

MICHIGAN SUPREME COURT
STATE COURT ADMINISTRATIVE OFFICE

OFFICE OF DISPUTE RESOLUTION

DOMESTIC VIOLENCE
SCREENING TRAINING
FOR MEDIATORS

Third Edition
2008

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PART I

Mediating Domestic Violence Cases

Domestic Violence Screening Protocol Training
Family Mediation
June 2005

- I. **Introductions/Background**

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- III. **Domestic Violence**
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- Break -

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Working to End Domestic and Sexual Violence

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APPROPRIATE FOR MEDIATION

1. Clients can speak (up) for themselves and negotiate for themselves.

If not:

- change the process
- bring advocates into mediation
- don't mediate

2. Clients are able to reach and carry out voluntary agreements.

If not:

- make more detailed agreements, with backups or penalty clauses
- don't mediate
- check if mediation is best alternative

3. Clients are safe and comfortable during and after mediation.

If not:

- change the process
- don't mediate

4. Mediator is appropriate for this case.

If not:

- Mediate with disclosure and agreement by parties if appropriate
- Refer to another mediator
- Co-mediate with more experienced / knowledgeable mediator
- Don't mediate

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12 QUESTIONS ABOUT MEDIATION AND DOMESTIC VIOLENCE

Zena D. Zumeta

1. Is Domestic Violence an issue for Mediation?

There are a number of victims who would not be able to mediate because they are intimidated by their spouses. Any agreements reached under these circumstances are likely to be coerced, not voluntary agreements. In addition, there are a number of victims who would be endangered by the process, of mediation: discussing issues of divorce could give rise to an incident of violence, or their becoming empowered could give rise to an incident of violence.

2. Are we only worrying about physical violence?

No. Emotional, psychological, financial and other forms of violence can be as incapacitating as physical violence. They may render a victim unable to speak for her/himself, negotiate on her/his own behalf, and unwilling to protect her/his interests. (See Power and Control Wheel)

3. Does the fact that a victim is leaving a marriage make her/him safe(r)?

The fact that a victim has decided to end the marriage and get out may be evidence s/he is ready to escape a cycle of violence. Yet s/he may be particularly vulnerable at this time, precisely because s/he is leaving. One report indicated that 3/4 of reported arrests for domestic violence occurred with people already separated. A battered spouse may face the most physical danger when s/he attempts to leave the relationship.

4. How can I find out if domestic violence is an issue in any particular case?

Because most victims of domestic violence do not let mediators know, the mediator or intake person must do active screening to find out if there is a history of domestic violence. Even with careful screening, the mediator may not find out about the violence; however, if screening is not attempted, many cases may be mediated where the violence could have been ascertained.

5. How should screening be done?

Screening must be done separately with each client, so that a batterer does not directly influence the answers given by the victim. If screening is done in person, appointments should be on different days so that a batterer is not watching as the victim goes in or out of the office. If the screening is done over the telephone, the clients should be asked if they are alone before the questioning is begun. If the screening is done in writing, the clients should not fill out a form while they are sitting in the same waiting room and can watch each other. There should also be a verbal follow-up. All screening instruments should avoid faultfinding and interrogation.

6. What are we trying to find out by screening?

We are not investigating truth or determining fault or guilt by screening. We are trying to determine a) whether a victim safe, and b) whether this case should be mediated. Therefore, questions aimed at finding out if there is a perceived history of violence, coercion or intimidation, and if there is continuing fear are the appropriate questions. It has been determined that questions about "violence" often do not elicit positive answers. Questions about "concerns" or very detailed questions about actions and attitudes have been found to be more effective. (See screening instruments.)

7. What if I don't find out about the violence or intimidation until mediation has commenced?

Screening should continue throughout the mediation, in the sense that mediators should always be looking for signs of intimidation and fear. If the mediator believes that is occurring, it is appropriate to separate the parties and find out whether there is fear and/or intimidation.

8. If there is domestic violence or intimidation, should the case be mediated?

Most of the time, where there is a perceived history of domestic violence, mediation should not take place. A victim may not speak up out of fear or intimidation; a victim may fear or experience retaliation if s/he does speak up; or s/he may not feel safe negotiating with the batterer.

There are some cases where mediation may be appropriate. These are cases where the victim is not afraid, where there has not been recent violence, and where there are resources available to support the victim, such as domestic violence advocates or lawyers who understand domestic violence. In addition, some mediators are better equipped to handle cases where there is domestic violence. Those mediators who have worked in this area may have enough understanding and experience to be able to judge when mediation is dangerous, or when a client is being intimidated.

9. If mediation is determined to be inappropriate, how should the mediation be terminated or denied?

Mediation should be terminated or denied in a way that does not increase the risk for the victim. Thus, a batterer should not be told that his spouse "ratted" about the violence, since that may enrage a batterer and lead to retaliation.

10. What if screening reveals that a victim is in immediate or present danger?

A person in danger of battering should be put in touch with the police or a domestic violence shelter. It is helpful to follow up and see if they are safe. A mediator should not be "neutral" about safety.

11. If mediation is appropriate, should the process be changed where there is a history of domestic violence?

There are changes in the process that should be made where there is a history of or even an allegation of domestic violence. The mediation environment needs to be safe for the victim, including such strategies as:

- Suggesting the victim come 10 minutes after the abuser and leave 10 minutes earlier than the abuser to avoid stalking, and assisting her/him to do so.
- Asking the victim if s/he would like to be seated closer to the door or further from the door, depending on her/his wishes.
- Taking all discussions of fear and safety seriously.
- Setting ground rules for the mediation and conversation between the couple to reduce fear and intimidation, starting with the ground rule of no violence.
- Allowing for an advocate to come to the mediation with the victim, or perhaps waiting for her/him in the waiting room.
- Not allowing the couple to sit in the waiting room or mediation room alone together.
- Requiring that the violence be talked about in the mediation, or not mediating.
- Stating unequivocally that violence and intimidation are unacceptable behavior, no matter what the "reason" for it.
- Co-mediating with a male-female team (if the couple is male and female)
- Using caucus as a safety valve and a check on the process.
- Talking to (at least) the victim between sessions to assess the level of fear and to check on retaliation.
- Insisting that parties be represented by attorneys.

12. Even if mediation is appropriate at times when there is a history of domestic violence, what about mandatory mediation? How can battered women be protected in jurisdictions with mandatory mediation (or mandatory conciliation)?

Many jurisdictions with mandatory mediation laws specifically exempt cases of domestic violence, and mandate screening of cases and training of mediators in this area.

Observing Dynamics of Power in Mediation

The following are things a mediator can look for in ongoing screening to detect domestic violence and power imbalance. It is important to understand that both these and the opposite dynamics are possible as indicators of power imbalance.

- Threatening looks or actions
- One party speaking for the other, or attempting to
- One party dominating the session
- One party giving in excessively
- One person objects to separate screening interviews
- One person appears in control: confident, competent, smiling
charming; but the other appears not in control: incompetent, unsure, anxious,
nervous, indirect, inappropriate affect
- Permission words or gestures by victim
- Secret signals or code words or phrases on part of perpetrator
- Threat by innuendo
- Referring to a past incident of power and control
- Stating what is the “expected” outcome
- Distortion of the other person’s reactions in mediation
- Intimidation
- Invoking domination, power or control sanctioned by tradition,
culture or religions
- One person suddenly gets quiet
- Retaliation for stating own point of view, such as:
 - Violence
 - Stalking
 - Intimidation
 - Threats
- Negotiations and agreements outside mediation that seem one-sided
- A person changes their demeanor from the first to the second session.

**DV Screening
Protocols**

PART II

Domestic Violence Screening Protocols

Role Plays

**DOMESTIC VIOLENCE
AND CHILD ABUSE/NEGLECT
SCREENING FOR DOMESTIC
RELATIONS MEDIATION**

MODEL SCREENING PROTOCOL

*Provided by:
Office of Dispute Resolution
State Court Administrative Office
Michigan Supreme Court*

January, 2006

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Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation

I. Purpose & Presumption Against Mediation

This screening protocol is designed to identify parties involved in divorce or child custody actions for which mediation may be inappropriate because of domestic violence or child abuse, and to maximize safety and fairness in the mediation process. Mediation presumes that participants can maintain a balance of power with the help of a mediator in order to reach a mutually satisfactory resolution of a dispute. The mediation process and resulting agreement can be dangerous and unfair if the imbalance of power is great or if the imbalance is unrecognized.

When domestic violence is present among parties in a dispute, the abuser's desire to maintain power and control over the victim is inconsistent with the method and objective of mediation. Fear of the abuser may prevent the victim from asserting needs, and the occasion of mediation may give abusers access to victims, which exposes the victim, the children, and the mediator to a risk of violence.

Mediator neutrality may support the abuser's belief that the abuse is acceptable. The future-orientation of mediation may discourage discussion of past abuse, which in turn invalidates the victim's concerns and excuses the abuser. This may result in agreements that are inherently unsafe.

Mandatory referral to mediation by the court may communicate to the abuser and the abused that the violence is not serious enough to compromise the parties' ability to negotiate as relative equals. This message also may invalidate the seriousness of the abuse, dilute abuser accountability, and result in unsafe agreements.

When domestic violence is present, the case should be presumed inappropriate for mediation.

The decision whether to order, initiate or continue mediation should be made on a case-by-case basis.

Parties should be fully and regularly informed that continuation of mediation is a voluntary process and that they may withdraw for any reason.

II. Referral to Mediation Under MCR 3.216

Under MCR 3.216 cases may be referred to mediation on written stipulation of the parties, on written motion of a party, or on the court's initiative. The court may not submit contested cases to evaluative mediation unless all parties so request.

Parties who are subject to a personal protection order or who are involved in a child neglect or abuse proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

A party may object to mediation by filing a written motion to remove the case from mediation. A timely motion must be heard before the case is mediated. Cases may be exempt from mediation on the basis of the following:

- a) child abuse or neglect;
- b) domestic abuse, unless attorneys for both parties will be present at the mediation session;
- c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
- d) reason to believe that one or both parties' health or safety would be endangered by mediation; or
- e) for other good cause shown.

III. Court, Party, and Mediator Screening

Three tiers of screening for domestic violence and child abuse are implemented: by the court, by the parties, and by the mediators.

A. Court Screening

The court recognizes that mediation is not an appropriate process for all cases and that an agreement is not necessarily the appropriate outcome of all cases referred to mediation.

Screening by the court for domestic violence and child abuse/neglect will help the court identify cases that are inappropriate for mediation. Screening will also help the court identify cases that, under MCR 3.216, *require a hearing* before they may be referred to mediation (i.e. current personal protection order or pending child abuse/neglect case).

Prior to referral to mediation, the court shall conduct screening for domestic violence and child abuse¹. The court will require parties to complete and file with the court a simple domestic violence screening form that addresses matters of public record, such as the existence of current or expired personal protection orders, pending or resolved domestic violence criminal cases, pending child abuse/neglect proceedings. Because the

¹ Ideally, specially trained court personnel would conduct separate and private individual conferences with each party to explore concerns about domestic violence, safety of parties and children, and issues concerning ability to negotiate. Court personnel would also provide referrals to appropriate services, including local domestic violence service providers. Due to safety concerns, information revealed by the parties during these conferences should be confidential and should not be disclosed, except where there is a duty to warn, allegations of child abuse / neglect, or if other statutes / rules require disclosure. Ensuring confidentiality of information revealed during the conferences, and establishing protocols regarding location or storage of this information is a prerequisite to instituting extensive screening by the court.

screening form is discoverable, it shall be limited to matters of public record to avoid placing victims of domestic violence at risk of further abuse. *See SCAO form MC 282, "Domestic Violence Screening for Referral to Mediation."*

If a party has revealed domestic violence in the form, the court will refer the abused party to a domestic violence service provider organization to discuss options, conduct safety planning, consider services, and consider whether mediation is a safe option. The public education notice "*Is Mediation Right For You?*" can be used to provide referral information if local domestic violence service provider information is included in the notice.

If the court determines that the case is not appropriate for mediation, the court will not order mediation.

B. Parties' Education and Self-screening

Prior to referral to mediation, parties will be provided by the court with clear, understandable educational materials about mediation, including:

- the advantages and disadvantages of mediation
- the circumstances under which mediation may be ordered with or without a hearing
- considerations for determining whether mediation is appropriate for their case
- information about domestic violence
- self-screening for domestic violence and child abuse
- procedures for objecting to mediation
- rights regarding confidentiality and termination of mediation
- referral to local domestic violence service providers.

See the model public education notice "Is Mediation Right For You?"

C. Mediator Screening

Mediators have the opportunity to conduct the most extensive screening for domestic violence and child abuse/neglect without providing the abuser with access to the information disclosed by the victim. Mediators must recognize that mediation is not an appropriate process for all cases and that an agreement is not necessarily the appropriate outcome in all mediated matters. The mediator's job includes continually assessing whether a case is better resolved in mediation, or by other means. A key factor in this assessment is whether the participants can safely stand up for what they believe is good for themselves and their children.

Mediation should not be initiated, and if initiated should not continue, unless all parties and the mediator believe that a safe, fair, non-coercive process will occur.

Once domestic violence among the parties has been determined, mediation should only be conducted when:

- the victim provides informed consent to mediation
- the victim has reviewed and demonstrated an understanding of the materials provided concerning mediation
- the victim has been advised to consult with an attorney and a domestic violence service provider
- the victim provides compelling reasons to mediate
- safety measures for mediation are taken

Mediators should not be evaluated on the basis of the number of agreements reached in mediated cases. To avoid a conflict of interest when mediators are paid per session, or to avoid other dis-incentives for screening out inappropriate cases for mediation, a mediator who determines that a matter is inappropriate for mediation should be positioned on the roster as if the matter had not been assigned.

It is possible that parties' self-screening and court screening will not reveal domestic violence and child abuse/neglect. This requires that mediators continually screen for domestic violence and child abuse/neglect. To achieve a fair and safe process, it is essential that both parties possess the requisite skills and capacity to mediate, and that any mediation is conducted with established safety precautions.

In-person screening by mediators should be conducted in each case, following the procedures outlined in the "Mediator In-Person Screening Protocol."

April, 2005

Mediator In-Person Screening Protocol

*Structure, Guidelines, Considerations in Decision Not to Mediate,
Safe Termination, Referral and Assistance*

In-Person Screening by Mediators

This screening tool is designed to screen out cases that are inappropriate for mediation, including cases that involve domestic violence, child abuse, substance abuse or mental health issues. Some victims of domestic violence and/or child abuse will readily talk about the violence that they are experiencing or have experienced if they feel safe and supported. However, many others may not identify themselves as victims of abuse the first time an inquiry is made about violence or abuse in their lives.

Victims may be willing to self identify in circumstances where they think that the inquiring professional will believe their allegations, where it is safe to share, where the victim trusts the information will be handled responsibly by the system, and where the victim has identified the violence as abuse. If they do identify the abuse, it is common for many victims and perpetrators to minimize the abuse.

Structure for Screening Interview

1. The person conducting the screening must be trained in domestic violence pursuant to SCAO Training Standards and Procedures.
2. In-person screening must be undertaken before joint sessions are held.
3. Telephone screening should not be conducted as the screener cannot be certain that the abuser is not present/listening during the screening, compromising victim safety, confidentiality, or ability to speak freely. Also, comfortable rapport with the parties resulting in disclosure of abuse is less likely to be established via telephone screening.
4. Screening of each party must be conducted separately, preferably scheduled at different times or locations. Interviewing one party directly after the other is to be avoided. In no event should parties be asked to wait in a room together before or after a screening.
5. When scheduling a screening, inquire whether a party has any safety concerns about coming to the screening location. Arrangements should be made to respond to the safety concerns of the parties. If there are safety concerns about coming to the screening location, the mediator should consider declaring the case inappropriate for mediation.
6. Conduct screenings in an environment that allows the greatest degree of privacy possible. Once a screening session begins, the session should not be interrupted.
7. At the election of a party, screening may be conducted with an attorney or advocate present. The other party's attorney or advocate must not be present during the screening.

Guidelines for the Screening Interview

1. Observe behavior during the scheduling phone call, in the waiting room, and during screening to pick up cues that could indicate an abusive relationship.
2. Preface screening with reassurances to reduce awkwardness. *See Mediator Introduction to Screening Interview.*
3. A policy of confidentiality consistent with applicable statutes and court rules must be maintained during the screening process. Each party must be informed of the policy. *See Mediator Introduction to Screening Interview.*
4. Explain the goals and process of mediation. Inquiries should be made about the advocacy and negotiation skills of each party, the capacity of each to acknowledge the independent interests of the other party, the decision-making practices of the relationship, and the distribution of the personal and economic resources of the parties.

The mediator should complete the following *Screening Questionnaire* to identify ability to negotiate, practices of abuse, coercion, and threats by a party, and any impact of the practices on the other. Give each party the opportunity to express concerns about the mediation process and to assess whether mediation is an appropriate way to reach an agreement about the issues in their case.

5. During the screening interview, ask questions slowly and wait for answers. Each item in the Screening Questionnaire should be asked and fully explored. Ask follow-up questions, if necessary, and note answers in the comment section. If counsel is present, explain that the process will move faster if the screener proceeds without interruption.
6. The words “the other party” are used throughout the screening questionnaire as a generic term. However, the mediator may want to adopt language that more closely reflects the actual relationship between the parties e.g. spouse, partner, etc.
7. It is important that participants clearly understand that it is appropriate to decide that mediation may not be the best process for them. Participants should be assured that participation in the screening process fulfills the requirement for court ordered mediation. Participants should understand that it is not a “failure” to terminate mediation and that there are no legal repercussions for doing so.

It is the mediator’s responsibility to terminate mediation if she or he believes either of the participants is unable to mediate safely, competently, and without fear of coercion. Monitoring by the mediator is a continuous responsibility throughout the mediation process.

8. Do not make judgments about allegations of abuse. Mediators are not investigators. There is no need to establish the truth of the allegations. The mediator’s role is to determine whether the case is appropriate for mediation. The focus should be on the existence of fear/intimidation. Mediation is not advisable when fear is present and almost never advisable when there has been domestic violence.
9. Do not mediate divorce or custody issues during the screening.

10. Parties whose cases are deemed inappropriate for mediation will be considered to have fully complied with a courts order for mediation by participating in the screening process.

Mediator In-Person Screening Protocol
Structure, Guidelines, Considerations in Decision Not to Mediate,
Safe Termination, Referral and Assistance

Party: _____ Date: _____

Case No.: _____ Counsel for Party: _____

Mediator Introduction to Screening Interview

Preface to Screening Interview with Assurances to Reduce Awkwardness

“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 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 mediation is appropriate for you and how I might help you. Further, this meeting is an opportunity for me to discuss the process of mediation, so that you can decide whether mediation is appropriate for you.”

Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy.

Mediation is confidential. Confidentiality means that the mediator cannot disclose any information that you provide unless:

- You and the other party agree that the information can be disclosed.
- The mediator informs you and you agree in writing before mediation starts that the mediator may disclose other information such as child abuse or threats of harm.
- You or the other party disclose child abuse or neglect, or threat of harm to another person, and the mediator has a statutory responsibility to report child abuse or neglect, or threat of harm.
- Information is necessary to resolve a dispute regarding the mediator's fee.

The Mediator also is required to report to the court certain basic facts about mediation, i.e. the number of sessions, who attended, whether or not an agreement was reached, whether or not the fee was paid, whether the parties provided information requested by the mediator, and general information necessary for program evaluation.

Explain the Goals and Process of Mediation.

“The goal of mediation is for the two of you to reach an agreement on some or all of the issues in your case. All agreements are voluntary. My role during mediation would be to help you reach agreement, not to make a decision or recommendation on the issues. I am neutral in the sense that I am not advocating for either one of you, or for a particular outcome. I would not give an opinion as to who is right or wrong, or as to what the agreements ought to look like. If we decide to mediate and use the usual process, I will meet with you and the other party together. Another option would be to meet separately. I don’t give legal advice. If you have counsel, I recommend that you keep your attorney informed about the mediation process, seek legal advice from your attorney and have any of our materials reviewed by your attorney.”

[If the parties have requested evaluative mediation explain that process. If a settlement is not reached during evaluative mediation, the mediator, within a reasonable period after the conclusion of mediation shall prepare a written report to the parties setting forth the mediators’ proposed recommendation for settlement purpose only. The mediator’s recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court. MCR 3.216 (I)(2)]

Questionnaire

(Ask all of the following. Feel free to take notes.)

Section 1: General

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require to have this discussion (language interpretation or other special accommodations)?

- b) Do you want to mediate? If so, why? If not, why not?

- c) Why don't you tell me about your situation?

- d) Could you tell me about how the decision to divorce and/or separate was reached?

Section 2: Control, Coercion, Intimidation, Fear

- a) When you look back over time, how were decisions made in your marriage?

- b) What happens when you speak your mind and express your point of view to [insert name]?

- c) When you and [insert name] fight and/or are angry with each other, what happens?

- d) Do you have any concerns about how the two of you will make decisions in mediation?

- e) 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]?

If yes, ask the following questions:

- i. What are your concerns?

- ii. If your attorney 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?

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

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

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

- i) Has your partner ever forced you to do something that made you uncomfortable? If so, what happened?

Section 3: Violence/Fear of Violence

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

- b) Do you ever feel afraid of [insert name]? What are you afraid of? Tell me about the time you felt most afraid. Has [insert name] ever felt afraid of you? What is he/she afraid of?

- c) Do you ever become afraid of yourself or others based on the look from [insert name] or actions of [insert name]? If so, tell me about it.

- d) Has [insert name] ever pushed, shoved, hit, kicked, choked you or restrained you, or pulled your hair? If so, what happened?

- e) Has [insert name] ever used or threatened to use a weapon to harm you? If so, what happened?

- f) 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?

- g) Has [insert name] ever damaged or destroyed your property or harmed or threatened to harm your pets? Your children's property or pets? If so, what happened?

- h) Have you or any family members ever sought medical treatment as a result of an injury caused by [insert name]? If so, what happened?

- i) 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? If so, what happened?

- j) Have any of these events involved the children? If so, what happened?

- k) Has there ever been an order that was meant to limit contact between the two of you, for example, a Personal Protection Order or a no contact order that was a condition of bail? Please describe.

- l) Have either of you ever had a PPO issued against you by anyone? If so, what happened?

- m) Have either of you ever been found in contempt of court for violating a PPO? If so, what happened?

- n) Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you say in mediation?

- o) Are you in immediate danger?

If yes to 3o:

1. **Discontinue use of screening questionnaire and proceed to *SAFETY PLANNING* (page 28); and**
2. **Terminate mediation. See *SAFE TERMINATION* (page 24).**

“Since you are in immediate danger, let’s arrange for you [and your children] to get to a safe place. I will not be mediating your case.”

If yes to any one of 3a-3n:

If there is a yes answer to any one of questions 3a-3n, this is an indication that you should advise the party that mediation is NOT appropriate. However, do not terminate 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 the decision whether or not to mediate.

Section 4: Violence/Dangerousness Assessment

- a) Have you or any one else ever called the police because of problems in your home? If so, what happened?

- b) Have you or [insert name] ever been arrested for, or convicted of, any crime? If so, what happened?

- c) Are there any guns or other weapons in the home? What kind? How many?

Section 5: Attorney Awareness of Violence

- (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

- a) How are the children doing?

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

- c) 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.

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

Section 7: Other Considerations Regarding Ability to Negotiate

- a) Do either of you have a problem with alcohol or drugs? (If yes, how recent? What is the current status of treatment?) Is there a problem with alcohol or drugs in either of your families? If so, please describe.

- b) Do either of you have a history of mental illness or emotional problems? Is there a history of mental illness or emotional problems in either of your families? (If yes, how recently? What is the current status of treatment?) Tell me about it.

- c) 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

- a) Is there anything else you think I should know about you, [insert name] or your family?

Section 9: Mediation Process Discussion

If the mediator believes that mediation will not go forward, skip this section and go to the “Decision to Not to Mediate” section. Return to this section if mediation ultimately will go forward.

“Now let’s talk more about the process of mediation.”

- a) **Discuss process of mediation.**

“In mediation, we will start by gathering information, then will look at what the issues are, options for resolving them, and how to resolve them in a way that is agreeable to both of you [and in the best interests of your children]. When you have agreements, I will send them to you and your attorneys to look over and make changes. The final draft will be given to the attorneys to file with the court documents. In light of the confidentiality of mediation as discussed earlier, I will report to the judge only that you attended mediation, and whether or not you reached an agreement.”

- b) **Discuss differences between mediation and the traditional legal process.**

“In mediation, the two of you will discuss the issues and reach your own resolutions that are agreeable to both of you. In the traditional legal process, your lawyers might do the negotiation for you, or you could take the issues to the Friend of the Court or a judge.”

- c) **Discuss need for lawyer, if party does not have a lawyer.**

“Mediation is a cooperative process, where the two of you are working together to reach a resolution. However, you will each need legal advice and knowledge of what the court would decide in your situation. I must remain neutral and cannot give you that advice. So I advise you to get a lawyer to give you legal advice, and advice about what might happen in court. You could either retain a lawyer or consult a lawyer. I would suggest that you get advice (1) prior to negotiating, and (2) after the agreement has been reached but before you sign your agreement, to see if there might be problems with it.”

- Has the divorce been filed? _____

- What is the current status of legal process? _____
- What are the upcoming court dates? _____
- Discuss fees. _____

Section 10: Preparation for Mediation

- a) What would you like to see as an outcome of mediation?

- b) What are the issues you think will be the most difficult for you and [insert name] to resolve?

Revised April, 2005

Decision Not to Mediate

1. A Party is in Immediate Danger

(Individual answered “Yes” to Question 30 in the Questionnaire)

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. *Go to Safety Planning (page 28) and then to Safe Termination of Mediation (page 24).*

To the Abused Party:

“Since you are in immediate danger, let’s get you [and your children] to a safe place. I will not be mediating your case. Let’s get a Safety Plan in place.” *See Safety Planning (page 28). See Safe Termination of Mediation (page 24).*

To the Abusive Party:

See Safe Termination of Mediation (page 24).

2. No Apparent Immediate Danger, but the Abused Party Discloses Violence by or Fear of the Other Party

(Individual answered “No” to Question 30 but a “Yes” to any other question in Section 3 in the Questionnaire.)

