

# MEDIATING PARENTING SOLUTIONS IN THE AGE OF TECHNOLOGY

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## INTRODUCTION

During the COVID-19 pandemic, court programs experienced an unprecedented shift toward virtual communication, signaling a turning point for program administrators, their partners, and the communities they serve. The accelerated digitization of services in the parenting court ecosystem—such as through online dispute resolution (ODR) and virtual mediation—provided opportunities for enhanced accessibility and efficiency while

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raising novel questions around equitable and ethical practices. Despite the challenges of modernizing court programs, technology's role in advancing solutions for parents and children will far outlast the pandemic. For these reasons and others examined in the study described below, court stakeholders must closely monitor technology's effect on access to justice.

From August to December 2020, a research team conducted a statewide case study of a family mediation program, M.A.R.C.H., Inc., to assess the effectiveness of virtual services in resolving parental disputes around custody, access and visitation, child support, and other issues. Using administrative data, post-mediation surveys, and interviews with parents, mediators, and parenting court stakeholders, the researchers compared indicators of accessibility, engagement, outcomes, and satisfaction across three mediation formats.

Section I of this Article reviews the literature on mediation, online dispute resolution, and the benefits and challenges of virtual services in court programs. It also introduces the Missouri program at the center of this study—M.A.R.C.H., Inc. Sections II and III describe the study's methodology and summarize the findings gathered from administrative data; post-mediation surveys; and interviews with parents, mediators, and parenting court stakeholders. Section IV synthesizes findings with a discussion and recommendations, and Section V outlines the study limitations and opportunities for future research.

## I. BACKGROUND

### *Mediation and Dispute Resolution in the Age of Technology*

Mediation is a process in which a neutral, third-party professional helps two parties arrive at a satisfactory agreement and, in some cases, foster more effective communication. As a form of Alternative Dispute Resolution (ADR), mediation provides an avenue to resolve disputes outside of the adversarial court system and recently has “emerged as the primary ADR process in the federal district courts.”<sup>1</sup> Though not a panacea, mediation can work in partnership with—rather than replace—lawyers and the courts, while flattening the structural inequities that lead to or prolong litigation.

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1. Michael McManus & Brianna Silverstein, *Brief History of Alternative Dispute Resolution in the United States*, CADMUS 104 (Oct. 1, 2011) (internal citation omitted).

For example, scholars have considered mediation not only as a partner in eviction prevention programs and courts, but as an upstream intervention to reduce the need for eviction filings altogether. In the context of tenant-landlord disputes, where legal representation is notoriously asymmetrical, Deborah T. Eisenberg and Noam Ebner found that mediation can provide low-income tenants a “greater sense of voice, broader remedial options, and increased flexibility.”<sup>2</sup> The same is often true in parent mediation.

Mediation plays an important role in the family court system, as either a recommended or mandated fixture in family dispute resolution or divorce proceedings. In parenting cases, it provides separated or never-married parents an alternative pathway for settling disputes over custody, child support, and parenting plans. In many parenting cases that have already escalated to court, mediation can serve as a useful intervention to facilitate communication. In other cases, mediation is a preventative measure by which parents can attempt to resolve issues outside the court system.

By facilitating conversations or agreements privately and outside the courts, mediation can produce residual benefits for public agencies, programs, and the communities they serve. In the 1990s, Congress authorized district courts to order ADR as a way to achieve greater efficiency through expeditious settlements, reduced backlogs, and decreased financial strains on the justice system.<sup>3</sup> Since then, ADR processes such as mediation have been found to increase satisfaction with agreements between disputing parents and prolong compliance with parenting, custody, or child support agreements.<sup>4</sup> Compliance benefits parents and children with positive spillover for communities. Research shows that involvement of and regular child support payments by noncustodial parents are associated with better educational outcomes, lower poverty rates, and decreased reliance on public assistance.<sup>5</sup>

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2. Deborah T. Eisenberg & Noam Ebner, *Disrupting the Eviction Crisis with Conflict Resolution Strategies*, 41 MITCHELL HAMLINE L.J. PUB. POL’Y & PRAC. 125, 131 (2020).

3. Alternative Dispute Resolution Act of 1998, Pub. L. No. 105-315, 112 Stat. 2993.

4. Ann Milne, *Mediation - A Promising Alternative for Family Courts*, 42 JUV. & FAM. CT. 61, 64 (1991); *How Courts Work: Mediation*, AM. BAR ASS’N (2019), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/mediation\\_advantages/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/mediation_advantages/) (last visited Jan. 27, 2022).

5. Elaine Sorensen, *The Story Behind the Numbers: The Child Support Program is a Good Investment*, U.S. DEPT. OF HEALTH & HUMAN SERVICES ADMIN. FOR CHILDREN & FAMILIES 1, 8 (2016), [https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn\\_csp\\_is\\_a\\_good\\_investment.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/sbtn_csp_is_a_good_investment.pdf) [<https://perma.cc/6FCJ-5WGQ>].

In times of crisis or increased health safety concerns, mediation can provide additional benefits to families and communities. During the COVID-19 pandemic, the family court system, partnering mediators, and parents receiving mediation services—hereafter, “parties”—confronted intersecting health, economic, and emotional challenges. The public health crisis response upended co-parenting schedules; introduced novel issues around travel, education, and public safety; escalated financial and emotional strain; and prolonged separation between noncustodial parents and their children.<sup>6</sup> In many of these cases, parents could not turn to the courts or in-person mediation for relief due to local mandates or concern for their own safety and health.<sup>7</sup> Online mediation, therefore, became a natural alternative to traditional mediation in the short run, but it has long-run benefits and challenges for programs to consider.

### *Online Dispute Resolution*

The civil court system often leaves self-represented and/or low-income parents feeling ill-equipped to navigate a labyrinth of processes for creating, implementing, or modifying parenting plans after dissolving their marriage or intimate relationship.<sup>8</sup> In 2018, a National Center for State Courts voter survey found that about 60% of voters felt “state courts [were] not doing enough to empower regular people to navigate the court system without an attorney,” and half described the court system as inefficient. That same survey found most voters were likely to try alternative pathways to resolve cases, including 64% who would try online dispute resolution.<sup>9</sup> Online dispute resolution (ODR) is a “public-facing digital space for parties to resolve their dispute or case” and to improve access to justice and

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6. Robin Young & Samantha Raphelson, *Parenting Expert Outlines Tips for Sharing Custody During The Pandemic*, WBUR (Nov. 11, 2020), <https://www.wbur.org/hereandnow/2020/11/11/co-parenting-tips-coronavirus> [<https://perma.cc/X5W9-CJXZ>].

7. Stephen H. Sulmeyer, *Family Mediation During the Coronavirus Pandemic: Unprecedented Times Call for Extraordinary Measures*, JAMS (Apr. 28, 2020), <https://www.jamsadr.com/blog/2020/family-mediation-during-the-coronavirus-pandemic-unprecedented-times-call-for-extraordinary-measures> [<https://perma.cc/GYD3-NS2A>].

8. Memorandum from GBA Strategies to National Center for State Courts, 2018 State of the State Courts – Survey Analysis (Dec. 3, 2018) (available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0020/16157/sosc\\_2018\\_survey\\_analysis.pdf](https://www.ncsc.org/__data/assets/pdf_file/0020/16157/sosc_2018_survey_analysis.pdf) [<https://perma.cc/8BUB-XPC7>]).

9. *Id.* at 5.

interactions with the civil justice system.<sup>10</sup> Like mediation, ODR has its origins in ADR, and has become a fixture within the family court system to resolve issues related to access and visitation, child support, and custody before they escalate to a court hearing.

In an increasingly digitized world, ODR has helped bridge the long-standing gap between under-resourced courts<sup>11</sup> and innovation while generating satisfactory outcomes, program efficiency, and access to justice alongside other court services. Experts find ODR introduces convenience to already-burdened court systems while increasing accessibility for parties.<sup>12</sup> It also generates cost-savings on travel, childcare, and time off; avoids delays; and reduces administrative burdens.<sup>13</sup> Virtual platforms may allow mediators and legal practitioners to use an array of tools to enhance communication and reduce tension, such as caucusing in breakout rooms, viewing documents digitally, or turning off cameras. When coupled with partner violence screening, safety, and trauma-informed measures, these benefits can go even further in cases involving intimidation or high levels

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10. *What is ODR?*, NAT'L CTR. FOR STATE COURTS: ODR (2022), <https://www.ncsc.org/odr/guidance-and-tools> [<https://perma.cc/25Z2-DUXS>]. For more information on ODR in courts, see also NATIONAL CENTER FOR STATE COURTS JOINT TECHNOLOGY COMMITTEE ("NCSC JTC"), *JTC Resource Bulletin: ODR for Courts* (Nov. 29, 2017), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0031/18499/2017-12-18-odr-for-courts-v2-final.pdf](https://www.ncsc.org/_data/assets/pdf_file/0031/18499/2017-12-18-odr-for-courts-v2-final.pdf) [<https://perma.cc/H4HU-HNXQ>]; NATIONAL CENTER FOR STATE COURTS JOINT TECHNOLOGY COMMITTEE, *JTC Resource Bulletin: Case Studies in ODR for Courts* (Jan. 28, 2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/16517/2020-01-28-odr-case-studies-v2-final.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/16517/2020-01-28-odr-case-studies-v2-final.pdf) [<https://perma.cc/R9KJ-5Q5Q>], and NCSC JTC's Resource Bulletins at <https://www.ncsc.org/about-us/committees/joint-technology-committee/publications-and-webinars> [<https://perma.cc/KV86-N96D>].

