

**Executive Summary**  
**of**  
**Intensive Therapeutic Mediation:**  
**Impasse-Directed Mediation as a Family Court Service**  
**and**  
**An Attempt to Develop an Intensive Therapeutic Mediation Program**  
**for the Family Court System in Santa Cruz County**

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The last decade witnessed promising developments in mediation services that assist in the resolution of child custody disputes for divorcing families (e.g., Folberg & Milne, 1988; Emery & Wyer, 1987). Although criteria for measuring success vary, outcome studies of mediation claim success rates of 40 to 80 percent (Kelly, Gigy, & Hausman, 1988; Emery & Wyer, 1987; Pearson & Thoennes, 1988; Saposnek, Hamburg, Delano, & Michaelsen, 1984; Shattuck, 1988).

These data suggest that, although mediation has served a significant proportion of divorcing families, a core group of “high conflict” families do not settle their disputes in mediation. If these families remain in conflict, they often face continued litigation, allegations, evaluation, and protracted disputes in the family court system. Attorneys, judges, court personnel, therapists and social workers can all become involved in the family dispute, at much expense. Parents who fail in mediation and who then face the more adversarial attempts at dispute resolution are at high risk of being dissatisfied with the adversarial outcome, of not complying with court-ordered plans, and of repeatedly litigating their disputes (Emery & Wyer, 1987; Kelly, 1989; Kelly, Gigy, & Hausman, 1988; Pearson & Thoennes, 1988). Although families who fail in mediation make up a minority of divorcing families (16 percent in one sample - Pearson & Thoennes, 1988), such families disproportionately burden court services, resulting in a doubling to tripling of court expenses per family (Pearson & Thoennes, 1988).

The Divorce Impasse Project was a small pilot court service designed to address the issues of high conflict families who fail in court-ordered mediation in Santa Cruz County. This executive report summarizes three manuscripts commissioned from the Project: a concept paper regarding the intervention for the families (Report 1), a description of an attempt to implement the model (Report 2), and an appendix of research materials developed for the project.

### **Report One: Intensive Therapeutic Mediation**

The first report for this project describes a working model of “intensive therapeutic mediation” (referred to as “ITM”), a form of dispute resolution that is proposed by the author as an alternative for family courts to the adversarial processes typically confronted by families failing mediation. ITM is designed

- to serve families who reach impasse in court-ordered mediation,
- to develop specific parenting plans for these families,
- to be affordable as a court service,
- to provide a service that is equivalent or better than existing court services in resolving the disputes of families who fail in mediation, and
- to be confidential.

The model of ITM was developed by the author from recent innovations in interventions with divorcing high conflict families (e.g., Isaacs, Montalvo, & Abelsohn, 1986; Johnston & Campbell, 1988; Saposnek, 1985).

### **“Intensive” and “Therapeutic” Mediation**

The innovations have two central features which are incorporated in the ITM model. First, the interventions are “intensive,” which means they involve a potentially long series of mediation sessions (in one study, over thirty hours of sessions - Johnston & Campbell, 1988) designed to intensively concentrate on the specific difficulties the families have in ending their disputes. Because high conflict families often engage in long protracted battles that have them entrenched in patterns of hostile behavior, intensive intervention is necessary to break this deadlock (Johnston, Campbell, & Tall, 1985). ITM involves work with the families over a rather short period of time in an attempt to settle their conflict as quickly as possible (for example, four to eight weeks). However, ITM may involve up to twenty-five hours of service during that time.

Second, the interventions are “therapeutic.” As described in the model below, high conflict families typically have members who are experiencing emotional difficulties, communication problems, and much stress (e.g., Cherlin et al., 1991; Coysh, Johnston, Tschann, Wallerstein, & Kline, 1989; Hetherington, 1989; Tschann, Johnston, & Wallerstein, 1989). Therapeutic techniques are needed to address the many behavioral, emotional and systemic difficulties that high conflict families experience (e.g., Johnston & Campbell, 1988; Saposnek, 1985, 1986a), to assist in the resolution of parental conflict so legal issues can be settled.

Of the four therapeutic components incorporated in the model of ITM, the first is an educational component. Educational components include any information parents may need about how to manage their conflict and implement a parenting arrangement for their children. ITM includes discussion and education regarding children’s reactions to the parental dispute, the need to extricate the children from the parental dispute, and realities of addressing the needs of the children, the reality of the involvement of the court, and the positive effects of conflict resolution. Social skills training, modeling of appropriate communication techniques, and modeling of appropriate parenting skills, are also included.

The second therapeutic component of ITM consists of strategies that elicit cooperation and negotiation between the parents. Strategic techniques used in mediation include preempting, giving information, reframing, the use of anecdotes, reflective listening, converting accusations to request, “diversion problem solving,” and many more (see, e.g., Saposnek, 1985, 1986b; Gadlin & Ouellette, 1986; Sargent & Moss, 1986).

Third, ITM attempts to break “impasse,” a term that “refers to whatever is preventing the family from resolving the dispute” (Johnston et al., 1985, p.115). Impasse is a “multilevel, multilayered phenomenon” which is fueled by personal problems, interpersonal problems, and social problems (Johnston et al, 1985). A variety of therapeutic techniques, principally described in the work of Johnston and Campbell (1988), are incorporated in ITM to address the impasses of high conflict families.

