

2017

# Divorcing Couples' Experience With Child Custody Mediation and Litigation

Jessica Leonard Anderson  
*Walden University*

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# Walden University

College of Social and Behavioral Sciences

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Jessica Leonard Anderson

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## Review Committee

Dr. Leslie Barnes-Young, Committee Chairperson, Psychology Faculty  
Dr. Cheryl Tyler-Balkcom, Committee Member, Psychology Faculty  
Dr. Carolyn Davis, University Reviewer, Psychology Faculty

Chief Academic Officer  
Eric Riedel, Ph.D.

Walden University  
2017

Abstract

Divorcing Couples' Experience With Child Custody Mediation and Litigation

by

Jessica Leonard Anderson

MA, Walden University, 2013

BA, Liberty University, 2009

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Psychology

Walden University

November 2017

## Abstract

Couples who divorce are likely to experience increased levels of psychological distress, decreased levels of happiness, and increased levels of depression. To reduce these negative effects, litigators use mediation to resolve disagreements including child custody disputes. The purpose of this quantitative study was to compare divorcing parents' depression and satisfaction with the process after the use of mediation or litigation. Wexler's theory of therapeutic jurisprudence provided the theoretical framework. Data was collected from 170 participants who were recruited using convenience sampling through Facebook. Participants voluntarily completed a survey which included a researcher developed questionnaire, the Acrimony Scale, the Nonacceptance of Marital Termination, and the Center for Epidemiological Studies-Depression. Results from MANOVA and ANOVA analyses showed that participants who used mediation reported significantly higher levels of fairness and control than parents who used litigation. Findings could be used to inform divorcing parents that mediation may provide them with higher levels of fairness and control. Divorcing couples could be offered mediation services that are more effective and will more likely meet their needs. Court systems could offer mediation as a mandatory first step. This may reduce the number of cases that litigate. Since mediation is generally free, parents would not be forced to pay money for the services and they may end feeling that they had more control within their dispute. If more families experience more fairness and control within their dispute, their overall psychological wellbeing may be improved, thereby positively impacting social change.

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## Dedication

First and foremost, I would like to dedicate my entire doctoral experience to the Lord. It is but the Lord that I started and finished this project, as I could not have done this on my own. I dedicate this dissertation and my doctoral degree to God.

To my children's father, Nathan: I appreciate your encouraging me to start this journey and I will be forever grateful that I had you along the way. Thank you for all the times you talked me out of giving up and all the times you took care of the children so that I could complete assignments. I could not have done this without you by my side. Thank you for all your sacrifices.

To our three children, Parker, Ashton, and Lacie: Thank you for all the times you played quietly so that I could work and for being cooperative when I had a time crunch. But most of all, thank you for all your kisses, hugs, and bedtime snuggles along the way. Your love fueled my fire to finish this project. You three will always be my biggest blessings. I love you most.

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## Chapter 1: Introduction

According to Kaslow (1991), divorce has been characterized as a process that can affect an individual in various ways, including emotionally, psychologically, legally, economically, religiously, and socially. Research suggests that couples who divorce are likely to experience increased levels of psychological distress, including decreased happiness and greater depression (Amato, 2000). The distress is thought to be even greater when children are involved. In an attempt to reduce these negative effects, litigators began using mediation as a way to resolve disagreements related to the divorce, including child custody disputes. Early mediation research generally revealed positive results; however, these studies contained various methodological issues such as small sample sizes (Emery & Wyer, 1987) and a lack of a litigation control group (Shaw, 2010). More recently, researchers have compared the effects of mediation versus litigation on divorcing parents in child custody battles (Emery & Wyer, 1987; Shiono & Quinn, 1994). Unfortunately, most of this research was completed two to three decades ago by a small number of investigators. The purpose of the current study was to examine the experience of parents involved in child custody mediation versus litigation within different court systems across the United States using a much larger sample size able to detect differences between the groups on variables such as depression, perception of fairness and control concerning custody decisions, co-parenting conflict, and acceptance of the divorce.

The purpose of this chapter is to review an area of research that is lacking in the field of mediation and litigation. This chapter is organized by background, problem

statement, purpose of the study, framework, nature of the study, definitions of key terms, assumptions, scope and delimitations, limitations, significance, and summary.

### **Background**

According to the Centers for Disease Control and Prevention (2015), the rate of marriage in 2014 in the United States was 6.9 per 1,000 total population, whereas the rate of divorce was 3.2 per 1,000 total population. The divorce rate is derived by dividing the number of divorces in a given year by the number of marriages in that same year (Shiono & Quinn, 1994). Overall statistics indicated a 46% divorce rate for the year 2014 in the United States (Centers for Disease Control and Prevention, 2015). However, the total divorce rate is a rather vague and uninformed statistic because most people do not get married and divorced in the same year (Shiono & Quinn, 1994). Instead, it would be more accurate to state that, in a given year, one person divorces for every two who marry (Shiono & Quinn, 1994). The National Survey of Family Growth study (CDC/National Center for Health Statistics [NCHS], 2002), a longitudinal study about women's health, revealed that of first marriages, 33% of women are divorced by 10 years and at least 60% of those marriages have at least one child. For most people who divorce and have children, an agreement regarding custody must be reached as part of the divorce process, thereby complicating the process and adding to the emotional turmoil (Emery & Wyer, 1987).

Learning how to reduce the negative effect of divorce requires learning how divorce occurs in the first place. Along this line, research indicated that several factors increase the likelihood of divorce, such as age of individuals when they marry, the timing

of pregnancies, and educational attainment (Shiono & Quinn, 1994). For example, individuals who marry before age 20 are most likely to divorce, and women who marry after age 30 are least likely to divorce (Shiono & Quinn, 1994). Further, women who become pregnant or have children prior to marriage are more likely to divorce than women who have children after marriage (CDC/NCHS, 2002). In addition, women who stop short of completing high school or a higher education degree have a higher risk of divorce compared to women who earn their degree (Shiono & Quinn, 1994).

Maccoby and Moonkin (1992) conducted a study on 1,100 California families who were in the postseparation process of making custody arrangements. Maccoby and Moonkin found that 82% of mothers sought sole possession and 29% of fathers were willing to give sole possession to the mother. On the other hand, 33% of fathers sought sole possession and 3% of mothers were willing to give sole possession to the father. Additionally, 15% of mothers sought joint possession and 35% of fathers sought joint possession (Maccoby & Moonkin, 1992). The difference between the mother's and father's desires were varied, as most mothers reported that they desired sole physical custody.

### **Problem Statement**

Over the past 30 years, there has been a wealth of research conducted on the impact of divorce on parents, including both immediate and long-term effects (Ahrons & Marquardt, 2010). Divorce has been found to negatively impact socioeconomic status, especially among women (DeGarmo, Forgatch, & Martinez, 1999); the quality of parenting (Hetherington & Stanley-Hagan, 2002) and the well-being of the children

involved (Amato & Cheadle, 2005). The general conclusion from this line of research is that many effects of divorce are negative for the parents and the children involved.

Custody disputes can be resolved via a number of methods. Litigation is the primary method of marital dispute resolution in which both parties release their interests to the court and allow a judge or jury to make decisions. The judge or jury decides which party is right or wrong and neither party is guaranteed a certain outcome. Litigation is often expensive, emotionally draining, unpredictable, and time consuming (Maccoby & Moonkin, 1992). Mediation is an alternative, less adversarial method of marital dispute resolution in which a trained facilitator (i.e., a mediator) helps each party work together to resolve their issues and decide what is best for them and their children (Maryland State Bar Association, 2011). Maccoby and Moonkin (1992) found that most divorcing couples prefer to make their own custody arrangements. Of those who use third parties to help resolve conflict, only 4% chose to use litigation whereas 11% chose mediation (Maccoby & Moonkin, 1992)

Specific to this study, research has indicated how the type of custody dispute resolution alters relational dynamics between divorcing parents (Sbarra & Emery, 2008). Child custody mediation is believed to have a conflict-reducing impact on the psychological adjustment and outcome satisfaction of parents compared to litigation (Sbarra & Emery, 2008). For example, Sbarra and Emery (2008) found that parents who mediated had less co-parenting conflict than parents who litigated. However, other research indicated that children of parents who went through mediation still experienced negative effects after the divorce (Kitzmann & Emery, 1994). Kitzmann and Emery

(1994) found no significant mean differences on the Child Behavioral Checklist (Achenbach & Edelbrock, 1986) between children whose parents mediated versus litigated. On average, children's problematic behavior did not vary as a function of the type of child custody process. However, children whose parents went through mediation had a greater range of scores (35 to 91) than children of parents who litigated (44 to 73). These findings suggest that a small number of children may experience more negative effects after mediation (Kitzmann & Emery, 1994).

In addition to conflictual relationships with the ex-spouse, divorcing parents often experience depression, anger, and ambivalence about ending the marriage (Emery & Wyer, 1987). However, little research has been done comparing the effect of mediation versus litigation on the parents' psychological adjustment and outcome satisfaction when custody determinations must be made (Emery & Wyer, 1987; Miller & Bornstien, 2013). Only a few researchers (Emery & Wyer, 1987; Emery, Matthews & Kitzmann, 1994) have evaluated some of the most important controversies surrounding mediation versus litigation, which include the psychological variables of depression, perception of fairness and control concerning custody decisions, co-parenting conflict, and acceptance of the divorce. In the current study, I conducted a similar comparison of the effect of mediation versus litigation on psychological variables to expand the findings of previous researchers (Emery & Wyer, 1987; Emery et al., 1994) with a much larger sample size.

The few studies that addressed the experience of parents concerning child custody mediation and litigation were conducted two to three decades ago, during a time when mediation was still developing and was far less widespread (Shaw, 2010). In addition,



only a handful of researchers (Emery & Wyr, 1987; Kitmann & Emery, 1994) conducted the bulk of those studies and included few court systems. Further research was needed to evaluate the experience of parents concerning child custody mediation and litigation with a larger sample and across a broader region of courts (Emery & Wyr, 1987).

### **Purpose of the Study**

The purpose of this study was to compare the psychological adjustment and outcome satisfaction of parents undergoing child custody mediation versus litigation. I compared divorcing parents' depression and satisfaction with the process after the use of either mediation or litigation. The sample included a larger number of parents involved in child custody mediation or litigation within a larger number of court systems than in previous research.

### **Research Questions**

Research Question 1: Do parents experience mediation and litigation differently on measures of fairness and control?

H<sub>0</sub>1: Parents who use mediation versus litigation report comparable levels of fairness and control.

H<sub>a</sub>1: Parents who use mediation experience higher levels of fairness and control than parents who use litigation.

Research Question 2: Do parents experience mediation and litigation differently on measures of psychological distress?

H<sub>0</sub>2: Parents who use mediation versus litigation experience comparable levels of depression, relational conflict, and acceptance of the divorce.

H<sub>a</sub>2: Parents who use mediation experience lower levels of depression and co-parenting conflict and higher levels of acceptance of the divorce than parents who use litigation.

Research Question 3: Is there a difference between mothers' and fathers' experience of fairness and control related to type of custody dispute resolution?

H<sub>0</sub>3: There is no significant difference on ratings of fairness and control between mothers' and fathers' experience of litigation or mediation.

H<sub>a</sub>3: There is a significant difference on ratings of fairness and control between mothers' and fathers' experience of litigation or mediation.

Research Question 4: Is there a difference between mothers' and fathers' experience of psychological distress related to type of custody dispute resolution?

H<sub>0</sub>4: There is no significant difference between mothers' and fathers' experience of psychological distress related to type of custody dispute resolution.

H<sub>a</sub>4: There is a significant difference between mothers' and fathers' experience of psychological distress related to type of custody dispute resolution.

### **Framework**

The theoretical framework for this study was Wexler's theory of therapeutic jurisprudence (Wexler, 1992) Therapeutic jurisprudence is the study of the role of the law as a "therapeutic agent" (Waldman, 1998, p. 158). This theory "views legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) [as] social forces

that...often produce therapeutic or anti-therapeutic consequences” (Waldman, 1998, p. 158). Therapeutic jurisprudence originated in the field of mental health law and has since been used to analyze the psychological consequences of policies regarding such topics as incompetence labeling, sexual orientation, health care, disability, civil commitment hearings, and contracts (Waldman, 1998).

