

**A META-ANALYTIC EXAMINATION OF
DIVORCE MEDIATION OUTCOME RESEARCH**

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ABSTRACT

As more and more divorcing couples use mediation rather than the traditional litigation process to resolve their divorce issues, the effectiveness of mediation has captured the attention of researchers. However, the results vary across divorce mediation and litigation outcome studies. Because a quantitative review has never been performed and the overall efficacy of mediation as an alternative dispute resolution process has not been determined, it was decided to conduct a meta-analysis on this literature. Based on the five studies that met the established inclusion criteria incorporating 71 couples, 569 cases, and 320 participants, it was found that mediation produced a grand effect size of .36. This small, but moderate, effect size reveals that across the included studies mediation is a beneficial alternative to litigation for divorcing couples. Several dependent variables measuring process, outcome, and emotional satisfaction, as well as spousal relationship and increased understanding of the children's needs were aggregated across the studies and rendered moderate positive effect sizes. The results also provide direction for future research and implications for the practice of mediation.

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CHAPTER I

REVIEW OF THE LITERATURE

Over the past three decades mediation has made a name for itself as an alternative dispute resolution process for divorcing spouses. This is due in part to the increase in divorces that occur each year, and in part to dissatisfaction with the litigation process (Twaite, Keiser, & Luchow, 1999). Over the past few years, research comparing the outcomes of litigation versus mediation has grown. Although there is qualitative evidence to suggest that mediation is superior to litigation, an empirical review of the literature comparing the two has yet to be done. Consequently, the present study conducted a meta-analytic review quantitatively summarizing the outcome of mediation when directly compared to litigation. Given this objective, it will be necessary to understand better how mediation differs from litigation in its process and goals. To begin, it is helpful to discuss how mediation has historically been defined.

Defining Divorce Mediation

Because the models of divorce mediation encompass a wide range of processes, mediation is difficult to define. Over the years, researchers have adapted their definitions to describe divorce mediation better, yet no definition seems broad enough to capture all models of mediation. The following list of definitions shows the discrepancy and evolution of defining divorce mediation: (a) “Mediation...can be defined as the process by which disputants attempt to reach a consensual settlement of issues in dispute with the assistance and facilitation of a neutral resource person or persons” (Folberg, 1983, p. 8);

(b) “The mediation process can be defined by a description of predictable stages that include a series of techniques for accomplishing necessary tasks; it is a finite process that produces specific outcomes, using the values, norms, and principles of the participants rather than those of the neutral third party mediator” (Taylor, 1988, p. 61); (c) Mediation is “a cooperative, task-directed, goal-oriented, dispute-resolution process whereby a neutral third party intervenes to assist parents to identify areas of conflict and agreement, and to reach a settlement which is satisfying to both parties” (Meyer, 1992, p. 11); (d) “Mediation is a task-oriented, time-limited, alternative dispute resolutions process (an alternative to litigation) wherein the parties, with the assistance of a neutral person or persons, isolate disputed issues in order to consider options and alternatives and to reach consensual settlement” (Beck & Sales, 2001, p. 3).

Without a generic definition for divorce mediation, it is difficult even to make comparisons between approaches. As the field of mediation searches for a universally accepted definition, Folberg (1983) suggests that the definition grow and change with the field and establish parameters that accommodate the rich variety of detail that exists among approaches. For the purpose of this study, divorce mediation is defined as a process in which a third party assists in the negotiations of two divorcing parties to reach a mutually acceptable agreement.

Benefits of Divorce Mediation

Mediation is used as an alternative to litigation because it is believed to render valuable benefits for divorcing couples. To date, researchers have shown that mediation produces more satisfactory outcomes for divorcing couples as well as a more satisfactory process than litigation (Emery & Wyer, 1987; Emery, Matthews, & Wyer, 1991; Kelly,

Gigy, & Hausman, 1988; Kelly, 1989). Specifically, compared to litigation, mediation clients reached agreements more quickly and more often, reducing the frequency of custody hearings (Emery et al., 1991). Furthermore, mediation participants have reported a higher level of satisfaction with the effect of mediation on themselves, their children, and their relationship with their former spouse than litigation participants (Emery et al., 1991). More recent research suggests that parents who mediate address more issues than parents who litigate in parenting plans (Haigh, 1999). Specifically, parents who mediation often discuss the following issues: behavioral expectations involving finances, power and decision making, emotional relationships with their children, scheduling, and handling future problems on which they do not agree (Haigh).

Those who have reviewed the literature qualitatively explain that divorce mediation is advantageous for several reasons. In particular, mediation reduces overt conflict between spouses, is more affordable than litigation, allows for a process and outcome that meets the individual needs of the spouses, empowers the spouses through active participation, allows for self-determination, is private, increases child support payments, enhances adjustment for the parents as well as the children, teaches parents how to use problem-solving skills, and allows divorcing spouses, in this time of crisis, to deal with root causes of conflicts and problems (Twaite et al., 1999; Beck & Sales, 2001). In short, mediation seems to be more beneficial to divorcing couples than litigation.

Similarities in Divorce Mediation Procedure

Although there are many different mediation approaches that will be discussed in this paper, it is important to note that there are certain procedural similarities across

programs. As described by Beck and Sales (2001), mediation typically involves the following stages:

1. The process and goals of mediation are explained, in detail, to the parties.
2. Parties are seen individually to screen for domestic violence.
3. Parties are brought back together and present their positions, name issues, and negotiate.
4. The mediator drafts an agreement indicating the decisions reached. (The agreement is usually sent to the parties' attorneys for review.)

Susan Brown (1985) suggests that all styles of divorce mediation are helping interventions that are goal-oriented and aimed at problem-solving. Brown states that across the different forms of divorce mediation, "the mediator's role is to help participants explore alternate solutions to their conflicts, address the needs of all concerned parties, and develop their own end product, usually a written agreement on all or most of the issues under negotiation" (p. 49). Clearly, there are some common mediation procedures and objectives that exist among the variety of mediation models.