11. Michael J. Graetz, *Trusting the Courts: Redressing the State Court Funding Crisis*, 143 DAEDALUS 96 (2014).

12. Erika Rickard, *Online Dispute Resolution Moves From E-Commerce to the Courts*, PEW CHARITABLE TRUSTS (June 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/online-dispute-resolution-moves-from-e-commerce-to-the-courts> [<https://perma.cc/69YV-BKWK>].

13. See Joel M. Grossman, *Arbitration by Videoconference: Not as Scary as You Think*, JAMS (Nov. 10, 2020), <https://www.jamsadr.com/blog/2020/arbitration-by-videoconference-not-as-scary-as-you-think> [<https://perma.cc/E9UB-ALE9>]; David Hodson, *The Role, Benefits, and Concerns of Digital Technology in the Family Justice System*, 57 FAM. CT. REV. 425, 427–28 (2019); Linda R. Singer, *Update on Remote Mediations and the Virtual Evolution of ADR*, JAMS (Oct. 29, 2020), <https://www.jamsadr.com/blog/2020/update-on-remote-mediations-and-the-virtual-evolution-of-adr> [<https://perma.cc/7QT2-BPQP>]; Joann Feld, *Mediation May Be the Best Option for Divorced Families Dealing With the Impacts of COVID-19*, N.Y. STATE BAR ASS'N (May 15, 2020), <https://nysba.org/mediation-may-be-the-best-option-for-divorced-families-dealing-with-the-impacts-of-covid-19/> [<https://perma.cc/6JK9-HLJ7>].

of conflict.<sup>14</sup> These benefits make ODR a natural alternative for parenting court services, where the need for accessibility and efficiency is high.<sup>15</sup>

However, several important considerations counterbalance these benefits of ODR, including issues with confidentiality, a loss of interpersonal communication, and unequal digital access. In the absence of clear ground rules for online sessions, multitasking, distractions, and the decreased ability to control who can overhear the conversation can compromise the quality of communication and threaten confidentiality.<sup>16</sup> Mediators and parties have reported challenges with distractions, background noise, and uncontrolled threats to confidentiality in online mediation formats.<sup>17</sup> Mediation experts highlight how much there is still to learn about ODR and its effectiveness in meeting the psychological needs of the parties involved. It may be that “the value of a human neutral listening to the stories of the parties and expressing empathy may exceed whatever efficiency benefits may come” of this approach.<sup>18</sup>

ODR may also impose the same challenge it is trying to solve: accessibility. One researcher reports, “[s]adly, those most in need of access to justice are those with the least digital access.”<sup>19</sup> A lack of privacy at home, equipment, or digital skills are the barriers mediating parties may confront

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14. See Fernanda S. Rossi et al., *Shuttle and Online Mediation: A Review of Available Research and Implications for Separating Couples Reporting Intimate Partner Violence or Abuse*, 55 FAM. CT. REV. 390, 391 (2017); Singer, *supra* note 13; Helen Cleak et al., *Screening for Partner Violence Among Family Mediation Clients: Differentiating Types of Abuse*, 33 J. INTERPERSONAL VIOLENCE 1118, 1141 (2015).

15. Tania Sourdin, Bin Li & Donna Marie McNamara, *Court Innovations and Access to Justice in Times of Crisis*, 9 HEALTH POL’Y & TECH. 447 (2020); Erika Rickard, *Online Dispute Resolution Can Make Local Courts More Efficient*, THE PEW CHARITABLE TRUSTS: CIVIL LEGAL SYSTEM MODERNIZATION (June 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/online-dispute-resolution-can-make-local-courts-more-efficient> [<https://perma.cc/JLA5-R29M>]; see Noam Ebner & Elayne E. Greenberg, *Strengthening Online Dispute Resolution Justice*, 63 WASH. U.J.L. & POL’Y 65, 92–93 (2020); Howard A. Herman, *Remote Mediation: An Opportunity for Customization*, JAMS ADR INSIGHTS (Sept. 14, 2020), <https://www.jamsadr.com/blog/2020/remote-mediation-an-opportunity-for-customization> [<https://perma.cc/2W87-49FS>].

16. Peter Halprin & Andrew Nadolna, *Is Virtual ADR the “New Normal”?*, 264 N.Y.J.L. 22 (2020) (available at <https://www.jamsadr.com/files/uploads/documents/articles/nadolna-nylawjournal-is-virtual-adr-the-new-normal-2020-07-31.pdf> [<https://perma.cc/2W87-49FS>]).

17. James C. Melamed, *Divorce Mediation and the Internet*, in DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES, AND APPLICATIONS 566 (Jay Folberg et al. eds., 2004); Rossi et al., *supra* note 14.

18. Colin Rule, *Online Dispute Resolution and the Future of Justice*, 16 ANN. REV. L. & SOC. SCI. 277 (2020).

19. David Hodson, *The Role, Benefits, and Concerns of Digital Technology in the Family Justice System*, 57 FAM. CT. REV. 425, 432 (2019).

if virtual formats supplant other communication options.<sup>20</sup> However, others still conclude that when appropriate circumstances exist, ODR can be used as a vehicle to advance justice, not limit it.<sup>21</sup>

*Mediation Achieving Results for Children (M.A.R.C.H.)*

This study aimed to address these and other timely concerns around effectiveness, satisfaction, efficiency, and access at the intersection of ODR and mediation services. The study emerged from a partnership between a team of researchers in Washington, D.C. and M.A.R.C.H., Inc., a Missouri non-profit created through a collaborative effort between the Missouri Department of Social Services and Family Support Division (FSD).<sup>22</sup> Since 1997, M.A.R.C.H., based out of Clay County, has partnered with mediators in each of Missouri's 114 counties, the state's 46 judicial circuits, and other service providers to connect parents across the state with mediation services to resolve parenting time and child support disputes. M.A.R.C.H. provides up to four hours of mediation services and limited scope legal services at no cost to parents with an active "IV-D" child support case with the state of Missouri.<sup>23</sup>

20. See Rossi et al., *supra* note 14, at 397.

21. Amy J. Schmitz & Leah Wing, *Beneficial and Ethical ODR for Family Issues*, 59 FAM. CT. REV. 250 (2021) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3561872](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561872) [<https://perma.cc/XY8E-6RX6>]).

22. See M.A.R.C.H. MEDIATION, <https://www.marchmediation.org/> [<https://perma.cc/4HPF-XWU4>].

23. Title IV-D: "Many state court systems and individual courts take advantage of federal funding under Title IV-D of the Social Security Act to obtain reimbursement for the costs of adjudicating child support and paternity matters when hearings are handled by persons other than 'judges' under state law." *Resource: Title IV-D Funding Resource Guide (SRLN 2014, revised 2017)*, SRLN (Nov. 1, 2021), <https://www.srln.org/node/53/resource-title-iv-d-funding-resource-guide-srln-2014-revised-2017> [<https://perma.cc/M5TH-K4MT>]. "A IV-D case is one with a parent (mother, father, putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the state Title IV-D program . . . [A]ll families that receive TANF, Foster Care or Medicaid benefits are referred to the Title IV-D child support program for child support services." Lee D. Morhar et al., *Use of Title IV-D Child Support Program Resource for Court Based Self-Help Services, SELF-REPRESENTED LITIG. NETWORK RES. GUIDE 1*, 6-7 (Dec. 2017), [https://www.srln.org/system/files/attachments/SRLN%20Title%20IV-D%20Resource%20Guide%20Revised%2012%202017\\_0.pdf](https://www.srln.org/system/files/attachments/SRLN%20Title%20IV-D%20Resource%20Guide%20Revised%2012%202017_0.pdf) [<https://perma.cc/9M94-YL7Y>]. Funding for these services originates from the U.S. Department of Health and Human Services, Office of Child Support Enforcement (OCSE) Access and Visitation grants, passed through to the Missouri Department of Social Services to services to help noncustodial parents spend more time with their children. See *Access and Visitation Mandatory Grant Program*, OFFICE OF CHILD SUPPORT ENFORCEMENT (Sept. 2, 2021), <https://www.acf.hhs.gov/css/outreach-material/access-and-visitation-mandatory-grant-program> [<https://perma.cc/UC53-5QEV>].