If a party answers yes to any question in Section 3, (other than question 30) or if violence or fear of the other party is otherwise identified, 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.” *See Safe Termination of Mediation (page 24).*

- 1. If the abused party concurs with the advice not to mediate, there are no circumstances under which mediation should proceed.
- 2. 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:
 - a) The situation is not dangerous for the abused party or the mediator. For *Dangerous Assessment* consider answers to Questionnaire Sections 2, 3, 4, 6 and 7.
 - b) The mediation is conducted by a skilled mediator knowledgeable about domestic violence.
 - c) The attorney for the abused party or an advocate for the abused party (such as an advocate from the local domestic violence program or a friend or family member of the abused party) will be present during the mediation.
 - d) The mediation is conducted within a specialized process under specific conditions to address concerns for safety and ability to make decisions without coercion or fear. *See Specialized Process for Mediating When Domestic Violence/Control Exists (page 25).*

- e) Both parties agree to this process and these specific conditions.
- f) The mediator assesses that the parties have the ability to negotiate voluntarily, fairly, safely and in good faith. Consider answers to Questionnaire Section 2. *See Determining Ability to Negotiate: Existence of Control, Coercion or Intimidation (page 22)*

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

The following indicate that a party may not have the ability to negotiate. The mediator must determine whether the presence of an attorney or advocate, and/or the adherence to specialized mediation conditions will provide the party with the ability to negotiate. If the mediator assesses that one or both parties do not have the ability to negotiate (even with an attorney or advocate present or under other specialized conditions) the mediation should not go forward despite the abused party's wishes. *See Mediator Standards of Conduct, Standard 2.*

- 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.

1. Non-Violent, but Abusive/Controlling

(Individual answered “No” to all questions in Section 3 but a “Yes” to any question in Section 2d-2i, or answers to Section 2a-c indicated the existence of *Control, Coercion or Intimidation*.)

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

- 1. The situation is not dangerous for the abused party or the mediator. For *Dangerous Assessment* consider answers to Questionnaire Sections 2, 3, 4, 6 and 7.
- 2. The mediation is conducted by a skilled mediator knowledgeable about domestic violence.
- 3. 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. Consider answers to Questionnaire Section 2. *See Determining Ability to Negotiate: Existence of Control, Coercion or Intimidation (page 22).*

- 4. If, to ensure the ability to negotiate, 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. *See Specialized Process for Mediating When Domestic Violence/Control Exist (page 25).*
- 5. The abused party wants to mediate.

If the mediator determines that mediation should not proceed, see *Safe Termination of Mediation*.

2. Non-Violent an Non-Abusive and Controlling, but Either Party Otherwise Lacks Capacity to Mediate

(Individual answered “No” to all questions in Sections 2 and 3 but a “Yes” to any question in Sections 7.)

Regardless of the existence of domestic violence or child abuse, if screening reveals any of the following 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.

- There is a history of substance abuse or mental illness that is not presently controlled.
- A party is not able to negotiate for her/himself or articulate her/his needs.
- A party is unable to reach an agreement voluntarily.

Mediation should proceed only if ALL of the following apply.

- 1. The situation is not dangerous for the parties or the mediator. For *Dangerous Assessment* consider answers to Questionnaire Sections 2, 3, 4, 6 and 7.
- 2. 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.
- 3. 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, or with or without specific conditions to address concerns about safety and circumstances affecting the ability to negotiate. *See Determining Ability to Negotiate Existence of Control, Coercion, or Intimidation (page 22).*
- 4. 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. *See Specialized Process for Mediating When Domestic Violence/Control Exist (page 25).*
- 5. The parties want to mediate.

If the mediator determines that mediation should not proceed, see *Safe Termination of Mediation (page 24)*.

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 shall 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 shall proceed. The mediator shall discuss and plan safety precautions with the abused party. If either the abused party or the mediator determines that the mediation is inappropriate, mediation should be terminated.
2. Consult privately with the abused party to determine whether safety arrangements are necessary. If possible, make arrangements for the parties to leave separately, with the abused 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 abused party to transportation. Do not reveal the destination or means of transportation of the abused party to the other party.
3. Without endangering the abused party, provide the abused party with information and referrals for assistance, including safety planning. Elicit how the abuser 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.
5. On the form that goes to the court check the box that says not appropriate for mediation. Do not provide any explanation.
6. 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 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 mediate this case. Many cases are not appropriate for mediation. It is my experience that with situations like yours, mediation does not work. This screening 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. I would suggest that you review this case with your attorney or seek legal advice. Your options may include negotiation between your attorneys, referral to Friend of the Court for investigation and recommendation and/or motion to the court for a decision. If your dispute involves custody, parenting time, or support and you are not represented by an attorney you may contact the Friend of the Court and ask them to provide you with the forms and instructions necessary to proceed.”

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 mediation. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so. I would suggest that you review this case with your attorney or seek legal advice. Your options may include negotiation between your attorneys, referral to Friend of the Court for investigation and recommendation and/or motion to the court for a decision. If your dispute involves custody, parenting time, or support and you are not represented by an attorney you may contact the Friend of the Court and ask them to provide you with the forms and instructions necessary to proceed.”

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.

- If not mediating separately, suggest that the abused party arrive 10 minutes after the abuser and leave 10 minutes before the abuser. Have separate waiting areas for the parties and do not leave the parties alone together.
- Allow an advocate, friend or family member of the abused party to accompany the abused party to the mediation sessions and wait in the waiting room.
- Check with the abused party between sessions to assess safety and ability to negotiate.
- 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. **Mediated agreements can:**
 - Avoid non-specific provisions such as "reasonable parenting time," "parenting time as agreed by the parties," or "parenting time to be arranged later." The terms of a parenting time agreement should be stated unambiguously, with pick up and drop-off locations, times, and days of the week clearly specified.
 - Provide for supervised parenting time, with supervising third parties clearly identified.
 - Provide safe, neutral locations for parenting time, whether supervised or unsupervised.
 - Specify how the parties may communicate with each other to make arrangements for parenting time (e.g., whether the abusive party or the abusive party's attorney may telephone the abused party, whether written or electronic communications is permitted).
 - Arrange parenting time so that the parties will not meet. Drop-off and pick-up times could be different for the abused party and the abuser, so that each party will have left the drop-off site before the other arrives.
 - If the parties must meet to transfer children, require that the transfer take place in the presence of a third party and in a protected setting. Use available resources for supervised visitation and exchange of children such as programs provided by local domestic violence service providers or other local agencies.
 - Provide for short, daytime visits in a public place, and increase length only if things are going well. Place limits on overnight visits.
 - Prohibit the noncustodial party from drinking or using drugs before or during parenting time.
 - Require a bond to assure compliance with the agreement.
 - Limit the abusive party's access to firearms.
 - Permit refusal of parenting time upon violation of any condition of the agreement.
 - Permit cancellation of parenting time if the noncustodial party is more than 20 or 30 minutes late.
 - Specify how disputes between the parties will be resolved.

- Build in automatic return dates for the court, or the parties with a mediator, to review how the agreement is working.
- Require surrender of passport prior to exercising parenting time, or take other steps to deter abduction, if there is a risk of a party abducting or fleeing with the children

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:

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 phone so that the abused party can contact the local domestic violence program and/or the National Domestic Violence Hotline 1-800-799-SAFE(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."

1. 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."

2. 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/her phone so that the party can contact friends or family, if the party wishes to do so.
3. 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.
4. 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?"
5. 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

1. If a screener for mediation or a mediator concludes that domestic violence or child abuse has occurred, the abused party shall be provided with information about and referral to a domestic violence advocacy agency for safety planning and other services. The information shall 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).
2. The mediator should provide the abused party 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.
3. 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 abusive party.
4. If a person is in imminent danger, the mediator should do safety planning with that person whenever possible.

Suggested Language for Referral and Assistance

"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 for 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. Here are brochures and information for you to read over. Will taking this information home with you be dangerous?"

On-Going Screening for All Cases

On-going screening for domestic violence should take place in all cases. It is the mediator's responsibility to terminate mediation if she or he believes either of the participants is unable to mediate safely, competently, and without fear of coercion. Monitoring by the mediator is a continuous responsibility throughout the mediation process. During the course of mediation the mediator may notice abusive or controlling behaviors that were not revealed during the screening process. Behaviors that may be of concern include threatening looks or actions, one party attempting to speak for or control the other party, one party unwilling to comply with the ground rules or specialized process for mediation, or one party dominating the sessions.

If any behaviors lead you to conclude that a party may not be able to mediate safely and fairly, reconsider the *Decision Not to Mediate* (page 20). If you determine that mediation should not proceed, see *Safe Termination of Mediation* (page 24).

DOMESTIC VIOLENCE AND CHILD ABUSE/NEGLECT SCREENING FOR DOMESTIC RELATIONS MEDIATION

Acknowledgments

Development of the April 2005 Model Protocol was a project of the

Michigan Domestic Violence Prevention and Treatment Board

in collaboration with

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The Office of Dispute Resolution gratefully acknowledges the time, helpful advice, and expertise contributed by the foregoing individuals.

RESOURCES

Fuller, J. and Lyons, R., "Mediation Guidelines," 33 *Williamette L. Rev.* 922 (1997)

Girdner, L., *Domestic Abuse and Custody Mediation Training for Mediators*
(American Bar Association, State Justice Institute, Academy of Family Mediators, 1999)

Joyce, H., "Mediation and Domestic Violence: Legislative Responses,"
14 *J. Am. Acad. Matrim. Law* 447 (1997)

Lovik, M., *Domestic Violence Benchbook* (Michigan Judicial Institute, 1998)

Pennsylvania Coalition Against Domestic Violence, *Proposed Tool for Screening for Domestic Violence and Child Abuse* (1998)

Zumeta, Z., *Initial Questionnaire: Individual Meetings with Mediation Clients*
(Ann Arbor Mediation Center, 1995)

Is Mediation Right for You?

What is Domestic Relations Mediation?

Mediation is a process which allows you and another party to resolve your dispute outside of the traditional court process. Unlike hearings or a trial, in mediation you and the other party work together to identify solutions to problems. The mediator, a trained neutral person, does not say who is right or wrong, and unless requested, does not provide recommendations for resolving your dispute. Mediation can be quickly arranged, and frequently saves time and money compared to the traditional court process. Because mediation promotes cooperation, the emotional costs of resolving your dispute also may be reduced. You can choose to try mediation, or a judge may order you to try mediation. Here are some more things you should know about mediation:

1.

Mediation is confidential. Confidentiality means that the mediator cannot disclose any information that you provide unless:

- You and the other party agree that the information can be disclosed.
- The mediator informs you, and you agree in writing before mediation starts, that the mediator may disclose other information such as child abuse or threats of harm.
- You or the other party disclose child abuse or neglect, or threat of harm to another person, and the mediator has a legal responsibility to report child abuse or neglect, or threat of harm.
- Information is necessary to resolve a dispute regarding the mediator's fee.

The mediator also is required to report to the court certain basic facts about mediation, such as the number of sessions, who attended, whether or not an agreement was reached, whether or not the fee was paid, whether the parties provided information requested by the mediator, and general information necessary for program evaluation.

2.

You can select your own mediator. In most cases, parties can agree who will serve as their mediator. If you and the other party cannot agree, the court will select a mediator from a roster of trained and experienced mediators.

3.

Reaching an agreement is voluntary. Most people who try mediation do resolve all their issues through mediation. However if you and the other party cannot agree on some issues, and you have chosen *evaluative* mediation, you can ask the mediator to provide you with recommendations for settlement. If settlement is not reached, your case continues in the court process.

What are the Benefits of Mediation?

Compared to the traditional adversarial court process, mediation may:

- be less time consuming
- be less expensive
- allow you to express all your opinions about the issues and results you want in an informal setting
- give you more control over the outcome of your dispute
- lead to fewer court proceedings after a judgment has been entered
- be less emotionally stressful
- provide a more fair outcome for both parties

Mediation is Appropriate

and works best when both parties:

- ✓ do not use fear, force, threats, violence, or intimidation to get what they want
- ✓ commit to respecting and listening to the other's opinions and interests
- ✓ feel free to openly and safely express needs and concerns

Mediation is NOT Appropriate

and does not work when the other party:

- ✓ uses fear, force, threats, violence or intimidation to get what they want
- ✓ does not respect or listen to your opinions and interests
- ✓ makes you afraid to openly express needs and concerns

If you think that mediation is not appropriate for your case for any of these reasons, it is important for you to let the court and the mediator know about these reasons, so that your case can have a fair and safe outcome.

**IF YOU THINK THAT MEDIATION IS NOT APPROPRIATE FOR YOUR CASE,
PLEASE READ THE OTHER SIDE OF THIS NOTICE.**

What if I do not want my case to go to mediation?

If your case is being considered for mediation, you are entitled to a hearing in front of a judge to decide whether mediation is appropriate for you for any of these **three** reasons:

1. You have a Personal Protection Order (PPO).

How do I tell the court that I have a Personal Protection Order?

File the enclosed "Motion to Remove Case from Mediation"* with a copy of your PPO or information about your PPO.

2. You or the other party is involved in a child abuse or neglect proceeding.

How do I tell the court that there is a child abuse/neglect case?

File the enclosed "Motion to Remove Case from Mediation"* with any information about the child abuse/neglect case.

3. You file a "Motion to Remove Case from Mediation" because you believe that mediation will not be fair or safe for you.

What are the reasons that I can ask the court to remove my case from mediation?

A court might not order you into mediation if:

1. There are good reasons, such as: the other party has been arrested for or convicted of domestic violence; there is a pending criminal domestic violence case; the other party has a past history of violating court orders; the other party has threatened to harm or kill you or has harmed you; the other party has threatened to harm or kill the children; there is history of depression or attempted suicide; past attempts at mediation have failed.
2. There is reason to believe that your health or safety would be endangered by mediation.
3. You are not able to negotiate for yourself and will not have a lawyer with you during mediation.
4. There has been domestic violence and you will not have a lawyer with you during mediation.
5. The case involves child abuse or neglect.

How do I file a "Motion to Remove Case from Mediation?"

You or your attorney must

- 1. Within 14 days of receiving an order for mediation file a written "motion to remove case from mediation" and a notice of hearing to remove the case from mediation. (See motion and notice in the enclosed motion packet.*)
- 2. Within 14 days of receiving an order for mediation serve a copy of your motion and notice to the other party's attorney, or to the other party if the other party is not represented by an attorney.
- 3. You may be entitled to have the filing fees waived if you cannot afford the motion fees. Ask the court mediation clerk for SCAO Form MC 20, *Affidavit and Order for Suspension of Fees/Costs*.

***If the motion or motion packet is not enclosed, contact the court's Mediation Clerk and ask for a copy.**

At this hearing, the judge will decide if you should try mediation. If you believe that you should not have to try mediation for reasons like those mentioned above, fill out and file the motion to remove case from mediation.

What is domestic violence?

Domestic violence is a pattern of behavior. It is one person scaring another into doing what the abuser wants. Abusers use physical and sexual violence, threats, money, emotional and psychological abuse to control their spouse or intimate partners and get their way. Many people don't think of themselves as victims of domestic violence.

However, if you answer yes to any of the following, you may want to consider filing a motion to remove your case from mediation.

- Have you ever been physically hurt or threatened by the other party?
- Have you been hit, kicked, slapped, pushed or shoved by the other party?
- Has the other party threatened you with a weapon?
- Have you ever been forced or pressured to have sex when you did not want to?
- Has the other party ever physically hurt or threatened to hurt your children?
- Has the other party ever threatened to kill your friends, family or pets?
- Are you afraid of the other party?

There are over 45 programs in Michigan offering confidential counseling, shelter, support groups, and safety planning to survivors of domestic violence. You can get the number for your local domestic violence program, and confidential crisis counseling and support, by calling the National Domestic Violence Hotline at:

**1-800-799-SAFE
(7233)**

Or by calling your local Domestic Violence Program at:

**DOMESTIC VIOLENCE
AND CHILD ABUSE/NEGLECT
SCREENING FOR DOMESTIC
RELATIONS MEDIATION**

**ABBREVIATED DOMESTIC VIOLENCE
SCREENING QUESTIONNAIRES**

*Provided by:
Office of Dispute Resolution
State Court Administrative Office
Michigan Supreme Court*

April, 2006

Purpose and Use of Abbreviated Domestic Violence Screening Questionnaires

To promote safety for litigants, their children, and mediators, the complete, unabbreviated Domestic Violence Screening Questionnaire (developed in 2001) should be used in every possible instance of screening for domestic violence*. All mediators and Friend of the Court and Community Dispute Resolution Program center staff conducting case intake should be trained on and be familiar with the complete Domestic Violence Screening Protocol document, including the complete Questionnaire.

Recognizing that special circumstances may exist at Friend of the Court and Community Dispute Resolution Program (CDRP) offices in which time constraints make the use of the complete Questionnaire difficult, two abbreviated versions were created in 2005 for use in the following limited situations **only**.

Abbreviated Questionnaire 1 is for use only when limited time is available in advance of meeting with the parties, but parties are not yet together at the mediation site. This Questionnaire contemplates the circumstance of CDRP centers or Friend of the Court offices having insufficient time to use the complete protocol in advance of parties appearing at the center or court office but where some limited time is available for screening.

Abbreviated Questionnaire 2 is for use only when parties are present at court and have proceeded through a security check, prior intake was not conducted, and mediation is to take place immediately. This Questionnaire contemplates the circumstance where parties have been ordered by the judge to attempt mediation at a location within the court, and the only opportunity for screening is literally “in the hall.”

SAFETY NOTE: In using the abbreviated questionnaires, it is absolutely essential that court records have been checked for:

1. Personal Protection Orders or similar civil protection orders issued in other states;
2. “No-contact” orders issued in criminal cases (e.g., pretrial release orders, probation or parole orders); and
3. Pending child abuse and neglect cases prior to bringing the parties together.

Neither abbreviated questionnaire is intended to replace the use of the complete Questionnaire when time and circumstances permit its use.

* Domestic violence is a pattern of controlling behaviors, some of which are criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking, and intimidation. These behaviors are used by the batterer in an effort to control the intimate partner. The behavior may be directed at others with the effect of controlling the intimate partner.

In the event that a party's response to a question does elicit concern over the presence of domestic violence, court and CDRP center staff and mediators must be ready to expand upon the party's response by referencing back to the complete Questionnaire document. In assessing the level of potential danger, the answers in sections 2, 3, 4, 6 and 7 of the complete Questionnaire are particularly helpful. Mediators using an abbreviated Questionnaire should also be alert during the mediation process for signs that a party is in anger or otherwise has a compromised ability to negotiate, and be prepared to safely terminate the mediation if domestic violence concerns arise during the mediation session.

Following the Questionnaires is guidance for mediators in determining whether mediation should take place, how to safely terminate a mediation once begun, and safety planning considerations.

Abbreviated Domestic Violence Screening Questionnaire 1

This Questionnaire is for use only by Friend of the Court and Community Dispute Resolution Program center staff and mediators when time and circumstances do not permit use of the complete screening Questionnaire in advance of meeting with the parties, but where parties are not yet together at the mediation site.

1. Is there anyone else in the room with you? (Assumes a telephone contact.) Can you speak freely?

2. What types of concerns would you have about sitting in the same room with [insert name] or mediating with [insert name]?

If concerns are noted, ask the following questions:

- a. Is there anything we could do to address your concerns?

- b. If your attorney was present with you during the mediation sessions, would you still have these concerns?

- c. If you and [insert name] were in separate rooms during the mediation sessions, would you still have these concerns?

3. Has there ever been any physical confrontations or threats between you and [insert name]? If so, what happened?

4. Do you ever feel afraid of [insert name]? Tell me about the time you felt most afraid. What makes you afraid? Has [insert name] ever felt afraid of you? What makes him/her afraid?

5. 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, sending you many unwanted letters, emails, faxes or gifts? If so, what happened?

6. Has there ever been an order that was meant to limit contact between the two of you, for example, a PPO, a no-contact order as a condition of bail, or other such order?

7. If so, have either of you ever violated any of these orders? Has a court ever found that either of you have violated any of these orders?

8. Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you said during mediation? Please describe.

9. Is there an open abuse or neglect case involving your children? If so, please tell me about it.

10. Do you have any concerns about the safety of the children? Please tell me your concerns.

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

12. Do you think you will be able to speak up for yourself in mediation?

April, 2005

Abbreviated Domestic Violence Screening Questionnaire 2

This Questionnaire is for use only by Friend of the Court and Community Dispute Resolution Program center staff and mediators when mediation is conducted at the court, parties have proceeded through security, a check for Personal Protection Orders and child abuse and neglect cases has been completed, and time and circumstances do not permit use of the complete screening Questionnaire.

1. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]?

If yes, ask the following questions:

- a. What are your concerns?

- b. If your attorney was present with you during the mediation sessions, would you still have these concerns?

- c. If you and [insert name] were in separate rooms during the mediation sessions, would you still have these concerns?

2. Have there ever been any physical confrontations or threats between you and [insert name]? If so, what happened?

3. Has there ever been an order that was meant to limit contact between the two of you, for example a PPO, a no-contact order as a condition of bail, or other such orders? If so, please describe.

4. Do you ever feel afraid of [insert name]? What makes you afraid? Has [insert name] ever felt afraid of you? What makes him/her afraid?

5. Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you say in mediation? If so, please describe.

6. Can you speak up for yourself in mediation?

April, 2005

Decision Not to Mediate

1. A Party is in Immediate Danger

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. Go to Safety Planning (page 6) and then to Safe Termination of Mediation (page 4).

To the Abused Party:

“Since you are in immediate danger, let’s get you [and your children] to a safe place. I will not be mediating your case. Let’s get a Safety Plan in place.” *See Safety Planning (page 6). See Safe Termination of Mediation (page 4).*

To the Abusive Party:

See Safe Termination of Mediation (page 4).

2. No Apparent Immediate Danger, but the Abused Party Discloses Violence by or Fear of the Other Party

If violence or fear of the other party is otherwise identified, 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.” *See Safe Termination of Mediation (page 4).*

- 1. If the abused party concurs with the advice not to mediate, there are no circumstances under which mediation should proceed.
- 2. 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:
 - a) The situation is not dangerous for the abused party or the mediator. In assessing the level of potential danger, the answers to the questions in sections 2, 3, 4, 6 and 7 of the complete Questionnaire are particularly helpful.
 - b) The mediation is conducted by a skilled mediator knowledgeable about domestic violence.
 - c) The attorney for the abused party or an advocate for the abused party (such as an advocate from the local domestic violence program or a friend or family member of the abused party) will be present during the mediation.
 - d) The mediation is conducted within a specialized process under specific conditions to address concerns for safety and ability to make decisions without coercion or fear. *See Specialized Process for Mediating When Domestic Violence/Control Exists (page 5).*
 - e) Both parties agree to this process and these specific conditions.

- f) The mediator assesses that the parties have the ability to negotiate voluntarily, fairly, safely and in good faith. *See Determining Ability to Negotiate: Existence of Control, Coercion or Intimidation (page 2).*

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

The following indicate that a party may not have the ability to negotiate. The mediator must determine whether the presence of an attorney or advocate, and/or the adherence to specialized mediation conditions will provide the party with the ability to negotiate. If the mediator assesses that one or both parties do not have the ability to negotiate (even with an attorney or advocate present or under other specialized conditions) the mediation should not go forward despite the abused party's wishes. *See Mediator Standards of Conduct, Standard 2.*

- 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.

If the mediator determines that mediation should not proceed, see *Safe Termination of Mediation* (page 4).

1. 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. Mediation should proceed only if ALL of the following apply:

- 1. If the situation is not dangerous for the abused party or the mediator. In assessing the level of potential danger, the answers to the questions in sections 2, 3, 4, 6 and 7 of the complete Questionnaire are particularly helpful.
- 2. The mediation is conducted by a skilled mediator knowledgeable about domestic violence.
- 3. 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. *See Determining Ability to Negotiate: Existence of Control, Coercion, or Intimidation (page 2).*
- 4. If, to ensure the ability to negotiate, 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. *See Specialized Process for Mediating When Domestic Violence/Control Exist (page 5).*

- 5. The abused party wants to mediate.

If the mediator determines that mediation should not proceed, see *Safe Termination of Mediation* (page 4).

2. Non-Violent and Non-Abusive and Controlling, but Either Party Otherwise Lacks Capacity to Mediate

Regardless of the existence of domestic violence or child abuse, if screening reveals any of the following, 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.

- There is a history of substance abuse or mental illness that is not presently controlled.
- A party is not able to negotiate for her/himself or articulate her/his needs.
- A party is unable to reach an agreement voluntarily.

Mediation should proceed only if ALL of the following apply:

- 1. The situation is not dangerous for the parties or the mediator.
- 2. 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.
- 3. 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.
- 4. 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.
- 5. 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 shall 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 shall proceed. The mediator shall discuss and plan safety precautions with the abused party. If either the abused party or the mediator determines that the mediation is inappropriate, mediation should be terminated.
2. Consult privately with the abused party to determine whether safety arrangements are necessary. If possible, make arrangements for the parties to leave separately, with the abused 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 abused party to transportation. Do not reveal the destination or means of transportation of the abused party to the other party.
3. Without endangering the abused party, provide the abused party with information and referrals for assistance, including safety planning. Elicit how the abuser 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.
5. On the form that goes to the court check the box that says not appropriate for mediation. Do not provide any explanation.
6. 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 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 mediate this case. Many cases are not appropriate for mediation. It is my experience that with situations like yours, mediation does not work. This screening 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. I would suggest that you review this case with your attorney or seek legal advice.

Your options may include negotiation between your attorneys, referral to Friend of the Court for investigation and recommendation and/or motion to the court for a decision. If your dispute involves custody, parenting time, or support and you are not represented by an attorney you may contact the Friend of the Court and ask them to provide you with the forms and instructions necessary to proceed.”

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 mediation. It is not a “failure” to terminate mediation and there are no legal repercussions for doing so. I would suggest that you review this case with your attorney or seek legal advice.

Your options may include negotiation between your attorneys, referral to Friend of the Court for investigation and recommendation and/or motion to the court for a decision. If your dispute involves custody, parenting time, or support and you are not represented by an attorney you may contact the Friend of the Court and ask them to provide you with the forms and instructions necessary to proceed.

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.

- If not mediating separately, suggest that the abused party arrive 10 minutes after the abuser and leave 10 minutes before the abuser. Have separate waiting areas for the parties and do not leave the parties alone together.
- Allow an advocate, friend or family member of the abused party to accompany the abused party to the mediation sessions and wait in the waiting room.
- Check with the abused party between sessions to assess safety and ability to negotiate.
- 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. **Mediated agreements can:**
 - Avoid non-specific provisions such as "reasonable parenting time," "parenting time as agreed by the parties," or "parenting time to be arranged later." The terms of a parenting time agreement should be stated unambiguously, with pick up and drop-off locations, times, and days of the week clearly specified.
 - Provide for supervised parenting time, with supervising third parties clearly identified.
 - Provide safe, neutral locations for parenting time, whether supervised or unsupervised.
 - Specify how the parties may communicate with each other to make arrangements for parenting time (e.g., whether the abusive party or the abusive party's attorney may telephone the abused party, whether written or electronic communications is permitted).
 - Arrange parenting time so that the parties will not meet. Drop-off and pick-up times could be different for the abused party and the abuser, so that each party will have left the drop-off site before the other arrives.
 - If the parties must meet to transfer children, require that the transfer take place in the presence of a third party and in a protected setting. Use available resources for supervised visitation and exchange of children such as programs provided by local domestic violence service providers or other local agencies.
 - Provide for short, daytime visits in a public place, and increase length only if things are going well. Place limits on overnight visits.
 - Prohibit the noncustodial party from drinking or using drugs before or during parenting time.
 - Require a bond to assure compliance with the agreement.
 - Limit the abusive party's access to firearms.
 - Permit refusal of parenting time upon violation of any condition of the agreement.
 - Permit cancellation of parenting time if the noncustodial party is more than 20 or 30 minutes late.
 - Specify how disputes between the parties will be resolved.
 - Build in automatic return dates for the court, or the parties with a mediator, to review how the agreement is working.
 - Require surrender of passport prior to exercising parenting time, or take other steps to deter abduction, if there is a risk of a party abducting or fleeing with the children.