In the past, most divorce disputes were settled via litigation; however, given that divorce is related to significant distress (Ahrons & Marquardt, 2010), other avenues to complete the process, such as mediation, have been used. Mediation was originally developed to make the divorce process less conflictual. In recent years, mediation has become the most popular method of divorce resolution (Kitzmann, Parra, & Jobe-Shields, 2012). Based on research from five countries over two decades, Kelly (2000) discovered that parents typically expressed high satisfaction with the results of divorce mediation. Kelly indicated that mediation is effective even in cases of angry parents, and is efficient in both time and money.

The application of Wexler’s theory can offer guidance to mediators and court systems to enhance an individuals’ psychological well-being via the examination of how law, emotions, behaviors, and mental health interact (Shapira, 2008). Such an examination can provide ways to establish a healthier child custody determination process and enable parents to have an outcome with more satisfaction and a healthier psychological adjustment. According to therapeutic jurisprudence theory, mediation will yield increased psychological adjustment and outcome satisfaction for parents and children compared to litigation (Shapira, 2008).

### **Nature of the Study**

The nature of the study was quantitative, which was consistent with comparing the effects mediation and litigation have on divorce outcomes, specifically the psychological variables of depression, perception of fairness and control, co-parenting conflict, and acceptance of the divorce. Legal procedures and the roles of mediators/lawyers/judges act as social forces that often create therapeutic or antitherapeutic consequences, which is consistent with Wexler's therapeutic jurisprudence (Waldman, 1998). The study included a 2X2 multivariate design with the independent variables being sex of the parent (mothers versus fathers) and method of child custody resolution (mediation versus litigation). The dependent variables were levels of satisfaction between parents who mediated versus those who litigated, depression, conflict between the parents, and emotions regarding the end of the marriage. Levels of satisfaction and depression were measured with the Center for Epidemiological Studies-Depression (CES-D) (Radloff, 1977). Conflict between the divorcing parents was measured with the Acrimony Scale (Emery & Shaw, 1987). The emotions related to the end of the marriage were measured using the Nonacceptance of Marital Termination (Kitson, 1982; Thompson & Spanier, 1983).

### **Definitions of Key Terms**

The following definitions provide a clearer understanding of the terminology used in the study:

*Emotional satisfaction*: An individual's readiness to exchange settlement agreements with a former spouse (Kelly, 1989).

*Impact on spousal relationship:* The amount to which the method of dispute resolution produced or resolved interspousal problems (Emery et al., 1991).

*Litigation:* The primary method of marital dispute resolution in which each party releases their interests to a judge/jury and allows the judge/jury to make decisions for both parties (Maryland State Bar Association, 2011).

*Mediation:* An alternative, less adversarial method of marital dispute resolution in which a mediator helps each party work together to resolve their issues and best decide what is best for them and their children (Maryland State Bar Association, 2011).

*Outcome satisfaction:* The level of satisfaction with decisions, requests being met, and the stability of the agreement (Emery et al., 1991).

*Overall satisfaction:* Satisfaction with dispute process and outcome, and impact on spousal relationship, children, and self (Emery et al., 1991).

*Process satisfaction:* The divorcing individual's level of satisfaction with the court's role in the dispute process, the individual's role in the dispute process, fairness of decision in the dispute process, and the individual's control over decisions in the dispute process; rights being protected; and awareness concerning available options (Emery et al., 1991).

### **Assumptions**

There were various assumptions for this study. The first assumption was that individuals who chose to participate in this study were not doing so because they had a positive or negative experience with mediation or litigation, but rather to further research in the mediation/litigation field. The second assumption was that the instruments chosen

were appropriate to measure parents' individual psychological states and their experiences of mediation versus litigation. The third assumption was that all individuals would respond in an honest and forthright manner. The fourth assumption was that the sample was representative of the identified population.

### **Scope and Delimitations**

The purpose of this study was to compare the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. The purpose did not include evaluating the impact the mediator's underlying theoretical approach to mediation had on the child, court, and parents. However, more research is needed in this area (Stoner, Perry, & Marcum, 2011).

### **Limitations**

There were various limitations to this study. The first limitation was that data were collected using Survey Monkey, which is an online data-collection platform. Online data collection incurs limitations because there is a possibility that anyone could be filling out the survey, ultimately falsifying the results. Another limitation was the inability to identify the mediator's underlying theoretical approach to mediation. Another limitation was that there were no allegations of abuse from either parent, limiting generalizability to parents who had experienced abuse.

### **Significance**

The study was unique because it addressed an underresearched area of mediation and litigation with a population that had experienced significant demographic changes (i.e., the marriage rate had dropped) in the past decade (Copen, Daniels, Vespa, &

Mosher, 2012). Measuring parents' psychological adjustment to child custody disputes was important because the psychological well-being of parents is likely to have a positive or negative effect on the children involved. For example, research indicated that when individuals live with a depressed family member, other individuals/family members living in the home are at a greater risk of suffering from depression as well (Novello, Stain, Lyle, & Kelly, 2011). In addition, children whose parents experience depression are at a greater risk of being depressed themselves and displaying antisocial behaviors (Downey & Coyne, 1990). Further, Stoner et al. (2011) found that the impact of divorce on the child, court, and parents varies depending on the mediator's underlying theoretical approach to mediation.

The results of the quantitative study may provide a greater understanding of the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. Insights from this study could aid court systems and mediators in helping parents to have a more successful divorce experience. Mediation has the potential to be a great force for social change by addressing issues (e.g., spousal support, scheduling time with the children, child support, financial issues, and property division) faced by parents during the divorce process.

Advancing litigation and mediation research may provide better understanding of the position of litigation and mediation in society, the profession of mediation, the cost and benefits of litigation and mediation, and suggestive qualifications for becoming a mediator. With more studies conducted to evaluate the efficiency of mediation, the

practice of mediation may be improved. Consequently, divorcing couples could be offered mediation services that are more effective and more likely to meet their needs.

### **Summary**

Divorce has been characterized as a process that can affect an individual in various ways including emotionally, psychologically, legally, economically, religiously, and socially (Kaslow, 1991). Couples who divorce are likely to experience increased levels of psychological distress, including decreased happiness and greater depression (Amato, 2000). Previous studies that addressed the experience of parents concerning child custody mediation versus litigation were not sufficient, in that sample sizes were too small for findings to be generalizable (Emery & Wyer, 1987). In the current study, I compared the experience of parents concerning child custody mediation and litigation within different court systems using a larger sample size able to detect differences between the groups on these variables.



## Chapter 2: Literature Review

Divorce has been found to negatively affect short-term adjustment for most individuals and long-term adjustment for some (Amato, 1994). An aspect of divorce thought to increase these negative effects is child custody disputes. Traditionally, child custody disputes have been resolved through litigation; however, more recently, mediation has been suggested as a way to decrease the negative psychological effects of these disputes. Although a few researchers (Emery et al., 1991; Kelly, 1991; Pearson & Thoennes, 1989) compared the outcomes of divorce mediation and litigation, most of this research was conducted 20 to 30 years ago (Shaw, 2010) within a few jurisdictions. Measuring parents' psychological adjustment to child custody disputes is important because the well-being of parents is likely to have either positive or negative effects on their children (Novello et al., 2011). For example, individuals living with a depressed family member are at greater risk of suffering from depression (Novello et al., 2011). The purpose of this chapter is to review the relevant research conducted in the field of mediation and litigation. I describe the search strategy used to locate extant literature related to the variables examined in the study. I also discuss the theoretical foundation, divorce statistics, and background of divorce.

### **Literature Search Strategy**

I conducted a search of literature through the use of psychology databases such as PsycEXTRA, PsycINFO, PsycCRITIQUES, and PsycARTICLES through the Walden University library. I also used the Google Scholar search engine. The list of search terms used to conduct the literature search included *divorce mediation*, *child custody*, *mediation*

*and litigation, mediation outcomes, and family mediation.* Only studies addressing mediation and litigation in the context of divorce were chosen.

### **Theoretical Foundation**

The theoretical framework for this research was Wexler's (Wexler, 1992) theory of therapeutic jurisprudence. Therapeutic jurisprudence is the study of the role of the law as a "therapeutic agent" (Waldman, 1998, p. 158). This theory "views legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) [as] social forces that...often produce therapeutic or antitherapeutic consequences" (Waldman, 1998, p. 158). This principle has since been used to analyze the psychological consequences of legal proceedings such as incompetence labeling or civil commitment hearings (Waldman, 1998). According to Winick (2001), "therapeutic jurisprudence seeks to assess the therapeutic and counter-therapeutic consequences of the law and how it is applied and to effect legal change designed to increase the former and diminish the latter" (p. 33).

Through the promotion of individuals' psychological well-being, the application of Wexler's theory can offer guidance to mediators and court systems via the examination of how law, emotions, behaviors, and mental health interact (Shapira, 2008). Such an examination can provide ways to establish a healthier child custody determination process and enable parents to have an outcome of more satisfaction and healthier psychological adjustment. According to therapeutic jurisprudence theory, mediation will likely increase psychological adjustment and outcome satisfaction for parents and children compared to litigation (Shapira, 2008). "Remarkably, no

commentator, as yet, has focused the lens of therapeutic jurisprudence on the mediation field” (Waldman, 1998, p. 159).

### **Divorce Statistics**

Copen et al. (2012) examined divorce rates for first marriages among women and men age 15 to 44 years and reported the following divorce/separation rates by ethnicity in the United States: 35% of White women, 35% of Hispanic women, 64% of Black women, 35% of White men, 27% of Hispanic men, and 40% of Black men. According to the Centers for Disease Control and Prevention (2015), the rate of marriage in 2014 in the United States was 6.9 per 1,000 total population, whereas the rate of divorce was 3.2 per 1,000 total population. Overall, this indicated a 46% divorce rate for the year 2014 in the United States. This number is a rather vague and uninformed statistic because the divorce rate is derived by dividing the number of divorces in a given year by the number of marriages in that same year. However, not all who divorce were married in the same year as they divorce; in fact, most were not (Shiono & Quinn, 1994). Rather, it is more accurate to state that, in a given year, one person divorces for every two people who get married.

When evaluating marriage and divorce statistics, it might make more sense to analyze the two groups separately (Shiono & Quinn, 1994). In fact, divorce statistics look radically different when they are examined separate from marriages. According to the CDC/National Center for Health Statistics (2015), divorce rates in the United States are dropping. In 2000, the divorce rate was approximately 4.0 per 1000 individuals; however, as of 2011, that number was down to 3.6 per 1000 individuals. As divorce rates are

dropping, marriage rates are also dropping. In 2000, the marriage rate was 8.2 per 1000 individuals, and in 2011 was down to 6.2 per 1000 individuals (CDC/National Center for Health Statistics, 2013). Copen et al. (2012) found that the number of women in their first marriage has significantly decreased over the past few decades from 44% in 1982 to 36% in 2006–2010. Notwithstanding the changes in divorce rates, the divorce process is a sudden and violent disruption for most parents and children, creating a significant amount of distress (Emery & Wyer, 1987).

To better understand the negative effects of divorce, it is important to identify the risk factors for how it occurs. Research indicated that several factors increase the likelihood of divorce, such as age of individuals when they marry, timing of pregnancies, and educational attainment (Shiono & Quinn, 1994). For example, individuals who marry before age 20 are most likely to divorce, whereas women who marry after age 30 are least likely to divorce (Shiono & Quinn, 1994). Further, women who become pregnant or have children prior to marriage are more likely to divorce than women who have children after marriage (CDC/National Center for Health Statistics, 2002). In addition, women who stop short of completing high school or a higher education degree have a higher risk of divorce compared to women who earn their degree (Shiono & Quinn, 1994).

Further, over the past 30 years there has been a wealth of research showing evidence of the negative impact of divorce on parents, both immediate and long term (Ahrons & Marquardt, 2010). For example, divorce reduces socioeconomic status, especially for women (DeGarmo et al., 1999); the quality of parenting (Hetherington & Stanley-Hagan, 2002); and the well-being of children involved (Amato & Cheadle,

2005). In a review of empirical studies from 1990 to 1999, Kelly (2000) examined the influence of parental violence, marital conflict, and divorce on the psychological adjustment of children, adolescents, and young adults. The consensus among the studies was that parental violence and high-conflict parental relationships within marriage, predivorce, and divorce can profoundly affect children and adolescents, causing problems such as posttraumatic stress disorder, anxiety, behavior disorders, depression, and learning disorders.