M.A.R.C.H. works with parenting court stakeholders to improve outcomes for children and their parents. One such partner is the Parenting Court Program, a voluntary program in Missouri's Seventh Judicial Circuit Court for individuals who are in court due to non-payment of child support, either on the civil or criminal side. The program aims to "increase the consistency of child support payments noncustodial parents make on their support cases."<sup>24</sup> In cases where other disputes may inhibit a noncustodial parent's ability or willingness to pay child support, M.A.R.C.H. mediators help facilitate conversations, establish parenting plans, and improve compliance and program outcomes.

On average, M.A.R.C.H.'s network of mediators completes about 56 mediations per month (half voluntary and half court-ordered), of which about half are no-cost mediations provided to eligible IV-D child support cases and half are fee-for-service. Parties typically arrive at M.A.R.C.H. following a court order or an independent, voluntary request to resolve a dispute. Once M.A.R.C.H. accepts a case and determines eligibility, the two parties are assigned to one of the 70 partnering mediators based on availability and location.

In March 2020, M.A.R.C.H. began offering virtual mediation for parties alongside phone and in-person mediation in response to the COVID-19 pandemic. This study aimed to assess the role of virtual mediation formats in sustaining access to services and desirable outcomes by collecting information about the mediation sessions M.A.R.C.H. conducted during the first year of the pandemic.

## II. METHODS

From August to December 2020, researchers conducted a study to assess the effectiveness of virtual mediation as a supplement to in-person and phone mediation services to resolve parenting disputes. The study compared virtual mediation sessions—such as those conducted via Zoom—to in-person and phone mediation sessions during the data collection period. A blend of survey, interview, and administrative data captured different indicators of effectiveness, including: accessibility, engagement, case outcomes, satisfaction, and quality of communication.

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24. *Parenting Court*, 7TH JUD. CIR. CT., CLAY CTY., MO., <http://www.circuit7.net/parentingcourt> [<https://perma.cc/E2RD-8VF6>].



### *Administrative Data*

During the intake process, M.A.R.C.H. administrators captured party demographics; relationship history, including domestic violence and intimidation; self-reported ratings on ability to communicate, resolve issues, and resolve conflicts with the other party; and information indicating whether mediation was voluntary or court-ordered. The research team collected this administrative data from M.A.R.C.H. intake forms to obtain pertinent background information on the 32 cases for which the team received survey responses.

### *Post-Mediation Surveys*<sup>25</sup>

During the four-month study period, M.A.R.C.H. parties and mediators completed post-mediation surveys to capture preferences, experiences, and levels of satisfaction with the session. Parties and mediators reported the mediation type, why that type was chosen, the benefits and challenges of the mediation type, and the issues discussed during mediation. Respondents ranked the parties' ability to communicate and capacity to resolve problems on a 5-point Likert scale (*1 = very low/almost none; 5 = very high*). Parties reported their level of satisfaction with mediation and the mediator, and they indicated whether they planned to go to trial with the other parent. Mediators additionally reported on attendance and the duration of mediation, the degree of conflict observed between parties, and their likelihood of mediating virtually for future sessions.

Surveys were collected on a rolling basis across 32 mediation cases—about 20% of the total number of cases M.A.R.C.H. closed in the data collection period. Mediators gave the surveys to parties as a link following virtual or phone sessions or as a paper survey following in-person sessions. In total, 43 parties (out of 64 total) and 22 mediators completed post-mediation surveys, for a total of 65 surveys. At the end of each survey, mediators and parties had the option to provide their contact information to participate in a follow-up interview.

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25. See *infra* Appendix A for a copy of the Post-Mediation Survey.

### *Party, Mediator, and Stakeholder Interviews*

The researchers conducted sixteen phone interviews with M.A.R.C.H. parties, mediators, staff, and parenting court stakeholders. The interviewees included: five parties; five mediators; the Executive Director of M.A.R.C.H. and two administrative staff members; the Clay County, Missouri Family Court Commissioner; and two representatives from the Clay County Parenting Court Program. The interviewees were compensated for their time with gift cards.

## III. RESULTS

Quantitative and qualitative observations provided a snapshot of mediation experiences and outcomes across the three communication types during the COVID-19 pandemic. Due to possible confounding events and the limited scope of this study, direct causality cannot be attributed between communication modes and mediation outcomes. The results, however, highlight important considerations for each communication type and themes surrounding safety, accessibility, and client-centered services.

### *Administrative Data Results*

#### i. Sample Characteristics

- Of the 32 mediation cases, there was an equal share of remote (phone and virtual) and in-person mediations: 50% were conducted in-person (16 cases); 31% (10 cases) were conducted virtually; and 19% (6 cases) by phone. About half of the cases were court-ordered, and the remaining were voluntary. A majority of the mediation sessions (26 cases) involved parents who received services from the Missouri Division of Child Support Enforcement and were eligible for no-cost mediation.
- The cases spanned 14 Missouri counties but were concentrated in more populous counties. Cases from Boone, Jackson, and St.

Louis—all highly-populated, urban counties—accounted for almost half (48%) of the sample.<sup>26</sup> Another 30% of the cases were from Adair, Clark, and Clay counties, and the remaining cases were distributed across eight other counties.

- While M.A.R.C.H. serves parents across several racial and ethnic groups, most individuals who received services in FY 2020 were white (about 76%) or Black (15%).<sup>27</sup> Due to the small sample size, the study only captured data from these two demographic groups. About 66% of the parties (42 parties) in the sample were white, while 33% (21 parties) were Black. One party's race was unknown.
- On average, parties were about 32 years old, with a minimum age of 22 and a maximum age of 63.
- Thirty (30) percent of parties earned \$0 in monthly wages at the time of mediation, almost 25% earned over \$3,000 in monthly wages, and 30% reported monthly earnings between \$1500 and \$2499.
- About 65% of parties worked either part-time or full-time at the time of the mediation, 31% were unemployed, and the others' employment statuses were unknown.
- Forty-eight (48) percent of parties had achieved up to a high school diploma or GED, and 36% had completed some college or obtained a college degree.

ii. Communication Type by Race, Age, Earnings, and History of Intimidation

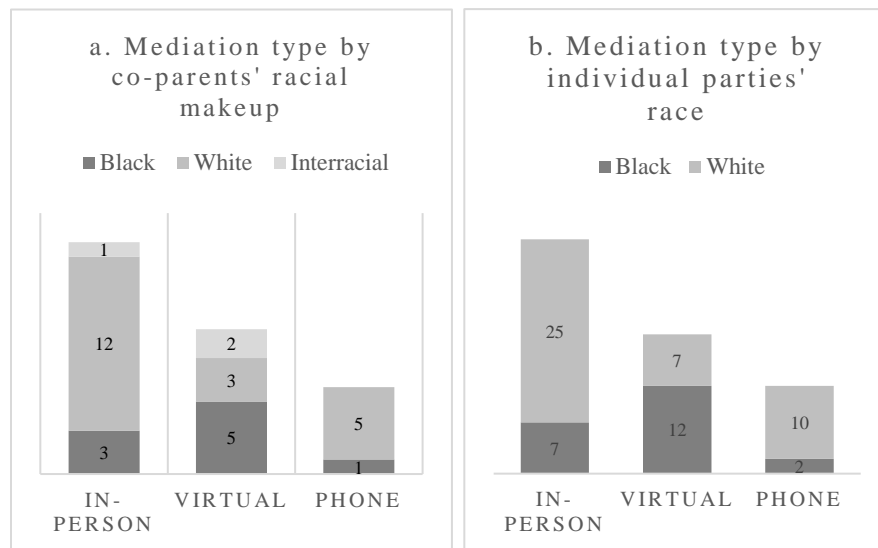
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26. *Population of Counties in Missouri (2021)*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-counties/states/mo> [<https://perma.cc/NS2J-ZHZM>].

27. In 2021, nearly 83% of Missouri's population was white alone, and about 12% was Black or African American alone, according to U.S. Census Bureau population estimates. *QuickFacts: Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MO> (last visited Jan. 15, 2022).

The research team used administrative data to identify differences in communication modes by race, earnings, and age.<sup>28</sup> A greater share of white parents (60%) received in-person mediation compared to Black (33%) and interracial parents (33%) (Figure 1a). In contrast, 56% of Black parents and almost all interracial parents mediated virtually, compared to just 15% of white parent mediations. The difference in racial groups does not change when observing data at the individual party level (Figure 1b).