Fourth, ITM includes follow-up and monitoring of expected changes in high conflict families. This component involves assisting families in implementing parenting arrangements, practicing regular parenting routines, and problem-solving any difficulties in parenting arrangements.

### **A Model Requiring Consultation**

ITM involves the use of two therapist/mediators, One serves as the primary therapist and the second serves as a case consultant or secondary mediator. Two therapist/mediators can provide complementary interventions to balance and manage family conflict. They can provide different points of view, different ideas, and different sources of support, which can be important balancing forces needed to help high conflict families.

### **The Five Phases of ITM**

ITM proceeds in five phase: (I) an intake phase, where an assessment of the family’s dispute is made; (II) a “bridge building” phase, where parents are provided support skills for meeting with their former spouses, (III) a “preparation for negotiation” phase, where parents meet together to settle the disputes which prevent them from negotiating; (IV) a “conflict resolution and parenting plan negotiation” phase, where parents negotiate suitable parenting plans; and (V) an implementation phase, where parents are provided assistance in implementing their parenting plan.

Total service hours average nineteen hours per family. Thus, ITM may be justified as a court service in court systems that expend an average of more than nineteen hours of staff time in evaluating and ordering parenting plans for families who fail in mediation.

### **Assertions of the ITM Model**

Existing court services for families failing in mediation include judicial review processes and child custody evaluations (Gardner, 1989). The following goals were set for ITM:

- to be more effective than existing court services at resolving impasses for families who fail in mediation.
- to be more effective than child custody evaluations at helping families implement parenting plans.
- to result in similar or reduced impacts upon the court, as measured in terms of personnel time and costs, when compared with child custody evaluations.

In implementing ITM, families would be eligible for referral to ITM if they are considered likely to require nineteen or more hours of service from other court programs and if there was some professional assessment that ITM had a reasonable chance of success.

### **Report Two: An attempt to Develop in ITM Program for a Court**

The second report for this project describes the development of the Divorce Impasse Project, a demonstration project of an ITM program developed for the Superior Court for Santa Cruz County. The project was an attempt to implement and evaluate a small program that would provide ITM services for families who were disputing the care and custody of their children in a local family court, for whom mediation efforts had previously failed to bring about a settlement of those child custody issues.

A group of families referred to the ITM program was to be compared with a group of families that were referred for traditional child custody evaluations (e.g., Gardner, 1989), administered by the local Probation Department. Outcomes of the two groups were to be compared, using measures of family satisfaction, parenting plan implementation, court costs, and degree of professional involvement.

The coordination of professionals and agencies necessary for project implementation and case referrals was successful. Unfortunately, the narrow case eligibility requirements severely limited referrals to the project. Families were excluded from the sample if they had repeatedly failed in mediation, if they already had a child custody evaluation and a court-ordered parenting plan, and when family violence involved child protective services. Because so many high conflict families are involved in repeated mediation, child custody evaluations, and violence, many families who may have benefited from ITM were rendered ineligible for the project. The program and policy changes required to include these families after the project began proved unworkable.

Although the project was not completed because of the lack of eligible cases, it is suggested in Report 2 that the model of ITM should still be considered by courts and that an evaluation of efficacy and cost-effectiveness be made comparing ITM

with traditional methods. Recommendations are provided in Report 2 that suggest ways that ITM programs might be developed in other California counties. The author believes that those developing ITM programs should seriously consider the recommendations made in Report 2.

It is also recommended that subject eligibility catchment systems be expanded from those used in the Divorce Impasse Project. For example, it is recommended that families who have repeatedly failed in mediation, families who have undergone child custody evaluations, and families who (after judicial review) have family violence issues all be eligible for ITM, and that ITM interventions be expanded accordingly.

### **An Appendix: Research Questionnaires and Related Materials**

An appendix includes the evaluation measures that were intended for use in the evaluation component of the Divorce Impasse Project. They are provided as source materials that could be used in the development and evaluation of similar demonstration projects in other California counties.

Two sets of research questions were posed. First, how would ITM affect family functioning after six months? In particular, how would families who participated in ITM compare with families receiving child custody evaluations on measures of parent symptoms, family functioning, families' satisfaction with services provided, and parenting plan implementation? Second, how would ITM affect the family court system? In particular, how would families who participated in ITM compare with families receiving Probation evaluations on measures at six months of the families' subsequent involvement in litigation, as measured by professional time involvement, professional costs, court time, and court costs?

Eight sets of measures were devised in an attempt to answer these questions. Whenever possible, the measures were developed using previously validated instruments. The measures in the appendix include:

- demographic measures,
- measures of parent symptoms,
- measures of parent attitudes,
- measures of parenting plan compliance,
- measures of parents' satisfaction with their respective programs,
- measures of professional time and costs, and
- measures of professionals' satisfaction with their respective programs.

These measures are quite extensive and were considered burdensome by the study participants. They are therefore presented as a menu of possible measures that could be used in future projects. It is recommended that any future projects carefully consider the rationale for selecting each outcome measure to be used for program evaluation.

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