitation issues. She and her ex-husband realized that they did have the ability to negotiate their own agreement. In mediation #3, the
sale of a house that the ex-couple shared got in the way of finalizing a custody agreement that they had already been executing and living by for a few years. The mother (A3) realized that she could compromise and not give up an important part of herself. She reported feeling more frustrated that issues regarding their son were not settled. She and her ex both believed that they would continue to be involved in their son's life regardless how long it would take for the legal issues to be settled. In two other mediations, there were allegations of violence, one involving domestic violence (mediation #2) and the other regarding a child custody evaluation and alcohol/drug use (mediation #5). Neither one of these cases was successful nor should they have been mediated based on the allegations made by the parties. There were many factors that influenced the outcome of mediation. The next section contains results from the survey questionnaires, and combines these results with the qualitative results, and compares this to previous studies that have been conducted in the area of family law mediation.

Quantitative Results

Frequencies

The quantitative data derived from this study are reported below and in (Appendix H) and represent the frequencies and percentages of the demographic characteristics of the participants who returned their survey questionnaires. Some data may be missing due to participants not responding to all questions.

Demographics

The data was analyzed using frequency distributions and percentages in SPSS student version 10.0. Crosstabulations were also conducted by gender and mediation and demographic variables. Of a total of 196 responses of participants who returned their
questionnaire, 86 or 43.9% were male and 110 or 56.1% were female. One hundred and fifty-seven respondents reported that they were Caucasians which represents 94% of the respondents and is characteristic of the population of the County and the State that this program is being offered. Seven respondents reported that they were Black or 4.2% of the respondents. Two participants reported that they were Hispanic (1.2%) and one person reported himself as other. All of the participants interviewed were Caucasian.

One hundred and sixty-six respondents or 77.2% responded that they were court-ordered to mediation, which is similar to the percentage court-ordered in the qualitative portion of the study (67%). Forty-three respondents or 20% reported that they attended mediation based on the recommendation of their attorneys and six participants or 2.8% reported that it was their choice to participate in mediation. These numbers demonstrate that approximately 23% are choosing mediation as an alternative means to deal with their issues relating to family law. Additionally, respondents reported that their mediations lasted between one-half hour to eleven hours. The mean was 3 hours per case. Of those interviewed, 10 out of 12 participants (83.3%) were court-ordered to mediation. Two participants (16.7%) attended mediation based on the recommendation of their attorneys. The length of mediation for the participants interviewed was shorter (30 minutes to 4 ½ hours long) than those reported by the respondents from the surveys.

Most respondents 197 or 93.8% reported that they strongly agree to agree that they were willing to come to mediation. Only a small number 6 or 2.9% stated that they disagree to strongly disagree that they were willing to come to mediation. Only one respondent or 0.5% did not know/neither. Furthermore, over half of the respondents (117 or 55.9%) prior to mediating strongly agree to agree that they were optimistic that the mediation would result
in a satisfactory solution. Seventy-two respondents or 34.5% disagree or strongly disagree. Twenty respondents or 9.6% don’t know or neither. In the qualitative portion of the study, over half of the participants (7 or 58.3%) reported that they were willing to come to the mediation. The rest, 5 or 41.7% disagree that they were willing to come to mediation. Participant’s willingness to attend mediation might have influenced the outcome of mediation.

Fourteen respondents or 6.5% reported that they did not have an attorney to represent them for mediation. Six respondents reported that they did not talk to their attorney at all. The majority of respondents, two hundred and two or 93% reported that they did have an attorney and 208 reported talking to their attorney about their issues relating to mediation. Surprisingly, only 30 or 14% of the respondents stated that they had talked to their attorney before mediation. One hundred and eighty-five or 86% did not talk to his or her attorney before mediation. Ninety-three respondents (43.3%) reported that they did not talk to his or her attorney during mediation. One hundred and twenty-two did (56.7%). Furthermore, it is interesting to note that 139 respondents or 65% of those involved in mediation did not talk to their attorney’s after mediation. More than one-third of the respondents (35%) or a total of 75 reported that they did talk to their attorney after mediation. These findings were similar to statements made by participants, mediators and attorneys involved in the qualitative portion of this study but contradictory to answers on the survey. For example, 82.1% or 169 survey respondents strongly agree to agree that their attorney adequately prepared them for mediation. Some felt like they were not prepared to mediate 34 or 16.5% disagree to strongly disagree. A small percentage, 3 or 1.5% did not know or stated it was neither response. However, a majority of participants (and their mediators) who were interviewed
felt that either they were not prepared to mediate the issues brought up in mediation and/or their attorneys had not adequately prepared them for mediation. These findings suggest that participants may not be utilizing their attorneys in the most beneficial way and also that attorneys are not preparing parties to maximize the benefit of what mediation can offer to involved families.

Forty-eight respondents or 22.6% reported that they mediated issues pertaining to the temporary order. One hundred and five or 49.5% reported that they mediated issues pertaining to the final decree. Fifty-nine respondents or 27.8% mediated issues involving a modification of an existing order or decree. The type of issues mediated may also influence the outcome of mediation. For example, in the qualitative portion of the study, mediation participants – 5A and 5B from Mediation #5 were able to settle issue relating to the temporary hearing but were unable to resolve the final custody issues.

One hundred and fifty-two or 70% of the respondents reported that they never felt pressure, coercion or concern for their physical safety. Fifty-three or 24.4% of the respondents stated that they did feel pressure, coercion, or concern for their physical safety. A small percentage, 12 or 5.5% did not respond to this question. Additionally, respondents were asked if they felt pressure, coercion or concern before, during, and/or after the mediation session. Thirty-two or 14.7% reported feeling pressure, coercion or concern before mediation, 172 or 79.3% did not and 13 did not respond. Thirty-three or 15.2% respondents reported feeling pressure, coercion or concern during mediation, 171 or 78.8% did not and 13 did not respond. Finally, 185 or 85.3% did not report feeling pressure, coercion or concern after mediation, 19 or 8.8% did report feeling pressure and 14 did not respond. It is unknown how many mediation cases were waived from mediation due to
concerns about domestic violence allegations, as this statistic was not kept for this study. Nor is it known how many cases went to mediation that should have been waived from mediating due to this concern.

Of the issues mediated, 142 respondents (65.4%) reported that their mediation involved issues relating to parenting schedules and/or custody and visitation. One hundred and fifty-three or 70.5% mediated financial issues. Sixty-six or 30.4% of the respondents mediated alimony and/or spousal support issues. Most attorneys, mediators and participants agreed that custody issues were the most difficult types of issues to mediate.

Sixty-two or 29.1% stated that some of their issues were addressed; and 3 or 1.4% stated that none of their issues were addressed. Fifty-five or 25.8% reported that they were able to reach agreement on some issues and 53 or 24.9% were unable to reach any agreements. One hundred and forty-eight respondents or 69.5% stated that all of their issues were addressed in mediation. In reviewing past studies Kelly found settlement rates for both comprehensive and brief mediation to be between 50% and 85%. This percentage is similar to the lower end of the settlement rates for this study. Approximately half of the respondents 105 or 49.3% reported that they reached an agreement on all issues brought to mediation. These rates might have increased if parties were offered more than one mediation session prior to their mediation or encouraged to return for another session.

Furthermore, even if not all issues were addressed or resolved in mediation, 134 respondents or 69.4% reported that they did benefit from mediation. Fifty-nine respondents or 30.6% reported that they did not benefit from mediation. A small majority of respondents, twenty-eight or 12.9% stated that they would not recommend mediation to others. It is interesting to note that a large majority of respondents 180 or 82.9% stated that they would
recommend mediation to others even though only 69.4% reported benefiting from mediation, and less than half of the respondents were able to reach agreements on all issues in mediation.

A large majority of respondents, 151 or 73.3% reported that they strongly agree to agree that they were satisfied with mediation, 45 or 21.8% reported that they disagree to strongly disagree, and 10 or 4.9% said don’t know or neither. Additionally, most of the participants in the qualitative portion of the study reported that they were satisfied with process of mediation. These findings are higher than other findings reported for court-mandated, brief mediation (2.5 sessions, approximately 3.2 hours per case), Kelly and Duryee (1992) reported that about 50% of the men were somewhat to completely satisfied and that 67% of the women reported being somewhat to completely satisfied with mediation.

In a crosstabulation by gender and did the respondent benefit from mediation, twenty-two or 26.8% of the male respondents reported that they did not benefit from mediation. Sixty or 73.2% of the male respondents reported that they did benefit from mediation. Thirty-five or 36.1% of females reported that they did not benefit from mediation. Sixty-two or 63.9% of the females did benefit from mediation. Kelly (1996) found that (comprehensive) mediation tends to favor women as they typically received more child support and alimony as a result of mediating versus litigating. Women from the current study might have been less satisfied with mediation because only brief mediation was being offered.