Figure 1: Mediation Type by Individual Party and Co-Parents' Race



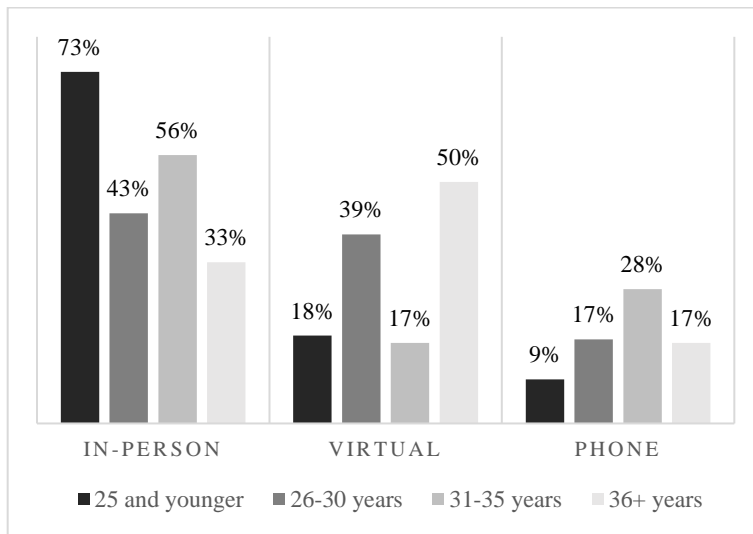
Employment status was associated with differences in mediation format. When both parents were employed full-time (12 cases), they mediated remotely (by phone or virtually) in half of the cases. In contrast, when parents were both unemployed, they mediated in-person in more than 80% of cases (five out of six).

Among parties younger than 36 years old, in-person mediation accounted for the largest share of communication types chosen (Figure 2). Nearly three-quarters (73%) of parties ages 25 and below, about 40% of

28. Data on gender, custodial, and noncustodial status of the parents was not reported.

parties ages 26 to 30, and over half (56%) of parties ages 31 to 35 mediated in person. By comparison, 67% of parties ages 36 and older mediated virtually or by phone, and the other third mediated in person.

Figure 2: Mediation Type by Age Group



During the intake process, a M.A.R.C.H. administrator asked the requesting party whether there was a history of intimidation in the relationship. In the three mediations where the requesting party reported a history of intimidation—although not representative of the true number of cases involving intimidation—the parties mediated remotely: two by phone, and one virtually.

### iii. Mediation Outcomes and Duration

Administrative records report four different outcomes of mediation: agreement with a court order, oral agreement, partial agreement, and no agreement. While the goals of mediation vary by case and may not always

include a formal agreement between parties, the study examined case outcomes by mediation type to identify differences.

Overall, more than half of cases (53%, or 17 cases) ended in an agreement with a court order (Table 1). About half of in-person and virtual mediations ended in an agreement with a court order, while nearly all phone mediations (four out of six) ended in an agreement with a court order. Oral agreements accounted for 20% of all cases, most of which were conducted in-person. A greater share of in-person mediations (31%) ended in no agreement, compared to virtual mediations (one in ten cases). The single mediation that resulted in a partial agreement was conducted virtually.

Table 1: Mediation Outcome by Communication Type

| <i>Mediation Outcome</i>   | In-Person  |            | Virtual    |            | Phone      |            | All        |            |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
|                            | <i>No.</i> | <i>%</i>   | <i>No.</i> | <i>%</i>   | <i>No.</i> | <i>%</i>   | <i>No.</i> | <i>%</i>   |
| Agreement with court order | 8          | 50%        | 5          | 50%        | 4          | 66%        | 17         | 53%        |
| No agreement               | 5          | 31         | 1          | 10         | 1          | 17         | 7          | 22         |
| Oral agreement             | 3          | 19         | 3          | 30         | 1          | 17         | 7          | 22         |
| Partial agreement          | 0          | 0          | 1          | 10         | 0          | 0          | 1          | 3          |
| <i>Total</i>               | <i>16</i>  | <i>100</i> | <i>10</i>  | <i>100</i> | <i>6</i>   | <i>100</i> | <i>32</i>  | <i>100</i> |

### *Survey Data Results*

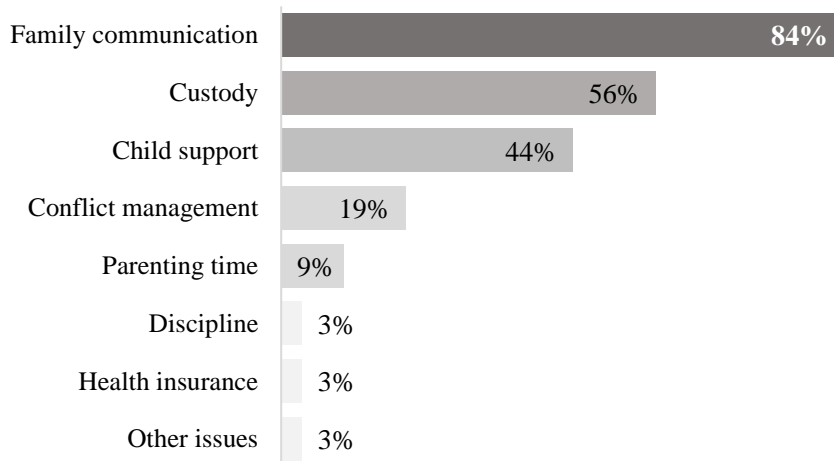
Post-mediation surveys captured the benefits, challenges, and experiences of parties and mediators during the session. It is important to note that females were disproportionately represented in the party surveys, with males comprising less than a quarter of the 43 party responses.

#### i. Issues Discussed During Mediation

According to post-mediation survey data, the most common issues addressed during mediation were family communication, custody, and child support (Figure 3). A majority (84%) of sessions involved discussions around family communication, while about half addressed custody and child support (56% and 44%, respectively). In about one in five mediations, the parties addressed conflict management, and one in ten mediations addressed

parenting time. Other, less frequently discussed issues were discipline and health insurance.

Figure 3: Share of Cases in Which Parties Discussed Parenting Issues



ii. Reasons for Choosing the Mediation Type

Neither mediators nor parties were solely responsible for choosing the communication type across cases; rather, this choice depended on individual circumstances coupled with mediator and party preferences. Most mediators and parties who mediated in-person reported that the format was chosen out of “personal preference.” Mediators reported that they conducted the session in-person at the request of parties; in one survey, the mediator reported that the parties “thought it would be more effective.”

In contrast to in-person mediation, participants in virtual and phone mediation reported in their post-mediation surveys that safety and

convenience were primary drivers of the choice.<sup>29</sup> Mediators and parties chose virtual mediation because of COVID-19 and geographic distance between the parties and/or the mediator. The motivations provided for phone mediation included that an ex parte order was in place, COVID-19 precautions, transportation issues with long-distance parties, and other “health concerns,” including pregnancy.

### iii. Benefits and Challenges

Virtual, in-person, and phone mediation presented a range of benefits for mediators and parties, but across all three forms of mediation, parties most frequently reported ease of communication as a benefit. It is possible that the parties’ perceived ease of communication was associated not only with the mediation type, but with the positive communication outcomes of mediation itself. As discussed in Section IV, this finding may also indicate that each mediation type served different party needs for enhancing communication.

Following in-person sessions, parties and mediators reported ease of scheduling, decreased tension, and nonverbal communication as benefits. Mediators and parties who mediated virtually or by phone reported the benefits of safety, decreased tension, scheduling, ability to attend, and convenience.

Challenges during mediation differed across communication types. Following in-person mediation, parties and mediators reported issues with communication, increased tension, and safety. Though it is unclear why communication was both a benefit and challenge of in-person mediation, some mediators reported in surveys that masks required because of COVID-19 made communication difficult and fueled tension if parties refused to wear their masks properly. Virtual mediation presented a different set of challenges, including confidentiality, a lack of nonverbal communication and visual aids, increased tension, and technical issues. One mediator

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29. While later versions of the survey allowed respondents to distinguish between physical/health and emotional safety, the number of responses following the change were too few to draw a reliable distinction. Instead, the later responses were aggregated into the general “safety” category. Participants were not offered the opportunity to elaborate on how safety and convenience drove their choice of format in post-mediation surveys, though some interview participants described these factors below. See *infra* ‘Party and Mediator Interviews: Common Themes and Select Quotations,’ p. 19.



reported in her survey that virtual mediation led to distractions rarely encountered during in-person mediations, such as parties smoking during the session. Challenges with phone mediation mirrored those reported for virtual mediation and included technical issues, visual aids, lack of nonverbal communication, and background distractions.

