

FAMILY MEDIATION AND PSYCHOLOGY: THEORETICAL-PRACTICAL ARTICULATIONS IN THE BRAZILIAN REALITY¹

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ABSTRACT. Family mediation is a non-adversarial conflict resolution method, which can be performed by several professionals, especially Psychology, Law and Social Services professionals. The objective of the present study was to analyze how this praxis has been applied in Brazil in dialogue with the field of Psychology. To this end, a literature survey of articles published by psychologists on Family Mediation was carried out in the following databases: SciElo, PePSIC, Periódicos Capes and Index-Psi, using seven descriptors: Mediation, Marital Conflict, Divorce, Marital Separation, Forensic Psychology, Family and Juridical Psychology. A thematic content analysis was carried out along with legal texts and other regulatory frameworks of praxis in Brazil. Psychologists have worked in the mediation of conflicts, and that Psychology, as an area of knowledge, has contributed and participated directly in its construction. In this way, we sought to stimulate debate and reflection, questioning the technical and ethical position of psychologists in this activity, as well as the relationship of Psychology with this field, considering the possible implications with the movement of judicialization of families.

Keywords: Family; justice; psychology.

MEDIAÇÃO FAMILIAR E PSICOLOGIA: ARTICULAÇÃO TEÓRICO- PRÁTICAS NA REALIDADE BRASILEIRA

RESUMO. A Mediação Familiar é um método não-adversarial de resolução de conflitos, que pode ser realizada por diversos profissionais, em especial de Psicologia, de Direito e de Serviço Social. Neste trabalho, foi verificado como essa prática tem sido aplicada no Brasil em interlocução com o campo da Psicologia. Para tal, foi realizado levantamento bibliográfico de artigos publicados por psicólogos sobre Mediação Familiar nas bases de dados: SciElo, PePSIC, Periódicos Capes e Index-Psi, utilizando sete descritores: Mediação, Conflito Conjugal, Divórcio, Separação Conjugal, Psicologia Forense, Família e Psicologia Jurídica. Procedeu-se à análise temática de conteúdo em articulação com textos legais e outros marcos regulatórios da *práxis* no Brasil. As análises indicaram que

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os psicólogos têm atuado na mediação de conflitos, e que a Psicologia, enquanto área de conhecimento, tem contribuído e participado diretamente de sua construção. Deste modo, buscou-se estimular o debate e a reflexão, problematizando o posicionamento técnico e ético dos psicólogos nessa atividade, bem como a relação da Psicologia com tal campo, considerando as possíveis implicações com o movimento de judicialização das famílias.

Palavras-chave: Família; justiça; psicologia.

MEDIACIÓN FAMILIAR Y PSICOLOGÍA: ARTICULACIONES TEÓRICO-PRÁCTICAS EN LA REALIDADE BRASILEÑA

RESUMEN. La Mediación Familiar es un método no adversarial de resolución de conflictos, que puede ser realizado por diversos profesionales, en especial, de Psicología, Derecho y Servicio Social. En este trabajo, se verifico cómo esta práctica se ha aplicado en Brasil em interlocución com el campo de la Psicología. Para ello, se realizo el levantamiento bibliográfico de artículos publicados por psicólogos sobre mediación familiar em las bases de datos: SciELO, PePSIC, Periódicos Capes e Index-Psi, utilizando siete descriptores: Mediación, Conflicto Conyugal, Divorcio, Separación Conyugal, Psicología Forense, Familia y Psicología Jurídica. Se procedió el análisis temático de contenido em articulación con textos legales y otros marcos regulatorios de la praxis em Brasil. Los análisis indicaron que los psicólogos han actuado em la Mediación de Conflictos y que la Psicología, como área de conocimiento, ha contribuido y participado directamente de su construcción. De este modo, se buscó estimular el debate y la reflexión, problematizando el posicionamiento técnico y ético de los psicólogos em esta actividad, así como la relación de la Psicología con tal campo, considerando las posibles implicaciones com el movimiento de judicialización de las familias.

Palabras clave: F amilia; justicia; psicología.

Introduction

Conflict mediation is usually defined as a dispute resolution method, in which a neutral and impartial third party seeks to stimulate autonomy, dialogue and cooperation between the parties, so that they seek, by themselves, a consensual solution (Conselho Nacional de Justiça [CNJ], 2016). Historically, mediation began informally, institutionalized in the 1970s in the United States as an alternative means of resolving disputes fostered by state policies (Catão, 2009). Since then, both on the international and national scene, conflict mediation has been applied to different contexts (business, school, community, legal), emerging as an interdisciplinary area that received input mainly from the fields of Law, Psychology and Social Work (Müller, Beiras, & Cruz, 2007, Orsini & Silva, 2016).

Müller et al. (2007) point out that Family Mediation emerged in the Brazilian courts in the 1990s with the aim of transforming conflicts considered destructive into a collaborative relationship between the parties. On the national scenario, the creation of the Instituto de Mediação e Arbitragem do Brasil [IMAB] in 1994 and the Conselho Nacional de Mediação e Arbitragem [Conima] (n.d.), founded in 1997 with the objective of organizing mediation and arbitration institutions (Brandão, 2011).

