

PERSPECTIVES ON INTER-PROFESSIONAL
COLLABORATION: MEDIATION

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By

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ABSTRACT

This research is based on the continuous search for alternatives in dealing with custody and access of minor children in divorcing families. In spite of the Mediation in Certain Divorce Matters Act, 1987, providing for mediation, it did not lead to the widespread implementation of mediation as an alternative form of dispute resolution in divorce matters. The family advocate as provided for in the Act, serves to protect the interest of minor children in disputes. However, custody evaluation is still used to determine the custody of minor children. Custody evaluation comprises an in depth study and assessment of the structure and functioning of the family made by a social worker and written up in the form of an evaluative report which is then submitted to the family advocate.

It occurred to the researcher that there had to be better ways of dealing with custody disputes and consequently the damage done by the parents who fight over their children without any regard for the children's feelings. It was considered an option to find out from the professionals directly involved with divorce and custody disputes why they have not considered alternatives, such as mediation, to resolve the disputes arising out of a divorce.

Semi-structured interviews were conducted with five social workers and five attorneys to gain their perspectives on mediation, how the two professions could cooperate to assist divorcing couples and how inter-professional collaboration could be used to promote the use of mediation in East London.

The family advocate was identified as a key role player. The possibility of mandatory mediation was raised with recommendations that it be considered. The co-mediation model was raised to enhance inter-professional collaboration. Social workers see their role as mediating custody issues where the attorneys see their role as mediating division of property and assets. Both professions recognize that they have their own unique contribution to make. Both social workers and attorneys have been found to be willing to collaborate with each other to make a mediation service available to divorcing couples.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

The researcher first conceptualized this research while observing the way in which custody investigations were undertaken by the office of the family advocate. It occurred to the researcher that there had to be better ways of dealing with custody disputes and consequently the damage done by the parents who fight over their children without any regard for their children's feelings.

In spite of the Mediation in Certain Divorce Matters Act, 1987, providing for mediation, custody evaluation is still used to determine the custody of minor children. According to Hoffman (1989:107) the substance of custody evaluation comprises of an in depth study and assessment of the structure and functioning of the family made by a mental health professional and written up in the form of an evaluative report. This report is submitted to the family advocate.

It was considered an option to find out from the professionals directly involved with divorce and custody disputes why they have not considered other alternatives, such as mediation, to resolve the disputes arising from a divorce. Many couples do not accept the final judgement and tend to continue using the children to maintain a hold on the non-custodian parent and to exert pressure on the children by involving them in the parental dispute.

The child's emotional trauma, as suggested by Schafer (1993:17), is further heightened where the parents, or at least one of them, are unable to come to terms with the fact that the marriage is indeed over. This and the fact that the parents often feel that they have many unresolved battles to fight out, mean that the unfortunate child becomes the focus of the mutual parental wrath. A disturbing problem with divorce and access is the fact that with the passage of time, the non-custodian parent in some cases, tends not to exercise the access rights fully in order to avoid conflict with the custodian parent. Social

workers and attorneys were identified as the professionals whom the researcher would involve in this study.

The Mediation in Certain Divorce Matters Act (24/87), although referring to mediation in its title, does provide for mediation but not as it is presently defined. Mediation is defined by Boule & Rycroft (1997:3) as a decision-making process in which the parties are assisted by a third party, the mediator, to improve the process of decision-making and to assist the parties to reach an agreement to which each of them can assent.

The incorporation of mediation as one of the services offered by the office of the family advocate, rests with the initiative of the family advocate. The nature of the mediation will be dictated by the family advocate's own understanding of the mediation process (Hoffman 1991:11)

The incorporation of the Mediation and Certain Divorce Matters Act (24/87) into the statute book, demonstrates a concern for the members of families touched by divorce, in particular children, because divorce mediation is a process by which society attempts to safeguard their interest. Divorce mediation can comprise a comprehensive service in which disputes relating to continuing parenting of children, the division of matrimonial assets, child support and spousal maintenance can be mediated.

Mediation is not a substitute for legal advice or an alternative to legal representation. Each form of intervention by attorneys or social workers can complement and assist the other. Clients, who are distressed, insecure and uncertain as to their objectives, often confront attorneys. The attorney can only operate within a legal framework. In a study by Davis & Roberts (1988:30) it was found that it is therefore tempting to push ahead with the divorce and so deny the client time to reflect on the course of action she or he wishes to pursue. In such a case, no alternatives to litigation are considered.

The negative effect of divorce on children is of great concern. They often become the subject matter of custody and access battles, which are fought without scant regard for the emotional damage done to the children. The irony as suggested by Pretorius

(1993:13) is that all the hurt occurs under the guise of determining the best interest of the children. In appropriate cases, mediation can go a long way to alleviate many problems associated with the adversarial litigation process.

Judges, as suggested by Schafer (1993:129), are beginning to recognize the value and importance of alternatives where the interests of minor children are concerned. This presents an opportunity for professionals to make use of an alternative such as mediation, to minimize the conflict, which occur between parties during a divorce. Attorneys and social workers should understand the mediation process and its effectiveness as well as the primary legal and ethical issues arising in its use so that they can make informed decisions whether to recommend its use to clients.

According to Hoffman (1991:12), the knowledge legal and social work professionals have of the nature and process of mediation must be expanded, not only to develop a clear understanding of what is meant by the use of mediation, but also to help them appreciate the significance of inter-disciplinary collaboration.

The input from attorneys and social workers concerning this collaboration should be valuable in order to gain an understanding of their views on divorce mediation. It is the understanding of the researcher that the law shapes and regulates all social work practice, whatever form the practice takes. The law may give social workers certain legal rights or may impose certain legal obligations on them. The point made by Saltzman (1990:10) that the interdependence of legal and social problems often require attorneys and social workers to work together to resolve clients problems, hold true for this research. Social workers must be able to communicate with lawyers in order to work with them.

1.2 OBJECTIVES OF THE RESEARCH

The goals of the research are:

- To explore the situations and experiences that have been encountered by social workers and attorneys when mediation has been used or attempted in order to develop

an understanding of the attitudes and expectations of mediation held by the two professions.

- To explore with social workers and attorneys why, from their professional perspective, mediation is not widely used in their own practice and generally.
- To explore with social workers and attorneys what they believe would facilitate the co-operation between the two professions that would allow for the increased use of mediation
- To develop an understanding of what is required to facilitate mediation by beginning to develop an understanding of shared or different perspectives on mediation.

The areas that would be explored would include:

- Professional perceptions of mediation
- Understanding the role and usefulness of mediation
- Social work perceptions of the role of attorneys in mediation and attorneys perceptions of the role of social work in mediation.

1.3 ANTICIPATED VALUE OF THE FINDINGS

- The researcher wants to begin to develop inter-professional understanding of the possibilities of co-operation in the mediation field.
- The researcher anticipates that the research findings, by identifying the reasons why mediation is not done and the ideas generated on how to make it available, could create an awareness which could lead to a process of implementation in the long term.
- The researcher will make recommendations based on the findings about where and how a mediation service should be offered.

- It is anticipated that the dissemination of the findings through appropriate media and professional publications will contribute to create awareness about mediation as an alternative dispute resolution mechanism in family matters.

1.4 RESEARCH DESIGN AND METHODOLOGY

1.4.1 Design

This study is exploratory in nature. The decision to conduct a study from the perspectives of attorneys and social workers consequently called for a qualitative approach to explore why mediation is not used in divorce matters and how inter-professional collaboration between social workers and attorneys could be enhanced in the area of study. Grinell & Stothe (Grinell: 1988:225) suggested that the idea of exploratory research is to explore. It is not the intention of this method to come up with statistically sound data or conclusive results. It is used to build a foundation of general ideas and tentative theories which can be explored later with more precise and hence more complete research designs and corresponding methodologies.

The study looks at the understanding of the perspectives the two professions have of each other's roles as well as their understanding of their own roles in mediation.

1.4.2 Methodology

In order to explore why mediation is not done and the possible inter-professional collaboration between social workers and attorneys, literature research was done. This was essential in order to gain an understanding of mediation as a concept, its processes and the roles of mediators in mediation.

Qualitative interviewing was used as a data collection instrument. Semi-structured interviews were conducted with five attorneys and five social workers. The interviews conducted with these professionals centered on three broad themes:

- Biographical Information
- Social workers and attorneys perspectives on mediation
- Social workers and attorneys perspectives on inter-professional collaboration in mediation

The non-probability snowball sampling technique as suggested by Stoker (Schnetler 1989:103) was used because it was deemed appropriate because mediation is not widely practiced in the East London area. The interviews were then analyzed using qualitative methods of data analysis.

1.5. SCOPE AND LIMITATIONS OF THE STUDY

The study has focused on attorneys who are experienced in dealing with divorce matters and who have at least three years experience. Social workers needed to have investigated at least three custody cases assigned to them by the family advocate after the latter appointed the social workers as family counselors in terms of the Mediation in Certain Divorce Matters Act, (24/87). The scope of the study was thus limited due to the fact that mediation is not widely practiced in the area of the study.

It is anticipated that the study will not be representative of all legal and social work practitioners in the East London area. The findings cannot be generalized beyond the sample because the sample is very small. The method of sampling could also have a limiting influence on the study because with non-probability snow-ball sampling, the possibility exists that respondents can refer the researcher to other respondents who hold the same views as themselves.

The limitations of the study will be further discussed in Chapter 3.

1.6 PROBLEMS EXPERIENCED

The researcher experienced an initial problem with the social workers and the attorneys because the majority have not acted as mediators. As one of the research goals, the researcher wanted to explore the situations and experiences that have been encountered by social workers and attorneys when mediation has been used or attempted in order to develop an understanding of the attitudes and expectations held by the two professions.

However, only one attorney has attempted mediation in two cases, two social workers has sat in as observers in informal mediation sessions. The researcher believes that this lack of practical experience in mediation did not detract from the quality input the respondents made. It would have enriched the data more if the respondents had practical experience in mediation.

The Mediation in Certain Divorce Matters Act (24/87) also does not specify that social workers be appointed as family counselors. A mediator in terms of the literature can also be any suitably qualified person, not necessarily an attorney or a social worker. The mediator had to be mindful of this because the study focuses on social workers and attorneys.

1.7 ORGANISATION OF THE STUDY

In this chapter, the study is briefly introduced, by placing it into context, describing the aims and anticipated value of the research and examining its scope and limitations.

The study is organized in the following manner:

Chapter Two: A review of the literature on mediation is presented.

Chapter Three: Discussion of the methodology and research design that has been used

Chapter Four: Presentation and discussion of the findings

Chapter Five: Conclusions and recommendations and suggestions for further research

Finally there is a bibliography of sources followed by appendix of the semi-structured interview schedule and one transcribed interview.

CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

This chapter attempts to give an overview of the literature on mediation. The first section will deal with defining mediation, the process of mediation, advantages and disadvantages of mediation.

The second section will deal with mediation and the law and the implications of the relevant Act.

2.2 BACKGROUND

The Mediation in Certain Divorce Matters Act 24 of 1987 has introduced the possibility of mediation in family disputes. One of the major disputes arising out of a divorce is the issue of the custody and access to minor or dependant children. A disturbing problem with divorce and access is the fact that with the passage of time, the exercising of access by the non-custodian parent, tends to diminish to the point that it is hardly, if ever, exercised at all.

This diminished exercise of access by the non-custodian parent is best understood by identifying the problems of access. Difficulties are not only experienced by parents, but also by the children. These difficulties will be discussed by referring to Schafer (1993:14-18), who identified the problems from the parents' and the child's point of view.

2.2.1 PROBLEMS FROM PARENTS' POINT OF VIEW

- The custodian parent usually resents the fact that the non-custodian parent enjoys a “Father Christmas”- like relationship with the child. This is because the custodian parent feels that, unlike the non-custodian parent, he/she has had to endure the stressful and unattractive aspects of daily child-care by nursing, feeding and disciplining the child.
- Even though the parents might have hoped that the divorce would lead to a “clean break” between them, they are often frustrated to discover that this is not always true. Thus, the exercising of reasonable access by the non-custodian parent only serves to remind both parents of the fact that they are inextricably emotionally bound to each other.
- Irregular, infrequent and casual access, as well as chopping and changing access arrangements, are most irritating for the custodian parent and, of course, most unsettling for the child who comes to feel rejected by the absent parent. Similarly, it is always distressing for the absent parent to discover that the previously agreed or ordered access arrangements have been unilaterally changed by the custodian parent.
- The custodian parent’s new spouse may resent the fact that the children are still maintaining contact with the other parent and may take active steps to discourage visits.
- Distance is also a problem. The further away the non-custodian parent lives from the child, the more difficult, expensive and inconvenient it is to exercise the privilege of access.

2.2.2 PROBLEMS FROM CHILD’S POINT OF VIEW

Most behavior scientists generally accept that a child’s emotional well being is threatened by the break-up of his parent’s marriage. Some of the problems of access as suggested by Schafer (1993:14-18) from a child’s point of view are:

- Whatever the access arrangements between the parents, such arrangements will invariably prove to be emotionally unsettling for the child.
- The child's emotional trauma is further heightened where the parents, or at least one of them, are unable to come to terms with the fact that the marriage is indeed over. This, and the fact that the parents often feel that they have many unresolved battles to fight out, means the unfortunate child becomes the focus of mutual parental wrath.
- Second partners, whether of the custodian or non-custodian parent, add a new dimension of complexity to the child's life. It is not unusual for resentment to set in, especially if the child sees the new partner as the cause of the breakdown of his parent's marriage.
- The relationship the child enjoys with his visiting parent will be vastly different from that previously enjoyed and, in all probability, will no longer be as close as it might have been previously. The child will have to make do with periodical visits by the absent parent.

These and other problems associated with divorce and family disputes, have given rise to the need to consider other options to the traditional adversarial approach followed to resolve family disputes. Mediation is such an option. It is appropriate at this stage to proceed to the discussion on mediation, which will show why, as an alternative option, it could be beneficial in resolving family disputes.

2.3 DEFINING MEDIATION

Mediation is not easy to define. It does not provide a single analytical model, which can be distinguished from other decision-making processes. The definitions in the literature have some points in common. Definitions by four authors are presented in order to ascertain the similarities or differences in the way mediation is defined.

Mediation is defined by Boule & Rycroft (1997:3), as “a decision-making process in which the parties are assisted by a third party, the mediator. The mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assent”.

According to Roberts (1997:4) mediation is “a form of intervention in which a third party, the mediator, assists the parties to a dispute to negotiate over the issues which divide them”. The mediator has no stake in the dispute and is not identified with any of the competing interest involved. The mediator has no power to impose a settlement on the parties, who retain authority for making their own decisions.

A defining characteristic of mediation as suggested by Fischer (1998:19) is that a mediator facilitates a joint decision-making process between two or more people who are in dispute or potential dispute.

The fourth definition according to Ansty (1993:6) is that mediation is a “form of third party intervention into disputes, directed at assisting parties to find their own mutually acceptable settlements”.

The core features of the definitions are that:

- it is a decision-making process involving persons who are in dispute
- the parties are assisted by a third party, the mediator
- who attempts to improve the process of joint decision-making
- and assisting the parties to reach a mutually acceptable settlement

The authors essentially agree on how mediation is defined in spite of the different way in which each author formulates their respective definitions.

2.3.1 Secondary objectives of mediation

Besides its principle objective of decision-making, mediation has a number of secondary objectives as formulated by Boulle et al (1997:8-9). Mediation seeks to achieve the following secondary objectives:

- Mediation brings clarity to the situation by identifying and defining which matters do or do not require decisions to be made;
- It overcomes or reduces communication problems between the parties so that they can more clearly perceive and understand what each other means and feels;
- Mediation identifies and acknowledge the various parties' needs and interests, whether substantive, procedural or psychological;
- It promotes constructive and efficient negotiations which focus predominantly on the parties' needs and interests, and which broaden the search for options and settlement alternatives;
- A recent study by Boulle et al (1997:9) found that mediation reduces anxiety and other negative effects of the problem situation and can be empowering for the parties so that informed and rational decision-making can take place;
- Mediation encourages the parties to take charge of their own decisions and to accept responsibility for the consequences of those decisions;
- It reduces tension and improves, or at least does not lead to a deterioration in relationships between the parties and
- It provides the parties with a model, and some skills and techniques for future decision-making without third party assistance.

From the definition and the secondary objectives, it is deduced that clients who enter into mediation, do not only try and reach a settlement, but that the process of mediation equips them with skills they could use in their daily functioning in their respective communities.