#### iv. Ratings of Communication and Satisfaction with Mediation

Parties rated the quality of communication and problem resolution on a 5-point Likert scale (*1 = very low; 5 = very high*). The study drew comparisons between parties' pre- and post-mediation questionnaires with data from intake forms and surveys.

Parties and mediators responded to the following prompts:

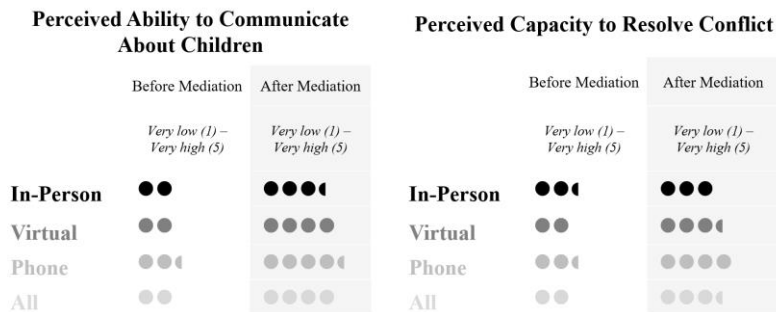
- *The ability to communicate effectively in the session was...*
- *The capacity to resolve problems in the session was...*

Comparisons of pre- and post-mediation responses indicate that parents' perceived ability to communicate about their children and capacity to resolve problems improved across all forms of communication. Compared to pre-mediation responses, parents' perceived ability to communicate increased by an average of 2 points out of 5 points, and their capacity to resolve conflict with their co-parent improved by an average of 1.5 points (Figure 4). The survey results indicated that, of the three communication modes, phone mediation resulted in the highest reported ability to communicate and resolve conflict after the session, at 4.5 points and 5 points, respectively. The increase in parents' perceived capacity to communicate and resolve conflict may be associated with the short-term outcomes of mediation, but revisiting this question with a larger sample size, qualitative data, or in a longitudinal study could substantiate this finding.

Changes in perceived ability to communicate and resolve conflict differed across communication types. Parties' reported ability to communicate about their children increased by 2 points following phone mediation and virtual mediations, and it increased by 1.5 points following in-person sessions. The perceived ability to resolve conflict increased by an

average of 1.5 points following virtual and phone mediations, while the change was smaller for in-person mediations at a .5-point increase.

Figure 4: Average Ratings of Parent's Communication Pre- and Post-Mediation



Parties were also asked to rate their satisfaction or dissatisfaction with the mediation process (*1 = not at all satisfied; 5 = very satisfied*). On average, parties rated their satisfaction with mediation equally across the three communication modes, with an average satisfaction score of 4 out of 5. One party reported that the mediation helped resolve misunderstandings, while another stated, “With the mediator present, I was able to voice my concerns.”

#### v. Did Parents Plan to Go to Trial After Mediation?

Following mediation, parents can decide how they will address any unresolved issues or formalize agreements related to parenting time, custody, and child support, independently of the mediator. In some cases, this decision involves the parents going to trial. About 46% of virtual mediation respondents, 44% of phone mediation respondents, and 37% of in-person mediation survey respondents reported that they planned to go to trial for reasons including concerns for their child’s safety, schedule changes, and custody issues.

## vi. How likely were Mediators to Use Virtual Mediation in the Future?

Mediators were asked to rate how likely or unlikely they would be to use virtual communication for future mediations. Almost three-quarters of mediators reported that they were likely to use a virtual communication platform for future mediations. They reasoned that virtual communication would fill continued needs during the pandemic; provide flexibility with parents' work schedules while addressing barriers such as poor weather, health concerns, and distance; decrease tension; and improve conflict resolution. The remaining quarter of mediators reported that they were somewhat unlikely or unsure whether they would use virtual platforms in the future. One undecided mediator noted accessibility issues, stating, "My experience has been that not everyone's devices have the same capacities." One mediator who was somewhat unlikely to mediate virtually noted an exception where virtual mediation could increase safety in cases involving partner violence.

*Party and Mediator Interviews:  
Common Themes and Select Quotations*

Interviews with mediators, parties, M.A.R.C.H. administrators, and parenting court stakeholders helped paint a clearer picture of the experiences, interactions, challenges, and benefits involved with mediation and different modes of communication. Common interview themes included how mediation types impacted physical and emotional safety, accessibility, and ease of conversation, as well as unanticipated ethical considerations.

## i. Physical and Emotional Safety

Several parties and mediators reflected on how the mediation format they participated in benefited their safety. For parties who experienced past abuse or tension with the other parent, virtual and phone mediation offered physical and emotional distance during the conversation, which helped them feel safe and remain on topic:

"He had been abusive to me . . . verbally and emotionally . . . In our case, any subtle facial expression or body

language makes someone quick to jump to an assumption that could be right, but also could also be totally wrong. I think that it was a lot easier when it was virtual, and I was able to focus on our mediator.” – Party, Virtual

“I definitely felt more comfortable having the mediation at home. I didn’t have to be in a foreign environment. Getting to make a lot of those decisions in a mediation where I don’t know what’s going to come up or what we’re going to have to work through brought a sense of mental and emotional security. As far as safety concerns, I didn’t have to worry about running into that person in the parking lot or worrying about them following me afterwards.” – Party, Phone

Parties who mediated in-person voiced a preference for having another individual in the room to foster a safe environment and improve the quality of the conversation:

“ . . . I’m actually very scared of him at times . . . . So that’s why I chose to do a mediation because . . . if there is someone else in the room, they can keep us on topic. I felt very safe and reassured that everything was going to be okay.” – Party, In-Person

## ii. Accessibility

Parties and mediators recognized the accessibility benefits and shortcomings associated with virtual, phone, and in-person mediation. For some, virtual and phone options made mediation a more accessible route for navigating parenting conflicts while balancing work, children, and travel:

“ . . . It was tremendously helpful with scheduling in that I didn’t have to take off work because of it. I could . . . have someone come and watch my son at home.” – Party, Virtual

“I felt [phone mediation] to be a lot more convenient between childcare, time off work, and finding the office.” – Party, Phone

“I have worked with families who live in poverty or are lower-income . . . People have had to take the bus, find a ride, leave work, or find a sitter . . . Many of these barriers are eliminated with virtual mediation.” – Mediator, Virtual

“I did a mediation with someone outside of the US, which would not have been possible if all mediations were in-person. Also, it’s useful in situations where parties are uncomfortable or feel unsafe being in the same room.” – Mediator, Virtual

In other cases, in-person mediation remained the only viable option for parties when they lacked access to internet, technology, or a private space:

“I don’t have access to internet at home, so that would have prevented me from doing mediation online.” – Party, In Person

“Virtual mediation relieves a lot of [scheduling conflicts] and makes them more capable of attending. However, people don’t always have a private space.” – Mediator, Virtual

### iii. Improved Communication

Mediators and parties also discussed how the mediation format chosen impacted participants’ ability to communicate, both during the session and in the long term:

“Zoom meetings are very impactful - people can be very open in the mediations. For some people, it feels intimate and like they can really have a conversation. It may be because they feel safer or more relaxed in their home environment. I think it’s been very successful.” – Mediator, Virtual

“One beautiful thing about Zoom is the technology doesn’t allow you to talk over one another. What it does is it forces you to sit back and listen prior to reacting, which I found interesting . . . People appeared to be a little less triggered

by the other party in virtual mediation. There's something about the virtual mediation in that it wasn't as emotionally loaded as being there in the same room . . . . That one step of removal was very effective and . . . kept the parties from spiraling." – Mediator, Virtual

"It was easier just having someone else in the room . . . . Someone that was there to help us with specific things . . . and keep us on track. Since the mediation, he and I have gotten better at communicating with each other." – Party, In Person

"There was no interrupting each other. The mediator was good at [helping us take turns]. We were able to stay on track with the topic because we weren't being distracted or interrupted." – Party, Phone

Some parties and mediators who participated in mediation via phone reflected on how the non-visual format enabled them to use emotion-regulation techniques during the session, effectively easing tension:

"I muted myself if I felt myself getting upset by what was being said. I could sigh . . . . If somebody had to cry, they would have the chance to not be stared at or judged about that. And for me, I could get up and move around if I needed to get that energy out . . . . It cut out a lot of that body language that could cloud the situation." – Party, Phone

"I did not think it would be successful, but it turns out it's actually quite successful. Sometimes, the parties not being able to help them see one another helps them focus on solutions and so I'm hopeful when I go into a telephone mediation." – Mediator, Phone

In at least one in-person mediation, masks to prevent the spread of COVID-19 created an additional communication barrier, and possibly an additional source of conflict:

