

# **MEDIATOR DOMESTIC VIOLENCE SCREENING TOOL AND SAFETY PLANNING**

(Structure and Guidelines for Assessing Domestic Violence)

As you conduct the mediation orientation, it is important to be aware of the questions in the Mediator Screening Tool, so you can use them to assess for the presence of domestic violence. Integrate the questions in the Mediator Screening Tool so you are able to assess for the presence of domestic violence, and more importantly determine if mediation is appropriate for the party.

## **A. QUESTIONNAIRE**

A mediator should ask the following questions during an orientation to assess for domestic violence between the parties.

### **Section 1: Control, Coercion, Intimidation, Fear**

- (a) When you look back over time, how were decisions made in your marriage/relationship?
- (b) What happens when you speak your mind and express your point of view to the other party?
- (c) When you and the other party fight and/or are angry at each other, what happens?
- (d) Has the other party ever prevented you (or tried to prevent you) from having contact with family or friends, or your children?
- (e) Has the other party ever denied you access to money for food, shelter, clothing, medical needs, etc.?
- (f) Has the other party ever threatened to hurt or kill you or him/herself?
- (g) Do you have any concerns about sitting in the same room mediating with the other party?

If yes, ask the following questions:

- (i) What are your concerns?
- (ii) If your attorney or an advocate was present with you in the room would you still have these concerns?

(iii) If you and the other party were in separate rooms during the mediation, would you still have these concerns?

**Section 2: Violence/Fear of Violence**

- (a) Has there ever been any physical confrontation between you and the other party? If so, what happened?
- (b) Do you ever feel afraid of the other party? What are you afraid of?
- (c) Has the other party ever pushed, shoved, hit, kicked, choked or restrained you, or pulled your hair? If so, what happened?
- (d) Has the other party ever used or threatened to use a weapon to harm you? Are there guns or weapons in your home? Does the other party have access to guns or other weapons?
- (e) Has the other party ever damaged or destroyed your property, or harmed or threatened to harm your pets?
- (f) Have you ever had medical treatment as a result of an injury caused by the other party?
- (g) Has the other party ever harassed you by following you, interfering with your work or education, making repeated phone calls to you or sending you several unwanted letters, e-mails, faxes or gifts?
- (h) Have you ever sought to have a Personal Protection Order issued against the other party? Was an order issued?
- (i) Have you or any one else ever called the police because of problems in your home? If so, what happened?
- (j) Are you afraid that the other party will physically harm you during the mediation or after you leave because of what you say in mediation?
- (k) Are you in immediate danger?

**If yes, stop the screening and proceed to *Safety Planning*.**

**If a party answered “yes” to any one of questions 2(a) through 2(j), this is an indication that mediation may not be appropriate for this party.** However, do not terminate the screening process until the entire questionnaire is completed. Information gathered in the following sections may be useful if the party wishes to mediate despite the mediator’s advice. This will assist the mediator to make a decision about whether or not to mediate.

### **Section 3: Children**

- (a) How are your children doing?
- (b) Do you have any concerns about the safety of your children?
- (c) Has the other party ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them?

### **Section 4: Other Considerations Regarding Ability to Participate**

- (a) Does either of you have a problem with alcohol or drugs? If so, please describe the problem.
- (b) Does either of you have a history of mental illness or emotional problems? If so, please describe the history.

### **Final Note:**

Monitoring by the mediator is a continuous responsibility throughout the mediation process. On-going screening for domestic violence should take place throughout all phases of mediation. It is the mediator’s responsibility to terminate the orientation and/or mediation if she/he believes either of the parties is unable to mediate safely, fully and without fear or intimidation. There are times when during the course of an orientation no behaviors or comments suggest the presence of domestic violence, but during the course of the mediation something suggests domestic violence. If the mediator determines that mediation should not proceed, see *Safe Termination* .

### **B. MAKING A DECISION ABOUT WHETHER OR NOT TO MEDIATE & SAFETY PLANNING** (Based on responses to Questionnaire section in *Mediator Screening Tool*)

- 1) **Party is in Immediate Danger** (party answered “yes” to Question 2(k) in the *Mediator Screening Tool*)

If a party is in immediate danger, the mediator should advise the party that mediation is not appropriate. There are no circumstances under which mediation should proceed. You should then help the party with Safety Planning. If during the orientation no behaviors or comments suggest the presence of domestic violence, but something is revealed during the mediation and the party is in danger, go to *Safe Termination of Mediation* and then to *Safety Planning*.