Models of Divorce Mediation

As previously mentioned, the practice of divorce mediation is widely varied. As Beck and Sales (2001) reviewed the literature, they noted that divorce mediation varies across a number of factors. As a result, there are several different models of divorce mediation. These models differ on:

- basic assumptions
- emphasized techniques
- behavioral commitments imposed on the clients

- confidentiality of the mediation sessions
- issues to be settled
- criteria used to exclude cases from mediation
- means by which cases are referred
- mediation setting
- the number of sessions offered
- qualifications of the mediator
- presence or the extent of lawyer involvement.

The range in mediation approaches is attributed by some to be the result of a lack of consensus regarding the goals and process of mediation. That is to say, some mediators focus on specific divorce-related issues while others encourage conversation about any issue raised by the participants (Twaite et al., 1999). Furthermore, differences in mediation may reflect the educational background of the mediators. Specifically, it has been suggested that mediators from the legal profession tend to be more directive and settlement oriented, while mediators with clinical backgrounds tend to be more concerned with personal and mutual understanding (Twaite et al.). The following review will discuss four dominant approaches to divorce mediation. There are other approaches to mediation generally, but these four models have been specifically developed for use in divorce mediation.

Therapeutic Model

The therapeutic model of divorce mediation is usually practiced by mediators from the mental health profession (Milne, 1983) and is most often used in court-connected divorce mediation (Brown, 1985). It assumes that relational processes

between a divorcing couple can handicap their negotiating ability and make them ineffective problem-solvers (Beck & Sales, 2001). Therefore, the first goal of therapeutic mediation is to address and resolve emotional issues (Beck & Sales), because they are thought to be at the root of substantive issues (Brown). Consequently, therapeutic-oriented mediators insist emotional issues are resolved before substantive issues are discussed (Brown). After emotional issues are resolved, the goal of mediation is to develop an equitable agreement that will address the needs of the couple over the long term. Further, because this style of mediation is partially focused on the children and their needs, the mediator also takes on the role of an educator teaching parents about the developmental needs of children. The mediator's role also includes interpreting the children's interests and ensuring that the resolutions are in the children's best interest. Additionally, mediation usually includes custody and visitation issues to reduce the chance of children being used as pawns during financial negotiations. Finally, lawyer involvement may be limited and in some cases clients are asked to sign an agreement that they will not see an attorney during mediation (Beck & Sales). Overall, because of the therapeutic focus, this model requires more hours of service than other models (Beck & Sales), in general eight or more sessions (Milne).

Legal Model

This style of mediation is based on O. J. Coogler's (1978) structured model of mediation. To understand the history of the legal model, it is essential to explain Coogler's original structured approach.

Coogler's structured mediation model was heavily based on a procedural order. In particular, Coogler required disputants to proceed from issue to issue in a set order

(e.g., first custody, then property, then support) because he believed the issues of custody and property must be resolved before an adequate and fair amount of child or spousal support could be determined. Coogler's model also included a set of rules requiring negotiations to be cooperative, foster open communication, create an atmosphere of trust, and support self-determination. To gain commitment, the rules of this mediation asked participants to pay up front for 10 mediation sessions, agree to turn unresolved issues to arbitration, and sign a contract to confirm their understanding of the rules, roles, and definitions and agree to follow them. Furthermore, Brown (1985) explains:

The rules equalize power of the spouses before, instead of during, the process of bargaining. Since they explicitly delineate roles for each party and for the mediator that require cooperative problem solving, the rules help to eliminate bargaining from positions of immovable power. They not only specifically define such substantive issues as child support, custody, and marital property, but also set out guidelines for division of property and for child placement that are consistent with state laws and fundamental rules of equity, making it easier for couples who are naïve bargainers to bargain effectively and fairly...In structured mediation, the rules governing the mediation contain explicit values that are based on fundamental principles of fairness and the prevailing legal standards. In agreeing to follow this structure, the participants have agreed to work within the same value framework. Yet, even within this framework, the couple may reach an agreement that the mediator feels is unjust. The rules allow the mediator to disavow the agreement. (pp. 60-62)

Other researchers describe a less formal construct of Coogler's structured model, and more recent writers identify this approach as "the legal model" (Beck & Sales, 2001; Brown; Milne, 1983).

The legal approach to divorce mediation is typically practiced by mediators with a law background such as attorneys (Milne, 1983). Some explain that finances and property are the primary issues of negotiation; however, custody and visitation may be discussed but are not often highly contested (Milne); there are others that argue all disputed issues should be discussed (e.g., division of property, support, custody, and visitation). Moreover, the legal model assumes the parties are rational and will commit to a cooperative process. Discussion of emotional issues is discouraged and is believed to threaten cooperative problem-solving. Thus, events leading to the couple's decision to divorce are discussed only when they relate to the couple's readiness to mediate and when a couple is overwhelmed with unresolved emotional issues they are referred to counseling. Like Coogler's model, the divorcing couple is often encouraged to pay for 10 hours of mediation in advance to promote commitment to the process. Although this structure allows for more than 10 hours of mediation, the parties are encouraged to develop an agreement within this time frame. Legal-based mediators offer options, discuss advantages and disadvantages, and control the process by retaining the power to open and close negotiations on issues. However, mediators in this structure refrain from advocating for, or educating parents about, the interests of the children. Finally, parties are required to agree to use an impartial attorney to prepare the negotiated agreement once it has been reached or submit their case to an arbitrator should they fail to reach an agreement on all issues.

Communication and Information model

This model was described by Ann Milne (1983) as the interdisciplinary model but more recently it has been labeled as the communication and information model (Beck & Sales, 2001). Nevertheless, the communication and information model is practiced by a team composed of an attorney and therapist (Milne). It assumes an attorney-therapist mediator team is the most efficient way to help divorcing couples resolve disputes (Beck & Sales). The attorney-mediator provides legal advice, drafts the agreement, assists in problem-solving, and focuses on settlement details while the therapist-mediator educates the parties on the needs of the children, informs about what to expect in the future, teaches communication skills for problem-solving, and focuses on how the couple negotiates the issues. To begin, this model assesses the couple to ensure they are ready to negotiate. If the couple is not ready for negotiation, then the therapist-mediator meets with them for 5 to 10 sessions to help them assess their relationship. Once the couple is ready for negotiation, all issues are discussed separately to provide clear structure during the negotiation phase. The communication and information model emphasizes separating emotional issues from topical ones. It seeks to resolve all divorce issues, yet custody and visitation are usually not highly contested. As a result, the focus of mediation is often on working out a cooperative financial and property agreement. When an agreement has been reached, the attorney-mediator drafts the agreement and handles the court proceedings. To end the process, the couple is given a list of community resources as well as books and articles to help them understand their personal experiences during the transition of divorce.

