

**Mediation and In Person Screening**  
**June 8, 2011 Conference**

Screening can be useful in identifying those cases that may be inappropriate for joint sessions, including cases involving domestic violence, child abuse, substance abuse, or mental health issues.

1. In person screening should be done before joint sessions are held.
2. If screening is done by telephone, be aware that there may be others present who may intimidate or interfere with the person participating in the screening.
3. Screening of each party should be done separately.
4. In person screening should be done in a private a setting as possible.
5. It may be appropriate to include a person's support person or attorney if they choose.
6. Parties should receive information about confidentiality and the mediation process prior to the screening.
7. Avoid making judgments about allegations of abuse. Mediators are not investigators and there is no need to establish the truth of the allegations in a mediation process. The goal is to assess whether joint sessions are appropriate.

**Sample Questions for Mediator to Pose to Parties**  
**(Based on protocol from Michigan)**

**Section 1: General**

1. Preface the screening interview with assurances to reduce awkwardness. For example:

“The reason I meet with parties individually is to give you and the other party the opportunity to tell me about concerns you might have about your mediation and your situation. I will also be asking you specific questions about how you and the other party got along, so that I can assess whether joint sessions are appropriate for you and how I might help you and the other party develop an agreement. Further, this meeting is an opportunity for me to discuss the process of mediation so that you can decide whether joint sessions are appropriate for you.”

2. Inform the party about confidentiality.
3. Inform the party about what information will go to the court.
4. Inform the party of your role. For example:

“My role in the mediation process is to assist you and the other parent in reaching an agreement and to provide information to you – I do not make decisions for you or the other parent or your children.”

5. Is there anything you would like to ask me or tell me before we continue? Is there anything you need to have this discussion (language interpretation, special accommodations)?

6. Why don't you tell me about your situation?

7. Could you tell me about how the decision to divorce and/or separate or file was reached?

## **Section 2: Control, Coercion, Intimidation, Fear**

8. When you look back over time, how were decisions made in your relationship? What happens when you speak your mind and express your point of view to [insert name]?

9. When you and [insert name] fight and/or are angry with each other, what happens?

10. Do you have any concerns about how the two of you will make decisions in mediation?

11. During mediation sessions, you and [insert name] may meet in the same room to talk about all the issues and problems that need to be resolved. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]?

12. If yes, ask the following questions:

i. What are your concerns?

ii. If a support person was present with you during the mediation sessions, would you still have these concerns?

iii. If you and [insert name] were in separate rooms during the mediation sessions, would you still have these concerns? iv. If you and [insert name] came at separate times, would you still have these concerns?

13. Has [insert name] ever prevented you from having contact with family or friends, or with your children? If so, what happened?

14. Has [insert name] ever denied you access to money for food, shelter, medical needs, clothing, etc.? If so, what happened?

15. Has [insert name] ever threatened to hurt or kill him/herself? If so, what happened?

16. Has your partner ever forced you to do something that made you uncomfortable? If so, what happened?

## **Section 3: Violence/Fear of Violence [more detailed questions as needed]**

17. Has there ever been any physical confrontation between you and [insert name]? If so, what happened?

18. Do you ever feel afraid of [insert name]?

19. What are you afraid of?

20. Tell me about the time you felt most afraid.

21. Has [insert name] ever felt afraid of you?
22. What is he/she afraid of?
23. Do you ever become afraid for yourself or others based on the look from [insert name] or actions of [insert name]? If so, tell me about it.
24. Has [insert name] ever pushed, shoved, hit, kicked, choked you or restrained you, or pulled your hair? If so, what happened?
25. Has [insert name] ever used or threatened to use a weapon to harm you? If so, what happened?
26. Has [insert name] ever threatened to kill or injure you? Has [insert name] ever threatened to kill or injure a family member, friend or coworker? If so, what happened?
27. Has [insert name] ever damaged or destroyed your property or harmed or threatened to harm your pets?
28. Your children's property or pets? If so, what happened?
29. Have you or any family members ever sought medical treatment as a result of an injury caused by [insert name]? If so, what happened?
30. Has [insert name] ever caused you to feel threatened or harassed by following you, interfering with your work or education, making repeated phone calls to you, or sending you many unwanted letters, emails, faxes or gifts?
31. If so, what happened? Have any of these events involved the children? If so, what happened?
32. Has there ever been an order that was meant to limit contact between the two of you, for example, a restraining order or a no contact order? Please describe.
33. Have either of you ever had a restraining order issued against you by anyone? If so, what happened?
34. Have either of you ever been found in contempt of court for violating a restraining order? If so, what happened?
35. Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you say in mediation? Are you in immediate danger?

