

COURT ANNEXED MEDIATION –VARIOUS DISCIPLINES (FAMILY LAW)

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BACKGROUND

- Issue Paper 3 I: Project 100D Family Dispute Resolution
- High conflict divorce
- Children as weapons/pawns
- Family disputes are relational

ADVERSARIAL LEGAL SYSTEM

- Adversarial atmosphere in and out of the court room
- Attorneys and advocates schooled in the adversarial system
- Intimate, emotional and psychological aspects of divorce

CHALLENGES

- No specialised family courts in SA
- No specialised training to deal with family disputes
- Pressure on courts
- Random rotation system in SA
- Different judges to handle different matters arising from a single family law dispute over time

MANDATORY VERSUS VOLUNTARY MEDIATION

- Court mandated mediation
- Statutory mediation: Mediation in Certain Divorce Matters Act 24 of 1987 established office of Family Advocate? Children's Act provides for compulsory mediation s21, s33, s34 and s6(4).
- Recognition of Customary Marriages Act, Muslim Marriages Bill
- Domestic violence?

COLLABORATIVE APPROACH

- Are courts best suited to decide questions relating to family law disputes?
- Mediation? Public v Private –access to justice
- Community mediation?
- *MB v NB* (2010) –penalised attorneys, divorce as war
- *S v J and Another* (2011) SCA– “talk things through”
- *PD v MD* (2013) –parental responsibilities –mediation then courts
- Collaboration –change in management and litigation style –infrastructure, IT...