Labor Management Model

The labor management model is most often used in the private sector of divorce mediation (Brown, 1985). Beck and Sales (2001) explain that:

The labor management model assumes that give-and-take bargaining on the part of equals representing their own interests will produce a mutually acceptable solution... Adequate agreements are defined to meet eight criteria: full disclosure of economic assets, equitable division of assets, no victims, open and direct channels of communication between parents, protected parental roles, assured access to children for both parents, an explicit process for making future decisions, and assured access to important relatives from the child or children.

(p. 10)

It is also assumed that the negotiations will take place within a value structure that is determined by the parties' own sense of fairness, rather than the mediator's sense of fairness or rules. In addition, mediators assume that the negotiation process is, at base, monetarily oriented and, regardless of the substantive issues being discussed, helps each side bargain for the best possible financial settlement. Before negotiation, clients are asked to talk about their relationship to bring their anger issues to the surface. If the couple is not able to move beyond the anger to negotiate substantive issues, the mediator refers the couple to counseling. Generally, labor-based mediators adopt the roles of educators and active problem solvers. That is to say, they teach bargaining skills, take an active position, suggest options, assess whether or not there is a power imbalance between the couple (and balance it if there is), protect the needs of the children, encourage compromises, hold private caucuses, and remind the parties of the unfavorable

consequences of not reaching an agreement. The mediator's allegiance is to the process, not to the individual parties or to their children; however, if the couple loses sight of the interests of the children, the mediator will represent those interests to the parents in order to keep the negotiations on track. Labor-based mediators use techniques like shuttle diplomacy (to enable the mediator to learn the parties' real interests), emotional attachments, reduction of disputant expectations, enforcement of nonreversible concessions, and are likely to reserve closure on major disputes until agreement on the entire package has been reached so that parties can make tradeoffs on items among and within major disputes in order to obtain a final package. Although these mediation models share basic goals, each makes its own assumptions and uses different techniques.

Mediation versus Litigation Literature: Which is Better?

As previously noted, mediation research suggests that mediation benefits divorcing couples. Emery et al.'s (1991) Charlottesville Mediation Project, Kelly & Gigy's (1989) Divorce and Mediation Project, and Pearson & Thoennes' (1988) Denver Custody Mediation Project (CMP) are three major studies in the mediation and litigation literature that are widely cited. Overall, these studies have compared the relative effectiveness of mediation compared to litigation. Generally, as noted earlier, these studies suggest that, across a variety of indices, mediation outperforms litigation. However, there are exceptions. Thus, a closer look at this literature is warranted.

User Satisfaction with Process and Outcome

Participant satisfaction is inconsistent across these studies. Pearson & Thoennes (1988) found that individuals who are in mediation are much more satisfied with the process regardless of whether or not they reached an agreement. However, Emery et al.

(1991) discovered a difference in satisfaction between mothers and fathers. Specifically, they observed that although mediation fathers were significantly more satisfied with their process and outcome than litigation fathers, litigation mothers reported more satisfaction with their agreements than mediation mothers. Paradoxically, women in the Pearson and Thoennes and Kelly et al. studies reported that mediation helped them understand their ex-spouse's point of view. Yet, interestingly, Kelly et al. (1989) also found that men who litigated rated their divorce process as more helpful in understanding their spouses' point of view than did mediation males.

In other areas, this research strongly supports that mediation participants are more satisfied with the mediation process and its outcomes than mediation. First, mediation couples reported that mediation helped them focus on the needs of their children (Pearson & Thoennes, 1988), as well as increased their understanding of their children's psychological needs and reactions more than did adversarial (i.e., litigation) participants (Kelly et al., 1989). Second, mediation participants enjoyed the opportunity to air grievances and were reportedly able to identify the real or underlying issues through the mediation process (Pearson & Thoennes); furthermore, women who mediated were most likely to report that the mediation process helped them stand up for themselves (Kelly et al.). Third, mediation respondents were significantly more likely to perceive spousal support as fair and were more likely to perceive that they had equal influence over the terms of their divorce agreements than were adversarial participants (Kelly et al.). Fourth, mediation couples were more likely to report that they would have been comfortable with their spouses' settlement had it been their own; that is, they were more willing to exchange terms of agreement, suggesting a greater degree of perceived fairness

(Kelly et al.). Fifth, Kelly et al. found the mediation group was significantly more satisfied with their property agreement at the completion of mediation compared to the adversarial group's final divorces. Also, the mediation group was more likely to report that the custody and visiting arrangements they negotiated would be better for everyone in the family than adversarial participants. Finally, mediators were seen as significantly more helpful by their clients in identifying useful ways to arrange custody and visitation than were attorneys, whereas the adversarial group perceived that their attorney imposed his or her viewpoint on them (Kelly et al.). Overall, then, mediation outperformed litigation in helping participants focus on their children's needs, dealing with underlying issues, perceiving they had equal influence over the terms of the agreement, viewing their agreement as fair, and negotiating a mutually desirable custody and visitation plan.

However, there were some satisfaction variables on which no group differences were found suggesting that mediation and litigation couples were equally satisfied. Specifically, both groups said that their process helped them identify very important issues and problems, felt they had sufficient understanding of details of their property and financial situations, deemed the amount of practical information or advice they were given to be adequate, and perceived the information to be sufficient to protect their own interests (Kelly et al., 1989).

User Dissatisfaction with Process and Outcome

In other ways, Pearson and Thoennes (1988) found that mediation participants were dissatisfied with the mediation process. Half of the respondents in the DMRP described mediation sessions as tension-filled and unpleasant, while 20-30% of them described the process as confusing.

Additionally, many DMRP respondents reportedly misunderstood the goal of mediation (e.g., some participants were annoyed because they thought the goal of mediation was to save their marriage, others interested in saving the marriage were upset that the mediator did not urge the other partner to give the marriage another chance, and some thought the mediator would make the final decision or that mediation was another form of counseling).