2.4 Differences between custody evaluation and mediation

It can be observed from the above definitions in the literature, that there are differences between mediation and custody evaluation. These differences are seen as important because the office of the family advocate appears to be still doing custody investigations in the area of study, by using custody evaluation and not mediation as defined above. The fundamental differences between the two processes according to Hoffman (1989:109-110) are the following:

- custody evaluation is rooted in litigation whereas mediation is a process intent on steering away from the adversarial process;
- in mediation an objective neutral third party structures and controls a joint decision-making process in which the two people who know their children best, participate, thereby reinforcing parenthood. In custody evaluation, a third party frames a view on a possible parenting plan;
- the custody evaluation report is submitted to court as part of evidence on which a decision is made by the judge, whereas the agreement report containing the decisions reached by the two parents through mediation are submitted to court for ratification;
- both parents participate in the mediation process, throughout all its phases, which is not the case in custody evaluation. In the latter process both parents at most, are seen together at the beginning and at times at the end of the evaluation process;

- the evaluation process does not necessarily reinforce the parental roles and responsibilities of both parents which is the rationale underlying mediation of custody and visitation, but rather investigates and questions these;
- mediation subscribes to the empowerment of the weaker parent, whereas custody evaluation emphasizes the weaknesses of the parent, accentuating the negatives in the social functioning or social environment of that parent;
- self-determination is not generally promoted in custody evaluation, whereas it features as a principle underlying mediation;
- mediation aims at the reduction of anxiety in the parents by gaining consensual decisions. The process of custody evaluation leading to an awaited decision can increase anxiety;
- negotiation and bargaining constitute the dominant technology of mediation, and do not apply to custody evaluation;
- fact-finding and assessment constitute the dominant technology of custody evaluation;
- It is suggested that an in-depth study in custody evaluation as stated by Hoffman (1988:109-110) tends to be past and present focused, whereas mediation emphasizes the present and the future;
- the goal of custody evaluation is not conflict management and its reduction as in mediation. Its goal which is to study and assess individual and family functioning within the social environment with a view to recommending the award of custody to a particular parent, in fact reinforces the adversarial process and exacerbate conflict;

- in divorce mediation the parents remain the two principle sources of information which differs in custody evaluation where information is obtained from significant others and collateral sources;
- the mediator plays an active role in seeking out options and solutions together with both parents, in order to reach agreement or consensus between the two parents, whereas agreement is not necessarily sought in the custody evaluation process, nor are solutions and options generally sought by both parents together;
- whereas mediation fosters co-operation, custody evaluation can foster competition between the two parties;
- the process of mediation prepares the parents to accept the consequences of their decisions made, which differs from the process of custody evaluation which envisages the court making the decision which one or at times both parents may not favour, and consequently would find difficult to accept and to adhere to;
- As further suggested by Hoffman(1988:110) the mediation process serves as a model process in decision-making for the parents, strengthening their own skills and motivating them to reach future decisions regarding their children consensually rather than through litigation, which is the model presented to them by custody evaluation;
- at times psychometric testing is done and submitted as evidence in custody evaluation. This places emphasis on abnormality, as persons regarded as functioning adequately, are not usually subjected to these tests. In contrast, mediation does not rely on professional evidence of this kind;
- whereas the mediation process facilitates the settlement of financial, property and spousal maintenance issues, the custody evaluation process being an adversarial process can actually block settlement of other issues;

- on reaching agreement in mediation, the written agreement, once cleared by the attorneys representing the parents, is always submitted to court for ratification. However, in custody evaluations which are privately ordered, an evaluation which does not favour a particular parent would not necessarily be submitted to court as evidence by that parent's attorney;
- in mediation no information is revealed by the mediator to either the judge or the attorneys, except in rare instances. In custody evaluation the principle of confidentiality does not apply in these respects.

The above differences pose a challenge to the relevant professionals, in this case social workers and attorneys to revisit the way they work and assist divorcing couples. The family advocate need to face up to the challenge on how alternative forms of dispute resolution, such as mediation, can be implemented.

2.5 MEDIATOR – QUALITIES AND CREDENTIALS

The ideal divorce mediator as suggested by Radford & Glaser (in Pretorius 1993:77) is a people's person, an active listener with personal integrity and a never-ending store of common sense. A professional person, like a social worker or attorney, should remember that while donning the hat of a mediator, they have to step out of their traditional role of offering therapy and in the latter, offer legal advice. This is not appropriate in mediation.

Furthermore, Goldberg (SA Law journal 1996:370) stated that professional persons need to regard themselves with professionalism, develop standards of training, practice and procedure. It is thus maintained that a mediator should be aware of her/his own needs, weaknesses and strengths. A mediator should have the strength of character to withdraw from mediation should a situation arise where she/he cannot adhere to ethical considerations.

Recent studies by Lombard (1992:60) stated that with regard to mediation in the social work context, it is not only social workers who can act as a mediator, parties such as church leaders, community members and neighborhood committee members can also be used effectively as mediators, provided that all parties involved are well trained for the role. This broader application complements the emphasis within the social work profession on inter-disciplinary roles and relationships.

2.6 PARTICIPANTS IN THE MEDIATION PROCESS

The divorcing couple and the mediator constitute the participants in the mediation. Whereas in other mediation processes, such as labour disputes, additional parties may be and often are present. This is not the case in divorce mediation where the consequences of the break-up of the most intimate of relationships are the issue and therefore, the fewer people present the better. There may be a need to refer the parties to outside professionals for counseling. This is a far cry from having such persons physically present during the mediation sessions.

In order for the mediation to be successful, both parties must attend voluntarily and be willing to fully participate to resolve the dispute they are embroiled in. Divorce mediation commences from the understanding that the parties have made a decision to divorce and it is therefore no longer an issue.

Mediation raises the possibility of social workers empowering participants in mediation with skills they could use in their families and their respective communities. Lombard (1992:61) suggested that the process of empowerment is a reciprocal process between different sources of power, social work and the powerless. The social worker's source of power stems from a professional level, but also from the powerless, by virtue of the powerless being empowered on different levels to take responsibility for themselves as individuals, groups, families or communities. This exchange occurs in a helping relationship.

As a helping relationship also forms the basic foundation for mediation, the latter is regarded as an appropriate strategy for social work intervention to empower people. Intervention through mediation can be realized on a primary, secondary or tertiary level of prevention and occurs through caucus and joint sessions with the disputing parties. The empowerment of people through mediation needs to be explored further by the social work profession.

2.7 ETHICAL RESPONSIBILITY OF A MEDIATOR

For a mediator to be successful, she/he should bear in mind that she/he has an ethical responsibility in the mediation process. The points raised by Roberts (1997:104-105) are used as a basis for discussion under this section.

The mediator's first responsibility is to protect the right of the parties to be the architects of their own agreement. This responsibility reaches out to those parties not actually present at the negotiating table but who are affected by any agreement reached there. The mediator is however, neither the advocate of the child nor the social worker for the child. It is the parent's role to protect the interest of their child. The mediator has a responsibility to ensure that the parties' participation in the negotiation process is fair and equal. Imbalances in power must be recognized.

Mediators have a responsibility to ensure that they understand and respond appropriately to the impact of cultural differences on mediation. This is true for the South African society where large sections of the citizens were denied their basic human rights and had no access to the law. One approach to this emphasizes the need for mediators to share the cultural and ethical norms of the disputants, and therefore to come from the same cultural background and community, exploring and adapting an indigenous form of mediation where appropriate.

Another approach argues that with training, a single group of mediators can work with a variety of cultural groups. A third approach recommends the combination of the two,

recognizing that further research is necessary. The researcher favours a combination of the two, with special attention to be given to adapting the mediation models to recognize the cultural differences and the different circumstances of the community, for example, urban and rural.

Mediators have a responsibility to understand the nature of their authority and power. They need to recognize their potential to influence or manipulate the course of the negotiation process as well as the substantive issues in discussions. The giving of information by the mediator, which is acceptable, must be distinguished from the giving of advice. The latter involves recommending strategic courses of action or making tactical suggestions in the light of the law, decisions of the courts. The giving of information, on the other hand, is supposed to be neutral, involving an explanation or clarification only of rights, resources, terms and so on.

It is thus maintained that a mediator should be aware of her/his own needs, weaknesses and strengths. A mediator should have the strength of character to withdraw from mediation should a situation arise where she/he cannot adhere to ethical considerations.

2.8 PRINCIPLES ON WHICH MEDIATION ARE BASED

The principles on which mediation are based, are set out clearly by Robinson & Parkinson (Social Work 1985: 63). These principles should be adhered to if mediation is attempted or done.

- Separating, divorcing or divorced couples need to voluntarily involve themselves in the mediation process;
- The primary goal is to assist the couple to reduce the intensity of their conflict and to work towards reaching agreements, especially in disputes related to their children, such as custody and access;

- The mediator works to empower the couple to consider the best interest of the whole family;
- The mediator works with an explicit contract, using only overt techniques;
- The tasks are concrete and concentrate on external data and issues, rather than on family communications or meaning. Although the expression of feelings is acknowledged, it is kept to the minimum necessary to achieve the tasks agreed upon by the parties;
- The role of the mediator is that of managing the process, not the outcome, and acting as educator, clarifier and organizer, not as therapist. The changes which result may indeed prove to be therapeutic for the couple, but this is not the primary objective of the process;
- The methods used by the mediator are appropriate to the goals and tasks agreed upon;
- The process of mediation is confidential and may not be reported to others without the consent of the parties;
- The mediator respects the legal context within which she/he and the couple is working.

2.9 CONDITIONS FOR SUCCESSFUL MEDIATION

According to the literature (Roberts 1997:128, Boule et al 1997:73-74 and Ansty 1993:58) the following conditions for successful mediation must be present if the mediator hopes to achieve an agreement between disputing parties:

- Moderate levels of conflict. High intensity conflicts are not easily settled.

- Both parties are committed to achieving a negotiated settlement, accepting the responsibility of making their own decisions, and accepting the legitimacy of mediation;
- Small rather than large degrees of power differences between the parties in conflict. Where there is gross disparity such that one party can dictate the outcome, or the other party could be intimidated into agreeing to a settlement which is prejudicial to its rights or interest, mediation would not be appropriate;
- There is a continuous relationship between the parties, such as parents in a matrimonial dispute. Parties will be concerned not only about the outcome but also about the way in which it is achieved;
- The parties have the capacity and abilities to negotiate, or where they lack these qualities by virtue of youth or mental condition, have representation who can negotiate on their behalf;
- There is more than a single issue in dispute, most family disputes involve multiple issues;
- Sufficient resources to meet all the parties aspirations to some degree, such as funds, time and information;
- There are no clear legal principles or other standards to guide the parties decision-making
- The parties can accept that the process is private and the outcome is confidential;

- There is some external encouragement for the parties to settle in mediation. Despite its consensual principles, there is relatively little spontaneous demand for mediation and it is often used effectively where the larger community encourages its use;
- Mediation is more likely to succeed if both parties have reached a minimum threshold of trust at the point of entry into mediation. This entails trust in the mediator, the mediation process, in one's own ability to negotiate and trust in the other party.

2.10 WHEN MEDIATION IS UNLIKELY TO SUCCEED

There is no guarantee that mediation will succeed in all instances of its application. The conditions when mediation is unlikely to succeed are described as the following in the literature (Severson & Bankston Social Work 1995:13, Boulle et al 1997:74-75, Roberts 1997:129-130).

- Timing of the mediation may limit the success of the outcome, because strong and recently surfaced personal emotions can block rational decision-making, mediation should be postponed until both spouses are psychologically prepared to make permanent decisions;
- Unsuitability of referral - there must be an actual or anticipated dispute between the parties which cannot be reconciled by the normal processes of decision-making, if referral is to be appropriate;
- Unsuitability of the dispute – the dispute must be capable of being negotiated;
- Serious imbalances of bargaining power – there must be no substantial impairment of mental or physical capacity to negotiate, or other inequality between the parties that would render an unfair outcome unavoidable;

- There are broad matters of policy at stake affecting many people or the whole society, such as constitutional or human rights issues;
- The dispute involves a pure legal question, for example, the interpretation of a statute;
- The parties have ulterior motives for using mediation, for example, to achieve some illegal or immoral purpose on a confidential basis;
- The use of mediation could involve risk of personal danger for one or more parties, or where the dispute revolves around issues of child abuse or family violence;
- Extreme conflict where conflict between the parties is so great that co-operation, however minimal, is out of the question, mediation will not succeed;
- Non-acceptance of the end of a relationship where one party uses mediation to cling on to the marriage, they will in all probability sabotage decision-making to its dissolution;
- An unfavourable environment where powerful third parties, such as combative attorneys unsympathetic to mediation, or unco-operative new partners, may fuel hostilities and jeopardize agreements;
- Where there is a remedy, which only a court could provide, such as an injunction or protection order, or where something has to be achieved with great urgency;
- Lack of clarity and competence where the mediator may fail to make clear to the parties what mediation is and what it involves, and mistaken expectations may therefore arise. A failure to control destructive exchanges, so that the meeting ends in an emotional shambles, a lack of innovative thinking or a lack of intelligent understanding of what is going on are further examples of lack of competence on the part of the mediator.

2.11 THE MEDIATION PROCESS

In order to engage in the mediation process, it is important to follow an orderly process to achieve the desired outcome. These processes and stages that will be mentioned, is not all inclusive and it does not mean that some of the stages cannot be combined. It would depend on the individual mediator as well on the dispute that is being mediated. Not one of the processes or stages is exclusive and two will be presented in order to portray a clear picture of the mediation process. The mediation process by Haynes (1994:3-7) and Moore (1996:66-67) will be presented.

Haynes (1994:3-7) suggested the following when mediating:

- **Selecting the mediator:** selection of a mediator is based on the client's knowledge of the process, the reputation of the mediator, and the extent to which other professionals refer cases to the mediator. Attorneys can fulfill an important function by referring parties for mediation. They are usually the first professionals to be consulted by parties who intend obtaining a divorce. The comments of Mr. Justice R J Goldstone at the opening of the National Conference of the South African Association of Mediators and Family Matters on 31 October 1991 (Pretorius: 1993:80) is indicative of the important role attorneys have. He said:

“Indeed, there may well be included amongst the professional duties of attorneys, the obligation, in suitable cases, of advising clients of the existence of alternative means of dispute resolution”

- **Gathering the data:** the mediator begins gathering the data about the nature of the dispute, the participant's views on the dispute and any other relevant information. The fact finding stage helps the participants to clarify the bargaining issues and learn about each other's positions on the issues.

The mediator insists on full disclosure of all issues and facts to all participants. The impact of inaccurate or unavailable data needs to be minimized at this stage. Sharing information is part of power balancing. When the mediator uses the process to ensure disclosure of all the information she/he empowers the less knowledgeable participants, assures that all participants use the same data to define the problem and improves the ability of each participant to choose the options most beneficial to them.

The recognition of the emotions involved in coming to the bargaining table as well as complimenting the parents on their willingness to attempt mediation is a good beginning for the mediator.

- **Defining the problem:** the problem must be defined in a way that does not benefit any one person over the other and therefore, is a mutual problem definition. All the participants attempt to define the problem in a way that minimizes their responsibility for the problem and moves the onus for change to the other participants. The mediator helps the participants negotiate a mutual definition of the problem that does not benefit one client at the expense of the others.

- **Developing options:** when all the people involved agree on the definition of the problem, the mediator helps them generate options to solve the problem. These options tend to be mutual, since the problem is mutual, and unilateral solutions are more easily seen as one-sided. Old options, based on a one-sided definition are discarded, and new, mutual options are considered.

Rogers & Salem (1987:30) suggested that even when parties want to settle, they usually work hard to identify acceptable alternatives. Potential solutions may occur to the mediator, but mediators tend to withhold them until the parties have had ample time to suggest their own ideas. They are most likely to stick to a solution of their own making.

- **Redefining positions:** all participants enter the mediation process with a position. Most people bargain from positions rather than interest, and bargaining about positions often result in a stalemate. When they select options, they take informed positions based on self-interest leading into the bargaining phase of the negotiations.
- **Bargaining:** the mediator helps them negotiate over the choice of solutions so that the agreement is acceptable to all involved. Participants can bargain only when they have all the facts, an appropriate mutual definition of the problem, a range of options to solve the problem and one or more options as their primary goal.
- **Drafting the agreement:** the mediator drafts the memorandum of understanding detailing the agreements and gives a copy to each participant. At the conclusion of the bargaining, she/he drafts the understanding in plain language that is clearly understood by each participant. According to Pretorius (1993:86) experience teaches that more likely than not, the parties will decline the invitation to submit the agreement to an outside attorney, particularly where the mediator is himself an attorney. If the attorney mediator is uncomfortable with the suggestion, then it would be appropriate to pass the matter on to a colleague to process the divorce through the court and at the same time apply for the agreement to make an order of Court. Roberts (1988:38) stated that as far as privately agreed financial and property arrangements are concerned, the court will usually be prepared to impute to them an intention to create legal relations.

Moore (1996:66-67) identifies twelve stages of mediation, which will be briefly listed because there are similarities to the ones listed above. This is done in the interest of a holistic view of mediation.

Stage 1: Establishing relationship with the disputing parties

- Make initial contact with parties
- Build credibility
- Promote rapport
- Educate the parties about the process

- Increase commitment to the procedure

Stage 2: Selecting a strategy to guide mediation

- Assist the parties to assess various approaches to conflict management
- Assist the parties in selecting an approach
- Co-ordinate the approaches of the parties

Stage 3: Collecting and analyzing background information

- Collect and analyze relevant data about the people, dynamics and substance of a conflict
- Verify accuracy of data
- Minimize the impact of inaccurate or unavailable data

Stage 4: Designing a detailed plan for mediation

- Identify strategies and consequent non-contingent moves that will enable the parties to move toward agreement
- Identify contingent moves to respond to situations peculiar to the specific conflict

Stage 5: Building trust and co-operation

- Prepare disputants psychologically to participate in negotiations on substantive issues
- Handle strong emotions
- Check perceptions and minimize effects of stereotypes
- Build recognition of the legitimacy of the parties and issues
- Build trust
- Clarify communications

Stage 6: Beginning the mediation session

- Open negotiations between the parties
- Establish an open and positive tone

- Establish ground rules and behavioural guidelines
- Assist the parties in venting emotions
- Delimit topic areas and issues for discussion
- Assist the parties in exploring commitments and influence

Stage 7: Defining issues and setting an agenda

- Identify broad topic areas of concern to the parties
- Obtain agreements on the issue to be discussed
- Determine the sequence for handling the issues

Stage 8: Uncovering hidden interests of the disputing parties

- Identify the procedural, substantive and psychological interests of the parties
- Educate the parties about each other's interests

Stage 9 : Generating options for settlement

- Develop an awareness among the parties for the need for multiple options
- Lower commitment to positions or sole alternatives
- Generate options using either positional or interest-based bargaining

Stage 10: Assessing options for settlement

- Review the interest of the parties
- Assess how interest can be met by available options
- Assess the cost and benefits of selecting options

Stage 11: Final Bargaining

- Reach agreement through either incremental convergence of positions, final leaps to package settlements, development of consensual formula, or establishment of procedural means to reach a substantive agreement

Stage 12: Achieving formal settlement

- Identify procedural steps to operationalize the agreement

- Establish an evaluation and monitoring procedure
- Establish acceptance and enforcement

2.12 ADVANTAGES OF MEDIATION

Recent studies (Roberts 1997:25-26, Bosman-Swanepoel, Fick & Strydom 1998:101, Hauser 1995:71) discuss the following advantages of mediation in family disputes:

- It reduces the financial cost as a mediated divorce costs far less than a litigated divorce
- Those who make the decisions in mediation have to live with them, rather than by some third party, however wise and well meaning. Retaining control over their own affairs also assists the parties to recover self-respect and dignity.
- Mediation empowers both parents as the power to negotiate and to find solutions is held in the hands of the parents and not in the hands of only the attorneys. Both parents, therefore, can and are able to make their own decisions.
- A mediated agreement, because it is consented to voluntarily, is more likely to be satisfactory to the parties and therefore to be adhered to by them. Even where no agreement is reached, mediation as a process is likely to be of value to the parties in providing improved opportunities for communication.
- The legal system is limited by the fact that it recognizes only legal norms, and cannot fulfill the psychological requirements as well as the requirements of legal justice for the parties and the children.
- The opportunity provided in mediation for the expression of feelings can be an important advantage over the legal system, though if this is excessive or prolonged, it

may seriously impede rational exchange and lead to a deterioration of relations, rather than any improvement.