#### **Section 4: Violence/Dangerousness Assessment**

36. Have you or anyone else ever called the police because of problems in your home? If so, what happened?
37. Are there any guns or other weapons in the home? What kind? How many?

### **Section 5: Attorney Awareness of Violence**

39 (If lawyer is not present) Have you told your lawyer about these things (Sections 3 & 4)? It is important for your lawyer to know about these matters.

### **Section 6: Children (if appropriate)**

40. How are the children doing?

41. Do you have any concerns about the safety of the children? If so, please describe.

42. Has [insert name] ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them. Please describe.

43. Is there an open abuse or neglect case involving your children? Tell me about it.

44. Has anyone ever expressed concerns about your children to you?

### **Section 7: Other Considerations Regarding Ability to Negotiate**

45. Do either of you have a problem with alcohol or drugs? (If yes, how recent? What is the current status of treatment?)

46. Is there a problem with alcohol or drugs that may impact your ability to negotiate with each other? If so, please describe.

47. Do either of you have a history of mental illness or emotional problems? If yes, please describe current treatment for such.

48. Is there a history of mental illness that might impact your children or your ability to negotiate with each other? (If yes, how recently? What is the current status of treatment?) Tell me about it.

49. Have either of you ever attempted or considered hurting or killing yourself? (If yes, how recently? What is the current status of treatment?) Please describe.

### **Section 8: Catch-All**

50. Is there anything else you think I should know about you, [insert name] or your family?

### **Section 9: Preparation for Mediation**

51. What would you like to see as an outcome of mediation?

52. What are the issues you think will be the most difficult for you and [insert name] to resolve?

### **Next Steps**

**Party is in Immediate Danger** If a party is in immediate danger, review safety planning and safe termination information.

**To the Party Alleging Abuse:**

“Since you are in immediate danger, let’s see what we can do to help get you [and your children] to a safe place. Let’s get a Safety Plan in place.”

**To the Other Party:**

See Safe Termination of Mediation section.

**No Apparent Immediate Danger, but the Party Discloses Violence by or Fear of the Other Party**

Consider whether joint sessions are appropriate only if the person alleging violence wants to meet jointly. The mediator has the authority to conduct mediations separately based on the overall assessment.

For Dangerousness Assessment: The session must be conducted by a skilled mediator knowledgeable about domestic violence. The attorney for the party alleging violence or an advocate for the person making the allegation such as an advocate from the local domestic violence program or a friend or family member) should probably be present during the mediation.

**Determining Ability to Negotiate: Existence of Control, Coercion or Intimidation**

The mediator should consider whether joint sessions or conditional mediation will be effective when:

- Party indicates that most decisions were made by the other party, or that s/he has serious concerns about how decisions will be made during mediation.
- Party has not been able in the past to speak her/his mind or express her/his point of view.
- Party indicates that she/he backs down if there has been a disagreement.
- Party has concerns about sitting in the same room during mediation.
- Party has been denied access to food or money, or has been prevented from contacting friends, family, or children.
- Either party indicates that there is a history of non-compliance with court orders by either party.
- Party seems unable to articulate her/his point of view to mediator.
- There is a history of substance abuse or mental illness.

**Non-Violent, but Abusive/Controlling**

If in screening, abusive and controlling dynamics appear central to one party’s relationship with the other, the mediator must determine whether either party lacks the ability to negotiate under any circumstances, or whether mediation could go forward under specific conditions with a skilled mediator.

Joint sessions should proceed only if ALL of the following apply:

- The situation is not dangerous for the abused party or the mediator.
- The mediation is conducted by a skilled mediator knowledgeable about domestic violence.

- The mediator assesses that the parties have the ability to negotiate voluntarily, fairly, safely, and in good faith, 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 make decisions without coercion or fear.

Conditional mediation should proceed only if ALL of the following apply.

- The situation is not dangerous for the parties or the mediator.
- The mediation is conducted by a skilled mediator knowledgeable about the substance abuse, mental illness or other circumstances affecting a party's ability to negotiate.
- The mediator assesses that the parties have the ability to negotiate voluntarily, fairly, safely, and in good faith, with specific conditions to address concerns about safety and circumstances affecting the ability to negotiate.
- If, to ensure the ability to negotiate, a party requires the presence of an attorney or advocate during mediation, or a specialize process to which both parties agree, the mediation must be conducted with those accommodations.
- The parties want to mediate.

## Safe Termination of Mediation

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 or child abuse, the mediation should be terminated in the following manner.