Some mediation participants felt mediation was rushed, and women who mediated were more likely to report feeling pressured into an agreement by their ex-spouse, feeling uncomfortable expressing their feelings, feeling angry during the many of the sessions, and finding the mediator to be so directive that these female participants felt the terms of the agreement were handed to them (Pearson & Thoennes, 1988).

Compliance and Relitigation

Another discrepancy among these studies concerns compliance and relitigation of agreements. Emery et al. (1991) found that significantly fewer court hearings were held for partners who mediated custody. That is to say, 27 of the 35 mediation cases ended in a verbal or written agreement, and only four of the eight unresolved cases went to court. However, Pearson and Thoennes (1988) found that the mediation couples are just as likely to return to court to modify their divorce agreement as litigating couples.

Impact on Spousal Relationships

Research results are also inconsistent concerning the effect mediation has on a party's relationship with his or her ex-spouse. Pearson and Thoennes (1988) reported that mediation appears to have only a modest ability to change basic relationship patterns between divorcing spouses or to promote cooperation; that is to say, although mediation

does not produce cooperative couples, it is less damaging than the litigation process. On the other hand, Kelly et al. (1989) found that the mediation process was perceived as being more beneficial to the spousal relationship than the adversarial proceeding. In fact, the adversarial group was significantly more likely to report that the divorce process had caused deterioration in their communication compared to mediation respondents (Kelly et al., 1989). Still, Emery et al. (1991) observed that fathers did not differ between groups regarding acceptance of marital termination or conflict in child-rearing; however, mediating fathers were significantly more satisfied with the effect of the dispute resolution procedure on themselves, their children, and their relationship with their former spouse than litigating fathers. Yet, mothers who mediated reported significantly less acceptance of marital termination than mothers who litigated (Emery et al., 1991).

Cost and Time Benefits

In some of this research, mediation saved participants a modest (e.g., about \$680) amount of money when an agreement was reached (Pearson & Thoennes, 1988). Others reported the mediation group reached agreements significantly more quickly than the litigation group (Emery et al., 1991) and saved divorcing couples between 2.5 – 3.5 months (Pearson & Thoennes, 1988).

Custody, Child Support, and Visitation Agreements

Unlike some of the variables previously discussed, research seems to agree on the effect of mediation on custody, child support, and visitation. Specifically, significantly more joint legal custody awards were made in mediation than litigation (Emery et al., 1991; Pearson & Thoennes, 1988); however, there were no group differences on the amount of child support to be paid (Emery et al., 1991; Pearson & Thoennes, 1988) or on

the number of days the children were to spend with the nonresidential parent (Emery et al., 1991).

Summary of Mediation and Litigation Studies

After reviewing the results of these three major studies, it seems that divorce mediation does in fact provide more benefits than litigation for divorcing couples. However, several of these results show no difference between groups; some even favor litigation. Thus, it seems necessary that the mediation versus litigation literature be quantitatively reviewed to investigate the degree to which mediation is more effective than litigation. Although several researchers have qualitatively reviewed the mediation versus litigation literature, to date the mediation outcome literature has not been quantitatively summarized. This was the goal of this study.

Meta-Analytic Technique

Meta-analysis is a technique used to survey research literature (Grimm & Yarnold, 1995). Beck and Fernandez's (1998) study described meta-analysis as a "quantitative procedure for evaluating treatment effectiveness by calculating effect sizes" (p. 65). The effect size expresses the magnitude of difference between treated and untreated subjects and is stated in standard deviation units allowing comparison among studies. Furthermore, effect size allows computation of summary statistics like the grand effect size, a statistic that indicates overall effectiveness of an intervention across studies.

The meta-analytic process is founded on the conceptual basis of sampling error (Arthur, Bennett, & Huffcutt, 2001). Sampling error is the difference between the distinctiveness of a sample and the population from which the sample was drawn. Because a sample usually represents only a small fraction of the original population,

sampling error is likely to occur. Arthur et al. explained that sampling error has a similar application of classical test theory:

Classical test theory maintains that a person's actual score on a test is a combination of his or her true score plus an unknown (i.e., random) error component. By extension, sampling error maintains that the relationship across all of the participants in a given study, whether represented by an effect size statistic (d) or by a correlation coefficient (r), is a combination of the true size of the relationship in a population plus an unknown (i.e., random) error component.

(p. 5)

Therefore, each study included in a meta-analysis represents a sample. This sample is likely to differ from the population from which it was taken by an unknown amount of sampling error (Arthur et al.). Because sampling errors tend to form a normal distribution with a mean of zero (i.e., the sampling errors in one direction balance the sampling errors in the other direction), when the mean sample-weighted effect is computed across all studies included in a meta-analysis, the resulting value is mostly free of sampling error. As a result, the grand effect size (i.e., the mean d value) is a direct estimate of the effect of an intervention if it were possible to test the entire population (Arthur et al.).

Despite its advantages over qualitative methods of review, meta-analysis has raised certain concerns which call for specific solutions. Of particular concern for this study is the so-called "apples and oranges" problem, the mixing together of disparate dependent measures into a grand effect size. Specifically, success in mediation could be judged across a variety of indices ranging from money and satisfaction to the number of

sessions. To handle different dependent measures typically, along with the grand d , researchers compute effect size estimates for distinct groupings of dependent measures. Calculating effect sizes for aggregated dependent variables allows effectiveness to be judged across many distinct dimensions. This procedure was adopted in this study.

The Present Study

Because the results vary across divorce mediation and litigation outcome research, the effectiveness of mediation, as it is currently practiced, is unclear. For example, Emery et al. (1991) reported that mediation is helpful to divorcing couples, while Pearson and Thoennes (1988) found that mediation may not be more beneficial but is at least as helpful as litigation. To measure the efficacy of mediation, a quantitative review is needed. The goal of the present study was to use meta-analysis to review this literature quantitatively so that the difference between mediation and litigation may be statistically summarized. It is predicted that the meta-analytic comparison will render a positive grand effect size indicating that mediation is more effective than litigation.