Additionally, three out of the six sets of participants in the qualitative portion of this study reported feeling like they had no resolution at the end of their mediation session and that they were worse off than when they began the process. Furthermore, they reported not
know what was the next step in the process or how to resolve their issues at that point. Therefore, implementing more than one mandatory session (brief mediation) may be helpful to bring the parties back to further explore their options, and/or provide information.

Seventy-nine or 41.4% of the respondents reported that they had 2 children. Fifty-seven (29.8%) had one child. Twenty-five or 13.1% reported having three children. Twenty-three or 12.6% stated that they did not have any children. Seven respondents or 3.6% reported having 4 or more children. This finding indicates that most of the mediations in Polk County; approximately 88% of all family law cases involved children. All of the participants interviewed had children. One ex-couple had three children. Two ex-couples had two children. Two had one child together and had children from another relationship. One had one child.

This sample of respondents were educated, 53.2% of the respondents had some college or above (n = 99) and 46.7% had a high school diploma or less (n = 87). A crosstabulation by gender and by highest grade achieved, revealed that five of the male respondents reported that they earned less than a high school diploma. There were 7 female respondents who also had earned less than a high school diploma. An equal number of respondents, thirty-six of the males and thirty-five of the females reported that they had received their high school diplomas or GEDs. Twelve of the males and thirty-six of the females had reported completing some college classes. Nineteen males and eighteen females of those responding to the questionnaire reported being college graduates. Four males and two females had earned their master's degrees and two males and one female had earned their doctorates. The amount of education that was reported by the participants involved in
this study was higher than what had been previously seen in the literature and may reflect changes in parties and attorneys attitudes about the effectiveness of mediation.

Respondents reported a range of time that they had been married or in a relationship with the minimum amount of time reported being less than 1 year and the maximum amount of time reported as 48 years. The mean/average amount of time that the respondents were together was 11.8 years. A crosstabulation of gender by length of marriage/relationship found over half of the respondents were married/in a relationship for 10 years or less, forty-one males (23%) and fifty females (29%) or a total of 53%. Twenty-six males (15%) and thirty-four females (19%) reported being married in a relationship more than ten years but less than twenty-and-a half years. Seven males (4%) and eight females (5%) reported being married/in a relationship for more than twenty-one years but less than thirty-and-a-half years. Three males (1.7%) and three females (1.7%) of those responding reported that they were married/in a relationship more than thirty years but less than forty-and-a-half years. One male reported being married over forty-five years. These findings are similar to statistics reported by Bee (1994) and the National Center for Health Statistics (1991) who reported that most marriages end before the seventh year. In this study, over half the couples (53%) were together ten years or less.

Respondents varied greatly in regards to their age at the time they completed mediation. Participants ranged in age from 18 to 68 years old with the mean age being 39 years old. The average age is somewhat older than previous research results of participants using court-ordered mediation programs.

The survey respondent's incomes varied with the majority of participants 125 or 65.1% earning more than $25,001 per year. Sixty-seven or 34.9% respondents earned less
than $25,000 per year. A crosstabulation by gender and income revealed that only two males and twelve females or total of 8% earned less than $10,000 per year. Thirteen males (8%) and thirty-four females (19%) earned between $10,001 and $25,000. Thirty-nine males (22%) and forty-one females (23%) earned a salary between $25,001 and $50,000. Twenty-five males (14%) and eleven females (6%) earned $50,001 and $75,000 per year.

Mediation respondents reported that their average share of the total cost for their mediation was $182.31. The minimum amount paid by one respondent was $10.00 and the maximum amount paid was $575.00. Ninety-three of the respondents or 47% reported that the amount they paid for mediation was "about right". Another seventy-five respondents reported paying "too much" and 30 or 15.2% reported that they paid "less than expected".

In addition to the above data, the researcher also gathered information about how the respondents felt about the process of mediation, their mediator, and attorneys involved in the process. These as well as all other issues are reported in the Appendix Section (See Appendix H).

In addition to offering their experience of participating in mediation, respondents had the opportunity to respond to three open-ended questions on the survey. Some participants responded with the same type of comments, others responded uniquely, not all participants provided a response. Participants were initially asked to provide information regarding whether they would or would not recommend mediation and the reasons why they answered as they did. The following responses are condensed into similar categories of meaning and put into descending order of mention:

Reason why participants would recommend mediation to others: N = 83

To avoid going to court – 14 respondents.
Good way to resolve issues/effective – 10 respondents.

More civilized and satisfying/best interests of all parties – 9 respondents.

Allows parties to resolve issues in an informal manner – 8 respondents.

Third party seems to help – 7 respondents.

  • Less expensive – 7 respondents.
  • Faster – 6 respondents.
  • Brings closure – 6 respondents.
  • Depends on the issues – 5 respondents.
  • Increases communication – 4 respondents.
  • Most everything was resolved – 4 respondents.
  • Could work in some situations – 3 respondents.

Those who responded but would not recommend mediation, stated the following reasons: N = 32

  • Too expensive – 8 respondents.
  • Waste of time – 8 respondents.
  • For mediation to work, both parties need to be willing to resolve issues – 5 respondents.
  • Mediator unqualified – 5 respondents.
  • Issues still did not get solved – 3 respondents.
  • Agreement unfair – 2 respondents.
  • I wasn’t going to give in to anyone but a judge – 1 respondent.
Participants were also asked to respond to issues relating to their safety before, during, or after mediation in regards to their interaction with the other party.

**Negative comments about safety included: (I did not feel safe...): N = 38**

- Due to my ex’s behavior/abuse – 13 respondents.
- Hostile mediation environment – 4 respondents.
- I felt pressure by the mediator – 3 respondents.
- Spouse was emotional and manipulative – 3 respondents.
- I had a restraining order before mediation – 3 respondents.
- My attorney wasn’t supportive – 2 respondents.
- Threats were made about my visitation – 2 respondents.
- I felt if I didn’t give in, we’d never end it – 2 respondents.
- I felt pressure to go to mediation – 1 respondent.
- I felt that the process was unjust – 1 respondent.
- The other attorney was rude – 1 respondent.
- We were stuck in a mind set and could not move forward – 1 respondent.
- I was there alone. I could not afford an attorney – 1 respondent.
- The restraining order was bull. It kept us from getting things done – 1 respondent.

**Positive comments about safety issues included: N= 5**

- The mediator was looking out for both of us, it made things better – 1 respondent.
- When my attorney was there, I felt better – 1 respondent.
- Thankfully, we were in separate rooms – 1 respondent.
- I felt safe in mediation – 1 respondent.
- I felt less pressure because I was prepared – 1 respondent.

Participants were also encouraged to write any other comments that they would like to share about their mediation experience at the end of the questionnaire. Comments will be divided into categories similar to those in the qualitative section:

**Attorney’s Influence on the Outcome of Mediation: N = 13**

- Encourage attorney to recommend mediation before you spend all you money on legal fees – 3 respondents.
- Other attorney dominated the session – 2 respondents.
- Attorneys should teach people to work together – 2 respondents.
- Both or none of the attorney’s should attend – 2 respondents.
- Demand your lawyer prepare you for mediation – 2 respondents.
- No need for three attorneys, too many attorneys involved – 2 respondents.

**Satisfaction with the Process of Mediation: N = 10**

- Issues important to me were not addressed – 5 respondents.
- Ex-partner was uncooperative – 3 respondents.
- Restraining order was bull and kept us from getting a lot done in the time we had – 1 respondent.
- I was afraid for my safety, mediator put an end to the threats and gave me a sense of value that I haven’t had for many years – 1 respondent.

**Mediation Outcomes: N = 12**

- Waste of time – 4 respondents.
• Waste of money – 3 respondents.
• Saved time, saved money – 2 respondents.
• No winners in this situation – 1 respondent.
• Too expensive – 1 respondent.
• We reached an agreement, I believe we compromised to the point that the arrangement is not in our kids best interest – 1 respondent.

Techniques Used: N = 9
• Mediator should only take 15 - 25 minutes to explain their role not 45 minutes to an hour – 3 respondents.
• Mediator made everyone feel comfortable – 2 respondents.
• Other party received too much time – 2 respondents.
• Caucusing was good – 1 respondent.
• Mediator kept things moving – 1 respondent.

Length of Mediation: N = 7
• Needed more time – 4 respondents.
• Could have been done in two hours instead of three – 2 respondents.
• Felt rushed due to mediator having another appointment after our session – 1 respondent.