Even though there is a downward trend for the number of people getting married and divorced, a significant number of couples who divorce have children. According to Emery and Weyer (1987) and Emery, Matthews, and Kitmann (1994), the process of divorce is difficult for both the parents and the children. The presence of children requires further decisions to be made during the divorce process.

### **Child Custody Disputes**

Divorce is a complicated process, and adding children to the equation exacerbates the complications. In 1967, national reports indicated that, for only the second time in U.S. history, more than a million adults were involved in divorce actions (Fisher, 1973). Three fifths of divorces that year involved children (Fisher, 1973). Further, Fisher (1973) reported that 700,000 children were affected, which was twice the number of children affected by divorce in 1955. During that time, mental health professionals, lawyers, and Americans began viewing divorce as an increasing problem for both adults and children (Fisher, 1973).

In divorce cases, the living arrangements for the children are part of the decision-making process. In child custody battles, 82% of mothers seek sole possession, and 29% of fathers are willing to give sole possession to the mother (Maccoby & Moonkin, 1992). On the other hand, Maccoby and Moonkin (1992) noted that 33% of fathers seek sole possession, but 3% of mothers are willing to give sole possession to the father. Additionally, 15% of mothers seek joint possession and 35% of fathers seek joint possession (Maccoby & Moonkin, 1992). When parents are not in agreement about where the children should live, the use of a third party becomes necessary.

Child custody determination among divorcing couples can be decided in several ways (Maccoby & Moonkin, 1992). Many parents choose to establish custody arrangements on their own. Maccoby and Moonkin (1992) found that 51% of divorcing couples determined custody arrangements on their own, and 29% settled without third party involvement. Third party arrangements include processes like litigation and mediation. Maccoby and Moonkin (1992) reported that, of parents who did not settle custody arrangements on their own, 11% decided on arrangements during mediation, 5% decided on arrangements after a custody evaluation, and 4% used litigation; however, only 1.5% of those who chose to litigate completed the litigation process. Of the couples who chose to mediate, 63% of mothers obtained sole possession, 6% of fathers obtained sole possession, and 25% obtained joint possession. Of the couples who chose litigation, 44% of mothers obtained sole possession, 11% of fathers obtained sole possession, and 40% obtained joint possession (Maccoby & Moonkin, 1992).

Maccoby and Moonkin (1992) found that child custody outcomes appeared to vary based on the type of child custody determination. Fathers were awarded sole or joint custody more often after litigation (Maccoby & Moonkin, 1992). However, these findings do not address the parents' satisfaction with the process or the outcome. Mediation was originally designed to reduce the conflict inherent in the divorce process.

### **Mediation**

In the past, most divorce disputes were settled via litigation; however, given that divorce is related to significant distress (Ahrons & Marquardt, 2010), other avenues to complete the process, such as mediation, have been used. Mediation was originally developed to make the divorce process less conflictual. In recent years, mediation has become the most popular method of divorce resolution (Kitzmann et al., 2012).

Based on research from five countries over two decades, Kelly (2000) discovered that parents typically expressed high satisfaction with the results of divorce mediation. Kelly indicated that mediation is effective, even in cases of angry parents, and is efficient in both time and money. Settlement rates ranged from 50% to 85% depending on the prescreening process, setting, and mediated content. Furthermore, Kelly found that couples who mediated during divorce were less likely to return to court. Based on this literature review, Kelly suggested that mediation should be a mandatory first step for divorcing parents.

As a result of this research, many states now require parents to try mediation before proceeding to litigation (Kitzmann et al., 2012). However, mediation is not error proof (Beck & Sales, 2000). In a series of articles, Pearson and Thoennes (1985, 1986,

1989) described their study in which they evaluated mediation services across three court systems. Pearson and Thoennes interviewed 271 parents who went through litigation or mediation before, 3 months after, and 1 year after the process. Parents were satisfied with mediation because they desired to be heard and discuss their concerns and grievances (Pearson & Thoennes, 1985, 1986). However, not everyone reported having ample time to discuss their concerns and grievances. Pearson and Thoennes (1989) found that some parents who mediated felt rushed and felt that they were pushed through the process too fast. Beck and Sales (2000) argued that, in cases of abuse, mediation may be detrimental to one or both parents and to the children due to the face-to-face contact endured through the mediation process.

Overall, the extant research suggests mostly positive outcomes associated with mediation (Jones & Bodtker, 1999; Kelly, 2000; Marcus, Marcus, Stilwell, & Doherty, 1999; Pearson & Thoennes, 1988); however, many of these studies (Jones & Bodtker, 1999; Marcus et al., 1999) did not measure actual changes in parental cooperation before and after mediation and divorce, but rather relied on parental self-reports after the process. In addition, several researchers sampled only parents who had undergone mediation and did not include a control group of parents who used litigation for their custody disputes (Kelly & Gigy, 1989; Shaw, 2010).

### **Comparison Between Mediation and Litigation**

In the early 1970s, divorce resolution began gaining significant attention (Fisher, 1973). The number of divorce counselors was rising, and the need to solve pressing issues concerning divorce became known. However, most peer-reviewed articles



concerning mediation versus litigation were not published until the late 1970s to early 1980s. During the mid 1980s, the role of mediation in the professional practice of psychology was just developing (Koch & Lowery, 1984). According to Koch and Lowery (1984), the requisite amount or type of training needed to provide individuals with competent mediation service was unclear.

Despite the importance of reducing the distress involved with child custody disputes, there is limited research comparing the effects of mediation versus litigation on divorcing parents. This early research tended to support more positive effects with mediation. For example, custody mediation typically costs less (Kelly, 1991) and takes less time for parents to reach an agreement (Emery et al., 1991) than litigation. Mediation generally promotes superior compliance concerning child support among fathers (Emery, Matthews, & Kitzmann, 1994). In addition, mediation is associated with more frequent and longer visitations between fathers and their children (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001).

Shaw (2010) conducted a meta-analysis of the outcome of five studies comparing mediation to litigation. Some of the selected studies used random assignment/random selection (Emery et al., 1991; Marcus et al., 1999), while others did not (Kelly, 1989; Jones & Bodtger, 1999). Shaw (2010) hypothesized that the meta-analytic comparison would indicate mediation to be more effective than litigation. The various studies examined the following variables: satisfaction with process, satisfaction with outcome, emotional satisfaction, agreement, overall satisfaction, impact on spousal relationship, and increased understanding of children's needs. After aggregating the effect sizes for

each study, Shaw (2010) discovered a grand effect size of 0.36, which indicated that, on each of the measured variables, mediation was a more effective procedure. In other words, divorcing parents who mediated were more likely to be satisfied with the procedure, to come to an acceptable agreement, to maintain the agreement, to experience less conflict with the former spouse, and to have a better understanding of their children's needs. The current study will focus on fairness and control, depression, co-parenting conflict, and acceptance of divorce; each one is discussed in the remainder of this section.

#### Fairness and Control

Fairness and control judgments encourage the participants to rate their perceptions related to the level of fairness or control believed to be inherent in the custodial dispute process (Jones & Bodtker, 1999; Emery & Wyr, 1987; Emery et al., 1991). Jones and Bodtker (1999) measured fairness and control by asking participants if they thought that their concerns were heard, if they felt pressured to go along with something they did not want to do, and to rate their satisfaction with the outcome of dispute process. Emery and Wyr (1987) and Emery et al. (1991) measured fairness and control by asking participants to rate items such as level of satisfaction regarding fairness of decisions, control over decisions, rights were protected, awareness of available options, lost what you wanted, and won what you wanted. In each of these studies, the judgments were rated on a 5-point Likert scale. Overall, researchers appear to measure fairness and control by examining process and outcome satisfaction (Jones & Bodtker, 1999; Emery & Wyr, 1987; Emery et al., 1991).

Jones and Bodtker (1999) evaluated the incidence of agreement, long-term maintenance of the agreement, outcome satisfaction, and rates of re-litigation in 169 mediating families and 61 litigating families. It is important to note that the two groups were not randomly assigned but were comparable on demographics. Jones and Bodtker (1999) hypothesized that mediating families would have higher rates of agreement, higher rates of long-term agreement, higher satisfaction rates, and lower re-litigation rates. The results indicated that mediated families had significantly more court involvement ( $p < .05$ ); while this initially appears counterintuitive, further examination revealed the parents who mediated actually had most of their court involvement prior to mediation. After the process, parents who mediated were actually less likely to return to court for further litigation. In relation to perceptions of the process, mediation families reported significantly higher rates of fairness pertaining to their agreement and belief that their concerns were well-received and respected. In addition, the mediation families were more likely to endorse the dispute method as being beneficial to their parenting. While Jones & Bodtker (1999) concluded the groups were similar at the beginning of the study, the fact that the mediating families had more court involvement before the divorce procedure suggests that those families had more complicated cases. As such, the two groups may have not been as similar as the authors believed; however, even though the mediating group may have had more difficulties, they were still more satisfied with the procedure and reported more positive outcomes. Even though this study supports the use of mediation, participants were not randomly assigned and had chosen their own form of

child dispute resolution. The lack of random assignment limits the generalizability to the population at large.

In one of the first studies to address this methodological issue, Emery and Wyrer (1987) randomly assigned 40 divorcing parents to either mediation or litigation. One hypothesis made by the researchers was that parents would find the mediation process fairer than the litigation process (Emery & Wyrer, 1987). Fathers who went through mediation reported significantly higher levels of satisfaction for “items that dealt with central assumptions of the adversary system (e.g., that one’s rights were protected)” ( $p < .0001$ ; Emery & Wyrer, 1987, p 183). In fact, on every item of the questionnaire used to measure fairness and control, mediation fathers had higher mean scores indicating greater satisfaction. In contrast, mothers who went through litigation reported significantly higher satisfaction with the outcome of court contact ( $p < .01$ ). “Specifically, mothers in litigation felt that they had won more ( $p < .0001$ ) and lost less in comparison with mothers in mediation” ( $p < .0001$ ; Emery & Wyrer, 1987, p 183). Overall, mediation resulted in significantly more joint legal custody agreement among parents than in litigation ( $p < .05$ ; Emery & Wyrer, 1987). There were no differences in number of days shared or the amount of custody paid between parents who mediated versus litigated.

In order to replicate the Emery and Wyrer (1987) study, The Charlottesville Mediation Project (Emery et al., 1991) was developed and has become one of most cited studies in mediation versus litigation literature. The project consisted of 35 mediation families and 36 litigation families who were randomly assigned to their respective child custody dispute condition (Emery et. al., 1991). The average age of the mothers was 28

years and the average age of the fathers was 31 years. As in the Emery & Wyer (1987) study, Emery et al. (1991) hypothesized that parents who mediated would find the dispute resolution process fairer than parents who litigated. As expected, fathers who mediated reported substantially higher rates of satisfaction compared to fathers who litigated. Specifically, the mediation fathers had higher mean scores indicating greater satisfaction on every item of the questionnaire used to measure fairness and control with the exception of “satisfaction with their role in resolving the dispute” (Emery et al., 1991, p 412). In this replication study, there were no significant findings for mothers concerning fairness and control. Overall, parents who mediated reached agreements quicker and were most likely to concur with joint legal custody. The research also indicated that mediating parents were significantly less likely to require a custody hearing; only 11% of the families who mediated proceeded to a court hearing, while 72% of parents who litigated proceeded to a court hearing (Emery et al., 1991).

In summary, researchers appear to measure fairness and control by examining participant’s ratings of process and outcome satisfaction (Jones & Bodtger, 1999; Emery & Wyer, 1987; Emery et al., 1991). Jones and Bodtger (1999) found that, in relation to perceptions of the process, mediation families reported significantly higher rates of fairness pertaining to their agreement and belief that their concerns were well-received and respected. Emery and Wyer’s studies (1987; Emery et al., 1991) indicate that fathers who mediated reported significantly higher satisfaction concerning fairness and control.

## Depression

In the mediation and litigation research, depression is measured to examine the distress parents experience as part of the child custody dispute process. Emery and his colleague's research (Emery & Wyr, 1987; Emery et al., 1991) have utilized the Beck Depression Inventory (BDI; Beck, Steer, & Garbin, 1988) in order to evaluate depression among mothers and fathers in custody disputes.