- The mediation process is in essence, forward-looking. Whereas the judge looks backwards to events of the past and makes a judgement on those facts in terms of the legal norms connected with them, the mediator looks forward to a consideration of future options and the consequences of alternative courses of action.
- The process of mediation, in comparison, facilitates direct communication and confidentiality, which are more likely to reduce misunderstanding and conflict, and can nurture a potential for co-operation that might not otherwise be realized. Disputes are resolved more quickly in mediation than by adversarial means, and legal costs are predictable and lower than attorney negotiation.
- It reduces the emotional cost as mediation focuses on compromising, rather than on confrontations and seeks to protect both parents from unnecessary hurt.
- It keeps both parents out of court.
- Focuses more on children's needs and welfare than do court hearings.
- Gives both parents the opportunity to express their individual points of view on divorce related issues.
- Mediation keeps the discussions focused and it works. According to the literature, three out of four couples who enter into mediation have reached satisfactory agreements.

2.13 DISADVANTAGES OF MEDIATION

Mediation is not without its disadvantages. Recent studies (Butler & Finsen 1993:14-15 and Roberts 1997:132) reveal the following disadvantages:

- Mediation is a consensual process heavily dependent on the individual parties. It can be abused by one party using delaying tactics.
- Where mediation takes place before discovery and an exchange of expert's reports, one party may agree to a negotiated settlement without being fully aware of weaknesses in his opponent's case, which this information would have disclosed.
- There is a perception that a party who suggests a negotiated settlement, with or without a mediator, is displaying a lack of confidence in his own case.
- A party may accept a mediator's opinion, which is based on an inadequate examination of the matters in dispute and the available evidence.
- Although a settlement may be achieved during the mediation process, further disputes may arise when trying to reduce the settlement in writing.
- Early mediation without the parents being prepared, can lead to future obstacles for the parents. Decisions made early on have far-reaching consequences for all concerned, for example, where and with whom will the children live. The advantages of calm, co-operative and reasoned exchanges must not be underestimated. Heightened feelings of anger, hurt and grief, as well as physical exhaustion resulting from changes and worry, all increase the difficulties of decision-making.

2.14 MEDIATION AND THE LAW

The South African Law Commission has issued a number of issue papers to investigate alternative dispute resolution. According to its Issue Paper 8 (1997), there is a wide perception that the formal justice system in this country, before commencement of the present constitutional dispensation, suffered from the effective exclusion of most South Africans from the forming and execution of legislation. The law was largely perceived by the ordinary citizen to be an instrument of oppression.

The Justice Ministry has already started transforming the justice system at various levels in line with democratic values. It may be that the introduction of alternative dispute resolution techniques supplementing formal justice systems at different levels may help provide South Africans with an opportunity to establish an acceptable justice system that will be swift and effective.

In a follow-up Discussion Paper (1999:87) it is suggested that effective government is largely dependent on a legal system that is respected by those it is intended to serve. The challenge facing the democratic State is therefore to ensure that the justice system is acceptable and accessible to the larger community. A great need exists to create an alternative but uniform system where the resolution of community disputes can be handled much more effectively and in less time than in the formal courts.

It is the understanding of the researcher that the delivering of justice within the community context would be more suitable in minor criminal matters. However, when decisions that affect children's lives are made, it would be advisable for these disputes to be settled within the formal justice system. The most effective way of resolving, amongst others, custody disputes would be within the family court system.

2.14.1 MEDIATION IN CERTAIN DIVORCE MATTERS ACT, 24 OF 1987 as amended by Mediation in Certain Divorce Matters Act, 121 of 1991

The Act provides for mediation in certain divorce proceedings, and in certain applications arising from such proceedings, in which minor or dependent children are involved. The Act also provides for the appointment of one or more officers of each division of the High Court. These officers are called family advocates. Such persons must be qualified to be admitted to practice as advocates under the Admission of Advocate's Act 74 of 1964. Most importantly, the Minister of Justice must deem them suitable for appointment as family advocates by reason of their involvement in or experiences of the adjudication or settlement of family matters.

The powers and duties of the family advocate evolve around instituting an inquiry to enable her/him to furnish the court with a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage concerned, at a divorce trial.

The family advocate may also appear at the trial of any divorce action and adduce any available evidence to the action or application and cross-examine witnesses giving evidence. Such function follows on the institution of the divorce action at the request of the parties or the court, or, if she/he deems it necessary, in the interest of any minor or dependent child of the marriage concerned.

In addition to the appointment of the family advocate, the Act makes provision for the appointment of a family counselor to assist the family advocate with an inquiry. The Act does not stipulate that social workers be appointed as family counselors, but refers to "suitably qualified or experienced persons". In the area of study, only social workers have so far been appointed as family counselors.

Boulle et al (1997:4) found that mediation in contemporary South Africa is still in its defining phase of development. The White Paper for Social Welfare (1997:46) states that the Department of Welfare will advocate the re-examination of the divorce laws and that couples will be encouraged to make use of mediation services. This poses a challenge for

the Department and it would be advisable if an inter-sectoral approach could be followed to give effect to the mandate contained in the White Paper.

Associations such as the South African Association of Mediators in Family Matters (SAAM) and the Family Mediators Association of the Cape (FAMAC) are some of the organizations who actively promote mediation in family matters. SAAM is a multi-disciplinary professional body in the field of family and divorce dispute resolution which aims to promote constructive resolution of family disputes through mediation, develop and maintain standards of practice, foster working relationships with other alternative dispute resolution organizations and encourage research and publication in the field. SAAM provides a national referral program through which client queries are channeled to SAAM accredited mediators. It also conducts regular training seminars including an annual conference and also has a research program.

FAMAC also provides the above services and offers expert assistance by fully qualified experienced mediators. Two mediators who work as a team do mediation. One member of the team is an experienced family attorney and the other a qualified professional trained in marital and family work. Such a professional can be a social worker or psychologist, depending on the circumstances.

Organizations such as these mostly function in major urban areas. It stands to reason that the private initiative needs to be commended but that the government, in particular the Department of Welfare, should also take responsibility to promote the use of mediation as an alternative form of dispute resolution in family matters. After all, it is one of its goals as stated in its own White Paper.

2.14.1.1 INCONGRUITIES IN THE ACT

The Office of the Family Advocate has been in operation since 1990 and is specifically involved in settling custody and access. According to the South African Law Commission (Issue Paper 8:1997), legislation and rules outlining the functioning of the

family advocate have been criticized for not making proper use of mediation procedures. It is also said that the intervention of the family advocate is not voluntary and that the process can be intimidatory because of the need to establish facts. A neutral approach is impossible, as judgements have to be made with regard to parenting abilities of the parties. In the Southern Divorce Courts (formerly Black Divorce Courts), mediation is a limited, irregular and informal component of the settlement approach.

Statutory attempts to address the need for additional and effective services to families during divorce proceedings has seemingly resulted in a compromise between what is strongly advocated on the one hand, namely, divorce mediation services, and equally strongly on the other hand, namely the retention of the existing custody evaluation (Hoffman: 1989:106).

The Act, although entitled the Mediation in Certain Divorce Matters Act, does not provide for mediation as it is presently defined and practiced. Hoffman (1991:11) suggested that the incorporation of mediation as one of the services offered by the family advocate's office, rests with the initiative of the family advocate and the nature of the mediation service will be dictated by the family advocate's own understanding of the mediation process.

Cohen (Pretorius: 1993:73) quite rightly observed that the use of the word "Mediation" in the title of the Act is a misnomer. The Act has nothing to do with mediation per se, but nevertheless opens possibilities for this to happen depending on the subjective attitudes of individual family advocates. This could be one of the reasons why family mediation is not accessible to the ordinary man in the street. Many families resort to the courts to resolve family disputes which could have been resolved in a more amicable way by making use of divorce mediation.

The incorporation of the Act in the statute book, however, demonstrates a concern for the members of families touched by divorce, in particular the children, because both divorce

mediation and custody evaluation are processes by which society attempts to safeguard their interests.

Bosman (Hoffman 1991:58) stated that mediation by the family advocate differs as follows from mediation as commonly viewed by mediators and the literature:

- Mediation by the family advocate and as understood by the family advocate is mostly, at least to some extent, not voluntarily submitted to by the parties;
- The family advocate and the experts assisting him or her actively participate in the decision-making process;
- Mediation by the family advocate often involves the establishment of facts on which the parties disagree. Although cross-examination is avoided, questioning takes place;
- Mediation by the family advocate by necessary implication also involves an evaluation of parenting abilities of the parties. The family advocate is duty bound to assure the court that, whatever the agreement between the parties, that, which is agreed upon, would be in the best interest of the children;
- The children, depending on their ages, intellectual and emotional maturity, are participants in the mediation process.

The family advocate, in a submission to the South African Law Commission (Discussion Paper 1999:87), stressed the need for alternative dispute resolution in family law. She stated that a public education program on alternative dispute resolution should be instituted and should involve a broader range of stakeholders. She believed that the present court structure of dividing and fragmenting the issue of family disputes should be abolished in favour of an all-inclusive family courts. A family court should be based on more informal processes, specifically mediation.

The need for training in various aspects of leadership, mediation and the ideas of restorative justice to individuals, who operate community forums in order to empower them, was also emphasized. The researcher is of the opinion that this form of training will result in community leaders and other major role players promoting mediation. They will also be able to refer disputing couples for mediation. In the long term, this could have a positive influence on minimizing the trauma resulting from family disintegration.

2.15 MANDATORY MEDIATION

According to Goldberg (1996:370) mandatory mediation is widespread in America, particularly in family law. Once a voluntary process outside the court procedure, mediation has fast become integral to the judicial system of the different States, in that court-referred alternative dispute resolution is very common, especially in the area of divorce and custody hearings.

Goldberg (1996:370) suggested that a family court that ought to be introduced is the one envisaged by the Hoexter Commission of Inquiry into the Structure and Function of the Courts, Report 78 or 1983. The report envisaged a three-tiered approach and the model as proposed should be adopted. At the very least, Goldberg (1996:370) recommended that mediation should be made mandatory in South Africa.

2.15.1 Potential disadvantages of mandatory mediation

As regard the merits of mandatory mediation, Boule et al (1997:16) suggested that there is an aversion to this approach from many quarters. One of the main pragmatic concerns is that if a person is forced into mediation against their will and better judgement, it could result in their participating in a perfunctory fashion. This could reduce the prospects of a settlement and the mediator's lack of binding decision-making powers has an effect on the process.

There is also a concern that if mediation is mandatory, it is incompatible with the values and assumptions of mediation and that it would distort the true nature of the process. If it is accompanied by financial disincentives to go to trial, it could force parties to compromise their personal rights, with particular disadvantages for poorer litigants.

There are also additional concerns where mandatory mediation is attached to the court system. Boule et al (1997:16) argued that there can never be genuine mediation within the domain of the court and that court officials and litigation-minded attorneys will pervert the system so that it becomes an alternative method of litigating rather than an alternative to litigation. It could further be argued that attaching mediation to the courts discredits the judicial system by confusing the role and identity of the courts in the eyes of their users, who expect binding decisions on their legal rights when they select court processes.

2.15.2 Potential advantages of mandatory mediation

There are a number of potential advantages for mandatory mediation and according to Boule et al (1997:16-17) it includes the following:

- Mandatory programs increase the number of cases coming to mediation and therefore reduce ignorance and suspicion of mediation among users and their professional advisers;
- Mandatory mediation provides a better basis for surveying the effectiveness of mediation services; there is a self-preserving bias in surveying the success on only those matters in which the parties have selected mediation as their preferred dispute resolution option;
- There can be more adequate administration of mediation and supervision of its quality if it is provided on a large scale basis and economies of scale can make it more cost-effective;

- The timing of mediation can be controlled in mandatory programs in order to save costs and time, to avoid destructive tendencies in the way the conflict is being managed, and to prevent a deterioration in the parties' relationship;
- Mandatory programs have an educative effect for lawyers and other professionals, which might increase their expertise and confidence in advising on the use of the system, in appropriate circumstances, within or outside the mandatory arrangements;
- The potential for success in mandatory programs is good. This is because even if parties are initially reluctant to participate in mediation, a skilled mediator may still be able to assist them to reach an agreement.

Given the potential benefits of mandatory mediation, it would be advisable to focus on the development of safeguards to ensure that mediation works. This would involve the screening of cases to ensure that inappropriate matters do not go to mediation. The funding of mandatory mediation services need to be investigated. The role of the legal aid board in administering funds for mediation needs to be explored.

2.16 DIFFERENCES BETWEEN LITIGATION AND MEDIATION

Research carried out in Cape Town in 1991 (Folb 1994:317) found that many attorneys confused mediation with arbitration, and erroneously thought that the role of the mediator was to give advice and work towards reconciliation. Due to the confusion that sometimes arises between litigation and mediation, the differences between litigation and mediation are highlighted by the presentation of the following table of contrasting principles by Boule et al (1997:33)

CONTRASTING	PRINCIPLES
LITIGATION	MEDIATION
Rights enforcement	Interest Accommodation

Value Claiming	Value creating
Coercive and binding	Voluntary and consensual
Due process of Law	Procedural flexibility
Privity of involvement	Widely participatory
Formality	Informality
Norm imposing	Norm Creating
Consistency and precedential	Situational and individualized
Act-centred	Person-centred
Fact orientated	Relationship orientated
Past focus	Future focus
Professionalised	Peer-based
Public and accountable	Private and confidential
Adversarial	Collaborative

These principles are self-explanatory and serve to highlight the differences between litigation and mediation. In other parts of the literature review these differences come to the fore and no further discussion about it will follow under this point.

2.17 PROLONGING OF DISPUTES BETWEEN DIVORCING FAMILIES

According to Goldstone (Hoffman 1991:3-4) there are many cases where alternative forms of dispute resolution and especially mediation, are far more effective and satisfactory than court adjudication. The most important area is that concerning disputes about the propriety rights of spouses and children. Lawyers frequently resort to litigation in order to resolve disputes. They perceive litigation as the only tool of their trade.

In a study by Haynes (1994:2), it is emphasized that mediation is non-adversarial and that the legal system requires participants to be adversaries. Many people want to solve their problems because they understand the importance of maintaining their ongoing relationship. People with this approach choose mediation. However, there are instances where attorneys, mental health professionals and the court prolong disputes between

divorcing families. This is more prevalent among less experienced attorneys and among attorneys intractably wedded to an adversarial stance.

Attorneys, mental health professional and the court can prolong disputes between divorcing families as suggested by Johnston & Campbell (1988:39-47) in the following ways:

2.17.1 Attorneys

Attorneys take their advocacy role seriously and literally as requiring sustained support of their client's rights and wishes, regardless of the impact on the child in the context of the family;

The series of maneuvers by attorneys as they formulate their client's positions, orchestrate their claims and engage in tactical warfare with the other attorneys that outrage both parents and serve to entrench their disputes. These maneuvers include them instructing the parties not to communicate with each other, caution parents against making temporary arrangements, lest they compromise their positions. They submit a series of motions to the court that attempt to characterize the other spouse in the most unfavourable light;

A number of attorneys lose their professional objectivity and become too emotionally involved with their clients;

The zeal with which some attorneys pursue the case at times has little to do with the client's needs, request or even the merits of the case. It can happen that ambitious attorneys, wishing to make a name for themselves in the legal community, seize on a case because it provided a means to challenge the constitutionality of a new law or the legality of a procedure.

2.17.2 Mental Health professionals

Mental health professionals who undertake individual counseling and psychotherapy for a separating spouse are usually privy only to one view of the family problem. In support of a seemingly powerless, depressed or abused spouse, they can encourage an uncompromising, aggressive stance that results in prolonged disputes over the post-divorce care of children;

They can encourage avoidance and non-communication with the ex-spouse in an effort to support their client's autonomy;

There are a number of instances in which a mental health professional is willing to offer an opinion or even testify in court as to the disposition of issues under dispute (such as custody and visitation) without having seen the other spouse or sometimes the child. A therapist sometimes attempts to see the whole family but extensively counseling only one individual member, making his or her neutrality questionable.

Other counselors continue to see one party after family counseling breaks down and participate in the polarization and the escalation of the dispute.

It appears that there is a need to educate the legal and mental health community as to the role of professionals in maintaining the disputes of high conflict divorcing families. More explicit guidelines are required for ethical conduct in case management with the families concerned. More co-ordination and effective communication is needed between the different agencies involved in helping these vulnerable people. There are, however, many attorneys and mental health professionals who maintain a high standard of service.

2.17.3 Courts

The authority and judgement of the court have powerful symbolic meaning for most people but take on added psychological dimensions for many clients who are emotionally

troubled and depend on others for their self-esteem. Some of the parents have unrealistic expectations that the court would control their ex-spouses errant behavior and force them to be more responsible and trustworthy. No-fault divorce and the very general mandate to attend to the best interest of the child, means the court cannot and will not take a stand on many of the issues in a family dispute;

More careful thought needs to be given to the symbolic meaning of the court interventions and particularly to explanations given for the court's actions. Where possible, the court should explicitly state the legal and pragmatic grounds for the decision that was made. It should further undo any misinterpretation of that decision by declaring its neutrality on the moral and personal issues at stake.

The court's refusal to make a decision, in some cases referring the family for mediation even though it is clearly stalemated, can unnecessarily extend the family's period of turmoil and uncertainty. Decisive court action is sometimes a more rapid and effective way to end the fight.