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:

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 phone so that the abused party can contact the local domestic violence program and/or the National Domestic Violence Hotline 1-800-799-SAFE(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."

3. 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.

Suggested Language for Obtaining Permission to Call the Hotline:

"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."

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 her/his phone so that the party can contact friends or family, if the party wishes to do so.
5. 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.

6. 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?"
7. 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

1. If a screener for mediation or a mediator concludes that domestic violence or child abuse has occurred, the abused party shall be provided with information about and referral to a domestic violence advocacy agency for safety planning and other services. The information shall 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).
2. The mediator should provide the abused party 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.
3. 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 abusive party.
4. If a person is in imminent danger, the mediator should do safety planning with that person whenever possible.

Suggested Language for Referral and Assistance

"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 for 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. Here are brochures and information for you to read over. Will taking this information home with you be dangerous?"

On-Going Screening for All Cases

On-going screening for domestic violence should take place in all cases. It is the mediator's responsibility to terminate mediation if she or he believes either of the participants is unable to mediate safely, competently, and without fear of coercion. Monitoring by the mediator is a continuous responsibility throughout the mediation process. During the course of mediation the mediator may notice abusive or controlling behaviors that were not revealed during the screening process. Behaviors that may be of concern include threatening looks or actions, one party attempting to speak for or control the other party, one party unwilling to comply with the ground rules or specialized process for mediation, or one party dominating the sessions.

If any behaviors lead you to conclude that a party may not be able to mediate safely and fairly, reconsider the *Decision Not to Mediate* (page 1). If you determine that mediation should not proceed, see *Safe Termination* (page 4).

DOMESTIC VIOLENCE AND CHILD ABUSE/NEGLECT SCREENING FOR DOMESTIC RELATIONS MEDIATION

Acknowledgments

Development of the April 2005 Model Protocol was a project of the

Michigan Domestic Violence Prevention and Treatment Board

in collaboration with

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University of Michigan Law School Family Law Project
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The Office of Dispute Resolution gratefully acknowledges the time, helpful advice, and expertise contributed by the foregoing individuals.

RESOURCES

Fuller, J. and Lyons, R., "Mediation Guidelines," 33 *Williamette L. Rev.* 922 (1997)

Girdner, L., *Domestic Abuse and Custody Mediation Training for Mediators*
(American Bar Association, State Justice Institute, Academy of Family Mediators, 1999)

Joyce, H., "Mediation and Domestic Violence: Legislative Responses,"
14 *J. Am. Acad. Matrim. Law* 447 (1997)

Lovik, M., *Domestic Violence Benchbook* (Michigan Judicial Institute, 1998)

Pennsylvania Coalition Against Domestic Violence, *Proposed Tool for Screening for Domestic
Violence and Child Abuse* (1998)

Zumeta, Z., *Initial Questionnaire: Individual Meetings with Mediation Clients*
(Ann Arbor Mediation Center, 1995)

Is Mediation Right for You?

What is Domestic Relations Mediation?

Mediation is a process which allows you and another party to resolve your dispute outside of the traditional court process. Unlike hearings or a trial, in mediation you and the other party work together to identify solutions to problems. The mediator, a trained neutral person, does not say who is right or wrong, and unless requested, does not provide recommendations for resolving your dispute. Mediation can be quickly arranged, and frequently saves time and money compared to the traditional court process. Because mediation promotes cooperation, the emotional costs of resolving your dispute also may be reduced. You can choose to try mediation, or a judge may order you to try mediation. Here are some more things you should know about mediation:

1.

Mediation is confidential. Confidentiality means that the mediator cannot disclose any information that you provide unless:

- You and the other party agree that the information can be disclosed.
- The mediator informs you, and you agree in writing before mediation starts, that the mediator may disclose other information such as child abuse or threats of harm.
- You or the other party disclose child abuse or neglect, or threat of harm to another person, and the mediator has a legal responsibility to report child abuse or neglect, or threat of harm.
- Information is necessary to resolve a dispute regarding the mediator's fee.

The mediator also is required to report to the court certain basic facts about mediation, such as the number of sessions, who attended, whether or not an agreement was reached, whether or not the fee was paid, whether the parties provided information requested by the mediator, and general information necessary for program evaluation.

2.

You can select your own mediator. In most cases, parties can agree who will serve as their mediator. If you and the other party cannot agree, the court will select a mediator from a roster of trained and experienced mediators.

3.

Reaching an agreement is voluntary. Most people who try mediation do resolve all their issues through mediation. However if you and the other party cannot agree on some issues, and you have chosen *evaluative* mediation, you can ask the mediator to provide you with recommendations for settlement. If settlement is not reached, your case continues in the court process.

What are the Benefits of Mediation?

Compared to the traditional adversarial court process, mediation may:

- be less time consuming
- be less expensive
- allow you to express all your opinions about the issues and results you want in an informal setting
- give you more control over the outcome of your dispute
- lead to fewer court proceedings after a judgment has been entered
- be less emotionally stressful
- provide a more fair outcome for both parties

Mediation is Appropriate

and works best when both parties:

- ✓ do not use fear, force, threats, violence, or intimidation to get what they want
- ✓ commit to respecting and listening to the other's opinions and interests
- ✓ feel free to openly and safely express needs and concerns

Mediation is NOT Appropriate

and does not work when the other party:

- ✓ uses fear, force, threats, violence or intimidation to get what they want
- ✓ does not respect or listen to your opinions and interests
- ✓ makes you afraid to openly express needs and concerns

If you think that mediation is not appropriate for your case for any of these reasons, it is important for you to let the court and the mediator know about these reasons, so that your case can have a fair and safe outcome.

**IF YOU THINK THAT MEDIATION IS NOT APPROPRIATE FOR YOUR CASE,
PLEASE READ THE OTHER SIDE OF THIS NOTICE.**

What if I do not want my case to go to mediation?

If your case is being considered for mediation, you are entitled to a hearing in front of a judge to decide whether mediation is appropriate for you for any of these **three** reasons:

1. You have a Personal Protection Order (PPO).

How do I tell the court that I have a Personal Protection Order?

File the enclosed "Motion to Remove Case from Mediation"* with a copy of your PPO or information about your PPO.

2. You or the other party is involved in a child abuse or neglect proceeding.

How do I tell the court that there is a child abuse/neglect case?

File the enclosed "Motion to Remove Case from Mediation"* with any information about the child abuse/neglect case.

3. You file a "Motion to Remove Case from Mediation" because you believe that mediation will not be fair or safe for you.

What are the reasons that I can ask the court to remove my case from mediation?

A court might not order you into mediation if:

1. There are good reasons, such as: the other party has been arrested for or convicted of domestic violence; there is a pending criminal domestic violence case; the other party has a past history of violating court orders; the other party has threatened to harm or kill you or has harmed you; the other party has threatened to harm or kill the children; there is history of depression or attempted suicide; past attempts at mediation have failed.
2. There is reason to believe that your health or safety would be endangered by mediation.
3. You are not able to negotiate for yourself and will not have a lawyer with you during mediation.
4. There has been domestic violence and you will not have a lawyer with you during mediation.
5. The case involves child abuse or neglect.

How do I file a "Motion to Remove Case from Mediation?"

You or your attorney must

- 1. Within 14 days of receiving an order for mediation file a written "motion to remove case from mediation" and a notice of hearing to remove the case from mediation. (See motion and notice in the enclosed motion packet.)*
- 2. Within 14 days of receiving an order for mediation serve a copy of your motion and notice to the other party's attorney, or to the other party if the other party is not represented by an attorney.
- 3. You may be entitled to have the filing fees waived if you cannot afford the motion fees. Ask the court mediation clerk for SCAO Form MC 20, *Affidavit and Order for Suspension of Fees/Costs*.

***If the motion or motion packet is not enclosed, contact the court's Mediation Clerk and ask for a copy.**

At this hearing, the judge will decide if you should try mediation. If you believe that you should not have to try mediation for reasons like those mentioned above, fill out and file the motion to remove case from mediation.

What is domestic violence?

Domestic violence is a pattern of behavior. It is one person scaring another into doing what the abuser wants. Abusers use physical and sexual violence, threats, money, emotional and psychological abuse to control their spouse or intimate partners and get their way. Many people don't think of themselves as victims of domestic violence.

However, if you answer yes to any of the following, you may want to consider filing a motion to remove your case from mediation.

- Have you ever been physically hurt or threatened by the other party?
- Have you been hit, kicked, slapped, pushed or shoved by the other party?
- Has the other party threatened you with a weapon?
- Have you ever been forced or pressured to have sex when you did not want to?
- Has the other party ever physically hurt or threatened to hurt your children?
- Has the other party ever threatened to kill your friends, family or pets?
- Are you afraid of the other party?

There are over 45 programs in Michigan offering confidential counseling, shelter, support groups, and safety planning to survivors of domestic violence. You can get the number for your local domestic violence program, and confidential crisis counseling and support, by calling the National Domestic Violence Hotline at:

**1-800-799-SAFE
(7233)**

Or by calling your local Domestic Violence Program at:

4 ROLE PLAYS: SCREENING, SPECIALIZED PROCESS AND TERMINATION

Adapted from *Domestic Abuse and Custody Mediation Training for Mediator*
developed by the American Bar Association.

CAROL AND DERRICK COOPER

Role Play 1: Screening Interviews and Assessing Appropriateness of Mediation

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Role Play 1: Screening Interviews and Assessing Appropriateness of Mediation Instructions

There are three different variations of this couple that should be used for small group role-play and discussion.

Background information:

Carol: 40 years old
Derrick: 46 years old
Son: 16 years old
Daughter: 13 years old
Married: 18 years
Separated: 2 weeks

Small Group Assignments:

1. Each group will be assigned ONE VERSION of screening information from version 1.11, 1.2, or 1.3. There should be enough groups so that ALL THREE VERSIONS CAN BE ASSIGNED IN EACH TRAINING.
2. Each small group will role-play separate screening interviews with BOTH Carol and with Derrick. Each group will determine whose interview is first.
3. The Role-play interview OBSERVER in each group should take notes based on information gained from following the Screening Protocol.
4. After the screening interviews, each group should determine WHETHER MEDIATION IS APPROPRIATE in this case.
5. Once the determination is made, each group should discuss the observations which led them to their conclusion (verbal and non-verbal cues).
6. Each group should have a REPORTER, who will report to the large group the decision to mediate or not and the reasons.

The following questions should assist each small group in making their determination whether mediation is appropriate:

1. What information do you have that would help you to decide whether domestic violence might be present? *(See Sections 1 – 10 of the Screening Protocol).*
2. What information do you have that would help you to decide whether the capacity to mediate was present? *(See the Determining Ability to Negotiate section of the Screening Protocol).*

Following are MEDIATOR SCREENING INTERVIEWS (3 VERSIONS, 1.1, 1.2, 1.3)

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from CAROL'S screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) Preface to Screening Interview to Reduce Awkwardness
- 2) Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy
- 3) Explain the Goals and Process of Mediation

B. SCREENING PROTOCOL:

SECTION 1: (General) Carol – Version 1

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or other special accommodations)? **NO**
- b) Why don't you tell me about your situation? **My son and husband are having problems getting along. My daughter is withdrawn and possibly depressed. I am concerned about this. I want to increase my independence and go back to school. I have a job starting soon, too.**
- c) Do you want to mediate? If so, why? **I want to mediate because I think it will be cheaper and better for everyone.**
- d) Could you tell me about how the decision to divorce and/or separate was reached? **It was my decision. I am ready to no longer feel controlled by him. I have felt controlled throughout our entire marriage and I am tired of it.**

SECTION 2:

- a) When you look back over time, how were decisions made in your marriage? **He is pretty pushy about getting his own way. But I was able to put up a fight for the things that I really wanted.**
- b) What happens when you speak your mind and express your point of view to your husband? **Nothing**
- c) When you and your husband fight/or are angry with each other, what happens? **He has a temper and he gets a little scary when he is angry and doesn't get his way. I've learned to just drop things if it starts to go in that direction.**
- d) Do you have any concerns about how the two of you will make decisions in mediation?

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from CAROL'S screening interview)

Not really, I am not sure what I would do if he got really mad or angry if I disagreed with him. Wouldn't you be able to help us with that?

- e) Has your husband ever prevented you from having contact with family or friends, or with your children? **NO**
- f) Has your husband ever denied you access to food or money? **NO**
- g) Has your husband ever threatened to hurt or kill himself? **NO**
- h) During mediation sessions, you and your husband may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your husband or mediating with your husband? **NO**

SECTION 3:

- a) Has there ever been any physical confrontation between you and your husband? What happened?
NO
- b) Do you feel afraid of your husband? What are you afraid of? **I don't know. He was really angry when he found out that I had a divorce attorney. He threw the phone at me, but he missed. I am the one who wants the divorce and I think it really threw him off balance.**
- c) Do you ever become afraid for yourself or other based on the looks or actions of your husband?
NO
- d) Has your husband ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **NO**
- e) Has your husband ever used or threatened to use a weapon to harm you? **NO**
- f) Has your husband ever threatened to kill or injure you? Has your husband ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- g) Has your husband ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**
- h) Have you or any family members sought medical treatment as a result of an injury caused by your husband? **NO**
- i) Has your husband 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- j) Have any of these events involved the children? **NO**
- k) Have you ever sought a Personal Protection Order (PPO) against your husband? **NO**

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from **CAROL'S** screening interview)

- l) Has either of you ever had a PPO issued against you? **NO**
- m) Has either of you ever been found in contempt of court for violating a PPO? **NO**
- n) Are you afraid that your husband will physically harm you during mediation or after you leave because of what you said in mediation? **NO**
- o) Are you in immediate danger? **NO**

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **NO**
- b) Have you or your husband ever been arrested or convicted of any crime? **NO**
- c) Are there any guns or other weapons in the home? **NO**

SECTION 5:

- a) (If lawyer is not present) Have you told your lawyer about these things? It is important for your lawyer to know about these matters. **NO**

SECTION 6:

- a) How are the children doing? **OK, I guess**
- b) Do you have any concerns about the safety of the children? **NO**
- c) Has your husband ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **NO**
- d) Is there any pending abuse or neglect cases involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**

SECTION 8: --

- a) Is there anything else you think I should know about you, your spouse or your family? **NO**

SECTION 9:

1. Discuss the process of mediation

2. Discuss the difference between mediation and the traditional legal process

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from CAROL'S screening interview)

- 3. Discuss the need for lawyer, if party does not have lawyer**
- 4. Ask the following questions:**
 - a) Has the divorce been filed? **YES**
 - b) What is the current status of the divorce? **We have a settlement conference coming up.**
 - c) What are the upcoming court dates? **The only date I am aware of is the settlement conference next month.**
 - d) Discuss fees.

SECTION 10:

- a) What would you like to see as an outcome of mediation? **I just want my freedom and the kids to be ok.**
- b) What are the issues you think will be the most difficult for you and your husband to resolve? **The kids**

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from DERRICK'S screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) Preface to Screening Interview to Reduce Awkwardness
- 2) Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy
- 3) Explain the Goals and Process of Mediation

B. SCREENING PROTOCOL:

SECTION 1: (General) Derrick- Version 1

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or others special accommodations)? **NO**
- b) Why don't you tell me about your situation? **Everything was really going fine. I do not know why she is doing this. I don't think our problems are any worse than any one else's. I was good to her and the kids. I have supported her all these years including her going back to school and getting a job and look what she does to me.**
- c) Do you want to mediate? If so, why? **YES. I hear it will be cheaper this way.**
- d) Can you tell me about how the decision to divorce and/or separate was reached? **She filed. There was no discussion.**

SECTION 2:

- a) When you look back over time, how were decisions made in your marriage? **Like most couples, I guess. We fought every now and then.**
- b) What happens when you speak your mind and express your point of view to your wife? **Nothing**
- c) When you and your wife fight/or are angry with each other, what happens? **She usually pouts until I give her what she wants.**
- d) Do you have any concerns about how the two of you will make decisions in mediation? **NO**
- e) Has your wife ever prevented you from having contact with family or friends, or with your children? **NO**
- f) Has your wife ever denied you access to food or money? **NO**
- g) Has your wife ever threatened to hurt or kill herself? **NO**

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from **DERRICK'S** screening interview)

- h) During mediation sessions, you and your wife may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your wife or mediating with your wife? **NO**

SECTION 3:

- a) Has there ever been any physical confrontation between you and your wife? What happened? **NO**
- b) Do you feel afraid of your wife? What are you afraid of? **NO**.
- c) Do you ever become afraid for yourself or others based on the looks or actions of your wife? **NO**
- d) Has your wife ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **NO**
- e) Has your wife ever used or threatened to use a weapon to harm you? **NO**
- e) Has your wife ever threatened to kill or injure you? Has your wife ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- f) Has your wife ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**
- g) Have you or any family members sought medical treatment as a result of an injury caused by your wife? **NO**
- h) Has your wife 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- i) Have any of these events involved the children? **NO**
- j) Have you ever sought a Personal Protection Order (PPO) against your wife? **NO**
- k) Has either of you ever had a PPO issued against you? **NO**
- l) Has either of you ever been found in contempt of court for violating a PPO? **NO**
- m) Are you afraid that your wife will physically harm you during mediation or after you leave because of what you said in mediation? **NO**
- n) Are you in immediate danger? **NO**

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **NO**
- b) Have you or your wife ever been arrested or convicted of any crime? **NO**
- c) ARE THERE ANY GUNS OR OTHER WEAPONS IN THE HOME? **NO**

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from DERRICK'S screening interview)

SECTION 5:

- a) (IF LAWYER IS NOT PRESENT) HAVE YOU TOLD YOUR LAWYER ABOUT THESE THINGS? IT IS IMPORTANT FOR YOUR LAWYER TO KNOW ABOUT THESE MATTERS. **NO**

SECTION 6:

- a) How are the children doing? **GREAT**
- b) Do you have any concerns about the safety of the children? **NO**
- c) Has your wife ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **NO**
- d) Is there a pending abuse or neglect case involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**
- c) Have either of you attempted or thought about attempting to hurt or kill yourself? **NO**

SECTION 8

- a) Is there anything else you think I should know about you, your wife or your family? **NO**

SECTION 9:

1. **Discuss the process of mediation**
2. **Discuss the difference between mediation and the traditional legal process**
3. **Discuss the need for lawyer, if party does not have lawyer**
4. **Ask the following questions:**
 - a) Has the divorce been filed? **Unfortunately, yes.**
 - b) What is the current status of the divorce? **It is simple, she wants it and I don't.**
 - c) What are the upcoming court dates? **I think we have a settlement conference coming up next month. What is that?**

ROLE PLAY 1.1: CAROL AND DERRICK COOPER 1

(Information gathered from **DERRICK'S** screening interview)

d) Discuss fees.

SECTION 10:

a) What would you like to see as an outcome of mediation? ? **If we are going to get divorced, I want to do so as cheaply as possible.**

b) What are the issues you think will be the most difficult for you and your wife to resolve?
Nothing

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from CAROL'S screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) **Preface to Screening Interview to Reduce Awkwardness**
- 2) **Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy**
- 3) **Explain the Goals and Process of Mediation**

B. SCREENING PROTOCOL:

SECTION 1: (General) Carol – Version 2

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or other special accommodations)? **NO**
- b) Why don't you tell me about your situation? **I am tired of him controlling me. I want to go back to school and get a job.**
- c) Do you want to mediate? If so, why? **I am not sure. He always wants things his way.**
- d) Can you tell me how about how the decision to divorce and/or separate was reached? **It was a mutual decision but I filed.**

SECTION 2:

- a) When you look back over time, how were decisions made in your marriage? **He is pretty pushy about getting his own way.**
- b) What happens when you speak your mind and express your point of view to your husband? **I don't know, nothing I guess.**
- c) When you and your husband fight/or are angry with each other, what happens? **He has a temper and he gets a little scary when he is angry and doesn't get his way. I've learned to just drop things if it starts to go in that direction.**
- d) Do you have any concerns about how the two of you will make decisions in mediation? **I don't know. I am not sure that I could stand up to him if he got really mad or angry if I disagreed with him. Wouldn't you be able to help us with that?**
- e) Has your husband ever prevented you from having contact with family or friends, or with your children? **NO. I don't think he would do that.**
- f) Has your husband ever denied you access to food or money? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from CAROL'S screening interview)

- g) Has your husband ever threatened to hurt or kill himself? **NO**
- h) During mediation sessions, you and your husband may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your husband or mediating with your husband? **NO**

SECTION 3:

- a) Has there ever been any physical confrontation between you and your husband? What happened? **Well sort of. Once early in our marriage we had a fight about something and he pushed me. I hit my head on the wall and gave myself a big bump (laughs). It wasn't a big deal. I didn't have to go to the doctor or anything and he apologized later and hasn't done anything like that since, until we started the divorce.**
- b) Do you feel afraid of your husband? What are you afraid of? **I don't know. When he found out that I had a divorce attorney he was furious and said that I would never get away with anything bought from the money he earned. He was in a rage. He threw the phone at me, but he missed.**
- c) Do you ever become afraid for yourself or other based on the looks or actions of your husband? **No, not until recently.**
- d) Has your husband ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **Just that one time, early in our marriage.**
- e) Has your husband ever used or threatened to use a weapon to harm you? **NO**
- f) Has your husband ever threatened to kill or injure you? Has your husband ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- g) Has your husband ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**
- h) Have you or any family members sought medical treatment as a result of an injury caused by your husband? **NO**
- i) Has your husband 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- j) Have any of these events involved the children? **NO**
- k) Have you ever sought a Personal Protection Order (PPO) against your husband? **NO**
- l) Has either of you ever had a PPO issued against you? **NO**
- m) Has either of you ever been found in contempt of court for violating a PPO? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from CAROL'S screening interview)

- n) Are you afraid that your husband will physically harm you during mediation or after you leave because of what you said in mediation? **After he threw the phone, I started to think about that. I am the one who wants the divorce and I think it really threw him off balance. I don't know anymore what he might do. I don't really think he would hurt me bad or anything.**
- o) Are you in immediate danger? **NO**

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **NO**
- b) Have you or your husband ever been arrested or convicted of any crime? **NO**
- c) Are there any guns or other weapons in the home? **YES**

SECTION 5:

- a) (If lawyer is not present) Have you told your lawyer about these things? It is important for your lawyer to know about these matters. **NO**

SECTION 6:

- a) How are the children doing? **OK, I guess**
- b) Do you have any concerns about the safety of the children? **NO. I think he is a pretty good father. Strict but good.**
- c) Has your husband ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **NO, I don't think he would do that.**
- d) Is there a pending abuse or neglect case involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**
- c) Has either of you attempted or thought about attempting to hurt or kill yourself? **NO**

SECTION 8

- a) Is there anything else you think I should know about you, your husband or your family? **NO**

SECTION 9:

1. Discuss the process of mediation

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from CAROL'S screening interview)

2. Discuss the difference between mediation and the traditional legal process
3. Discuss the need for lawyer, if party does not have lawyer
4. Ask the following questions:
 - a) Has the divorce been filed? **YES**
 - b) What is the current status of the divorce? **We have a settlement conference coming up.**
 - c) What are the upcoming court dates? **The only date I am aware of is the settlement conference next month.**
 - d) Discuss fees.

SECTION 10:

- a) What would you like to see as an outcome of the mediation? **My freedom, the kids to be ok, and some money to help me go back to school until I can get a job.**
- b) What are the issues you think will be the most difficult for you and the other party to resolve? **The kids and money for me.**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from DERRICK'S screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) **Preface to Screening Interview to Reduce Awkwardness**
- 2) **Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy**
- 3) **Explain the Goals and Process of Mediation**

B. SCREENING PROTOCOL:

SECTION 1: (General) Derrick- Version 2

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or other special accommodations)? **NO**
- b) Why don't you tell me about your situation? **I do not know why she is doing this. I don't think our problems are any worse than anyone else's. I am good to her and the kids. I have supported her all these years. I even told her I would support her going back to school and getting a job if that is what she really wants to do, as long as it did not interfere with the family. Anyway, I know I will end up writing all her papers.**
- c) Do you want to mediate? If so, why? **YES. It is cheaper and we won't have to have our attorneys involved.**

Can you tell me about how the decision to divorce and/or separate was reached? **She just filed.**

SECTION 2:

- e) When you look back over time, how were decisions made in your marriage? **Fine. We are generally in agreement.**
- a) What happens when you speak your mind and express your point of view to your wife? **Nothing**
- b) When you and your wife fight/or are angry with each other, what happens? **Nothing**
- c) Do you have any concerns about how the two of you will make decisions in mediation? **Not really, she can be assertive though. Look she made the decision to get a divorce**
- d) Has your wife ever prevented you from having contact with family or friends, or with your children? **NO**
- e) Has your wife ever denied you access to food or money? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from DERRICK'S screening interview)

- f) Has your wife ever threatened to hurt or kill herself? **NO**
- g) During mediation sessions, you and your wife may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your wife or mediating with your wife? **NO**

SECTION 3:

- a) Has there ever been any physical confrontation between you and your wife? What happened? **No. Well we might have pushed each other around a long time ago. I don't remember exactly, so it couldn't have been a big deal**
- b) Do you feel afraid of your wife? What are you afraid of? **No, but her lawyer could do a lot of harm. That's why I think it would be better for her to be reasonable and handle this through mediation. It's much more civilized. Those divorce lawyers can be barbarians, don't you agree?**
- c) Do you ever become afraid for yourself or others based on the looks or actions of your wife? **NO**
- d) Has your wife ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **NO**
- e) Has your wife ever used or threatened to use a weapon to harm you? **NO**
- f) Has your wife ever threatened to kill or injure you? Has your wife ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- g) Has your wife ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**
- h) Have you or any family members sought medical treatment as a result of an injury caused by your wife? **NO**
- i) Has your wife 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- j) Have any of these events involved the children? **NO**
- k) Have you ever sought a Personal Protection Order (PPO) against your wife? **NO**
- l) Has either of you ever had a PPO issued against you? **NO**
- m) Has either of you ever been found in contempt of court for violating a PPO? **NO**
- n) Are you afraid that your wife will physically harm you during mediation or after you leave because of what you said in mediation? **NO**
- o) Are you in immediate danger? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **NO**
- b) Have you or your wife ever been arrested or convicted of any crime? **NO**
- c) Are there any guns or other weapons in the home? **Yes, I keep guns.**

SECTION 5:

- a) (If lawyer is not present) Have you told your lawyer about these things? It is important for your lawyer to know about these matters. **NO**

SECTION 6:

- a) How are the children doing? **Great**
- b) Do you have any concerns about the safety of the children? **I have concerns that the two older ones might walk all over her, especially my son. He needs a firm hand. You know how boys can be.**
- c) Has your wife ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **Two of them are teenagers. They are the ones that threaten to deny us both access. They just want to hang out with their friends. You know what I mean.**
- d) Is there a pending child abuse or neglect case involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**
- c) Have either of you attempted or thought about attempting to hurt or kill yourself? **NO**

SECTION 8

- a) Is there anything else you think I should know about you, your wife or your family? **NO**

SECTION 9:

1. **Discuss the process of mediation**
2. **Discuss the difference between mediation and the traditional legal process**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

3. Discuss the need for lawyer, if party does not have lawyer

4. Ask the following questions:

- a) Has the divorce been filed? **Unfortunately, yes.**
- b) What is the current status of the divorce? **It is simple, she wants it and I don't.**
- c) What are the upcoming court dates? **I think we have a settlement conference coming up next month. What is that?**
- d) Discuss fees.

