

Response to Article on “Abused Mothers’ Safety Concerns and Court Mediators’ Custody Recommendations”

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In their article, “Abused Mothers’ Safety Concerns and Court Mediators’ Custody Recommendations” (*Journal of Family Violence*, v.27, pp.321-332), Rivera, Zeoli, and Sullivan conclude, “IPA [intimate partner abuse] does not significantly influence mediators’ custody decision making. Rather, father’s actions and custody desires during mediation appear to be more important to mediators... Further, emotional abuse and control are not taken seriously, and physical abuse is considered to be the only legitimate form of abuse” (p.330). Further, the authors suggest, “Mediators prefer to award joint custody” (p.320), and this bias exists even in situations where the father has abused the mother.

While these findings are very disconcerting, upon closer reading of the article, it is not clear that the researchers were actually studying a mediation process. The title of the article suggests the research focused on abused women’s concerns about mediation. The literature review focuses on research on mediation, particularly in the context of IPA. It is not until the bottom of the third page of the article (p. 324) that the authors note that they were not actually studying a mediation program or process, per se, but rather an intervention involving a court-appointed official who facilitated negotiation (in an unspecified manner) and who “makes a custody and visitation recommendation regardless of whether the divorcing couple comes to an agreement” (p.324). Although the authors note that they use the term “court mediator” and “mediator” interchangeably, they refer to the process they studied as mediation. In fact, the process was not mediation, and the article is not clear whether the program even uses the term “mediation” to describe its services.

The views in this article are presented as his own and are not intended to represent the views of any of these affiliations.

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According to the Model Standards of Practice for Family and Divorce Mediation (Association of Family and Conciliation Courts (AFCC) 2000), family and divorce mediation is defined as:

A process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants’ voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements [emphasis added]. (p.1)

In limited and anomalous conditions, some court mediators have been known to make recommendations; however, this practice has been widely criticized by the family mediation community. Further, under no circumstances do mediators have the authority to “award custody” as the present authors suggest.

The women interviewed for this article certainly conveyed significant concerns about the court official who provided services. To understand the context of their concerns, it would be helpful to have:

- A clear understanding of the professional backgrounds, training, and accreditations of the court officials who conducted the conflict resolution processes that were studied.
- The court’s description of the role that these practitioners played, including whether they were to act as mediators, arbitrators, evaluators, or some other role.
- The court’s description of how these practitioners were to make recommendations or awards of custody (e.g., were they to gather evidence; what criteria are they supposed to use to make decisions; to what extent to lawyers participate in the process; is there a requirement of due process?).

After reading the article, I asked the authors for this information and received the response that the requested information was beyond the scope of their study and was not available (Cris Sullivan, personal communication, January 27, 2014). I believe it is incumbent on researchers to know and to be able to present the nature of the phenomenon that they are studying. To call a process mediation when it is “like mediation, but not mediation” may mislead researchers, practitioners, policy makers, and other readers about the nature of mediation.

Regarding mediation, it is important to note:

- Professional family mediators require knowledge and skills to be able to assess for power and safety issues, including those related to intimate partner abuse; in situations that are not appropriate for mediation, the mediator should refer the parties to more appropriate services (AFCC 2000, Standard X).
- A common misperception about mediation is that it assumes equal power among participants and this article perpetuates that misinformation. There may not be equal bargaining power even among couples where there is no IPA. The mediator’s role is to assure a level playing field for negotiations and make sure both parties are making informed decisions, free of coercion, and with a full understanding of the alternatives
- Mediators have a duty to be impartial and not impose a bias toward joint custody or any other specific custodial arrangement.

Mediators, and indeed any professionals working with divorcing couples, need to take intimate partner abuse seriously. They should take preemptive measures to ensure client safety. When determining how to intervene, they should ensure their actions do not place the parents or children at additional risk. The number of family dispute resolution methods has grown dramatically in recent decades, with many processes combining mediative and evaluative aspects in order to provide clients with a range of services. Thus, it is easy to see how the authors may have been confused about the name and nature of the process they studied. Still, accuracy is a cornerstone of research. In the search for truth and meaning, research findings must be presented in a manner that is full, authentic, accurate, and unbiased.

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Reference

Association of Family and Conciliation Courts (AFCC) (2000). Model Standards of Practice for Family and Divorce Mediation. Retrieved from: <http://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/ModelStandardsOfPracticeForFamilyAndDivorceMediation.pdf>.