Custody as an Issue: N = 2
• Fought to be part of my son’s life – 1 respondent.
• Husband was worried about material issues, not our children – 1 respondent.
Mediator Characteristics: N = 39

- Mediator was excellent, neutral, and kept things moving. The mediator was fair – 31 respondents.
- Mediator did not pursue that both sides did not want to be divorced – 2 respondents.
- Mediator was unfair, felt it was a set up – 2 respondents.
- Mediator had to be stern with both parties – 1 respondent.
- Mediator unskilled, biased – 1 respondent.
- Mediator fair for black man, married to white woman – 1 respondent.
- Mediator was one-sided. Would have been better without attorneys – 1 respondent.
CHAPTER 5
DISCUSSION

The following chapter will focus on the interpretations that the researcher has made from the ethnographic interviews and survey questionnaires and will combine this information together with the previous literature on family law mediation. The areas covered in this section will discuss how the findings of this study represent similarities and uniqueness, limitations, and implications in regards to previous research conducted. Additionally, thoughts regarding how to improve mediation and possible future research will be included.

The purpose of this study was to evaluate participant’s perceptions of family law mediation in Polk County, Iowa. Mediation provided was designed to facilitate families’ adjustment before, during and following a divorce, separation and/or change in a parenting relationship. The goal of this mediation program was to offer participants an alternative method to resolve their issues relating to divorce and child custody. Qualitative research methods were chosen to gain an in-depth understanding of the perceptions of participants and mediators involved in the study. Eighteen qualitative interviews were conducted and involved 12 participants (one mother and one father for each case) and 6 mediators (one mediator per case). The informants participating in this study were parties seeking mediation through the Polk County District Court Mediation Program and their mediators who provided mediation. Participants were chosen based on their responses on the survey questionnaire in regards to their willingness to participate. Mediators also agreed to provide information about the cases that they mediated. Data from the survey questionnaire were also used to support the findings of the ethnographic interviews.
Similarities and Differences

The findings of this study were similar to other studies conducted on court-ordered mediation programs although the results are not as comprehensive as they come from only one District Court Program over a period of 13 months in which brief mediation services were offered for marriage dissolution, child custody issues, and temporary issues.

Participants court-ordered to mediation in Polk County resembled those who had used court-based mediation programs in other studies. In the present study, 77.2% of the participants completing the survey reported that they were court-ordered to mediation. Of the interview participants, five of the six mediations were court-ordered. The other mediation was scheduled based on the advice of their attorneys. Twenty percent reported that they attended mediation based upon their attorney’s recommendations and 2.8% reported they attended voluntarily. For example, in Jones and Bodtke’s (1998) and in Depner, Cannata, and Simon’s (1992) studies most of the participants were Caucasian, their mediations involved children, had limited income levels, and the average age of parents mediating was less than 35 years old. In the present study, based on the homogeneity of the population a greater proportion of the participants completing the survey were Caucasian (94%) than in previous studies. Additionally, the average age of parents at the time they completed their mediation session was 39 years old, indicating that these participants were somewhat older than previous studies.

Depner, Cannata, and Simon (1992) noted that most of the children whose parents had been court-ordered to mediation were between the ages of one through nine years old. Jones and Bodtke (1998) noted that the age of children involved in their sample were less than six years old. In the present study, 88% of the mediations involved children of which
their parents had been in a relationship or married an average of 11.8 years, which is a few years longer than what previous results have demonstrated.

Although some mediation cases had more than one mediation session and were longer than three hours, the model for this study was based on brief mediation. Participants who completed the surveys reported that they mediated at the minimum, 50 minutes, and at the most, 11 hours. The average number of hours that participants mediated per case was 3. Participants who were interviewed mediated their cases quicker between 30 minutes and 4 ½ hours. These results are somewhat different than Kelly and Duryee's (1992) sample of participants who were court-ordered for mediation for custody only. Their parties attended mediation 2.5 sessions and mediated an average of eight hours.

Like other studies conducted on court-based mediation programs, this study also found domestic violence to be a concern for participants (24.4% reported experiencing pressure, coercion or concern for their physical safety). However, the number of participants reporting this concern was lower than Pearson (1997) who found that over 50% and Depner, Cannata, and Simon (1992) found 67% of cases reported incidences of domestic violence. Additionally, only 27.4% of participants reported that their attorney and/or mediator spoke to them about domestic violence or other safety issues. A small percentage, 8.4% were uncertain and 64.2% reported that neither their attorney nor their mediator spoke to them about domestic violence. Of the participants who were interviewed, one reported concern about domestic violence (A2) and another parent (B5) reported concerns about his ex’s (A5) ability to parent their child. This is lower than the percentages reported in previous literature and those percentages indicated from the results of the surveys.
Of the participants, 93.5% reported that they had a lawyer. Of this 86% talked to their attorney before mediation. Over half, 56.7% talked to him or her during mediation and 35% talked to their attorney afterwards. From the qualitative portion of the study, four participants (A4, B4, A5, B5) came to mediation without their attorney. Participants A4 and B4 attended mediation on the advice of their attorneys who also recommended to them that they could mediate the issues on their own. Participants A5 and B5 went to mediation without their attorneys as A5 had recently dismissed her previous attorney. The other four cases had attorneys present during the mediation.

In reviewing past studies conducted on mediation, Kelly (1996) reported settlement rates for brief and comprehensive mediations between 50 - 85%. These rates are similar to the ones found in the quantitative part of this study in which 49.3% of respondents reported reaching agreements on all issues. Additionally, 25.8% reported reaching agreements on some issues. The settlement rates were somewhat different for the interview participants, only one case settled at the end of mediation. Another case settled a few weeks after mediation. The other four had not settled at the time of the interview.

Kelly (1990) notes that parties who mediate are more likely to follow their terms of their agreement than those who went to court and were more likely to report that they felt their agreement was fair. Similar to these findings, a majority of participants (68.7%) from this study reported that they felt their agreements in mediation were fair. Approximately, 16% stated that they did not feel they were fair and another 15.3% were uncertain. Furthermore, 82% reported that they strongly agree to agree that their mediator asked questions so make sure that both parties felt the agreement was realistic and fair. A small percentage, 7.3% disagree to strongly disagree and 10.7% reported that they did not know or
neither. Additionally, 89.9% of respondents agree to strongly agree that their mediator did not take sides, and 9.6% said did not and .5% did not know or neither.

Additionally, Kelly (1988) reports that divorce mediation is less costly than using the adversarial court system. On the average participants paid $182.31 to mediate their case. Participants paid as little as $10.00 and as much as $575.00. Of the participants, 37.9% thought this amount was too much. Forty-seven percent felt this amount was about right and 15.2% reported that this was less than they had expected to pay.

Most of the participants (82.9%) reported that they would recommend mediation to others, 12.9% would not. Furthermore, 73.3% reported that they strongly agree to agree that they were satisfied with mediation, 21.8% reported that they disagree to strongly disagree, and 4.9% said don't know or neither. This is similar to other findings that most participants are satisfied with mediation.

Uniqueness

This study was unique in that it was about understanding the process families go through when being court-ordered to mediation to resolve family law issues. Participants from the same mediation were interviewed in an attempt to understand both perspectives of those involved. Additionally, mediators were also interviewed to try to understand the barriers these families encounter to successfully mediating these types of cases.

Most previous research conducted on family law mediation has been focused on outcome studies through the use of survey questionnaires and quantitative analysis. Other studies have analyzed past research and combined the findings to make generalized statements about mediation outcomes. This study was unique as it employed both qualitative and quantitative methods. The quantitative portion of this study enabled the researcher to
identify parties willing to be interviewed and also to provide a greater sample of responses through the use of survey questionnaires.

This study attempted to understand the impact of family law mediation on participant's lives by conducting an in-depth exploration of their mediation experience. In the qualitative portion of the study, participants (mother and father/ex-couple) were matched with their mediator to gain a more sophisticated description of the process of family law mediation, their experiences of this type of mediation, and using the insight provided by participants to improve mediation and services offered by mediators, attorneys and the court system for those needing these types of services in the future.

Limitations of the Study

One limitation was based on the homogeneity of the population. Most of the participants, 94% or 157 who returned and completed the ethnicity question on their survey questionnaires were Caucasians. A small percentage of the respondents were from other ethnic origins, 4.2% or 7 respondents were Black; 1.2% or 2 individuals were Hispanic; and 0.6% or 1 person identified him or herself as other. All of the participants interviewed in the qualitative portion of the study were Caucasians. Although a few individuals who reported being from a minority group had completed the survey questionnaire, they had indicated that they did not want to be contacted or their ex-partner did not return a survey, so he or she might have then been excluded from the qualitative process. Additionally, all but one mediator who serves on the panel for the mediation program are Caucasians, the other mediator is African American. Divorce, custody and visitation, property settlement issues may differ for families who come from a more racially or ethnically diverse background or who live in an area that represents a more diverse population. Mediators who are more
racially diverse may also offer a different perspective than those who are Caucasians. Future studies might include similar programs offered in larger cities where larger minority populations exist to understand what their needs are in regards to family law mediation. Additionally, all parties going through family law mediation were involved in heterosexual relationships. The needs of same sex families may differ as well.

Another limitation might be that individuals agreeing to be interviewed might have different issues, needs, and concerns than those who would not agree to be interviewed. These participants may be better able to express themselves or their experiences. Additionally, those agreeing to be interviewed may have polarized views of their mediation experience, either really good or really bad.

