


## CONFLICT MEDIATION IN DIVORCE CASES WITH CHILDREN: CONTRIBUTIONS OF PSYCHOLOGY

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### ABSTRACT

The article aims to discuss the contributions of Psychology in the Brazilian judicial system in cases of divorce with children aged up to 18 years. For the preparation of the theoretical essay, the techniques used and the challenges encountered by professionals working with mediation practices in the judicial system were investigated, through a bibliographic review in the CAPES, Scielo and Google Scholar databases, with priority for works published between the years 2019 and 2023. The works, selected in accordance with the specificity of the study, provided relevant information about the reality of the psychologist who works as a mediator in Brazil. The results highlight the interdisciplinary nature of their work, the scarcity of longitudinal research with a robust theoretical basis for action, challenges to demarcate the limits, as well as evidenced the precarious working conditions to which mediators, mostly women, are subjected, influencing the scenario and the need for future research.

**Keywords:** Forensic Psychology, Mediation, Divorce.

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## INTRODUCTION

The social, economic and emotional impacts of divorce can be reduced with preventive actions and with judicial procedures appropriate to cases in which there is litigation (CÉZAR-FERREIRA, 2004; FERREIRA, 2015; ALVES, 2023). The significant increase of 5.5 percentage points in the rate of judicial divorces granted in the first instance in Brazil, between 2010 and 2021, to couples who had children under 18 years of age (IBGE, 2021), justifies the discussion about the potential contribution of Psychology to the Brazilian Judicial System through conflict mediation.

Marital separation, which involves negative emotions, such as anger and sadness and often modifies the condition of family life, tends to be more harmful when the arguments witnessed by children become frequent and violent, even if verbally and psychologically. Violence is harmful to the development of all family members, aggravates and is aggravated by vulnerability factors to which the family is subject (FEIJÓ et al., 2017). Financial dependence at the time of divorce, the difficulty in balancing family and work, and material precariousness that can worsen after divorce are psychosocial factors that require care in most families with children, including because they can impair the joint work of raising children, which becomes more difficult in situations of continuous conflicts between parents and in a tense environment with difficulties in the exercise of parental functions (CÉZAR-FERREIRA, 2004; LIMA, et al., 2021).

Public policies to prevent and cope with divorce processes should include conflict mediation services and support for families to care for their children and their development during the divorce process and in the post-divorce period. In the equipment of the judiciary, pre-procedural and procedural mediation (BRASIL, 2015) can avoid the aggravation of fights and prevent disputes or prolonged litigious divorce, which is costly and emotionally exhausting. Companies and Schools should also create policies favorable to the development of people who go through divorce, especially for those who have restricted access to support networks and rights. Spouses should be provided with informative actions, dialogue groups and reflections, with specific support for those who start to take care of children alone, who may demand opportunities for work, daycare or school for children close to their home and at a time compatible with their working hours (SORIA, 2008).

Another relevant issue that may originate from a conflicting divorce process, justifying the importance of mediation, is the presence of work-family conflict. If we consider

that work and family are two of the most important spheres of life for individuals, and that it is increasingly common for both spouses to have work activities in work organizations, considering a possible conflict between these two spheres after a painful divorce process is necessary. Carvalho (2024) argues that work-family conflict is a potential stressor that emerges from the need to manage work demands and family duties/responsibilities. In his study with 438 teachers from the basic education network of cities in the southern region of Minas Gerais, he revealed, among others, that the work-family conflict had a significant relationship with the presence of common mental disorders (MCD), thus evidencing risks to the mental health of the participants.

Mediators of family cases, in addition to adequate training, must develop the ability to dialogue, empathy, the use of mediation resources and techniques, and a systemic view of human health and quality of life. In a firm attempt to maintain impartiality in dialogues with spouses in the process of divorce, they must keep in mind that people and relationships are unique, without judging them to strengthen them. Training in psychology tends to prepare professionals for the least discriminatory attitude and for dialogues in favor of autonomy, protagonism, and valuing differences (CHAVES et al., 2022).

This article is structured around research on the contributions of Psychology in the Brazilian legal context, in cases of divorce mediation with children up to 18 years old, for which theories and mediation techniques used were studied, in addition to identifying challenges and obstacles faced in these practices.

## **METHODOLOGY**

The theoretical essay was produced after conducting a bibliographic review, with a qualitative design, which focuses on the understanding and interpretation of social and human phenomena, involving the collection of descriptive data. This follows an exploratory approach to investigate the topic in a broad and initial way, especially when there is scarce prior information available. Exploratory research plays a key role in defining focus and scoping, laying the groundwork for further investigation (SOARES, 2019).

Research sources included the CAPES, Scielo, and Google Scholar databases. Only articles in Portuguese that dealt with mediation in the judiciary were selected, with free access. The period for collecting materials was delimited by the period from 2019 to 2023. A careful evaluation was carried out to exclude works that involved the work of professionals from other areas in the context of mediation and restorative practices, selecting only those

related to the area of Psychology, meeting the pre-established objectives. The keywords used in the search were "Forensic Psychology", "Mediation" and "Divorce".