1. If domestic violence or child abuse is revealed for the first time after mediation has commenced, 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 party's ability to participate in mediation fully and fairly. If the party subject to the abuse and the mediator agree that neither domestic violence nor child abuse is an inhibiting factor, the mediation can proceed. The mediator should discuss and plan safety precautions with the abused party. If either the party alleging abuse or the mediator determines that the mediation is inappropriate, mediation should be terminated.
2. Consult privately with the party alleging abuse to determine whether safety arrangements are necessary. If possible, make arrangements for the parties to leave separately, with the alleging party leaving first and allowing reasonable time for departure. Consider whether to alert law enforcement or other security of the potential for violence and arrange for escort of the party to transportation. Do not reveal the destination or means of transportation to the other party.
3. Without endangering the alleging party, provide the person with information and referrals for assistance, including safety planning. Elicit how the other party is likely to respond to mediation being terminated.
4. If you learn of a threat of imminent danger of physical harm to any person, take appropriate safety measures.

Some 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 or child abuse, regardless of whether the victim or the abuser discloses 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 negotiate, unwillingness to compromise, substance abuse or mental illness (if known to 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 and place responsibility on the abuser, 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.

## **Suggested Language: Termination of Mediation After Screening**

### **To the Abused and Abusive Party**

“I have decided not to move ahead with joint mediation sessions in this case. Many cases are not appropriate for joint mediation. It is my experience that with situations like yours, joint mediation does not work. This process fulfills the requirement for court ordered mediation. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so. [explain next steps for example: I would suggest that you review this case with your attorney or seek legal advice. Your options may include negotiation between your attorneys, referral for investigation and recommendation and/or motion to the court for a decision. If you are not represented by an attorney you may want to contact the self-help center and ask them to provide you with the forms and instructions necessary to proceed.”] OR discuss whether you are going to do separate sessions and explain how that will work.

## **Suggested Language: Termination after Mediation Has Commenced**

“After observing the issues between you and your interactions with each other, I know from my experience that it would be very difficult for you to reach agreements. So rather than taking up your time and resources, I am terminating this session. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so.” [explain next steps and options]

## **Specialized Process for Mediating When Domestic Violence/Control Exists**

The following are suggestions for specialized conditions that may accommodate safety concerns, and may provide a party with the ability to negotiate and make decisions without coercion or fear.

- Take all discussions of fear and safety seriously.
- Require the presence of an attorney or advocate for the abused or vulnerable party during mediation.
- Talk with the abused party about what safety precautions she/he would like to see in place.
- Mediate the case separately with each party. Do not schedule sessions with the parties back to back.

Allow an advocate, friend or family member of the party alleging abuse to accompany the abused party to the mediation sessions, orientation sessions, and wait in the waiting room.

**Ongoing screening** Continually reevaluate the safety of the situation for the abused party and the abused party's ability to negotiate. Terminate mediation if there are concerns for the abused party's safety or if the mediator believes that the abused party cannot negotiate fairly. Co-mediate in order to better oversee and direct the process in difficult mediations. Facilitate the crafting of specific and detailed agreements to reduce the opportunity for the abuser to take advantage of ambiguities.

**Safety Planning** A safety plan is a tool to help victims 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 the mediator has any questions at all during the course of the discussion with the party, call the National Domestic Violence Hotline for consultation at 1-800-799-SAFE(7233).

Following are several options to consider depending upon the situation:

Ensure that there is a safe and private area in the office where the mediator can speak to the abused party alone.

Offer the use of a phone so that the abused party can contact the local domestic violence program and/or the National Domestic Violence Hotline 1-800-799SAFE(7233). Both of these organizations have trained professionals who are able to offer confidential services and should be able to help the abused party create a safety plan.

**Suggested Language for Safety Planning Assistance** "I am concerned for your safety. None of this is your fault. 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 use my phone."

If the abused party does not want to contact the Hotline, the mediator may want to ask the party's permission to call the Hotline for consultation. The Hotline should be able to walk the mediator through some basic safety planning strategies. The mediator should assure the abused party that the Hotline is confidential and that the mediator will not disclose any personal information.

"I am concerned for your safety and want to make sure that I am giving you correct information. Would it be o.k. with you if I called the National Domestic Violence Hotline to help me give you referrals and assistance in coming up with a plan to stay safe? I will not give them any identifying information about you."

- 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 her/his phone so that the party can contact friends or family, if the party wishes to do so.
- Discuss with the party what she/he will do with any paperwork that she/he is taking home, especially if she/he still lives with the abusive party.
- 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?"