- 2) **No Apparent Immediate Danger, but the Abused Party Disclosed Violence by or Fear of the Other Party** (party answered “no” to Question 2(k) but “yes” to any other question in Section 2 of the *Mediator Screening Tool*)

The mediator should advise the parties that mediation is not appropriate. The abusive party’s willingness to proceed with mediation is irrelevant. **Advise against mediation:** “*I do not think it is advisable for you to participate in mediation.*”

If the abused party concurs with the advice not to mediate, there are no circumstances under which mediation should proceed.

If the abused party disagrees with the advice against mediation and wants to mediate, then mediation should proceed only if **ALL** of the following apply:

- The situation is not dangerous for the abused party or the mediator. Consider answers to Section 2 of the *Mediator Screening Tool*.
- The mediation is conducted by a skilled mediator.
- The attorney for the abused party or an advocate for the abused party (such as a advocate from the local domestic violence program or a friend or family member) will be present during the mediation.
- Both parties agree to these specific conditions.
- Parties wait in separate waiting areas; parties are not left alone together.
- The mediator assesses that the parties have the ability to participate voluntarily, fairly, safely, fully and relatively free of fear and intimidation. Consider answers to Sections 1 and 2 of the *Mediator Screening Tool*.

- 3) **Non-Violent, but Abusive/Controlling** (party answers “no” to all questions in Section 2, but “yes” to any question in Section 1(d) – 1(g) or answers in Section 1(a) – 1(c) indicate the existence of control, coercion or intimidation).

The mediator must determine whether either party lacks the ability to fully participate in the mediation and whether mediation could go forward under specific conditions, relatively free of fear and intimidation. Mediation should proceed only if **ALL** of the following apply:

- The situation is not dangerous for the abused party or the mediator. Consider answers to Section 2 of the *Mediator Screening Tool*.
- The mediation is conducted by a skilled mediator.
- The mediator assesses that the parties have the ability to voluntarily, fairly, safely and fully participate, with or without an attorney or advocate present for the abused party, or with or without specific conditions to address concerns for safety and ability to participate and make decisions without coercion or fear. Consider answers to Sections 1 and 2 of the *Mediator Screening Tool*.

- The abused party wants to mediate.
- Parties wait in separate waiting areas; parties are not left alone together.
- If, to ensure the ability to fully participate, the abused party requires the presence of an attorney or advocate during mediation, or a specialized process to which both parties agree, the mediation must be conducted with those accommodations.

4) **Non-Violent, Non-Abusive and Non-Controlling, but Either Party Otherwise Lacks Capacity to Mediate** (party answers “no” to all questions in Sections 1, 2 and 3 of the *Mediator Screening Tool*, but “yes” to any question in Section 4)

Regardless of the existence of domestic violence, if screening reveals any of the following the mediator must determine whether either party lacks the ability to fully participate in mediation or whether mediation could go forward under specific conditions.

- There is a history of substance abuse or mental illness that is not presently controlled.
- A party is not able to fully participate for themselves and/or articulate their needs.

Mediation should proceed only if **ALL** of the following apply:

- The situation is not dangerous for the parties or mediator.
- The mediation is conducted by a skilled mediator.
- The mediator assesses that the parties have the ability to participate voluntarily, fairly, safely and fully, with or without an attorney or advocate present, or with or without specific conditions to address concerns about capacity and ability to participate in mediation.
- The parties want to mediate.
- If, to ensure the ability to participate, a party requires the presence of an attorney or advocate during mediation, or a specialized process to which both parties agree, the mediation must be conducted with those accommodations.

5) **Protection Order or Restraining Order In Effect** (one party has a protection order/restraining order against the other party)

Any case between parties with a protection order or restraining order in effect should not be mediated. In addition, a mediator ***should not*** advise a party to have the protection order or restraining order temporarily rescinded in order to do mediation. Parties may believe that mediation is an extension of the court and the court’s protection. Mediation cannot offer the same level of protection to a party. Most courts will not refer a case to mediation if a protection order or restraining order is in effect between the parties.