A third limitation is that this study was primarily cross-sectional. Participants were only surveyed and then interviewed one time. Additionally, the researcher was deliberate in her attempts to not let more than three months time elapse between the time participants filled out the survey questionnaire (completed their mediation session) and completed their ethnographic interview. Although some mediators offered more than one session and some mediations lasted more than three hours, the model for this mediation program was based on a one-session, three-hour model. In one case (mediation #5) many things had changed for the parents and the children between the parents' first mediation three years before and the current mediation. Their children had entered adolescence and their visitation and parenting needs were different. Furthermore, their needs had also changed since their divorce. This is an example where it might be important to evaluate a family over time to determine if the benefits of brief mediation lasts. A longitudinal study would provide a greater understanding
whether brief or comprehensive mediation would better benefit families utilizing family law mediation.

A further limitation is that mediators providing mediation for Polk County were sent surveys requesting them to provide information about themselves, their styles of mediation, years of experience, background and training, and various other questions that might have shed greater light on the role mediators play in brief court-ordered mediations. Since the response rate of returned surveys was poor (.058%), the results were not deemed representative enough of the sample to be utilized. Therefore, a future study comparing mediator characteristics, styles and training might prove useful.

Another limitation of this study was that it was unknown how many cases were mediated that should have been waived from mediating due to concerns of domestic violence. Typically, these types of cases are not appropriate for mediation. Future research might include the number of cases waived and the impact that this has on satisfaction and outcomes.

**Conclusions and Implications**

Many programs report providing information to participants about how mediation can benefit them through educational programs such as "Children in the Middle" and/or from their attorneys and 85.5% of participants from this study reported that they agree to strongly agree that mediation process was adequately explained to them. However, even though they felt they understood the process, these participants reported that they were not prepared to mediate the positions brought up by their ex-partner and/or his/her attorney. Those parties who attended mediation for one purpose and were surprised with the positions that their ex-
partners had taken on certain issues had a more difficult time resolving issues than those parties that were not surprised by the positions taken on issues discussed.

Some mediators reported that not only were participants unprepared, their attorneys were, too. For example, both mediators one in Mediation #1 and one in Mediation #2 reported that at least one of the attorneys at the time of the mediation was either not familiar with the case and/or did not have the necessary paperwork to facilitate a resolution. If their attorneys had been familiar with the case and consulted with the other attorney prior to attending mediation they could have prepared their client beforehand. By doing this, participants might have reported higher satisfaction levels with the process of mediation and/or may have increased settlement rates.

Additionally, participants noted concerns about not knowing if they needed their attorney or not before, during or after mediation and when to include him or her, if at all. A participant in Mediation #2; Participant – B2 reported that “Children in the Middle” told him not to bring his attorney and his attorney told him that she insisted on coming. Rather than having attorneys or educational programs driving decisions for participants, it might be better for those involved to teach participants how to make these types of decisions for themselves. For example, an attorney can offer information to the client about similar cases based on the issues being brought to mediation to help him/her make decisions about whether the attorney is needed during or after mediation. Or one attorney might confer with their estranged partner’s attorney prior to mediation to determine if they will be attending. Furthermore, individuals teaching “Children in the Middle” classes should also educate participants to help them make informed decisions about their specific needs rather than merely making blanket statements about never including attorneys as was the case in the above example.
Only in one case did a participant who had been through mediation before (Mediation #4; Participant – B4) seem to understand and verbalize why he made the decision to attend this mediation without his lawyer. He succinctly stated, “it depends on what the issues are and how complex and dear to your heart are they. Scheduling issues don’t involve my livelihood. I could not have done the first mediation which involved our divorce without my attorney present.” Since the process of mediation is built on participants negotiating their own settlement based on sufficient factual data and understanding of the issues (Umbreit, 1995), participants should be provided with enough information about their mediation and related issues prior to deciding to mediate. This could possibly be accomplished by offering separate pre-screening interviews with both parties to determine if mediation is appropriate and what type of mediator would best suit their needs.

By conducting an in-depth analysis, it was determined that some cases entering mediation needed to be pre-screened more carefully (preferably in separate pre-mediation sessions) and waived from mediating as these cases are not appropriate for mediation. Cases where allegations of domestic violence and drug abuse had been reported and child custody evaluations were ordered do not fare well even when individual caucusing is implemented. These issues are common among parties involved in court-based mediations. In this study, participants were asked over the telephone or by their attorney if they believed domestic violence was a concern for them. Participants and attorneys were informed that they could waive mediation under these circumstances. This method may be less effective in screening out cases that are not appropriate for mediation than meeting in person. It is unknown how many participants waived their mediation based on their concern for their safety.
Pearson (1997) found in her evaluation of five court-based settings that the most widely used screening approach was separate face-to-face interviews. She found that even when this approach was implemented only 5% of the cases were waived from mediation. She reports that over 50% of all parties court-ordered to mediate cite domestic violence as one of their concerns. Depner, Cannata, and Simon (1992) found in their statewide sample that 67% of parents court-ordered to mediation reported domestic violence had occurred and 33% reported problems in their relationship concerning substance abuse. Results from this study indicate that 24.4% of the respondents completing the survey questionnaire and two cases of the six interviewed or 33.3% reported having concerns about domestic violence in their relationship. Neither one of these cases were resolved. Additionally, only 27.4% of participants reported that their attorney and/or mediator spoke to them about domestic violence or other safety issues. Another 8.4% were uncertain and 64.2% reported that neither their attorney nor their mediator spoke to them about domestic violence.

Mediation outcomes for these domestic violence cases are not good for various reasons including ensuring safety of the abused, maintaining neutrality, balancing power imbalances, and determining the best interests of the children. Most end up not being settled and need to go to court. Participants (both parties) feel that mediation is one more barrier (hassle) that they have to deal with in their lives and that they are not any closer to a resolution than before they entered mediation but may feel more hopeless and mistrustful of the court system.

**Future Research**

Due to the increases in single-headed households, children born out-of-wedlock, never-married parents, and divorcing parents combined with concerns of domestic violence,
substance abuse, mental illness, and depression, more children and families will need family law mediation to help them deal with the complexities of the above situations. Mediators and mediations programs (whether they are court-ordered or not) will need to become more effective and efficient in providing information to participants about how they can best utilize the process of mediation to promote the interests of all of those involved. This could be accomplished by requiring mediators to understand the different models/approaches of mediation and when to apply these based on the needs of each case. Additionally, mediators could receive specialized training in domestic violence, child development issues, parenting, how to determine if a case is appropriate for mediation, and preparing participants for mediation, to name a few. Furthermore, attorneys, mediators, “Children in the Middle” facilitators and those involved in providing information to participants about mediation need to do a better job of teaching participants how to make decisions for themselves about such issues as: Is mediation appropriate for my situation, do I need to involve an attorney, what information do I need to bring to mediation, what do I want from this process, how many sessions might I need to resolve my issues? All these issues should be explored before mediation occurs.

Additionally, future research should include comparing the different approaches of mediation (transformative, evaluative, and facilitative) to one another in an outcome study. The purpose of this type of study would attempt to understand which approach and/or parts of each approach would work better for different types of family law issues.

As mediators gain more skill level in dealing with the ever complex and changing needs of families and their issues, they will have better success rates in regards to how
satisfied participants are with the process and the outcome of mediation and the effect this has on their lives and the lives of their children.
Dear Attorney/Client:

Thank you for participating in mediation. By using this process, you afford yourself the opportunity to resolve your case in mutually satisfactory and cost-effective way.

To help you understand the important aspects of entering mediation, a copy of an agreement to mediate is enclosed. This agreement explains the role of the mediator, the use of an attorney, confidentiality, and the fee obligation. Prior to commencing the session, your mediator will have you sign the agreement.

Your mediator will attempt to settle your case to the best of his or her ability. To be successful, s/he will have two expectations of you. The first is that you enter mediation with a sincere desire to resolve your case and make a good-faith effort to do so. The second is that you come prepared. For this, you may want to bring your pre-trial paperwork and/or previous settlement proposals. If there are property issues, please bring a list. You can also request from us the pamphlet “Preparing Yourself for Mediation.”

Your mediation is scheduled for Date, in the office of Mediator and address. Should you have a conflict with this, or if your case settles, please notify the mediator or me as soon as possible.

We want your feedback on the effectiveness of both the mediator and the mediation process. For this, an evaluation form and a self-addressed, stamped envelope will be provided to you. When you have concluded mediation, we would appreciate it if you would complete the form and return it to our office.

Thank you again for your participation, and good luck in the mediation.

Sincerely,

Joe Harrison

Note: If your case settles and you no longer need a hearing or trial, please notify court administration at 286-3754 so that they can schedule another. Thank you.
APPENDIX B

QUALITATIVE INTERVIEW QUESTIONNAIRE

Mediators will be asked to provide demographic information and also will be asked to address the following mini tour questions and follow-up questions:

1. Please describe the process this family went through for divorce mediation from the beginning to the time they had ended with you.