- Offer the use of a phone to contact the police to file a report or to request an escort, if the party wishes.

### **Referral and Assistance**

- If a screener for mediation or a mediator concludes that domestic violence or child abuse has occurred, the person alleging abuse should be provided with information about and referral to a domestic violence advocacy agency for safety planning and other services. The information should be provided only when the other party is not present. If the mediator does not know the local shelter number she or he can get the number from the National Domestic Violence Hotline at 1-800-799-SAFE (7233).
- The mediator should provide the party alleging abuse with information and brochures about domestic violence, child abuse, and referrals for assistance. Free general domestic violence brochures are available from the National Domestic Violence Hotline by calling 1-800-799-SAFE (7233). Local domestic violence programs also should have free brochures.
- The mediator should discuss with the party what she/he will do with any paperwork and brochures that she/he is taking home, especially if she/he still lives with the other party.

If a person is in imminent danger, the mediator should do safety planning with that person whenever possible.

Sample Intake Form Questions/Issues

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**What is this form for?** You the other party have been referred to mediation for help with developing an agreement. The information collected on this form will be used to help the mediator decide how to best help you with your particular case. Sometimes information on this form may be included in a report that goes to the court. The mediator will let you know when that may happen. You will receive a written copy of any report or recommendation the mediator provides to the court before the report goes to the court.

Today's date \_\_\_\_\_ Family Law Case Number \_\_\_\_\_  
Next hearing date \_\_\_\_\_

Your Full Name \_\_\_\_\_  
Other Party's Name \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work \_\_\_\_\_  
Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_ Email \_\_\_\_\_  
Address \_\_\_\_\_

Are you represented by an attorney in this case?  Yes  No If yes, please provide the attorney's name and contact information below:

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Name	Address	Telephone and Fax Number
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**Children involved in this case**

<u>First name</u>	<u>M.I.</u>	<u>Last Name</u>	<u>Age</u>	<u>Date of birth</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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Have you been to mediation with the other party before?  Yes  No  
Have you been to family court services mediation yet?  Yes  No

**Detailed questions:** Mediators need to know about your case so that your appointment is as helpful to you as possible. Please answer the following questions:

1. Have either you or the other party said that there are concerns about domestic violence?  
 Yes  No  Not Sure
2. Has a request for a restraining order been filed?  Yes  No
3. Is there a restraining order in place right now?  Yes  No

4. Do you have any concerns about **your safety** around the other party? \_\_\_Yes \_\_\_No If yes, the mediator will talk with you about your concerns, but if there anything you would like to briefly write to the mediator about this now?  
\_\_\_\_\_
5. Do you have any concerns about mediating (talking about your case) with the other party in the same room? \_\_\_Yes \_\_\_No

**Your case may be one where a “separate session” must be provided.** If there are allegations or a history of domestic violence, or if there is a restraining order in your case, it may make sense for you to meet separately with the mediator without the other party (“separate session”). In a case with allegations or a history of domestic violence, even if you do not ask for a separate session, the mediator will speak with each party separately before meeting with you together (or during or after if the domestic violence comes up during the session).

**Are you asking for a separate session at this time?** \_\_\_Yes \_\_\_No

**If you are unsure about whether you need to meet separately, would you like to speak with the mediator privately about the mediation process?** \_\_\_Yes \_\_\_No

**Support Person** If a restraining order has been issued to protect you, a support person may be allowed to go with you any mediation session, including separate sessions. However, the mediator may exclude a support person if the support person participates in the mediation, acts as an advocate, or if their being there interferes with mediation.

involved or is involved in other court cases. If there are other cases related to this one, please let us know:

Case Type	Current	Past	County	Which family member (you, other party)
Juvenile Dependency				
Juvenile Delinquency				
Probate Guardianship				
Domestic Violence Restraining Order				
Criminal Case				
Other				

**Substance abuse:** Do you have concerns about drug or alcohol use or abuse by the other party? Y  
N

**Mental health concerns:** If you have concerns about mental health issues in this case, please briefly describe:  
\_\_\_\_\_  
\_\_\_\_\_

**Information about mediation:** [insert information about process, limitations on confidentiality, etc.].

**What do you feel needs to be discussed in mediation?**

(Check as many as applicable)

- \_\_\_ Property division  
\_\_\_ Debt division  
\_\_\_ Bills that need to be paid

- Parent/Child relationship
- Following the court's order(s)

***Are there any other issues you would like to discuss with the mediator?***

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***Confidentiality***

Mediation sessions are private and the mediator may not share information from those sessions with just anybody.

***What information goes to the judge?***

***What information goes to people outside the court?***