2.18 CO-MEDIATION

The term co-mediation is used when more than one mediator is involved in the same mediation. Co-mediation is routinely used in community or family mediations and is used on a selective basis in other kinds of mediation. Depending on the appropriateness of the occasion, the attitude of the spouses and the costs, it may be advisable to have an attorneys and a mental health professional working as a mediation team as suggested by Cohen (Pretorius:1993:79).

The Family Mediators Association of the Cape is one of the organizations practicing co-mediation in family matters. In this case an attorney and a social worker or psychologist act as co-mediators. According to Boule et al (1997:105) there is no definitive proof that it is more effective than solo mediation. There are potential advantages and disadvantages of co-mediation. Co-mediation is regarded as an alternative worth considering. The

potential advantages and disadvantages, one relating to the parties, some to the mediators and some to the mediation movement, as presented by Boule et al (1997:107-108) are the following:

2.18.1 Potential advantages of co-mediation

Additional resources are available: co-mediation involves doubling the available mediator resources in all facets of mediation. It allows the mediators to complement each other's strengths, to consult with each other and to avoid mediation fatigue.

Division of Labor can take place: co-mediation allows for the division of labor, particularly during the early stages of mediation when a wide range of tasks must be completed in a short period of time.

Mediators can be matched with the parties: the co-mediation model allows for the matching of the gender, race, age, culture of the parties with those of the co-mediators in order to promote the acceptability of, and the parties' comfort with the process. In family mediation it is common to have a male and female co-mediators.

Selection of professional backgrounds: co-mediation allows for the selecting of more than one professional background where this might contribute to the success of the mediation. It is common in family mediation to have one mediator trained in law and the other trained in social sciences.

Positive modeling: co-mediation allows mediators to model constructive communication and mutual respect. The way in which differences between mediators are handled can have a healthy demonstration effect on the process.

More stable dynamics: two disputants and a single mediator can constitute an unstable system where the mediator directly or indirectly favors, or is perceived to favor, one party. Co-mediation is less susceptible to these dynamics.

Mutual debriefing: co-mediation allows for immediate and direct mutual debriefing. In community justice mediation services, a structured form of debriefing is undertaken immediately after the co-mediation process. This can also be beneficial in family mediations.

Training: co-mediation allows for a form of apprenticeship training and mediator assessment. Beginner or inexperienced mediators can gain experience and confidence in the protective environment of co-mediation. Even experienced mediators can benefit from exposure to the skills and techniques of other colleagues.

Mediator accountability: mediators have considerable power by virtue of their intimate involvement in the negotiation process and their access to information disclosed in mediation. In these situations, co-mediators can help to promote mediator accountability.

Additional work for mediators: co-mediation has the advantage of providing more work for those interested in developing practice as mediators. This is a benefit for the mediation movement as a whole in that it produces more collective experience and expertise than would otherwise be the case.

2.18.2 Potential disadvantages of co-mediation

Negative modeling: co-mediation introduces differences in mediator personality and style, and if the co-mediators do not model equality of status and teamwork, they may have a negative effect on the behaviour of the parties.

Additional expense and time: the use of co-mediators may increase the cost of mediation, either for the parties or for the mediation service that bears the costs.

The patron syndrome: where co-mediators have been selected to match the attributes of the disputants, this model could cause one or more party to view the matching mediator as her patron and attempt to form an alliance with them during joint or separate meetings.

Inability to match mediators: where it is not possible to match the gender, race, age or culture of the co-mediators with those of the parties, and there are not one but two mediators from one party's affinity group, there might be perceptions of partiality and problems in maintaining trust.

2.19 CONCLUSION

Whilst divorce terminates the marriage, it does not terminate the parenting role. The cost and bruising result of adversarial litigation is hardly likely to preserve this ongoing parenting relationship. Family law by its very nature should present a human face and provide a mechanism to which the spouses can relate without feeling intimidated, overwhelmed, hopeless or alienated. Mediation, it is suggested, gives law that human face.

Mediation has its place as an alternative, additional or appropriate method of dispute resolution. As the public becomes aware of what mediation has to offer, a mediation culture may hopefully be created within the communities whereby instead of resorting to litigation, they will instead, resort to mediation.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

This chapter outlines the design of this study, and the methodology used in obtaining the data. The sampling procedure and the method used to collect the data will then be explained, followed by the technique used to analyze the data. An assessment of the limitations of the study, and the problems encountered in conducting it will complete the chapter.

3.2 RESEARCH DESIGN

This study is exploratory in nature. The research aim is to develop an understanding of why mediation is not practiced and how collaboration between attorneys and social workers can lead to the introduction of a mediation service for divorcing couples.

It attempts to explore from experienced social workers and attorneys what place mediation has in dealing with matters arising from a divorce. It also attempts to establish how the two professions could collaborate in assisting divorcing couples by the use of mediation to resolve disputes arising from divorce. The understanding of attorneys and social workers on how a mediation service should function, who should pay for the service should it be introduced, was also explored.

An effort is also made to gain an understanding of the perspectives the two professions have of each other's roles as well as their understanding of their own roles in mediation. It also attempts to find out how inter-professional collaboration can be facilitated and the potential difficulties that are foreseen to facilitate a mediation service for divorcing couples. As Taylor & Bogdan (1984:6) suggest, for the qualitative researcher, all perspectives are valuable. The researcher seeks not "truth" but a detailed understanding of other people's perspectives.

3.3 RESEARCH METHODOLOGY

Exploratory studies usually lead to insight and comprehension rather than the collection of accurate and replicable data. These studies frequently use interviewing, analysis of case studies and the use of the informants to generate data. In this research, interviewing as a method was used.

Five social workers and five attorneys were fully briefed about the objectives of the study as well as the anticipated benefits, which are foreseen to come from the study. The subjects were willing to be interviewed. In addition to the words, the body language of the subjects was noted through observation.

One of the criteria for participation in the research was for social workers and attorneys to be experienced in family law. Each social worker must have at least investigated three cases in which custody and access to minor children was in dispute. These cases are usually referred to social workers by the family advocate, who appoint social workers as family counselors as prescribed in the Mediation in Certain Divorce Matters Act 1987.

The attorneys had to have at least three years experience in dealing with divorce cases. It was anticipated that experienced professionals would be able to enrich the study by drawing on their practical experiences in the field.

The participants were assured of complete anonymity and as Huysamen (1994:174) suggests, the subjects should feel free to express opinions without fear of disapproval by the interviewer. The interviewer should neither approve nor disapprove of the participant's actions but show understanding of it.

3.4 SAMPLING PROCEDURE

Qualitative researchers usually work with small samples of people, unlike quantitative researchers who aim for larger numbers (Huysamen 1994:27) It was anticipated that the sample would be small because mediation appeared not to be widely practiced in the East London area. For this reason it was deemed appropriate to use non-probability snowball sampling technique by initially contacting attorneys and social workers known to the researcher as suggested by Grinell (1988:253). In this sampling technique cases of interest are identified from people who know people who know what cases are information-rich.

In probability sampling procedure, Stoker (Schnetler 1989:103) suggested that each element of the population has a known positive probability of being selected as an element of the sample. This is however not true of non-probability sampling procedure. Non-probability sampling procedures include all methods of sampling in which the probability of selection of population elements are unknown or undeterminable.

Non-probability sampling is usually used where the expense of probability sampling is too great or where less than precise representation of the population is temporarily justifiable. Thus snowball sampling is useful in this research because it is difficult to quantify the population the researcher is interested in and it is not known how widely divorce mediation is practiced in the area of study. The researcher knows only a handful of the appropriate persons in the target population. In the case of non-probability procedures no indication can be given of possible bias because as suggested by Stoker (Schnetler 1989:103), the researcher has no control over the composition of the sample.

The researcher started by contacting an attorney known to her who then referred her to other attorneys who met the criteria for inclusion in the sample. The attorneys were contacted by phone, the aim of the research explained and an interview requested. If they were willing to grant an interview, an appointment would be made for a time convenient

to the attorney. Should the attorney who was phoned not be willing to grant an interview, the next person would be called. The same procedure was followed with the social workers.

The researcher underestimated the time it would take to obtain interviews, albeit because of the daily schedules of the attorneys and the amount of time they spent in court. Attorneys who specialized in criminal cases were not considered in the sample.

The researcher also endeavored to interview attorneys attached to different law firms in order to get a diversity of views in the hope that it would enrich the data collected. However, this was not a pre-requisite for inclusion in the sample because the researcher had no control over the composition of the sample due to the particular sampling procedure used i.e. non-probability snowball sampling procedure.

The same problem was not experienced with the social workers, mainly because there are only a few social workers who act as family counselors investigating custody and access cases. The Department of Welfare, Province of the Eastern Cape mostly employs these social workers. Generally, the social workers were easily accessible to the researcher.

Interviews were conducted with five social workers and five lawyers who were fully briefed about the objectives of the study as well as the anticipated benefits, which were foreseen to come out of the study.

3.5 INSTRUMENTS OF DATA COLLECTION

Qualitative interviewing was used as the main instrument of data collection because it provides a means to explore the points of view of the research subjects (Silverman 1997:100). The research subjects were fully briefed about the purpose of the study and that their cooperation was essential in contributing to the study.

The researcher remained aware of the legal terms used by attorneys and social work methodology by the social workers. Silverman (1997: 117) suggests that validity of answers will depend on the ability of the respondents to convey experiences in terms that are locally comprehensible.

The advantages of interviewing (Cochros 1981:255) as a data collection method are primarily related to naturalness and spontaneity, flexibility, and control of the environment. Combined with a high response rate, it is regarded as particularly suitable for this study compared to mailed questionnaires.

Face to face interviews were conducted in order for the interviews to be individualized as needed to facilitate the collection of data. The interview form followed is a semi-structured interview: it has a sequence of themes to be covered, as well as suggested questions (Kvale 1996: 124). This allows the interviewer to adapt the sequencing and wording of questions to each particular interview as suggested by Rubin & Babbie (1997:390) and to follow up on the answers given to obtain clarity as needed.

Semi-structured interviewing offers a versatile way of collecting data. Unlike structured interviews, Huysamen (1994:145) expresses the opinion that semi-structured and unstructured interviews allow the interviewer to use probes with a view of clearing up vague responses or to ask for incomplete answers to be elaborated on.

The interviews lasted between sixty and ninety minutes each. Each respondent was informed about the purpose of the interview and they were afforded the opportunity to ask questions before the interview started. Permission was sought for the use of a tape recorder. The interviews were audio-taped after permission was obtained from the respondents. Notes were also taken of the proceedings. This was done to obtain a comprehensive account of the interview. The process of preserving data and meanings on tape and the combined transcription and preliminary analysis according to Marshall & Rossman (1995:115) greatly increase the efficiency of data analysis.

Rubin & Babbie (1997:392) suggested that a tape recorder is an essential tool of the qualitative interviewer. It not only ensures verbatim recording but it frees interviewers to keep their full attention on the respondents, to communicate that they are listening to what is being said, and to probe into important cues.

The subjects were assured of anonymity, confidentiality and that the information will only be used within the context of the research. This allowed the researcher to adhere to the ethics of interviewing as suggested by Kvale (1996:153). The researcher had to be sensitive to the initial reluctance of some attorneys to divulge how many divorce cases they deal with.

There are problems and limitations in any research method, which depends on respondents self-reports, whether the data comes from questionnaires or an interview.

According to Bailey (Cochros 1981:257) there are four major sources of respondent errors and biases in self-reported data:

- Respondents may:
- 1) deliberately lie because they do not know an answer
 - 2) make mistakes without realizing it
 - 3) give inaccurate answers by accident simply because they misunderstand or misinterpreted the question.
 - 4) Be unable to remember and may blend the truth with fiction to cover up their memory gaps.

This study is not about a sensitive topic and above errors and biases could be excluded to an extent because the respondents did not have to reveal intimate and personal details of their own lives. They could experience the interviews as non-threatening and they readily agreed to participate once agreement was reached on the time and date for the interview.

The researcher made notes of non-verbal communication and observation during the interviews to enrich the data. It could also in a lesser way assist in addressing some of the disadvantages mentioned above.

3.6 ANALYSIS OF DATA

Permission was sought and obtained from the respondents to record the interviews.

According to Marshall & Rossman (1993:79) the process of preserving data on tape and the combined transcriptions and preliminary analysis greatly increases the efficiency of data analysis. Transcribing the interviews was time-consuming and the researcher had to spend several hours transcribing each interview.

Kvale (1996:190) mentioned three parts of analysis that may be discerned. First, structuring the often large and complex interview material for analysis. This is usually done by transcription and by programs for computer analysis of qualitative material. The researcher understands the important contribution computers can make in the analysis of qualitative data. Due to the small sample, the researcher did not pursue the different programs for computer analysis.

According to Denzin & Lincoln (1994:460), artificial intelligence research has contributed to qualitative analysis powerful techniques for managing documents and expressing theories. Computers can greatly enhance the process of data analysis when research is done where the use of these relevant techniques is appropriate. The use of computer software in the analysis of the data, due to the small sample, was not considered appropriate for this research.

The next part consists of clarification of the material, making it amenable for analysis by eliminating superfluous material such as digressions and repetitions, distinguishing between the essential and non-essential. This would depend on the purpose of the study.

In this study, the above method was followed but the researcher was mindful of the objectives of the study in not to eliminate data, which is useful.

Data analysis is seen, as the process of bringing order, structure and meaning to the collected data and according to Huysamen (1994:176), notes of presumed non-verbal communication on the part of the participant should still be kept. The researcher made notes about the non-verbal communication and it enriched the data. Denzin & Lincoln (1994:371) suggested that non-verbal communication both informs and sets the tone for the interview.

The third part would be the analysis proper and it involves developing meanings of the interviews, bringing subjects own understanding into the light as well as providing new perspectives from the researcher on the phenomena. The researcher compared and contrasted the perspectives of the respondents in the two professions namely social workers and attorneys with that found in the literature, extracting themes around the specific questions.

Some of the analytic methods as suggested by Miles & Huberman (1996:9) have been used namely noting reflections and remarks in the margins of the transcripts, identifying and highlighting similar responses and themes, gradually elaborating a small set of generalizations and creating a formalized body of knowledge.

Methods most likely to be useful in analyzing information gained from investigations of a limited nature according to Goulding (Bell 1987:103) are those of descriptive statistics. Whether the information arises from questionnaires which respondents themselves complete, or whether it arises from a structured interview situation where the interviewer completes a schedule, makes no difference to the way that the data can be handled. This approach was found not suitable for this particular research because the instrument of data collection used, is a semi-structured interview.

The test for goodness of qualitative research, as suggested by Miles & Huberman (1996:262-263), lies in checking for representatives of the sample, checking for researcher effects and biases, the possible influence the researcher had on the

respondents, weighing the evidence and deciding which of the data can be trusted. Further in the quest for reliable analysis, is verification of rival explanations, which according to Miles & Huberman (1996:274) is time-consuming. It is believed that during the literature review, this is already taking place. The respondents are the sources to corroborate and it took place during the data collection phase.

Miles & Huberman (1996:277) asked the question how anyone will know whether the emerging findings are good namely, possibly true or probably true, reliable, valid, confirmable and dependable. The researcher believes that this has been addressed.

3.7 LIMITATIONS OF THE STUDY

It is anticipated that the study will not be representative of the majority of legal and social work practitioners in the East London area. This is due to the fact that mediation is not widely practiced in this area. The findings cannot be generalized and does not claim to be representative of the views of all the legal and social work practitioners in the East London area.

One of the limitations found was the fact that the professionals dealing with divorce cases were not sensitized towards mediation. They were aware of the alternative of mediation in divorce matters but have never seriously considered the possible introduction of such a service.

The use of a tape recorder to audiotape the interviews made some of the social workers uncomfortable but as the interview progressed, they seemed to be less intimidated by it. This is attributed to the fact that social workers in this area of the study, do not normally use tape recorders, unlike their legal counterparts, who seem more at ease because all of the attorneys in the sample, tape some of their work at one time or the other. The researcher adopted a reassuring attitude towards the respondents and is satisfied that this did not significantly impact negatively on the outcome of the research.

The failure of the Mediation in Certain Divorce Matters Act, 1987, to fully specify what it envisaged on the role of mediation, also had a limiting influence on the study. As discussed in the literature review, the word mediation in the title of the Act is a misnomer. Legal and social work practitioners in the study use relevant Acts as a guide on how to deal with issues they have to deal with in performing their respective tasks.

The use of the sampling method, non-probability snowball sampling, could lead to respondents referring the researcher to others who hold the same view as them. It is believed that in spite of many similar views expressed, the data was enriched by the many diverse views obtained from the respondents from the two professions, namely social workers and attorneys.

CHAPTER FOUR

FINDINGS: PRESENTATION AND DISCUSSION

4.1 INTRODUCTION

This chapter documents the findings of the study. These findings explore the perspectives on inter-professional collaboration between social workers and attorneys in mediation.

Some of the literature on mediation consulted does not pertinently discuss the role of social workers in mediation. The role of social workers and other professionals in the same field is grouped under mental health professionals. This discussion, however, focuses on the role of social workers and attorneys without negating the role of other professionals in family law. These two professions fall within the ambit of this study.

To facilitate the presentation and discussion of the findings, the researcher decided to discuss both professions simultaneously instead of presenting it separately. It is believed that the latter would be cumbersome, while the former would enhance the presentation and readability of the chapter.

For the purpose of the study, the presentation and discussion has been divided into five broad themes:

1. Biographical information
2. Mediation in East London
3. Perspectives on mediation – social workers and attorneys
4. Social workers and attorneys perspectives on inter-professional collaboration in mediation

5. Promotion of mediation through inter-professional collaboration in mediation.

4.2 FINDINGS OF THE TOTAL SAMPLE

4.2.1 Construction of the Total Sample

The total sample consisted of five social workers and five attorneys. Semi-structured interviews were conducted with the respondents. Access was gained to the respondents by using the non-probability snowball sampling method. Access to the social workers was obtained without difficulty. However, not being readily available due to their frequent court appearances complicated access to some of the attorneys. The researcher in spite of this did gain access to five attorneys.

4.2.2 BIOGRAPHICAL DATA

4.2.2.1 Social Workers

Across the sample, the length of employment for the social workers ranges from 6 to 13 years. All of them have experience in family law with the bulk of their experience being in children's court cases. The social workers become involved in custody cases when they are appointed by the family advocate as family counselors in terms of the Mediation in Certain Divorce Matters Act, 1987 to investigate specific cases in which custody is in dispute.