2. What, if any, changes had you observed occurring in these parents/couple during the mediation sessions?

3. What if any, barriers/challenges had you experienced in providing divorce mediation to this family? Which ones were you able to overcome?

4. What, if any, is your theoretical approach/philosophy/style of mediation? How did you apply this when working with this family?

5. What, if any, strategies or tactics did you apply to facilitate the resolution dispute?

6. What, if any, professional skills were the most valuable to you during the mediation session when working with this family?

7. What, if any, skills do you believe were most important to the man/father? To the woman/mother? To the family?

8. How likely is this family to follow the terms of the agreement they made through mediation (if one was settled)?

9. What is your main role in the mediation sessions?

10. What are the “grand lessons” you’ve learned while being a mediator?
Individual participants volunteering to be contacted after completing the survey will be asked the following mini tour and follow-up questions:

11. What has it been like to be in this mediation program?

12. What, if any, specific differences has using mediation made in your lives? In your children's lives?

13. What aspects of the program would you suggest be continued, what aspects should be changed?

14. What characteristics of your mediator were most helpful to you?

15. What characteristics of your mediator were least helpful to you?

16. Would you recommend mediation to others? Why or why not.

17. What barriers were most difficult to deal with in mediation?

18. If you reached a settlement, how likely are you to follow the terms of the agreement reached through mediation?
APPENDIX C

PARTICIPANT SURVEY QUESTIONNAIRE

Please take a few minutes to complete this survey. The results of it will be used to document the effectiveness of family law mediation in Polk County, and as part of a research study for a doctoral dissertation. Participating in this study may provide you with a sense that you have contributed to increasing the understanding of and improving the process of divorce and family mediation services. Your participation is strictly voluntary and you are free to decline. Efforts to protect your confidentiality will be maintained.

1. Your mediation was:
   a. Court ordered _____
   b. Suggested by your attorney _____
   c. Your preference _____
   d. Other referral _____

2. What types of issues did you mediate?
   a. Issues pertaining to a temporary order before the final decree _____
   b. Issues pertaining to the final decree _____
   c. Issues involving modification of an existing order or decree _____

3. How soon before a hearing or trial did you participate in mediation?
   a. A matter of days _____
   b. A matter of weeks _____
   c. A matter of months _____

4. How many mediation session did you attend? _____ How many total hours? _____

5. Considering the number of issues to be discussed in mediation, how many were addressed?
   None _____ Some _____ All _____

6. Of the issues discussed, on how many were you able to reach an agreement on?
   None _____ Some _____ All _____

7. Which issues did you mediate?
   a. Parenting schedule: custody/visitation _____
   b. Alimony/spousal support _____
   c. Financial issues _____
   d. Other _________________________________

8. Do you have a lawyer? Yes _____ No _____

9. If you do have a lawyer, did you talk with him/her (please check all that apply):
   a. Before the first session _____
   b. During the session _____
   c. After the agreement was drafted _____
   d. Not at all _____

   If you didn’t talk with your attorney, why not? __________________________

10. Would you recommend mediation to others? Yes _____ No _____

   Why or why not? _______________________________________________________

11. I felt pressure, coercion, or concern for my physical safety or threats from the other party:
   _____ before the mediation session
   _____ during the mediation session
after the mediation session
never, not a problem
If yes, please explain __________________________________________

12. If you reached agreements in mediation, do you feel they are generally fair?
   Yes _____   No _____   Uncertain _____

13. Did your lawyer, mediator or mediation staff person speak with before the mediation session regarding domestic violence or other matters that may have prevented you from feeling safe in mediation?
   Yes _____   No _____   Uncertain _____

Please agree or disagree with the following statements. (Circle SA for strongly agree, A for agree, D for disagree, SD for strongly disagree and DK/N for don’t know or neither.)

A. I was willing to come to the mediation session.  SA   A   D   SD   DK/N
B. Before we went to mediation, I was optimistic that mediation would result in a satisfactory solution. SA   A   D   SD   DK/N
C. The mediation process was adequately explained to me.  SA   A   D   SD   DK/N
D. Preparing for mediation was adequately explained to me.  SA   A   D   SD   DK/N
E. My attorney adequately prepared me for mediation.  SA   A   D   SD   DK/N
F. The mediator did not take sides.  SA   A   D   SD   DK/N
G. The mediator allowed both sides to express their views.  SA   A   D   SD   DK/N
H. The mediator did not allow one person to control the discussion.  SA   A   D   SD   DK/N
I. The mediator asked questions to make sure we both thought the agreement was realistic and fair.  SA   A   D   SD   DK/N
J. I was able to express my opinions in mediation.  SA   A   D   SD   DK/N
K. I am satisfied with our mediator.  SA   A   D   SD   DK/N
L. I am satisfied with mediation.  SA   A   D   SD   DK/N

14. Did the mediator recommend a particular outcome?   _____ yes   _____ no

15. What was your share of the total fee? $________

16. In your opinion, this amount was:   _____ too much   _____ about right   _____ less than expected

17. Did you benefit from mediation?   _____ yes   _____ no

18. You are:   _____ male   _____ female

19. Length of marriage/relationship  __________

20. Number and age(s) of children __________


24. Your Income:   _____ $0-$10,000   _____ $10,001-$25,000   _____ $25,001-$50,000   _____ $50,001-$75,000+

25. Mediators learn from feedback. Would you be willing for your mediator to receive a copy of this evaluation?   _____ yes   _____ no

26. Name of your mediator (optional) __________

27. Other comments: ____________________________________________
PARTICIPANT SURVEY QUESTIONNAIRE

I understand that the results of this survey will be used to evaluate the family law mediation program in Polk County, and as part of a research study for a doctoral dissertation.

Your name/signature ______________________, date________________

I would like to be contacted to provide more information about my mediation experience: ____ yes ___ no

Your phone number where you can be reached: ________________; best time to call?

______________

Thank you for completing this evaluation. Please return it in the self-addressed, stamped envelope.
APPENDIX D

PARTICIPANT INFORMED CONSENT

Iowa State University

Title: The Process of Divorce and Family Mediation in Polk County.

Purpose: The purpose of this study is to evaluate divorce and family mediation in Polk County, IA. Your participation in this study may provide you with a sense that you have helped increase understanding of and improve the process of divorce and family mediation.

Iowa State University and the District Court Mediation Program support the protection of human subjects participating in research studies. The following is provided so that you can decide if you want to be involved in the present study to be used as part of a research study.

Procedure: As of January 2000, family law judges will offer mediation to families seeking divorce and family mediation. All cases presenting for divorce and family law issues will be offered mediation at the Pre-trial conference, if not previously settled, and if domestic violence is not a factor. Mediators and participants will be interviewed to discuss their experiences regarding providing mediation. In addition, mediators and participants will be contacted to participate in follow-up telephone calls and/or respond to a survey. All interviews will be audiotaped.

Risks: We anticipate no physical, psychological, social, legal, professional, or economic risks or discomforts involved in this study. However, the potential exists for discomfort that sometimes accompanies social interaction. This study will request your consent to ask you questions during your involvement in individual interviews, completion of a survey, and also through follow-up telephone calls.

Benefits: You will be able to share your experiences about providing divorce and family mediation. Your input will be used to provide information to improve the process of divorce mediation. You will receive $10.00 for your participation in this study.

Confidentiality: Every effort will be made to ensure that your confidentiality is maintained. Any information that may identify you will be separated from information being reported. All scores on all measures will be stored in the computer memory by code rather than by name. Audiotapes will be stored in a locked cabinet. Project and research staff adheres to professional ethical guidelines regarding confidentiality.

Questions regarding this study may be addressed to Dr. Harvey Joanning, at (515) 232-4831, or Jill Sudak-Allison at (515) 271-6150. You are free to discontinue your involvement in this evaluation study at any time.
Participant’s Name:_____________________________________

Witness:_____________________________________

Date:_____________________________________


Checklist for Attachments and Time Schedule

The following are attached (please check):

12. X Letter or written statement to subjects indicating clearly:
   a) the purpose of the research
   b) the use of any identifier codes (names, #’s), how they will be used, and when they will be removed (see item 17)
   c) an estimate of time needed for participation in the research
   d) if applicable, the location of the research activity
   e) how you will ensure confidentiality
   f) in a longitudinal study, when and how you will contact subjects later
   g) that participation is voluntary; nonparticipation will not affect evaluations of the subject

13. □ Signed consent form (if applicable)

14. X Letter of approval for research from cooperating organizations or institutions (if applicable)

15. □ Data-gathering instruments

16. Anticipated dates for contact with subjects:

   First contact                        Last contact
   January 31, 2000                     March 1, 2001
   Month/Day/Year                       Month/Day/Year

17. If applicable: anticipated date that identifiers will be removed from completed survey instruments and/or audio or visual tapes will be erased:
   March 1, 2005                        Month/Day/Year

18. Signature of Departmental Executive
   Officer
   [Signature]
   Date 1-21-00
   Department or Administrative Unit
   [HDFS]

19. Decision of the University Human Subjects Review Committee:
   □ Project approved  □ Project not approved  □ No action required

Name of Human Subjects in Research Committee Chair
   Patricia M. Keith
   Date
   Signature of Committee Chair

http://www.grad-college.issate.edu/forms/HumanSubjects.doc
January 11, 2000

Dr. Pat Keith
Assistant Graduate Dean
207 Beardshear Hall
Ames, IA 50011-2029

Dear Dr. Keith:

I am writing this letter to let you know that Jill Sudak-Allison has contacted me for the purpose of conducting research for her dissertation. She wishes to assess participant and mediator evaluations that this program elicits, as well as interview some of the mediators.