Judicial mediation is the procedure carried out before or during the course of a process, under the coordination of a mediator who is part of the technical team of a body linked to the Justice System. In cases where the process has started, it can be interrupted so that the parties try to reach an agreement through non-adversarial resolution. This form of resolution refers to the construction of possible solutions to the conflict through dialogue between the parties involved in the process. In this way, those involved actively participate in the elaboration of a solution to the litigation and thus take responsibility for this choice, without delegating the decision-making process exclusively to a third party, such as the judge (Alves, Cúnico, Arpini, Smaniotto, & Bopp, 2014).

Conflict mediation can take place in the extrajudicial and judicial modalities, as prescribed in Lei nº 13.140 (2015), known as the Mediation Law. Extrajudicial mediation is that carried out outside the formal space of the judiciary, the mediator being a person trusted by the parties who has undergone training recognized by the Escola Nacional de Formação e Aperfeiçoamento de Magistrados [ENFAM] or by the courts, as described in Articles 9 and 11 of the aforementioned law.

Fonkert (1998) conceives conflict mediation as an attempt to restore dialogue between individuals, with the mediator being a third party with the ability to focus discussions and guide participants to regain autonomy. The mediator, therefore, must be a facilitator of communication between subjects. This idea is supported by Orsini and Silva (2016), who also point out that the available techniques come from different areas of knowledge, such as Psychology.

Müller et al. (2007) emphasize that Psychology becomes even more necessary in Family Mediation, since there are subjective issues, sometimes related to the emotional aspect of those involved, which are beyond the objective issues present in legal demands. This understanding is found in Fonkert (1998) when stating, with regard to the family, conflict mediation has great therapeutic potential, given the possibility of bringing hidden conflicts to the surface. For Verdi (2012), the practice of conflict mediation can be interesting for participants as it allows them to develop a joint solution, which can cause a change in their relationships.

Mediation focused on family issues presents some very specific difficulties. Krüger (2009, p. 245) indicates that, for those who experience divorce, mediation can enable the “[...] resumption of life, previously paralyzed by the crisis established during the rupture of the marital bond”. It should be noted that the demands in Family Mediation involve, mainly, issues related to post-divorce consequences, such as alimony, child custody and family living agreements. Therefore, there are themes that Legal Psychology presents relevant theoretical production (Brandão, 2011; Therense, Oliveira, Neves, & Levi, 2017).

Given the above, the present study was structured with the objective of analyzing the contributions of Psychology to the field of Family Mediation in Brazil, also showing its regulatory process through legislation that guides its development. Thus, we sought to stimulate debate and reflection on the expansion of such praxis, questioning the technical and ethical positioning of psychologists in this activity, as well as the relationship between Psychology and this field.

Methodology

As a methodological approach, a survey of scientific production was carried out on the practice of conflict mediation in the Brazilian context, specifically applied to family issues. Initially, it was planned to analyze as of the year 2011 because of the date of the Resolution of the Conselho Nacional de Justiça [CNJ] that regulates the practices of

mediation and conciliation (Resolução nº 125, 2010). As the data found concerning this period were considered very small, the period of publications was not delimited.

The databases used were: SciELO, PePSIC, Periódicos Capes and Index-Psi. As an inclusion criterion, articles that were freely accessible in full were considered. For this search, six descriptors were initially used: mediation, marital conflict, divorce, marital separation, forensic psychology and family. Descriptors were selected considering the theoretical framework on the subject, as well as on the set of descriptors required by the Biblioteca Virtual em Saúde-Psicologia [BVS-PSI] system. Later, we found a considerable number of publications using the descriptor 'legal psychology' and, therefore, it was decided to include it in the set of keywords used, despite the term not appearing in the BVS-PSI listing, totaling seven descriptors for the survey.

The searches indicated a total of 159 published studies. The first analysis was performed from the abstracts available online, so articles without abstracts were disregarded. Among the exclusion criteria, duplicate articles indexed in more than one database, the articles which were not available online in entirety, as well as publications that did not correspond to the area of Psychology were disregarded. For this purpose, the authors' training specified in the publication or in the Lattes Curriculum was identified, insofar as we attempted to analyze the participation of Psychology in the practice of conflict mediation through the theoretical production of the field. Finally, part of the publications was excluded from the final analysis because they were dissertations and theses, since we decided not to add these works due to the greater reach obtained by publications in journals, in addition to the fact that often the authors of theses and dissertations write articles presenting the results of their research. At the end of the cuts, carried out in June 2017, a total of 19 articles were selected in accordance with the criteria adopted here.

After data collection, the thematic content analysis technique was applied, which, as described by Gomes (2012), occurs from grouping information considering the similar themes of the publications studied. Based on the analysis, the material was organized into three categories: a) mediation and its relationship with family themes; b) experiences in Family Mediation services; and c) mediation as a possibility of action for the legal psychologist. As part of this article, we decided to start with the presentation of the legislative context that regulates the performance of mediation in Brazil to, later, detail the aforementioned categories of analysis of publications.