According to the proposal for a qualitative study, it focused on the understanding and interpretation of social and human phenomena, involving the collection of descriptive data and exploratory conduct to investigate the theme in a broad and initial way, since there was scarce previous information available. According to Soares (2020), exploratory research plays a fundamental role in defining the focus and delimiting the scope, laying the foundations for more in-depth investigations.

Regarding the research problem, questions were listed to guide the guideline of the scientific works to be researched and the general objective was established: To analyze the contributions of Psychology in the Brazilian legal context in cases of divorce mediation with children under 18 years of age. Specifically, theories and techniques of psychological intervention used in the process of conflict mediation were investigated, and the challenges and obstacles faced by Psychology in the Brazilian Judicial System in the context of mediation of family conflicts were identified, according to the authors of the articles found. This essay focuses on conflict mediation as an important means of access to the judiciary for spouses in divorce proceedings, and those with children under 18 years of age are a population that may benefit from this practice. Other measures and policies necessary for this population and favorable to the development of their children will be pointed out as reflections generated after the bibliographic review.

In order to broaden the discussion of the theme of the study towards the proposed objectives, making considerations about concepts of related subjects becomes significant.

## **CONCEPT OF FAMILY**

The concept of family has been transformed over time and, in the past, it used to be associated with a structure composed of a man, a woman and a child, which was in accordance with the old Constitution of 1916, but not necessarily with the different forms of family configuration that already existed. In addition to the current social legitimation of the heteronormative configuration, it is important to note that, in the past, children born out of wedlock were not considered members of the family in the legal sphere, as stated in Article 358 of the aforementioned Constitution: "Incestuous children and adulterines cannot be recognized".

Thus, the only recognized way to form a family was through marriage between people of opposite sexes. In addition, legal separation, as we understand it today, could only occur in cases of adultery, attempted murder or serious assault, or voluntary abandonment of the marital home for a period of two continuous years, according to Article 319 of the Civil Code of 1916.

In 1988, the "Citizen Constitution" was promulgated, which, in response to social changes, established values centered on human dignity. In this context, the concept of family began to be approached in a more inclusive way, although it still maintained heteronormative characteristics. This Constitution also simplified the divorce process and recognized equal rights between men and women in marriage, as established in article 226 of the Federal Constitution of 1988.

In 2002, the Civil Code began to consider that the fundamental element in the constitution of a family is affection and responsibility, abandoning the exclusively biological perspective, which was based on the relationship of consanguineous father and mother. Instead, it began to value care, coexistence, and solidarity (VILASBOAS, 2020), generating new possibilities for legitimizing some family configurations and the growing reflection on family expectations and roles, especially related to gender, such as same-sex unions.

Same-sex unions are a way of forming a family, which in the process of social legitimation, have challenged society to understand that there are different ways of loving, of organizing oneself as a family, of dividing and performing functions, including in the education of children and in the case of adoption.

A father is the one who educates, cares, feeds, protects, provides and participates in the physical, moral, psychic and intellectual development of the child, offering him any and all support that is necessary for his growth and evolution as a human being. In many cases, the child who lives in a state of affective possession with his parents is much better raised and socially and psychologically supported than if he were with his biological parents Vilasboas (2020, p.59).

According to Cervený (2011), families are two or more people united by affection or consanguinity, without necessarily cohabiting. Regardless of the family configuration, relational difficulties and interpersonal conflicts will arise and may turn into disputes. Violence can also occur and in conditions of social vulnerability it tends to worsen when there is a lack of support and social legitimacy (FEIJÓ et al., 2017).

## CONSIDERATIONS ABOUT THE CONFLICT

In marital relationships, whether in the heteronormative context or not, partners need to dialogue and face interpersonal conflicts, since, as highlighted by Vasconcelos (2008), conflict, which is a contingency of the human condition, stems from different perceptions and positions between individuals and is the result of their life history. According to the author, ten thousand years ago, with the development of agriculture and livestock, the transformation of sedentary nomadic communities and the development of private property and the accumulation of wealth, conflict became an instrument of power, domination and a means to establish hierarchical relations that culminated in absolutism and its centralized power figures.

If in the first civilizations conflict was part of a culture of domination, in which hierarchy, patrimonialism, absolutism and predatory competition prevailed, in the current "Age of Knowledge", conflicts can occur between people and groups that are geographically distant or with different cultures and habits. In some places, domination and violence are still structural and current, but often discussed with different critiques of criticality, in the light, for example, of human rights and the need to build a culture of peace and collaboration. In certain groups, conflict is predominantly expressed in the form of persuasion or negotiation and, in some institutions, resources such as mediation may be used in attempts to generate mutual gains and to consider differences and pluralities (VASCONCELOS., 2008.).