"I had one client who came to session without a mask, I supplied one. Every time she talked, she felt the need to pull

it away from her face, which defeated the purpose of the safety measure. In terms of mediation dynamics, I didn't want to put myself in a compliance position and constantly correct her because I was concerned that would affect the overall dynamics of what we were trying to do in the family law case. So, I just let her be, but it wasn't ideal."  
– Mediator, In Person

#### iv. Navigating Ethical Considerations and Establishing New Norms

Parties and mediators raised several issues associated with virtual mediation including distractions and ethical considerations such as lapses in confidentiality which, in the absence of established standards for conducting virtual parent mediation, were unanticipated challenges:

"I don't feel comfortable talking to parties while they are driving. Depending on the party, there can be more distractions and interruptions." – Mediator, Virtual

"A challenge is keeping the parties present and protecting the children from the mediation." – Mediator, Virtual

One mediator reflected on confidentiality concerns associated with virtual and phone formats and their inability to monitor the environment as they would have in-person:

"I always discuss confidentiality with mediation clients. There is always the question on Zoom of whether there's someone else in the room. It is different from in-person in that I can't see their surroundings to the same extent."  
– Mediator, Virtual

Conversations with various stakeholders, further quoted in the following section, reveal the diverse needs and preferences of parents, mediators, and court administrators in the COVID-19 pandemic response. Their comments also highlight the role, benefits, and challenges of tailored service design in the parenting court system in response to evolving external conditions while providing a roadmap for future interventions. The discussion section will reflect on the study's quantitative and qualitative

findings and provide key takeaways for parenting court system stakeholders.

#### IV. DISCUSSION

“We all fell backward into COVID, and we are all trying to keep our practice moving and sustain, if at all possible, our services.” – M.A.R.C.H. Mediator

While this study intended to assess the effectiveness of virtual mediation in advancing access to services compared to in-person and phone mediation, the data produced other findings relevant to conversations around digital innovation in the parenting court system, the power of choice, and measures of success, quality of communication, autonomy, and accessibility in mediation.

##### *The Role and Benefits of Mediation Parenting Court System*

Interview and survey results highlighted the critical role mediation serves in partnership with the family court system. Across all modes of communication, parties reported a greater capacity to resolve conflict in post-mediation surveys, and a majority of parents reported that they did not plan to go to trial afterwards. Regardless of mediation format, parties indicated that mediation assisted them with resolving conflicts and helped them to voice concerns in a neutral, non-adversarial setting.

These results indicate improved communication strategies, satisfaction, and desirable outcomes for parents following mediation, as well as potential time- and cost-savings for the court system. One Clay County Parenting Court Commissioner reflected:

It absolutely saves time and money for the courts. But it also saves time and money for the participants/litigants. The courts are overwhelmed with caseload [sic]. We do not have time to try every case. Mediation gives the courts and the parties the opportunity to resolve cases without having to expend time and resources on trials. Mediation also results in the parties being more satisfied with the outcome than if a Judge dictates the outcome after a trial.



Even before the pandemic, Missouri parents experienced challenges with the child support system.<sup>30</sup> Increased safety needs and financial hardship associated with COVID-19 have intensified emotionally fraught dynamics between co-parents while interrupting structured visitation plans and court services.<sup>31</sup> As noncustodial parents struggle to fulfill child support obligations, some custodial parents have employed gatekeeping behaviors to prevent visitation, severing the connection between noncustodial parents and their children.<sup>32</sup> During interviews, Parenting Court Program stakeholders similarly observed that noncustodial parents would be more likely to lose access to their child due to increased health safety measures and, as a result, withhold child support funds. According to these stakeholders, M.A.R.C.H.'s services help to mitigate the costly consequences of this cycle. As one stakeholder commented:

The Parenting Court recognizes that active disputes between parents can result in, or be a major component in, a lot of what we're having to deal with here on the [child support] enforcement side . . . . So, access to children and things of that nature that can be pushed by one party often can have a resulting equal, if not greater, reaction from another party. So, one individual who is obligated to pay the court but perhaps can't do so in certain circumstances may find that he or she doesn't have access to their children because of that and then doesn't want to pay, thereby escalating the circumstances . . . . My experience has been that M.A.R.C.H. has been tremendous at taking those circumstances, providing a disinterested third party . . . and [laying] the groundwork for something that can, if not resemble a true happy compromise, can at least build a

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30. Casey Murray, *Missouri's Child Support System Is Broken, and Parents Feel the Pain*, COLUMBIA MISSOURIAN (May 25, 2021), [https://www.columbiamissourian.com/news/state\\_news/missouris-child-support-system-is-broken-and-parents-feel-the-pain/article\\_207f5f4e-b32b-11eb-b8fc-03655db574d5.html](https://www.columbiamissourian.com/news/state_news/missouris-child-support-system-is-broken-and-parents-feel-the-pain/article_207f5f4e-b32b-11eb-b8fc-03655db574d5.html) [https://perma.cc/TH4Z-6B36].

31. Karen Oehme, Kelly S. O'Rourke & Lyndi Bradley, *Online Virtual Supervised Visitation During the COVID-19 Pandemic: One State's Experience*, 59 FAM. CT. REV. 131 (2021) (available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8014818/>).

32. Armon Perry, Waldo Johnson & Natasha Cabrera, *Covid-19 Web Panel: Child Welfare & Non-Custodial Parents*, RESEARCH2POLICY (June 25, 2020), <https://www.research2policy.org/covid19-web-panel-child-welfare> [https://perma.cc/5YRJ-7TX4].

bridge so that everyone can—for the best interest of their children—start to move forward.

The findings indicate that virtual mediation can advance these goals alongside other forms of mediation. Some scholars argue that ODR's emergence in the court system as a "fourth party" may raise new challenges and considerations, but it will also increase flexibility and maximize cost- and time-savings in court processes.<sup>33</sup> Almost three-quarters of mediators who participated in this study reported that they would be very likely to use virtual mediation platforms again because they add flexibility, convenience, and safety to existing processes and reduce the barriers caused by tension, power imbalances, travel, and scheduling.

### *Obstacles and Opportunities*

This study sheds light on the obstacles and opportunities associated with virtual, in-person, and phone mediation. While some factors are confined to the circumstances surrounding the COVID-19 pandemic, others have longer-term implications for parenting mediation.

Personal preference played a salient role in determining which mediation format was used. While many interviewees agreed that traditional face-to-face interactions were preferable to those conducted online or by phone, there were exceptions. For example, among parties and mediators who sought convenience and safety, virtual and phone mediation were largely preferred over in-person. These findings indicate that providing choices and services tailored to parents' needs and expectations is highly valuable. Providing multiple formats for communication not only increases the likelihood of satisfaction with the process, but it can also increase overall access to services and lead to more desirable outcomes. For parties who feel especially anxious or unsafe approaching mediation, providing choices in the mediation environment fosters a sense of control, security, and empowerment.

On the other hand, mediators described the challenge of providing multiple options to parties when tensions and conflict are already high. They expressed concern that choosing an option desired by one party would be

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33. Leah Wing et al., *Designing Ethical Online Dispute Resolution Systems: The Rise of the Fourth Party*, 37 NEGOT. J. 49, 51–53 (2021).

interpreted as preferential treatment by the other. When communication options create another point of conflict prior to mediation, mediators agreed that this choice should be left to the mediator:

“One party wanted to participate virtually, and the other wanted to be in-person. They settled on in-person, but it did cause me to question ‘How do I prioritize their competing desires?’ Do I tell someone who might be COVID fearful that they’re required to meet in person . . . or do I prioritize that person’s health concern? It feels like you’re already taking sides at that point, as a mediator which . . . is something I’d like to avoid . . . I suppose at the end of the day it would be up to me to make that call.” – M.A.R.C.H. Mediator

While mediators and parties expected in-person mediation to ease communication, face-to-face interactions sometimes led to diminished quality of communication and increased tension among parties. Therefore, in considering cases where there is high conflict, tension, or physical barriers to communication—such as masks used because of COVID-19—virtual or phone conversations may be preferable. Mediators and parties typically reported decreased tension when the session was held remotely, and they reported the use of emotional self-regulation strategies and technological tools to mitigate conflict during mediation. Mediators further discussed the benefit of caucusing in breakout rooms and using the “Share Screen” option to review written agreements and other documents. These features not only provide insights into the different benefits of each method of mediation, but they also have potential for enhancing communication where possible in a time when alternatives to traditional face-to-face interactions are preferable or, for some, necessary.