Conflict mediation in the Brazilian law

Conflict mediation has been one of the main avenues of access to justice promoted in recent decades, present on the agenda of government actions and national policies. Among the main arguments in favor of such an approach, celerity, efficiency, modernization and the change of culture in the judiciary stand out, aiming to reduce practices with an adversarial content in favor of consensual methods.

In order to better understand this movement, the following rules and legal frameworks were analyzed: Resolution 125 of November 29, 2010 (Resolução nº 125, 2010), prepared by the CNJ; Amendment I to Resolution 125/10 issued in January 2013 (Emenda nº 1, 2013); the New Code of Civil Procedure (NCPC), enacted on March 16, 2015 through Law 13.105 (Lei nº 13.105, 2015) and in force since March 2016; and Law 13.140, enacted on June 26, 2015 (Lei nº 13.140, 2015).

In spite of its infra-legal character, Resolution 125/2010 had broad normative force, due to the CNJ's role as the Judiciary control body (Oliveira & Brito, 2016). Thus, this

document aimed to consecrate the so-called “[...] adequate treatment [...]” policy (Resolução nº 125, 2010, p. 1) to conflicts presented to the Judicial Power, promoting the references of Conciliation and Mediation. It is in this sense that the CNJ (Resolução nº 125, 2010) declares that conflict resolution is a public policy and that it is up to the Judicial Power to watch over it in associated bodies, which are responsible for the creation of Permanent Centers of Consensual Methods for Conflict Resolution and the Judicial Centers for Conflict Resolution and Citizenship, which must be responsible for holding mediation and conciliation hearings.

As for mediator training of mediators, the resolution determines that the candidate, with a degree in a higher education program for at least two years, must seek courses offered by the courts or duly registered by the CNJ. For those who already worked as mediators or conciliators prior to the preparation of the aforementioned document, it would be sufficient to participate in training and improvement courses. It is worth mentioning that, according to the resolution, such courses must consider the syllabus, the minimum workload, as well as professional practice with due supervision. Furthermore, as described in paragraph 4 of article 12, the so-called “[...] understanding facilitators” (Resolução nº 125, 2010, p. 6) must be subjected to the mediator code of ethics, also established by CNJ Resolution 125/2010.

Therefore, the centrality of the Justice System in definitions of the field of mediation in Brazil is noted, with the CNJ establishing public policies and actions to promote self-compositional models. The CNJ also assumed responsibility for training mediators, including the production of manuals to guide theoretical training and practice monitoring. Following this trend, Amendment I of 2013 (Emenda nº 1, 2013) brings changes to some articles and annexes present in Resolution 125 (2010), among which information regarding the responsibilities attributed to the CNJ, defining their implementation and promotion of alternative conflict resolution techniques, as well as encouraging the professional training of mediators and conciliators in the public and private sectors (Emenda nº1, 2013). In addition, an amendment to article 12 determines that the training course for conciliators and mediators must be enriched with simulation activities. The other articles of this regulation bring information relevant to the organization and the zeal for the mediation service (Emenda nº1, 2013).

Importantly, the encouragement of such methods of conflict resolution indicates changes in the Brazilian Justice System, which since 2010 has been restructured to expand mediation and conciliation services and enhance the rate of cases resolved with agreements. To understand the dimension of such changes, it is worth noting the data from the Justice in Numbers Report 2020, which indicate that, in 2019, “[...] 12.5% lawsuits were resolved via conciliation” (CNJ, 2020).

Along these lines, the enactment in 2015 of the New Code of Civil Procedure - NCPC (Lei nº 13.105, 2015) established the mandatory requirement of prior mediation and conciliation hearings in all civil proceedings, especially those in the Family Law field. In addition, it validated the creation of conflict resolution centers and established the principles on which conflict resolution is based, the possibility of choosing the intermediary and issues related to the ethical conduct of the facilitator.

It should be noted that article 167 of the NCPC (Lei nº 13.105, 2015) requires that mediators be registered with a national bank, as well as with the Court of Justice or the Federal Regional Court. Also in this article, the NCPC changed the nature of the link between mediators and conciliators, creating the possibility of an application for a public position (Law 13105, 2015), which was consolidated in 2016 with the civil service

examination applied by the Court of Justice of the state of Mato Grosso [TJMT] and by the Court of Justice of the State of Rio Grande do Sul [TJRS].

However, the indication that mediation and conciliation are exercised voluntarily remains, which is in line with the argument in the Judicial Mediation Manual (CNJ, 2016) that such self-compositional methods are presented as an economic strategy for the courts, aiming at the “[...] rational and efficient use of the state machine [...] [and] the material and human resources of the Judicial Power” (CNJ, 2016, p. 9-10), an aspect that is also evident in the recommendation that “[...] as a rule, the magistrate should not conduct mediations mainly to save this scarce human resource” (CNJ, 2016, p. 257).

The mediation law (Lei nº13.140, 2015), in turn, gathers and details what had already been sanctioned by Resolution 125/10 (Resolução nº 125, 2010), by Amendment I/2013 and by the articles corresponding to the topic in the NCPC (Lei nº 13.105, 2015). This law is specifically aimed at the mediation of conflicts and does not make any reference to another modality of conflict resolution, for example, conciliation, like the other codes. Another distinguishing factor refers to the fact that the law describes in more detail the practices of the mediator, explaining the possibilities of acting, as a judicial and extrajudicial mediator described in articles 4 to 13 (Lei nº 13.140, 2015), and the ethical procedures concerning the activity.