Table 1

Characteristics of Individual Studies Included in the Meta-Analysis

Study	N	RA/RS	Method of Data Collection	Mediation Setting	Issues Mediated	DV
Emery, Matthews, & Wyer (1991)	71 couples	RA/RS	SRQ, SI CRD	Court-Based	CC, V, CS	SP, SO, ES, OS, ISR
Jones & Bodtker (1999)	169 cases	No	SRQ, CRD	Court-Based	CC	SP, SO, OS
Kelly (1989)	236 participants	No	SRQ, SI	Private	ADR	SP, SO, ES, OS, ISR, CN
Marcus, Marcus, Stilwell, & Doherty (1999)	400 cases	RS*	CRD	Private	ADR	FO
Meyer (1992)	84 participants	RS	SRQ	Court-Based	CC	SP, SO, ES, OS, CN

N = number of subjects, RA = random assignment, RS = random selection, DV = dependent variable, MG = mediation group, LG = litigation group, SRQ = self-report questionnaire, SI = structured interview, CRD = court record data, CC = child custody, V = visitation, CS = child custody, ADR = all divorce related, SP = satisfaction with process, SO = satisfaction with outcome, ES = emotional satisfaction, OS = overall satisfaction, ISR = impact on spousal relationship, CN = increased understanding of children's needs, FO = financial outcomes.

* Random selection only occurred for the litigation group

CHAPTER II

METHODOLOGY

Inclusion Criteria

A computerized database search of PSYCINFO and *Dissertation Abstracts International* using key terms such as *divorce mediation*, *mediation and litigation*, *family mediation*, and *mediation outcomes* was conducted. Additional studies were located by reading the reference lists of the identified studies. Only studies comparing divorce mediation and divorce litigation on outcome variables were selected. That is to say, for inclusion in the analysis, studies had to (a) use a “between groups design” in which a mediation group was compared to a litigation group; (b) measure both groups on at least one outcome variable; (c) use mediation and litigation in a divorce context; and (d) report sufficient data to compute effect sizes. Applying these criteria rendered five usable studies for the final sample including four published studies and one unpublished dissertation.

Characteristics of Individual Studies

As seen in Table 1, the final sample included a total of 71 divorcing couples, 569 divorce cases, and 320 participants (i.e., these distinctions are due to methodology differences in the included studies). Although the studies met the inclusion criteria, the studies varied on methodology characteristics such as random assignment, method of data

collection, mediation setting, and issues mediated. The studies also assessed a variety of dependent variables. Table 1 summarizes these differences.

Random Assignment/Selection

As indicated in Table 1, some of the studies used random assignment or random selection and others did not. Emery et al. (1991) randomly approached families about either attempting to resolve their disputes in the court's new mediation program or participating in an evaluation of the court's services. Therefore, Emery et al.'s study used both random selection (i.e., randomly selecting the sample included in the study) and random assignment (i.e., randomly assigning the selected sample to treatment and control groups.) Using another method, Meyer (1992) called 84 randomly selected participants from a pool of 300 prospective subjects and asked them if they had mediated or litigated child custody issues. Because these participants had already completed mediation or litigation, random assignment was not possible; however, Meyer was able to use random selection. Like Meyer, Marcus, Marcus, Stilwell, and Doherty (1999) gathered subjects by obtaining a list of previously mediated and litigated cases. Although Marcus et al. were able to select litigated cases for the sample randomly, mediated cases were not randomly selected. Specifically, Marcus et al. asked mediators to send only cases that were mediated from start to finish. The remaining two studies did not use random assignment or selection.

Method of Data Collection

Furthermore, these five studies also differed concerning method of data collection. Table 1 shows that most of the studies used self-report questionnaires and structured interviews to compare the mediation and litigation groups on dependent

outcome variables such as satisfaction. In particular, Kelly's Divorce and Mediation project (1989) collected information from participants using self-report questionnaires at the beginning of the study, when mediation was completed, and when the divorce was final. Furthermore, Emery et al.'s Charlottesville mediation project (1991) collected demographic and court record data on the participating families when initial contact was made. After mediation was completed, members of Emery et al.'s research team visited each family's home where the structured interview took place and self-report questionnaires were completed. Other studies such as Jones and Bodtker (1999) and Meyer (1992) used archival court record data to identify mediation and litigation participants and mailed self-report questionnaires to them. As for Marcus et al. (1999), who were interested in comparing mediation and litigation groups only on financial outcomes, the researchers were able to gather information using only court record data.

Mediation Setting

Table 1 also points out that some of the studies used private mediation settings while others used court-based mediation. To illustrate the difference in private and court-based, mediation Kelly's (1989) and Jones and Bodtker's (1999) studies are compared. Kelly's private mediation took place outside of the court and participants voluntarily came to mediate divorce issues. In contrast, Jones and Bodtker's court-based mediation program mandated that all couples filing for divorce with custody-related issues be evaluated by a hearing officer who determined whether the couple was referred to mediation or the normal adversarial process. However, Emery et al. (1991) used court-based mediation in which participants were able to choose their own dispute resolution process. Therefore, it seems that the major difference between court-based and private

mediation is that court-based mediation is held at the courthouse while private mediation is held at a private mediation facility.

Issues Mediated

Moreover, the studies differed on the types of issues included in mediation. As indicated in Table 1, studies either included all divorce issues in mediation or limited mediation to only child-related issues such as custody. Specifically, Kelly and Marcus et al. used all-inclusive mediation while Emery et al. (1991), Jones & Bodtker (1999), and Meyer (1992) limited mediation to child-related issues.

Definitions of Outcome Variables

All of the included studies measured mediation and litigation groups on outcome variables. As can be seen in Table 1, four of the five studies measured the groups on outcome variables that were comparable with another included study. Specifically, all four of these studies measured process satisfaction, outcome satisfaction, and overall satisfaction. Additionally, emotional satisfaction was studied by three of the included studies, while impact on spousal relationship and increased understanding of children's needs were variables measured by two studies. Because these variables were compared across studies, it is of particular interest to note how each study defined these dependent variables.