SECTION 10:

- a) What would you like to see as an outcome of the mediation? **As little money to her and her attorney as possible.**
- b) What are the issues you think will be most difficult for you and the other party to resolve? **How much money I have to pay and the house.**

ROLE PLAY 1.3: CAROL AND DERRICK COOPER 3

(Information gathered from CAROL'S screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) Preface to Screening Interview to Reduce Awkwardness
- 2) Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy
- 3) Explain the Goals and Process of Mediation

B. SCREENING PROTOCOL:

SECTION 1: (General) Carol – Version 3

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or other special accommodations)? **NO**
- b) Why don't you tell me about your situation? **I have felt controlled by him throughout our marriage and I am tired of it. My daughter is withdrawn and depressed. My son and husband don't get along. I want to get a job but am afraid to. When I had a job early on in our marriage, he came and harassed me daily. I ended up losing that job.**
- c) Do you want to mediate? If so, why? **NO**
- d) Could you tell me about how the decision to divorce and/or separate was reached? **He won't change and I want to try to so I filed.**

SECTION 2:

- a) When you look back over time, how were decisions made in your marriage? **He has to have his own way. I have learned that there is just no point in disagreeing with him.**
- b) What happens when you speak your mind and express your point of view to your husband? **I don't know, nothing I guess.**
- c) When you and your husband fight/or are angry with each other, what happens? **He has a temper and he gets a little scary when he is angry and doesn't get his way. I've learned to just drop things if it starts to go in that direction.**
- d) Do you have any concerns about how the two of you will make decisions in mediation? **Yes, I think that he will run right over me. Like I said, he has to have his own way.**

ROLE PLAY 1.3: CAROL AND DERRICK COOPER 3

(Information gathered from CAROL'S screening interview)

- e) Has your husband ever prevented you from having contact with family or friends, or with your children? **No, but he hates my family so I don't have much contact with them.**
- f) Has your husband ever denied you access to food or money? **NO**
- g) Has your husband ever threatened to hurt or kill himself? **NO**
- h) During mediation sessions, you and your husband may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your husband or mediating with your husband? **There is no way we could be in the same room for mediation. I heard that sometimes you could have separate rooms and do this. I'd rather do this than go back to my attorney, because that would really upset him. You can still help us right? We both would rather mediate.**

MEDIATOR NEEDS TO ADDRESS THE IF YES QUESTIONS THAT COME UNDER SECTION 2, H

SECTION 3:

- a) Has there ever been any physical confrontation between you and your husband? What happened? **Mainly he yells, calls me names and pushes me around. He's only hit me a few times and he is always really sorry afterwards. When I first started seeing a counselor, he tried to keep me from going. He'd block the door and hid the car keys.**
- b) Do you feel afraid of your husband? What are you afraid of? **Yeah. Like I said, he gets a little scary when he is angry and doesn't get his way.**
- c) Do you ever become afraid for yourself or others based on the looks or actions of your husband? **NO**
- d) Has your husband ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **Yes, like I said he pushes me around sometimes.**
- e) Has your husband ever used or threatened to use a weapon to harm you? **I don't know. When he found out that I had a divorce attorney he was furious and said that I would never get away with anything bought from the money he earned. Then he said that I would never get away with this divorce. He was in a rage. He threw the phone at me, but he missed.**
- f) Has your husband ever threatened to kill or injure you? Has your husband ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- g) Has your husband ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**

ROLE PLAY 1.3: CAROL AND DERRICK COOPER 3

(Information gathered from CAROL'S screening interview)

- h) Have you or any family members sought medical treatment as a result of an injury caused by your husband? **NO**
- i) Has your husband 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- j) Have any of these events involved the children? **NO**
- k) Have you ever sought a Personal Protection Order (PPO) against your husband? **NO**
- l) Has either of you ever had a PPO issued against you? **NO**
- m) Has either of you ever been found in contempt of court for violating a PPO? **NO**
- n) Are you afraid that your husband will physically harm you during mediation or after you leave because of what you said in mediation? **After he threw the phone, I started to think about that. I am the one who wants the divorce and I think it really threw him off balance. I don't know anymore what he might do. I don't think he would hurt me bad or anything.**
- o) Are you in immediate danger? **NO**

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **Once the neighbors called the police, but they didn't really do anything.**
- b) Have you or your husband ever been arrested or convicted of any crime? **NO**
- c) Are there any guns or other weapons in the home? **NO**

SECTION 5

(If lawyer is not present) Have you told your lawyer about these things? It is important for your lawyer to know about these matters. **NO**

SECTION 6:

- a) How are the children doing? **OK, I guess**
- b) Do you have any concerns about the safety of the children? **I had concerns when they were younger, because he believes in physical punishment. But I think that they are old enough now. They know how to keep out of the way.**

ROLE PLAY 1.3: CAROL AND DERRICK COOPER 3

(Information gathered from CAROL'S screening interview)

- d) Has your husband ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **No, I think this whole custody fight is because he's mad at me for leaving.**
- e) Is there a pending abuse or neglect case involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**
- c) Have either of you attempted or thought about attempting to hurt or kill yourself? **NO**

SECTION 8

- a) Is there anything else you think I should know about you, your husband or your family? **NO**

SECTION 9:

1. Discuss the process of mediation

2. Discuss the difference between mediation and the traditional legal process

3. Discuss the need for lawyer, if party does not have lawyer

4. Ask the following questions:

- a) Has the divorce been filed? **YES**
- b) What is the current status of the divorce? **We have a settlement conference coming up.**
- c) What are the upcoming court dates? **The only date I am aware of is the settlement conference next month.**
- d) Discuss fees.

SECTION 10:

- a) What would you like to see as an outcome of the mediation? **I would like him to leave me alone; money to help take care of me and the kids so I can go to school and get a job so I won't need him anymore.**
- b) What are the issues you think will be most difficult for you and the other party to resolve?

ROLE PLAY 1.3: CAROL AND DERRICK COOPER 3

(Information gathered from CAROL'S screening interview)

Him leaving me alone, money, the kids (he will try to use them against me) the house.

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

A. MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

- 1) **Preface to Screening Interview to Reduce Awkwardness**
- 2) **Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy**
- 3) **Explain the Goals and Process of Mediation**

B. SCREENING PROTOCOL:

SECTION 1: (General) Derrick – Version 3

- a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require in order to have this discussion (language interpretation or other special accommodations)? **NO**
- b) Why don't you tell me about your situation? **I don't know why she is doing this. I don't think our problems were any worse than anyone else's. I was good to her and the kids. I have supported her all these years. Look what she does to me.**
- c) Do you want to mediate? If so, why? **YES. It is cheaper and we won't have to have our attorneys involved.**
- d) Could you tell me about how the decision to divorce and/or separate was reached? **It was her decision. She filed.**

SECTION 2:

- a) When you look back over time, how were decisions made in your marriage? **Like most couples, I guess. We fought every now and then.**
- b) What happens when you speak your mind and express your point of view to your wife? **Nothing**
- c) When you and your wife fight/or are angry with each other, what happens? **Nothing**
- d) Do you have any concerns about how the two of you will make decisions in mediation? **NO**
- e) Has your wife ever prevented you from having contact with family or friends, or with your children? **NO**
- f) Has your wife ever denied you access to food or money? **NO**
- g) Has your wife ever threatened to hurt or kill herself? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

- h) During mediation sessions, you and your wife may meet in the same room to talk about all the issue and problems that need to be resolved. Do you have any concerns about sitting in the same room with your wife or mediating with your wife? **NO**

SECTION 3:

- a) Has there ever been any physical confrontation between you and your wife? What happened? **NO**
- b) Do you feel afraid of your wife? What are you afraid of? **NO**.
- c) Do you ever become afraid for yourself or others based on the looks or actions of your wife? **NO**
- d) Has your wife ever pushed, shoved, hit, kicked, choked, or restrained you, or pulled your hair? What happened? **NO**
- e) Has your wife ever used or threatened to use a weapon to harm you? **NO**
- f) Has your wife ever threatened to kill or injure you? Has your wife ever threatened to kill or injure a family member, friend, or co-worker? **NO**
- g) Has your wife ever damaged or destroyed your property, or harmed or threatened to harm your pets? Your children's property or pets? **NO**
- h) Have you or any family members sought medical treatment as a result of an injury caused by your wife? **NO**
- i) Has your wife 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 several unwanted letters, e-mails, faxes or gifts? **NO**
- j) Have any of these events involved the children? **NO**
- k) Have you ever sought a Personal Protection Order (PPO) against your wife? **NO**
- l) Has either of you ever had a PPO issued against you? **NO**
- m) Has either of you ever been found in contempt of court for violating a PPO? **NO**
- n) Are you afraid that your wife will physically harm you during mediation or after you leave because of what you said in mediation? **NO**
- o) Are you in immediate danger? **NO**

SECTION 4:

- a) Have you or anyone else ever called the police because of problems in your home? **NO**.
Neighbor's heard us yelling once and called. The police came and left. It was a waste of their time.
- b) Have you or your wife ever been arrested or convicted of any crime? **NO**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

- c) Are there any guns or other weapons in the home? **NO**

SECTION 5:

- a) (If lawyer is not present) Have you told your lawyer about these things? It is important for your lawyer to know about these matters. **NO**

SECTION 6:

- a) How are the children doing? **Great**
- b) Do you have any concerns about the safety of the children? **NO**
- c) Has your wife ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them? **She wants to take the children away from me. That is why I'm fighting her for custody. This divorce was her idea.**
- d) Is there a pending abuse or neglect case involving your children? **NO**

SECTION 7:

- a) Do either of you have a problem with alcohol or drugs? **NO**
- b) Do either of you have a history of mental illness or emotional problems? **NO**
- c) Have either of you attempted or thought about attempting to hurt or kill yourself? **NO**

SECTION 8

- a) Is there anything else you think I should know about you, your wife or your family? **NO**

SECTION 9:

1. Discuss the process of mediation

2. Discuss the difference between mediation and the traditional legal process

3. Discuss the need for lawyer, if party does not have lawyer

4. Ask the following questions:

- a) Has the divorce been filed? **Unfortunately, yes.**
- b) What is the current status of the divorce? **It is simple, she wants it and I don't.**
- c) What are the upcoming court dates? **I think we have a settlement conference coming up next month. What is that?**

ROLE PLAY 1.2: CAROL AND DERRICK COOPER 2

(Information gathered from **DERRICK'S** screening interview)

d) Discuss fees.

SECTION 10:

- a) What would you like to see as an outcome of the mediation? **If she thinks she is going to get anything out of me, she is crazy.**

- b) What are the issues you think will be most difficult for you and the other party to resolve? **Everything will be difficult because she wants to take everything from me.**

Role Play 2: Declining Mediation

Role Play 2 – In groups of four, each group will role play Mediator with Carol and Mediator with Derrick.

Part I – Immediate Danger of Carol and Declining Mediation with Carol

The mediator has completed the initial screening with Derrick. Carol is now in the mediator's office. Based on information received from both of them, it is determined that physical danger is present to Carol, though there are no PPO's present.

The mediator needs to tell Carol that her case will not be mediated and then help Carol develop an immediate and short term safety plan. *(See the following Sections of Protocol – Decision Not to Mediate, Safe Termination of Mediation, and Safety Planning)*

The mediator then needs to address the issue of declining with Derrick.

Part II – Declining Mediation with Derrick.

The mediator needs to decide what to say to Derrick and how to contact him. Then the mediator will role-play talking with Derrick. *(See the Safe Termination of Mediation Section of the Protocol).*

Role Play 3: Specialized Process for Mediation

Role Play 3 – Specialized Process for Mediating when Domestic Violence/Control Exists

In groups of four, each group will role play Mediator with Carol and Mediator with Derrick.

The mediator has completed initial screenings with both Carol and Derrick at separate times. Based on information received from both of them, it is determined that there is abuse/control but no physical violence.

Derrick admitted that there were past incidents of abuse/control but minimizes them and takes no responsibility. The mediator determines that there is lack of ability to proceed based on the information given by both parties.

However, Carol, the abused/controlled party, wants mediation.

The mediator needs to ADDRESS WHAT STEPS NEED TO BE TAKEN FOR MEDIATION TO PROCEED, and then role play telling Carol and then Derrick what the Specialized Process needs to be if mediation is to commence. Make sure you have permission from Carol to discuss the abuse/control with Derrick before doing so.

(See the following sections of the Protocol –Decision Not to Mediate and Specialized Process for Mediating When Domestic Violence/ Control Exists).

Role Play 4: Terminating Mediation

DERRICK AND CAROL TERMINATION AFTER MEDIATION IS UNDERWAY ROLE PLAY 4

**In groups of four, each group will role play
Mediator with Carol and Mediator with Derrick.**

Mediation has been underway for approximately 1 hour. Carol and Derrick have been discussing what to do with the marital home. The Mediator notices that Carol is unable to make eye contact. Carol defers to Derrick on all decisions. She is reluctant to express her point of view. Derrick has established he was in charge of the money. The Mediator calls a caucus.

Large Group Discussion: Whom do you meet with first? Why?
(Review Sections 4 and 5 of the Protocol)

Role-play: (with Carol)

Carol: **I'm not comfortable, I don't want to go on. Can I just leave?**

Mediator: *(See Sections 2 and 3 of Protocol)* What are your concerns? *(Section 2(h) (I)*

Carol: **He is very controlling. It is hard for me to say what I think about anything.**

Mediator: If your attorney was present with you during the mediation sessions, would you still have these concerns? *(Section 2(h) (ii))*

Carol: **I do not know.**

Mediator: If you and Derrick were in separate rooms during the mediation sessions, would you still have these concerns? *(Section 2(h) (iii))*

Carol: **Yes.**

Mediator: Are you in immediate danger? *(Section 3(o))*

Carol: **I could be.**

Mediator: With Carol, *address Safety Planning and Safe Termination as per the Protocol. Mediator then meets with Derrick and uses the "Suggested Language: Termination after Mediation has commenced" from the Protocol.*

Role Play 4: Terminating Mediation

Post-processing questions or items for discussion:

What should the mediator say to Derrick about terminating mediation? (Mediators should practice telling Derrick.)

Who should the Mediator have leave the office first? Why?

What could you say to the other spouse to give the person leaving first time to leave?

What do you do if Carol still wants to continue?

If the attorneys in the case were not present at the mediation, the mediator needs to notify them that mediation will not continue. Should the mediator say why?

Send form MCL 280 to Court to notify them that mediation will not proceed. Does the mediator say why?

Abbreviated Protocol 2: ONLY FOR USE WHEN MEDIATING IN COURT AFTER PARTIES HAVE PROCEEDED THROUGH SECURITY, A CHECK FOR PPO's IS NEGATIVE, AND SPECIAL CIRCUMSTANCES PRECLUDE USING THE FULL PROTOCOL.

Female

1. Do you have any concerns about sitting in the same room with _____ or mediating with _____?

If yes, ask the following questions:

a. What are your concerns?

I'm afraid that he'll just get his own way..just like he always does.

b. If your attorney was present with you during the mediation sessions, would you still have these concerns? *Probably not.*

c. If you and _____ were in separate rooms during the mediation sessions, would you still have these concerns? *I don't think so.*

2. Have here ever been any physical confrontations or threats between you and _____? What happened?

Mainly he yells, calls me names and pushes me around. He's only hit me a few times and he is always sorry afterwards. When I first started seeing a counselor he tried to keep me form going. He'd block the door and hid the car keys.

3. Has there ever been an order that was meant to limit contact between the two of your, for example a PPO, a no-contact order as a condition of bail, or other order? _____ Please describe.

No, the police came one time but they didn't do anything.

4. Do you ever feel afraid of _____? What are you afraid of? Has _____ ever felt afraid of you? What is he/she afraid of?

Yeah, like I said, he gets a little scary when he is angry and doesn't get his way.

5. Are you afraid that _____ will harm you during the mediation or after you leave because of what you say in mediation? _____ Please describe.

After he threw the phone I started to think about that. I am the one who wants the divorce and I think it really threw him off balance. I don't know anymore what he might do. I don't think he would hurt me bad or anything.

6) Can you speak up for yourself in mediation?

I think so, but I really need your help to make sure he doesn't walk all over me.

Abbreviated Protocol 2: ONLY FOR USE WHEN MEDIATING IN COURT AFTER PARTIES HAVE PROCEEDED THROUGH SECURITY, A CHECK FOR PPO's IS NEGATIVE, AND SPECIAL CIRCUMSTANCES PRECLUDE USING THE FULL PROTOCOL.

Male

1. Do you have any concerns about sitting in the same room with _____ or mediating with _____? *NO.*

If yes, ask the following questions: (no need to proceed)

a. What are your concerns?

b. If your attorney was present with you during the mediation sessions, would you still have these concerns?

c. If you and _____ were in separate rooms during the mediation sessions, would you still have these concerns?

2. Have there ever been any physical confrontations or threats between you and _____? *NO* What happened?

3. Has there ever been an order that was meant to limit contact between the two of you, for example a PPO, a no-contact order as a condition of bail, or other order? _____ Please describe.

NO. Neighbors heard us yelling once and called. The police came and left. It was a waste of their time.

4. Do you ever feel afraid of _____? *NO.* What are you afraid of? *NO.* Has _____ ever felt afraid of you? *NO.* What is he/she afraid of?

5. Are you afraid that _____ will harm you during the mediation or after you leave because of what you say in mediation? *NO.* Please describe.

6) Can you speak up for yourself in mediation? *YES.*

PART III

Supplemental Materials

Rule 3.216 Domestic Relations Mediation

(A) Scope and Applicability of Rule, Definitions.

- (1) All domestic relations cases, as defined in MCL 552.502(h); MSA 25.176(2)(h), are subject to mediation under this rule, unless otherwise provided by statute or court rule.
- (2) Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. This procedure, known as evaluative mediation, is governed by subrule (I).
- (3) This rule does not restrict the Friend of the Court from enforcing custody, parenting time, and support orders.
- (4) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Mediation Plan. Each trial court that submits domestic relations cases to mediation under this rule shall include in its alternative dispute resolution plan adopted under MCR 2.410(B) provisions governing selection of domestic relations mediators, and for providing parties with information about mediation in the family division as soon as reasonably practical.

(C) Referral to Mediation.

- (1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may submit to mediation by written order any contested issue in a domestic relations case, including postjudgment matters.
- (2) The court may not submit contested issues to evaluative mediation unless all parties so request.
- (3) Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

(D) Objections to Referral to Mediation.

- (1) To object to mediation, a party must file a written motion to remove the case from mediation and a notice of hearing of the motion, and serve a copy on the attorneys of record within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the court orders otherwise.
- (2) A timely motion must be heard before the case is mediated.
- (3) Cases may be exempt from mediation on the basis of the following:
 - (a) child abuse or neglect;
 - (b) domestic abuse, unless attorneys for both parties will be present at the mediation session;
 - (c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
 - (d) reason to believe that one or both parties' health or safety would be endangered by mediation; or
 - (e) for other good cause shown.

(E) Selection of Mediator.

- (1) Domestic relations mediation will be conducted by a mediator selected as provided in this subrule.
- (2) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (G). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the court's scheduling of the case for trial.
- (3) If the parties have not stipulated to a mediator, the parties must indicate whether they prefer a mediator who is willing conduct evaluative mediation. Failure

to indicate a preference will be treated as not requesting evaluative mediation.

- (4) If the parties have not stipulated to a mediator, the judge may recommend, but not appoint one. If the judge does not make a recommendation, or if the recommendation is not accepted by the parties, the ADR clerk will assign a mediator from the list of qualified mediators maintained under subrule (F). The assignment shall be made on a rotational basis, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned.
- (5) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(F) List of Mediators.

- (1) Application. An eligible person desiring to serve as a domestic relations mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.
 - (a) The form shall include a certification that
 - (i) the applicant meets the requirements for service under the court's selection plan;
 - (ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and
 - (iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (K).
 - (b) The applicant shall indicate on the form whether the applicant is willing to offer evaluative mediation, and the applicant's hourly rate for providing mediation services.
 - (c) The form shall include an optional section identifying the applicant's gender and

racial/ethnic background; however, this section shall not be made available to the public.

(2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.

(a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

(b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

(c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.

(3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.

(4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing.

(G) Qualification of Mediators.

(1) To be eligible to serve as a domestic relations

mediator under this rule, a applicant must meet the following minimum qualifications:

- (a) The applicant must
 - (i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;
 - (ii) have a masters degree in counseling, social work, or marriage and family therapy;
 - (iii) have a graduate degree in a behavioral science; or
 - (iv) have 5 years experience in family counseling.
 - (b) The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.
 - (c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.
- (2) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (G)(1), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator.
- (3) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under subrule (F)(4).
- (4) Additional qualifications may not be imposed upon mediators.
- (H) Mediation Procedure.
- (1) The mediator must schedule a mediation session within a reasonable time at a location accessible by the

parties.

- (2) A mediator may require that no later than 3 business days before the mediation session, each party submit to the mediator, and serve on the opposing party, a mediation summary that provides the following information, where relevant:
 - (a) the facts and circumstances of the case;
 - (b) the issues in dispute;
 - (c) a description of the marital assets and their estimated value, where such information is appropriate and reasonably ascertainable;
 - (d) the income and expenses of the parties;
 - (e) a proposed settlement; and
 - (f) such documentary evidence as may be available to substantiate information contained in the summary.

Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the court.

- (3) The parties must attend the mediation session in person unless excused by the mediator.
- (4) Except for legal counsel, the parties may not bring other persons to the mediation session, whether expert or lay witnesses, unless permission is first obtained from the mediator, after notice to opposing counsel. If the mediator believes it would be helpful to the settlement of the case, the mediator may request information or assistance from third persons at the time of the mediation session.
- (5) The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties.
- (6) Within 7 days of the completion of mediation, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and

whether further ADR proceedings are contemplated. If an evaluation will be made under subrule (I), the mediator may delay reporting to the court until completion of the evaluation process.

- (7) If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.
- (8) Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to
 - (a) the report of the mediator under subrule (H) (6),
 - (b) information reasonably required by court personnel to administer and evaluate the mediation program,
 - (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
 - (d) information necessary for the court to consider issues raised under MCR 2.410(D) (3) or 3.216(H) (2).

(I) Evaluative Mediation.

- (1) This subrule applies if the parties requested evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.
- (2) If a settlement is not reached during mediation, the mediator, within a reasonable period after the conclusion of mediation shall prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court.
- (3) If both parties accept the mediator's recommendation in

full, the attorneys shall proceed to have a judgment entered in conformity with the recommendation.

- (4) If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, mediator shall report to the court under subrule (H)(6), and the case shall proceed toward trial.
- (5) A court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither the parties nor the mediator may inform the court of the identity of the party or parties who rejected the mediator's recommendation.
- (6) The mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties' consent to read the mediator's recommendation.

(J) Fees.

- (1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.
- (2) Before mediation, the parties shall agree in writing that each shall pay one-half of the mediator's fee no later than:
 - (a) 42 days after the mediation process is concluded or the service of the mediator's report and recommendation under subrule (I)(2), or
 - (b) the entry of judgment, or
 - (c) the dismissal of the action,

whichever occurs first. If the court finds that some other allocation of fees is appropriate, given the economic circumstances of the parties, the court may order that one of the parties pay more than one-half of the fee.

- (3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other

than that provided in subrule (J) (2).

- (4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate judgment under MCL 552.13(1); MSA 25.93(1) to enforce the payment of the fee.
 - (5) In the event either party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.
- (K) Standards of Conduct. The State Court Administrator shall develop and approve standards of conduct for domestic relations mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

E:\Domestic Violence\Training Manual\3.216.wpd



Approved, SCAO

| | | |
|--|--|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | DOMESTIC VIOLENCE SCREENING FOR REFERRAL TO MEDIATION | CASE NO. |
|--|--|-----------------|

Court address

Court telephone no.

| |
|---|
| Plaintiff name |
| Plaintiff attorney, bar no., address, and telephone no. |

v

| |
|---|
| Defendant name |
| Defendant attorney, bar no., address, and telephone no. |

**Note: If you have an attorney, this form should be completed with your attorney.
Please return this completed form to the ADR clerk at the above court address within 7 business days.**

Instructions: If there are any actions involving you or the other party, specify the names of the persons involved, the case number, the name of the court where the action was filed including the county and state. If there are no actions, write "NONE".

1. I am aware of the following personal protection actions involving myself and/or the other party:

2. I am aware of the following domestic violence criminal actions involving myself and/or the other party:

3. I am aware of the following pending child protective (abuse /neglect) actions involving myself and/or the other party:

Date

Signature

| | | |
|--|----------------------------------|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | STIPULATION FOR MEDIATION | CASE NO. |
|--|----------------------------------|-----------------|

Court address Court telephone no.

| | | |
|--|----------|--|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |

Probate In the matter of _____

1. The parties agree that this matter shall be submitted to

- mediation under MCR 2.411(B).
- mediation under MCR 3.216(A)(1).
- evaluative mediation under MCR 3.216(A)(2).