Also in the same regulation (Lei nº 13.140, 2015), there is in its article 11 a reference to the mediator’s basic training, bringing the requirement of the training course, internship, supervision and proper recycling. However, at no time is it designated whether this is a place to be occupied by law graduates, psychologists or social workers. The codes analyzed here do not limit the higher education of the professional who will perform this function, so that conflict mediation remains a viable occupation for both psychologists and other professions.

Despite the theoretical-technical articulations of mediation with Psychology, there is sometimes an effort to dissociate these fields. Cúnico, Mozzaquatro, Arpini and Silva (2010, p. 168) warn that the mediator must refrain from making use of the daily practices of their profession, so that “[...] the psychologist should not interpret the speech of the parties involved as well as the lawyer, who is exercising the role of mediator, the defense of one of the peers is prohibited”.

On the other hand, there is recognition of the tools, resources and techniques of Psychology, as in the recommendation that, in order to build an appropriate environment, it is necessary that mediators - like psychologists - have the ability to listen carefully and encourage communication and autonomy of the parties. The appreciation of Psychology can also be observed at the I National Meeting of Psychology: Mediation and Conciliation, when a magistrate highlighted the importance of the presence of the psychologist due to the difference in training in relation to Law, since the attitude of Law regarding the solution of conflicts would be imposing (Moraes, 2006).

Therefore, mediation is a field that is constituted in Brazil in relation to Psychology, it is necessary to resume the problematization about the “[...] judicialization of social life in times of consensualization of conflicts” (Oliveira, 2018, p. 6), since even though it is a service that escapes the heterocompositional path of conflict resolution, it still has legal validity and is linked to the Justice System. In this way, judicialization of everyday life is a phenomenon that has intensified in recent years and has become the object of discussions that point to the complexity of the issue (Nascimento, 2014, Oliveira & Brito, 2016, Therense et al., 2017). It is necessary to emphasize that judicialization is not limited to the population’s search for the judiciary, but permeates the increase in legislative productions,

demands, judicial policies and methods aimed at regulating relationships, conduct and family conflicts, such as mediation.

It is also worth reflecting on a possible failure of social relations, since in order to reach an agreement between the parties, the interference of a third party is sought, even in the condition of mediator. In this aspect, one can question whether the population requires State intervention, via Justice, due to the difficulty in resolving their impasses or if this interference has been constructed as necessary and fed back by the Justice System itself.

In short, when analyzing the publications that deal with the role of psychologists as mediators, some questions guided the discussion of the categories: how to think about the relationship between Psychology and the field of conflict mediation in order to build a critical practice that does not reinforce the judicialization of families? Would it be possible for the psychologist, as a mediator, to combine mediation with the theoretical-technical and ethical specificities of Psychology as a science and a profession? How has Psychology contributed, then, to conflict mediation?

Mediation and its relationship with family issues

Currently, in Brazil, mediation of family conflicts is mainly applied to divorce cases and disputes over custody of children that enter the legal space (Lourenção, Lemes, & Sequeira, 2005, Schabbel, 2005, Silva, 2008, Cúnico et al., 2010, Oliveira & Ramires, 2011, Cúnico, Arpini, Mozzaquatro, Silva, & Bopp, 2012, Luz, Gelain, & Lima, 2014). Schabbel (2005), when dealing with the contributions of mediation to those served, says that this is a relevant alternative for Family Law cases because it allows deeper emotional issues to reach the surface and be worked directly with the litigant parties. Lourenção et al. (2005), Silva (2008) and Santos and Costa (2007) point out that, at the time of mediation, emotional contents can be highlighted. Another beneficial aspect emphasized by Schabbel (2005, p. 18) is that “[...] the mediation agreement, even if partial, signals the end of months or even years of dissatisfaction and discord in the marriage, and begins a new phase of family life [...]”.

Still on marital separation, but with the addition of the issue of definition of custody, Coimbra (2009) discusses the duration of processes and the weight that this time has on the narrative of those who arrive at the Family Court. The author reports the emotional state of the litigant parties during divorce and child custody proceedings, and how memory leaves peculiar traces that mark the speech of those who are being heard.

The last publication studied in this category is by Trentin and Zeni (2010), whose work discusses the application of mediation to family issues in general. The authors also problematize the emotional aspects underlying the context of family dispute, highlighting the relevance of speech during mediation and the direct role of this method in restoring and improving communication between those involved.

According to the factors presented, mediation would have a prophylactic role, in order to prevent new conflicts, since the parties would be instrumentalized during the development of mediation and thus would have tools to assist in the resolution of possible future family problems. Trentin and Zeni (2010) emphasize that mediation would be a technique that does not distinguish between those who could participate, thus being widely accessible to the population. This characteristic would produce a movement of valuing individuals and promoting citizenship, an idea that Oliveira and Spengler (2011) also defend in their work.