The Emery and Wyr (1987) study also examined depression in their families who underwent child custody procedures. They compared the effect of the respective proceedings on the parents' psychological outcome and satisfaction with the respective process. Emery and Wyr's (1987) hypothesis was that mediation would result in lower levels of depression among parents. Contrary to expectations, there was no significant difference in depression between fathers in mediation versus litigation. Even more surprising, mothers in mediation reported significantly higher levels of depression ( $p < .05$ ) than mothers who litigated.

The replication study, the Charlottesville Mediation Project (Emery et al., 1991) also examined depression in their set of participants. Consistent with the earlier research, Emery et al. (1991) hypothesized that mediation would result in lower levels of psychological distress (depression) among parents. Among fathers, depression was lower among those who went through mediation. Contrary to expectations (but similar to Emery & Wyr, 1987), mothers who went through mediation were actually more depressed than mothers who went through litigation (Emery et al., 1991). Thus, while

mediation has several advantages, the fact that mothers who utilized this process were more depressed is contrary to the goals of reducing negative psychological outcomes.

In summary, mothers who mediated reported higher levels of depression, as measured by the BDI (Beck et al., 1988; Emery & Wyr, 1987; Emery et al., 1991). However, in one study (Emery et al., 1991), fathers who mediated reported lower levels of depression. Based upon this research (Emery & Wyr, 1987; Emery et al., 1991), in terms of depression, it appears as though mothers and fathers experience mediation differently; however more empirical research is needed to support these findings.

### **Co-Parenting Conflict**

One way to reduce distress during child custody procedures is to alleviate the conflict occurring between the parents. In published research, co-parenting conflict among parents has been measured by the **Acrimony Scale** (Emery & Shaw, 1987; Emery & Wyr, 1987; Emery et al., 1991). Parents are asked to rate the degree of conflict they have amongst themselves in 25 areas of potential problems (e.g., discipline, gifts, visitation). The parents were asked to rate their experiences on a four point scale: 1 = almost never, 2 = some of the time, 3 = much of the time, and 4 = almost always. The ratings of each of the 25 items are summed and then averaged for each person's score. The following research (Emery & Wyr, 1987; Emery et al., 1991; Kitzmann & Emery, 1994; Sbarra & Emery, 2008) utilized the **Acrimony Scale** in order to evaluate co-parenting conflict among mothers and fathers in custody disputes.

Emery and Wyr (1987) compared the effect of the respective proceedings on the parents' relationships after mediation. They hypothesized that the parents' relationships

after mediation would be less conflictual than after litigation (Emery & Wyr, 1987). Fathers who mediated reported significantly more satisfaction with the effect of the dispute resolution method on themselves (i.e., feelings were understood, concern was shown for you;  $p < .05$ ) and their relationship with their children's mother (i.e., settled problems with spouse;  $p < .05$ ). On the other hand, no significant differences were found when comparing mothers who mediated or litigated concerning their relationship with their child's father. However, mothers who mediated reported significantly higher satisfaction with the impact of the dispute resolution process on their children (i.e., concern was shown for children;  $p < .05$ ).

The replication study, the Charlottesville Mediation Project (Emery et al., 1991) also examined co-parenting conflict in their set of participants. Consistent with Emery and Wyr (1987), Emery et al. (1991) hypothesized that the parents' relationships after mediation would be less conflictual. These fathers were significantly more satisfied with the effect of mediation on themselves ( $p < .05$ ) and on their children ( $p < .001$ ). The mediation fathers also thought that their and their children's feelings were more understood, more concern was shown for them, and they had an improved relationship with their ex-wife ( $p < .01$ ). There were fewer differences in women between the two groups and the significant results were reversed. Specifically, mothers who litigated reported significantly higher satisfaction than mothers who mediated when evaluating the impact of the court contact on their children ( $p < .01$ ). Overall, parents who mediated reached agreements quicker and were most likely to concur with joint legal custody. The research also indicated that mediating parents were significantly less likely to require a



custody hearing; only 11% of the families who mediated proceeded to a court hearing, while 72% of parents who litigated proceeded to a court hearing (Emery et al., 1991).

While the superior effectiveness of mediation versus litigation has been consistently supported in the literature (Kitzmann & Emery, 1994), few studies have evaluated the long term outcome of mediation. To address this issue, Kitzmann and Emery (1994) conducted a study to evaluate family and child coping one year after the mediated and litigated disputes. The researchers hypothesized that mediation would result overall in more positive outcomes, including greater communication between the divorcing parents, fewer behavioral problems for the children, and, if mediation allows parents to shelter their children from the conflictual divorce process, less correspondence between problems experienced by parents and children. The authors further hypothesized that the level of parental conflict, depression, and acceptance of the divorce will mediate the children's wellbeing. There were 32 mediation families and 26 litigation families that participated in the study. One year after the settlements, in reference to those who mediated, a significant correlation was found between the type of resolution process and the perception of the effect of the experience on their family. Specifically, parents who mediated were less likely to agree with the statement the "court had good effect on you" ( $p < .01$ ;) (Kitzmann & Emery, 1994). Contrary to the hypothesis, no correlations were found between the type of resolution process and child problems. Thus, mediation did not necessarily result in fewer problems for the children. However, positive correlations were found between parental conflict and child problems (i. e., Anxious/Depressed, Oppositional Defiant Problems, Externalizing/Internalizing Problems, Post-traumatic

Stress Problems; Achenbach & Edelbrock, 1986). In fact, on the Child Behavior Checklist (Achenbach & Edelbrock, 1986), children whose parents mediated produced a greater range of scores (35 to 91) compared to the range of scores (44 to 73) of children whose parents litigated, suggesting that children may have been experiencing more negative effects after mediation. However, because Kitzmann and Emery (1994) did not include pre-assessments, it is impossible to say what range of problematic behaviors existed prior to the divorce procedures. The children whose parents underwent mediation may have experienced more problems prior to the divorce procedure than the children whose parents underwent litigation. Furthermore, this study (Kitzmann & Emery, 1994) relied solely on parents' reports and, in many families, reports were only provided from one parent. This poses limitations because the parents may have been biased and/or had negative feelings about the divorce, which may have caused the parent to report more negatively.

While Kitzmann and Emery (1994) examined the experiences of mothers and fathers individually, Sbarra and Emery (2008) examined divorce as a systemic process. The main goal of their research was to “investigate how custody dispute resolution alters relational dynamics between divorced parents and to better understand how these patterns of interpersonal influence impact short- and long-term changes in co-parenting conflict” (p. 144). They conducted a 12-year longitudinal study where they randomly assigned 109 parents to either mediate or litigate a child custody dispute. The parents' self-reports of acceptance of the divorce and conflict concerning co-parenting were assessed five weeks, 13 months, and 12 years after the dispute resolution. The results indicated that mediation

parents reported a decrease in co-parenting conflict one year after the dispute resolution, whereas litigation parents reported an increase in co-parenting conflict a year after the dispute resolution. Furthermore, litigation parents reported higher levels of fluctuation of co-parenting conflict in the 12 years after the dispute resolution (Sbarra & Emery, 2008). While the pattern of changes in the conflict based on the type of divorce proceedings appears different, the study was descriptive in nature and the authors did not analyze their results in order to determine if these changes were statistically significant. Despite this, the results do suggest that mediation tends to result in less conflict between divorcing parents. In addition, while parental conflict was examined in this study, the parent's psychological well-being (e.g., depression) was not measured.

In summary, fathers who mediated reported significantly more satisfaction with the effect of the dispute resolution method on their relationship with their children's mother. In addition, Sbarra and Emery (2008) found that mediation parents reported a decrease in co-parenting conflict one year after the dispute resolution, whereas litigation parents reported an increase in co-parenting conflict a year after the dispute resolution. Further, other research (Kitzmann & Emery, 1994) found positive correlations between parental conflict and child problems. Thus, research suggests that mediation compared to litigation has shown to reduce co-parenting conflict between divorcing parents.

### **Acceptance of Divorce**

In published research, acceptance of divorce among parents has been measured by the **Nonacceptance of Marital Termination** (AMT; Kitson, 1982; Thompson & Spanier, 1983; Emery & Wyer, 1987; Emery et al., 1991). The AMT is an 11-item self-

report assessment in which participants are asked to rate their feelings about various aspects of marital termination, including guilt, disbelief, preoccupation with the former spouse, and regret (Emery & Wyr, 1987). The parents were asked to rate their experiences on a four-point scale: 4 = not at all, 3 = a little, 2 = somewhat, 1 = very much. An acceptance score is obtained by computing a mean of the items. The following research (Emery & Wyr, 1987; Emery et al., 1991) utilized the **AMT** in order to evaluate acceptance of divorce among mothers and fathers in custody disputes.

Emery and Wyr (1987) compared the effectiveness of the dispute process on the rated acceptance of marriage with 40 divorcing parents randomly assigned to either mediation or litigation. They hypothesized that mediation would significantly improve the parents' post-divorce relationship (Emery & Wyr, 1987). Contrary to expectations, there was no significant difference between the type of dispute resolution concerning the parent's ratings of acceptance of divorce. In the replication study, the Charlottesville Mediation Project (Emery et al., 1991) examined the effect of dispute process on the parent's acceptance of divorce. Contrary to the earlier research, mothers who mediated reported significantly less acceptance of divorce ( $p < .01$ ). There was no significant difference between fathers and dispute resolution concerning their acceptance of divorce.

In summary, the initial study did not find significant difference between mothers and fathers and dispute resolution concerning their acceptance of divorce (Emery & Wyr, 1987). The replication study reported reported significantly less acceptance of divorce for mothers who mediated ( $p < .01$ ), while fathers did not report any significant

difference between dispute resolution concerning their acceptance of divorce (Emery et al., 1991).

### **Summary**

Overall, the majority of studies (Emery & Wyr, 1987; Emery, et al.1991; Kitmann & Emery, 1994) have found more positive outcomes related to mediation versus litigation. Some of the negative results (e.g., more problems in children whose parents went through mediation) cannot be directly attributed to the mediation process due to a lack of pre-testing. In addition, most of the studies (Emery & Wyr, 1987; Kelly and Gigy, 1989; Emery, et al.1991; Kitmann & Emery, 1994) that have compared the experience of parents utilizing child custody mediation or litigation were conducted two to three decades ago. Since that time, mediation has continued to develop and become more popular (Shaw, 2010). In addition, national demographics have changed with a decreasing number of divorces and marriages. As such, the previous research needs to be replicated to understand what effect the changing culture has on the published results.

Some of this previous research also investigated how custody dispute resolution alters relational dynamics between divorced parents (Sbarra & Emery, 2008). However, little research has examined the influence of mediation versus litigation on parents' psychological adjustment and outcome satisfaction (Miller & Bornstien, 2013). What research has been conducted often included small sample sizes and been conducted by a few researchers in specific geographical regions, making it difficult to generalize to the population of divorcing parents. Thus, further research is needed that utilizes a larger sample size in a number of jurisdictions across the country to more adequately evaluate

the current experience of parents concerning child custody mediation and litigation  
(Emery & Wyr, 1987).

### Chapter 3: Research Method

The purpose of this quantitative study was to compare the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. Findings may broaden the understanding of divorcing parents' experiences of mediation and litigation by addressing parents' psychological adjustment and outcome satisfaction with the custody determination process. In previous related studies, sample sizes were too small to be anything but suggestive (Emery & Wyer, 1987). The purpose of this chapter is to discuss the research design and methodology of this study. I describe the participants, instrumentation, procedures used to gather data, and data analysis process. I also address threats to validity and ethical considerations.

#### **Research Design and Rational**

Quantitative methodology was needed to compare the effects mediation or litigation has on divorce outcomes, specifically psychological variables. Legal procedures and the roles of mediators/lawyers/judges act as social forces that often create therapeutic or antitherapeutic consequences, which is consistent with Wexler's therapeutic jurisprudence (Waldman, 1998). I used a 2X2 multivariate design with the independent variables being parent (mothers versus fathers) and method of child custody resolution (mediation versus litigation). The dependent variables included levels of satisfaction with mediation versus litigation, depression, conflict between the parents, and emotions regarding the end of the marriage. The Walden IRB approval for the study # 07-27-16-0166559, will expire on July 26th.