Marital conflicts, as dynamic processes, in constant interaction with historical contexts, have undergone modifications, but it is possible to affirm that each couple is a couple and that the archaic coexists with the modern both in family relations (CERVENY, 2011). There are partners who have already modified certain patterns and expectations related to gender, but there are those who still reproduce most of them. Families with young children have also experienced the impact of living with a new generation, which demands a more open look at the new and attentive to the growing demand for care for psychological suffering (FEIJÓ, 2021).

Nowadays, marital relations occur, among numerous influences, through affective and parenting bonds, but this has not always been the reality. In Roman Law, the family was centered on the father figure and its formation had as its objective the production and protection of patrimony, with the wife and children being tools to achieve this goal in a passive and submissive way. This perspective of the conjugal relationship lasted later,



under the influence of the Catholic Church, which characterized marriage as an indissoluble entity and accepted the affective relationship of marriage with the exclusive purpose of procreation. Thus, there was no room for discussion about marital conflict, nor about the tools for resolving these conflicts and guaranteeing rights, expressed today, for example, by the possibility of divorce and division of assets (SCHAEFER & SPENGLER, 2020).

Marital conflict is a multidimensional and multicausal phenomenon, characterized by the frequency with which it occurs, the intensity of the arguments, the cause of the conflicting situations, the recognition of the spouses about the existence or not of these conflicts, and the strategies used to resolve them. Costa et al. (2016), in a systematic review study, pointed out disagreements in child rearing, time spent together, money, household chores, and infidelity as reasons for the disputes. Dialogues about conflicts that generate opportunities for expression and the creation of coexistence agreements are favorable to relationships or constructive, as treated in the literature. The constructive strategies for resolving marital conflict are directed towards more flexible and tolerant attitudes of the couple in the face of the problem, the recognition of the spouse's capacities and limitations, the optimistic perception of conflicts and the manifestation of mutual responsibility in the resolution strategies. Destructive strategies, on the other hand, involve individualized behaviors in the face of marital issues and competition between spouses, who assume a posture of attack and/or self-protection in order to 'win' the dispute in question. Destructive strategies often result in divorce and the end of that marital relationship (COSTA et al., 2016).

Divorce appears in history in the previously mentioned context of written culture, in which conflicts acquire rhetoric, negotiation and respect for individualities and plurality. In this context, in some families, more equitable relationships are developed with regard to the roles of spouses, with more symmetrical power relations. In addition, marriage is seen as an optional relationship, replacing the Christian notion of indissoluble marriage. Divorce comes, therefore, to meet this new historical context of marital relations (SANTOS, 2023).

In Brazil, marital dissolution appears only in 1916 in the Civil Code, in which it was allowed only in the case of death, annulment or amicable/contentious legal separation, following a series of criteria that certainly made the divorce process difficult. Subsequently, in 1977, the Divorce Law was enacted, which reduced the stiffening of the marital dissolution process by respecting the individual interest of not being in a marriage regardless of the reason, but still maintained the impossibility of forming new relationships.

Currently, divorce is governed by Constitutional Amendment No. 66 of 2010, which among its prominent articles is the possibility of immediate divorce (SANTOS, 2023).

The possibility of divorce, an important milestone for the promotion of gender equality and respect for the autonomy of the individual, can mean for some, the rupture of a desired family structure and the arrival of intense feelings and difficult challenges, very often economic and care for children or people who are more dependent. In the case of relationships that constitute offspring, the quality of the marital relationship can greatly affect parenting and the quality of living with children, depending on how the divorce process takes place, the social support for the former spouses and the children and the decisions and measures to maintain psychosocial aspects that are protective and generate well-being. such as sustenance (housing, food, education, health), routine, care, development, leisure, and living with children (KOPROWSKI et al., 2020).

Divorce and marital conflict can significantly influence the emotional, cognitive, and social development of the child, depending on how these processes occur in terms of frequency of physical and verbal conflicts, intensity, and ability to resolve the child. Among the feelings most signaled by children in these situations are guilt, insecurity, sadness, isolation, and fear of aggression against themselves and between their parents, feelings that over time of exposure can make it difficult for the child to adjust psychologically (KOPROWSKI et al., 2020). In addition, it is important to highlight parental alienation as a serious consequence of divorce, in which the alienator practically excludes the other parent from living with the child, preventing his or her participation in the child's care and development (SILVA et al., 2021).

Judicial measures are necessary to minimize such consequences and the offer of conflict mediation at the beginning of divorce proceedings can reduce the intensification of disputes and, in some cases, violence. For Chaves et al. (2022), the benefits of mediation are speed, efficiency, and a change in culture in the judiciary, with a reduction in adversarial practices and an increase in consensual methods.