And finally, mediators should be concerned about potential consequences of mediating cases that involve domestic violence. Mediator malpractice liability is an issue. The process may do harm (physical and psychological). It may violate ethical and state laws or regulations.

### C. SAFETY PLANNING

A safety plan is a tool to help an abused party identify ways to stay safe. Most victims of domestic violence have a variety of methods that have helped keep them safe in the past. **The**

**mediator should take all discussions of fear and safety seriously.** If a mediator has any questions at all during the course of the discussion with the abused party, call a local domestic violence program or the National Domestic Violence Hotline at 1-800-799-SAFE(7233). Here are several options to consider depending on the situation:

1. Ensure that there is a safe and private area in the office where the mediator can speak to the abused party alone.
2. Offer the use of a telephone so that the abused party can contact the local domestic violence program or the National Domestic Violence Hotline. Both of these organizations have trained professionals who are able to offer confidential services and should be able to the abused party create a safety plan.
3. If the abused party does not want to contact the hotlines, the mediator may ask the party's permission to call one or both of the hotlines for consultation. They should be able to walk the mediator through some basic safety planning strategies. The mediator should assure the abused party that this information is confidential and that the mediator will not disclose any of the information.
4. The party may be able to identify friends or family that have been helpful in the past or who are able to offer a place to stay. The mediator should offer the use of a telephone so that the party can contact family or friends, if the party wishes to do so.
5. Consider what the party will do when she/he leaves the mediator's office and where she/he will go. Work with the party to ensure that she/he will be safe during the rest of the day. Ask questions like: "What is your mode of transportation and is it safe? Where is your car parked? Do you have a safe place to spend the night?"
6. Discuss with the party whether she/he would like to contact the police to file a report or to request an escort.
7. Ask some of the following questions as you discuss safety:
  - In what way can I (and others) help you?
  - What do you feel you need to be safe?
  - What particular concerns do you have about your children's safety?
  - What have you tried in the past to protect yourself and your children (e.g., left for a few days, sought help from family, friends, or a shelter, fought back, got an order for protection)? Did any of these strategies help? Will any of them help you now?
  - Who in your support system will help you? How can they help? Can we involve them?
8. If the party has separated from the domestic violence perpetrator, evaluate the following options with the party:
  - Changing the locks on doors and windows.
  - Installing a better security system -- window bars, locks, better lighting, smoke detectors and fire extinguishers.
  - Teaching the children to call the police or family and friends if violence occurs or they are snatched.
  - Talking to schools and childcare providers about who has permission to pick up the children and developing other special provisions to protect the children.
  - Finding a lawyer knowledgeable about family violence to explore custody, visitation, and divorce provisions that protect the children and the adult victim.

- In rural areas where only the mailbox may be visible from the road, covering the box with bright colored paper so that police can more easily locate the home.
  - Obtaining an order of protection.
  - Telling neighbors that the parties' partner is gone and asking the neighbors to inform the party if the parties' partner returns to the area.
  - Figuring out what the party can do (or is willing to do) if/when the parties' partner returns.
9. If the party is leaving the domestic violence perpetrator review the following with the party:
- How and when can the party most safely leave? Does the party have transportation? Money? A safe place to go?
  - Is the party comfortable calling the police if the party needs them?
  - Who will the party tell or not tell about leaving?
  - Who in the parties' support network does the party trust to protect the party?
  - What can the party and others do so that the parties' partner will not find the party?
  - How will the party travel safely to and from work or school or to pick up children?
  - What parental rights and responsibilities provisions would keep the party and the children safe?
  - Would an order of protection be a viable option?
10. If the party is staying with the domestic violence perpetrator, review the following with the party:
- In an emergency what works best to keep the party and the children safe?
  - Who can the party call in a crisis?
  - Would the party call the police if the violence starts again? Is there a phone in the house or can the party work out a signal with the children or the neighbors to call the police or get help?
  - If the party needs to flee temporarily, where can the party go? Help the party think through several places where the party can go in a crisis. Write down the addresses and phone numbers.