To begin, Kelly (1989) described process satisfaction as mediator/attorney effectiveness, mediator/attorney impartiality, empowerment in the process, and impact on spousal relationship. Emery defined process satisfaction as the participant's satisfaction with the court's role, his/her own role, fairness of decision, and participant control over

decisions, felt his/her rights were protected, and knew about available options. Although Emery included impact on spousal relationship as a variable, it was not used to define process satisfaction. Nevertheless, it seems that Kelly and Emery's definitions of process satisfaction derived from two shared sub-variables: (1) empowerment in the process for the participant and (2) satisfaction with the court's role. Interestingly, Meyer's (1992) definition of process satisfaction resembles Kelly's in that it includes spousal relationship issues (i.e., clarifying issues and resolving disagreements with one's former spouse regarding the parenting plan and resolution of parenting disputes in general). In addition, Meyer's definition is similar to Emery's in that it includes fairness in handling the agreement and consideration of both parties' needs. Furthermore, unlike Kelly or Emery et al.'s definitions, Meyer includes helpfulness in putting aside anger with one's spouse and focusing on the children's well-being as a dimension of process satisfaction. Different from these three studies is Jones and Bodtker (1999) who directly asked participants one question in a questionnaire: were you satisfied with the mediation/litigation process? Although the included studies' definitions are similar and overlap on several dimensions, each study defined process satisfaction slightly differently.

As noted earlier, outcome satisfaction was measured by four of the studies included in the meta-analysis. Emery et al. (1991) used satisfaction with decisions, winning what one wanted, and the durability of the agreement to define outcome satisfaction, while Kelly (1989) used emotional satisfaction, satisfaction with financial agreements, satisfaction with custody and child support, and understanding children's needs as defining characteristics of outcome satisfaction. Similarly, Meyer (1992)

measured outcome satisfaction with the participants' perceptions of fairness of the child custody agreement, satisfaction with the child custody agreement, and how accommodating the parenting agreement was for everyone in the family. As with process satisfaction, Jones and Bodtger (1999) simply asked participants if they were satisfied with the outcome of their respective dispute process. In summary, the overlapping sub-variables used to define outcome satisfaction seem to be (1) the participants' perception of fairness of the agreement and, as expected, (2) satisfaction with the final agreement.

Additionally, emotional satisfaction was quantified in three studies. Specifically, Emery et al. (1991) used the Beck Depression Inventory, Acceptance of Marital Termination Scale, and the Acrimony Scale to measure emotional satisfaction. Similarly, Meyer (1992) defined emotional satisfaction by feelings of anger and tension toward one's ex-spouse as well as satisfaction with the agreement. However, Kelly (1989) simply defined emotional satisfaction by a participant's willingness to trade settlement agreements with his or her former spouse (e.g., comfort with spouse's agreement if it were his or her own). Therefore, the common theme across these studies in defining emotional satisfaction appears to be peacefulness with one's former spouse. That is to say, it seems that the researchers agreed that emotional satisfaction could be defined by the lack of negative feelings between spouses.

Impact on spousal relationship was defined by Emery et al. (1991) as the degree to which the dispute resolution method caused or settled inter-spousal problems. Likewise, Kelly (1989) defined this variable as improving/worsening communication and reasonableness between the divorcing couple. Also, increased understanding of children's needs was defined by Kelly as helpfulness in the custody and visitation

arrangement, understanding of psychological needs, and understanding the cost of raising a child. Whereas, according to Meyer (1992), increased understanding of children's needs was defined by mediation/litigation's helpfulness in understanding children's experience in divorce, children's needs and reactions during divorce, and participants' helpfulness in arranging a parenting plan and custody arrangement that meets the growing needs of the children.

Last, overall satisfaction was calculated by aggregating all satisfaction sub-variables. In particular, overall satisfaction was defined by Emery et al. (1991) as satisfaction with process and outcome, and impact on self, children, and spousal relationship. In the same vein, Jones and Bodtger (1999) also measured satisfaction with process, outcome, fairness of the agreement, and parenting plan. Included in Jones and Bodtger's definition was also that participants felt their concerns were heard and that they did not feel pressured to go along with something they did not want. To calculate overall satisfaction for Kelly's (1989) study, the previously mentioned sub-variables of process (e.g., mediator/attorney effectiveness, mediator/attorney impartiality, empowerment in the process, and impact on spousal relationship) and outcome (e.g., emotional satisfaction, satisfaction with financial agreements, satisfaction with custody and child support, and understanding children's needs) satisfaction were combined. Finally, for Meyer's (1992) study, overall satisfaction was defined by combining these four variables: emotional, process, and outcome satisfaction as well as increased understanding of children's needs.

CHAPTER III

RESULTS

Overview of Analysis

To review, after five studies were identified as suitable to meta-analytic study, effect sizes were calculated. For the studies that reported means and standard deviations, an effect size (d) was calculated (i.e., mean of the mediation group subtracted by the mean of the litigation group then divided by the pooled standard deviation of the groups) for the mediation and litigation groups. Where means and standard deviation were not reported, effect sizes were estimated using t -values, correlation coefficients, and F -values. Specifically, t - and F -values were converted to r , and r was then converted to d .

Effect sizes were treated in two ways. First, effect sizes were averaged across variables to generate a mean effect size for each study. Subsequently, the mean effect size for each study was averaged to produce the grand d effect size, illustrating the difference between the mediation and litigation groups across the analyzed studies. Second, the effect sizes for those dependent variables that were comparable across two or more studies were averaged to express an effect size for the comparable dependent variables. All effect sizes were computed so that a positive d indicated mediation was superior to litigation.

Calculation of Grand d

Individual d 's and the overall grand d is reported in Table 2. As shown, all studies rendered positive d 's, indicating that mediation outperformed litigation. It is important to

Table 2

Effect Sizes for Individual Studies and the Grand Effect Size

Study	d
Emery, Matthews, & Wyer (1991)	0.28
Jones & Bodtker (1999)	0.34
Kelly (1989)	0.42
Marcus, Marcus, Stilwell, & Doherty (1999)	0.21
Meyer (1992)	0.56
Grand d	0.36

d = effect size.

note that, according to Arthur et al. (2001), an effect size of .2 is considered a small effect, and .5 is regarded as a moderate effect while a d of .8 is judged as a large effect. Effect sizes ranged from .21 to .56. Specifically, the Marcus et al. (1999) study and Emery et al. (1991) study provided a fairly small effect size of .21 and .28, respectively. From Jones and Bodtker's (1999) study, a small-to-moderate effect size of .34 was calculated while a moderate effect size of .42 was obtained for Kelly's (1989) study. Last, Meyer's (1992) study showed a moderate effect size of .56. Also, as predicted, the meta-analytic comparison rendered a positive grand effect size indicating that mediation is more effective than litigation. As indicated in Table 2, averaged across all studies the

grand effect size was .36, a small but moderate effect. Overall, the present study quantitatively indicates that mediation is superior to litigation.