## **MEDIATION AS A CONFLICT RESOLUTION STRATEGY**

Mediation, one of the appropriate means of conflict resolution, has been offered as a judicial or extrajudicial alternative in cases of divorce. These practices began to gain prominence in Brazil during the 1990s, influenced by the effectiveness already demonstrated in other countries. The performance of a professional, properly trained (CNJ,



2020), to collaborate with the parties in understanding the dispute and the relationship between them, in order to create agreed solution possibilities, characterizes most mediation processes. Providing a space for reflection capable of inducing transformations in the perspectives and behaviors of those involved is also the objective and focus of mediation processes (BRAGA NETO, 2020). In the extrajudicial form, the parties, by consensus, seek a mediator to resolve the conflict without having to take it to the Judiciary or to the presence of a lawyer or public defender (CRISTO, GUIMARÃES & GUIMARÃES, 2021).

In general, mediation is a process in which an impartial third party, properly trained, is chosen or accepted by the parties involved in a conflict. This mediator plays a fundamental role, assisting in the exposure of the problem in question and in the identification of common interests, with the objective of reaching an agreement, in the case of transformative and integrative models of mediation (SUARES, 1997; VASCONCELOS, 2008). These approaches value constructive communication, focused on resolving the conflict. They are complex procedures that require the mediator to have knowledge in various areas, such as law, psychology, sociology, and communication. For Vasconcelos (2008), the mediator's role can be considered an art form and, in the case of family mediation, it demands knowledge of theories about families and systemic interventions and practices and, currently, narrative and restorative (SUARES, 1997; PRANIS, 2010; CHAVES et al., 2022).

There are several types of mediators' work, which differ in their epistemological and theoretical bases, which results in practical differences. The new paradigms of science and the evolution of fields of study such as systemic family therapy and narrative practices have provided new relevant contributions to practices with people who maintain continuous and intimate relationships with each other. The narrative circular mediation created by Sara Cobb is aligned with the most recent studies and practices with families, is based on systemic and complex assumptions and on social constructionist theories and narratives, and aims to strengthen the people who dispute and their bonds, without the main focus being the agreement as occurs in transformative mediation (SUARÉS, 1997).

Cahali (2018) reinforces the recommendation of mediation between people who maintain a closer and more lasting relationship, characterized by personal and legal bonds, and characterizes the integrative negotiation model, applicable in situations in which the resolution of the conflict will result in a new dynamic of rights and responsibilities for the parties involved, unlike the distributive negotiation model.

In addition to the circular narrative and integrative models, there are other proposals in the field of mediation: Facilitating or Traditional Harvard, Conciliation or Evaluative, Transformative or Circular-narrative (VASCONCELOS, 2008). The first two are mediation models directed to the agreement, in which the direct resolution of specific conflicts and the formal agreement between the parties are sought, therefore based on a more pragmatic approach and with greater participation of the mediator. The last two are mediation models directed to the relationship, and in Transformative Mediation the focus is on improving or preserving the relationship between the parties, facilitating communication and rebuilding trust between them (VASCONCELOS, 2008). Circular narrative mediation is the model that presupposes less intervention by the mediator, which aims at the greatest possible participation and protagonism of the parties in the solution of the dispute (FEIJÓ et al., 2011).

The Harvard School, derived from negotiations, points to the need to pay attention to one's own perception, emotion and communication and that of others, concentration on the interests and not on the positions adopted by the parties, to identify options in which there are mutual gains, insistence on objective criteria and finally to know their Chances of Withdrawal (negotiation alternatives). The conciliatory and evaluative models, as well as the first Harvard proposals, rely on the effective participation of mediators in the interventions and in some cases there may be suggestions for alternatives that the parties may consider reasonable (VASCONCELOS, 2008).

Transformative Mediation, which has a more relational character and is less focused on agreement, was greatly influenced by systemic family therapies, such as the strategic one, and aims to modify interactions between people in the face of a problem situation such as a dispute, with the intention that it becomes less fierce or dissolves. The Transformative mediation model seeks to empower the parties involved in the conflict, allowing them to regain their decision-making power and promote transformation through mutual recognition, using techniques such as verification, mirroring, and summarization. These techniques aim to enhance communication and facilitate the transformation of the parties involved. The model also seeks to identify the patterns of interaction between the parties in conflict situations. Understanding these patterns can help overcome repetitive and unhealthy conflicts (VASCONCELOS, 2008).

Narrative Circular Mediation, understood as a new paradigmatic systemic practice, aims to strengthen people and their relationships, so that protagonism is promoted, which in

turn can facilitate effective participation in the construction of new meanings related to the dispute, relationships, the behavior of those involved and their stories (VASCONCELOS, 2008). Such changes in meaning may help people to define the direction of the issues that affect them, including the dispute. It is the least interventionist model of mediation (SUARÉS, 1997).

There are mediators who move between models and use different resources, depending on the need of the moment and mediation. But in general, narrative circular mediators, committed to Foucault's (1979) studies on the need to deconstruct power, seek the construction of new meanings, as advocated by the narrative theory based on social constructionist theory and constructivist epistemology (SUARÉS, 1997).