2. At the request of the parties, _____ has agreed to serve as mediator.
Name

Date

Plaintiff/Attorney signature

Date

Defendant/Attorney signature

USE NOTES:

- Item 2 must be checked in general civil matters if parties stipulate to mediation.
- If item 2 is not completed in a domestic relations matter and evaluative mediation is not requested, mediation will be nonevaluative and a mediator will be assigned from the court roster of domestic relations mediators.
- After this form is filed with the court, an order for mediation will be prepared for the judge's signature.

| | | |
|--|--|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | ORDER FOR MEDIATION <input type="checkbox"/> CIVIL <input type="checkbox"/> DOMESTIC RELATIONS | CASE NO. |
|--|--|-----------------|

Court address _____ Court telephone no. _____

| | | |
|--|---|--|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |
| <input type="checkbox"/> Probate In the matter of _____ | | |

IT IS ORDERED:

1. This case is ordered to mediation under MCR 2.411(A)(2) MCR 3.216
 - a. by agreement of the parties.
 - b. on motion of _____.
 - c. on the court's own motion.
2. The mediator will be:
 - a. _____
Name of mediator
 - b. selected by the agreement of the parties. The parties shall advise the ADR clerk of the mediator selected by the agreement of the parties by _____ Date. If the parties do not advise the ADR clerk of the mediator agreed upon by that date, the ADR clerk shall assign one as provided by the court's alternative dispute resolution plan.
3. Mediation must be completed within 30 60 90 _____ days of the date this order is entered. The mediator shall promptly confer with the parties to schedule mediation within the deadline.
4. The costs of mediation shall be divided by the parties on a pro-rata basis unless otherwise agreed to by the parties or ordered by the court or, for persons unable to pay for mediation, as provided by the court's alternative dispute resolution plan.
5. Unless otherwise ordered by the court:
 - a. persons with authority to settle the case, including the parties to the action, their agents, representatives of lien holders, and representatives of insurance carriers shall be: present at the mediation. available by telephone at the time of the conference. The parties must provide to the mediator, as soon as possible, the names of the above mentioned individuals.
 - b. the attorneys who intend to try the case shall attend the mediation.

Date

Judge

Bar no.

NOTICE: A party may move to set aside or modify an order for mediation within 14 days after entry of the order.

CERTIFICATE OF MAILING

I certify that on this date a copy of this order was mailed to the parties/attorneys by ordinary mail at the addresses stated above.

Date

Signature

Approved, SCAO

Original - Court
1st copy - Plaintiff

2nd copy - Defendant
3rd copy - Mediator

| | | |
|--|---|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | NOTICE REGARDING COURT SELECTED MEDIATOR | CASE NO. |
|--|---|-----------------|

Court address _____ Court telephone no. _____

| | | |
|---|---|---|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |

Probate In the matter of _____

TAKE NOTICE:

1. This case was ordered to mediation on _____
Date
2. The time has passed for the parties to select their own mediator.
3. The court has selected _____ as the mediator according to
Name of mediator
its alternative dispute resolution plan and has notified the mediator of his/her obligations under the court rules.

Date

Signature

| | | |
|--|---|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | MOTION TO MODIFY ORDER FOR MEDIATION | CASE NO. |
|--|---|-----------------|

Court address _____ Court telephone no. _____

| | | |
|---|---|---|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |
| <input type="checkbox"/> Probate In the matter of _____ | | |

MOTION

1. The court entered an order for mediation dated _____
Date
2. I request that the court modify the order as follows:

Date

Signature

CERTIFICATE OF MAILING

I certify that on this date a copy of this motion was mailed to the parties/attorneys by ordinary mail at the addresses stated above.

Date

Signature

| | | |
|--|---|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | MOTION TO REMOVE CASE FROM MEDIATION | CASE NO. |
|--|---|-----------------|

Court address _____ Court telephone no. _____

| | | |
|---|---|---|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |
| <input type="checkbox"/> Probate In the matter of _____ | | |

MOTION

1. I object to the order for mediation dated _____ and request a hearing on this objection to set aside the order because:

- a. the case involves child abuse or neglect.
- b. the case involves domestic abuse and attorneys for both parties will not be present at the mediation session.
- c. one or both of the parties are unable to negotiate for themselves and are unrepresented by attorneys.
- d. there is reason to believe that one or both of the parties' health or safety would be endangered by mediation.
- e. other: _____
specify _____

2. I was served with a copy of the order for a mediation on _____

_____ Date _____ Signature _____

NOTICE OF HEARING

1. A hearing has been scheduled on the above motion on _____ at _____
at _____ before Hon. _____

2. If you require special accommodations to use the court because of disabilities, or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

_____ Date _____ Signature _____

CERTIFICATE OF MAILING

I certify that on this date a copy of this motion and notice of hearing was mailed to the parties/attorneys by ordinary mail at the addresses stated above.

_____ Date _____ Signature _____

Approved, SCAO

Original - Court
1st copy - Plaintiff
2nd copy - Defendant

| | | |
|--|--|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | ORDER ON MOTION TO REMOVE CASE FROM MEDIATION | CASE NO. |
|--|--|-----------------|

Court address

Court telephone no.

| | | |
|---|---|---|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |
| <input type="checkbox"/> Probate In the matter of _____ | | |

1. On _____ objections to the order for mediation dated _____ were filed.
Date Date
2. A hearing on the objections was held on _____ .
Date

IT IS ORDERED:

3. The motion to remove the case from mediation is
 - granted and the order for mediation is set aside.
 - denied and the order for mediation is not set aside.

Date

Judge

CERTIFICATE OF MAILING

I certify that on this date a copy of this order was mailed to the parties/attorneys by ordinary mail at the addresses stated above.

Date

Signature

| | | |
|--|--------------------------------|--------------------------------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | MEDIATION STATUS REPORT | CASE NO. JUDGE: |
|--|--------------------------------|--------------------------------------|

Court address _____ Court telephone no. _____

| | | |
|--|----------|--|
| Plaintiff name(s), address(es), and telephone no(s). | v | Defendant name(s), address(es), and telephone no(s). |
| Plaintiff attorney, bar no., address, and telephone no. | | Defendant attorney, bar no., address, and telephone no. |

Probate In the matter of _____

The mediator must submit this report within 7 days of completing mediation or of determining mediation is inappropriate.

1. Mediation was completed on _____ Date _____ Mediation was determined inappropriate.

2. The participants were:

_____ on behalf of _____

3. This case was:

a. settled. Final documents will be filed with the court on or before _____ Date _____

b. not settled.

c. Further alternative dispute resolution proceedings are are not contemplated.

Date

Signature

Mediator name (type or print)

Approved, SCAO

| | | |
|---|--|-----------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE | AFFIDAVIT AND ORDER SUSPENSION OF FEES/COSTS | CASE NO. |
|---|--|-----------------|

Court address _____ Court telephone no. _____

| | | |
|--|---|--|
| Plaintiff/Petitioner name, address, and telephone no. | v | Defendant/Respondent name, address, and telephone no. |
| Plaintiff's/Petitioner's attorney, bar no., address, and telephone no. | | Defendant's/Respondent's attorney, bar no., address, and telephone no. |
| <input type="checkbox"/> Probate In the matter of _____ | | |

AFFIDAVIT

1. The attached pleading is to be filed with the court by or on behalf of _____, applicant, who is plaintiff/petitioner. defendant/respondent.
Name

2. The applicant is entitled to and asks the court for suspension of fees and costs in the action for the following reason:

- a. S/he is currently receiving public assistance: \$ _____ per _____ Case No.: _____.
- b. S/he is unable to pay those fees and costs because of indigency, based on the following facts:

INCOME: _____
Employer name and address

_____ per week. month. two weeks.
Length of employment Average gross pay Average net pay

ASSETS: State value of car, home, bank deposits, bonds, stocks, etc.

OBLIGATIONS: Itemize monthly rent, installment payments, mortgage payments, child support, etc.

REIMBURSEMENT:

3. (in domestic relations cases only) The applicant is entitled to an order requiring his/her spouse to pay attorney fees.

Affiant signature

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy clerk/Register/Notary public

(SEE REVERSE SIDE FOR ORDER)

CERTIFICATION OF ATTORNEY

1. I have reviewed the affidavit of indigency, and I certify that its contents are true to the best of my information, knowledge, and belief.
2. I will bring to the court's attention the matter of suspended costs and fees and the availability of funds to pay them before any disposition is entered. I will report at that time any changes in the information contained in the affidavit of indigency or any other information regarding the affiant's financial status or alterations of the fee arrangement.

Date

Attorney signature

Attorney name (type or print) Bar no.

CERTIFICATION BY PERSON OTHER THAN PARTY

1. I have personal knowledge of the facts appearing in the affidavit.
2. The person in whose behalf the petition is filed is unable to sign it because of

minority: _____ other disability: _____
Date of birth Nature of disability

Relationship: _____

Date

Affiant signature

Affiant name (type or print)

Address

City, state, zip Telephone no.

ORDER

IT IS ORDERED:

1. Fees and costs in this action required by law or court rule are waived/suspended until further order of the court. Before any final disposition or discontinuance is entered, the moving party shall bring the fee and costs suspension to the attention of the judge for final disposition.
2. Requests for waiver/suspension of transcript costs must be made separately by motion.
3. The applicant's spouse shall pay the fees and costs required by law or court rule.
4. This application is denied.

Date

Judge Bar no.

Act No. 419
Public Acts of 2000
Approved by the Governor
January 8, 2001
Filed with the Secretary of State
January 8, 2001
EFFECTIVE DATE: March 28, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Reps. Switalski, Wojno, Rivet, Lemmons, Jamnick, Hansen, Woodward, Vear, Bovin,
Basham and O'Neil

ENROLLED HOUSE BILL No. 4552

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9948) by adding chapter 50B.

The People of the State of Michigan enact:

CHAPTER 50B.

DOMESTIC RELATIONS ARBITRATION

Sec. 5070. (1) This chapter provides for and governs arbitration in domestic relations matters. Arbitration proceedings under this chapter are also governed by court rule except to the extent those provisions are modified by the arbitration agreement or this chapter. This chapter controls if there is a conflict between this chapter and chapter 50.

(2) This chapter does not apply to arbitration in a domestic relations matter if, before the effective date of the amendatory act that added this chapter, the court has entered an order for arbitration and all the parties have executed the arbitration agreement.

Sec. 5071. Parties to an action for divorce, annulment, separate maintenance, or child support, custody, or parenting time, or to a postjudgment proceeding related to such an action, may stipulate to binding arbitration by a signed agreement that specifically provides for an award with respect to 1 or more of the following issues:

(272)

- (a) Real and personal property.
- (b) Child custody.
- (c) Child support, subject to the restrictions and requirements in other law and court rule as provided in this act.
- (d) Parenting time.
- (e) Spousal support.
- (f) Costs, expenses, and attorney fees.
- (g) Enforceability of prenuptial and postnuptial agreements.
- (h) Allocation of the parties' responsibility for debt as between the parties.
- (i) Other contested domestic relations matters.

Sec. 5072. (1) The court shall not order a party to participate in arbitration unless each party to the domestic relations matter acknowledges, in writing or on the record, that he or she has been informed in plain language of all of the following:

- (a) Arbitration is voluntary.
- (b) Arbitration is binding and the right of appeal is limited.
- (c) Arbitration is not recommended for cases involving domestic violence.
- (d) Arbitration may not be appropriate in all cases.
- (e) The arbitrator's powers and duties are delineated in a written arbitration agreement that all parties must sign before arbitration commences.
- (f) During arbitration, the arbitrator has the power to decide each issue assigned to arbitration under the arbitration agreement. The court will, however, enforce the arbitrator's decisions on those issues.
- (g) The party may consult with an attorney before entering into the arbitration process or may choose to be represented by an attorney throughout the entire process.
- (h) If the party cannot afford an attorney, the party may wish to seek free legal services, which may or may not be available.
- (i) A party to arbitration will be responsible, either solely or jointly with other parties, to pay for the cost of the arbitration, including fees for the arbitrator's services. In comparison, a party does not pay for the court to hear and decide an issue, except for payment of filing and other court fees prescribed by statute or court rule for which the party is responsible regardless of the use of arbitration.

(2) If either party is subject to a personal protection order involving domestic violence or if, in the pending domestic relations matter, there are allegations of domestic violence or child abuse, the court shall not refer the case to arbitration unless each party to the domestic relations matter waives this exclusion. A party cannot waive this exclusion from arbitration unless the party is represented by an attorney throughout the action, including the arbitration process, and the party is informed on the record concerning all of the following:

- (a) The arbitration process.
- (b) The suspension of the formal rules of evidence.
- (c) The binding nature of arbitration.

(3) If, after receiving the information required under subsection (2), a party decides to waive the domestic violence exclusion from arbitration, the court and the party's attorney shall ensure that the party's waiver is informed and voluntary. If the court finds a party's waiver is informed and voluntary, the court shall place those findings and the waiver on the record.

(4) A child abuse or neglect matter is specifically excluded from arbitration under this act.

Sec. 5073. (1) Arbitration under this chapter may be heard by a single arbitrator or by a panel of 3 arbitrators. The court shall appoint an arbitrator agreed to by the parties if the arbitrator is qualified under subsection (2) and consents to the appointment. An arbitrator appointed under this chapter is immune from liability in regard to the arbitration proceeding to the same extent as the circuit judge who has jurisdiction of the action that is submitted to arbitration.

(2) The court shall not appoint an arbitrator under this chapter unless the individual meets all of the following qualifications:

- (a) Is an attorney in good standing with the state bar of Michigan.

(b) Has practiced as an attorney for not less than 5 years before the appointment and has demonstrated an expertise in the area of domestic relations law.

(c) Has received training in the dynamics of domestic violence and in handling domestic relations matters that have a history of domestic violence.

(3) The office of the friend of the court, an alternative dispute resolution clerk, or another individual designated by the chief judge may make available a list of arbitrators who meet the qualifications of this section. The list shall include a summary of each arbitrator's qualifications and experience.

Sec. 5074. (1) An arbitrator appointed under this chapter shall hear and make an award on each issue submitted for arbitration under the arbitration agreement subject to the provisions of the agreement.

(2) An arbitrator appointed under this chapter has all of the following powers and duties:

(a) To administer an oath or issue a subpoena as provided by court rule.

(b) To issue an order regarding discovery proceedings relative to the issues being arbitrated.

(c) Subject to provisions of the arbitration agreement, to issue an order allocating arbitration fees and expenses between the parties or to 1 party, including imposing a fee or expense on a party or attorney as a sanction.

(d) To issue an order requiring a party to produce specified information that the arbitrator considers relevant to, and helpful in resolving, an issue subject to the arbitration.

(3) If the arbitrator considers it relevant to an issue being arbitrated, the arbitrator may order the filing of sworn statements that identify each party's place of employment and other sources of income and that list the assets and liabilities of each party. The arbitrator shall not release the sworn statements required under this section until after all parties have filed those sworn statements. The arbitrator shall attempt to release the sworn statements to the opposite parties at approximately the same time.

(4) A sworn statement ordered under subsection (3) shall list at least all of the following assets:

(a) Real property.

(b) Checking and savings account balances, regardless of the form in which the money is held.

(c) Stocks and bonds.

(d) Income tax refunds due the parties.

(e) Life insurance, including cash value and amount payable at death.

(f) Loans held as a creditor or money owed to the parties in whatever form.

(g) Retirement funds and pension benefits.

(h) Professional licenses.

(i) Motor vehicles, boats, mobile homes, or any other type of vehicle including untitled vehicles.

(j) Extraordinary tools of a trade.

(k) Cemetery lots.

(l) Ownership interests in businesses.

(m) Limited partnerships.

(n) Other assets in whatever form.

(5) A sworn statement ordered under subsection (3) shall list at least all of the following liabilities:

(a) Secured and unsecured credits.

(b) Taxes.

(c) Rents and security deposits.

(d) All other liabilities in whatever form.

Sec. 5075. (1) An arbitrator, attorney, or party in an arbitration proceeding under this chapter shall disclose any circumstance that may affect an arbitrator's impartiality, including, but not limited to, bias, a financial or personal interest in the outcome of the arbitration, or a past or present business or professional relationship with a party or attorney. Upon disclosure of such a circumstance, a party may request disqualification of the arbitrator and shall make that request as soon as practicable after the disclosure. If the arbitrator does not withdraw within 14 days after a request for disqualification, the party may file a motion for disqualification with the circuit court.

(2) The circuit court shall hear a motion under subsection (1) within 21 days after the motion is filed. If the court finds that the arbitrator is disqualified, the court may appoint another arbitrator agreed to by the parties or may void the arbitration agreement and proceed as if arbitration had not been ordered.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4615 of the 90th Legislature is enacted into law.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.

Act No. 420
Public Acts of 2000
Approved by the Governor
January 8, 2001
Filed with the Secretary of State
January 8, 2001
EFFECTIVE DATE: March 28, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Shulman

ENROLLED HOUSE BILL No. 4615

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts." (MCL 600.101 to 600.9948) by adding chapter 50B.

The People of the State of Michigan enact:

CHAPTER 50B.

DOMESTIC RELATIONS ARBITRATION

Sec. 5076. (1) As soon as practicable after the appointment of the arbitrator, the parties and attorneys shall meet with the arbitrator to consider all of the following:

- (a) Scope of the issues submitted.
- (b) Date, time, and place of the hearing.
- (c) Witnesses, including experts, who may testify.
- (d) Schedule for exchange of expert reports or summary of expert testimony.
- (e) Subject to subsection (2), exhibits, documents, or other information each party considers applicable and material to the case and a schedule for production or exchange of the information. If a party knew or reasonably should have known about the existence of information the party is required to produce, that party waives objection to producing that information if the party does not object before the hearing.
- (f) Disclosure required under section 5075.

(2) The arbitrator shall order each party to produce information that is applicable and material to an issue under arbitration, including, but not limited to, any of the following:

- (a) A current, complete, and accurate sworn financial disclosure statement.
- (b) Financial disclosure statements for the past 3 years.
- (c) State and federal income tax returns for the previous 3 years or other time period as ordered by the arbitrator.

(274)

(d) If a court has issued an order concerning an issue subject to arbitration, a copy of the order, state and federal income tax returns for the year the order was issued, and a financial statement for the time at which the order was issued, which statement includes at least gross and net income and assets and liabilities.

(e) Proposed award for each issue subject to arbitration.

Sec. 5077. (1) Except as provided by this section, court rule, or the arbitration agreement, a record shall not be made of an arbitration hearing under this chapter. If a record is not required, an arbitrator may make a record to be used only by the arbitrator to aid in reaching the decision. The parties may provide in the arbitration agreement that a record be made of those portions of a hearing related to 1 or more issues subject to arbitration.

(2) A record shall be made of that portion of a hearing that concerns child support, custody, or parenting time in the same manner required by the Michigan court rules for the record of a witness's testimony in a deposition.

Sec. 5078. (1) Unless otherwise agreed by the parties and arbitrator in writing or on the record, the arbitrator shall issue the written award on each issue within 60 days after either the end of the hearing or, if requested by the arbitrator, after receipt of proposed findings of fact and conclusions of law.

(2) Subject to the other restrictions in this subsection, if the parties reach an agreement regarding child support, custody, or parenting time, the agreement shall be placed on the record by the parties under oath and shall be included in the arbitrator's written award. An arbitrator shall not include in the award a child support amount that deviates from the child support formula developed by the state friend of the court bureau unless the arbitrator complies with the same requirements for such a deviation prescribed for the court under the law that applies to the domestic relations dispute that is being arbitrated.

(3) An arbitrator under this chapter retains jurisdiction to correct errors or omissions in an award until the court confirms the award. Within 14 days after the award is issued, a party to the arbitration may file a motion to correct errors or omissions. The other party to the arbitration may respond to such a motion within 14 days after the motion is filed. The arbitrator shall issue a decision on the motion within 14 days after receipt of a response to the motion or, if a response is not filed, within 14 days after expiration of the response period.

Sec. 5079. (1) The circuit court shall enforce an arbitrator's award or other order issued under this chapter in the same manner as an order issued by the circuit court. A party may make a motion to the circuit court to enforce an arbitrator's award or order.

(2) The plaintiff in an action that was submitted to arbitration under this chapter shall file with the circuit court a judgment, order, or motion to settle the judgment within 21 days after the arbitrator's award is issued unless otherwise agreed to by the parties in writing or unless the arbitrator or court grants an extension. If the plaintiff fails to comply with this subsection, another party to the action may file a judgment, order, or motion to settle the judgment and may request sanctions.

Sec. 5080. (1) Subject to subsection (2), the circuit court shall not vacate or modify an award concerning child support, custody, or parenting time unless the court finds that the award is adverse to the best interests of the child who is the subject of the award or under the provisions of section 5081.

(2) A review or modification of a child support amount, child custody, or parenting time shall be conducted and is subject to the standards and procedures provided in other statutes, in other applicable law, and by court rule that are applicable to child support amounts, child custody, or parenting time.

(3) Other standards and procedures regarding review of arbitration awards described in this section are governed by court rule.

Sec. 5081. (1) If a party applies to the circuit court for vacation or modification of an arbitrator's award issued under this chapter, the court shall review the award as provided in this section or section 5080.

(2) If a party applies under this section, the court shall vacate an award under any of the following circumstances:

(a) The award was procured by corruption, fraud, or other undue means.

(b) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights.

(c) The arbitrator exceeded his or her powers.

(d) The arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

(3) The fact that the relief granted in an arbitration award could not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(4) An application to vacate an award on grounds stated in subsection (2)(a) shall be made within 21 days after the grounds are known or should have been known.

(5) If the court vacates an award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement or, if there is no such provision, by the court. If the award is vacated on the grounds stated in subsection (2)(a) or (c), the court may order a rehearing before the arbitrator who made the award.

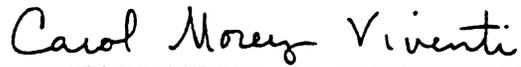
(6) Other standards and procedures relating to review of arbitration awards described in subsection (1) are governed by court rule.

Sec. 5082. An appeal from an arbitration award under this chapter that the circuit court confirms, vacates, modifies, or corrects shall be taken in the same manner as from an order or judgment in other civil actions.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4552 of the 90th Legislature is enacted into law.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.

Child Protection Act (Excerpt)

MCL 722.623

(1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, a person employed in a professional capacity in any office of the friend of the court, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school is adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department in the same manner as required under subdivision (a):

(i) Eligibility specialist.

(ii) Family independence manager.

(iii) Family independence specialist.

(iv) Social services specialist.

(v) Social work specialist.

(vi) Social work specialist manager.

(vii) Welfare services specialist.

(c) Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order. A person required to report under this subdivision shall report in the same manner as required under subdivision (a).

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county department of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c, sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, or section 7401c of the public health code, 1978 PA 368, MCL 333.7401c, involving methamphetamine has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall, within 24 hours of completion, transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.

(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect or discovers evidence of or receives a report of an individual allowing a child to be exposed to or to have contact with methamphetamine production, and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect or allowing a child to be exposed to or to have contact with methamphetamine production, was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county department of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect or allowed a child to be exposed to or to have contact with methamphetamine production, is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.

(9) In conducting an investigation of child abuse or child neglect, if the department suspects that a child has been exposed to or has had contact with methamphetamine production, the department shall immediately contact the law enforcement agency in the county in which the incident occurred.

October 15, 2008

CONFIDENTIALITY AND MEDIATION

- **The mediation process is confidential**
 - MCR 3.216 (H)(8)
 - Michigan Supreme Court, State Court Administrative Office: Standards for Mediators:
 - MI Mediation Model Protocol
 - AFCC Model Standards Standard VII
ABA/AAA Model Guidelines

Michigan Court Rule 3.216 (H)(8) SCAO Standards of Conduct for Mediators

- Statements made during mediation, including written submissions, may not be used in any other proceeding, including trial.
- Any communications between the parties and the mediator, or counsel and the mediator, relating to mediation are confidential and shall not be disclosed without written consent of all parties. MCR 3.216(H)(8)(a-d) outline exceptions to this general rule allowing for disclosure of general information for administrative purposes.

Dangers Created by a Breach of Confidentiality

- Physical danger to the victim.
- Disclosure can jeopardize a victim's efforts to escape the abuse.

Disclosure can sabotage the victim's plan to end the relationship.

Exceptions to Confidentiality

- **If party agrees to disclosure.** (MCR 3.216(H)(8), SCAO Model Protocol).
- **If the mediator has a statutory responsibility to disclose child abuse/neglect.** (SCAO Model Protocol, MCL 722.623)
 - If mediator has a statutory responsibility to report child abuse/neglect the mediator must inform the parties of that duty before mediation begins.
- **Mediator may have a duty to warn if a party discloses threats of future violence.**

General administrative information required by the court such as attendance, number of sessions, and general information for program evaluation. (MCR 3.216(H)(8)(a-d), SCAO Model Protocol).

Disclosure of Past Incidents Domestic Violence is Confidential

- The existence of domestic violence **SHOULD NOT BE** communicated to the court when a determination is made that the case is not appropriate for mediation. Mediator should only ~~communicate that the case is not appropriate for mediation by~~ completing form MC 280. (SCAO Model Protocol: Safe Termination of Mediation)
- An abuse survivor's disclosure of violence **SHOULD NEVER** be disclosed to the abuser or the abuser's attorney without permission of abuse survivor. (SCAO Model Protocol: Safe Termination of Mediation)

- There is no law permitting the mediator to violate confidentiality by reporting past incidents of domestic violence to any authority or agency.

Disclosure of **past** incidents of domestic violence against the victim does not create a duty to warn.

Credible and Specific Threats of Future Violence: Mediator May Have a Duty to Warn

- A **Mental Health Professional** who is **treating a patient** has a duty to warn an identifiable third person against whom a credible threat of violence has been made. *MCL 300.1946(2)*.
 - *Is mediator providing treatment?*
- A person has a duty to warn a potential victim of a specific threat of harm if they have a special relationship with the potential assailant that creates a responsibility to control the behavior of the assailant. *Restatement Second Torts*.

Is mediator in a relationship the creates responsibility to control assailant?

A lawyer may reveal...the intention of a client to commit a crime and the information necessary to prevent that crime. (Michigan Rules of Professional Conduct, April 1999)

— Mediator can obtain a waiver from parties to disclose threats of **future** violence. This a is recommended practice.

- Such a waiver should be in writing and be specific regarding who will be warned (usually the potential victim and/or law enforcement).

- A standard waiver to report such threats should be obtained at initiation of mediation.

It is highly unlikely that a party would provide a waiver after making such a threat.

Child Abuse and Neglect : Some Mediators may be Mandatory Reporters

The following professionals are mandatory reporters of child abuse and neglect under Michigan law.

- psychologist,
- marriage and family therapist,
- licensed professional counselor,
- certified social worker,
- social worker,
- social work technician,
- school administrator, school counselor or teacher,
- law enforcement officer, or
- regulated child care provider
- A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist.

[P]ersons [mandatory reporters] ...who have **reasonable cause to suspect** child abuse or neglect shall make immediately...a report... of the suspected child abuse or neglect to the department.

Children's witnessing of domestic violence is not considered reasonable cause to suspect child abuse or neglect. CPS will not substantiate a report of child abuse and neglect based on the

witnessing of domestic violence alone. *CPS Best Practice Guidelines (January 1998)*.

- A CPS reports made on the sole basis of children witnessing domestic violence has the potential to expose the non-abusing parent/victim with failure to protect and/or neglect.

— This could result in harm to the victim and children. Such a report has a chilling effect on victims future ability or willingness to disclose abuse and seek help for self and children.