The number of cases investigated by them ranged from three to forty-five cases respectively. In the case of SW2 and SW5, they worked full-time for the office of the family advocate for a period of time until their own Department reassigned them to other tasks. At this point it is interesting to note that the Department of Welfare employs social workers and that they render services to the Family Advocate, an employee of the Department of Justice, on an agency basis.

In cases where social workers are assigned full time to the Family advocate's office, their duties require them to scrutinize summonses issued by divorcing couples, which ranged from seventy to eighty per month. The other social workers get appointed as family counselors to investigate cases as and when these are assigned to them. All the social workers have experience in custody investigations with the last mentioned two being the most experienced. None of them have experience as mediators. SW5 received training in mediation in the form of a three-day workshop. However, she has not had the opportunity to implement the training in practice.

4.2.2.2 ATTORNEYS

Across the sample the length of employment of attorneys range from ten years to twenty-four years. Most of them are directors or partners in their respective law firms, with AT1 presently employed by a non-governmental organization campaigning for women's rights. All are experienced litigators and most of them are specializing in divorce. AT3 has experience as a prosecutor and has done a stint as a magistrate. AT1, AT2, AT3 and AT5 are not formally practicing mediation. AT4 has mediated in two cases. A colleague from another law firm referred these two cases to him. All five of them have extensive dealings with the office of the family advocate and are experienced in divorce matters.

The number of cases the attorneys deal with range from eight new cases per week to the finalization of twelve cases per week. It was difficult for the attorneys to quantify their cases because they deal daily with divorce cases. Some cases do not proceed to trial; some are only inquiries with many couples not proceeding with the divorce. This is a qualitative study and the researcher did not emphasize the numbers but was satisfied to verify that the attorneys interviewed indeed met the criteria set out in the research methodology. Another reason was that AT5, AT3 and AT4 mentioned that they would not be able to give the exact number of cases due to the factors mentioned above.

From the above it is concluded that both the social workers and the attorneys are experienced and that they meet the criteria as determined in the research methodology.

4.3 MEDIATION IN EAST LONDON

4.3.1 Availability of a mediation service

All five social workers and all five attorneys confirmed that mediation is not done in East London. The family advocate is also not engaged in mediation at the East London High Court. As far as the social workers and attorneys know, no private mediation is available.

One attorney, AT4, has done mediation in two cases as requested by a colleague. He however, does not practice mediation in the cases that he deals with. The social workers and the other four attorneys were not aware that AT4 done mediation on request. This might suggest that the two cases mediated by AT4 were the exception than the rule in that it also was the only two cases he mediated in a career of 22 years.

Although the social workers and attorneys interviewed are aware of mediation as a concept, none of them has seriously considered promoting its use or given serious thought to mediation as an alternative to litigation. This could also be attributed to the fact that the Mediation in Certain Divorce Matters Act, 1987, is not specific about mediation.

4.3.2 Reasons why mediation services are not available

Social workers and attorneys agree on the following reasons why mediation in divorce matters is not done in East London:

- There is a lack of funds in the relevant government departments to start a mediation service.
- Mediation as an alternative dispute resolution method is unknown amongst professionals and the communities at large.

- There might be resistance to change because social workers and attorneys are working in ways, which are comfortable for them.
- Many attorneys and social workers dealing in divorce matters do not consider alternatives such as mediation when making recommendations on the settlements of divorce cases.
- Social workers are not trained to do mediation and attorneys do not have enough information about mediation to offer the service or advise clients about the option of mediation.
- No private mediation service is available because nobody thought about starting such a service.
- Some of the divorce cases are not suitable for mediation and the litigation procedure can prevent the use of mediation. Recent studies (Boulle et al 1997:74-75 and Roberts 1997:129-130) suggested that mediation is unlikely to succeed where a referral is unsuitable. There has to be an actual or anticipated dispute between the parties, which cannot be reconciled by the normal processes of decision-making. The dispute must be capable of being negotiated.

Additional reasons mentioned by attorneys are:

- Some attorneys are under the impression that mediation is not financially viable. If cases are settled quicker it will impact negatively on their fees.
- Some attorneys encourage their clients to litigate. According to the literature (Haynes 1994:2 and Johnston & Campbell 1988:39-47) attorneys perceive litigation as the only tool of their trade and in some cases attorneys can actually prolong the disputes between divorcing families. It is mostly prevalent amongst inexperienced attorneys

or attorneys who are intractably wedded to an adversarial stance. The series of maneuvers by attorneys as they formulate their client's positions and engage in tactical warfare with other attorneys, further encourage their clients to litigate.

Additional reasons presented by the social workers are:

- Some communities have been exposed to mediation in community affairs and labour issues but are ignorant of the fact that mediation can be used to resolve disputes arising from divorce.
- Social workers have high caseloads and do not have the opportunity to practice mediation.
- There are not enough social workers available to become involved in mediation.

It is evident from the additional reasons mentioned by the social workers, that they see social workers as major role players in mediation. However, the referral to case-loads and lack of human resources, could be an indicator that social workers need to revisit how they practice their profession to be able to respond to the challenge that mediation poses to them.

4.3.3 How divorce cases are settled at present

All five attorneys indicated that they attempt to convince clients to come to a settlement to avoid taking cases to trial. Cases are discussed and negotiated with the opposing attorney to facilitate a settlement. Many of the cases where the parties cannot reach an agreement about the custody of minor children are referred to the family advocate for an investigation. All five social workers agree that attorneys refer cases where custody and access is disputed, to the family advocate in terms of the Mediation in Certain Divorce Matters Act, 1987.

A family counselor, who is usually a social worker, assists the family advocate to investigate the case and to make a recommendation to the court about what is in the best interest of the minor children involved. This recommendation is usually contained in a report compiled by social workers on completion of an investigation into a particular case.

Both social workers and attorneys are mindful of the important role of the family advocate whose powers evolve around the instituting an inquiry to make recommendations on any matter concerning the welfare of minor or dependant children.

According to SW2, a case can be postponed for six months to afford the parties an opportunity to reconcile if they have a desire to work on their marriage. This view seems to be similar to AT3 who recommends counseling for all clients who come to him for a divorce. AT3 has a working relationship with his church pastor who is a trained counselor. This is regarded as unusual by the researcher in the sense that not one of the other attorneys in the sample refers all their clients for counseling.

AT 2 has tried to refer clients for counseling to social workers, but the clients reject it outright. AT2 suggests that there is a stigma attached to going to see a social worker. AT5, AT3 and AT4 expressed concern about the lack of post-divorce counseling for the divorced couples to assist them towards accepting the divorce. The non-acceptance of the end of a relationship by one party will inevitably result in them sabotaging the decision-making process should they enter into mediation to dissolve the marriage.(Roberts 1997:129-130 and Boule et al 1997:74-75)

Most social workers are of the opinion that the majority of the cases are settled by means of an agreement drawn up by the respective attorneys acting for the parties. Their understanding is that the main motivation for this is an effort to save on legal cost. This is in direct contrast with the view held by the most of the attorneys who suggested that it is very seldom that cases are settled outright. SW2 is the only social worker who agrees

with the sentiment expressed by the attorneys. AT 4 holds the opinion that very few cases come to an agreement between themselves without consulting an attorney.

From the above it can be deduced that the majority of the divorce cases where disputes arise concerning custody and access are referred to the family advocate for intervention. Very few cases are settled. The attorneys identified a gap in social services in that pre- and post-divorce counseling does not seem to be readily available to divorcing couples.

4.4. PERSPECTIVE ON MEDIATION – SOCIAL WORKERS AND ATTORNEYS

4.4.1. Mediation as an alternative method of dispute resolution in divorce cases

All five social workers and all five attorneys agree that mediation can be useful as an alternative method of dispute resolution between divorcing couples. The attorneys suggested that it be up to the attorney to try and find an amicable settlement. SW3 is of the opinion that mediation is not considered by attorneys as an alternative to litigation.

One attorney, AT2, expressed reservations about mediation when it comes to the division of property and disclosure of assets. She stated that full disclosure could weaken the attorney's case when mediation proves to be unsuccessful and the case has to go court. If parties change their minds about mediation, the attorney has exposed his case because the other party will know everything about the case. AT2 also does not see a mediator as qualified to decide on the division of property and assets. Her opinion is that only attorneys can advise on the last mentioned.

In the literature on mediation, Haynes (1994:3-7) when discussing the mediation process, stated that the mediator insists on full disclosure of all issues and facts to all participants. This does not mean that the disclosure will weaken the attorney's case. Sharing information is part of power balancing and when the mediator uses the process to ensure full disclosure, she assures that all participants use the same data to define the problem

and it improves the ability of each participant to choose the options most beneficial to them.

Three attorneys and four social workers agree that mediation in some cases can prevent a divorce by giving the couple an opportunity to consider their options and to make their own decisions about their children. It is not somebody else who decides about custody and access for the non-custodian parent. AT3 stated that he has successfully prevented a divorce in a few of his cases. SW5 feels strongly that with mediation, the interest of the child is paramount and not the interest of the parents. According to Bosman-Swanepoel, Fick and Strydom (1998:101) mediation empowers both parents as the power to negotiate and to find solutions is held in the hands of the parents and not in the hands of only the attorneys. Both parents, therefore, can and are able to make their own decisions.

Some social workers and attorneys see the fact that many cases are still litigated as ignorance on the part of the community and professionals. Some of the social workers feel that mediation gives parents access to a professional who understands the difficulties of divorce. Professionals could cross-refer if need be. According to the literature, the role of the mediator in such a case is that of managing the process, not the outcome, and acting as an educator and organizer, not as a therapist. The changes, which result from the mediation process, may indeed be therapeutic for the couple, but this not the primary objective of mediation. This concurs with the view expressed by the respondents.

AT4 emphasized the point that mediation is only practical in cases where the parties are sufficiently educated to understand the benefits of mediation and participate voluntarily. This agrees with Roberts (1997:128) who found that separating, divorced or divorcing couples need to voluntarily involve themselves in the mediation process for it to work. This is one of the main principles of mediation.

Four social workers interviewed felt that by using mediation as an alternative method of dispute resolution, the parents get the chance to vent their feelings, which would otherwise not be the case. On the question of expressing feelings in mediation, recent

studies (Roberts 1997:25-26, Hauser 1995:71) saw the opportunity provided for in mediation for the expression of feelings as an important advantage over the legal system, though if this is excessive or prolonged, it may seriously impede rational exchange and lead to a deterioration of relations, rather than any improvement. Mediators are cautioned to keep it to the minimum to achieve the tasks agreed upon so as not to distract from the reason why the parties entered into mediation.

SW3 raised an interesting point by saying that social workers should change the way in which they work if they want to give credence to the positive role that mediation can play in the interest of the minor children and parents. This poses a particular challenge to the profession on how to transform their services to be able to be involved in mediation services.

Two social workers stated that social workers employed by private welfare organizations are not involved in mediation and that they should also be considered if training in mediation is offered. This would have the additional advantage of broadening the skills base should mediation services be implemented. This is in accordance with the social workers assertion that there are not enough social workers to do mediation.

From the above, mediation as an alternative form of dispute resolution in divorce cases has the support of both social workers and attorneys.

4.4.2 Functioning of a mediation service

Four attorneys and four social workers feel that mediation should be based within the justice system. The rationale being that people will accept judgements because of the air of authority that goes with the justice system. The family advocate's office is seen, as the ideal place where mediation services should be offered. AT3 and SW4 hold an opposing view. They feel that private mediators and non-government organizations should provide mediation service. The reason for this is that private mediators will have an incentive to

provide a good quality service. If mediators were salaried employees, it would not matter to them what quality service they render to the general public.

The family advocate agrees that her office has a role to play in mediation in divorce matters. In a submission to the South African Law Commission (Discussion Paper 1999: 87), the family advocate stated that she believed that the present court structure of dividing and fragmenting family disputes should be abolished in favour of an all-inclusive family court. A family court should be based on more informal processes, specifically mediation.

Most of the attorneys suggested that mediation should be mandatory otherwise people would not make use of such a service. The social workers do not agree with this, rather opting for mediation to be voluntary. AT 2 goes so far as to say that couples should be issued with a certificate to confirm that they have gone for mediation before a divorce is granted. AT4 do not agree with this because he believes that a person's right to litigate cannot be taken away and that mediation should be voluntary. AT3 agrees with this sentiment. The potential disadvantages of mandatory mediation (Boulle et al 1997:16) as discussed in 4.2.1 in the literature chapter must be considered in this instance.

According to Goldberg (1996:370) mandatory mediation is widespread in America. Particular in family law. Once a voluntary process outside the court procedure, mediation has fast become integral to the judicial system of the different States. She recommends that mediation should be mandatory in South Africa. In spite of the potential advantages of mandatory mediation mentioned in the recent studies (Boulle et al 1997:16-17), the researcher is hesitant to agree to mandatory mediation but can see the point in cases where the parties are not willing to submit themselves voluntarily to mediation. However, if people are forced into a particular service, it could reduce the prospects of a settlement and the mediator's lack of binding decision-making powers has an effect on the process.

Most of the social workers feel that social workers are the ideal persons to act as mediators. SW1 would prefer social workers with at least a Masters Degree to act as

mediator. The attorneys on the other hand, feel that knowledge of the law is a prerequisite for a mediator. Only one social worker mentioned that mediators need not necessarily be social workers, but attorneys, psychologists or anybody with the relevant qualification could act as mediators. This is in line with the view expressed by Lombard (1992:60) who suggested that with mediation in the social work context, it is not only social workers who can act as a mediator. Parties such as community leaders and neighborhood members can also be used effectively as mediators, provided that all parties are well trained for the role. This broader application complements the emphases within the social work profession on inter-disciplinary roles and relationships.

4.4.2.1 Payment for mediation services

Both social workers and attorneys see the State as the main funder of mediation services. The attorneys, through their involvement with the Legal Aid Board, is more aware of the difficulties which can be expected in obtaining funds from the State to pay for new services such as mediation.

The possibility of a means test was mentioned to require couples, who can afford to pay, to do so. Attorneys and social workers were concerned that if the State does not bear the cost for mediation, that such a service will not be accessible to disadvantaged and rural communities.

All of the attorneys and social workers agree that a mediation service should be based within the justice system at the family advocate's office. There is a difference in opinion on whether mediation should be mandatory or voluntary. Private mediation was also raised. All agree that the State should be the main funder of mediation to ensure accessibility for everyone.

4.4.3 Advantages of mediation in divorce matters

The attorneys and social workers interviewed agree on the following advantages that mediation has as an alternative form of dispute resolution in divorce matters:

- Mediation can be the best way to resolve what can be financially crippling to the couple. The sooner the case is finalized, the less it will cost.
- The parties reach their own agreement and are more likely to adhere to the terms agreed upon after the divorce.
- Mediation is quicker than a litigated case and the couple can carry on with their lives without the added frustration of a lengthy court battle.
- Mediation will assist the parties to accept the divorce and to move on. Non-acceptance of a divorce can heighten the emotional trauma for the parents and the children and according to Schafer (1993:14-18) the unfortunate child becomes the focus of parental wrath when parents feel that they have unresolved battles to fight.
- The parties can still communicate with each other and they can be referred for counseling to assist them with the adjustment after the divorce. The need for revenge is minimized by constructive engagement of each other.
- Mediation will take the extreme pressure off children when they are pressurized by their parents to choose between the them.
- The children do not have to go through the trauma of court attendance.
- Children can stay in contact with both parents without feeling guilty about their loyalty to their parents.

- Mediation can be beneficial in maintenance cases – it could prevent the non-custodian parent from becoming estranged from his family if he tries to avoid conflict with the custodian parent. In a study by Schafer (1993:14) he found that there is diminishing exercising of access rights by the non-custodian parent where conflict is high between the parties. This in itself is detrimental for the children in question.
- It is beneficial for the children to witness their parents resolving their differences in a mature way. Use of mediation is seen as a way in which parents can teach their children positive conflict resolution skills by setting an example for them to emulate. During the twelve stages of mediation as defined by Moore (1996:66-67), the mediator assists the parties to assess various approaches to conflict management before a strategy to guide mediation, is selected.
- The researcher sees this as a refreshing viewpoint which illustrates that there can be positive spin-offs in a situation where the negative aspects are more than often emphasized to gain power over the other party.

The advantages mentioned by the social workers and attorneys can be found in the literature (Roberts 1997:25-26, Bosman-Swanepoel et al 1998:101 and Hauser 1995:71). The following additional advantages not mentioned by the social workers and attorneys can be found in the literature:

- The legal system is limited by the fact that it recognizes only legal norms, and cannot fulfill the psychological requirements as well as the requirements of legal justice for the parties and the children.
- Mediation keeps the discussions focussed and it works. Recent studies have shown that three out of four couples who enter into mediation have reached satisfactory agreements.

It is clear from the above that both social workers and attorneys are conversant with the advantages of mediation. In spite of this, not one of the professions have initiated or promoted mediation as an alternative method of dispute resolution for divorcing couples.

4.5 SOCIAL WORKERS' AND ATTORNEYS' PERSPECTIVES ON INTER-PROFESSIONAL COLLABORATION IN MEDIATION

4.5.1 Contact between social workers and attorneys

Social workers and attorneys agree that contact between the professions should be encouraged. At present four attorneys have no or infrequent contact with social workers. One attorney has regular contact with social workers for discussions about cases dealt by the family advocate's office. He regards the contact as useful because the sharing of information leads to cases being settled sooner. AT4 states that social workers do not have an obligation to contact the attorney. The opposing attorney might view contact as bias on the side of the social worker.

Most social workers on the other hand have regular contact with attorneys, especially those who worked full time at the family advocate's office. Most social workers have experienced contact with attorneys in a positive light with only SW4 who experienced her contact with attorneys negatively. She feels attorneys want to dominate social workers and that they undermine social workers. SW5 has a strong opinion that social workers should realize that attorneys fight for their clients and they do not have anything personal against social workers and that it is to be expected that disagreements will occur between the professions.

