

# Child Protection Mediation in Texas: Past, Present, and Future

University of Texas School of Law  
Mediation Clinic



SCHOOL OF LAW



# Inspiration

*...mediation and non-adversarial family group decision making can be effective means to final resolution and are underutilized through the state....*

Texas Supreme Court's Order Establishing Permanent  
Judicial Commission for Children, Youth and Families,  
November 2007



# The Past: CJA

- 1997-2005
- 50 counties, mostly through cluster courts
- Training developed and delivered
- Evaluation by CPPDR
- The Bottom Line: CPM effective and efficient process for resolving child protection litigation



# Key CJA Results

- Variety of disputes, including termination
- Most resulted in agreements
  - Full or partial agreements in 76% of cases
- Used at all stages in case lifecycle
  - Trend toward later mediation during CJA period
  - 2003-2005: 86% of mediations occurring later than 90 days after litigation began



# Key CJA Results

- Process seen as fair and effective → very satisfied participants
- Anecdotal reports of savings but data inconsistent
- Participants considered CPM more effective than resolution through court hearing
- Training and paying mediators important



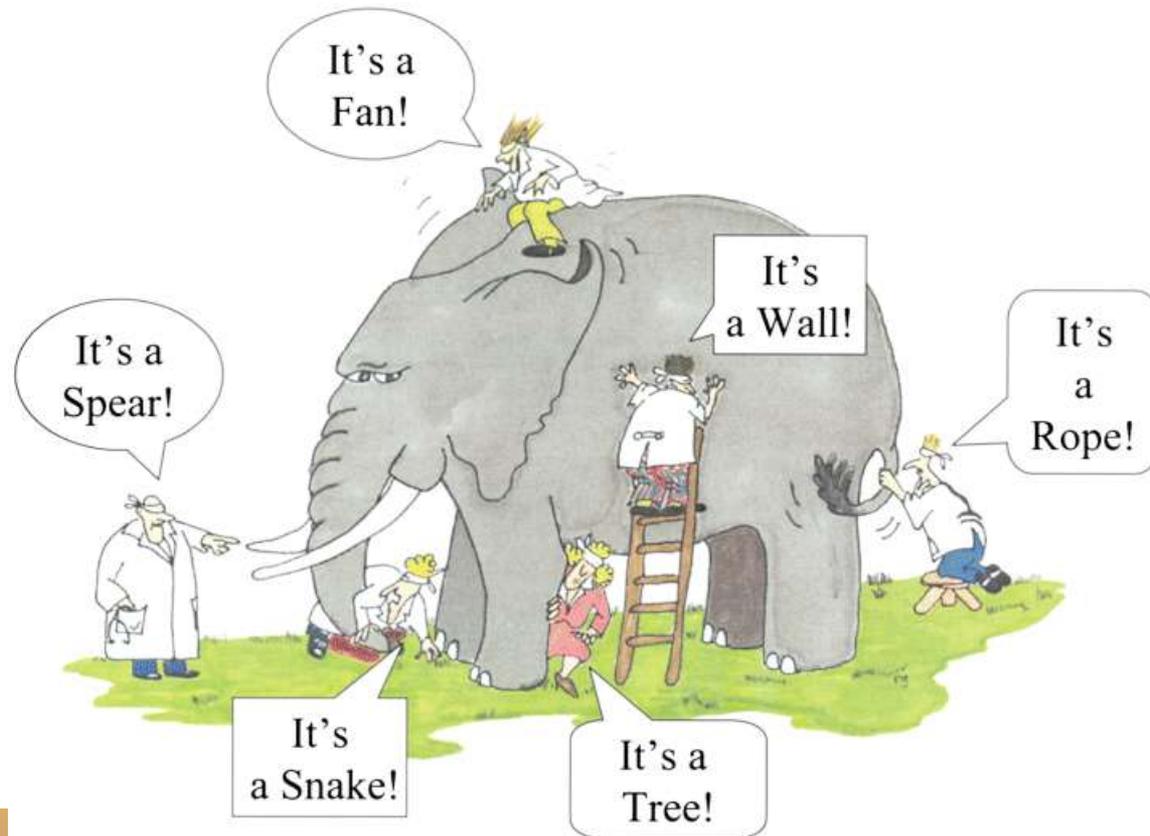
# The Present:

## UT Mediation Clinic Assessment

- In the absence of useful quantitative data, we surveyed and reviewed surveys of
  - Judges
  - Mediators
  - CASA programs
  - DFPS staff
  - Lawyers in CP cases
- We also looked at reported research



# Caveat



# What We Learned

- Judges strongly believe that CPM serves the best interest of children
  - 88% satisfied or very satisfied
  - NO judge dissatisfied or very dissatisfied
- Reports indicate mediation is widely used
- No consistent criteria for referring cases to mediation



# What We Learned

- Courts refer at all stages
  - Most mediations occur later in case lifecycle
    - Focus on settlement of litigated case
  - A minority occur early
    - Focus on TMC, placement, services
    - Coordination with FGDM?
- Most mediations result in settlement



# What We Learned

- Mediators
  - 2/3 lawyers
  - 40 hours basic + 24 hour family law mediation training
    - All mediators surveyed had 40 hours basic + 24 hour family law mediation training
    - 87% of judges required basic + either 24 hour family law or CPM training
  - Experience also important to judges' selection
  - Training needs to include
    - Unique characteristics of child protection system and litigation
    - Role plays that reflect real world experience



# What We Learned

- Funding
  - Multiple sources
  - Primarily county \$
  - Some sites make extensive use of volunteers
  - Lack of funding reported as significant barrier to expansion



# Concerns of Judges

- Mediation confidentiality limits access of judges to facts related to best interests of children
- Quality of participation
  - Parties other than AALs, GALs not focused on best interests
  - Impact of multiple representatives of DFPS

*Even so, judges overwhelmingly see mediation as serving best interests of children*



# Advantages

- Cases resolved earlier
  - Avoid trial and contested hearings
  - Avoid appeals
  - By removing settled cases from the docket, allowed judges to focus valuable docket time on truly contested cases
  - Narrowed issues even when settlement did not occur
  - Child reaches permanency sooner
  - Cost savings



# Advantages

- Flexibility and participation in case resolution
  - Parents voices heard
  - Individualized agreements
  - Empowers parents to be more responsible for decisions about children
  - Less stressful on parents than court



# Research Elsewhere Reveals Consistent Results

- Mediation results in agreement
  - 60-80% full agreement + 10-20% partials
  - Agreements at all stages
    - Termination settlements ~ 50-60%
    - Mediated treatment plans provide more services and details
- Mediation results in quicker resolution
- Mediation engages parents



# Research Elsewhere Reveals Consistent Results

- Program success depends on participant buy-in
- Consistent funding remains a struggle
- For consistency and quality statewide, check out NM model for central coordination with local autonomy



# Six Factors Found by the Think Tanks

- Local judicial support
- Central coordination with local autonomy
- Ample resources and funding
- Quality assurance
- Highly-trained mediators
- Buy-in from other participants



# The Future: Guiding Principles

- Establish the expectation that judges will authorize mediation in appropriate cases
- Assure consistency and quality in the delivery of mediation services by developing best practices based on comparable quantitative data



# The Future: Guiding Principles

- Assure reliable mediation services and secure stable funding.
- Provide to mediators training focused on the unique characteristics of child protection mediation.
- Provide lawyers, CASAs, and DFPS staff training focused on effective participation in the mediation process.