Making a Report

- Should be only suspected/actual direct harm to the child.
- Tell non-abusive parent/victim that a report will be made and involve non-abusive parent in reporting.
- Clearly identify the perpetrator as the abuser.
Identify protective actions (if known) taken by the victim.

**Model Standards
of Practice**

Model Standards of Practice for Family and Divorce Mediation

**Developed by
The Symposium on Standards of Practice**

August 2000

Model Standards of Practice for Family and Divorce Mediation

Overview and Definitions

Family and divorce mediation ("family mediation" or "mediation") is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements.

Family mediation is not a substitute for the need for family members to obtain independent legal advice or counseling or therapy. Nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:

- increase the self-determination of participants and their ability to communicate,
- promote the best interests of children; and
- reduce the economic and emotional costs associated with the resolution of family disputes.

Effective mediation requires that the family mediator be qualified by training, experience and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on

sufficient factual data; that the mediator be aware of the impact of culture and diversity; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.

These Model Standards of Practice for Family and Divorce Mediation ("Model Standards") aim to perform three major functions:

1. to serve as a guide for the conduct of family mediators;
2. to inform the mediating participants of what they can expect; and
3. to promote public confidence in mediation as a process for resolving family disputes.

The Model Standards are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability. The Model Standards include different levels of guidance:

- use of the term "may" in a Standard is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but which can be deviated from in the exercise of good professional judgment.
- Most of the Standards employ the term "should" which indicates that the practice described in the Standard is highly desirable and should be departed from only with very strong reason.
- The rarer use of the term "shall" in a Standard is a higher level of guidance to the family mediator, indicating that the mediator should not have discretion to depart from the practice described.

Standard I

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

Standard II

A family mediator shall be qualified by education and training to undertake the mediation.

Standard III

A family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.

Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

Standard V

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

Standard VI

A family mediator shall structure the mediation process so that the participants make decisions based on sufficient information and knowledge.

Standard VII

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

Standard VIII

A family mediator shall assist participants in determining how to promote the best interests of children.

Standard IX

A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

Standard X

A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.

Standard XI

A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reasons.

Standard XII

A family mediator shall be truthful in the advertisement and solicitation for mediation.

Standard XIII

A family mediator shall acquire and maintain professional competence in mediation.

Standard I

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

- A. Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.
- B. The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.
- C. A family mediator should inform the participants that they may seek information and advice from a variety of sources during the mediation process.
- D. A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.
- E. The family mediator's commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

Standard II

A family mediator shall be qualified by education and training to undertake the mediation.

- A. To perform the family mediator's role, a mediator should:
 - 1. have knowledge of family law;
 - 2. have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect;
 - 3. have education and training specific to the process of mediation-,
 - 4. be able to recognize the impact of culture and diversity.

- B. Family mediators should provide information to the participants about the mediator's relevant training, education and expertise.

Standard III

A family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.

- A. Before family mediation begins a mediator should provide the participants with an overview of the process and its purposes, including:
1. informing the participants that reaching an agreement in family mediation is consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;
 2. distinguishing family mediation from other processes designed to address family issues and disputes,
 3. informing the participants that any agreements reached will be reviewed by the court when court approval is required;
 4. informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists or other professionals during the mediation process;
 5. advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;
 6. discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet alone with any of the participants, or with any third party and the conditions of confidentiality concerning these separate sessions;
 7. informing the participants that the presence or absence of other persons at a mediation, including attorneys, counselors or

advocates, depends on the agreement of the participants and the mediator, unless a statute or regulation otherwise requires or the mediator believes that the presence of another person is required or may be beneficial because of a history or threat of violence or other serious coercive activity by a participant.

8. describing the obligations of the mediator to maintain the confidentiality of the mediation process and its results as well as any exceptions to confidentiality;
 9. advising the participants of the circumstances under which the mediator may suspend or terminate the mediation process and that a participant has a right to suspend or terminate mediation at any time.
- B. The participants should sign a written agreement to mediate their dispute and the terms and conditions thereof within a reasonable time after first consulting the family mediator.
- C. The family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator should not agree to conduct the mediation if the mediator reasonably believes one or more of the participants is unable or unwilling to participate.
- D. Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of the participants concerning the timing of the process.

Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

- A. Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.

- B. Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute, that compromises or appears to compromise the mediator's impartiality.
- C. A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.
- D. A family mediator should identify and disclose potential grounds of bias or conflict of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior to the start of a mediation and in time to allow the participants to select an alternate mediator.
- E. A family mediator should resolve all doubts in favor of disclosure. All disclosures should be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.
- F. A family mediator should guard against bias or partiality based on the participants' personal characteristics, background or performance at the mediation.
- G. A family mediator should avoid conflicts of interest in recommending the services of other professionals.
- H. A family mediator shall not use information about participants obtained in a mediation for personal gain or advantage.
- I. A family mediator should withdraw pursuant to Standard IX if the mediator believes the mediator's impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.

Standard V

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

- A. The participants should be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.

- B. The participants' written agreement to mediate their dispute should include a description of their fee arrangement with the mediator.
- C. A mediator should not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the settlement.
- D. A mediator should not accept a fee for referral of a matter to another mediator or to any other person.
- E. Upon termination of mediation a mediator should return any unearned fee to the participants.

Standard VI

A family mediator shall structure the mediation process so that the participants make decisions based on sufficient information and knowledge.

- A. The mediator should facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate experts.
- B. Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.
- C. The mediator should recommend that the participants obtain independent legal representation before concluding an agreement.
- D. If the participants so desire, the mediator should allow attorneys, counsel or advocates for the participants to be present at the mediation sessions.
- E. With the agreement of the participants, the mediator may document the participants' resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

Standard VII

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

- A. The mediator should discuss the participants' expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.
- B. Prior to undertaking the mediation the mediator should inform the participants of the limitations of confidentiality such as statutory, judicially or ethically mandated reporting.
- C. The mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon as permitted by law.
- D. If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions.
- E. If subpoenaed or otherwise noticed to testify or to produce documents the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

Standard VIII

A family mediator shall assist participants in determining how to promote the best interests of children,

- A. The mediator should encourage the participants to explore the range of options available for separation or post divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:

1. information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;
 2. problems that continuing conflict creates for children's development and what steps might be taken to ameliorate the effects of conflict on the children;
 3. development of a parenting plan that covers the children's physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;
 4. the possible need to revise parenting plans as the developmental needs of the children evolve over time; and
 5. encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan.
- B. The mediator should be sensitive to the impact of culture and religion on parenting philosophy and other decisions.
- C. The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.
- D. Except in extraordinary circumstances, the children should not participate in the mediation process without the consent of both parents and the children's court-appointed representative.
- E. Prior to including the children in the mediation process, the mediator should consult with the parents and the children's court-appointed representative about whether the children should participate in the mediation process and the form of that participation.
- F. The mediator should inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental health professional, or the mediator reporting to

the parents, or a videotape statement) and discuss the costs and benefits of each with the participants.

Standard IX

A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

- A. As used in these Standards, child abuse or neglect is defined by applicable state law.
- B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve child abuse or neglect without appropriate and adequate training.
- C. If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with applicable child protection laws.
 - 1. The mediator should encourage the participants to explore appropriate services for the family.
 - 2. The mediator should consider the appropriateness of suspending or terminating the mediation process in light of the allegations.

Standard X

A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.

- A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.
- B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training.
- C. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to

mediate. The mediator should continue to assess for domestic abuse throughout the mediation process.

- D. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:
1. establishing appropriate security arrangements;
 2. holding separate sessions with the participants even without the agreement of all participants;
 3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
 4. encouraging the participants to be represented by an attorney, counsel or an advocate throughout the mediation process;
 5. referring the participants to appropriate community resources;
 6. suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.
- E. The mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children.

Standard XI

A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reasons.

- A. Circumstances under which a mediator should consider suspending or terminating the mediation, may include, among others:
1. the safety of a participant or well-being of a child is threatened,
 2. a participant has or is threatening to abduct a child;
 3. a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;

4. the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;
 5. a participant is using the mediation to further illegal conduct;
 6. a participant is using the mediation process to gain an unfair advantage;
 7. if the mediator believes the mediator's impartiality has been compromised in accordance with Standard IV.
- B. If the mediator does suspend or terminate the mediation, the mediator should take all reasonable steps to minimize prejudice or inconvenience to the participants which may result.

Standard XII

A family mediator shall be truthful in the advertisement and solicitation for mediation.

- A. Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.
- B. Mediators should accurately represent their qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

Standard XIII

A family mediator shall acquire and maintain professional competence in mediation.

- A. Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education programs and should regularly engage in self-assessment.
- B. Mediators should participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.

- C. Mediators should continuously strive to understand the impact of culture and diversity on the mediator's practice.

Appendix:
Special Policy Considerations for
State Regulation of Family Mediators and Court Affiliated
Programs

The Model Standards recognize the National Standards for Court Connected Dispute Resolution Programs (1992). There are also state and local regulations governing such programs and family mediators. The following principles of organization and practice, however, are especially important for regulation of mediators and court-connected family mediation programs. They are worthy of separate mention.

- A. Individual states or local courts should set standards and qualifications for family mediators including procedures for evaluations and handling grievances against mediators. In developing these standards and qualifications, regulators should consult with appropriate professional groups, including professional associations of family mediators.
- B. When family mediators are appointed by a court or other institution, the appointing agency should make reasonable efforts to insure that each mediator is qualified for the appointment. If a list of family mediators qualified for court appointment exists, the requirements for being included on the list should be made public and available to all interested persons.
- C. Confidentiality should not be construed to limit or prohibit the effective monitoring, research, evaluation or monitoring of mediation programs by responsible individuals or academic institutions provided that no identifying information about any person involved in the mediation is disclosed without their prior written consent. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the participants, to individual case files, observations of live mediations, and interviews with participants.

Michigan Supreme Court
State Court Administrative Office

Standards of Conduct for Mediators

(1) **Introduction.** These standards of conduct apply to all persons who act as a mediator pursuant to the dispute resolution programs of the court. They are designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs and shall be available to the public.

(2) **Self-Determination.** A mediator shall recognize that mediation is based upon the principle of self-determination by the parties. This principle requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement.

(3) **Impartiality.** A mediator shall conduct the mediation in an impartial manner. The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which it is possible to remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

(4) **Conflict of Interest**

(a) A conflict of interest is a dealing or relationship that might create an impression of possible bias or could reasonably be seen as raising a question about impartiality. A mediator shall promptly disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation unless the conflict of interest casts serious doubts on the integrity of the process, in which case the mediator shall decline to proceed.

(b) The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation. A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances that would raise legitimate questions about the integrity of the mediation process. A mediator shall not establish a personal or intimate relationship with any of the parties that would raise legitimate questions about the integrity of the mediation process.

(5) **Confidentiality.** Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between

the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to:

- (a) the report of the mediator under subrule MCR 2.411(C)(3) or 3.216(H)(6),
- (b) information reasonably required by court personnel to administer and evaluate the mediation program,
- (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
- (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or 3.216(H)(2).

(6) Competence. A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties. Mediators assigned by the court are required to have the training and experience specified by court rule.

(7) Quality of the Process. A mediator shall conduct the mediation fairly and diligently. A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

(8) Advertising and Solicitation. A mediator shall be truthful in advertising and solicitation for mediation. Advertising or any other communication with the public concerning services offered or regarding the education training and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

(9) Fees. A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties. The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator or to object to mediation. Any fees charged by a mediator shall be reasonable, considering, among other things, the mediation services, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary to the community.

(10) Obligations to the Mediation Process. Mediators have a duty to improve the practice of mediation by helping educate the public about mediation, making mediation accessible to those who would like to use it, correcting abuses, and improving their professional skills and abilities.

[Effective January 4, 2001]

2001 Staff Comment

These Standards of Conduct were proposed by the Michigan Supreme Court Dispute Resolution Task Force in its January, 2000 Recommendations to the Michigan Supreme Court. The Standards derive principally from the Model Standards of Conduct for Mediators developed by delegates of the American Bar Association, Society of Professionals in Dispute Resolution, and American Arbitration Association.

Appropriate for Mediation

- Parties do not use fear, force, threats, violence or intimidation to get what they want.
- Parties who are able to:
 - Speak up for themselves and their preferred outcomes
 - Safely express needs and concerns
 - Able to listen to and respect each other
 - Decide freely and without coercion
 - Capable of understanding the mediation process
 - Recognize that the other party has rights and needs separate from their own

Inappropriate for Mediation

- Either party uses or has used fear, force, threats, violence or intimidation to get what they want.
- Either party cannot safely express needs and concerns
- Either party cannot speak up for themselves
- Either party is unable to listen to or respect each other
- Either party cannot decide freely and without coercion
- Either party is not capable of understanding the mediation process
- Either party is unable to recognize that the other party has rights and needs separate from their own
- There is active physical danger to one party

Observing Dynamics of Power in Mediation

The following are things a mediator can look for in ongoing screening to detect domestic violence and power imbalance. It is important to understand that both these and the opposite dynamics are possible as indicators of power imbalance.

Threatening looks or actions
One party speaking for the other, or attempting to
One party dominating the session
One party giving in excessively
One person objects to separate screening interviews
One person appears in control: confident, competent, smiling
 charming; but the other appears not in control: incompetent,
 unsure, anxious, nervous, indirect, inappropriate affect
Permission words or gestures by victim
Secret signals or code words or phrases on part of perpetrator
Threat by innuendo
Referring to a past incident of power and control
Stating what is the “expected” outcome
Distortion of the other person’s reactions in mediation
Intimidation
Invoking domination, power or control sanctioned by tradition,
 culture or religions
One person suddenly gets quiet
Retaliation for stating own point of view, such as:
 Violence
 Stalking
 Intimidation
 Threats
Negotiations and agreements outside mediation that seem one-
 sided
A person changes their demeanor from the first to the second
 session.

PPO's and No Contact Orders

- Parties who are subject to a PPO...may not be referred to mediation without a hearing (MCR 3.216).
- If mediation occurs, the restrained party is still subject to all provisions of the PPO including any no contact provisions. The mediator should not put a party in a position to violate the PPO by allowing the restrained party to have contact with the victim.
- The mediator must screen for domestic violence and terminate the mediation if the case is not appropriate for mediation.

SAFETY IS NON-NEGOTIABLE. The terms of a PPO that protect safety should never be negotiated in mediation.

- Mediators should always be aware of the existence of current or previous PPOs and/or No Contact Orders involving the parties (Note: Other states may use different terms for their protective orders).
- PPOs are a type of civil restraining order used in Michigan, primarily between parties that have some type of domestic relationship. PPOs often contain no contact provisions.
- No contact provisions may also appear in bond and probation orders in criminal proceedings.

A party can be contemporaneously restrained by a PPO and a no contact provision in a criminal court order.

PPOs and criminal bond or probation orders may prohibit a party from engaging in conduct, including but not limited to:

- Telephone contact with the protected party;
- Indirect contact with the protected party, including contact through third parties;
- Electronic communications, including e-mail;

- Appearing at the protected party's workplace;
- Appearing at other places frequented by the protected party, such as: church, relatives' homes, doctors' offices, children's schools, children's baby sitter or daycare;

Contacting children and/or removing children from the custody or possession of the protected party.

- PPOs can be modified only by the issuing court.
- The mediator has no standing or authority to waive provisions of a PPO.
- The parties cannot waive or amend provisions of the PPO or terminate the PPO without a court order.

PPOs only prohibit conduct by the restrained party. A protected party cannot violate a PPO intended to protect her or him.

WHY SOME SURVIVORS WANT TO MEDIATE; WHY SOME SURVIVORS DON'T WANT TO MEDIATE; and WHY ABUSERS GENERALLY WANT TO MEDIATE

Developed by Linda Girdner, Ph.D.

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WHY SOME SURVIVORS WANT TO MEDIATE

- No realistic alternatives to mediation exist if cannot afford attorney (possibly due to economic abuse).
 - Let her know of programs providing low cost or pro bono representation, so she can assess her options realistically.
- Afraid hiring attorney will enrage abuser.
- Afraid abuser will enforce rule if she breaks it (e.g. rule may be that she must agree to mediation or that she cannot retain an attorney).
 - He may have said that if she breaks the rule, he will leave her with nothing financially; will harm or kill her, the children or other members of her family; and/or will take the children and make sure she never sees them again.
 - She believes he will carry out his threats, so mediation appears as the more desirable option under the circumstances.
 - Make sure she has information about existing community services for abuse survivors and knows what is available.
 - Consider letting her make referral calls from the mediator's office or another office at the court, because she may not be able to do them safely from home.
- Wants to believe that giving him what he wants will make her safe.
 - Survivors sometimes believe that mediators can stop the abuse when they hear that the mediator can balance power and establish ground rules. They may become angry with the mediator when they realize the mediator does not have the power to stop the abuse.
 - Mediators should make clear that they do not have the power to stop the abuse or protect the survivor. She should consider this seriously before deciding whether to mediate.

- Wants to believe that giving him what he wants will make her safe.
 - Be aware that this is not usually true in the long run, although it may be her choice for the short-term. Domestic violence generally gets more frequent and severe over time.
 - Mediators should terminate mediation if a party is exchanging economic issues, arrangements for the children, or anything else for safety.
 - This is not likely to be explicit in mediation, so the mediator must be able to ferret this out without endangering her safety.
 - Safe termination and safety planning are essential.

- Feels she has more control over what will happen to her in mediation than she would in court, especially unrepresented.

- Afraid of the formality and impersonal nature of the court, especially unrepresented. Prefers the informality and natural language of mediation.
 - Some abuse survivors prefer not to testify about the history of abuse in court, because they may know that the abuser will be angry or want retribution because she has said things under oath against him. (perhaps she has had this experience in criminal court.) The situation is too risky and without sufficient protections for her.
 - She may see mediation as a better option for short term safety, but not have considered the long term consequences.

- Afraid that in court she might have to give information under oath that he will use to further abuse and harass her (e.g. her place of employment; the child care schedule).
 - Mediation can present the same risks, although not under oath, if the mediator does not set up a safe process that prevents such information from being shared.
 - This includes keeping address information confidential from the abuser (but not the court) in the final agreement.

- Had a previous bad court experience, e.g. testifying against him in a criminal case.

- Believes she can better protect the children in mediation.

- He may have threatened that she will lose custody if she goes to court. She may believe that she can placate him better, and better address the children's needs, in mediation.
 - She may have an order of protection granting her temporary custody. He may have told her that she has to vacate the order before they can mediate, which would be unsafe for her. She should have legal advice before making this type of decision.
- Can state what she wants, can begin to identify her needs and interests, and believes that she can stand up to her spouse and negotiate.
 - Check how long she has been able to do this with success.
 - Make sure she has a support system and a safety plan before beginning mediation.
- Recognizes that her abuser has been very emotionally and psychologically controlling and/or abusive but enters mediation with reasonable assurance and confidence that she will not be at serious physical or other risk.
 - Check whether she has considered impact of this behavior on her ability to handle stress and make decisions and whether he is likely to respond to her assertiveness with greater control or escalate to violence.
 - Make sure she has a support system and a safety plan before beginning mediation.
- Believes that as she and her partner have been separated for several months to a couple years or more, the dynamics of power and control over that period of time have undergone some re-alignment.
 - Check if she has considered whether dealing with him in mediation (with or without separate sessions) will trigger past incidences and have a debilitating effect on her decision-making abilities (e.g. post-traumatic stress syndrome).
 - Make sure she has a support system and a safety plan before beginning mediation. Abusers may stop abusing a specific survivor or stop abusing altogether, but many resume abuse when parties are in greater contact again.
- Is no longer fearful of him, the abuse is in the past, and she is willing to try and make joint decisions with him regarding the children.

- Check if she has considered whether dealing with him in mediation (with or without separate sessions) will trigger past incidences and have a debilitating effect on her decision-making abilities (e.g. post-traumatic stress syndrome).
 - Make sure she has a support system and a safety plan before beginning mediation.
- Believes that participating in the mediation process will not put her at such a level of risk as to prevent the mediation from proceeding and results from being achieved.
 - Check if this decision stems from resigned acceptance of her situation and lack of options, in which case she is not truly able to negotiate in her own interests.
 - Make sure she has a support system and a safety plan.

WHY SOME SURVIVORS DON'T WANT TO MEDIATE

- Afraid that he will manipulate, coerce and control her, even if the sessions are separate, because mediation requires joint decision-making.
- Afraid that she will be pressured into an arrangement that will endanger her and/or her children.
- Knows she needs protection and believes mediation will not be able to give it to her.
- Has an attorney or can afford one to represent her interests.
- Afraid that taking any independent actions (even choosing whether or not she wants to mediate) will be viewed by him as an attempt to get out from under his control and she will pay for it.

WHY ABUSERS GENERALLY WANT TO MEDIATE

- Believes that he can control and manipulate his partner more easily in a mediation context due to its informal and unstructured nature.

- Believes he will not be confronted about his past abusive behavior.
 - Mediators tend to emphasize the future rather than the past.
 - Mediators tend to avoid topics that relate to fault and blame in the relationship.
 - There is no requirement in mediation to consider domestic violence in working out custody and visitation arrangements.
 - Whereas many state statutes currently require the court to consider domestic violence as a factor.
 - He can threaten the survivor not to raise the issue of domestic violence, so the mediator may never find out.

- Believes that he will be able to manipulate or charm a mediator more easily than a judge.

- Believes that he can string out mediation long enough for his partner not to be able to survive economically without returning to him.
 - He may be proceeding with litigation on marital property, support, or order of protection issues.
 - He may be trying to wear her down by proceeding with multiple processes on multiple issues.

- Believes he can monitor her behavior and rule compliance in mediation.

- Believes that he will not be held accountable for his abuse.

- Believes that the mediator preference toward joint custody and continuing contact will work to his advantage.

- Believes he can use mediation to get her to come back to him.

- Has taken responsibility for his behavior, is no longer abusive, and prefers mediation to the adversary system.
 - Most abusers are skilled in conveying this perception when they have not changed their attitudes or behavior.
 - Checking with the survivor in a private and safe manner would be instructive.
 - Be aware that most batterer's treatment programs have little success in stopping abuse.

In this Chapter...

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Domestic abuse is more than an incident of angry name-calling, or an isolated, one-time slap or shove between intimate partners who are frustrated with one another. *Domestic abuse is a purposeful pattern of actions carried out over a period of time with the aim of controlling an intimate partner.* In this chapter, the reader will learn about:

- The nature and dynamics of domestic abuse.
- The tactics of domestic abuse perpetrators.
- The effects of abusive tactics on a perpetrator's intimate partner.
- The effects of domestic abuse on children who live in households where it occurs.

1.1 The Impact of Domestic Abuse on Proceedings in Family Division of Circuit Court

The issue of domestic abuse presents the following unique challenges in cases in the family division of circuit court:

- Separation from an abuser does not always end the abuse. Because perpetrators of domestic abuse seek to control their intimate partners, they may resort to (or escalate) physical violence in order to regain control after a separation. Court intervention in abusive behavior may increase the abuser's sense of lost control, and thus the risk of physical violence.
- Domestic abuse perpetrators typically have unlimited access to their intimate partners. A perpetrator may live with the person being abused, or share parental responsibilities with that person. The perpetrator's knowledge of a partner's daily routine or whereabouts may provide opportunities for harassment, intimidation, and physical violence that would not exist in other relationships.

Section 1.2

*Rennison & Welchans, *Intimate Partner Violence*, p 5 (Bureau of Justice Statistics Special Report, May, 2000).

- Domestic abuse typically occurs in the privacy of the home, where the only witnesses are under the abuser's control. (The National Crime Victimization Survey reported that from 1993–1998, almost two-thirds of intimate partner violence against women and about half of such violence against men occurred in the victim's home.)* This circumstance may make it difficult for the court to determine what events have occurred in a case.
- Persons subjected to domestic abuse respond to it in a variety of ways that are normal for victims of trauma. These responses may appear illogical to outside observers who do not have the information to discern such behavior as a normal response to abuse.

Court employees can best respond to the above concerns when they are well-informed about the nature and dynamics of domestic abuse. This chapter briefly summarizes some of the research findings on this subject. However, the reader should be aware that psychologists and sociologists have only been studying domestic abuse over the last 25 to 30 years. Because this complex field is so new, the following cautions apply:

- Domestic abuse perpetrators can be men or women involved in heterosexual or same-sex intimate relationships. Accordingly, Michigan's laws against domestic abuse apply regardless of the parties' gender or sexual orientation. Nonetheless, the discussion in this chapter will assume a heterosexual relationship with a male abuser unless otherwise indicated. The discussion has been framed in this way because most domestic abuse research has been done in this context. Abuse in same-sex relationships and in heterosexual relationships with female abusers has not been much studied to date, and is not well understood.*
- While much research regarding heterosexual relationships with male abusers has been published, many questions remain about this type of domestic violence, and studies of it are ongoing. Accordingly, the reader should be alert for new information that is likely to appear after the publication date of this Resource Book.

*The Nat'l Crime Victimization Survey estimates that in 1998, women were victims of intimate partner violence at a rate about five times that of men. *Id.*, p 2.

1.2 Defining Domestic Abuse

Unless stated otherwise, the terms "domestic abuse" or "domestic violence" in this Resource Book mean:

- A purposeful pattern of physically, psychologically, sexually, or emotionally abusive actions;
- Carried out over a period of time;
- With the aim of controlling an intimate partner.

According to this definition, domestic abuse is more than an occasional incident of angry name-calling, or an isolated, one-time slap or shove between a husband and wife who are frustrated with one another. Moreover, domestic abuse is *not* “out-of-control” behavior. Domestic abuse is one person’s effort to control another using a variety of tactics that may involve physical, sexual, emotional, and/or financial abuse.* These tactics may include both criminal and non-criminal acts. Criminal acts may include: hitting, choking, kicking, assaulting with a weapon, shoving, scratching, biting, raping, kidnapping, threatening violence, stalking, destroying property, and attacking pets. Non-criminal acts may include: making degrading comments, interrogating children or other family members, threatening or attempting to commit suicide, controlling access to money, and monitoring the partner’s time and activities. The abuse may be directed at persons other than the partner (e.g., children) for the purpose of controlling the partner.

Note: In using this Resource Book, the reader should understand that Michigan statutes contain several different definitions of domestic abuse that apply in particular contexts. These definitions have been cited where applicable and should be consulted in appropriate cases. Examples include:

- MCL 400.1501; MSA 16.611(1), defining “domestic violence” for purposes of the activities of the Michigan Domestic Violence Prevention and Treatment Board. See Section 2.11 for a citation, and Section 3.1(A) for discussion of the Board’s activities.
- MCL 600.2950; MSA 27A.2950, defining the relationships for which a domestic relationship personal protection order may be issued. See Section 7.2(A) for more information.
- MCL 750.81, 750.81a; MSA 28.276, 28.276(1), defining the domestic relationships warranting special treatment in criminal assault cases. See Sections 8.2, 8.3 for more information.