Overall, the contact from social worker side seems more frequent, with the attorneys reporting that they seldom or ever have contact with social workers. As experienced by the one attorney and four social workers, contact can be beneficial and positive when it takes place. Both professions agree that contact is necessary.

4.5.2 SOCIAL WORKERS' PERSPECTIVES ON ROLE OF ATTORNEYS IN MEDIATION/ATTORNEYS' PERSPECTIVE ON OWN ROLE IN MEDIATION

Most of the social workers see the role of the attorney in mediation as one of referral to the social worker for mediation. This agrees with the attorneys' perspectives on their own role in mediation. Clients usually consult an attorney first if they consider obtaining a divorce. Four of the social workers also see a role for attorneys to educate themselves about mediation. This will enable the attorneys to identify cases which might benefit from mediation.

The attorneys agree with this by saying that an attorney has the responsibility to give clients the best advice and to consider all options before entering into litigation. The attorneys also see a role for them to inform clients about the option of mediation. However, according to Roberts (1997:105), the giving of information by the mediator, which is acceptable, must be distinguished from the giving of advice. The latter involves recommending strategic courses of action. The giving of information, on the other hand, is supposed to be neutral, involving an explanation of rights, resources and terms. This would imply that the attorneys would have to educate themselves about mediation as suggested by the social workers.

The comments of Mr. Justice R J Goldstone at the opening of the National Conference of the South African Association of Mediators and Family Matters on 31 October 1991, still holds true today. He stated that there might well be included amongst the professional duties of the attorney an obligation of advising clients of the existence of alternative means of dispute resolution, such as mediation.

The social workers and attorneys further agree that the main role for the attorney in mediation is advising on legal matters, attending to the redistribution of property and assets to achieve a fair settlement. The attorney also submits the final agreement to court to bring the divorce process to finality.

Some of the social workers do not see attorneys working as mediators while SW3 is of the opinion that co-mediation between attorneys and social workers can be beneficial. Studies done by Boulle et al (1997:107-108) found that there are more advantages than disadvantages when a co-mediation model is used in mediation. SW1 is unsure whether attorneys will make suitable mediators. However, when referring specifically to custody, all the social workers feel that they have the primary responsibility where custody of minor children is concerned.

Some of the attorneys suggested that attorneys have to adapt to their changing roles. They need to adapt to changes in family law and mediation in the same way as they adapted to changes in other areas of the law. Most of the attorneys suggested that attorneys should not mediate where custody of minor children is involved. AT 2 and AT3 however, hold opposing views by saying that attorneys are qualified to mediate where custody is concerned.

These two however, contradict themselves because when discussing the role of social workers in mediation, they agree with their colleagues that the main role for social workers is to mediate where custody is concerned and that attorneys should leave that task to social workers.

In summary social workers and attorneys agree on the role of attorneys in mediation, which is mainly informing clients about the option of mediation, referral and dealing with legal aspects.

4.5.3 ATTORNEYS' PERSPECTIVES ON ROLE OF SOCIAL WORKER IN MEDIATION/SOCIAL WORKERS' PERSPECTIVE ON OWN ROLE IN MEDIATION

The attorneys and social workers agree that the main role for social workers is to protect the interest of minor children and to mediate where custody and access is concerned.

Social workers also see themselves as acting as mediators where some of the attorneys do not agree that social workers should mediate where property and assets are concerned.

Some social workers see the need for social workers to transform their services. They have to differentiate between their roles as social workers and their roles as mediators. According to Radford & Glaser (Pretorius:1993:77) a professional person, like a social worker or attorney, should remember that while donning the hat of a mediator, they have to step out of their traditional role of offering therapy and in the latter, offering advice. This is not appropriate in mediation.

Some of the social workers identified a need for specialization in mediation to make it work. Social workers should also be a resource for attorneys because they are trained in the humanities. They could give structure to the mediation process because they are skilled in interviewing. Giving structure to the mediation process, is one of the stages of mediation discussed by Moore (1996:66-67).

Some of the social workers expressed concern about the general misconception in the community that social work is about pensions and grants. Two social workers are also concerned about the quality of the investigations and reports done by social workers. SW2 is of the opinion that social workers should not allow other professions to take over their functions. It erodes the profession if social workers do not take up the challenge to initiate a mediation service. This view is aligned to the view expressed that social workers should take the lead and act as mediators.

Mediation is seen by the social workers as a way in which they could obtain approval from their peers as well as gain recognition in the communities. In a study by Lombard (1992:61) on mediation as an intervention strategy to empower people, he suggested that the helping relationship between social workers and their clients also form part of the basic foundation of mediation. The latter is regarded as an appropriate strategy for social work intervention to empower people. The researcher is of the opinion that the theme of

empowerment through mediation could be useful to address the social workers' concern about their profession and quality of work.

There is consensus amongst the respondents that the role of social worker is protecting the interest of minor children and thus mediating where custody and access is concerned. The social workers also see themselves as mediators while the attorneys have reservations about social workers mediating property and assets. They regard that as the domain of the attorney.

4.5.4 COOPERATION BETWEEN ATTORNEYS AND SOCIAL WORKERS TO ASSIST DIVORCING COUPLES

The attorneys and social workers agree that it is possible for them to co-operate to assist divorcing couples. Four social workers suggested that the two professions need to bridge the gap that is prevalent between them. These four social workers attribute the gap between the professions to the following:

- Social workers are more concerned with the human side while the attorney only sees the facts about a case.
- The attorney has only one party as his client, while the social worker deals with the whole family.
- Attorneys act on the instructions of their clients while social workers do not have the same restriction on their work.
- Social workers and attorneys do not communicate effectively.
- There is no mutual understanding about the respective professions. The attorneys also expressed the need for the two professions to understand each other's roles. They

would be more than willing to refer clients to social workers if they could be sure that the clients would get the service they require.

- There appears to be a power struggle between some social workers and some attorneys
- Attorneys think differently. They focus on legal aspects while social workers takes feelings and behaviour into account.
- Some attorneys feel that social workers do not execute their work proficiently are unco-operative towards finalization of cases. According to some of the attorneys, it will improve the understanding between the professions if social workers and attorneys could discuss why certain recommendations are made by the social worker. This would place the attorney in a better position to explain the recommendation to the non-custodian parent. AT4 feels that the attorney is the person who involves the social worker in the first place by referring a case to the family advocate's office in terms of the Mediation in Certain Divorce Matters Act, 1987.
- Some social workers do not give feedback to attorneys about mutual cases and that gives rise to the impression that social workers are not interested in the investigations.

The two professions could co-operate and complement each other. SW 3, SW5 and SW2 suggested that building trust between social workers and attorneys could facilitate co-operation. They need to get to know each other. A working relationship is vital because attorneys sometimes have very important information, which could impact on the social workers recommendation concerning the custody of minor children. It would be advantageous for the disputing couples if cases are discussed with the attorney.

Attorneys could motivate their clients to co-operate with social workers. They could ensure that clients keep appointments, prepare their clients and give them all the information on why the clients have to be interviewed by social workers. The clients will

than feel less threatened by the custody investigations. This concurs with the views expressed by the attorneys.

AT3, AT1 and AT5 see social workers as the people on the ground who know the communities and who are indispensable where children are involved. Social workers must remember to be impartial and that they need to listen to both sides. The investigations are not easy because many clients feel that the social worker take the other party's side. Recent studies (Barsky 1984:10 and Cohen in Pretorius 1993:78)) suggested that one of the qualities of a mediator is that the mediator should be experienced by both parties as a neutral facilitator. The mediator should always remember to maintain a neutral stance, which should not be compromised.

AT1 and AT5 feel that social work reports in some instances do not reflect an unbiased recommendation. AT2 is of the opinion that many social work reports have depth but many are superficial and it is obvious that not much work has gone into it. Reports sometimes take three months or more to be submitted and this causes undue strain for the divorcing couple and for the attorney.

AT1 is also concerned about the lack of adequate staff attached to the family advocate's office and the fact that the advocate only visits East London on a weekly basis for one day. These suggestions correlate with some of the reasons the social workers put forward why a gap is prevalent between the two professions.

AT1 observed that social workers have many frustrations caused by bureaucracy and this could be an obstacle for the two professions to work together in an effective way.

However, she sees the need for the two professions to change their view about each other and that they should understand that they are not in opposition to each other.

According to AT2 and AT5 co-operation between social workers and attorneys can be improved if social workers could offer a comprehensive service to divorcing couples. They identify the need for pre- and post divorce counseling. These couples sometimes

expect attorneys to provide them with emotional support while attorneys are not trained to deal with emotional issues.

4.6. PROMOTION OF MEDIATION THROUGH INTER-PROFESSIONAL COLLABORATION

All five social workers and attorneys interviewed agree that collaboration between social workers and attorneys could lead to the implementation of a mediation service. The two professions agree on the following to facilitate the promotion of mediation through inter-professional collaboration:

- The family advocate's office is seen as the starting point for a mediation service. Social workers should take the initiative to start mediating and to actively promote mediation as an alternative to the family advocate. All divorce cases should be channeled through the family advocate's office to ensure that the service is accessible to everybody. SW5 is of the opinion that the family advocate should inform the clients about the option of mediation during interviews and give them full details about the process. This will enable the clients to make an informed choice whether they want to exercise the option or not.
- The attorneys and social workers suggested that a forum should be established where the two professions could meet to address common issues. These meetings could assist to clear up any misunderstandings between social workers and attorneys.
- Further to the latter, attorneys and social workers proposed the holding of workshops on mediation where both professions could clarify role differentiation and develop a common understanding of what steps need to be taken on the introduction and promotion of mediation in family law. Social workers were identified to take the initiative to arrange workshops. Attorneys also would like ongoing feedback about new developments in family law to keep them updated.

- One of the key areas identified by social workers and attorneys is the need for training in mediation processes. Social workers feel that training for social workers need to be a priority because they act as family counselors for the family advocate. Training should also be extended to social workers employed by private welfare organizations to broaden the skills base.

The need for training was also emphasized by the family advocate in her submission to the South African Law Commission (Discussion Paper 1999:87), where she promotes training in mediation for individuals who operate community forums in order to empower them with the necessary skills. It is suggested by Boule et al (1997:73-74) that mediation is more likely to succeed if there is some external encouragement for the parties to settle in mediation. According to Radford & Glaser (Pretorius 1993:77) competent mediators should acknowledge the need for them to constantly update their skills and techniques by further and advanced training

- In the South African situation, mediators have the responsibility to ensure that they understand and respond appropriately to the impact of cultural differences on mediation. In a study by Roberts (1997:104-105) she suggested that one approach would be for mediators to share the cultural and ethical norms of the disputants, exploring and adapting indigenous forms of mediation where appropriate. Another approach would be for a single group of mediators to work with a variety of cultural groups. The researcher favours a combination of the two, with special attention to be given to the adaptation of the mediation models to recognize the cultural differences and the different circumstances of the community, for example, urban and rural.

In addition to the above aspects, the attorneys identified the following on the promotion of mediation through inter-professional collaboration:

- The attorneys see a role for the respective professional bodies to formally explore how the two professions could collaborate and what common ground could be found. This would enhance the working relationship between attorneys and social workers.

Information should be exchanged on how social workers work, how attorneys work, new laws, procedures and cases could be discussed where intervention by using mediation, was successful.

- Most of the attorneys feel strongly that mediation should be vigorously promoted in the Southern Divorce Courts formally known as Black Divorce Courts. The family advocate is not involved in these courts and no legal representation is allowed. The South African Law Commission in its Issue Paper 8 on alternative dispute resolution, stated that mediation in these courts is limited, irregular and an informal component of the settlement approach. Mediation could be useful to ensure that settlements reached are in the interest of the children and the parties who come to it.

Some attorneys voiced concern that it could happen in the Southern divorce court that the weaker party in the divorce could be intimidated into accepting an unfavorable settlement. Recent studies (Severson & Bankston 1995: 45, Roberts 1997:129, Boule et al 1997:73-74) suggested that mediation is unlikely to succeed where there is a serious imbalance of bargaining power. There must be no substantial impairment of mental and physical capacity to negotiate, or other inequalities between the parties that would render an unfair outcome unavoidable. Mediation is more likely to succeed where there is small rather than large degrees of power difference between the parties in conflict.

Social workers raised the following additional points to promote mediation through inter-professional collaboration

- A needs assessment is suggested by some social workers followed by an intense lobbying for government funding to implement a mediation service. Private mediation is promoted for those persons who could afford to pay for it.
- Some social workers recommend the promotion of collaboration in mediation by actively promoting mediation to attorneys by visiting each firm and addressing the

attorneys about mediation. Giving talks at the attorneys meetings, sending out newsletters and constantly offering mediation as an option before litigation could further enhance awareness.

- Advertising in the print media could raise community awareness according to most of the social workers. Radio is a most effective way of communicating with the communities especially those in the rural areas. Many radio stations have community time slots. Some of these radio stations are Umhlobo we Nene and Link FM.

The researcher is of the opinion that training will result in community leaders and other major role players promoting mediation as an alternative dispute resolution method. In the long term, this can have a positive influence on the minimizing of the trauma resulting from family disintegration.

4.7 CONCLUDING COMMENT

The findings have indicated that both social workers and attorneys are conversant in what mediation entails with some reservation being expressed by some attorneys. Both recognize the need for co-operation and collaboration to promote mediation. However, there are a few areas, which need to be addressed to bridge the gap between the professions. One of the main reasons for the gap, is the lack of communication between attorneys and social workers as well as the lack of understanding of each other's professions.

Some social workers also had negative experiences with attorneys and that would influence their perspectives about inter-professional collaboration. Both professions seem aware that mediation can promote a positive change in services rendered to divorcing couples and their families.

The findings cannot be generalized to all social workers and attorneys, but the researcher believes that enough awareness was raised to at least encourage them to consider mediation as an alternative dispute resolution mechanism in family law.

The conclusion and recommendations will be discussed in the following chapter. It will be presented sequentially to facilitate the reading of the chapter.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter discusses the conclusions and recommendations resulting from the study. The conclusions are based on the sample of five attorneys and five social workers. It is recognized that the conclusions and findings cannot be generalized to all the attorneys and social workers in East London. However, it gives an understanding of why mediation is not done, the role of social workers and attorneys in mediation, possibility of inter-professional collaboration between social workers and attorneys and the perspective of attorneys and social workers on collaboration in mediation.

The conclusions and recommendations are presented under broad themes and headings as used in the previous chapter. To facilitate the integration of the information, the following groupings will be used:

1. Mediation Services and why it is not done
2. Social workers and attorneys perspective on mediation
3. Inter-professional collaboration in mediation
4. Promotion of mediation through inter-professional collaboration
5. Conclusion

5.2 MEDIATION SERVICES

5.2.1 CONCLUSIONS

- The attorneys and social workers interviewed are experienced. They meet the criteria as determined in the research methodology, namely that attorneys should have at least three years experience in dealing with divorce cases and that social workers need to have investigated at least three cases in which custody was in dispute.
- Social workers and attorneys are recognizing the important role of the family advocate concerning the protection of the interest of minor or dependant children in divorcing families. This is borne out by the fact that the attorneys refer many cases where custody is in dispute to the family advocate for a recommendation. This is in line with the duties and functions of the family advocate as defined in the Mediation in Certain Divorce Matters Act, 1987.
- In trying to reach a settlement, attorneys find that clients sometimes expect their attorneys to provide emotional support. They are not trained to fulfil this need. A need for counseling such as post-divorce counseling was identified to assist divorcing couples to accept the divorce.
- It is difficult to reach a settlement where parents refuse to accept a divorce and as suggested by Schafer (1993:14-18), a child's emotional trauma is further heightened where the parents, or at least one parent, is unable to come to terms with the fact that the marriage is indeed over.
- Many divorce cases are still settled by litigation without alternatives such as mediation being considered by attorneys and their clients.
- No mediation services are available to assist divorcing couples to resolve disputes arising from divorce. Although social workers and attorneys are aware of mediation

as a concept, none of those interviewed has seriously considered promoting its use as an alternative dispute resolution mechanism.

- Social workers and attorneys were not aware that one attorney on request does mediation. This is not widely practiced as this attorney only did two cases in his career.
- Both social workers and attorneys agree on most of the reasons why mediation is not done. Some of the reasons are lack of funds by the State, lack of awareness amongst professionals and the community, need for training and the way in which services are rendered. The reasons are listed at point 4.3.2.3. It is believed that the study has contributed to create awareness amongst the professionals that mediation as an alternative dispute resolution mechanism, could be promoted.
- Social workers see mediation as giving the parents an opportunity to vent their feelings and for parents to make their own decisions. On the question of expressing feelings, recent studies (Roberts 1997:25-26 and Hauser 1995:71) suggested that the expression of feelings is an important advantage over the legal system, though if this is excessive or prolonged, it may seriously impede rational exchange and lead to a deterioration of relations, rather than an improvement.
- The attorneys are of the opinion that it is up to the attorney to try and find an amicable settlement. Some of them believe that mediation can prevent a divorce in some cases. This not the objective of mediation. When a couple enter mediation, it is with the understanding that they have decided to divorce. However, it is not impossible that a couple can reconcile during or after mediation.

5.2.2 RECOMMENDATIONS

- Social workers and attorneys, because of the many potential advantages of mediation, accept that both professions have a responsibility to ensure that the State fulfill its

obligations toward divorcing families in terms of the Mediation in Certain Divorce Matters Act, 1987.

- Social workers and attorneys vigorously promote the use of mediation and lobby the relevant government departments such as Departments of Welfare and Justice, Human Rights Commission, Commission on Gender Equality, local public representatives, women's groups and other relevant organizations to mobilize their support for the introduction of a mediation service in East London.
- A pilot project is started to introduce mediation as an alternative to litigation. In view of the lack of funds as reported by both social workers and attorneys, the pilot project is started at the family advocate's office.
- The inception of the Mediation in Certain Divorce Matters Act, 1987 did not lead to an increase in the use of mediation. The majority of people do not have access to mediation in family matters. This implies that the effectiveness of the Act need to be revisited and changes made to address the shortcomings of the legislation.