From the texts analyzed in this category, there was an understanding that mediation can be used at different times and types of family conflicts, helping to reestablish communication, manage emotions and even prevent other disagreements. However, despite such benefits, it is noted that the aforementioned studies do not explore the limits, gaps and criticisms of such method, crucial aspects whose analysis would contribute to the deepening of the discussion and the improvement of praxis.

Experiences in Family Mediation Services

When reading academic productions, one of the most recurrent themes was reports of experiences and evaluations of Family Mediation services. Through the literature survey, it was possible to find significant differences in the functioning of mediation sessions. In the article by Lourenção et al. (2005), three cases are reported that varied the number of sessions and professionals with different training, with the minimum number of consultations being a single meeting. On the other hand, Müller et al. (2007) report that the number of sessions stipulated by the Court of Justice of the state of Santa Catarina [TJSC] should be between two and four sessions. Such variation leads to questioning the variety of mediation practices and their corresponding effects.

The articles grouped in this category emphasize the success of the service and the conflict resolution modality, as reported by Cúnico et al. (2012), who understands Family Mediation as effective due to the approval of agreements built through this practice. Based on experiences in Centers of Judicial Practices, Cúnico, Arpini and Cantele (2013) and Alves et al. (2014) present uses and possible fruits of the mediation of family conflicts, such as the debate on shared custody, the exercise of paternity and the construction of agreements on the custody of children. For example, Cúnico et al. (2013) discuss the family relationship and the exercise of paternity between parents and children, after they have gone through the mediation of conflicts in the aforementioned center. Although the focus of this study is not Family Mediation, but the experiences of five fathers in their paternity relationships, it is important for the analysis carried out here since it presents the experiences of part of the family as a result of the mediation process. Alves et al. (2014) discuss the use of conflict mediation and its effectiveness in the discussion about shared custody, through the report of experiences in which this type of custody was obtained via an agreement produced in mediation.

All the articles studied on the implementation of the mediation service (Lourenção et al., 2005; Silva, 2008; Nobre & Barreira, 2008⁹; Cúnico et al., 2010; Oliveira & Ramires, 2011; Cúnico et al., 2012; Cúnico et al., 2013; Alves et al., 2014), whether in the psychology service or in the legal assistance service of universities, preceded the main Brazilian regulatory frameworks that deal with conflict mediation, which shows that conflict mediation is a practice prior to its regulation and which, according to the analyzed productions, has been considered successful, which could justify the legislative production that regulated it in recent years.

Mediation as a field of action for the legal psychologist

⁹ Nobre and Barreira (2008) discuss the implementation, on an experimental basis, of the conflict mediation program within a specialized police department for women in the state of Sergipe. As the focus of the present work is the mediation of conflicts concerning the Family Courts, it was decided not to deepen the study of the article by Nobre and Barreira (2008), since it permeates a different area of action, according to the division of the Judiciary, namely, the Specialized Court in Domestic Violence. However, it was not an initial exclusion factor.

A recurring questioning in the field of Legal Psychology concerns the role that professionals have assumed throughout history when relating to the Law, configuring itself as an auxiliary practice and limited to legal demands (Therense et al., 2017). Despite the various changes that have taken place in this relationship, Verdi (2012) indicates that psychologists over time have mainly occupied the restricted position of the judicial expert, whose objective is to assist in judicial decision and not to intervene in the conflict, which may further accentuate the dispute between the parties.

Given this, Bucher-Maluschke (2007), Verdi (2012) and Therense et al. (2017) problematize the need for Psychology to assume another role in the judicial system, so that the psychologist's role is not limited to the elaboration of reports or the provision of diagnoses, but contributes to the reestablishment of dialogue and cooperation between the litigants. It should be considered that procedural litigation and mediation deal with different ways of ending a conflict, given that their purposes and results are different.

Bucher-Maluschke (2007) and Verdi (2012) defend mediation as a field of action for the psychologist, in which it is possible to use their training to go beyond technical assistance to the judicial power, being a transforming agent of the relationship between the litigants, in order to assist them in preparing a solution in line with both interests. The long discussion about the work of the psychologist in the Family Courts, expressed in a document of the Federal Council of Psychology (CFP, 2010), indicates the possibility of mediation being a form of action of psychology, a perspective that predates its official insertion in the Brazilian judicial system. Thus, to understand that the psychologist's work in the Family Court is limited to the production of the report to be sent to the judge is to disregard all the debate and effort of the professional category in the construction of practices beyond the expert paradigm.

Teixeira (2007) assesses that mediation can have therapeutic effects, as the parties become aware that not all litigation arises from objective issues to be dealt with by law, but from emotional ones. However, it should be noted that mediation and psychotherapy are two distinct procedures and that mediation has limits in terms of intervention time, mode of conduct, objective of practice and, sometimes, even basic training of the professional, being necessary to make referrals to the due attention when some issue obstructs the progress of the mediation or even when it goes beyond the competence of the mediator, as highlighted by Teixeira (2007).