Harvard's 'facilitative' or traditional mediation was used as a reference for the first mediation professionals, as well as the use of the tools developed by the Harvard School, mentioned earlier. It is characterized by the presence of an impartial mediator who does not make decisions, but creates an environment conducive to the parties expressing their concerns, interests, and needs. For this, the mediator must have some tools to help him in the negotiation. First of all, it is important to broaden the views towards solving problems, since improving relationships and solving problems can at some point generate conflicts that hinder the process. According to the Harvard model and the Conciliation model, the mediator must be flexible and adapt the approach as necessary, and may adopt evaluation elements when requested, as long as all parties agree. Flexibility is crucial to meet the needs of the parties and the context of the conflict (VASCONCELOS, 2008).

Conciliation or Evaluative mediation is traditionally used as a complement to the judicial process and its emphasis is the search for an agreement between the parties, being widely used to resolve conflicts in financial and material terms. Unlike the 'facilitative', Conciliation has in the conciliator a more active mediation process, since he will act as a facilitator of the dialogue between the parties, helping to suggest solutions in an ethical and respectful way, and it is not only up to the parties to resolve the conflict (VASCONCELOS, 2008).

In studies and scientific publications on mediation, it is common to present proposals that combine elements of the 'traditional facilitative' model with the 'transformative' model and bases such as general systems theory, systemic family therapy, cybernetic studies, observer theory and communication theory. In the most recent publications, the main objective of mediation is not necessarily the agreement, but the improvement of the

relationship and communication, which can reduce the strength of the dispute. The importance of the participation of the parties in the process has been increasingly emphasized in mediation practices, especially in the circular narrative proposal, which aims to destabilize pre-existing stories and build new narratives. The techniques applied in the model include microtechniques, mini techniques, techniques themselves and macro techniques (SUARÉS, 1997). These techniques are used to question, reformulate, legitimize, and recontextualize the histories of the parties, seeking to challenge the original histories of the parties involved in the conflict and construct a new history. The model may include a reflective team, which monitors the work of the mediators and helps to reflect on the different ways of describing or explaining what is being discussed in the sessions (VASCONCELOS, 2008).

It is important to note, in addition to the mediation models, that this process can take place publicly or privately, as provided for by the 2015 Code of Civil Procedure of Brazil. In addition, it can occur in a judicial and extrajudicial way. In the case of judicial mediation, it must be exercised by a duly trained mediator, obtained in a school or institution for the training of mediators, recognized by the CNJ (CRISTO, GUIMARÃES & GUIMARÃES, 2021). The success of mediation is directly related to the training of the mediator. The regulations and parameters for the performance and training of mediators have been expanded in Brazil in the last two decades, and the following documents can be highlighted: Resolution No. 125 of November 29, 2010 (Resolution No. 125, 2010), prepared by the CNJ; New Code of Civil Procedure (NCPC), of March 16, 2015 (Law No. 13,105, 2015) Law No. 13,140, enacted on June 26, 2015 (Law No. 13,140, 2015). In the extrajudicial form, the parties, by consensus, seek a mediator to resolve the conflict without having to take it to the Judiciary or the presence of a lawyer or public defender (CRISTO, GUIMARÃES & GUIMARÃES, 2021).

The teachings and resources of mediation have also been useful in the restorative practices of dialogue, applicable in cases of bullying, other violence and crimes that generate social trauma and that demand that parties assume responsibilities, that relationships and contexts be transformed, to avoid new violence and the punitive criminalization of offenders, without care for the victims.

In addition to access to mediation, care is needed related to the training of mediators and broadening their view of labor rights, possibilities of family-work-leisure balance (VEZZULA, 2003). In cases involving continuing relationships, such as family relationships,

mediation and the participation of Psychology professionals are relevant so that themes and relationships are treated properly, in depth, but without losing the focus of the dispute. The partnership between Law and Psychology professionals is usually very fruitful, as long as both are aligned with the purposes, methods and line of mediation chosen for working together.

## **INTERDISCIPLINARITY**

The interdisciplinarity between psychology, law and other areas provides a broadening of interpretations and perspectives related to human behavior, which is a shared phenomenon. This collaborative approach aims to contribute significantly to improving the quality of interventions and understanding of these issues, aiming at a better quality of life and implementation of the culture of peace.

According to Cronemberger (2019), transdisciplinarity is fundamental in mediation, allowing interaction between different fields of study. Mediation is contributing to changing the paradigm of the litigating culture in Brazil, introducing a more collaborative approach to conflict resolution. In the study carried out by the same author, the analysis of theses and dissertations reveals a diversity of academic areas involved in research on Family Conflict Mediation, reflecting the need for a multidisciplinary approach.