5.3 SOCIAL WORKERS AND ATTORNEYS PERSPECTIVES ON MEDIATION

5.3.1 CONCLUSIONS

- Both social workers and attorneys have identified most of the advantages of mediation as stated in recent studies (Roberts 1997:25-26, Bosman-Swanepoel et al 1998:101, Hauser 1995:71). The best interest of the child seems to be of great concern to both professions. This is in consensus with the constitution of the Republic of South Africa, which stated in chapter two that the interest of the child is always paramount in any matters pertaining to the child. In spite of the fact that both social workers and attorneys are conversant with the advantages of mediation, nothing was done by either profession to facilitate the use of mediation as an alternative form of dispute resolution in family matters.

- Some of the social workers observed the broader benefits for the whole family by regarding mediation as a way in which parents can learn conflict resolution skills which they could teach their children and use in their communities. During the twelve stages of mediation as defined by Moore (1996:66-67), the mediator assist the parties to assess various approaches to conflict management before a strategy to guide the mediation is selected. The social workers suggested that the conflict resolution skills the parents acquire or are exposed to in mediation would assist them to apply these skills not only in their own families, but also in their interaction with communities.
- Some attorneys also see mediation as useful in resolving maintenance cases, which implies that mediation could be beneficial within the family court system.
- Most of the social workers and attorneys see a role for the State in mediation with the minority favoring private mediation. A partnership between the State and non-governmental organizations in providing mediation services should be explored. The family advocate is seen as the main role player.
- Most of the attorneys feel that a mediation service should be court based and some are of the opinion that mediation should be mandatory. The reasoning for this is that people will accept the authority of the court and would cooperate. According to Goldberg (1996:370) mandatory mediation is widespread in America and she recommends that mediation should be mandatory in South Africa. This however, goes against the principle that if mediation is to be successful, it should be voluntary.
- Some attorneys suggested that the weaker party needs to be protected against the domineering one. According to the literature (Roberts 1997:104-105) it is the ethical responsibility of a mediator to ensure that participation in the mediation process is fair and equal.
- There is consensus amongst the respondents that the State has a responsibility to pay for mediation services to ensure that the service is accessible to all families who

might need it. Those families, who do have financial resources, should at least have the option of private mediation.

5.3.2 RECOMMENDATIONS

- Further research be done on how the secondary benefits of mediation such as the conflict resolution skills acquired during the mediation process, can be applied in the resolution of conflict within families and communities.
- In this study the question of mandatory mediation was raised. It is a new concept in South Africa where mediation in family law is voluntary. In spite of this, the merits of mandatory mediation need further exploration to determine how effective it could be and what role it could play in making mediation services more accessible to the broader community.
- The question of State involvement as the main provider of mediation services in relation to private mediation is further researched.

5.4 INTER-PROFESSIONAL COLLABORATION IN MEDIATION

5.4.1 CONCLUSIONS

- Social workers do not see attorneys as mediators preferring them to refer clients for mediation to social workers and for them to focus on the legal aspects.
- Social workers further see the role of the attorney as advising and informing clients about mediation and to promote it as an alternative to litigation. Recent studies (Roberts 1997:105) suggest that the giving of advice by the mediator, which is acceptable, must be distinguished from the giving of advice. The latter involves recommending strategic courses of action. The giving of information, on the other

hand, is supposed to be neutral, involving an explanation of rights, resources and terms.

- Some social workers do not see attorneys as suitably qualified to act as mediators because they would not be able to mediate custody disputes. The attorneys, on the other hand, see a role for the attorney as mediator, but would prefer social workers to mediate where custody and access is concerned.
- The possibility for co-mediation was raised by some social workers. Co-mediation as a model has been successfully practiced by organizations such as the Family Mediators Association of the Cape. Boule et al (1997:105) suggested that co-mediation is commonly used in family and community disputes. There is however, not definitive proof that it is more effective than solo mediation. The advantages and disadvantages of co-mediation are discussed in the literature review under 3.5.
- Social workers perspective on their own role in mediation is that social workers are ideal to act as mediators and that they should take the lead when it comes to custody disputes to protect the interest of minor children. It appears as if social workers understanding of their own role is totally focused on the child and not the other aspects that are also covered in mediation, such as property and maintenance.
- Social workers also identified that mediation poses a challenge to their profession. Social workers need to differentiate between the role of social worker and the role of mediator. Radford & Glaser (Pretorius 1993:77) suggested that a professional person, such as a social worker or an attorney, should remember that while donning the hat of a mediator, they have to step out of their traditional role of offering therapy and in the latter, offering legal advice. It is not appropriate in mediation.
- Further challenges facing the social workers are the community's misconception that social work is about payment of grants and pensions, that the quality of social work reports need attention, that social workers should be wary not to give away their

functions to other professions and that mediation can be used effectively to boost the image of the profession. These challenges indicate that the social workers were frank about the way in which they see their role in mediation.

- Most social workers see social workers as taking the lead to initiate a mediation service. Lombard (1992:61) suggested that the helping relationship between social workers and their clients also form part of the basic foundation of mediation, the latter is regarded as an appropriate strategy for social work intervention to empower people.
- The perspective of the attorneys interviewed on their own role in mediation is referring clients for mediation because clients always consult their attorney first when they consider a divorce. Attorneys also need to give their clients the best legal advice and to consider other options to litigation. This concurs with the role that social workers see for attorneys in mediation.
- Most of the attorneys stated that attorneys should not mediate where custody is concerned, preferring this to be one of the main functions of social workers. This agrees with what the social workers indicated about the mediation of custody.
- Two of the social workers do not have regular contact with attorneys. One in particular, SW4, has experienced her contact with attorneys as very negative. Some of the others regard their contact with attorneys as a learning and positive experience.
- Most of the attorneys interviewed, have minimal or no contact with social workers. If contact does take place, it is about cases being investigated by the social workers to make recommendations about custody of minor children. The view was expressed that contact between attorney and social worker, could be seen as bias by the opposing attorney. Where contact has taken place, the attorneys found it helpful in dealing with their cases.

- All five social workers agree that it is possible for attorneys and social workers to cooperate to assist divorcing couples. A gap between the professions exists which involves a number of difficulties.
- The basis of the above is discussed in 4.4.5.1. It appears that social workers are ignorant about the opinion that the differences in the way the two professions work and a lack of understanding, creates a difficulty for the working relationship.
- Some of the social workers do not give regular feedback to attorneys about mutual cases and it creates the impression that the social workers are not interested in their work. The two professions do not communicate effectively.
- There is a need to build trust between social workers and attorneys in order to facilitate co-operation.
- The five attorneys interviewed agree that social workers and attorneys could cooperate in assisting divorcing couples.
- Some of the attorneys suggest that social workers should always remain impartial and that in some instances, their clients feel that social workers are biased towards one party. Cohen (Pretorius:1993:78) clarifies this point by suggesting that a mediator should always remember to maintain a neutral stance, which should not be compromised.
- The attorneys also identified the need for the two professions to reach out to one another. The attorneys would refer clients to social workers if they could be sure that client would receive the services they require.
- There is also willingness amongst the attorneys if social workers could discuss their recommendations. This will place the attorney in a better position to explain to the

non-custodian parent why and how the recommendation was made by the social worker.

- Some of the attorneys believe that in some cases social work reports lack depth and that long delays are experienced before reports are submitted. Some of the social workers have also expressed the need for social workers to improve on the quality of their reports. In the light of this, it can be concluded that social workers need to assess where the problem lies and find suitable ways to address the issue.

5.4.2 RECOMMENDATIONS

- Research is done into how the social work profession in its helping relationship with clients, could use mediation as an empowering tool and how this helping relationship could be enhanced by the use of mediation.
- Mediation poses a particular challenge to the social work profession. Research is recommended on how the profession will respond to review the traditional role of social workers when conducting investigations into custody disputes. Mediation requires a paradigm shift from the traditional to the new way of resolving disputes between divorcing couples.
- The attorney-social work team can provide a framework of change for the divorcing family that neither the traditional legal intervention nor counseling can independently provide. Further research is recommended on how the inter-disciplinary team can assist the family to restructure itself.
- Social workers and attorneys in the study agree that attorneys should not mediate where custody of minor or dependant children are in dispute. Attorneys prefer to deal with legal issues. Role differentiation needs further research.

5.5 PROMOTION OF MEDIATION THROUGH INTER-PROFESSIONAL

COLLABORATION

5.5.1 CONCLUSIONS

- The lack of staff at the office of the family advocate and the fact that the family advocate only visits East London on a weekly basis, are seen as obstacles for the implementation of a mediation service.
- One of the attorneys observed that social workers have many frustrations in the workplace and they often get caught up in bureaucracy.
- Both social workers and attorneys agree that collaboration between the two professions could lead to the implementation of mediation.
- The social workers suggested that the government should adopt mediation as a program for social workers. One of the key areas identified is the need for training. None of the professionals in the sample have experience in mediation, except one attorney who had mediated in two cases. According to Radford & Glaser (Pretorius:1993:77) competent mediators should acknowledge the need for them to constantly update their skills and techniques by further and advanced training.
- Collaboration can further be promoted by advertising campaigns, workshops where the professions could reach out and jointly work on a plan, social workers to visit attorneys and promote mediation, the involvement of the community and the respective professional societies are some of the ideas generated to promote inter-professional collaboration.
- Both social workers and attorneys emphasize the role of the family advocate in the promotion of inter-professional collaboration. The family advocate seems mindful of the important role and in her submission to the South African Law Commission,

recognizes the importance of alternative forms of dispute resolution, such as mediation.

- The attorneys have concerns about the cases that are finalized in the Southern Divorce Courts in that it could happen that settlements are accepted which are not in the best interest of the minor children. Inter-professional collaboration could also address this issue.

5.2.2 RECOMMENDATIONS

- The social workers and attorneys address the need for capacity building and training around mediation by embarking on relevant training courses to develop and improve mediation skills in family matters.
- Research articles around mediation and its potential benefits as an alternative form of dispute resolution are published in professional journals to create awareness amongst professionals, such as social workers and attorneys. This might spur interest amongst professionals who would be interested to offer private mediation in family matters.
- The respective professional associations of social workers and attorneys facilitate communication and collaboration between the two professions. This, however, does not mean that social workers and attorneys should not collaborate and communicate on an individual basis. Both professions seem willing to make contact, but are not sure how to go about it.
- The use of case conferences where attorneys, social workers and family advocates meet to discuss why certain recommendations are made, to address the lack of trust and understanding between the professions, be researched. This could enhance co-operation between the two professions.

- Attorneys and social workers to embark on awareness campaigns in communities on alternative forms of dispute resolution, such as mediation. The media could be useful to disseminate information. To access rural communities, radio is the most effective communication tool. Radio stations have time slots for community affairs and they reach a wide population.

- Further research into the functioning of the Southern Divorce Courts and the use of mediation to reach settlements, could pose challenging research. It is believed that the interest of minor children could be protected and that fair settlements could be reached, if mediation is used. The issue of mandatory mediation could possibly be considered in these courts where court processes are more informal.

5.6 CONCLUDING COMMENT

This study explored why mediation is not done in East London from the perspectives of social workers and attorneys, professional perceptions of mediation, understanding the role and usefulness of mediation, social workers and attorneys perspectives on inter-professional collaboration in mediation and perspectives on the promotion of mediation as an alternative form of dispute resolution for divorcing couples.

Perhaps as our social concept of divorce incorporates more models for a constructive divorce process and a healthy post-divorce family, mediation will be seen as a service that can meet the comprehensive needs of the divorcing families.

Inter-professional collaboration, with the possibility of a team approach by social workers and attorneys, has the expertise and resources to expand the definition of mediation and to offer a broad range of services to the divorcing families, beyond the current service available to the family in East London.

BIBLIOGRAPHY

Ansty M. 1993. Practical peace-making: a mediators handbook. Kenwyn: Juta & Co

Barsky M. 1984. Strategies and techniques of divorce mediation. Social Casework: The Journal of Contemporary Social Work. Vol 65:102-108

Bell J. 1987. A Guide for First Time Researchers in Education and Social Science. Routledge: Kegan Paul Publishers.

Bosman-Swanepoel H, Fick A & Strydom N. 1998. Custody and visitation disputes. Durban: Butterworth Publishers.

Boule L & Rycroft A. 1997. Mediation: Principles, Process, Practice. Durban: Butterworth Publishers.

Butler J & Finsen R. 1993. Arbitration in South Africa. Kenwyn: Juta & Co.

Cigler E. 1986. Mediation – its significance, technology and feasibility in social work services related to divorce issues. Unpublished PhD dissertation, Rand Afrikaanse Universiteit, Johannesburg.

Constitution of the Republic of South Africa, Act Nr 108/1996. Pretoria: Government Printers

Dane F. 1990. Research Methods. California: Brooks Publishing Co.

Davis G & Roberts M. 1988. Access to agreement: a consumer study of mediation in family disputes. Great Britain: University Press

Denzin N K & Lincoln Y S. 1994. Handbook of qualitative research. California: Sage Publications.

Emery R E. 1994. Renegotiating family relationships. New York: Guilford Press.

Fisher T. 1998. Family mediation and the dividing home. Psychiatry 5 (1):19-21

Folb S. 1994. Attorneys attitude to divorce mediation and the development of a collaborative approach in a social work agency. The South African Law Journal, 3 (2):316-327.

Folb S. 1994. Mediation with the family. Welsynfokus, 29:35-42

Folberg J & Taylor A. 1984. Mediation-a comprehensive guide to resolving conflict without litigation. San Franscisco:Jossey Publishers

Goldberg S B, Sander F E A & Rogers N. 1992.(3rd edition). Dispute resolution Negotiation, Mediation and Other Processes.Canada: Little,Brown & Company.

Goldberg V. 1996. Family mediation is alive and well in the United States of America: a survey of recent trends and developments. Journal of South African Law, 2:358-370

Grinell R M. 1988.(3rd edition). Social work research and evaluation.Illinios:Peacock

Hall D & Hall I. 1996. Practical social research :practical work in the community. London:Macmillan Press.

Hauser J. 1995. Good divorces, bad divorces:a case of divorce mediation.University of America: Langham

Haynes J M. 1994. The fundamentals of family mediation.Albany:University of New York.

Hoffman W. 1989. Divorce mediation and custody evaluation-fundamental differences. Social Work/Maatskaplike werk 25 (2):105-110

Hoffman W. 1991. Family mediation in South Africa-present practice and future vision. Auckland Park: South African Association of Mediators in Family Matters.

Huysamen G K. 1994. Methodology for the social and behavioral sciences. Halfway House: Southern Books

Johnston J R & Campbell L E G. 1988. Impasses of divorce. New York:Free Press.

Kvale S. 1996. Interviews: an introduction to qualitative research interviewing. London: Sage Publishers

Lee R M. 1993. Researching sensitive topics. London: Sage Publishers

Lombard A. 1992. Mediation as a means of social work intervention to empower people. Social Work/Maatskaplike Werk, 28 (3):56-69

Marshall C & Rossman G. 1995(2nd edition).Designing qualitative research. London:Sage Publishers

Mediation in Certain Divorce Matters Act, 24 of 1987. Pretoria: Government Printer.

Miles M B & Huberman A M. 1996. Qualitative data analysis: an expanded sourcebook. Thousand Oaks:Sage publishers

Moore C.M. 1996 (2nd edition). The mediation process – practical strategies for resolving conflict. San Fransisco:Jossey-Bass publishers.

Mouton J & Marais H C. 1990. Basic concepts in the methodology of the social sciences. Pretoria:Human Sciences Research Council.

Patton M.Q. 1982. Practical evaluation. Newbury Park:Sage Publishers.

Plummer K. 1983. Documents of life : an introduction to the problems and literature of a humanistic method.London: George Allen and Unwin.

Pretorius P. 1993. Dispute resolution. Kenwyn:Juta & Co.

Roberts M. 1988. Mediation in family disputes: a guide to practice .England: Wildwood House Ltd

Roberts M. 1997.(2nd edition) Mediation in family disputes- principles of practice. England:Ashgate

Robertson J A. 1997. The law of children and young persons in South Africa. Durban:Butterworths Publishers

Robinson T & Parkinson S.1995 The practice of mediation. Social Work.Vol 40:111-112

Rogers N & Salem R. 1987. A students guide to mediation and the law. New York:Matthew Bender and Co

Rosnow R L & Rosenthal R. 1996 (2nd edition).Beginning behavioral research .New Jersey:Prentice Hall.

Rubin A & Babbie E. 1997. Research methods for social work. (3rd Ed). Pacific Grove:Brooks/Cole

Rubin H J & Babbie E. 1989. Research methods for social work. California:Wadsworth Publishing Company.

Saltzman A. & Proch K. 1990. Law in social work practice. United States of America:Nelson Hall Publishers.

Saslow C.A. 1982. Basic research designs. New York:Randon House.

Schafer I D. 1993. Law of access to children. Durban:Butterworths

Schnetler J. 1989. Survey methods and practice.Pretoria: Human Sciences Research Council.

Schurink E M & Schurink W J. 1988. Developing practise wisdom into theory: the use of qualitative methodology in social work. The social work practitioner/researcher (June):22-37

Severson M M & Bankston T V. 1995. Social work and the pursuit of justice through mediation. Social Work,40(5):683-689.

Silverman D.1997. Qualitative research – theory,method and practice. London:Sage

Smit G.J. 1995. Research – guidelines for planning and documantation.Halfway House: Southern Book Publishers

South African Law Commission. 1997. Alternative dispute resolution. Issue Paper 8

South African Law Commission. 1999. Community Dispute Resolution Structures Paper 8

Taylor S J & Bogdan R. 1984. Introduction to qalitative research methods. New York:Wieley & Sons

Van Wyk G & La Cock A. 1988. Divorce in South Africa. Cape Town:Timmins Publishers.

White Paper for Social Welfare 1997.Pretoria: Government Printers.

Yegidis B L & Weinbach R W.1991. Research methods for social workers. New York: Longman

INTERVIEW SCHEDULE

SECTION 1: BIOGRAPHICAL DETAILS

1. Participant
2. Qualification
3. Current employment
4. Current position held
5. Length of employment
6. Experience in family law – please explain

SECTION 2: MEDIATION

1. Are you aware if mediation is done in East London? Please explain
2. How often do you come across divorce cases in your practice?
3. How do you feel about the use of mediation as an alternative method of dispute resolution?
4. Could you give an example from your experience of a case in which mediation was used or attempted?
5. Are there any benefits for the disputing parties when mediation is used?
6. Should a mediation service be available to divorcing couples?
7. If so, how would you like to see such a service function?
8. Who should pay for mediation?