## **Methodology**

### **Participants**

The target population for this study was divorcing/divorced couples who have used mediation or litigation as a custody dispute resolution. Participants were excluded if they were not the child's biological parent or in cases where child abuse was suspected, accused, or founded. A power analysis using G\*Power (Faul, Erdfelder, Buchner, & Lang, 2009) was conducted to determine the sample size needed to generate a medium effect size. Based on an alpha of .05, a power of .95, and a medium effect size (Cohen, 1988), the target sample size was 160 participants (80 who used mediation and 80 who used litigation).

### **Instrumentation**

The following instruments were used in this study:

**Demographic survey.** Demographic information was collected for each participant. Each participant was asked to provide his or her sex, age, annual income, state of residence, highest level of education, years married to former spouse, number of biological children shared with former spouse, and time since custody was determined.

**Structured survey.** Parents were asked questions regarding their court experience during mediation or litigation. The topics of these questions included the following: (a) the level of satisfaction the person holds with the process of decision making, (b) the level of satisfaction with the decisions each person holds with decisions that were made in litigation and mediation, (c) the person's view of the influence of the court contact on the current relationship between the parents, (d) the person's view of the influence of the



court contact on himself or herself, and (e) the person's view of the influence of the court contact on the children. The parents were asked to rate their experiences on a 5-point scale: 1 = not at all, 2 = a little, 3 = somewhat, 4 = quite a bit, and 5 = very much. Emery and Wyer (1987) used a similar survey; however, the reliability or validity of this measure was not reported. The readability level for this measure is 9.0. The approximate completion time for this measure is less than 5 minutes.

**Acrimony Scale (AS).** The AS (Emery & Shaw, 1987) is an assessment used to measure conflict between divorced or separated parents. Parents were asked to rate the degree of conflict they had between themselves in 25 areas of potential problems (e.g., discipline, gifts, visitation). The parents were asked to rate their experiences on a 4-point scale: 1 = almost never, 2 = some of the time, 3 = much of the time, and 4 = almost always. The ratings for each of the 25 items were summed and averaged for each person's score. The AS has been found to have high test-retest reliability ( $r = .88$ ) over a 6-week period and to be internally consistent ( $\alpha = .86$ ). Research also indicated that children's behavioral adjustment is correlated with the AS (Emery & Wyer, 1987). The readability level for this measure is 5.0. Permission was granted for this scale via email on July 7, 2015 (Appendix C). The approximate completion time for this measure is 7 minutes.

**Nonacceptance of Marital Termination (AMT).** The AMT (Kitson, 1982; Thompson & Spanier, 1983) is an 11-item self-report assessment in which participants are asked to rate their feelings about various aspects of marital termination, including guilt, disbelief, regret, preoccupation with the former spouse, and regret (Emery & Wyer,

1987). Participants in the current study were asked to rate their experiences on a 4-point scale: 4 = not at all, 3 = a little, 2 = somewhat, 1 = very much. An acceptance score was obtained by computing a mean of the items. The measure has been found to be internally consistent ( $\alpha = .90$ ), and scores on the AMT were found to be related to lack of commitment (Emery & Wyer, 1987). The readability level for this measure is 6.9. Permission for use was not able to be obtained because the author has died. The approximate completion time for this measure is less than 5 minutes.

**Center for Epidemiological Studies-Depression (CES-D).** The CES-D (Radloff, 1977) is a 20-item self-report inventory used to assess depression. Individuals are asked to rate how they felt over the past 7 days on a 4-point scale. A total score is computed from their ratings and is used to distinguish individuals who may suffer from depression from individuals who are not suffering from depression. The range of scores is 0 to 60, and the cutoff for clinical depression is 16 and above. This measure has been found to be internally consistent ( $\alpha = .85$ ) (Radloff, 1977). The readability level for this measure is 5.6. The completion time for this measure is approximately 5 minutes.

### **Procedures**

Participants were recruited electronically via Facebook. This allowed for a large sample across various regions of the United States. Participants were recruited and invited to participate through Facebook advertising, as well as advertising on the Survey Monkey website.

Once participants were cleared to continue the study, they were provided informed consent electronically through the Survey Monkey website prior to completing

the assessment measures. In the event the willing participant reported that he or she was not the child's biological parent or was suspected, accused, or found guilty of child abuse, the participant was asked to discontinue the study. Once participants gave their consent, they were taken to the questionnaire part of the study. First, demographic information was collected for each participant. Each participant was asked to provide his or her sex, age, annual income, state of residence, highest level of education, years married to former spouse, number of biological children shared with former spouse, and time since custody was determined. After completing the demographic survey, participants were asked to complete the four questionnaires including a structured survey (Appendix B), the Acrimony Scale (Appendix C), the Nonacceptance of Marital Termination (Appendix D), and the Center for Epidemiological Studies-Depression (Appendix E). After completing these four questionnaires, participants went through a debriefing process that allowed them to make any additional comments regarding the study.

### **Data Analysis**

The research design involved a 2X2 multivariate analysis of variance (MANOVA) with two independent variables each with two levels: sex of the parent (male versus female) and method of custody agreement (litigation versus mediation). The dependent variables included fairness and control, depression, conflict between the parents, and emotions regarding the end of the marriage. For each of the dependent variables, two main effects for each of these dependent variables were examined: fathers versus mothers and parents in litigation versus those in mediation. Further, the interaction

between the sex of the parent and the method of custody agreement was examined. If the multivariate effects were significant, post hoc comparisons were conducted for the individual items.

### **Threats to Validity**

An external threat to validity was that participants would not provide honest and forthright responses; there was no way to measure honesty in such a setting. Another threat was that the participant did not understand the questions being asked on the assessments. During the debriefing process, participants were asked if they clearly understood the questions being asked and if they wished to add additional information.

An internal threat to validity was that this study did not address participants' psychological state before the custody arrangement to provide a baseline measure. This was a threat because it could be argued that the participant's current psychological state was not related to the psychological state immediately after the custody arrangement. In addition, there was no way to identify changes in psychological state from before the custody arrangement to participation in the current study.

### **Ethical Procedures**

All of the participants' information was kept confidential throughout the research process. Once a participant responded, he or she was assigned an identification number and his or her name was not saved as part of data collection. Further, results were discussed as a summary of group data.

### **Summary**

This chapter included the research design and methodology of this study. I aimed to provide a greater understanding of the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. The results are addressed in Chapter 4 and may be helpful in identifying a child custody resolution method that is more effective and more likely to meet the needs of divorcing parents.

## Chapter 4: Results

The purpose of this quantitative study was to compare the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. Participants were recruited solely through Facebook. I aimed to compare divorcing parents' depression and satisfaction with the process after the use of mediation or litigation. I hypothesized that parents who went through mediation would experience more satisfaction and lower distress than parents who went through litigation. This chapter includes the data collection process, research questions, hypotheses, and findings of the study.

### **Data Collection**

All participants were recruited via Facebook using convenience sampling. A Survey Monkey link was posted to my personal Facebook page and forwarded to all ( $N = 693$ ) friends. Once the link was forwarded to friends, those friends were then free to forward, share, and e-mail the link. Through this snowball sampling process, all participants were recruited within 92 days of the survey opening.

### **Demographics**

Based on an alpha of .05, a power of .95, and a medium effect size (Cohen, 1988), the target population size was 160 participants (80 who used mediation and 80 who used litigation). A total of 222 individuals responded and agreed to participate in the study. Of the 222 participants, 170 completed all survey questions, which was a 77% completion rate. Of the 222 participants, 76 were male and 146 were female. With regard to custody resolution method, 47% of participants ( $n = 105$ ) reported that they used mediation and

53% of participants ( $n = 117$ ) reported that they used litigation. Participants were asked to provide the location of the place where their custody determination was made. Locations included 25 states in the United States and several other countries. The Northeast region of the United States consisted of 19 participants (9%): ME = 1, NY = 8, PA = 7, CT = 3. The Midwest region consisted of 31 participants (14%): KS = 2, NE = 3, IL = 4, WI = 3, MN = 5, MI = 4, OH = 8, MO = 2. The South region consisted of 114 participants (51%): WV = 2, GA = 5, AL = 1, LA = 1, OK = 1, MS = 1, TN = 3, NC = 3, FL = 5, VA = 74, TX = 16, KY = 2. International countries consisted of 14 participants (6%): UK = 1, Africa = 1, Australia = 6, Canada = 6. Six participants (3%) did not provide a valid location. The demographics were compared, but not statistically analyzed, by the method of resolution. Table 1 shows participant's employment status, annual income, level of education, years married to former spouse, number of biological children shared, and amount of time since custody was determined.

Table 1

*Number of Participants in Each Demographic Group by Method of Resolution*

	Method of Resolution	
	<u>Mediation</u>	<u>Litigation</u>
<u>Employment Status</u>		
Employed for wages	83	85
Self-employed	8	8
Homemaker	6	11
Student	3	1
Unemployed	3	7
Disability	2	5
<u>Annual income</u>		
\$0 to 60,000	63	70
\$60,000 – 100,000	34	33
\$100,000 – 150,00	7	10
\$150,000 – 200,000	1	2
Over \$200,000	0	2
<u>Highest level of education</u>		
Middle school	1	3
High school or GED	41	31
Associate's degree	24	29
Bachelor's degree	25	33
Graduate degree	14	21
<u>Years married to former spouse</u>		
0-5 years	40	46
6-10 years	39	36
11-15 years	9	23
16-20 years	12	9
21-30 years	2	3
Over 30 years	3	0
<u>Number of biological children shared</u>		
0-3 children	101	114
4-7 children	4	3
<u>Amount of time since custody was determined</u>		
0-6 months	26	11
7-12 months	13	13
13-18 months	7	7
19-24 months	5	9
2-3 years	15	24
4- 5 years	12	13
6-10 years	12	25
10+years.	15	15

*Note.* Mediation  $n = 105$ ; Litigation  $n = 117$



With regard to employment status, 168 participants (76%) reported that they were employed for wages, 17 (8%) reported that they were a homemaker, 16 (7%) reported that they were self-employed, four (2%) indicated that they were students, 10 (5%) indicated that they were unemployed, and seven (3%) indicated that they were unable to work due a medical condition. When asked about annual income, 133 participants (60%) indicated that their annual income was between \$0.00 and \$59,000, 67 participants (30%) indicated that their annual income was between \$60,000 and \$99,000, 17 participants (8%) indicated that their annual income was between \$100,000 and \$149,000, three participants (1%) indicated that their annual income was between \$150,000 and \$199,000, and two participants (1%) indicated that their annual income was over \$200,000.

Participants were also asked about their highest level of completed education. Of the 222 participants, four participants (2%) reported that their highest level of completed education was middle school, 72 participants (32%) reported that their highest level of completed education was high school or GED, 53 participants (24%) indicated that they earned an associate's degree, 58 participants (26%) indicated that they earned a bachelor's degree, and 35 participants (16%) earned a graduate degree. In regard to how long participants were married to their former spouse, 86 participants (39%) reported being married 0 to 5 years, 75 participants (34%) reported being married 6 to 10 years, 32 participants (14%) reported being married 11 to 15 years, 21 participants (9%) reported being married for 16 to 20 years, five participants (2) reported being married for 21 to 30 years, and three participants (1%) reported being married for over 30 years.

In regard to how many biological children were shared with the participant's former spouse, 215 participants (97%) reported that they shared 0 to 3 children and seven participants (3%) shared 4 to 7 children with their former spouse. In regard to the amount of time since custody was determined, 37 participants (17%) reported that custody had been determined within the past 6 months, 26 participants (12%) reported that custody had been determined within the past 7 to 12 months, 14 participants (16%) reported that custody had been determined within the past 13 to 18 months, 14 participants (16%) reported that custody had been determined within the past 19 to 24 months, 39 participants (18%) reported that custody had been determined within the past 2 to 3 years, 25 participants (11%) reported that custody had been determined within the past 4 to 5 years, 37 participants (17%) reported that custody had been determined within the past 6 to 10 years, and 30 participants (14%) reported that custody had been determined within the past 10+years.

### **Research Question 1**

Research Question 1 addressed the possibility that parents' perception of fairness and control would be a function of whether the parent used mediation or litigation. The parents' perception of fairness and control was measured by the structured survey (Appendix B). I hypothesized that parents who used mediation experienced higher levels of fairness and control.