From the 1970s onwards, in France, both psychology and other areas of knowledge began to expand their activities. In this period, interdisciplinarity emerged as a movement that sought to overcome hyper-specialist views, allowing a broader and multifaceted approach in the interpretation and contribution to the understanding of a given object of study. One of the notable advantages of the interdisciplinary approach is the creation of transdisciplinary knowledge, which integrates knowledge from different areas of activity. For example, in the work of a lawyer in mediation of family conflicts, the knowledge of Psychology plays a crucial role in addressing socio-affective dynamics, going beyond simple biological connections. This movement in Brazil is known as the "debiologization of fatherhood" (DURI & TARTUCE, 2016).

## **RESULTS**

In the Brazilian legal context, the role of the psychologist has been the object of analysis. Chaves et al. (2022) highlight that Psychology, in the context of family conflict mediation, has been extensively debated. Psychology needs to transcend its traditional role

of preparing reports and diagnoses. It is essential that it takes an active role in promoting dialogue and cooperation between the parties to the dispute in family conflicts. The Federal Council of Psychology (CFP) reinforces this perspective, arguing that the psychologist's work in the Family Court should be broader than the production of reports, as established in its 2010 document.

Exploratory qualitative research, carried out through three semi-structured interviews with two psychologists and a lawyer who have been working in the field of mediation for more than ten years, carried out by Cronemberger (2019) highlights the crucial role of psychology in conflict mediation, promoting a more holistic and collaborative approach in the resolution of family disputes. However, this field still lacks advances, especially in terms of research and development of methodologies.

In the qualitative research prepared by Rocha (2021) based on the theoretical assumptions of Institutional Analysis based on institutional observation and semi-structured interviews, he recognizes limitations, such as the lack of a more robust theoretical basis. However, he hopes that the results, although limited, can be a starting point for future research and contribute to the improvement of the working conditions of judicial mediators, regardless of their areas of expertise.

The systematic review conducted by Schutz et al. (2023) highlights the effectiveness of mediation in resolving conflicts related to child custody in the judicial system. The importance of dialogue, bonds between parents and children and the maintenance of agreements is emphasized. However, the work of the psychologist in this context lacks a solid basis that allows mediators to evaluate the relationship between the proposal of mediation and the role of the psychologist.

A study conducted by Neto et al. (2021) sought to understand the perspective of individuals who participated in judicial mediation in child custody cases. Most of the interviewees positively evaluated the mediation process, highlighting the benefits, such as the resolution of issues related to child support, the guarantee of children's rights and the encouragement of dialogue.

It is evident that mediation offers a differentiated quality service within the judicial system, contributing to the rapid resolution of procedural disputes and improving the well-being of the participants and their children, when successful. Therefore, it is crucial to promote the wide dissemination of mediation, emphasizing its objectives and benefits, both within the Judiciary and in other contexts of human relationships (NETO et al., 2021).



As for family mediation in the judicial system, it is observed that it is conducted in several courts by volunteer mediators, professionals from different backgrounds who do not receive remuneration. This approach aims to alleviate the workload of the Judiciary. However, concerns arise about the possible misuse of the technique, the risk of its trivialization, and the inappropriate use of psychological knowledge and practices (ROCHA., 2022). The authors highlight that family mediation is based on theoretical principles of Psychology, incorporating techniques such as active listening, stimulating the autonomy of the parties, maintaining a positive approach and restructuring the problem. Also for the authors, this approach uses concepts from disciplines such as Communication Theory, Conflict Theory and Family Law as a basis for their practices, as many conflicts that result in mediation have origins related to psychological and social issues.

With the transformations in the family structure, which include separations, subsequent marriages, adoptions and changes in perceptions of gender and sexuality, various family configurations and affective relationships emerge. These changes affect family dynamics, creating the potential for everyday conflicts and tensions. In this scenario, the judicial system plays a crucial role in resolving family conflicts, particularly when the parties are unable to reach an agreement on their own. Some family courts have multidisciplinary teams, which include professionals such as psychologists and social workers. However, judges still make the most significant decisions, according to Rocha and Dimenstein (2022).

The interface between divorce and work has also been studied by authors who deal with the importance of work-family balance, but not all mediators are familiar with labor laws and the most recent actions in search of quality of life and appreciation of the family of those who work.

Knowledge about work-family balance and the consequences of non-balance becomes relevant to the mediator's knowledge. Several studies indicate that the lack of this balance causes conflict and this, in turn, influences the mental health of workers, which is probably the situation of one of the spouses, or even of both (ZANELLI & KANAN, 2018; RIANDA & FITRIA, 2023; CARVALHO, 2024; RYU, 2024). According to Zanelli and Kanan (2018), work-family conflict is configured as a potential stressor and, consequently, as a psychosocial risk that can lead the individual to illness. Divorce, depending on the present situation, can favor or aggravate the presence of work-family conflict and should deserve the mediator's attention.