1.3 Patterns of Domestic Abuse

There is no one way in which domestic violence progresses. Some studies (especially those involving women in shelters or women who sought help after severe abuse) indicate that domestic violence tends to escalate in frequency and seriousness over time, particularly where there is no effective intervention from the justice system or other social institutions.* The existence of this dynamic makes it important to treat domestic violence incidents as a serious threat to the victim from their earliest manifestations — many domestic violence homicides might be prevented with early intervention against abusive behavior.

Researchers have also reported that in some relationships, domestic abuse follows a pattern. Although all relationships do not exhibit patterns, some of the models noted in the research can provide insight into the abused person’s responses to the violence.

*Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, Appendix C, p 2–6, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Family Violence Prevention Fund, 1995).

*Walker, *The Battered Woman Syndrome*, p 26 (Springer, 1984); Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 5 (Fall, 1999).

Section 1.3

*See Schechter & Ganley, *Domestic Violence: A National Curriculum for Family Preservation Practitioners*, p 93–94 (Family Violence Prevention Fund, 1995).

*See Section 1.7(A) on obstacles to leaving a violent partner.

*Walker, *supra*, p 95–97.

Some research shows that abused women leave and return to abusers many times before making a final break with the relationship.* This research notes a progression in some situations:

- Some women do not leave after a first assault, even though they disapprove of the violence. They may see the abuse as an aberration, and remain with the abuser to work on the relationship. Alternatively, they may be afraid to leave the relationship for fear the violence will escalate.
- If the violence continues, some women may leave for a few days, to gain immediate safety, to think about the relationship, or to get the perpetrator to stop. At this stage, the perpetrator may respond by pursuing the partner, promising to change, apologizing, or trying to reform. Women at this stage may perceive that they have achieved their goal. They may leave and return several times, and try various other strategies (including court intervention) in the hopes of improving the relationship.
- Later, women may leave and return without any hope of change. They may return due to one or more obstacles to leaving permanently, such as lack of housing or job skills.*

Researchers noting this progression have observed that the women’s behavior at each state is logical, pointing out that ambivalence over leaving an important relationship is normal. Indeed, leaving any important life relationship is a process for most people.

The “cycle of violence” is another general abusive pattern noted in the research. It consists of three stages:*

- During the first stage of the cycle, **tension builds** gradually between the parties. The abuser expresses dissatisfaction and hostility, but not in an extreme or explosive form. The victim “walks on eggshells,” trying to placate the abuser. The victim may succeed for a time, which reinforces an unrealistic belief that it is possible to control the abuser.
- When the tension becomes unbearable, the abuser proceeds to the second stage—the **acute battering incident**. Anything the abuser chooses can be the catalyst for this incident. Unless the abuser decides not to use violence, this incident becomes inevitable without intervention.
- After the abusive incident, a third **loving contrition stage** follows. In this stage, the abuser may express remorse, behave affectionately toward the victim, and promise that the abuse will end. Both partners may sincerely believe that violence will never occur again. The abused party’s hopes for the future may be reinforced, based on the abuser’s promises or some actual changes in behavior. Each partner may deny or minimize the abuse. The victim may accept the abuser’s blame for provoking the abuse, in the erroneous belief that she can prevent future violence.

A third dynamic noted by researchers working with abused individuals is the “Stockholm Syndrome.” This dynamic was first noticed in 1973 after hostages in a bank holdup in Stockholm, Sweden, bonded with the captors

who had held them for six days. Based on studies of this group and other hostage groups (including battered women), researchers have suggested that bonding to an abuser or captor may be an instinctive survival function for individuals who:

- Perceive a threat to survival and believe that their captor is willing and able to carry out the threat;
- Perceive a small kindness from the captor within the context of the terrifying experience;
- Are isolated from the perspectives of persons other than their captors; and,
- Believe they cannot escape.

The effect of the foregoing conditions on the captive individual has been described as follows:

“As a result of being traumatized, the victim needs nurturance and protection. Being isolated from others, the victim must turn to her abuser for the needed nurturance and protection if she turns to anyone. If the abuser shows the victim some small kindness, this creates hope in the victim, who then denies her rage at the terror-creating side of the abuser — because this rage would be experienced as overwhelming — and bonds to the positive side of the abuser. With the hope that the abuser will let her live, the victim works to keep the abuser happy, becoming hypersensitive to his moods and needs. To determine what will keep the abuser happy, the victim tries to think and feel as the abuser thinks and feels. The victim therefore (unconsciously) takes on the world view of the abuser. Because so much is at stake, namely her survival, the victim is hypervigilant to the abuser’s needs, feelings and perspectives. Her own needs (other than survival), feelings and perspectives must take second place to the abuser’s. Also, the victim’s needs, feelings and perspectives can only get in the way of the victim doing what she must do to survive: they are, after all, feelings of terror. Therefore, the victim denies her own needs, feelings and perspectives. She sees the captors as the ‘good guys’ and those trying to win her release (for example parents, police or therapists) as the ‘bad guys,’ as this is the way her captor sees things. The victim projects the anger of the abuser onto the police, whom she sees as more likely to kill her (or get her killed) than the captors....If the victim is given the opportunity to leave the abuser, she will have an extremely difficult time doing so. Having denied the violent, terrifying side of the abuser as well as her own anger, the victim sees no reason to leave him.” Graham and Rawlings, *Bonding with Abusive Dating Partners: Dynamics of Stockholm Syndrome*, in *Dating Violence: Young Women in Danger*, p 121–122 (Levy, ed, Seal Press, 1991).

1.4 Causes of Domestic Abuse

Many researchers have suggested that domestic abuse is influenced by a combination of social and individual factors. Most characterize it as a pattern of behavior that is learned and chosen by the abuser, and encouraged or discouraged by the abuser's social environment. This section explores the role that various social factors play in the abuser's choice to use violence.

A. The Environment of Violence

This discussion addresses three circumstances noted in the research that are generally present in an environment where domestic violence is occurring.

Note: The discussion is taken from the following resources: Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases*, Appendix C, p 9–14, in Lemon, *Domestic Violence and Children: Resolving Custody and Visitation Disputes* (Family Violence Prevention Fund, 1995); Merrill, *Ruling the Exceptions: Same-Sex Battering and Domestic Violence Theory*, p 14–17, in *Violence in Gay and Lesbian Domestic Partnerships* (Renzetti and Miley, ed, Harrington Park Press, 1996); and, Farley, *A Survey of Factors Contributing to Gay and Lesbian Domestic Violence*, p 36–41, in *Violence in Gay and Lesbian Domestic Partnerships*, *supra*.

1. The perpetrator has learned to abuse.

Domestic violence perpetrators have learned that violence is an effective, legitimate means of controlling their partners. They have learned this lesson by observing violent behavior in others or by behaving violently on a trial-and-error basis, and discovering that violence is tolerated, or even rewarded. Violent behavior is tolerated in various private and public settings. Familial and societal attitudes that devalue women can contribute to an environment that teaches abuse. The criminal justice system also teaches that abuse is acceptable when it fails to impose appropriate sanctions on violent behavior.

In family division proceedings, courts can create an environment that tolerates domestic violence when they:

- Fail to identify cases where domestic violence is present.
- Fail to address safety concerns in cases where domestic violence is identified.
- Blame the abused party for the abuse rather than holding the abuser accountable for it.
- Issue conflicting domestic relations and personal protection orders, or domestic relations orders that conflict with orders issued in concurrent criminal proceedings.
- Issue mutual protection orders.

- Issue orders that reward abusive behavior.
- Require mediation without regard to the imbalances of power and safety concerns that arise when domestic violence is present.
- Issue vague custody or parenting time orders that can be easily manipulated.
- Require the parties to cooperate in carrying out their parental responsibilities without regard to the imbalances of power and safety concerns that arise when domestic violence is present.
- Issue orders for custody or parenting time that allow the abuser to exercise control over a former partner and the parties' children.

2. The perpetrator has found the opportunity to abuse.

Although violent behavior can be learned from violent family members, most children who witness violent behavior do not become abusive adults. Likewise, the vast majority of men who are exposed to social attitudes that devalue women do not commit acts of violence against their domestic partners. For violence to occur, the perpetrator must also find the opportunity and social permission to “get away with it,” and choose to act abusively. Opportunities for domestic violence occur in environments where it is tolerated. Abusers who believe that they will “get away with” violence against their domestic partners will have no motivation to change their behavior, particularly if they have learned that violence is effective to get them what they want in their intimate relationships. Indeed, social tolerance for domestic violence reinforces the lessons of violence by allowing abusers to succeed in controlling their intimate partners without suffering negative consequences. The criminal justice system plays a critical role in ending opportunities for abuse by treating violence against an intimate partner at least as seriously as it treats violence against a stranger.

In family division proceedings, courts can end opportunities for abuse by:

- Restricting abusers' access to identifying information about their partners who are in hiding.
- Providing a safe environment for persons who come to the courthouse.
- Requiring the abusive party to bear the financial consequences of abuse.
- Issuing custody and parenting time orders with specific provisions that promote safety, including supervised parenting time orders.
- Requiring the abusive party to complete appropriate intervention and demonstrate change before modifying more restrictive orders for parenting time.

3. The perpetrator has chosen to abuse.

Learning and opportunity alone do not produce domestic violence. The third prerequisite to violent behavior is the perpetrator's choice to engage in it. Domestic violence is a choice; it is not “out-of-control” behavior. Common

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abusive behavior patterns illustrate how abusers calculate their actions to avoid risk to themselves, while maximizing control over their intimate partners. Some abusers injure only those parts of their partners' bodies that are not readily seen by others. Others batter their partners instead of other people over whom they have no control, such as their employers. Many abusers will destroy their partners' possessions, while leaving their own intact. These behaviors evidence choice, not loss of control.

*Fagan, *The Criminalization of Domestic Violence: Promises & Limits*, p 14, 39 (Nat'l Inst of Justice, 1996). See Section 1.8 on the effects of domestic violence on children.

Courts can play a critical role in discouraging domestic abuse by treating violence between domestic partners at least as seriously as violence between strangers. Indeed, domestic violence may be a more serious threat to the victim and society than stranger violence, for it entails an increased risk of repeat assault on the victim and the potential for long-term harm to children who witness it. When a court consistently and fairly enforces the laws against domestic violence it helps to remove opportunities for violence. When a court's orders hold abusers accountable for the harm they inflict, the court contributes to an environment in which domestic violence is just as unacceptable as any other type of violence. Many abusers will be motivated to stop their violent behavior upon discovering that it will cause them significant legal and social consequences.*

B. Factors That May Accompany Domestic Violence

Abusive behavior occurs because the abuser chooses it. Nonetheless, many people (including abusers) erroneously characterize domestic violence as out-of-control behavior caused by circumstances such as alcohol and drug use, stress, unresolved anger, or problems with the relationship. While these factors often accompany domestic violence and may intensify its severity, they do not cause it. The following discussion explores the relationship between these factors and domestic violence.

- **Alcohol and drug use**

Researchers generally agree that alcohol and drug use do not cause domestic violence. Although studies show a high correlation between these two behaviors, researchers have rejected a causal connection between them, noting that most abusive men who successfully complete alcohol or drug treatment continue to abuse their partners if the violence is not also addressed separately. Studies have found that alcohol abuse by men is associated with an increased likelihood of injury as a result of domestic violence, and that abusers with a history of heavy drug or alcohol use tend to engage in intensified violence toward their domestic partners. Alcohol and drug use can lower the abuser's inhibitions and provide an excuse for "losing control." Indeed, some abusers admit to using alcohol in certain situations in order to give themselves permission to batter.*

*See Ganley, *supra*, p 11-12; Kyriacou, et al, *Risk Factors for Injury to Women from Domestic Violence*, 341 *New England J of Medicine* (Dec. 16, 1999).

*See Section 1.5(B) for more discussion of lethality factors.

Because alcohol or drug use does not cause domestic violence, effective intervention in cases where the abuser is drug or alcohol dependent must be directed at *both* the violence and the substance abuse. Because it may intensify the severity of violence,* drug and alcohol use is one of the

factors to consider in assessing whether the abuser is likely to kill or seriously injure an intimate partner.

- **Stress and anger**

Stress and anger are not primary causes of domestic violence. Studies show that many abusers use physical violence in a calculated way, in order to gain compliance, and that abuse occurs when the abuser is not emotionally charged.* Indeed, an abuser's display of anger may merely be a tactic to intimidate an intimate partner. Moreover, when domestic violence is regarded as a *pattern* of behavior that unfolds over time, specific irritants or stressors become less meaningful in explaining the entire pattern.

Many researchers believe that effective intervention in abusive behavior must focus on the fact that abuse is the sole choice and responsibility of the abuser. Although abusers may benefit from learning stress or anger management skills, they will not cease to abuse unless these skills are taught in the context of a program that regards violence as a choice for which abusers must be held accountable.*

- **Problems inherent in the relationship**

Abusers frequently escape responsibility for their violent choices by blaming the abuse on their intimate partners. Blaming the relationship is a variation on this theme, because it gives the intimate partner at least partial responsibility for the abuse. However, most people who experience relational difficulties respond to them without violence.* Safe, effective domestic violence interventions recognize that only the abuser has the power to stop the abuse.

Persons subject to domestic abuse are endangered by interventions that require them to share responsibility for the abuse by working cooperatively with the abuser to resolve the difficulties with the relationship. Accordingly, couples counseling and family therapy are *not* appropriate primary interventions for abuse. These interventions may endanger abused persons by putting them into a situation where they must reveal information that their abusers may later use against them. Moreover, couples or family counseling may create opportunities for abuse by physically bringing the abuser to the same location as an intimate partner. Finally, where the abused person is expected to work cooperatively to resolve the difficulties in the relationship, the abuser may feel justified in using abuse as "punishment" when the couple's difficulties continue; indeed, many domestic violence victims report assaults following couples therapy sessions.*

For similar reasons, many researchers assert that mediation, community dispute resolution, and arbitration are not appropriate when domestic violence is present.* Because these interventions require equal bargaining power between the parties, they cannot operate fairly in situations involving domestic violence, where the abuser is in control. Furthermore, domestic violence cannot be a subject for negotiation or settlement between the abuser and an intimate partner because the partner has no

*Ganley, *supra*, p 12-13.

*See Stordeur & Stille, *Ending Men's Violence Against Their Partners*, p 29, 50, 57 (Sage Publications, 1989).

*Ganley, *supra*, p 13-14.

*Stordeur & Stille, *supra*, p 25-26; Walker, *The Battered Woman Syndrome*, p 118 (Springer, 1984).

*For more discussion of concerns with mediation, see Section 6.3.

responsibility for changing the abuser's behavior. This is particularly true where the abuse rises to a criminal level; mediation between a crime victim and perpetrator is just as inappropriate in cases involving domestic violence as it is in cases involving stranger violence.

C. Illness-based Violence

*Stordeur & Stille, *supra*, p 24-26; Ganley, *supra*, p 11.

Most researchers regard domestic abuse as a learned, chosen pattern of behavior, rejecting the notion that it is a form of psychological or biological illness over which the abuser lacks control. In some cases, however, domestic violence may be the product of a mental illness such as psychosis or Alzheimer's Disease. Unlike cases where the violence is learned, chosen behavior, these cases truly involve a loss of control by the abuser. Illness-based violence can be distinguished from learning-based violence in several ways:*

- The perpetrator of illness-based violence does not usually select a particular, consistent victim; instead, abuse is directed at any person present when the violent impulses arise.
- Illness-based violence is often accompanied by other symptoms of disease, such as changes in speech or gait, or delusional thinking.
- Poor recall of the abuse does not necessarily indicate illness-based violence. Abusers who are not mentally ill often deny or minimize their behavior.

1.5 Understanding the Abuser — The Potential for Lethality

This section will explore some common characteristics of domestic abusers, as well as factors that are often present in situations when an abuser is more likely to kill or inflict serious physical harm.

A. Characteristics of the Abuser

*Rygwelski, *Beyond He Said/She Said*, p 11, 20-24 (Mich Coalition Against Domestic Violence, 1995).

Domestic violence occurs in all social groups, without regard to the parties' racial, ethnic, economic, religious, educational, professional, or social backgrounds. It is not restricted to the ranks of the impoverished, unemployed, or substance-dependent. Because it often occurs within the privacy of the home, domestic violence may be well-hidden from outside observers, including family members who are not living in the household where the abuse occurs. Indeed, many abusers appear to be devoted to their families, and have positive characteristics that mask the injuries they inflict.*

Although there is no "typical" abuser, domestic violence perpetrators commonly exhibit certain characteristics. Some of these characteristics include:

- **Dependency and jealousy**

Many abusers are extremely jealous and possessive of their intimate partners. Possessive abusers are emotionally dependent on their partners, which makes them susceptible to a number of conflicting emotions, including fear of abandonment, and anger at their dependence. In the context of these feelings, an abuser's behavior may be seen as an effort to prevent abandonment, or as a means of denying the need for the partner's companionship. Extremely jealous abusers may be so possessive that they are willing to kill their partners rather than face losing control over them.*

*Stordeur & Stille, *Ending Men's Violence Against Their Partners*, p 44–46 (Sage Publications, 1989). See Section 1.5(B) on other lethality factors.

- **Belief in men's entitlement to dominate women**

Male abusers may subscribe to a rigid ideal of men's dominant role, with the accompanying belief in men's entitlement to control persons and events in the household.*

*Stordeur & Stille, *supra*, p 51–52.

- **Isolation**

Some abusers are psychologically and socially isolated. Isolated abusers tend to be distrustful of others, afraid of intimate relationships, and unable to share or recognize emotions other than anger. While they may have numerous contacts and acquaintances within the community, these tend to be superficial. An isolated abuser may have increased dependence on the intimate partner, along with the attendant jealous, possessive behavior.*

**Id.* p 49–50.

- **“Jekyll and Hyde” personality**

Most abusers are not violent all the time — their intimate partners and others often describe them as charming and lovable. The loving, caring facet of an abuser's behavior can be one means of convincing an intimate partner to stay involved in the relationship after a violent incident.*

**Id.* p 48–49.

- **Poor interpersonal skills**

Many abusers may appear to be charming and lovable on the surface level, especially to those outside the family. Within the family, however, they do not demonstrate the same level of interpersonal relational skills. Abusers often use anger and violence to manage conflict or express feelings. They may confuse assertiveness with aggression, and misperceive neutral communications or interactions as being threatening or insulting to them; for example, a partner's brief delay in meeting him may cause an abuser to assume that she is having an affair.*

*See *id.*, p 38–41.

- **Refusal to accept responsibility for the violence**

When confronted with their violent behavior, abusers commonly avoid responsibility by denying that it occurred, lying about it, minimizing its nature or significance, or blaming it on outside factors such as stress, drunkenness, or provocation from their partners. The court may hear such statements as:

– “It was an accident.”

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*See Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, App. C, p 14–16, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Fam. Violence Prev'n Fund, 1995).

*Rennison & Welchans, *Intimate Partner Violence*, p 1, 3 (Bureau of Justice Statistics, May, 2000).

*Bureau of Justice Statistics, *Report to the Nation on Crime & Justice*, p 33 (U.S. Dept of Justice, 1988); Rennison & Welchans, *supra*, p 5, 11.

- “I didn’t hurt anyone — I didn’t even use my fist.”
- “The kids didn’t see it.”
- “The cop didn’t like me.”
- “I couldn’t take the nagging anymore.”
- “I was drunk.”
- “I’ve been under a lot of pressure lately, and I lost control.”
- “She’s having an affair. I just want to save my family.”
- “I’m the real victim here.”*

B. Lethality Factors

Although the National Crime Victimization Survey reports that intimate partners committed fewer murders in each of the three years 1996, 1997, and 1998 than in any other year since 1976, domestic violence perpetrators still kill their victims with alarming frequency. In 1998, the Survey reported 1830 murders attributable to intimate partners (down from 3000 murders in 1976); 53% of these 1998 murder victims were killed by their spouses (down from 75% in 1976). Women are more likely than men to be the victims of domestic homicide. The Survey reports that women were nearly three out of four victims of the 1830 murders attributed to intimate partners in 1998. The percentage of female murder victims killed by intimate partners has remained at about 30% since 1976.* This deadly potential requires vigilance in all cases involving domestic violence.

Assessing the lethality of a situation involving domestic violence is difficult. Domestic violence is often unpredictable. In some cases, an abuser may not “intend” to use lethal force, but may miscalculate with fatal consequences. Lethal violence may occur unexpectedly, without any advance warning from the abuser’s behavior, or it may be preceded by one or more circumstances that serve as danger signals. In the latter case, researchers have found that certain factors can often accompany an abuser’s potential for serious violence.

One such “lethality factor” that has caused particular concern is the recent separation of the couple. Research indicates that leaving a relationship will not always end the abuse; in fact, leaving an abuser may cause the violence to escalate. In a 1988 study, the U.S. Department of Justice reported that 75% of the domestic assaults reported to law enforcement agencies occurred after the victim was divorced or separated from the assailant. A more recent National Crime Victimization Survey similarly reported that between 1993–1998, divorced or separated men or women were subjected to the highest levels of intimate partner violence, as compared with married and never-married persons. (The rate of nonlethal violence per 1000 divorced or separated persons was 31.9 for women and 6.2 for men. The rate per 1000 married persons was 2.6 for women and 0.5 for men. The rate per 1000 never-married persons was 11.3 for women and 1.6 for men.)*

Note: More research is needed on the role that ending a relationship plays in increasing the risk of intimate partner violence. Although it reported higher levels of violence for divorced or separated persons, the National Crime Victim Survey noted that its data reflected a person's marital status at the time of the survey interview. Thus, it was not possible to determine from the data whether a person was separated or divorced at the time of victimization or whether the separation or divorce came after the violent incident. Questions about "separation violence" are further complicated by the fact that the "end" of a relationship is more a matter of interpretation than of objective reality; some individuals may equate the "end" of a relationship with a formal dissolution or physical separation, while others may consider a relationship to have "ended" at some previous point.*

Other lethality factors in addition to separation are noted in the following list. While it is impossible to predict with certainty what a given abuser will do, the presence of the following factors can signal the need for extra safety precautions — the more of these factors that are present in a situation, the greater its danger.*

- The abused partner (who is familiar with the abuser's patterns of behavior) believes the abuser's threats may be lethal.
- The abuser threatens to kill an intimate partner or other persons.
- The abuser threatens or attempts suicide.
- The abuser fantasizes about homicide or suicide.
- Weapons are accessible, and/or the abuser has a history of using weapons.
- The abuse involves strangling, choking, or biting the intimate partner.
- The abuser has easy access to the intimate partner or to the intimate partner's family.
- The couple has a history of prior calls to the police for help.
- The abuser exhibits stalking behavior.
- The abuser is jealous and possessive, or imagines the intimate partner is having affairs with others.
- The abuser is preoccupied or obsessed with the intimate partner.
- The abuser is isolated from others, and the intimate partner is central to the abuser's life.
- The abuser is assaultive during sex.
- The abuser makes threats to the intimate partner's children.
- The abuser threatens to take the intimate partner hostage, or has a history of hostage-taking.
- The severity or frequency of violence has escalated.

*Rennison & Welchans, *supra*, p 5; Tjaden & Thoennes, *Extent, Nature, & Consequences of Intimate Partner Violence: Findings from the Nat'l Violence Against Women Survey*, p 38 (Nat'l Inst of Justice, July, 2000).

*Rygwelski, *supra*, p 49–52; Walker, et al, *Domestic Violence & the Courtroom: Understanding the Problem... Knowing the Victim*, p 4 (American Judges Foundation, 1995).

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- The abuser is depressed or paranoid.
- The abuser or intimate partner has a psychiatric impairment.
- The abuser has experienced recent deaths or losses.
- The abuser was beaten as a child, or witnessed domestic violence as a child.
- The abuser has killed or mutilated a pet, or threatened to do so.
- The abuser has started taking more risks, or is “breaking the rules” for using violence in the relationship (e.g., after years of abuse committed only in the privacy of the home, the abuser suddenly begins to behave abusively in public settings).
- The abuser has a history of assaultive behavior against others.
- The abuser has a history of defying court orders and the judicial system.
- The intimate partner has begun a new relationship.
- The abuser has problems with drug or alcohol use, or assaults the intimate partner while intoxicated or high.

One researcher has noted that the pattern of risk factors is not the same across offenders, and makes a connection between a male abuser’s childhood experiences and his patterns of abuse:

“[S]ome offenders are violent only at home while others attack non-family members. The particular childhood experiences seem to be related to differing patterns of abuse and personality. In one pattern, severe physical abuse in childhood is associated with anti-social personality, a ‘criminal lifestyle’, a lack of remorse, violence inside and outside the home, substance abuse, and severe violence against a partner. In a second pattern, severe loss or emotional rejection in childhood is associated with borderline personality traits, fear of abandonment, jealousy, severe psychological abuse of one’s partner, depression, and suicidality. This may be the type of offender who is most likely to stalk and kill his partner after separation, sometimes killing himself as well. In a third pattern, childhood trauma is not evident and violence is restricted to the home. The men appear to be over-controlled...and perfectionistic with themselves and others. They are the least likely to be severely violent and have less rigid sex role attitudes than the other types. Typology research has helped to identify the men most likely to be severely violent during and after the relationship. In addition, there are a growing number of assessment tools for uncovering indicators of lethality. The most widely used is the Danger Assessment Instrument, but others are being developed and validated, such as the Spousal Assault Risk Assessment (SARA) instrument.”

Saunders, *Domestic Violence Perpetrators: Recent Research Findings and Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 4 (Fall, 1999).

For more discussion of lethality evaluation, see Appendix A of the Batterer Intervention Standards for the State of Michigan, which is reproduced in Appendix C to this Resource Book.

1.6 Abusive Tactics

An abuser's primary motivation is to maintain control over an intimate partner. Abusers are master manipulators, who employ physical assault in conjunction with other tactics to achieve their objective. Abusers' tactics have been compared to the brainwashing tactics used against prisoners of war, which include isolation, threats, occasional indulgences, demonstrations of power, degradation, and enforcement of trivial demands. Abusers may employ similar patterns of physical, sexual, financial, and emotional coercion to control their intimate partners.* These tactics prevent abused persons from leaving a relationship. In addition to physical assaults or threats, abusers' control tactics may include:

- **Emotional abuse**

Emotional abuse may consist of isolating an intimate partner from family and friends, making degrading remarks, blaming the partner for the abuse, constantly monitoring the partner's activities, stalking, playing "mind games," making and enforcing extensive, egregious rules, and threatening suicide if the partner leaves the relationship.

- **Using children as vehicles for abuse**

Abusers frequently involve their partners' children in their efforts to assert control. Some abusers kidnap, sexually abuse, or physically harm their partners' children, or threaten to commit one of these acts. Others initiate or threaten to initiate court proceedings to remove the children from their partners' homes, or use court-ordered parenting time as an opportunity to harass their partners. Abusers may also force children to act as informers, or to deliver threats.