To examine the different perceptions of fairness and control between the two resolution method groups, I conducted a multivariate analysis of variance (MANOVA) to compare all five responses to the structured survey by resolution method group (litigation

versus mediation). The items on the structured survey asked about satisfaction regarding participants' court experience during mediation or litigation. The topic of these questions included (a) the level of satisfaction the person holds with the process of decision making, (b) the level of satisfaction the person holds with decisions that were made in litigation or mediation, (c) the person's view of the influence of the court contact on the current relationship between the parents, (d) the person's view of the influence of the court contact on himself or herself, and (e) the person's view of the influence of the court contact on the children. The MANOVA for this analysis was significant,  $F(5, 186) = 2.850, p = .017$ , meaning that two resolution groups significantly differed in their overall perceptions of fairness and control. To examine which specific perceptions of fairness and control differed based on resolution method, I conducted one-way ANOVAs for each item. Each ANOVA was conducted in the same manner to compare all five responses to the structured survey by resolution method group (litigation versus mediation). Table 2 shows descriptive statistics for participant responses to the structure survey.

Table 2

*Means (M) and Standard Deviations (SD) for Participants' Responses to the Structured Survey*

Variable	<i>M</i>	<i>SD</i>
Satisfaction w/method		
Mediation	3.41	1.453
Litigation	2.71	1.466
Satisfaction w/decision		
Mediation	3.07	1.482
Litigation	2.55	1.453
Satisfaction w/court contact		
Mediation	3.06	1.487
Litigation	2.41	1.492
Satisfaction w/impact on self		
Mediation	2.96	1.445
Litigation	2.48	1.501
Satisfaction w/impact on child		
Mediation	2.87	1.523
Litigation	2.39	1.504

*Note.* Mediation  $n = 90$ ; Litigation  $n = 102$

The first question addressed satisfaction the person held with the method of resolution. The one-way ANOVA results indicated a significant difference for satisfaction with the method,  $F(1,190) = 5.95, p = .016$ . Participants who used mediation ( $M = 3.41, SD = 1.453$ ) were significantly more satisfied with the process than those who used litigation ( $M = 2.71, SD = 1.466$ ).

The second question addressed satisfaction the person held with the process of decision-making. The one-way ANOVA results indicated a significant difference for satisfaction with the decision,  $F(1,190) = 11.16, p = .001$ . Participants who used mediation ( $M = 3.07, SD = 1.482$ ) were significantly more satisfied with the decision than those who used litigation ( $M = 2.55, SD = 1.453$ ).

The third question addressed the effects of the method of resolution on the

person's view of the influence of the court contact on the current relationship between the parents. The one-way ANOVA results indicated a significant difference for satisfaction with court contact on the current relationship between the parents,  $F(1,190) = 8.93$ ,  $p = .003$ . Participants who used mediation ( $M = 3.06$ ,  $SD = 1.487$ ) were significantly more satisfied with court contact than those who used litigation ( $M = 2.41$ ,  $SD = 1.492$ ).

The fourth question addressed the effects of the method of resolution on the person's view of the influence of the court contact on himself or herself. The one-way ANOVA results indicated a significant difference for satisfaction with the impact of the court on himself or herself,  $F(1,190) = 4.96$ ,  $p < .027$ . Participants who used mediation ( $M = 2.96$ ,  $SD = 1.445$ ) were significantly more satisfied with the impact of the court on themselves than those who used litigation ( $M = 2.48$ ,  $SD = 1.501$ ).

The fifth question addressed the effects of the method of resolution on the person's view of the influence of the court contact on his or her children. The one-way ANOVA results indicated a significant difference for satisfaction with the impact of the court on his or her children,  $F(1,190) = 4.71$ ,  $p < .031$ . Participants who used mediation ( $M = 2.87$ ,  $SD = 1.523$ ) were significantly more satisfied with the impact of the court on their children than those who used litigation ( $M = 2.39$ ,  $SD = 1.504$ ).

Findings supported Hypothesis 1 that predicted mediating parents would experience higher levels of fairness and control than parents who used litigation. Parents who used mediation reported experiencing significantly higher ( $p = .017$ ) levels of fairness and control than parents who used litigation; therefore Hypothesis 1 was accepted.

## Research Question 2

Research Question 2 addressed the possibility that psychological distress would be a function of whether a parent used mediation or litigation. The measures of psychological distress included depression, relational conflict, and acceptance of the divorce. I hypothesized that parents who used mediation would have lower levels of depression and distress. Table 3 shows the descriptive statistics for participant responses to questions addressing psychological distress.

Table 3

*Means (M) and Standard Deviations (SD) for Participants' Responses to the Acrimony Scale, Nonacceptance of Marital Termination, and Center for Epidemiological Studies-Depression*

Variable	Method of Resolution	<i>N</i>	<i>M</i>	<i>SD</i>
Acrimony scale				
	Mediation	87	2.28	.274
	Litigation	90	2.27	.248
	Total	177	2.27	.260
Nonacceptance of marital termination				
	Mediation	85	1.83	.385
	Litigation	86	1.92	.416
	Total	171	1.88	.402
Center for epidemiological studies-depression				
	Mediation	85	16.06	12.436
	Litigation	85	15.22	11.629
	Total	171	15.64	12.011

The AS (Emery & Shaw, 1987) was used to measure relational conflict between the parent and the ex-spouse and it was expected that parents who used mediation would experience less relational conflict. To test this, I conducted a one-way ANOVA to examine the effects of the method of resolution on co-parenting conflict as measured by the AS (Emery & Shaw, 1987). Contrary to the hypothesis, there was no significant

difference found between mediation ( $M = 2.28$   $SD = .274$ ) and litigation ( $M = 2.27$ ,  $SD = .248$ ),  $F(1,175) = .060$ ,  $p < .806$ .

A one-way ANOVA tested the effect of the method of resolution on acceptance of the divorce as measure by the Nonacceptance of Marital Termination to the hypotheses. Contrary to the hypothesis, there was no significant difference found for resolution method,  $F(1,169) = 1.85$ ,  $p < .176$ . Parents who utilize mediation ( $M = 1.83$ ,  $SD = .385$ ) versus litigation ( $M = 1.91$ ,  $SD = .416$ ) experienced comparable levels of acceptance of the divorce as measured by the Nonacceptance of Marital Termination (Kitson, 1982; Thompson & Spanier, 1983).

A one-way ANOVA was conducted the effect of the method of resolution on depression as measured by the Center for Epidemiological Studies-Depression (CES-D). Contrary to the hypothesis, there was no significant difference found for resolution method,  $F(1,168) = .205$ ,  $p < .652$ . Parents who utilize mediation ( $M = 16.06$ ,  $SD = 12.44$ ) versus litigation ( $M = 15.22$ ,  $SD = 11.63$ ) experienced comparable levels of depression as measured by the CES-D (Radloff, 1977).

In summary, parents who reported that they utilized mediation versus litigation experienced comparable levels of depression, relational conflict, and acceptance of the divorce. Therefore hypothesis 2 was not accepted.

### **Research Question 3**

Research Question 3 examined the possibility that parents' perception of fairness and control would be a function of the interaction between mothers and fathers experience of litigation or mediation. The parents' perception of fairness and control was

measured by the structured survey (see Appendix B). It was hypothesized that there would be a significant difference on ratings of fairness and control as a function of the interaction between mothers and fathers experience of litigation or mediation. The mean ratings for these surveys are presented in Table 4.

To examine the interaction between method of resolution and sex of parent on the different perceptions of fairness and control, a multivariate analysis of variance (MANOVA) was conducted to compare all five responses to the structured survey by resolution method group (i.e., litigation versus mediation) and sex of parent (i.e., male versus female). The items on the structured survey asked about satisfaction regarding their court experience during mediation or litigation. Unlike the analyses of litigation method for hypothesis 1, results comparing the resolution method on the different perceptions of fairness and control were not significant after entering sex of the parent,  $F(1,188) = 1.65, p = .148$ . Results comparing the sex of the parent on the different perceptions of fairness and control were found to be significant,  $F(1,188) = 4.48, p = .001$ . When the interaction between sex of parent and resolution method were examined, no significance was found  $F(1,188) = .760, p = .580$ .

Table 4



*Means (M) and Standard Deviations (SD) for Participants' Responses to the Structured Survey*

Method of Resolution	Sex	N	M	SD
Satisfaction w/method				
Mediation	Male	23	2.65	1.434
	Female	67	3.67	1.375
Litigation	Male	47	2.26	1.310
	Female	55	3.09	1.494
Total	Male	70	2.39	1.354
	Female	122	3.41	1.453
Satisfaction w/decision				
Mediation	Male	23	2.39	1.469
	Female	67	3.30	1.425
Litigation	Male	47	2.04	1.334
	Female	55	2.98	1.421
Total	Male	70	2.16	1.379
	Female	122	3.16	1.426
Satisfaction w/court contact				
Mediation	Male	23	2.74	1.389
	Female	67	3.16	1.514
Litigation	Male	47	2.17	1.388
	Female	55	2.62	1.557
Total	Male	70	2.36	1.404
	Female	122	2.92	1.551
Satisfaction w/impact on self				
Mediation	Male	23	2.61	1.530
	Female	67	3.07	1.407
Litigation	Male	47	2.04	1.398
	Female	55	2.85	1.496
Total	Male	70	2.23	1.456
	Female	122	2.98	1.446
Satisfaction w/impact on child				
Mediation	Male	23	2.30	1.460
	Female	67	3.06	1.506
Litigation	Male	47	2.00	1.383
	Female	55	2.73	1.533
Total	Male	70	2.10	1.405
	Female	122	2.91	1.521

I performed a one-way ANOVA to examine the effect of the sex of parent on the level of satisfaction the person holds with the process of decision making. Results

indicated that there was a significant difference found for satisfaction with the process of the decision making,  $F(1,188) = 17.89, p = .000$ . Mothers reported ( $M = 3.41, SD = 1.453$ ) significantly higher levels of satisfaction with the process than fathers reported ( $M = 2.39, SD = 1.354$ ).

A one-way ANOVA examined the effect of the sex of parent on the level of satisfaction the person holds with the process of decision making or outcome. Results indicated that there was a significant difference found for satisfaction with the decision  $F(1,188) = 17.59, p = .000$ . Mothers reported ( $M = 3.16, SD = 1.426$ ) significantly higher levels of satisfaction with the decision than fathers reported ( $M = 2.16, SD = 1.379$ ).

A one-way ANOVA was conducted to assess effect of the sex of parent on the person's view of the influence of the court contact on the current relationship between the parents. Results indicated that there was no significant difference found for satisfaction with court contact on the current relationship between the parents,  $F(1,188) = 3.54, p = .061$ . There was no significant difference reported between mothers ( $M = 2.92, SD = 1.551$ ) and fathers ( $M = 2.36, SD = 1.404$ ) concerning levels of satisfaction with court contact on the current relationship between the parents.

A one-way ANOVA tested the effects of the sex of parent on the person's view of the influence of the court contact on oneself. Results indicated that there was a significant difference found for satisfaction with the impact of the court on them self,  $F(1,188) = 7.98, p < .005$ . Mothers reported ( $M = 2.98, SD = 1.446$ ) significantly higher levels of satisfaction with the impact of the court on them self than fathers reported ( $M = 2.23, SD = 1.456$ ).

A one-way ANOVA examined the effects of the sex of parent on the person's view of the influence of the court contact on their children. Results indicated that there was a significant difference found for satisfaction with the impact of the court on their children,  $F(1,188) = 10.26, p < .002$ . Mothers reported ( $M = 2.91, SD = 1.521$ ) significantly higher levels of satisfaction with the impact of the court on their children than fathers reported ( $M = 2.10, SD = 1.405$ ).

In summary, there was no significant difference on ratings of fairness and control measured by the structured survey (Appendix B) as a function of the interaction between mothers and fathers experience of litigation or mediation. Results comparing the sex of the parent on the different perceptions of fairness and control were found to be significant, such that, when differences between parents existed, mothers rated higher levels of satisfaction with the decision and the impact that the court had on themselves and their children.

#### **Research Question 4**

Research Question 4 examined the possibility that psychological distress would be a function of the interaction between mothers and fathers experience of litigation or mediation. The measures of psychological distress included depression, relational conflict and acceptance of the divorce. It was hypothesized that there would be a significant difference on ratings of psychological distress as a function of the interaction between mothers and fathers experience of litigation or mediation. Means and standard deviations for these variables can be found in Table 5.