We met yesterday, and I am willing to involve our program in her research project. I am aware that this means she will have access to confidential client records and has approval to analyze and gather this information.

Please contact me at 1-800-557-1405 if you have any questions and/or concerns.

Sincerely,

Joe Harrison

copy to: Jill Sudak Allison
APPENDIX E

MEDIATOR INFORMED CONSENT

Iowa State University

Title: The Process of Divorce and Family Mediation in Polk County.

Purpose: The purpose of this study is to evaluate divorce and family mediation in Polk County, IA. Your participation in this study may provide you with a sense that you have helped increase understanding of and improve the process of divorce and family mediation.

Iowa State University and the District Court Mediation Program support the protection of human subjects participating in research studies. The following is provided so that you can decide if you want to be involved in the present study to be used as part of a research study.

Procedure: As of January 2000, family law judges will offer mediation to families seeking divorce and family mediation. All cases presenting for divorce and family law issues will be offered mediation at the Pre-trial conference, if not previously settled, and if domestic violence is not a factor. Mediators and participants will be interviewed to discuss their experiences regarding providing mediation. In addition, mediators and participants will be contacted to participate in follow-up telephone calls and/or respond to a survey. All interviews will be audiotaped.

Risks: We anticipate no physical, psychological, social, legal, professional, or economic risks or discomforts involved in this study. However, the potential exists for discomfort that sometimes accompanies social interaction. This study will request your consent to ask you questions during your involvement in individual interviews, completion of a survey, and also through follow-up telephone calls.

Benefits: You will be able to share your experiences about providing divorce and family mediation. Your input will be used to provide information to improve the process of divorce mediation.

Confidentiality: Every effort will be made to ensure that your confidentiality is maintained. Any information that may identify you will be separated from information being reported. All scores on all measures will be stored in the computer memory by code rather than by name. Audiotapes will be stored in a locked cabinet. Project and research staff adheres to professional ethical guidelines regarding confidentiality.

Questions regarding this study may be addressed to Dr. Harvey Joanning, at (515) 232-4831, or Jill Sudak-Allison at (515) 271-6150. You are free to discontinue your involvement in this evaluation study at any time.
Participant’s Name:______________________________________________________________

Witness:_________________________________________________________________________

Date:________________________________________
APPENDIX F

MEDIATOR STATUS REPORT

CASE NAME:

1. Court ordered mediation? _____ yes _____ no

2. Number of sessions? _____ Total number of hours____

3. Did parties reach agreement on: _____ all issues
   _____ some issues
   _____ no agreement

4. The issues mediated (check all that apply):
   _____ temporary issues
   _____ general divorce issue
   _____ a modification
   _____ custody/visitation related
   _____ spousal support
   _____ financial issues
   _____ other

5. Were attorneys present at any session? _____ yes _____ no

6. Did you learn or observe anything about the process that would be useful for the program or other mediators? Please elaborate.

__________________________________________________________

(Note: the results of this survey will be used as part of a research study and doctoral dissertation. The purpose of this study is to evaluate divorce and family mediation services in Polk County.)

YOUR NAME ___________________________ DATE __________

7. Please remit this form plus applicable fee to Joe Harrison at: Polk County Courthouse, 500 Mulberry Street, Room 110, Des Moines, IA 50309. Phone (515) 286-4120. Fax 323-5283; EMAIL joeharrison@earthlink.net.
### SAMPLE TRANSCRIPT

Mediation Case #3

<table>
<thead>
<tr>
<th>Researcher: My first question is what was it like to be part of this mediation program?</th>
<th>Mini Tour Question.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant: Um. Before I arrived there I did not want to do it. Okay. It was not anything that I had previously done before or anything like that and I wasn’t really sure exactly how it was going to go. Especially knowing that we were all in one room with each other. <strong>I thought overall that it was positive experience.</strong> If you asked the other person, they thought it was a joke.</td>
<td>Felt pressure, didn’t want to do it. Didn’t know what to expect.</td>
</tr>
<tr>
<td></td>
<td>It ended up being positive.</td>
</tr>
<tr>
<td></td>
<td>Ex-boyfriend thought it was a joke.</td>
</tr>
<tr>
<td>Researcher: How did you first hear about mediation?</td>
<td>Court-ordered.</td>
</tr>
<tr>
<td>Participant: My attorney told me I had to do it.</td>
<td></td>
</tr>
<tr>
<td>Researcher: So, your first thought was?</td>
<td></td>
</tr>
<tr>
<td>Participant: I went in thinking we were going to be discussing our son’s issues. Which we did then another issue was brought up which I wasn’t prepared to discuss. It was presented very apologetic to myself and to my attorney because there was no forewarning or anything like that. I felt like that the session was used for that purpose or that opportunity to bring up other things then I was led to believe that I</td>
<td>Came for one issue —resolve custody. Another issue was brought up. Felt mislead.</td>
</tr>
</tbody>
</table>
was discussing.

Researcher: So what was that like?

Participant: I guess, I mean. He needed to hear from other people, I guess, outside of just him and I concerning the custody of our son. I was willing to make some concessions as far as increasing visitation time. I agreed to lower child support. Which allowed him to spend more time with our son. He did not like being told point blank from my attorney and his attorney at the same time, “this is the best that you are going to get because if we go into court, it won’t go” because I was voluntarily agreeing to all of this. He was not liking that because I think to him he was caught off guard, too. Because him and I after everything was said and done, we were only there an hour-and-a-half of the three hours. We walked down the street and had a soda together. He wanted to discuss what I thought of the meeting. I thought that it was pretty positive but I didn’t agree to anything that I wouldn’t have agreed to beforehand.

Researcher: So, the mediation didn’t influence anything that you had agreed to.

Participant: On my side, “No”. I didn’t think I would lower child support. In my situation it wasn’t big enough issue to sit there and argue about. We had already been separated for over two years. We had already worked out our visitation between the two of us. The whole purpose of this was just to get everything formalized.

Researcher: That is a long time. Two-years.

Felt her concerns re: their son were validated by the attorneys.

Willing to discuss issues pertaining to son – lower child support, more time.

Evaluative model of mediation.
Both caught off guard.

Met afterward to discuss the mediation.

Mediation didn’t influence the decisions she made.

Separated for two years-needing to finalize things.
| Participant: Yeah. We had already been doing every other weekend and alternating holidays and every other family event that came up and that kind of thing. | Living their agreement needed it to be legal. |
| Researcher: So, that really didn’t need to be worked out. Okay let’s just get this over and done with (member check). Why two-years? | Started with child support and then turned into a custody issue. |
| Participant: It all started. I agreed to just a certain amount of money a month, $50.00 a week. “Okay. Fine”. Then it got to where it was “Well, I don’t have it”. Or it was I dropped it off your house and put it in your door and it is not there and somebody must have taken it. But I am not paying you again. So, I thought this is crazy. For $50.00 a week, you ought to be kissing the ground I walk on. Really. So, that is when I started with the child support thing. As soon as I started with going to the child support recovery unit in getting something set up where it comes out of his check then the custody thing. Him wanting custody came up. | Participant’s life was changing and wanted issues related to her past relationship finalized. |
| Researcher: So things were mostly worked out until the next phase came up. | Amiable relationship between the parties. |
| Participant: I’d say concerning * there were other things that I wanted documented like life insurance and anything standard, half of the medical bills that don’t get covered by health insurance. Just that kind of thing like after high school education so I just wanted to get it all. Because I was getting remarried, too. Because *, his dad and I were never married. And so I was moving on to the next level and the new person in my life was saying, “You need to get this taken care of and this chapter closed”. So, |
that is where it kind of all started. Like I
said when I got in there he and I were
talking, you know and whatever.
**Actually the mediator said nothing. My**
**attorney said nothing. My son's father**
**said nothing. I talked with his attorney**
**the whole time. It went like this, you**
**know. “Would you be willing to do this or**
**what do you think about this?” Her and I**
**did most of the talking. The mediator was**
**really quiet. He seemed to be pretty**
**thankful that it was going so well.**
**Normally, he has some difficult and**
**negative experiences in those sessions. We**
**were able to resolve this in an hour-and-a-**
**half.**

Researcher: What was that like for you?
Did you wish your attorney had more
involvement?