Given the specificity of the procedure, whether due to its objective or techniques, mediation is a practice still under construction. In this opportunity, Costa, Penso, Legnani and Sudbrack (2009), discuss how Family Mediation can help not only to restore communication, but also to bring the individual to Justice in a less vertical way, understanding joint decisions as bridges in this naturally unequal relationship. The authors protect the role of the psychologist as a mediator, stressing the need for resources and training of these professionals to deal with the emotional demands of this practice (Schabbel, 2005). In contrast to this perspective, Bucher-Maluschke (2007) states that mediation is a field of its own and defines it as a method considered as a practice, but from this performance it becomes an area of knowledge. And, therefore, it would not be exclusive to any area of knowledge.

Regarding the practice of conflict mediation and the role of psychologists, Bucher-Maluschke (2007, p. 205) points out some difficulties in the service, such as: "[...] a lack of theoretical depth on knowledge about negotiation techniques, techniques of brief psychotherapies, theories of communication and systems, among others, which are essential for mediators to act with excellence". It is also worth mentioning the failures in

the teaching of Family Mediation in Psychology programs, in contrast to Law students who would be more informed about alternative methods of conflict resolution, as shown by the results of Germano (2013).

Thus, although the literature points to an interdisciplinary path of construction and exercise of mediation in Brazil, there is still a certain gap between training in Psychology and the practice of Family Mediation (Bucher-Maluschke, 2007; Verdi, 2012). In turn, for Müller et al. (2007), the theoretical basis of Psychology would be in agreement with some skills required of the mediator, which reinforces the importance of this articulation between the areas.

In short, it is noted that, in general terms, the authors of the analyzed literature converge with regard to the recognition and appreciation of the relationship between Psychology and the field of Family Mediation in Brazil (Teixeira, 2007; Müller et al., 2007; Bucher-Maluschke, 2007; Costa et al., 2009; Verdi, 2012; Germano, 2013). Thus, in the scope of action with families, mediation has gained great space because it is an interdisciplinary practice and, therefore, possible for psychologists, insofar as it seeks to restore the responsibility of participants, making them regain autonomy over their litigious issues.

Final considerations

In Brazil, mediation of family conflicts was legitimized by the enactment of two regulatory frameworks: the New Code of Civil Procedure (Lei nº13.105, 2015) and the Mediation Law (Lei nº13.140, 2015). Such legislation brings similar points regarding the structuring of the service and the practice, the insertion of the technique, the preparation of the professional, the possibilities of action, and also regarding the guiding principles of the method. However, they neglect an important point: the previous training of the mediator, which remains open to any area of higher education, with only the requirement of a minimum training time (two years) and a training course.

In addition, even with the legal provision and the consensus of the literature about the interdisciplinary character of mediation, it is worth questioning which professionals have exercised such a function, if it would be relegated to those of the Justice System, and, also, if psychologists are included in the aforementioned interdisciplinarity. Such questionings become necessary considering that, recently, civil service examination announcements¹⁰ were published for mediators and conciliators requiring candidates to have a degree in Law, as in the case of the Court of Justice of the state of Paraná [TJPR] and the Court of Justice of the state of Mato Grosso [TJMT], as well as a public notice for interns at the Conciliation Centers of the Court of Justice of the state of Rio Grande do Norte, which made available 100 vacancies for undergraduates in Law and only 16 for Psychology.

It is also worth questioning whether the preparation offered to mediators considers the plurality of their previous training and, above all, the complexity of issues linked to family conflicts that they propose to mediate - such as relationships, affections, parental

¹⁰Public notice of the Court of Justice of the state of Paraná. Retrieved from: <https://www.tjpr.jus.br/documents/18319/6161868/Juiz+Leigo+Antonina/2b689e95-9c21-422e-bd50-f8b39c1e79f3>. Public notice of the Court of Justice of the state of Mato Grosso. Retrieved from: <https://www.tjmt.jus.br/intranet.arq/downloads/Imprensa/NoticialImprensa/file/27%20-%20Edital%20Conciliador%20Guiratinga%202017.pdf>. Public notice of the Court of Justice of the state of Rio Grande do Norte. Retrieved from: <http://www.tjrn.jus.br/images/edital-estagiario-conciliador.pdf>

functions, communication, emotions, among others. Importantly, such themes are widely studied by Psychology over the years of higher education, which is clearly opposed to the quick and simplified model of training offered – exclusively – by the CNJ in Brazil¹¹.

It is worth emphasizing, therefore, the centralizing character of the Justice System in the proposition, supervision, management and execution of measures concerning conflict mediation, including from broader guidelines, those related to the creation of exclusive spaces for self-compositional methods, such as the Judicial Centers for Conflict Resolution and Citizenship [CEJUSCs], to very specific aspects, such as the programmatic content that underpins the training programs or even the mediators' code of ethics. In view of the above, it is understood that mediation constitutes a way of judicialization of family relationships because it is inserted in the Justice System, thus being a tool of the Judicial Power, especially after the enactment of the NCPC (Lei nº 13.105, 2015), which instituted the obligation of pre-procedural mediation in Family Courts. In this sense, it is considered pertinent to point out the fragility of the argument that Family Mediation and non-adversarial conflict resolution models would be an alternative to the increasing judicialization of disputes. Although they are practices that propose to break with the “[...] disjunctive, Manichean and binary logic of win-lose” (Müller et al., 2007, p. 198) historically present in the Judicial Power, it continues to promote the regulation of conflicts through legal and legislative references.