Table 5

*Means (M) and Standard Deviations (SD) for Participants' Responses to the Acrimony Scale, Nonacceptance of Marital Termination, and Center for Epidemiological Studies-Depression*

Method of Resolution	Sex	N	M	SD
<b>Acrimony scale</b>				
Mediation	Male	21	2.34	.216
	Female	66	2.26	.289
	Total	87	2.28	.274
Litigation	Male	37	2.30	.312
	Female	53	2.24	.189
	Total	90	2.27	.248
Total	Male	58	2.32	.280
	Female	119	2.25	.249
	Total	177	2.27	.260
<b>Nonacceptance of marital termination</b>				
Mediation	Male	20	1.85	.325
	Female	65	1.83	.404
	Total	85	1.83	.385
Litigation	Male	34	2.00	.470
	Female	52	1.86	.370
	Total	86	1.92	.416
Total	Male	54	1.95	.425
	Female	117	1.84	.388
	Total	171	1.88	.402
<b>Center for epidemiological studies-depression</b>				
Mediation	Male	20	16.45	13.27
	Female	65	15.94	12.27
	Total	85	16.06	12.44
Litigation	Male	33	16.45	11.95
	Female	52	14.44	11.47
	Total	85	15.22	11.63
Total	Male	53	16.45	12.34
	Female	117	15.27	11.90
	Total	170	15.64	12.01

A 2 X 2 factorial analysis of variance tested the effect of the method of resolution and sex of parent on relational conflict as measured by the AS (Emery & Shaw, 1987).

Contrary to the hypotheses, there were no significant differences found for resolution

method,  $F(1,173) = .38, p < .540$ , or for sex of parent,  $F(1,173) = 2.97, p < .087$ . Contrary to the hypothesis, there was no significant difference between the interaction,  $F(1,173) = .08, p < .781$ . Results showed that there was no significant difference on ratings of relational conflict as measured by AS (Emery & Shaw, 1987) as a function of the interaction between mothers and fathers experience of litigation or mediation. Mothers and fathers who utilize mediation versus litigation experienced comparable levels of relational conflict (as measured by the Acrimony Scale; Emery & Shaw, 1987).

A 2 X 2 factorial analysis of variance tested the effect of the method of resolution (mediation  $n = 85$ , litigation = 86) and sex of parent (male  $n = 54$ , female  $n = 117$ ) on acceptance of the divorce as measured by the Nonacceptance of Marital Termination. Contrary to the hypothesis, there was no significant difference found for resolution method,  $F(1,167) = .29, p < .180$ . In addition, results indicated that there was no significant difference for acceptance of the divorce found for sex of parent,  $F(1,167) = .26, p < .209$ . Furthermore, there were no significant differences between the interaction,  $F(1,167) = .12, p < .397$ . Results showed that there were no significant differences on ratings of acceptance of the divorce as a function of the interaction between mothers and fathers experience of litigation or mediation. Parents who utilized mediation versus litigation experienced comparable levels of acceptance of the divorce.

A 2 X 2 factorial analysis was conducted to compare the interaction of the method of resolution (mediation  $n = 85$ , litigation  $n = 85$ ) with sex of parent (male  $n = 53$ , female  $n = 117$ ) on depression as measured by the Center for Epidemiological Studies-Depression (CES-D). Contrary to the hypothesis, there were no significant main effects

found for resolution method,  $F(1,166) = 19.36, p < .716$ . or for sex of parent,  $F(1,166) = 55.43, p < .539$ . In addition, there was no significant interaction effects,  $F(1,166) = 19.6, p < .715$ . Results showed that there was no significant difference on ratings of depression as a function of the interaction between mothers and fathers experience of litigation or mediation.

In summary, results indicated that there was no significant difference on ratings of psychological distress as measured by CES-D (Radloff, 1977), AS (Emery & Shaw, 1987), and Accept of Marital Termination Survey (Thompson & Spanier, 1983) as a function of the interaction between mothers and fathers experience of litigation or mediation. Therefore, hypothesis 4 is rejected.

In conclusion, the purpose of this quantitative study was to provide a greater understanding of the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. Participants were recruited solely through Facebook. The study aimed to compare divorcing parents' depression and satisfaction with the process after the use of either mediation or litigation. Overall, it was hypothesized that parents who went through mediation would experience more satisfaction and lower distress than parents who went through litigation.

### **Summary**

This chapter reviewed the data collection process, including the details regarding data collection. The research questions and hypotheses tested were stated. The statistical findings of this study were discussed. The results show that parents who utilized

mediation did report experiencing higher levels of fairness and control, as measured by the structured survey, than parents who utilize litigation.

## Chapter 5: Discussion, Conclusions, and Recommendations

The purpose of this quantitative study was to provide a greater understanding of the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. In addition to conflictual relationships with the ex-spouse, divorcing parents often experience depression, anger, and ambivalence about ending the marriage (Emery & Wyer, 1987). However, few studies have addressed the effect of mediation versus litigation on the parents' psychological adjustment and outcome satisfaction when custody determinations must be made (Emery & Wyer, 1987; Miller & Bornstien, 2013). Only a few researchers (Emery & Wyer, 1987; Emery, Matthews, & Kitzmann, 1994) have evaluated some of the most important controversies surrounding mediation versus litigation, which include the psychological variables of depression, perception of fairness and control concerning custody decisions, co-parenting conflict, and acceptance of the divorce. I conducted a similar comparison of the effect of mediation versus litigation and aimed to expand on the findings of previous research with a much larger sample across a broader region of courts.

Research Question 1 addressed the possibility that parents' perception of fairness and control would be a function of whether a parent used mediation or litigation. I hypothesized that parents who used mediation would experience higher levels of fairness and control. I conducted a MANOVA to compare all five responses to the structured survey by resolution method group (litigation versus mediation). The results showed that parents who used mediation reported experiencing higher levels of fairness and control than parents who used litigation. Results for the remaining research questions showed no



significant differences on ratings of acceptance of the divorce, relational conflict, and depression as a function of the interaction between mothers and fathers experience of litigation or mediation.

### **Interpretation of the Findings**

This study extended the research of litigation and mediation in several ways. First, I found that parents who used mediation experienced higher levels of fairness and control, as measured by the structured survey, than parents who used litigation. Participants who used mediation were significantly more satisfied with the process than those who used litigation. In addition, participants who used mediation were significantly more satisfied with the decision than those who used litigation. Further, participants who used mediation were significantly more satisfied with court contact than those who used litigation. Participants who used mediation also reported significantly higher satisfaction with the impact of the court on themselves and on their children than those who used litigation. These findings are consistent with previous findings. Jones and Bodtger (1999) found that, in relation to perceptions of the process, mediation families reported significantly higher rates of fairness pertaining to their agreement and belief that their concerns were well-received and respected. Perhaps mediation operated as a therapeutic agent, thereby supporting the theory of therapeutic jurisprudence.

The current study also addressed the effect of the interaction between sex of the parent and resolution method. Once sex was entered into the analysis, the resolution method no longer affected the parent's perceptions of fairness and control. However, sex of the parent did affect these perceptions. Mothers reported significantly higher levels of

satisfaction with the process than fathers reported. Mothers also reported significantly higher levels of satisfaction with the decision than fathers reported. There was no significant difference reported between mothers and fathers concerning levels of satisfaction with court contact on the current relationship between the parents.

Additionally, mothers reported significantly higher levels of satisfaction with the impact of the court on themselves than fathers reported. Mothers also reported significantly higher levels of satisfaction with the impact of the court on their children than fathers reported. These findings differ from the work done by Emery and Wyr (1987) and Emery et al. (1991). In these studies, fathers who mediated reported significantly higher satisfaction concerning fairness and control. Unfortunately, there has not been any new research published since the current study was completed.

Two hypotheses addressed the factors (resolution method and the interaction of resolution method and sex of parent) that affect psychological distress. Findings showed that mothers and fathers who used mediation experienced comparable levels of relational conflict, acceptance of the divorce, and depression as those who used litigation. This finding contradicts published research. In several studies, mothers who mediated reported higher levels of depression, as measured by the BDI (Beck et al., 1988; Emery et al., 1991; Emery & Wyr, 1987). In terms of depression, it appears mothers and fathers experience mediation differently. One major difference between the current study and previous studies is the instruments that were used to measure depression. Other researchers (Beck et al., 1988; Emery et al., 1991; Emery & Wyr, 1987) used the BDI to measure depression; however, I measured depression with the CES-D. Wilcox, Field,

Prodromidis, and Scafidi (1998) examined correlations between the BDI and CES-D in a sample of adolescent mothers and found that “the BDI was more highly correlated with the Major Depression subscale, and the CES-D with the Dysthymia subscale” (p 565). Additionally, “more adolescent mothers preferred the CES-D, stating that it was quick and simple while several commented that the BDI was depressing” (Wilcox et al., 1998, p. 565). It is possible that the different measures influenced the differences among different studies. Other possibilities that may have influenced the difference between the present study and previous research is the amount time since custody determination. I did not set limitations on the amount of time lapsed, whereas other research (Emery et al., 1991; Emery & Wyer, 1987; Kitzmann & Emery, 1994; Sbarra & Emery, 2008) was conducted much sooner after custody determination. Because I did not set limitations on the amount of time lapsed, participants may not have remembered all of the details and may have resolved some of the issues that were once problematic, thereby alleviating depressive symptoms.

This study also addressed co-parenting conflict. Previous researchers found that fathers who mediated reported significantly more satisfaction with the effect of the dispute resolution method on their relationship with their children’s mother (Emery et al., 1991; Emery & Wyer, 1987). Time interacted with resolution method to affect the parents’ ratings of conflict; mediation parents reported a decrease in co-parenting conflict 1 year after the dispute resolution, whereas litigation parents reported an increase in co-parenting conflict a year after the dispute resolution (Sbarra & Emery, 2008). Unlike previous research, results of the current study showed that parents who used mediation or

litigation experienced comparable levels of relational conflict as measured by the Acrimony Scale. Additionally, mothers and fathers who used mediation or litigation experienced comparable levels of relational conflict.

I found that parents who used mediation or litigation experienced comparable levels of acceptance of the divorce as measured by the Nonacceptance of Marital Termination. This is consistent with some previous research (Emery & Wyer, 1987). However, Emery et al. (1991) reported significantly less acceptance of divorce for mothers who mediated, while there was no difference between resolution method in acceptance of divorced for fathers.

The theoretical framework for the current study was Wexler's theory of therapeutic jurisprudence (Wexler, 1992). Therapeutic jurisprudence is the study of the role of the law as a "therapeutic agent" (Waldman, 1998, p. 158). The findings of the current study, when examined through the lens of therapeutic jurisprudence on the mediation field, are partly consistent with the results of Shapira (2008) that mediation (versus litigation) will likely heighten psychological adjustment and outcome satisfaction for both parents and children. I found that parents who used mediation reported experiencing higher levels of fairness and control than parents who used litigation. However, the results did not indicate that mediation had any significant effect on the psychological adjustment of parents. This implies that although parents reported experiencing higher levels of fairness and control while using mediation, mediation does not impact psychological adjustment.

### **Limitations of the Study**

There were several limitations to this study. The first limitation was that data were collected using Survey Monkey, which is an online data collection platform. Online data collection incurs limitations because there is a possibility that anyone could be filling out the survey, ultimately falsifying the results. Another limitation was the inability to identify the mediator's underlying theoretical approach to mediation. Also, due to the nature of this study, certain generalizations cannot be made.

### **External Validity**

External validity issues within this study include the convenience sampling used for participant recruitment. Convenience sampling limits generalizations that can be made about this study. The request for study participation was posted to my personal Facebook page, which could have introduced sampling bias. Participants may have decided to participate or not to participate simply because they knew me personally. Respondents who knew me may have responded in a desirable manner, thereby falsifying their responses. Additionally, certain participants may have participated or not participated because they knew me.

### **Internal Validity**

Internal validity issues in this study included the inability to identify the mediator's underlying theoretical approach to mediation. A total of 222 individuals responded and agreed to participate in the study. Of the 222 participants, 170 participants completed all survey questions, which is a 77% completion rate. This indicated that 52 participants abandoned the study prematurely. This may have been because the study

elicited uncomfortable feelings for participants. Another possible reason for this may have been frustration with the length of the study.