Organizational Psychology has been bringing significant contributions to the prevention of psychosocial risks at work. Among these risks, the work-family conflict stands out. Goulart Jr. et al. (2013) explain that many organizations promote actions aimed at minimizing this conflict. According to the authors, considering the organizational policies that can improve the work-family relationship, the policies of flexibility of time and space stand out, which allows the employee to have a flexible schedule in the face of training needs, family emergencies, leaves to take care of small, sick or incapacitated children, part-time work and reduced working hours to social benefit policies that include life insurance, retirement plans and health insurance for the partner, children and in some situations even for ascendants. Other actions concern corporate policies for professional support to workers, such as offering advice and training to employees to deal with family situations, through legal, financial, psychological and career counseling. Finally, the authors highlight family service policies that would focus on reducing the burden of "extra-work work", for example, through the creation of daycare centers in the organizations themselves. In these actions, the organizational and work psychologist have a leading role together with a multiprofessional team.

Thus, the psychologist plays a relevant role in mediation, due to his in-depth understanding of the subjective dimension of the parties involved. This understanding is key to protecting rights and promoting citizenship, aspects that are often neglected by the conventional judicial system due to bureaucratic processes and power dynamics, as evidenced by Chaves et al. (2022).

Acting as a psychologist in family mediation involves creating opportunities that allow people to explore options for dealing with their relationships and disagreements, emphasizing the importance of dialogue. This function is remarkably rich in subjective and sensitive aspects, aligned with the skills and knowledge acquired during training in Psychology. It is important to highlight that most of these disputes cause significant emotional distress to the parties involved, thus underlining the importance of the presence of mediators with a background in Psychology to deal with these needs, as pointed out by Meotti and Costa (2019).

## **THEORIES AND TECHNIQUES**

Mediation and Psychotherapy are distinct practices, although they share common factors, such as bonding and cooperation. A fundamental distinction lies in the purpose:

psychotherapy is aimed at curing or modifying behaviors considered problematic and that harm the individual's health. On the other hand, mediation is not primarily focused on promoting these changes, but rather on facilitating dialogue between the parties involved, aiming to increase the likelihood of dialogue (REZENDE, 2015; CHAVES, 2022). Both processes can have therapeutic effects, but mediation has well-defined time limits and scope, while psychotherapy is a longer treatment, which requires time to deepen emotional and social issues, which may result in changes in patterns of behavior, relationship, and self-image. Self-knowledge, coping with losses and grief, reviewing histories of violence and trauma, are some examples of psychotherapeutic demands, for which psychology professionals are prepared to work, but there are not always disciplines on conflict mediation in the curriculum of the training institution. The lack of a solid theoretical basis and the scarcity of training in family mediation for psychology students have been identified as problems, particularly when compared to law students, who generally receive more comprehensive information about alternative methods of conflict resolution (CHAVES et al., 2022).

The training of mediators is still recent and its contents are still little explored in higher education courses. Thus, there are challenges in the training and performance of mediators, whose formal work spaces in Brazil have been slowly created in the last 10 years. They often lack theoretical depth and essential skills to conduct effective mediation, such as negotiation techniques, communication theories, systemic theories and narratives applied to practices with families, so that they can act with disputes involving divorce: alimony, complaints related to custody, child visitation, separation and dissolution of stable union (CÚNICO et al., 2012).

A systematic review carried out by Schutz et al. (2023) concludes that the articles analyzed do not offer detailed information about the psychologist's role as a mediator in relation to the reasons that lead people to mediation. However, it is implied that due to the multidisciplinary nature of the work, psychologists tend to focus on the emotional aspects of conflicts, while objective and legal issues are handled by legal professionals.

The reviewed studies focus mainly on the techniques used in conflict mediation, with an emphasis on the interview as the main approach of mediators. Active listening is considered fundamental, allowing the mediator to promote dialogue and assist in the resignification of the conflict. However, there is a lack of detailed information about how individual or joint interviews are conducted. Few articles provide specific guidance on the

mediation process, such as the negotiation of parental responsibilities, division of assets, and financial issues. In general, the articles analyzed provide general concepts about conflict mediation and its importance in family issues. However, there is a lack of clarity about the role of psychologists and a lack of recent empirical studies in this area. It is concluded that more research is needed for an in-depth understanding of the psychologist's role as a mediator, its techniques, and conflict resolution, especially in cases of child custody disputes (SCHUTZ et al., 2023).

The research conducted by Cronemberger (2019) sought to understand how the knowledge and techniques of Psychology contribute to Conflict Mediation and identify its limits. Both the literature review and the interviews show that theory and practice are aligned, highlighting a solid theoretical appropriation by the mediators. According to the author, psychology plays a relevant role in Conflict Mediation, focusing on the subjectivity and integrality of those involved, taking into account emotions and feelings. Many of the techniques used in Mediation have their origins in Psychology, such as active listening, interpretation of non-explicit speeches and reflection on emotions.

However, there are still many challenges to be overcome. Conflict Mediation in Brazil is in a structuring process, with important milestones such as Resolution No. 125 of 2010 and Mediation Law No. 13,140 of 2015, which expanded its reach beyond the legal field, allowing the participation of professionals from various areas, including Psychology, but challenges still persist, such as the recognition and adequate remuneration of this profession.