Calculation of Aggregated d 's

To investigate the difference between mediation and litigation, dependent variables that were comparable with one or more studies were combined further. As previously mentioned, four of the five studies measured variables that were comparable with at least one other study. Because Marcus et al.'s (1999) study only measured financial outcome (i.e., a variable not measured by any other included study), it was not included in Table 3. As illustrated in Table 3, the aggregated variables were process satisfaction, outcome satisfaction, emotional satisfaction, overall satisfaction, impact on spousal relationship, and increased understanding of children's needs. As shown, effect sizes ranged from -.01 to +.81 for individual d 's. With the exception of Emery et al.'s (1991) emotional satisfaction variable, all individual d 's were positive in value. For the aggregated variables, effect sizes ranged from .34 to .67. In particular, effect sizes obtained from outcome satisfaction and emotional satisfaction were moderate at .34. Overall, satisfaction and increased understanding of children's needs calculated moderate effect sizes of .41 and .42, respectively. Furthermore, the d for process satisfaction was .45, another moderate effect size. However, impact of spousal relationship obtained the largest effect size of .67. That is to say, mediation appeared to have a fairly large positive effect on a divorcing couple's relationship with each other. On the whole, when compared to litigation, mediation rendered low moderate to moderate effect sizes on all aggregated variables.

Table 3

Aggregated Effect Sizes for Dependent Variables

Study	Dependent Variable					
	SP	SO	ES	OS	ISR	CN
Emery, Matthews, & Wyer (1991)	0.25	0.08	-.01	0.32	0.53	—
Jones & Bodtker (1999)	0.27	0.57	—	0.34	—	—
Kelly (1989)	0.47	0.36	0.35	0.42	0.81	0.35
Meyer (1992)	0.81	0.35	0.67	0.56	—	0.42
Aggregated d	0.45	0.34	0.34	0.41	0.67	0.42

SP = satisfaction with process, SO = satisfaction with outcome, ES = emotional satisfaction, agreement, OS = overall satisfaction, ISR = impact on spousal relationship, CN = increased understanding of children's needs.

CHAPTER IV

DISCUSSION

Summary of Results

Across the five included studies, mediation has been shown quantitatively to be superior to litigation in dealing with divorce cases. Interestingly, Erickson (1988) noted that the mediation and adversarial systems, in most cases, share the exact same goal: present the court with a settlement agreement. That is to say, both systems urge settlement. Furthermore, Erickson pointed out that the mediation and legal processes are similar in that they both require full disclosure in the discovery process, use experts (e.g. accountants, appraisers) and make sure all essential issues are discussed and included in the agreement.

Therefore, the question is raised, what distinguishes mediation from litigation? Erickson (1988) gave the following explanation:

The mediator and attorney may both produce an agreement, but they differ in the process used. The mediator helps the parties negotiate their settlement, while in the traditional legal process the two attorneys advise and negotiate a settlement on behalf of their clients. Attorney negotiations are based on the assumption that an adversarial, competitive approach to conflict allows the attorney for each spouse to argue and compete for the best result. The attorneys define the most common divorce issues in a way that reflects the basic assumptions inherent in the

adversarial court process, in terms of competitive, win-lose outcomes. In contrast, mediators define divorce issues in mutual, cooperative terms....

(pp. 106 – 107)

As Erickson noted, the process of mediation and litigation differentiate these two systems from one another. Furthermore, mediation and litigation produce different kinds of agreements. In litigation, the attorney acts as an interpreter to the client about what is fair in the eyes of the court. That is to say, attorneys advise their clients about what would happen if their case went to court, whereas mediation asks clients to create their own laws of fairness. Thus, mediation often produces unique agreements that deviate from the norm because they are tailor-made by the couple to fit their circumstances and desires. In contrast, because the court does not have the knowledge or the time to custom make agreements for each divorcing couple, it uses a set of procedures that produces very similar outcomes. For these reasons, mediation is more desirable. These differences distinguish mediation from litigation and contribute to mediation's higher performance shown in the present study.

As previously stated, the purpose of this study was to use meta-analysis to review divorce mediation and litigation outcome literature quantitatively. Although the literature had been reviewed qualitatively, prior to the present study it had not been statistically summarized. It was predicted that the meta-analytic comparison would render a positive grand effect size indicating mediation to be more effective than litigation. As expected, meta-analysis of divorce mediation and litigation outcome literature produced a small, but moderate positive grand effect size confirming the researcher's hypothesis. At the same time, each of the five included studies yielded individual positive effect sizes (as

seen in Table 2), and positive effect sizes were also generated for each aggregated variable (as seen in Table 3). These findings suggest that the popularity of mediation as an alternative to litigation for divorcing couples is justified by its effectiveness in producing desirable outcomes.

Implications for Research

This study attempted to summarize the findings of mediation versus litigation outcome literature to date. Based on the presented study, several implications for future research are offered.

First, to understand the effectiveness of mediation better, more studies comparing divorce mediation and litigation outcomes are needed. Although some of the earliest divorce mediation and litigation outcome studies were conducted almost 30 years ago, this literature is considered “young” because of the small number of studies that have been conducted. As more studies are carried out, the effectiveness of mediation will be more clearly revealed. Also, as more research is executed, implications will likely be discovered that cause new challenges for the practice of mediation. Nevertheless, several adjustments may be made in the sampling, methodology, and design of future studies. The subsequent implications are specific guidelines for improving the quality of future studies.

Second, although many possible studies were gathered as candidates for analysis, several were unusable and did not meet the inclusion criteria. There were two issues that most commonly excluded studies from inclusion in the meta-analysis. Specifically, several studies measured mediation on outcome variables without including litigation as a control group. Moreover, several studies did not report effect sizes or include the

rudimentary statistics needed for the researcher to compute an effect size. In particular, Pearson and Thoennes' (1989) CMP and Divorce Mediation Research Project (DMRP) are two major divorce mediation projects that include a total of 959 participants.