In conclusion, through the literature review carried out, Psychology has participated significantly in the field of Family Mediation in Brazil, contributing theoretically and technically to the consolidation of such praxis, as well as exercising this function. Nevertheless, reflection on these articulations is crucial, so that Psychology is no longer a reinforcer of judicialization of families, but contributes as a critical, ethical and committed professional and scientific field, whose knowledge and practices can foster social transformation and raise new forms of relationship between subjects and the Judicial Power. Therefore, the need for further investigations, studies and scientific productions focusing on the theme is highlighted, following the changes caused by the institutionalization of Family Mediation in Brazil and the place of Psychology in this scenario.

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References

- Alves, A. P., Cúnico, S. D., Arpini, D. M., Smaniotto, A. C., & Bopp, M. E. T. (2014). Mediação familiar: possibilitando diálogos acerca da guarda compartilhada. *Pesquisas e Práticas Psicossociais – PPP*, 9(2), 193-200.
- Brandão, E. P. (2011). *A interlocução com o direito à luz das práticas psicológicas em varas de família*. In H. S. Gonçalves, & E. P. Brandão (Org.), *Psicologia jurídica no Brasil* (3ª ed., p. 73-140). Local: NAU Editora.

¹¹As a comparative example and for the purpose of encouraging future research, there is information on the website of the Ministry of Justice of Quebec, Canada, that only professionals accredited in specific professional orders and councils and authorized by the government, can practice Family Mediation, such as psychologists, family therapists, social workers and lawyers. (Retrieved from: <https://www.justice.gouv.qc.ca/couple-et-famille/separation-et-divorce/la-mediation-familiale-pour-negocier-une-entente-equitable/comment-trouver-un-mediateur/>).

- Bucher-Maluschke, J. S. N. F. (2007). Revisitando questões sobre lei, transgressão e família em suas interações com a psicologia, a psicanálise, o direito e a interdisciplinaridade possível. *Psicologia: Teoria e Pesquisa*, 23(ed. esp.), 89-96.
- Catão, A. L. C. (2009). *Mediação e o judiciário: problematizando fronteiras psi-jurídicas* (Dissertação de Mestrado em Psicologia Social). Pontifícia Universidade Católica de São Paulo, São Paulo.
- Coimbra, J. C. (2009). Tempo e memória nas varas de família. *Estudos e Pesquisas em Psicologia*, 9(3), 695-709.
- Conselho Federal de Psicologia [CFP]. (2010). *Referências técnicas para atuação de psicólogos nas varas de família*. Brasília, DF: CFP.
- Conselho Nacional das Instituições de Mediação e Arbitragem [Conima]. (n.d.). Recuperado de: http://www.conima.org.br/quem_somos
- Conselho Nacional de Justiça [CNJ]. (2020). *Justiça em números: 3,9 milhões de acordos homologados em 2019*. Recuperado de: <https://www.cnj.jus.br/justica-em-numeros-39-milhoes-de-acordos-homologados-em-2019/>
- Conselho Nacional de Justiça [CNJ]. (2016). *Manual de mediação judicial*. Brasília, DF: CNJ.
- Costa, L. F., Penso, M. A., Legnani, V. N., & Sudbrack, M. F. O. (2009). As competências da Psicologia Jurídica na avaliação psicossocial de famílias em conflito. *Psicologia & Sociedade*, 21(2), 233-241.
- Cúnico, S. D., Arpini, D. M., & Cantele, J. (2013). A impossibilidade do exercício da paternidade: algumas reflexões. *Psicologia em Revista*, 19(3), 353-370.
- Cúnico, S. D., Arpini, D. M., Mozzaquatro, C. O., Silva, M. L., & Bopp, M. E. T. (2012). Psicologia e Mediação Familiar em um núcleo de assistência judiciária. *Boletim de Psicologia*, LXII (137), 141-154.
- Cúnico, S. D., Mozzaquatro, C. O., Arpini, D. M., & Silva, M. E, T. (2010). Vivências de um serviço de psicologia junto a um núcleo de assistência judiciária. *Aletheia*, 33.
- Emenda nº 1 à resolução nº 125, de 31 de janeiro de 2013* (2013). Altera os arts. 1º, 2º, 6º, 7º, 8º, 9º, 10, 12, 13, 15, 16, 18 e os Anexos I, II, III e IV da Resolução nº 125, de 29 de novembro de 2010. Recuperado de: http://www.cnj.jus.br/images/emenda_gp_1_2013.pdf
- Fonkert, R. (1998). *Mediação familiar: recurso alternativo à terapia familiar na resolução de conflitos em famílias com adolescentes*. Recuperado de: <http://www.dialogosproductivos.net/img/descargas/16/04022009164518.pdf>
- Germano, Z. (2013). A mediação de conflitos na compreensão de graduandos em direito e em psicologia. *Psicologia: ensino e formação*, 4(2), 18-33.
- Gomes, R. (2012). Análise e interpretação de dados de pesquisa qualitativa. In M. C.S. Minayo, S. F. Deslandes, & R. Gomes (Org.), *Pesquisa social: teoria, método e criatividade* (32a ed., p. 79-106). Petrópolis, RJ: Vozes.