### **Suggested Text for Safety Planning Assistance**

“Based on what I’ve heard from you and observed, I am concerned for your safety. I would like you to consider contacting some professionals to help you come up with a plan to stay safe today. Most communities have organizations that provide services to survivors of domestic violence. These services often include confidential shelter, counseling, advocacy, support groups and counseling for your children. The phone number to our local domestic violence program is ... You can also call the National Domestic Violence Hotline at 1-800-799-SAFE (7233). The National Hotline can provide you with confidential advocacy and support and also refer you to the nearest domestic violence program. Please feel free to use my telephone.”

For additional information about mediating cases involving domestic violence, please read and become familiar with the Association for Conflict Resolution’s Standards of Practice for Family and Divorce Mediation, which outlines what to do in mediations that may involve domestic violence.

### **D. SAFE TERMINATION OF MEDIATION**

There are times when during the course of an orientation no behaviors or comments suggest the presence of domestic violence, but during the course of the mediation something suggests domestic violence. Anytime during the course of mediation, if either party decides to withdraw, or the mediator finds that mediation is not safe because of domestic violence, the mediation should be terminated in the following manner.

- If domestic violence is revealed for the first time during a mediation session, the mediator should interrupt the proceeding and conduct a screening of each party separately to determine whether mediation is appropriate and whether the party who has been subject to the abuse understands the potential impact of abuse on the person's ability to participate in mediation fully and fairly.
- The screening sessions can occur right after the interrupted mediation or screening sessions can be scheduled for future dates or the screening session for the abused party can take place immediately with the screening session for the other party scheduled for another day.
- In any event, talk privately with the abused party to determine whether safety arrangements are necessary. If possible, make arrangements for the parties to leave separately. Consider whether to alert law enforcement or other security of the potential for violence and arrange for escort of the abused party to his/her transportation. Do not reveal the destination or means of transportation of the abused party to the other party.
- Provide the abused party with information and referrals for assistance, including safety planning.
- There are two positions to consider with regard to advising the parties about the reasons for termination of mediation.
  - Some domestic violence victim advocates and professionals who work with batterers in batterer intervention programs believe that, due to safety concerns, the mediator ***should not*** advise the parties that the reason for termination is domestic violence, regardless of whether the victim or abuser disclosed the violence. Other valid reasons for termination that could be provided to the parties include: mediation policies and procedures, parties too far apart in positions or interests, inability to fully participate, unwillingness to participate, substance abuse or mental illness (if known by both parties).
  - Some mediators believe that if the abuse is ***disclosed by the abuser or by both parties***, it is appropriate to advise the parties that the reason for termination is domestic violence. If a mediator chooses this approach, the mediator must be careful to provide each party with the same information regarding the reasons for termination without violating confidentiality. If the violence is ***disclosed only by the victim***, the mediator should not advise the parties that the reason for termination is domestic violence.
  - **Violence should never be mediated.** In other words, never mediate when the core issues is for one party to stop abusing the other party. "I'll stop hitting you if you stop seeing your friend, Jane."
  - The mediator must promote the safety of all parties in the mediation process, but it is important to remember not to create an artificial environment during the mediation.



To say to parties “you can say whatever you want in here” may be harmful because a mediator cannot guarantee a party’s safety outside the mediation sessions.

**Suggested Text to the Abused and Abusive Party: Termination of Mediation after Orientation**

“I have decided not to mediate this case. Many cases are not appropriate for mediation. It is my experience that with situations like yours, mediation may not be the best process. This orientation meeting fulfills the requirement for court ordered mediation. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so. You may want to talk with an attorney about your situation.”

**Suggested Text: Termination of Mediation after Start of Mediation**

“After observing the issues between you and your interactions with each other, I know from my experience that mediation may not be best process for you. Many cases are not appropriate for mediation. So rather than taking up your time and resources, I am terminating this mediation. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so. You may want to talk with an attorney about your situation.”

This screening tool was developed by the Michigan Supreme Court Office of Dispute Resolution. (2005). Domestic Violence and Child Abuse/Neglect Screening for Domestic Relations Mediation [On-line]. Available: <http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf> It was adapted for the Family Mediation Pilot Program with the permission of the Michigan Supreme Court Office of Dispute Resolution.