Preferences for virtual and phone mediation largely depended on factors such as convenience and flexibility. However, as mediators cautioned both in their surveys and interviews, increased convenience and flexibility through remote mediation can lead to novel challenges not encountered during in-person sessions. When convenience leads to increased distractions, confidentiality concerns, or decreased quality of communication, it jeopardizes accessibility to satisfactory mediation services and outcomes. By developing new strategies and ground rules for

fair, ethical, and open communication, mediators can maximize the benefits and accessibility of remote forms of mediation.

### *Safety*

This study demonstrates that, while mediation may not be the first choice in family law cases involving intimate partner violence, it can provide an avenue for neutralizing tensions in the short-term and reaching agreed-upon solutions that increase long-term child and party safety.<sup>34</sup> The communication type used in mediations plays an instrumental role in moderating levels of safety and power imbalances between parties when there is a history of intimate partner violence. Though very few cases in the sample had a self-reported history of abuse or intimidation, those that did were conducted remotely, indicating the value of establishing a safe and protective environment for these parties.<sup>35</sup> Furthermore, parties and mediators agreed that safety was a benefit of using phone and virtual mediation, although distinctions between health, emotional, or physical safety were not measured. Despite the known challenges of mediation in cases involving abuse, alternative modes of communication can introduce potential solutions that make mediation more feasible for these parties.

Health concerns related to COVID-19 among mediators and parties also surfaced during the study. In light of the complex challenges associated with providing in-person services during the pandemic, mediators adapted their protocols and took additional steps to ensure the safety of all parties. For example, when both parties requested in-person mediation, some mediators used waivers to ensure awareness of the health risks and responsibilities associated with meeting in-person as opposed to virtually or by phone. As elevated health concerns related to COVID-19 are unique to the study period, this could impact the generalizability of the findings. It is likely,

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34. Amy Holtzworth-Munroe et al., *Intimate Partner Violence (IPV) and Family Dispute Resolution: A Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation*, 27 PSYCH. PUB. POL'Y & L. 45 (2021); David A. Sbarra & Robert E. Emery, *Deeper Into Divorce: Using Actor-Partner Analyses to Explore Systemic Differences in Coparenting Conflict Following Custody Dispute Resolution*, 22 J. FAM. PSYCH. 144 (2008).

35. Fernanda S. Rossi et al., *Shuttle and Online Mediation: A Review of Available Research and Implications for Separating Couples Reporting Intimate Partner Violence or Abuse: IPV and Mediation*, 55 FAM. CT. REV. 390 (2017); Carl L. Tishler et al., *Is Domestic Violence Relevant?: An Exploratory Analysis of Couples Referred for Mediation in Family Court*, 19 J. INTERPERSONAL VIOLENCE 1042, 1059 (2004).

however, that precautions taken in the wake of the public health crisis will linger and establish the basis for a new “status quo” in terms of prioritizing health and physical safety in service provision.

### *Access and Disparities*

The COVID-19 pandemic highlighted the need to address the digital divide and its isolating effects on low-income and rural communities.<sup>36</sup> A 2020 study conducted by the National Education Association found that only 70% of students in Missouri have access to broadband internet and devices.<sup>37</sup> These barriers not only affect children’s educational outcomes, but they also translate into accessibility issues for households as public services moved online. The difference in uptake in virtual vs. in-person mediation between Black and white parties raises important questions of accessibility between demographic groups. The disproportionate use of digital over traditional means of mediation among Black parties may also be indicative of health disparities in this racial group during the pandemic or other structural, historical, or geographic factors.

In general, community-based and problem-solving programs in the court system, like M.A.R.C.H., are well-positioned to reach communities that have historically distrusted the courts<sup>38</sup> and engage demographics that generally have low levels of participation in family courts (e.g., noncustodial or unmarried fathers).<sup>39</sup> Parties may also have varying levels of access to and experience with technology, which could escalate access to justice issues, a valid concern of mediators hesitant to use virtual

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36. John Lai & Nicole O. Widmar, *Revisiting the Digital Divide in the COVID-19 Era*, 43 APPLIED ECON. PERSP. & POL’Y 458 (2021); Emily A. Vogel, *Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption*, PEW RSCH. CTR. (June 22, 2021) <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/> [https://perma.cc/696E-XEKM].

37. *The Digital Divide and Homework Gap in Your State*, NAT’L EDUC. ASS’N (Oct. 16, 2020), <https://www.nea.org/resource-library/digital-divide-and-homework-gap-your-state> [https://perma.cc/RV5K-YX5T].

38. David B. Rottman, *Court Outreach to Minority Communities*, NAT’L CTR. FOR ST. CTS. (Oct. 16, 2015), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0023/51719/Court-Outreach-to-Minority-Communities-Rottman.pdf](https://www.ncsc.org/_data/assets/pdf_file/0023/51719/Court-Outreach-to-Minority-Communities-Rottman.pdf) [https://perma.cc/EY5A-5V6G]; *Building Trust*, CTR. FOR JUST. INNOVATION, <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/building-trust.pdf> [https://perma.cc/2E6A-BGV2].

39. Mary S. Marczak et al., *Strengthening the Role of Unmarried Fathers: Findings from the Co-Parent Court Project*, 54 FAM. PROCESS 630, 636 (2015).

communication platforms. In contrast, others argue that because of the growing demand for and ability to access technology, digital tools will increasingly become integrated in systems that work to expand access to justice.<sup>40</sup> As one mediator explained, virtual mediation can be helpful when parents face a variety of structural, socioeconomic, and circumstantial barriers, such as weather, health, and distance, which prevent their physical presence. This desire for increased access is widespread; the National Center for State Courts found a majority of voters want more online access to local courts.<sup>41</sup>

Another asymmetry in the results and sample characteristics indicates the need to emphasize fathers and noncustodial parents in the mediation process—whether virtually, in-person, or by phone—as well as in program outcomes. Fathers comprised less than a quarter of survey respondents and did not volunteer to participate in interviews. The need to include fathers in conversations surrounding parent mediation processes, custody, and child support is critical, as research has found that fathers who complete mediation report more satisfaction than those who only participated in traditional adversary settlement. Research has also demonstrated a positive association between child support payments and increased parent-child relationships, which may secondarily improve academic, social, and parent-parent relationships.<sup>42</sup>

A stakeholder from the Clay County Prosecutor’s Office who works closely with child support enforcement and the Parenting Court commended M.A.R.C.H. for its role in helping the court get eligible fathers engaged in the lives of their children:

“M.A.R.C.H. will take cases that have reached an enforcement level and . . . they can put these parties in a room and establish a parenting plan. That gets fathers that have never had it before a court document that says ‘I have rights to see my kids’ . . . . That’s tremendous to have a

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40. Ebner & Greenberg, *supra* note 15, at 65; Wing et al., *supra* note 33, at 62.

41. *Online Dispute Resolution: What Can it Do for Your Court?*, NAT’L CTR. FOR ST. CTS., [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0016/41056/NCSC-ODR-Fact-Sheet-for-Courts.pdf](https://www.ncsc.org/__data/assets/pdf_file/0016/41056/NCSC-ODR-Fact-Sheet-for-Courts.pdf) [<https://perma.cc/G5LB-MGED>].

42. Rebekah Selekman and Pamela Holcomb, *Fact Sheet: Approaches for Engaging Fathers in Child Support Programs*, U.S. DEP’T OF HEALTH AND HUMAN SERVS., OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION (APSE) AND MATHEMATICA (Oct 2021).

court recognize that you're not only the father, that you're not only obligated to pay support, but you have a right to see them. That's an impact in our community for the lives of the fathers, the lives of the kids, and the lives of the families . . . . You can't quantify that—you can't put that on paper.” – Parenting Court Stakeholder

### *Measuring Success in Mediation*

This study found that defining success in mediation is complex and often requires selecting the right communication tools and strategies for the right situation. This is especially true for cases involving histories of intimidation or high levels of conflict.

In some cases, starting respectful conversations around parenting issues—creating a space where both parties feel heard—can be enough to avoid unnecessary or excessive court involvement and can improve long-term conflict resolution. Substantiating this observation is the overall improvement in parents' perceived ability to communicate and resolve problems with their coparent following mediation across all forms of communication. A statewide study of court ADR in Maryland similarly found that, while reaching an agreement in mediation did not affect long-term outcomes for parties, mediator strategies allowing participants to share their perspectives were positively associated with long-term increases in parties' perceived ability to work together and meet children's needs.<sup>43</sup> For example, mediators may prompt participants to suggest potential solutions and facilitate a discussion about how those ideas may work in practice, resulting in a conversation centered around communication, expression of goals, and conflict prevention and resolution.<sup>44</sup> Substantiating this finding, one M.A.R.C.H. party explained in an interview how mediation helped her and the co-parent develop communication skills that could be used to resolve issues in the long-term. In other cases, both parties may desire a formal agreement through the courts following mediation, or they require

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43. Lorig Charkoudian, *What Works in Child Access Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes*, COMMUNITY MEDIATION MARYLAND & MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS (Jan. 2016), <https://mdcourts.gov/sites/default/files/import/courtoperations/pdfs/familyfullreport.pdf> [<https://perma.cc/QB4P-JVLG>].