SECTION 3: ROLE OF LEGAL AND SOCIAL WORK PROFESSIONS IN MEDIATION

1. How do you feel about the role of social workers in mediation?
2. How do you feel about the role of attorneys in mediation?
3. How often do you come into contact with social workers?
4. How often do you come into contact with attorneys:
5. How do you see the two professions cooperating in assisting divorcing couples?
6. What role do you think mediation can or should play in divorce?
7. How do you feel about collaboration between attorneys and social workers in promoting mediation and when dealing with divorce cases?

INTERVIEW WITH PARTICIPANT E (SW5) ON 25 JUNE 1999

Purpose of interview was explained, confidentiality, participant's willingness to participate was confirmed, permission was sought to tape interview.

Q: Could you tell me about your qualifications please

A: I have a Dipl in SW four years

Q: Where are you currently employed

A: Department of Welfare Bisho

Q: What position do you hold

A: I am in charge of statutory services in the Province – I am a Chief Social Worker

Q: What is your length of employment

A: 13 years experience in social work

Q: Could you please tell me about your experience in family law

A: In family law, I have been working for the office of the family advocate, approximately 3 years, before that we did work with family law but not in such great detail as when with the office of the family advocate

Q: We will discuss a section on mediation. Could you tell me how often you came across divorce cases in your practise?

A: Ummm, since I have been working, I would say, the family advocate used to come down every second week, and that's when we used to do cases, sometimes it would take about six investigations over two or three days, sometimes we would do two a day, overall it could be 15 to 20 cases per month. That is apart from the summonses that I had to go through which could sometimes be about 80 per month, sometimes it could be less depending on what time of the year it is, if it is at the end of the year, it becomes less because the attorneys are closing. Most of the time it is a lot of summonses especially where minor children are involved.

Q: Could you possibly just say what is your role concerning the summonses

A: Summonses, I had to look at the summonses to see who actually claim custody, where the children are staying at the moment, would it be in the best interest of the children to be placed in the custody of either the mother or father, depending who wants custody, we also look if there is any problem of alcohol abuse, especially if there is alcohol abuse, we would see what access they want for the other party, everything you look at is to see if it is in the best interest of the child or the children concerned.

Q: These cases that you mentioned how are they usually settled between the parties

A: Most of them with a settlement agreement, very few I think really go to court and settled in court. Most of them I think try to settle out of court because the High Court fees are so expensive. So, you would rather let the parties come to an agreement. In cases where they really cannot reach an agreement, they have to go to court, with the witnesses concerned and then they decide custody and access in court.

(Silence)

In some instances, I think that mediation can be the best way for them to settle any divorce or access case.

Q: So, what role do you think mediation can or should play in divorce

A: It can play an important role, I think it is very important to use mediation. It actually give parents the chance to say what they feel and what they think is best. They actually come up with a solution to the problem, they basically know the problem, they both love the children, they both want the children, but when you sit together, you put together, you give each other a chance, you actually realise what you want for your child or for your children. In that way you can say that you have say in the recommendation to the court as to who should have custody. In other cases where investigations are made Somebody else makes a decision on your behalf who should get the children and what kind of access arrangement are made. I think that actually is the advantage of mediation.

Q: could you possibly give an example in your experience of a case in which mediation was attempted or used

A: Mediation in one of the cases with regard to access arrangements. With the access the wife had such a lot of conditions for the father to have access to the boy of four years at that stage. So with mediation we could come to an agreement as to what access was actually in the best interest of the child. I think in most instances when it comes to divorce the parties involved, think what is in their best interest and not what is in the best interest of the child. When they actually sit down and realise that they are a bit silly or whatever, the child sees his mother and his father everyday of his life, and now that you are separated, you do not want the child to have any contact with the other party. And yet it is important for the child to still have contact with the father or the mother. So cases can rather go the mediation regarding access.

Q: And what are the benefits for the party if they go to mediation

A: Like I said, the benefits is actually for them to sit and I would say, give whatever they have, all that aggression, anger, bitterness, came out, any divorce matter do not really want to go through with a divorce. You have anger, but I think you more angry with yourself because your marriage did not work out. And somehow or the other you try to make the other person pay for your failure. But I think when you start to sit down and realise what you doing to your child and this has to do with your child, what is best for your child's future, what is best for your child, that is when your realise that this is the best way. I don't actually say that the other party the greatest of it all is that you come up with the solution and that the two parties say that is what I want, that is what we want for our own child. I think that is very important.

Q: What do you think, should mediation services be made available to divorcing couples

A: I think very much so, mediation services like custody is very part of it, it has its advantages, I think it has more advantages than disadvantages, especially in cases were people cant come to an agreement. Lots of money is wasted on lawyers, for advocate's fees. All that money can be for your child's educational future, you can use mediation, mediation is the cheaper way and it gives you a chance to come up with something which you both feel is in the best interest of your children. It should become readily available for divorce cases.

Q: How would you like to see a mediation service function

A: My opinion is that I would believe that the lawyers would play an important role. Where most of the clients/people go to them especially the ones getting divorced; where you have a difficult case you need a contact person to maybe refer to a mediator who can make contact with the lawyers or even a social workers or even the office of the family advocate. I think some of them are also trained in mediation. I think you must have an inter link somewhere but somebody must take the key role to advise clients on mediation and what is in the best interest of the people. Because many people don't know about mediation, they don't know that you can mediate these cases, because of their ignorance they spent more money then what they can afford to spend. Somebody has to play the key role, whether it is the office of the family advocate or whether it is a lawyer.

Q: Where do you think a service like that should be based

A: I think it should be accessible to all clients, or it should be somewhere, it could be at the court building, it could be in any government building wherever clients are readily available. You could have one-stop centre, a one-stop centre, you could have social workers, a psychologist, and you have your mediator, everybody in sort of one building. But it is not always possible. That is why I say, wherever it is accessible for the clients, that should be the best place.

Q: Who do you think in your opinion is the best person to coordinate this, you say that somebody should take the lead

A: I think maybe the office of the family advocate in stead of lawyers. Not that I say I don't trust lawyers, but they will think about money first, before they think about the best interest of the children as such. The office of the family advocate is basically there for the children, they are the advocate for the children. They would know exactly when a case should rather be referred for mediation in stead of an investigation being done.

Q: Who do you think should pay for mediation service

A: If the client can afford the mediation fees, let the client pay, but should he not be able to afford, the government should have some subsidy, like they have legal aid, or maybe

have mediators working for the government and the government pay the mediator instead of the client. Just like we have social work services, we have the private social workers where the client pays and the government social workers where the government pays the social workers in stead of the client paying the social worker. People should have that option as well. The services are not so readily known we have to start somewhere and we have to build up the services so the government can see that the money they will be paying is not wasted money.

Q: You have referred to private social workers, are you referring to private mediators

A: Private mediators as well, JA. I am referring to them as well. (silence- seems unsure) Sometimes, not just social workers, sometimes you get just an ordinary mediator umm, who mediate in labour relations and all that. Anybody who has the qualification, can mediate, but I think you must have a background in family law to understand and mediate in family issues. Training in mediation in family issues is important. Even a psychologist cannot just mediate.

Q: How do you feel about the role of social workers in mediation

A: Social workers, I know it is a little bit difficult if you have to start the process because social workers are used to give the solutions and not allow the client to give the solutions. I think when we got the training, that was the problem because most of the social workers then, when we had the role play, it was really difficult to for you to give the client a chance to come up with possible solutions to their problem. You actually want to give it, but I am sure, that once you start doing it, you will be able to differentiate your role as a mediator, and your role as a social worker. I think if you can do that, then you will be able to play your role as a mediator very good as well. You as the mediator is there to guide the process and not to tell the client, but I think that is best for your child, because they are actually supposed to say that is what we think is best for our child or children and not for the social worker to say. That is why I say, if you know your role, social workers can play an important part. Because they have the background in family conflict and all those issues. So they will be able to play their part and mediate that.

Q: What impact do you think social workers can have on the mediation concept

A: What impact? (sound unsure) I think social workers can have a very good impact because most of them are there for the children. We work for the best interest of the children and so can have a very good impact. I think if they have to start the process as well, it can boost the image of the social workers and people can know what you are doing. It is something that you are doing and it is something where you are not giving the solutions, but people are coming up and you could have assisted those people in coming up with the solutions. In the end if it is accepted by the judge, it will be good.

Q: Could you possibly explain, why do you say that the social workers need to boost their image with mediation

A: I think most of the social workers would feel that we are not that important a profession because other professional people walk over us. Umm, it is not the case. If you know what you are doing, you have your facts and know what you are doing, you should actually come up with your suggestions, most of us actually allow people to walk over us. Sometimes there are cases where we really don't do a proper investigation and it is time for us to know that people are becoming aware of their rights. We also have our rights, but we have to know that we have important families and children. Whatever we do, we must look at the reliability. If we do a proper investigation, we are sure about our facts, then nobody can, even if we compile a report, and do it to the best of our abilities. If we get feedback from other professionals, a judge or a lawyer that says your report was good. It actually helps you to gain more confidence in what your are doing is right. And not only that, you are doing something to the benefit of society and the children or families. It will help to enhance the profession because people think that we are only dealing in grants to the people. That is not the case, we need to show what we are really doing.

Q: You did mention lawyers earlier, how do you feel about the role of lawyers in mediation.

A: Lawyers have an important role because lots of people go to lawyers, most of them are referred to lawyers when it comes to divorce cases. They then decide if clients can afford the fees of the High Court when it comes to the difficult cases. They could actually have been referred to mediators. The client will go back to the lawyer once they come up with what you want for the child, who will get custody and the kind of access. They go back to the lawyer and it does not mean we are taking over the role of the lawyer. No, they still need the lawyer and will go back to the lawyers. They will have to play a key role for them to see if it is a case for mediation and is able to refer to mediators. As I say, they have a very important role.

Q: Do see any other role for lawyers except the referral part?

A: They all have an important part, (sounds uncertain) each of us in our own professions, know exactly what we supposed to do, that why I say there is a role for lawyers, they know what to advise the clients on legal terms. I would not be able to do that. I might if at all but you have to know your limits and know that it is not your process, but the lawyer that must advise, be it the movable or immovable property, the money, all the assets, how the legal process works, and all that(laughs)

Q: Do you see any role for them as part of the mediation process as such

A: To be a mediator as such, I don't think so, maybe someone else would differ, but I do not believe that they could be mediators because I don't see that they will be able to differentiate between what they say and what they are supposed to do. That is why I do not want to see them, although they will be an important link to the mediator. The mediator, not the whole report of the mediation process, but what they come up as a decision of the process and refer it to the lawyer. So there will always be that link between them, but I don't think, maybe some of them could, but I am not sure about that. I do not agree that they should be mediators.

Q: How often did you come into contact with lawyers during your practice

A: When working for the office of the family advocate, you basically have daily contact with lawyers. They always finding out how far you are with their client's cases, or if they have a problem they would always come or if they need any advise they have to give to their clients, they would always contact you as well. So I would say that I had very regular contact with lawyers.

Q: And how would you see that contact, how did you experience the contact with lawyers

A: For me it was a learning process, it was a positive experience, to work with a totally different profession umm, and I think your relationship with them must be good umm, you have to understand the dynamics of their work as well. Sometimes you get those few who are negative and say things that make you angry but in the end you realize that they are not fighting you but that they are fighting for their clients. So that is what is important for them. I am fighting for my client, for the children. He or she is fighting for their clients. That is how I feel. I did get negative feedback from them, saying I did not do my job properly, if I make a recommendation that was not in their favour, so that is how they would come across. But if you can just learn to appreciate their work and to know that they all say that, they have nothing against you, I have to fight for my client. So if you have that open relationship with the lawyers, you will actually understand what they had to do, they have to go the extent for their clients. Even if they know it would not be in the best interest of the children to be placed in the custody of their client, they would still fight for their client. I think that something we can learn from them, if you know you right, they fight even if they wrong, and when you are right you must fight to the bitter end. I really did not have a problem, mostly a positive experience.

Q: How do you see the two professions cooperating to assist divorcing couples

A: Very well, because I always work well with the lawyers being a social worker, I can recall only one case where the lawyer himself did not know how to handle the case, his client was very difficult, wanting this and the father could not do this, she only wanted the father to see the children when he was off duty, and he was off every six weeks, every sixth weekend, and he felt that it would be unfair towards the children but because his

client was paying him, he did not want to say that it was not in the best interest of the children. We actually arranged for a come together where it was me, the lawyer and the client together, and we sat and we could actually convince the client but this is not in the best interest of the children and that is how we actually got the settlement to change before it went to court. And that is why I say that there should always be a working relationship between the two professions. In other cases as well, maybe criminal cases or whatever, where we work together because you will always be asked to do an investigation of the family or person. There should always be that relationship.

Q: So, how would you say you feel about direct collaboration between social workers and lawyers – specific about divorce cases

A: Silence. —There should always be a good cooperation between the two when working with these cases because umm the lawyer sometimes have very important information and maybe he will get negative information from the other party or of the other party, they would always give it to you. You can have a clue for what to look for in your investigation. Maybe that is only a story and you have to find out whether it is good for the children or is it a fact. So, working together actually assist in bringing out the best. If it is in the best interest of the children, whatever information we have, or any information, you will not give him the confidential information but whatever you feel will guide him in specific things, or the lawyer himself will ask you what should be done. What is so nice, they do not only come to you with negative things, but if they want advice or they need to know something more about the case, they also speak to you about it. If there is a relationship with the lawyers it would be easier to work with them with regard to anything, if you need information about anything, maybe not on your specific case, maybe about something else at a later stage, you can always have an open line and know that you can speak to the other person. It is very important to collaborate and to work together very well.

Q: You seem to have had a positive experience with lawyers, do you think that is the case with other social workers

A: I would not say with all social workers because I did hear negative feedback from other social workers as well as from lawyers umm. You would not encourage them to talk badly about your colleagues in front of them but they would say something, negatively about you colleague, maybe they don't work properly or they do not get the cooperation they need to get. I don't think all social workers have that positive experience, some social workers are very negative towards lawyers. Because you know lawyers can be a little pushy or they want to get things from you in a hurry and they don't always understand why you are taking your time with an investigation or writing your report. So that is why when you are in that situation, you will regard it as negative and that will affect your relationship with the lawyers. Some of my colleagues have a positive relationship and some a negative relationship.

Q: What would you say are the reason for this, I do not want to say poor relationship, but with the social workers who have poor relationship with the lawyers

A: I don't know, I don't understand what the lawyers are doing, or what the lawyers would say about the social workers (laughs) and you cant expect that if you make a recommendation, which would be for a child, which would be for the rest of his life, you would not want that to be to the disadvantage of a child. So when you do an investigation, you want to do a proper one and see and really come up with a good recommendation and a very good report. The lawyers do not always understand that because they feel they want the work to be done now and they want the work now. They do not understand. That could also be a reason why the relationship is not that good, and maybe they get word to one another, they become negative in the relationship, each one should work on the relationship I think. Maybe sometimes you cannot get hold of the person, sometimes if I had a problem with the client and cannot get hold of him, I phone the lawyer and say – Listen, I am having a problem with the investigation because I cant find the client, I phone how many times already for him to come in and he does not respond. Could your help. I find that some social workers do no worry when the client does not come and do not give feedback. The lawyers are then under the impression that we are not interested in the investigations.

Q: Do you know if any mediation is done at the family advocates office in EL

A: In EL specifically, no. I don't know since I have gone but I was here we did not do formal mediation although we had a few mediation sessions. It was not that formal I would say. I do not know what is happening, there was training for the family counselors and it was supposed to be in place already. I know that they are doing it in PE but in EL I am not sure.

Q: What are the reasons that you can think of why mediation is not done

A: I think with anybody there is a resistance to change and maybe because mediation is new for the family advocate and family counselors. To start the process is not that difficult but I think one should start with it. There should be no stopping you. I think that is what is difficult, it is to start it, because you are used of working to working in the old way. That is how you done it, that is how you getting your information; and you do not want to change from that. I think that they should actually make a start with it, the sooner they start the better and the more experience you can gain, you can build up the confidence in mediation for the families involved. You can start with the cases by going through it and look at your own cases.

Q: You mentioned that people are not aware of mediation, how do you think people can become more aware of this option

A: I think there are cases that are brought to the attention of the family advocate, they can arrange the conference and discuss it with the client and tell them about the other option. That you can go through the process of mediation and tell them what the process entails, who will be the mediator, will it be someone they know, tell the parties, what can I say, you have to advertise now. You can use words and even put something in the newspaper, or talk about it over the radio, or having pamphlets all over, so that people can be aware of it and people can know that there is another possibility. I think that is what you can do and it will be worth it.

Q: If I ask you to summarize your feelings about mediation, how would you do it

A: I am very much for mediation, I think, like I said it is positive, it has more advantages than disadvantages. I think one is financially, you pay much more in lawyer's fees, and for court fees. In the mediation process, you pay less and you can come forward and say this is what I want for my child, and the two of you can actually sit down. Maybe, for some other reason you did not have the opportunity to sit down, and listen to one another and both say this is what we want for our children. Any social worker, family advocate, judge or outside person does not know the family dynamics, you know your child and you know where it is best for your child to stay after the divorce or what would be the best for access arrangements. This why I say that mediation is the best option of all. To say this is what we want for the child, it can start negative but will end positively. If you do your investigation and make a recommendation, one party can never be satisfied. But in mediation, they can say this is what we agreed to. That is why mediation can work better.

Q: Do you have anything else that you want to add

A: No, umm I think that social workers and lawyers should work on their relationship, I believe they could be more positive, they must understand the dynamics of each other's professions. Things are changing quickly, and if they can come together, even if it is once a month to learn from each other that can help to promote a positive relationship

Q: At what level do you see the two professions coming together

A: I do not know how the lawyers work, but we welfare, the Department, the Heads of Dept in the field should maybe form a forum where they can meet with each other. Even if it means that the social workers should take that initiative.

Q; anything else you like to add

A: No, I think I covered it.

Thank you for your time.