Rocha (2021) highlights that the shift from adversarial culture to a more collaborative approach to mediation is still in its early stages. Mediators often report feelings of unease in the work environment, including distrust on the part of some magistrates, lack of remuneration, devaluation, lack of recognition and poor working conditions.

Rocha (2021) mentions the issue of gender in the field of judicial mediation, where the majority of mediators are women. This reflects and reinforces the gender inequalities associated with social roles, which still persist in the field of work, especially in judicial mediation. This gender inequality reveals that women's work has historically been devalued compared to men's, reinforcing women's association with volunteering and work related to family issues, often considered to belong to "feminine nature".

Research in the context of mediation of family conflicts in Brazil faces a notable lack of empirical studies, with a predominance of theoretical works, especially in the legal field.

However, valuable lessons can be drawn from international research. For example, in the United States, mediation has been shown to be effective in changing parents' perceptions of divorce conflicts, which can benefit children. Mediation is seen as an effective tool to promote change in cases of custody disputes. In Sweden, children's participation in mediation processes is examined, concluding that their participation can bring benefits, despite the challenges in determining what is best for them (SCHUTZ et al., 2023).

Research carried out in Italy has highlighted that the success of family mediation is related to the moment it is introduced into the conflict and the mediator's posture. Some authors in Europe and Brazil defend shared custody, even when the parents do not agree. In Portugal, research has observed that mediation can reduce the intensity of disputes in divorce and child custody cases. In addition, the importance of multiprofessional and interdisciplinary approaches in divorce and custody cases is emphasized, along with the need for mediation interventions in situations of parental alienation (SCHUTZ et al., 2023).

Psychology plays a significant role in family mediation in Brazil, however, it is crucial to reflect on these interactions to ensure that it does not contribute to a greater judicialization of family issues. Instead, Psychology should be a critical and ethical professional and scientific field that promotes social transformation and new forms of relationship between individuals and the Judiciary (CHAVES et al., 2022).

It is important to note that, despite this diversity of research, there are still few longitudinal studies and there is a lack of standardization of indicators to assess the transformative impact of Mediation. Therefore, it is imperative that more research and studies be conducted to analyze the changes resulting from the institutionalization of family mediation in Brazil and the role of Psychology in this context, as highlighted by Chaves et al. (2022). The search for a more comprehensive approach, as pointed out by Cronemberger (2019) and the training of consistent mediators is crucial to assess the transformative impact of Mediation and promote the evolution of this field in the Brazilian scenario.

## CONCLUSION

The contributions of Psychology in the Brazilian judicial system, especially with regard to conflict mediation in cases of divorce with young children, represent one of the multiple areas in which Psychology plays a crucial role. These contributions are manifested through their technical knowledge, critical analyses and diverse interpretations, thus

contributing to a more comprehensive view of this phenomenon and fostering the practice of an interdisciplinary approach in the judicial system.

Psychology, when associated with legal professionals, broadens the understanding of the object of study, since it brings an approach that focuses on the subjectivity of the parties involved and the well-being of all. This perspective enriches the mediation process by taking into account not only legal aspects, but also emotional and psychological aspects, which are fundamental in family conflicts, especially when there are minor children involved.

The study portrayed here, by revealing the contribution of Psychology in the judicial context, which goes beyond the preparation of documents and reports, is significant. Especially if you consider that a divorce situation represents a complex context, involving different people with different ways of thinking and acting. Therefore, Psychology plays an essential role in promoting dialogue, seeking collaborative solutions, and mitigating conflicts in litigation situations, especially when children are involved.

This study highlights the need to strengthen the interface between Psychology and Law, promoting a broader approach to mediation, with the possibility of creating new knowledge and transforming paradigms in both areas. However, it also points out that the psychologist's role in mediation lacks a more robust theoretical basis and specific methodologies, despite its ability to promote citizenship and a culture of peace.

Another relevant point is the distinction between psychotherapy and mediation, highlighting that, although they share similarities, these approaches have different purposes and require different sets of skills. In addition, it is essential to provide specific training to conflict mediators and to include content on mediation and its applications in the training of psychologists.

The challenges faced by psychologist mediators include a lack of recognition, inadequate remuneration, lack of knowledge of the work they do, and the poor conditions in which they often operate. In addition, there is still some resistance on the part of some judicial professionals.

Psychology professionals are needed in the judiciary, but also in companies and in the instances of creation and monitoring of public policies, as it is necessary that ex-spouses can monitor the development of their children and that the family experiences the balance between work-family-leisure-rest for adults, and between education, leisure, family life and among peers, adequate food, housing and health for children and young people. It is relevant to consider that family and work are important areas of people's lives and they



influence each other, and therefore, what happens in one of the spheres will undoubtedly reflect on the other.

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