44. *Id.* at vi.

multiple sessions through different avenues of communication to reach satisfactory outcomes. As one mediator commented, after addressing the most significant issues in-person, “a follow-up via Zoom should be as effective as in-person.” In any of these cases, different communication models can play a vital role in achieving different, often evolving measures of success in mediation, while producing equally satisfactory outcomes. Selecting appropriate measures of success in mediation program evaluation is critical to advance research in the field.

*Recommendations for M.A.R.C.H. Mediators and Administrators*

1. Virtual mediation options should be offered in addition to—rather than in place of—traditional forms of communication to ensure satisfaction, accessibility, and effective exchanges of information.
2. Mediators and court practitioners should continue to refine digital best practices to maximize benefits and mitigate risks.<sup>45</sup>
3. As programs expand options for communication, they should develop screening tools to help participants, mediators, and program managers select the best platform for all participants while balancing complex needs.
4. Parenting court and social service stakeholders should jointly establish and work toward shared goals to increase effectiveness, equity, and desirable outcomes for children and parents.

“I’d like to challenge the ideas that people often think about mediation, such as: ‘I’m going to lose money by having mediation’ or ‘I’m going to hinder the process.’ The research actually shows that clients are more satisfied when they overcome those fears and incorporate mediation in the process.” – Dawn Kuhlman, M.A.R.C.H. Executive Director

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45. James C. Melamed, *Establishing Ethical Standards for Online Family Mediation*, 59 FAM. CT. REV. 2 (2021).



## V. Study Limitations and Recommendations for Further Study

This novel, small-scale case study was not without limitations. First, confounding events associated with the COVID-19 pandemic could have impacted the mediation results. The pandemic and its associated impacts—which include but are not limited to emotional, economic, work-related, political, health, and safety factors—are difficult if not impossible to disentangle from mediation outcomes during 2020.

Second, this study has representation limitations among parties. Mothers were more likely to complete the survey and express an interest in participating in an interview. Future studies should draw more robust comparisons between parents, as fathers and noncustodial parents are often the central focus of programs directed at enforcing child support payments and resolving custody issues. Future studies should also include a more representative sample that allows for more robust comparisons in outcomes across races and ethnicities. Finally, it is important to note that all the mediation cases in this study involved opposite sex co-parents. Future studies on mediation and modes of communication may aim to include a representative sample of opposite and same-sex parents and nontraditional families.

Third, the small sample size of parties indicating possible abuse or intimidation suggests that future studies should seek to better understand the role of remote communication in these cases. Future research could also focus specifically on the nuances in mediation techniques across mediators and different modes of communication. If mediators use different techniques to reach similar outcomes during virtual or phone mediation, it is important to make those distinctions and assess the quality of rapport and party satisfaction. As one mediation expert (who was not in the original sample of interviewees) stated:

“[I]n mediation, my feeling is that in-person, virtual, phone will matter less than the skill of the mediator, the ability to connect and guide the parties, and the complexity of the situation the clients bring to the table. As a mediator, I want a platform that will allow me as much information and options as possible.” – Mediator

Timing and length of the study may also affect the validity and accuracy of the study results. The study began three months after M.A.R.C.H. implemented the virtual mediation option, while mediators were still developing their own methodologies, skills, and standards for online communication. Future studies might assess the long-term effects of mediation strategies on the development of durable communication and conflict resolution skills in a parenting context.

In summary, this evaluation, while informative as an introductory study on the effectiveness of various mediation formats, is not widely generalizable. Rather, the findings are unique to M.A.R.C.H. and its Missourian stakeholders. Furthermore, as the researchers observed virtual mediation during COVID-19, follow-up research is needed post-pandemic to determine whether the findings hold over time.

#### CONCLUSION

The global health crisis highlighted the imperative for program directors and administrators to explore new avenues towards more adaptable, efficient, and equitable service provision. Technology is one tool that the parenting court system may increasingly utilize to adapt to a changing environment and meet the evolving, complex needs of families. Investigating and measuring the many “unknowns” of digital communication is more critical than ever. Quantifying the effectiveness of virtual parent mediation and other technologies will help programs like M.A.R.C.H. advance their cause, optimize support networks for children and parents, and improve their long-term wellbeing.

# Appendix A



**M.A.R.C.H. Mediation**  
*Mediation Achieving Results for Children*

## MARCH party questionnaire

1. Your answers to this survey and comments will help us measure, evaluate, analyze, report and, eventually, publish MARCH program outcomes. In the event that we would like to use a particular written quote you have provided for reporting or research purposes, your full name and any individual identifiers (eg. your town, contact information, or any confidential information shared during the mediation) will not appear in any publicly-facing reports, documents or publications. Do we have your consent to quote your responses for future research and reporting purposes? (Even if you provide consent, this does not guarantee we will quote your responses.)

Participation in the questionnaire is voluntary, and you may skip questions at any time.

- YES, you may use my words and my first name.
- YES, you may use my words, but not my first name. (If you check this option, we will either quote your response without a name or we will make up a name.)
- NO, you do not have my consent to use my comments for future reports or publications.
- UNSURE, I am undecided and would like you to contact me with more information. (If you select this option, please fill in your contact information on question 17, at the end of this questionnaire.)

Other questions or comments regarding this survey? (Optional)

2. Signature: Please enter your first and last name

3. What method of mediation was used for session 1?

- In-person
- Online
- Phone

Date of session (MM/DD/YYYY):

4. Why was this method of mediation chosen for session 1?

- Content of discussion
- Personal preference
- Confidentiality
- Technology
- Safety
- Convenience for schedule

Other/Explain:

5. What method of mediation was used for session 2?

- In-person
- Online
- Phone
- N/A

Date of session (MM/DD/YYYY):

6. Why was this method of mediation chosen for session 2?

- Content of discussion
- Personal preference
- Confidentiality
- Technology
- Safety
- Convenience for schedule
- N/A

Other/Explain:

7. Were there benefits to this method of mediation for your case? Check all that apply.

- Ease of communication
- Access to technology
- Safety (general)
- Safety (health, physical)
- Safety (emotional)
- Ability to stay on task
- Use of visual aids
- Convenience
- Ease of scheduling
- Ability to attend session(s)
- Use of technology
- Confidentiality
- Use of nonverbal communication
- Decreased tension (between parties)
- Decreased tension (with mediator)
- None/Not applicable

Other/Explain

8. Were there challenges to this method of mediation for your case? Check all that apply.

- Difficulty of communication
- No access to technology
- Lack of safety (general)
- Lack of safety (health, physical)
- Lack of safety (emotional)
- Less ability to stay on task
- Less visual aids
- Less convenience
- Scheduling difficulties
- Inability to attend session(s)
- Technology issues
- Confidentiality
- Nonverbal communication
- Increased tension (between parties)
- Increased tension (with mediator)
- None/Not applicable

Other/Explain

9. What issues were discussed in mediation? Check all that apply.

- Parenting time
- Custody
- Establishing paternity
- Child support
- Discipline
- Parenting plan
- Child(ren)'s safety
- Parent safety
- Health insurance
- Education
- Transportation
- Vacation/travel
- Conflict management
- Medical concerns
- Pandemic-related concerns
- Family communication
- Order of protection/Ex parte
- Therapeutic services for children/family

Other/Explain

10. The ability to communicate effectively in the session was

Very low/Almost none

Very high











Explain

11. The capacity to resolve problems in the session was

Very low/Almost none

Very high



Explain

12. My satisfaction with the mediation process was

Very low/Almost none

Very high



Explain

13. My satisfaction with the mediator was

Very low/Almost none

Very high



Explain

14. Would you recommend including videoconferencing (such as by Zoom or Webex) as a permanent option for mediation, in addition to by phone and in-person?

- Yes
- No
- Unsure
- Please explain.



15. Do you plan to go to trial?

Yes

No

If yes, why?

16. Any additional comments?

17. Qualitative data and in-depth feedback are important for monitoring and evaluating program outcomes. Would you be interested in participating in a brief follow-up interview?

\*Individuals who participate in an interview will receive a \$10 e-gift card to Starbucks as a small thank you.

Yes, I am interested in participating in a brief follow-up interview.

No, thanks.

Unsure. I would like more information.

18. If you answered yes to question 16, or if you would like more information about a follow-up interview or this questionnaire, please provide your contact information:

**Name**

**Email Address**

**Phone Number**