Participant: I was comfortable. I guess
with his comments and his feedback. But
like I said the stuff I felt that we were
compromising on: one, I was doing
already and two, it wasn’t that big of a
deal to me to sit there another hour-and-a-
half and take time off work.

Researcher: So, it was okay. You were
going to make sure that what was important
to you for your son was going to be heard.

Participant: That is right. And to me it
was just a formality. Like I said the other
person may not perceive it the same way.

Researcher: So, it was like I want to move
on with my life and these are the steps I
need to take (member check).

Participant: I have been married over a
year.

Researcher: So, this was something that

<table>
<thead>
<tr>
<th>Does she need more direction from the mediator?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant viewing this as a formality. They were living the agreement. She was willing to go through the process to be able to move forward.</td>
</tr>
<tr>
<td>Married over a year by the time of the mediation (3 years since the end of this relationship?).</td>
</tr>
</tbody>
</table>
was hanging over your head.

**Participant:** And it still is. It still is.

**Researcher:** And tell me why?

**Participant:** Well, this one issue that I was just discussing that was brought up. We kind of left it hanging. Well, okay we have agreed to dates and times just to get on paper. It wasn’t something that * and I felt like that we had to adhere to, to the tee. Because we had already been working out these visitations times anyway. It was just to get something on paper. But neither his attorney nor my attorney were willing to step up and say well I’ll go back to my office and put it on paper and let’s be done with it. So, I spoke up and said to my attorney, “Just put what we discussed down on paper and I’ll review it and we’ll go from there. Then you can send it off to them.” So, I can get this over and done with because this is ridiculous, 2 and 1/2 years, I mean it should be done”.

**Researcher:** Like you said you have already been married for over a year.

**Participant:** Yeah. I suppose it was about a week later and he called me into his office. I read everything and I had him add a couple of things. *Couple of details, no big deal.* So he added those and changed it and we sent it off. Three or four weeks had gone by and I called him back. We haven’t heard anything yet and I’m supposed to go to court August 9th.

**Researcher:** You were supposed to go to court, only if it wasn’t resolved?

**Participant:** Yeah. So, here it was the last week of July and it wasn’t resolved. I still hadn’t heard. My attorney’s assistant did

<table>
<thead>
<tr>
<th>Not resolved yet.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation was left hanging.</td>
</tr>
<tr>
<td>The one thing that she came for was resolution and it didn’t happen. To get it on paper.</td>
</tr>
<tr>
<td>Participant wanted the attorneys to take a more active role in resolving their issues.</td>
</tr>
<tr>
<td>Participant thought things were resolved, hadn’t heard anything. What about court? Difficult for client to move on with her life. How could this type of situation be improved for those who use these services?</td>
</tr>
<tr>
<td>The issue that she did not know was going to be brought to mediation is slowing down the process.</td>
</tr>
</tbody>
</table>
call me. Now, they are not going to sign because of this one issue that they brought up and this has nothing to do with child custody or anything like that. Or anything like that.

Researcher: So, it has nothing to do with what you guys went to do to finalize this (member check)?

Participant: No.

Researcher: And so now you are going to court?

Participant: I was supposed to go to court August 9th and now they are going to continue that for several months on down the road to get a new court date. So, here it won’t be, I don’t know when yet.

Researcher: So, it felt like we came to an agreement and we got everything that we came here to do and we are doing it anyway. It really doesn’t matter what is on paper, although paper would have helped. What do you think the barrier was to getting this issue resolved? It looks really painful for you.

Participant: Well, it is ridiculous. The issue that was brought up is that I purchased a home and he lived with me four years and wants equity. And, no I wont. That is the issue that is holding everything up.

Researcher: That is the home you are still in?

Participant: No, I have sold it, even. My husband, we had his and her homes. This weekend we are moving into our own home with this baggage hanging over me.

Hoped it would be finalized at mediation. Then a few weeks later in court. Now it is continued. More time passes without a resolution.

Researcher: Then a few weeks later in court. Now it is continued. More time passes without a resolution.

The barrier is the house she owned and he lived in.

No resolution, hanging over her head.
<table>
<thead>
<tr>
<th>Researcher: You want to get into your new home with out this hanging over you?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant: Well, yeah and it is crazy. It is. It is absolutely asinine.</td>
</tr>
<tr>
<td>I was pretty optimistic going into the mediation process because * needed to hear from other individuals beside myself because I am stupid and I'm a girl.</td>
</tr>
<tr>
<td><strong>Because the things I am agreeing to are pretty positive things concerning him spending time with our son.</strong> And he was married before because he has that issue to deal with his daughter. And it is a totally night and day situation he has to like fight constantly to see his daughter. And he has this other side where I am allowing additional time and I am thinking to myself. Well, okay, I guess putting my feelings aside in the case doesn’t mean anything, the more I give and make concessions the more you want to take. And now we were as far as I am concerned back in square one. Because all the other things I have agreed to it doesn’t matter because of the money thing.</td>
</tr>
<tr>
<td>Researcher: So, that is being held over everything. So, all the good this mediation did is all negated, because even though that is on paper, nothing is settled.</td>
</tr>
<tr>
<td>Participant: Nothing is signed, yet. They won’t sign that. Like I said that was another opportunity to present this other issue that came out of nowhere.</td>
</tr>
<tr>
<td>Researcher: Do you feel like an hour-and-a-half was enough time or was it too long?</td>
</tr>
<tr>
<td>Participant: Well, yeah. Concerning our son it was plenty long enough. Because okay. Actually, I could have done it in a half-an-hour. But he needed to hear that</td>
</tr>
<tr>
<td>you are not going to get physical custody. And he needed to hear that from my attorney and his attorney.</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Researcher: Especially since it has been going on so long.</td>
</tr>
<tr>
<td>Participant: He also wanted to do, he wanted to try the six months with me and six months and six months with him idea.</td>
</tr>
<tr>
<td>Researcher: Not so good for children.</td>
</tr>
<tr>
<td>Participant: No. Actually, the mediator didn’t need to say a whole lot. Because I was just discussing the issues like I am talking to you. The past was the past. What went wrong went wrong but that was behind me.</td>
</tr>
<tr>
<td>Researcher: It has been so long.</td>
</tr>
<tr>
<td>Participant: Right. So, however, I personally feel about that individual I can just not go there.</td>
</tr>
<tr>
<td>Researcher: How helpful was that to have that much time for this process?</td>
</tr>
<tr>
<td>Participant: That probably helped because my emotions were not so involved in it. But also, I think age is a factor. If I would have gone through this ten years ago when I was married, I don’t know if I would have reacted the same way.</td>
</tr>
<tr>
<td>Researcher: Maybe handled your emotions better?</td>
</tr>
<tr>
<td>Participant: I was more controlled and I had plenty of reasons not to be. I know that the cost was really a big factor. Coming up with a couple of hundred of dollars for that is, I know for him it was</td>
</tr>
</tbody>
</table>
really difficult.

Researcher: Did your attorney prepare you for that?

Participant: When I initially went in I had led him to believe it was a cut and dried thing. I just need you to formalize it for me. Because I said, it had already been a long time and a lot of those details we had worked out between us. So, I led him to believe like I thought, let's just do this and go from there.

Researcher: When did he tell you what the cost of the mediation would be?

Participant: I don’t recall when I found out how much I was going to have to pay for it. I remember him bringing the word mediation up to me that it was mandatory and it is something that you had to do. It was a formality. So, I thought well, okay. I don’t remember when that was brought up to me.

Researcher: Did you get the Agreement to Mediate form that tells you what to expect from mediation?

Participant: Yes.

Researcher: And I heard you wanted your ex-partner to get the message that we have already settled on this and get it signed.

Participant: Yeah.

Researcher: Do you think it was more difficult because you, I had read some articles somewhere that sometimes mediation for parents who have not been married versus parents who have been married that they have different issues and/or different needs? It is just something

<table>
<thead>
<tr>
<th>Participant prepared the attorney for how she thought it would go. She also managed the process of mediation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court-ordered. A formality.</td>
</tr>
<tr>
<td>Received information on what to expect in mediation.</td>
</tr>
<tr>
<td>Issues regarding never-married parents not applicable here. Only the house issue was what could not be mediated.</td>
</tr>
</tbody>
</table>
Participant: It definitely complicated some of the other things. But to me, concerning the child custody thing, us being married didn’t make a difference. He is still his dad and that is just it. That didn’t make any difference. The other issue, the house did.

Researcher: So, you go into mediation and you have your ideas about what you are discussing in mediation and do not get any information that you will be talking about the house and you walk in and this is dropped on you. What would have been helpful to you?