### **Recommendations for Further Research**

Results of this study found that parents who mediated showed higher levels of fairness and control than parents who litigated. Further research could investigate the demographic differences among parents who mediate and parents who litigate. This would help identify the cause of the interaction between mediation and the reported higher levels of fairness and control.

The published literature on the effects of mediation or litigation on depression has been contradictory. In previous research, mediation was associated with higher levels of depression for mothers (Beck et al., 1988; Emery et al., 1991; Emery & Wyr, 1987) and lower levels of depression for fathers. I found no significant difference between mothers' and fathers' level of depression when comparing mediation and litigation. As stated earlier, one major difference between the present study and previous studies is the instruments that were used to measure depression. Other researchers (Beck et al., 1988; Emery et al., 1991; Emery & Wyr, 1987) used the BDI to measure depression; however, I measured depression with the CES-D. Therefore, more empirical research is needed to address the inconsistent findings between this study and previous studies.

There were also discrepancies between this study and previous studies regarding relational conflict. Results of the current study showed that parents who used mediation or litigation experienced comparable levels of relational conflict as measured by the Acrimony Scale. Other researchers found that fathers who mediated reported

significantly more satisfaction with the effect of the dispute resolution method on their relationship with their children's mother (Emery et al., 1991; Emery & Wyer, 1987). Time interacted with resolution method to affect the parents' ratings of conflict; mediation parents reported a decrease in co-parenting conflict 1 year after the dispute resolution, whereas litigation parents reported an increase in co-parenting conflict a year after the dispute resolution (Sbarra & Emery, 2008). All of the studies including the present study included the Acrimony Scale to measure relational conflict. One factor that cannot be determined is the mediator's underlying theoretical approach to mediation. The mediator's theoretical approach is the approach that the mediator uses to reduce conflict. Perhaps the mediator's theoretical construct interacts with relational conflict. Future studies should be conducted to measure interaction between mediator's theoretical construct and relational conflict.

### **Implications**

The current study was unique because it addressed an underresearched area of mediation and litigation with a population that has experienced significant demographic changes. Measuring parents' psychological adjustment to child custody disputes is important because the psychological well-being of parents is likely to have a positive or negative effect on the children involved. For example, researchers have found that when individuals live with a depressed family member, they are at a greater risk of suffering from depression as well (Novello et al., 2011). In addition, children whose parents experience depression are at a greater risk of being depressed and displaying antisocial behaviors (Downey & Coyne, 1990).

The results of the current study provided a greater understanding of the psychological adjustment and outcome satisfaction of parents concerning child custody mediation and litigation. Insights from this study could aid court systems and mediators in helping parents have a more successful divorce experience. Encouraging parents to utilize mediation could help parents to have a more successful divorce experience as the results of this study indicated that parents experienced higher levels of fairness and control. Mediation has the potential to be a great force for social change by addressing issues (e.g., spousal support, scheduling time with the children, child support, financial issues, and property division) brought forth by parents with the divorce process. Mediation allows parents the opportunity to work together collectively to best meet their needs, rather than have a judge determine child support and other related issues. As mentioned, the results of this study indicated that parents experienced higher levels of fairness and control when utilizing mediation.

Advancing litigation and mediation research will provide the following implications for society: the position of litigation and mediation in society, the profession of mediation, and the cost and benefits of litigation and mediation. Parents may be persuaded to utilize mediation if they believe that they will have more fairness and control within their dispute. If more parents utilize mediation, the profession of mediation will expand, thus providing more employment opportunities for mediators. Mediation is generally free or significantly cheaper than litigation, therefore, not only could parents have higher levels of fairness and control, they would also be saving money utilizing mediation. With more studies being conducted to evaluate the efficiency of mediation,



the practice of mediation may be improved. Consequently, divorcing couples could be offered mediation services that are more effective and will more likely meet their needs. Court systems could offer mediation as a mandatory first step. This may reduce the number of cases that litigate. Since mediation is generally free, parents would not be forced to pay money for the services and they may end feeling that they had more control within their dispute. If more families experience more fairness and control within their dispute, their overall psychological wellbeing may be improved, thereby positively impacting social change.

### **Conclusion**

According to Kaslow (1991), divorce has been characterized as a process that can affect an individual in various ways, including emotionally, psychologically, legally, economically, religiously, and socially. Within this study, I aimed to provide a greater understanding of the psychological adjustment and outcome satisfaction of parents undergoing child custody mediation versus litigation. This study compared divorcing parents' psychological adjustment and satisfaction with the process after the use of either mediation or litigation. The sample included a larger number of parents involved in child custody mediation or litigation within a larger number of court systems than in past research. Locations included 25 states in the United States and several other countries. Results of this study found that parents who mediated showed higher levels of fairness and control than parents who litigated. This finding could be used to inform parents going through custody battles that mediation may provide them with a high level of fairness and control.

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## Appendix A: Demographic Information

**AREA CODE OF PLACE WHERE CUSTODY DETERMINATION WAS MADE**\_\_\_\_\_

**Please select one option from each section:**

**SEX**

- Male
- Female

**EMPLOYMENT STATUS**

- Employed for wages
- Self-employed
- Homemaker
- Student
- Unemployed
- Not able to work due to medical problems

**ANNUAL INCOME**

- \$0.00 - \$59,000
- \$60,000 - \$99,000
- \$100,000 - \$149,000
- \$150,000 - \$199,000
- Over \$200,000

**HIGHEST LEVEL OF COMPLETED EDUCATION**

- Elementary School
- Middle School
- High School or GED
- Associates Degree
- Bachelors Degree
- Graduate Degree

**YEARS MARRIED TO FORMER SPOUSE**

- 0 – 5 years
- 6 – 10 years
- 11 – 15 years
- 16 – 20 years
- 21 – 30 years
- 30 years +

**NUMBER OF BIOLOGICAL CHILDREN SHARED WITH FORMER SPOUSE**

- 0 – 3
- 4 – 7

- 8 +

**AMOUNT OF TIME LAPSED SINCE CUSTODY WAS DETERMINED**

- 0 – 6 months
- 7 – 12 months
- 13 – 18 months
- 19 – 24 months
- 2 – 3 years
- 4 – 5 years
- 6 – 10 year
- Over 10 years

**CUSTODY RESOLUTION METHOD**

- Mediation
- Litigation

## Appendix B: Structured Survey

Please rate your experiences on a five-point scale:

1 = not at all, 2 = a little, 3 = somewhat, 4 = quite a bit, and 5 = very much

- |           |    |   |
|-----------|----|---|
| 1 2 3 4 5 | 1. | How happy are you with the decision-making process that you chose (i.e., either litigation or mediation)?       |
| 1 2 3 4 5 | 2. | How happy are you with the decisions that were made during your litigation or mediation?                        |
| 1 2 3 4 5 | 3. | How happy are you with the court contact regarding the current relationship between you and your former spouse? |
| 1 2 3 4 5 | 4. | How happy are you with your perceptions of the impact on yourself of the court contact?                         |
| 1 2 3 4 5 | 5. | How happy are you with your perceptions of the impact on your child(ren) of the court contact?                  |

## Appendix C: Acrimony Scale

For the following questions, circle “one” (1) if the answer is almost never; circle “two” (2) if the answer is some of the time; circle “three” (3) if the answer is much of the time; and circle “four” (4) if the answer is almost always.

- 1 2 3 4      1. Do you feel friendly toward your former spouse?
- 1 2 3 4      2. Do your children feel friendly toward your former spouse?
- 1 2 3 4      3. Are gifts to the children a problem between you and your former spouse?
- 1 2 3 4      4. Is visitation a problem between you and your former spouse?
- 1 2 3 4      5. Do you have friendly talks with your former spouse?
- 1 2 3 4      6. Is your former spouse a good parent?
- 1 2 3 4      7. Do your children see your former spouse as often as you would like?
- 1 2 3 4      8. Do your children see your former spouse as often as he would like?
- 1 2 3 4      9. Do you and your former spouse agree on discipline for the children?
- 1 2 3 4      10. Are your children harder to handle after a visit with your former spouse?
- 1 2 3 4      11. Do you and your former spouse disagree in front of the children?
- 1 2 3 4      12. Do the children take sides in disagreements between you and your former spouse?
- 1 2 3 4      13. Are alimony or child support payments a problem between you and your former spouse?
- 1 2 3 4      14. Do your children feel hostile toward your former spouse?
- 1 2 3 4      15. Does your former spouse say things about you to the children that you don't want them to hear?
- 1 2 3 4      16. Do you say things about your former spouse to the children that he wouldn't want them to hear?
- 1 2 3 4      17. Do you have angry disagreements with your former spouse?
- 1 2 3 4      18. Do you feel hostile toward your former spouse?
- 1 2 3 4      19. Does your former spouse feel hostile toward you?
- 1 2 3 4      20. Can you talk to your former spouse about problems with the children?
- 1 2 3 4      21. Do you have a friendly divorce or separation?
- 1 2 3 4      22. Are pick-ups and drop-offs of the children between you and your former spouse a difficult time?
- 1 2 3 4      23. Does your spouse encourage your child to live with him or her?

- 1 2 3 4 24. Have you adjusted to being divorced/separated from your former spouse?
- 1 2 3 4 25. Has your former spouse adjusted to being divorced from you?

## Appendix D: Nonacceptance of Marital Termination

For the following questions, circle 1 = not at all, 2 = a little, 3 = somewhat, 4 = very much

- 1 2 3 4      1. I find myself spending a lot of time thinking about my former spouse
- 1 2 3 4      2. Sometimes I just can't believe that we got a divorce (separation).
- 1 2 3 4      3. I find myself wondering what my (former) spouse is doing.
- 1 2 3 4      4. I went ahead with the divorce (separation) only because it was what my (former) spouse wanted.
- 1 2 3 4      5. I feel as if I've been dumped.
- 1 2 3 4      6.. Perhaps with all things considered, we should have tried longer.
- 1 2 3 4      7. This has been coming for a long time, and I'm glad we've finally made the break.
- 1 2 3 4      8. I feel as if this is a horrible mistake.
- 1 2 3 4      9. It isn't an easy decision to divorce (separate from) your spouse, but basically I'm relieved.
- 1 2 3 4      10. I feel I will never get over the divorce (separation).
- 1 2 3 4      11. Divorce is one of the most tragic things that can happen to a person.



## Appendix E: Center for Epidemiologic Studies Depression Scale (CES-D)

Below is a list of some of the ways you may have felt or behaved.

Please indicate how often you've felt this way during the past week. Respond to all items.

1 = Rarely or none of the time (less than 1 day), 2 = Some or a little of the time (1-2 days), 3 = Occasionally or a moderate amount of time (3-4 days), 4 = Most or all of the time (5-7 days)

- |         |   |
|---------|---|
| 1 2 3 4 | 1. I was bothered by things that usually don't bother me.                               |
| 1 2 3 4 | 2. I did not feel like eating; my appetite was poor.                                    |
| 1 2 3 4 | 3. I felt that I could not shake off the blues even with help from my family or family. |
| 1 2 3 4 | 4. I felt I was just as good as other people.   |
| 1 2 3 4 | 5. I had trouble keeping my mind on what I was doing.                                   |
| 1 2 3 4 | 6. I felt depressed.  |
| 1 2 3 4 | 7. I felt that everything I did was an effort.  |
| 1 2 3 4 | 8. I felt hopeful about the future.   |
| 1 2 3 4 | 9. I thought my life had been a failure.  |
| 1 2 3 4 | 10. I felt fearful.   |
| 1 2 3 4 | 11. My sleep was restless.  |
| 1 2 3 4 | 12. I was happy.  |
| 1 2 3 4 | 13. I talked less than usual.   |
| 1 2 3 4 | 14. I felt lonely.  |
| 1 2 3 4 | 15. People were unfriendly.   |
| 1 2 3 4 | 16. I enjoyed life.   |
| 1 2 3 4 | 17. I had crying spells.  |
| 1 2 3 4 | 18. I felt sad.   |
| 1 2 3 4 | 19. I felt that people dislike me.  |
| 1 2 3 4 | 20. I could not get "going."  |

Appendix F: Proof of Permission for Acrimony Scale