- Krüger, L. L. (2009). Mediação do divórcio: pressupostos teóricos para prática sistêmica. In S. L.R. Rovinski, & R. M. Cruz (Org.), *Psicologia Jurídica: perspectivas teóricas e processos de intervenção* (p. 235-246). São Paulo, SP: Vetor.
- Lei nº 13.105, de 16 de março de 2015. (2015). Código de processo civil. Brasília, DF: Presidência da República. Recuperado de: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm
- Lei nº 13.140, de 26 de junho de 2015 (2015). Dispõe sobre a mediação entre particulares como meio de solução de controvérsias e sobre a autocomposição de conflitos no âmbito da administração pública. Brasília, DF: Presidência da República. Recuperado de: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/Lei/L13140.htm
- Lourenção, R. P., Lemes, V. B., & Sequeira, V. C. (2005). A mediação como forma de amenizar questões emocionais nos conflitos judiciais. *Boletim de Iniciação Científica em Psicologia*, 6(1), 9-18.
- Luz, A. F., Gelain, D., & Lima, L. R. (2014). Reflexões sobre alienação parental em um projeto de mediação de conflitos. *Revista Psicologia e Saúde*, 6(2), 96-103.
- Moraes, G. (2006). Transcrição da fala. In Conselho Federal de Psicologia [CFP]. *Relatório final do I Encontro Nacional de Psicologia: Mediação e Conciliação realizado de 7 a 8 de dezembro de 2006 em Brasília/DF* (p. 13-20). Recuperado de: <http://www.crprj.org.br/publicacoes/relatorios/mediacao-conciliacao.pdf>
- Müller, F. G., Beiras, A., & Cruz, R. M. (2007). O trabalho do psicólogo na mediação de conflitos familiares: reflexões com base na experiência do serviço de mediação familiar em Santa Catarina. *Aletheia*, (26), 196-209.
- Nascimento, M. L. (2014). Pelos caminhos da judicialização: lei, denúncia, e proteção no contemporâneo. *Estudos em Psicologia*, 19(3), 459-467.
- Nobre, M. T., & Barreira, C. (2008). Controle social e mediação de conflitos: as delegacias da mulher e a violência doméstica. *Sociologias*, 10(20), 138-163.
- Oliveira, C. F. B. (2018). *Judicialização e as relações entre sujeitos, direitos, justiça e cidadania*. In *Anais da 31ª Reunião Brasileira de Antropologia* (p. 1-17). Brasília, DF.
- Oliveira, C. F. B., & Brito, L. M. T. (2016). Humanização da Justiça ou judicialização do humano? *Psicologia Clínica*, 28(2).
- Oliveira, L. D., & Spengler, F. M. (2011). Uma política pública de tratamento do conflito como fortalecimento da cidadania. *Revista do Direito*, 35, 03-18
- Oliveira, L. R. F., & Ramires, V. R. (2011). Avaliação de um programa de mediação de conflitos. *Contextos Clínicos*, 4(2), 99-112.
- Orsini, A. G. S., & Silva, N. F. (2016). Entre a promessa e a efetividade da mediação: uma análise da mediação no contexto brasileiro. *Revista Jurídica da Presidência*, 18(115), 331-356.
- Resolução nº 125, de 29 de novembro de 2010 (2010). Dispõe sobre a Política Judiciária Nacional de tratamento adequado dos conflitos de interesses no âmbito do Poder

Judiciário e dá outras providências. Recuperado de: http://www.cnj.jus.br/images/stories/docs_cnj/resolucao/Resolucao_n_125-GP.pdf

Santos, M. R. R., & Costa, L. F. (2007). O tempo na trajetória das famílias que buscam a justiça. *Revista do Departamento de Psicologia-UFF*, 19(1), 111-126.

Schabbel, C. (2005). Relações familiares na separação conjugal: contribuições da mediação. *Psicologia: Teoria e Prática*, 7(1), 13-20.

Silva, J. E. M. (2008). Mediação de conflitos conjugais: a persistência do conflito e o olhar clínico. *Contextos Clínicos*, 1(1), 36-42.

Teixeira, G. N. (2007). Reflexões sobre a psicologia no programa de mediação de conflitos: relato de experiência do trabalho desenvolvido em Minas Gerais. *Mosaico: Estudos em Psicologia*, 1, 17-23.

Therense, M., Oliveira, C. F. B., Neves, A. L. M., & Levi, M. C. H. (Org.). (2017). *Psicologia jurídica e direito de família: para além da perícia psicológica*. Manaus, AM: UEA Edições.

Trentin, T. R. D., & Zeni, B. S. (2010). Mediação: instituto democrático-dialógico de exercício de cidadania na construção de soluções satisfatórias nos conflitos familiares. *Direito e Práxis*, 1(1), 80-99.

Verdi, M. S. (2012). A mediação e a contribuição da Psicologia à). *Mediação*, 36(ed. esp.), 31-41.

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