Participant: Well, my attorney chose to, I didn’t say anything, although, I wanted to because I was getting defensive over that subject even being brought up. But, he just said that is a separate issue we need to discuss that at another time. So, that was basically the end of that topic.

Researcher: So, that would have been helpful to resolve the child custody and we will resolve this other issue at another time. Would that have been more helpful to you?

Participant: Well that is basically how it went.

Researcher: Is that was how the mediation ended? We have this agreement about child custody and we will deal with the house later?

Participant: Right.

Researcher: So, in your mind was it resolved?

Participant: No. I think that maybe the
situation of the custody thing would be finalized now, when I told the mediator to go back and draw up papers and put things in writing. I also stated in there that whatever debts or bills or equity in that house are totally my responsibility. That is what I think hung up signing of the whole entire thing. What I don’t want to happen is that we get a new court date set up and we go in and rehash all the things concerning that I have already been through. Because basically legally I guess it is still an open book. That is what I am frustrated with.

Researcher: It is like, I have done this and we are living this. So, why do we have to go through this all over again?

Participant: Yes.

Researcher: Emotionally having to go through this again? Is that the most difficult part?

Participant: Yes. Because having this thing come at me unexpectedly. I am able to talk to him and I asked him, “Why are bringing this up now?” Because that is what we discussed later on when we went out the two of us. Because he already purchased a new home. So where is this coming from? “Well, because you are married now and you have money now and I want it.” That was the response I got.

Researcher: When you heard that, how did you respond?

Participant: I knew I was going to get defensive. I said, “You are entitled to your opinion. And I am entitled to mine.”

Researcher: So, that went nowhere.

Starting over for court. Don’t want to rehash all of the events, it is frustrating.

What was brought up in mediation caused her to be surprised.

Time allowed them to communicate with one another. Different for those who recently separated.
Participant: I know it would not have gotten me anywhere. I know that the power of reasoning would have went out of the roof. If I discussed it further. There was no reasoning at that time, I could tell. So, I chose not to even discuss it.

Researcher: It was a dead issue and you gave him that message, too.

Participant: Yeah. So I changed the subject back onto *.

Researcher: So, do you feel pretty helpless in regards to this process? My attorney told me I had to do this and you go ahead and do this. You kind of get to some resolution and that feels pretty good after an hour-and-a-half. That time was okay and leave and nothing is any different expect for the emotional feeling of not being able to put this behind you?

Participant: Yeah.

Researcher: What could have been different? Could the mediator or attorneys have done anything different? What could have helped?

Participant: Like I said. The hang up was the house issue. Maybe I could have spoke up and said as long as we are here that maybe we ought to get this over and done with, too. I don’t know. I think that. My attorney just kept trying to get through the child custody issue and trying to some compromising and agreements made.

Researcher: He was focusing on * and that issue?

Participant: His attorney was saying too, “I am very sorry.” She presented him with a copy of a case and he was familiar with it.

Member check. Participant responded, yes to this.

What would have helped resolve your issues?

Possibly mediating the house issue.

Mediator technique- resolve easier issues first.
APPENDIX H

ADDITIONAL RESULTS

The following frequencies and distributions are from the surveys returned by participants utilizing mediation through the Polk County District Court. There were 217 surveys returned.

Evaluation of Mediation Participant Survey

<table>
<thead>
<tr>
<th>Your mediation was?</th>
<th>Frequency</th>
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<tbody>
<tr>
<td>Valid</td>
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<td></td>
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<tr>
<td>court-ordered</td>
<td>166</td>
<td>76.5</td>
<td>77.2</td>
<td>77.2</td>
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<tr>
<td>suggested by your attorney</td>
<td>43</td>
<td>19.8</td>
<td>20</td>
<td>97.2</td>
</tr>
<tr>
<td>your preference</td>
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<td>2.8</td>
<td>2.8</td>
<td>100</td>
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<tr>
<td>Total</td>
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<td>99.1</td>
<td>100</td>
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</table>

What type of issues did you mediate?

<table>
<thead>
<tr>
<th>Valid</th>
<th>Issues of temp order before final decree</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<tr>
<td></td>
<td>Issues pertaining to the final decree</td>
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<td>48.4</td>
<td>49.5</td>
<td>72.2</td>
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<td>Total</td>
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<td>212</td>
<td>97.7</td>
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</tbody>
</table>

How soon before a hearing or trial did you participate in mediation?

<table>
<thead>
<tr>
<th>Valid</th>
<th>A matter of days</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
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<td>A matter of weeks</td>
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<tr>
<td></td>
<td>A matter of months</td>
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<td>35</td>
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<td>Total</td>
<td></td>
<td>207</td>
<td>95.4</td>
<td>100</td>
<td></td>
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</table>

How many issues were addressed in mediation?

<table>
<thead>
<tr>
<th>Valid</th>
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<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<tr>
<td></td>
<td>Some</td>
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<td>28.6</td>
<td>29.1</td>
<td>30.5</td>
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<tr>
<td></td>
<td>All</td>
<td>148</td>
<td>68.2</td>
<td>69.5</td>
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<tr>
<td>Total</td>
<td></td>
<td>213</td>
<td>98.2</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

On how many issues were you able to reach agreement?

<table>
<thead>
<tr>
<th>Valid</th>
<th>None</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<tbody>
<tr>
<td></td>
<td>Some</td>
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<tr>
<td></td>
<td>All</td>
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<td>48.4</td>
<td>49.3</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>213</td>
<td>98.2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>How many total hours?</td>
<td>N</td>
<td>Minimum</td>
<td>Maximum</td>
<td>Mean</td>
<td>Std. Deviation</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-----</td>
<td>---------</td>
<td>---------</td>
<td>--------</td>
<td>----------------</td>
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<tr>
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<td>11</td>
<td>3.0387</td>
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<table>
<thead>
<tr>
<th>How many total hours?</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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</tr>
<tr>
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<td>2</td>
<td>0.9</td>
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<td>1</td>
</tr>
<tr>
<td>1</td>
<td>8</td>
<td>3.7</td>
<td>3.8</td>
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<tr>
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<tr>
<td>Total</td>
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</table>

<table>
<thead>
<tr>
<th>Parenting schedule: custody/visitation</th>
<th>Frequency</th>
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<th>Cumulative Percent</th>
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<table>
<thead>
<tr>
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<table>
<thead>
<tr>
<th>Alimony/spousal support</th>
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<td>Total</td>
<td>217</td>
<td>100</td>
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</table>
How soon before a hearing or trial did you participate in mediation?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid A matter of days</td>
<td>64</td>
<td>29.5</td>
<td>30.9</td>
<td>30.9</td>
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<td>A matter of months</td>
<td>76</td>
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<tr>
<td>Total</td>
<td>207</td>
<td>95.4</td>
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Do you have a lawyer?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
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<tbody>
<tr>
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<td>6.5</td>
<td>6.5</td>
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<td>Total</td>
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<td>99.5</td>
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</table>

If you have a lawyer, did you talk to him or her before mediation?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
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<tbody>
<tr>
<td>Valid No</td>
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<td>Total</td>
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<td>99.1</td>
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</table>

If you have a lawyer, did you talk to him or her during mediation?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
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<tbody>
<tr>
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If you have a lawyer, did you talk to him or her after mediation?

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I did not talk to my lawyer.

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Would you recommend mediation to others?

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I was willing to come to the mediation session.

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Before we went to mediation, I was optimistic that mediation would result in a satisfactory solution.

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<tr>
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<td>72</td>
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<tr>
<td>Disagree</td>
<td>44</td>
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<tr>
<td>Strongly Disagree</td>
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<tr>
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The mediation process was adequately explained to me.

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<td>2.9</td>
<td>98.6</td>
</tr>
<tr>
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Preparing for mediation was adequately explained to me.

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<td>3.7</td>
<td>3.8</td>
<td>97.1</td>
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<tr>
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My attorney adequately prepared me for mediation.

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The mediator did not take sides.

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<tr>
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The mediator did not allow one person to control the discussion.

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The mediator asked questions to make sure we both thought the agreement was realistic and fair.

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I was able to express my opinions in mediation?

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I am satisfied with our mediator.

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**I am satisfied with mediation.**

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**Did the mediator recommend a particular outcome?**

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**What was your share of the total fee?**

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**What was your share of the total fee?**

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Total 199 91.7 100
In your opinion, this amount was?

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Did you benefit from mediation?

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You are?

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Length of marriage/relationship?

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Number of kids?

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Your age?

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Evaluation of Mediator Status Report

The following frequencies and distributions are from the surveys returned by mediators who mediated through the Polk County District Court. 399 surveys were returned.

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Was your mediation court-ordered?

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**General divorce- issues mediated**

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**Modification - The issues mediated**

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**Custody/visitation related-The issues mediated**

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### Were attorney's present at any session?

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March 1998 (Update). *Current Population Reports, P-20, No. 514.* Washington,

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