However, because the necessary statistics for effect size calculation were not reported, neither project was included in the meta-analysis. Furthermore, the DMRP study also did not use litigation as a control group, but compared three different mediation programs on outcome variables. Overall, it is necessary for future studies to include litigation as a control. Additionally, effect sizes should be included in future studies or, at least, means and standard deviations should be reported so that effect sizes may be computed.

Third, external and internal validity may be improved in future studies. In his book, *Research Design in Clinical Psychology*, Alan Kazdin (2003) describes external validity as the extent to which the results of a study can be generalized to other populations and settings. Therefore, it is important to note that external validity can be increased in future studies by using random selection. Because random selection increases the population from which the sample is taken, generality of the results increases as well. Moreover, internal validity is defined by Kazdin as the extent to which the experimental intervention can account for group differences. Therefore, internal validity is especially important in studies attempting to show treatment effectiveness. Because divorce mediation outcome literature is attempting to show the effectiveness of mediation as an alternative to litigation, internal validity is important. To increase internal validity in future studies, random assignment may be used. Specifically, random assignment is used to assure that the treatment and control groups are similar prior to treatment. Therefore, if the groups are as similar as possible before the intervention, then

change in the treatment group is more likely to have occurred as a result of the intervention. By prioritizing random selection and random assignment in future studies, meaningful inferences may be made about the effectiveness of mediation and generalized to other populations and settings.

Implications for Practice

Finally, it is important to consider how the results of the present study affect the current practice of mediation. The following section discusses the present study's implications for practice concerning the role of mediation and litigation in society, the costs and benefits of mediation, the profession of mediation, and credentials for becoming a mediator.

The Role of Mediation and Litigation in Society

Specifically, it has been implied that mediation is a useful option and can serve divorcing couples in ways that the adversarial process cannot. For example, the present study indicated that mediation had a more positive effect than litigation on spousal relationships as well as increased the parents' understanding of his or her children's needs. According to Beck and Beck (1985), a child's adjustment is positively affected by a cooperative and supportive relationship between spouses during divorce. The results of the present study also indicated that mediation participants were more emotionally satisfied than litigation participants. In this same vein, Beck and Beck explained that, while the adversarial process tends to compound adjustment, mediation assists the adjustment process during divorce which increases the long-term welfare of divorcing spouses. Furthermore, in the present study, mediation participants showed greater satisfaction with process and outcome, suggesting the methods used and the agreements

made in mediation are more suitable than litigation procedures and contracts to divorcing couples. Therefore, the role of mediation in society is to give divorcing couples a more satisfying alternative to litigation that is less likely to affect the adjustment of the spouses or the children adversely.

On the other hand, there seems to be at least one situation in which mediation may not be the best option for divorcing couples. Several of the studies included in the present analysis screened for and excluded cases in which domestic violence existed. Therefore, exclusion from the analyzed studies may imply that litigation is a more suitable process for divorcing couples dealing with domestic violence issues. Thus, like mediation, the adversarial process also serves the public by offering protection to divorcing spouses dealing with domestic violence.

The Costs and Benefits of Mediation

In addition, to investigate the implications for the practice of mediation further, it is necessary to discuss the costs and benefits of mediation. In particular, as the present study quantitatively reviewed divorce mediation outcome literature, the benefits of mediation were shown to outweigh the costs. According to the included studies, the benefits of mediation included process satisfaction, outcome satisfaction, emotional satisfaction, increased understanding of the children's needs, and a more positive effect on the spousal relationship than litigation. Beck and Sales (2001) also note that divorce mediation gives participants empowerment and self-determination in their own divorce agreement by allowing them to draft the laws of fairness. As a result, parties develop more satisfying agreements, increasing the chances of compliance by the participants and the durability of the agreement. Furthermore, parties get to air their grievances and feel

“heard” by the other party, making mediation a less hostile process than litigation. It has also been argued that mediation is faster, less expensive, increases child support payments, teaches parents problem-solving skills, deals with the root causes of problems and conflict that exist between a divorcing couple, and benefits the legal system by lessening its caseload and providing a process that more effectively deals with the relationships and emotional issues involved in divorce (Beck and Sales).

However, for the following sub-variables, small to moderate negative effect sizes were calculated and may be considered costs of mediation : (a) under the outcome satisfaction variable for Emery et al.’s (1991) study, litigation participants were more likely to report that they “won what they wanted” than mediation participants; (b) in the same study, emotional satisfaction variable, mediation participants were less accepting of marital termination and more depressed than litigation participants; (c) Jones and Bodtker (1999) reported that mediation parties were more likely to feel pressured to go along with something they did not want than litigation parties; and (d) for Marcus et al.’s (1999) study, women who mediated received a lesser percentage of the family’s income in the divorce agreement.

Overall, it seems that these variables reveal the cost of seeking a win-win solution and decreased hostility in mediation. For example, because mediation focuses more on the relationship between divorcing spouses and the needs of children, it may focus less on substantive issues. Therefore, mediation participants may not win as much substantively as litigation participants. Moreover, mediation participants may be more likely to experience depression and struggle with accepting the termination of the marriage as a result of mediation’s focus on renegotiation of the spousal relationship and decreased

hostility between spouses. Last, because one goal of mediation is to come to a mutually acceptable agreement, participants may report feeling more pressure to go along with something they do not necessarily want than litigation participants. That is to say, because hostility is considered unhelpful to the mediation process, mediation participants may be more likely to go along with something they do not want out of fear that they may appear to be hostile. Therefore, although mediation has many benefits, it is important that these costs be noted so that in the future mediators better understand the emotional and substantive losses experienced by some in mediation.

Conclusions

Meta-analysis of divorce mediation outcome literature not only provided statistical summarization of mediation's effectiveness, but it also offered implications for future research and the practice of mediation. As more studies are conducted testing the effectiveness of divorce mediation, the practice of mediation will be sharpened. As a result, divorcing couples will be provided with more effective mediation services that will better meet their needs.

CHAPTER V

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