- **Controlling the finances**

An abuser may maintain control in a relationship by limiting a partner's access to the couple's money, or by preventing the partner from participating in job training, or from getting or keeping a job. This interference with economic independence makes financial abuse a major obstacle to leaving a relationship.

- **Sexual abuse**

This form of abuse includes rape, forced sexual acts, verbal degradation, forced sexual contact in front of the children, threats to find another partner if sex is refused, and injury to the sexual areas of the body. Sexual

*Walker, *The Battered Woman Syndrome*, p 27-28 (Springer, 1984); Graham & Rawlings, *Bonding with Abusive Dating Partners: Dynamics of Stockholm Syndrome*, in *Dating Violence: Young Women in Danger*, p 121-122 (Levy, ed, Seal Press, 1991). A chart illustrating abusive tactics appears in Section 1.9.

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abuse may also include the abuser's refusal to take appropriate precautions against unwanted pregnancy or sexually transmitted diseases.

*From Tennessee Domestic Abuse Benchbook, p 23-24 (Tenn Task Force Against Domestic Violence, 1996). See also Zorza, *Batterer Manipulation & Retaliation in the Courts*, 3 Domestic Violence Report 67 (June/July, 1998).

Abusers may extend their controlling tactics to situations within the courtroom. Such tactics may be employed before, during, and after court proceedings to demonstrate control, and to manipulate the court's response to the abuser. The following list gives examples of abusive tactics that court personnel may encounter:*

- Physical assaults or threats of violence against the abused person, those providing refuge, and others inside or outside the courtroom.
- Threats of suicide.
- Threats to take the children.
- Harassment intended to coerce the abused person to dismiss proceedings, or to recant previous testimony.
- Following an intimate partner in or out of court.
- Sending an intimate partner notes or "looks" during proceedings.
- Bringing family or friends to the courtroom to intimidate the abused person.
- Long speeches about how an intimate partner "made me do it."
- Statements of profound devotion or remorse to the intimate partner and to the court.
- Repeated requests for delays in proceedings.
- Requests for changes of counsel or failure to follow through with appointments of counsel.
- Intervening in the delivery of information from the court to the abused person so that the abused person will be unaware of when to appear in court.
- Requests for mutual orders of protection as a way to continue control over the abused person and to manipulate the court.*
- Continually testing the limits of parenting time or support arrangements, e.g., arriving late or not appearing at appointed times.
- Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues.
- Assertions that the abusive individual is actually the "victim" in the case.
- Initiating retaliatory litigation against the abused person or others who support the abused person.
- Enlisting the aid of parent rights groups to verbally harass the abused person (and sometimes courts) into compliance with demands.
- Using any evidence of the effects of the abuse as evidence that the abused person is an unfit parent.

*Mutual personal protection orders are not permitted under Michigan law.

The court can take steps to intervene in abusive courtroom tactics, as follows:

- Develop a safe waiting area in the courthouse.

Note: MCL 780.757, 780.817; MSA 28.1287(757), 28.1287(817) provides that in criminal proceedings regarding felonies or serious misdemeanors, “[t]he court shall provide a waiting area for the victim separate from the defendant, defendant’s relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim’s contact with defendant, defendant’s relatives, and defense witnesses during court proceedings.”*
- Call cases involving domestic violence as early as possible on the court calendar.
- Communicate that the court takes evidence of domestic violence seriously.
- Require the abusive party to remain in the courthouse until the abused party has left the building.
- Be alert for multiple court actions or orders concerning the same parties.
- Meet separately with the parties to a relationship where domestic violence is present.

1.7 Effects of Abuse

Women who are subject to domestic abuse exhibit no specific “personality profile” that differentiates them from other women. Abused individuals may display some of the same behaviors as survivors of other life-threatening situations or trauma, however.* Signs of trauma include:

- Shock.
- Disbelief.
- Fear.
- Withdrawal.
- Confusion.
- ~~Panic or excitement.~~
- A belief that “everything will be okay.”
- Minimization or denial of the traumatic events, or reluctance to discuss what has happened.
- Rationalizing or taking responsibility for what has happened.*

This section will explore some of the strategies that abused persons may employ in order to cope with or survive the trauma they suffer. It will also

*Serious misdemeanors are defined in MCL 780.811(a); MSA 28.1287(811)(a). They include stalking, assault and battery, aggravated assault, illegal entry, and discharging a firearm aimed intentionally at a person.

*Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 4 (Fall, 1999).

*The signs of trauma listed here are taken from *New Service Provider Training Manual & Resource Guide*, p 27 (Mich Coalition Against Domestic & Sexual Violence, 1999)

discuss the impact that domestic violence may have on a person's interactions with the court system.

A. Coping and Survival Strategies

Persons who are subject to domestic violence use active strategies for surviving the experience. Strategies for surviving domestic abuse vary, depending upon the abused person's individual personal characteristics and the nature of his or her social environment. Some may appear to be no different from those not experiencing violence, having adopted behavior that conceals the abuse they suffer. Others may engage in behavior that appears illogical or erratic. Most researchers do not believe that persons who are subject to domestic abuse suffer from masochism or other types of psychological disorders; rather, researchers agree that the behavior exhibited by some abused persons is better understood as a normal survival or coping response to the abuse.*

The following discussion lists common survival or coping strategies that abused persons may display:

- **Minimizing or denying the violence**

Like abusers, some abused persons may minimize or deny the violence in their lives. They may deny or minimize the violence in the abuser's presence or in public settings (such as court proceedings) in order to protect themselves from further retaliatory violence. Abused persons may also minimize their experiences with violence or their emotional responses to it to survive the emotional trauma they suffer.*

- **Taking responsibility for the violence**

Instead of objecting to the violence against them, some abused persons may blame themselves for it. In doing so, these individuals focus on their own perceived failings as a cause of the abuse, rather than on the abuser's choice to use violence. This attitude may arise because the abuser has convinced the abused person to take the blame, or because the abused person has submitted to the abuser's exercise of control in the relationship.* Taking responsibility for the violence may give some victims a sense of control over it. These victims believe that if they change the behavior that seems to be causing the violence, it will stop.

- **Using alcohol or drugs**

Persons subject to abuse may use alcohol or drugs as a means of numbing the effect of the violence; one researcher notes that substance abuse problems are likely to be consequences of abuse rather than precursors.* If the abuser is alcoholic or drug dependent, the intimate partner may be forced to join in the use of these substances to prevent abuse. Some abused persons receive prescription medication from their physicians as a means to cope with the anxiety resulting from the abuse. These medications may impair the ability to judge the dangerousness of an abusive situation or to seek protection.

*Walker, *The Battered Woman Syndrome*, p 7-10, 33 (Springer, 1984).

*Douglas, *The Battered Woman Syndrome*, in *Domestic Violence on Trial*, p 43 (Sonkin, ed, Springer, 1987).

*Rygwelski, *Beyond He Said/She Said*, p 25 (Mich Coalition Against Domestic Violence, 1995).

*Saunders, *supra*, p 3, 5.

- **Seeking help**

Many people who suffer domestic abuse actively seek help, often without success. Some researchers have found that a person's efforts to seek help tend to increase with the danger to the person and his or her children. Justice system professionals may not recognize an individual's efforts to obtain help from sources outside the "system"; however, these "informal" sources of assistance may be the first to which an abused individual turns. It is important to note that an individual's help-seeking behavior often depends upon the responses they have received or observed in the past.

- **Self defense**

Persons subject to domestic abuse often act to defend themselves or their children. A recent analysis of data on crimes by current or former spouses, boyfriends, or girlfriends published by the Bureau of Justice Statistics reported that 77% of female victims of nonlethal intimate violence actively defended themselves.* Of these, 43% tried to escape from the offender, called the police or other help, or used other non-confrontational means of self-defense. Thirty-four percent confronted the offender by struggling, shouting, chasing or other means without a weapon (30%) or with a weapon (4%).

- **Remaining in the relationship**

Leaving any important relationship is difficult. Leaving an abuser can have serious physical consequences for the abused person. In response to their partners' efforts to leave, many abusers will escalate the physical violence — often to lethal levels — as they seek to reassert control in the relationship.* When seen in this light, the seemingly illogical decision to stay with an abuser makes sense as a survival tactic.

The threat of death or serious injury upon separation from the abuser is not the only obstacle to leaving a relationship where domestic violence is present. Individuals trapped in such relationships often face other formidable barriers to escape, including:*

- Concern for the children's welfare.
- Lack of employment skills, or financial dependence on the abuser.
- Lack of housing upon leaving the relationship.
- Inability to afford legal assistance with divorce, custody, or protection order proceedings.
- Fear of the court system's intervention.
- Fear of losing custody of the children if the violence is reported or revealed in divorce proceedings. Some abusers deliberately give their partners misinformation about their legal rights to prevent them from seeking legal recourse.
- Isolation from the social or family connections that could otherwise provide support after leaving the relationship.

*Greenfeld, et al, *Violence by Intimates*, p 19 (Bureau of Justice Statistics, 1998). The data in the analysis were collected between 1992–1996.

*Recent separation from the abuser is a lethality factor. See Section 1.5(B).

*The listed obstacles are taken from Jones, *Why Doesn't She Leave?* 73 Mich Bar J 896 (1994); Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, Appendix C, p 20–25, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Family Violence Prevention Fund, 1995).

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- Acceptance of the blame for the abuse; attempts to change in the hopes that it will stop.
- Belief in the abuser's expressions of remorse and promises to change.
- Lack of self-confidence caused by believing statements issued by the abuser such as, "You are worthless without me," or "Nobody cares about you but me."
- Religious or cultural constraints. If a woman believes that her male partner must be the dominant figure in her household, she may regard his abuse as an acceptable extension of his dominance. Under this family concept, she may believe that her efforts to escape are inappropriate. She may also believe that if she ends the relationship in order to escape the abuse, she will lose her connection with her religious or cultural community.

B. Survival and the Court System

Efforts to survive or cope with domestic violence may appear in many forms in civil court proceedings. An abused individual may:

- Publicly agree with the abuser's denial or minimization of a violent incident.
- Avow love for the abuser.
- Make statements supporting the abuser.
- Flee the jurisdiction, along with the children.
- Abandon proceedings.
- Agree to unfair property settlements or support provisions.
- Agree to what outsiders see as unsafe provisions for child custody or parenting time.

Although the foregoing actions may seem illogical to observers outside of a relationship, they make sense if they are regarded as survival tactics and normal human responses to trauma.* Persons subject to domestic violence know their abusers better than anyone else, and they choose active strategies to minimize injury based on past success. Although the strategies above may not be to the long term advantage of an abused person, many such individuals are so involved in a day-to-day struggle to preserve their own lives and the lives of their children that they cannot focus on the long range effects of the violence, or on the task of forging a new life apart from the abuser. Accordingly, they are likely to view a court proceeding only in terms of its immediate effect upon their safety. The following discussion explores some of the specific concerns that affect domestic violence victims during court proceedings.

*Ganley, *supra*, p 23; Rygwelski, *supra*, p 26.

1. Coercion

Abused individuals may be unable to protect their interests in court proceedings due to a legitimate fear of death or injury at the hands of an abuser.* Abusers frequently coerce their intimate partners to remain silent about the violence, either by injuring them so that they cannot speak, or by threatening them with death or injury. Coercive threats may also extend to others who associate with an abused person. The following factors may indicate coercion:

- The abused person appears in court with the abuser to request that court proceedings be terminated.
- One attorney appears in court to act on behalf of both the abuser and the abuser's intimate partner.
- The abuser has a history of past violence.

If any of these factors is present (or any other suspicious circumstance), the Advisory Committee for this Resource Book recommends that the court obtain more information about the parties' situation before taking action. See chapter 2 of this Resource Book for a discussion of how the court might identify cases in which violence or coercion is present.

2. Uncertainty About the Court's Intervention

An abused person's past experience with the court system may contribute to the perception that it will neither stop the violence nor offer adequate protection from injury. The following factors can erode the confidence of persons who are subject to abuse:

- Procedural delays.
- Complex court proceedings.
- Discourteous court employees.
- Misinformation about the court system given by the abuser, uninformed service providers, or others.
- Vague, easily manipulated court orders that provide opportunities for further abuse.
- Court employees' disbelief that abuse is occurring.
- Court orders that require the abused person to cooperate with the abuser or to have regular physical contact with the abuser.
- Court orders that reward abusive tactics (e.g., awarding custody of children to an abusive parent because the abused parent cannot stop the abuse, rather than requiring the abusive parent to stop the abuse as a prerequisite to gaining access to children).
- Conflicting orders in criminal, personal protection, and civil court proceedings.

*See Section 1.5(B) for a list of lethality factors.

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- Recurrence of violence despite the issuance of court orders restraining the abuser.
- Failure of law enforcement officers to arrest abusers who violate court restraining orders.
- Failure of prosecutors to prosecute domestic violence offenses.
- Failure of courts to impose appropriate sanctions for domestic violence offenses.
- Court orders that punish protective actions taken by the abused person, characterizing these actions as antagonistic or “unfriendly” to the abusive party.

A court can address the fears of abused persons in a number of ways:

- To the extent possible, maintain the confidentiality of information in court documents that would identify the abused person’s whereabouts, if that person is in hiding from the abuser and there is a reasonable apprehension of acts or threats of physical violence or intimidation by the abuser.
- Provide for expedited proceedings in cases involving domestic violence.
- Provide domestic violence training for court personnel.
- Provide clear information about court proceedings to unrepresented parties.
- Craft specific, readily-enforceable orders with provisions that address the abused person’s safety concerns.
- Craft orders that are consistent with orders issued in criminal and personal protection proceedings.
- Craft orders that hold the abuser accountable for the abuse.
- Work with other units of the court system and with social service agencies to develop a clear, coordinated policy for situations involving domestic violence.

1.8 Domestic Abuse and Children

The National Crime Victimization Survey reports that between 1993 and 1998, children under age 12 lived in 43% of the households where domestic violence occurred.* This section explores how children are exposed to adult domestic abuse, and how it affects them.

A. How Children Are Exposed to Adult Violence

Children are exposed to adult domestic violence in various ways:

- They witness it.

*Rennison & Welchans, *Intimate Partner Violence*, p 6 (Bureau of Justice Statistics, May, 2000).

- They are used by the abuser to maintain control in the adult relationship.
- They suffer physical consequences that accompany the adult violence.

1. Witnessing the Violence

Although parents often minimize or deny the presence of children during violent incidents, studies show that up to 90% of children are aware of domestic violence when it occurs in their households. Children perceive the adult violence in their homes in a variety of ways. They may be eyewitnesses to all or part of a violent incident, or they may catch a fleeting glance of it. They may hear the sounds of abuse — the screaming or crying, the breaking glass, the impact of the blows. Children can also see a parent's tears, along with the blood, bruises, torn clothing, splintered furniture, and broken glass that evidence abuse after an incident has occurred. Finally, children notice the tension between the adults — they may see their mother jump when her abuser's car pulls in the driveway, or when the abuser enters the room.*

2. Using Children to Maintain Control in the Adult Relationship

A common tactic of domestic abusers is to use the children in the household to control their intimate partners.* Domestic abusers are likely to:

- Deliberately abuse their intimate partners in the presence of the partner's children.
- Interrogate the children about the abused parent's activities.
- Force the abused individual to always be in the company of a child.
- Take the child away after a violent episode to prevent the abused individual from fleeing.
- Threaten violence against the child, or against a pet or object that is important to the child.
- Encourage the child to participate in the physical or emotional abuse of the abused individual.
- Isolate the child along with the abused individual.
- Manipulate the children through gifts or promises of activities.
- Coerce the abused individual to remain in the relationship for the sake of the children.

Because domestic violence often escalates when the abused individual attempts to leave the relationship, it should not be assumed that separation from the abuser will be sufficient by itself to protect the children from the violence.* The following abusive tactics may be employed after a separation:

- Engaging in lengthy battles over custody or parenting time.
- Detaining or concealing children.
- Abducting the children, or holding them hostage.

*Hart, *Children of Domestic Violence: Risks & Remedies*. Child Protective Services Quarterly (Pittsburgh Bar Ass'n, Winter, 1992); Walker, *The Battered Woman Syndrome*, p 59 (Springer, 1984).

*Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, Appendix C, p 27, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Family Violence Prevention Fund, 1995).

*See Section 1.5(B) on separation violence.

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- Using parenting time to interrogate the children about the abused parent, or to blame the abused parent for the separation.
- Using parenting time to abuse the children.
- Demanding unlimited access to the children.
- Making abusive contacts with the abused parent's home or work place under the pretext of arranging for access to children.

3. Physical Consequences of Violence for Children

Children living in homes where domestic violence occurs are at increased risk for suffering bodily injury. Such injury may be unintentional, occurring during the adult violence. Some children are harmed when they intervene to defend or protect a parent. Assaults on parents who are holding young children in their arms often result in injury to the children as well as the parents. Children can also be struck by furniture or other objects thrown by adults during an assault.*

Adult domestic violence can have other devastating physical consequences for children beyond bodily injury. Domestic violence can deprive children of housing, schooling, or medical care. Flight from domestic violence often leads to homelessness among children and their abused parents, and is a primary reason why adolescents run away from home.* Because abusers sometimes find partners who are in hiding by obtaining addresses from children's school or health care records, some abused individuals are reluctant to enroll their children in school or to seek medical care for them out of fear that the abuser will discover their whereabouts.

Children in homes where domestic violence occurs can also face dislocation at the hands of the court or child protection system, which may remove them from an abused parent's care — or terminate parental rights — due to a "failure to protect" them. Some domestic violence experts assert that the removal of children from the home on this basis is often founded on faulty assumptions,* namely:

- The abused parent is principally responsible for the safety of the children. This assumption reinforces abusive behavior by placing the blame for it on the abused individual, thus allowing the abuser to escape responsibility for the negative consequences of the violence.
- The abused parent has the power and resources to protect the children. This assumption overlooks abusers' control of the choice to behave violently toward their intimate partners, and their deliberate use of physical and psychological tactics to incapacitate their intimate partners.
- The abused parent has not tried to protect the children. An abused person's efforts to protect children may have been ineffective (or perceived as ineffective) because they were met by a less-than-helpful systems response, or did not involve a systems response.
- An allegation of failure to protect may induce an abused individual to leave the abuser. This assumption does not account for the fact that the abused individual and the children may be at increased risk after

*Ganley, *supra*, p 26.

*Rennison & Welchans, *supra*, p 8; Richie, *The Impact of Domestic Violence on the Children of Battered Women*, Children's Aid Society Nwsltr, p 3 (Spring, 1992).

*See Zorza, *Batterer Manipulation & Retaliation in the Courts*, 3 Domestic Violence Report 68, 75 (June/July, 1998); Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3 (Fall, 1999).

25.248(2). The statute does not define “physical or mental injury” or “maltreatment.” For cases discussing the question whether domestic violence subjects a child to physical or mental harm, see *In re Miller*, 182 Mich App 70, 80 (1990) (“Evidence of violence between parents in front of the children is certainly relevant to showing...that the home is an unfit place for children by reason of criminality or depravity”), and *In re Sours Minors*, 459 Mich 624, 634–636 (1999) (trial court was not justified in terminating the mother’s parental rights because her child was injured in an altercation between the parents, where the mother had separated from the father and there was not sufficient evidence that the mother’s new partner was abusive).

B. Effects of Adult Violence on Children

Whether they witness the abuse or are abused themselves, children suffer from involvement with adult domestic violence. In addition to causing physical injury, domestic violence can have a profound impact on children’s core beliefs about themselves, those in authority, and those with whom they have intimate relationships. The trauma and anxiety it produces can impede children’s development by preventing them from forming healthy emotional attachments with others, and derailing their efforts to learn basic social skills. This devastating emotional, cognitive, and behavioral damage can be manifested even after a child reaches adulthood. The following discussion explores some specifics of these effects.*

- **Emotional Effects**

Domestic violence terrorizes children. Once a violent incident has occurred, children may experience pervasive anxiety that another attack is imminent. They may feel rage at both the abuser and the abused parent, or confusion, guilt, shame, and helplessness. If the family is separated as a result of the abuse, children often experience grief and depression.*

- **Cognitive Effects**

Domestic violence teaches children that violence is effective behavior. Children in homes with a heterosexual male abuser may learn that men are aggressive and domineering, while women are powerless and deserving of abuse. They may learn that they and their mothers are worthless, and that adults cannot be trusted. Children exposed to domestic violence may learn to equate caring with abuse. They frequently believe that they are to blame for the abuse, particularly if some of the parental conflict involves child care issues. This belief is reinforced when the abuser tells the children that the abused parent deserves the abuse, or that it is occurring for the family’s own good. If children are threatened or punished when they disclose the violence in their homes, they may learn to be deceptive and indirect in their communication with others.

- **Behavioral Effects**

Domestic violence can cause developmental delays in children. Children in households where violence occurs may experience delayed development of speech, motor, and cognitive skills. Anxiety over their family situation may interfere with their ability to function in school, or

*Jackson. *Intervention with Children Who Have Witnessed Abuse*, p 4–5 (House of Ruth, Baltimore, MD, 1996); Ganley, *supra*, p 28–29.

*See Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 Social Work 51, 52–53 (1994), and Crites & Coker, *What Therapists See That Judges May Miss*, *Judges’ Journal*, 9, 11–12 (Spring, 1988).

cause learning disabilities. Conversely, domestic violence may cause a child to “over-achieve.” Children in homes where domestic violence is present may also develop complaints such as insomnia, diarrhea, bedwetting, or frequent illnesses. Some children experience eating or sleeping disorders, withdrawal, over-compliance, clinginess, aggression, destructive rages, detachment, regressive behavior, a fantasy family life, or thoughts of suicide.

A few children turn to violent behavior themselves as a result of observing adult domestic violence. Sixty-three percent of all males between ages 11 and 20 who are imprisoned for homicide in this country killed their mother’s batterer. An Oregon study reported that 68% of the delinquent youth in treatment programs had witnessed their mother’s abuse and/or had been abused themselves. These youth had committed such crimes as arson, assault, rape, and murder. Ninety percent of the youth within the group were abusing alcohol, and 89% were abusing drugs. A 1985 Massachusetts study found that children who witnessed the abuse of their maternal caretaker were:*

- Twenty-four times more likely to commit sexual assault crimes;
 - Fifty percent more likely to use drugs and/or alcohol;
 - Seventy-four percent more likely to commit crimes against another person; and,
 - Six times more likely to commit suicide.
- **Effects on Adult Behavior**

Children carry the effects of domestic violence into their adult lives. The failure to acquire academic or interpersonal skills in childhood may adversely impact an adult’s abilities to maintain a job or an intimate relationship. Moreover, male children who have witnessed domestic violence in their homes are at increased risk for perpetuating abuse in the families they form as adults. In one study, men who had witnessed domestic violence were three times more likely to hit their wives than those who had not.*

1.9 Chart — The Power and Control Wheel

The Domestic Abuse Intervention Project of Duluth, Minnesota, has devised the following Power and Control Wheel chart, which illustrates the dynamics of domestic violence as a wheel with spokes symbolizing the control tactics exerted in various aspects of the relationship.

*Studies cited in Edwards, *Reducing Family Violence: The Role of the Family Violence Council*, 43 *Juvenile & Family Court J* 1 (1992), and Jackson, *supra*, p 5.

**The Effects of Women Abuse on Children*, p 11-12 (2d ed. Nat’l Center on Women & Family Law, 1994).



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In cases involving domestic violence and/or child abuse, concerns about safety, fairness, and abuser accountability arise, particularly for alternative dispute resolution methods such as settlement negotiation and mediation that must rely on the parties' cooperation to produce an agreement resolving the dispute. These dispute resolution methods will not produce a fair resolution unless the parties have equal bargaining power and can express their needs and concerns without fear of reprisal or intimidation. *In cases involving domestic violence and/or child abuse, the imbalance of power between the parties, the criminal nature of the abuse, and safety concerns should lead courts to presume that cooperative dispute resolution methods such as mediation are inappropriate.* After exploring various types of ADR, this chapter focuses specifically on the safety and fairness concerns with mediation in the context of domestic relations cases involving domestic violence.

6.1 Types of Alternative Dispute Resolution

In Michigan, "alternative dispute resolution" ("ADR")* is defined under MCR 2.410(A)(2) as:

"any process designed to resolve a legal dispute in the place of court adjudication, and includes settlement conferences ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties."

As the court rule indicates, ADR encompasses many different dispute resolution methods, including negotiation and settlement, mediation, and arbitration. In distinguishing the various ADR methods, it is useful to consider

*For general information on ADR, see 1 Michigan Family Law, ch 8 (5th ed, Inst for Continuing Legal Ed, 1998). ADR is also the featured subject of several articles in 79 Mich Bar J 480 et seq, (May, 2000).

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the degree to which the disputants rely on assistance from a neutral third party to resolve the case:

*Some courts use "conciliation" to facilitate the parties' agreement to temporary provisions for support or access to children soon after case filing. Conciliation is similar to mediation in many respects.

- In **negotiation and settlement**, the parties typically meet face-to-face to try to reach an agreement resolving their dispute. Although there is no neutral third party to facilitate the discussion, the parties frequently engage attorneys to represent their interests. Negotiation and settlement will not result in a resolution of the parties' dispute if they are not able to reach agreement.
- In **mediation**, a neutral third party assists the parties as they work together to reach agreement. The parties frequently have attorneys to represent them during the mediation, although this is not required. The neutral third party does not impose a solution on the parties, so that mediation will not result in a resolution of the dispute if the parties cannot agree. See MCL 552.502(i); MSA 25.176(2)(i) ("Domestic relations mediation" means a process by which the parties are assisted by a domestic relations mediator in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time....").*
- In **arbitration**, the parties select a neutral third party (or third-party panel) to hear their dispute and reach a decision that will be binding on them under contract principles. The parties to arbitration are typically represented by counsel, although this is not required. Because the neutral third party makes a decision for the parties, arbitration always results in a determination of their rights and responsibilities in resolving the dispute. See MCL 600.5001 et seq; MSA 27A.5001 et seq, and MCR 3.602 on arbitration procedure.

The parties to domestic relations cases may use any of the above methods to resolve disputes. See MCR 3.216(A)(4) (parties may agree to use mediation and other settlement procedures), and *Dick v Dick*, 210 Mich App 576 (1995) (parties to a divorce may agree to binding arbitration for the resolution of property division, child support, and child custody).

*See Sections 1.2–1.3 on the dynamics of power and control.

In cases involving domestic violence, ADR methods that require the parties' cooperation (i.e., settlement negotiation and mediation) are problematic. Courts should presume that these dispute resolution methods will not produce a fair resolution; the parties do not have equal bargaining power due to the dynamic of power and control that is the hallmark of domestic violence.* The rest of this chapter will address the safety and policy concerns that arise from this power imbalance in the context of mediation. On concerns with settlement agreements between the parties, see Section 4.5(C).

6.2 Types of Mediation in Michigan Domestic Relations Cases

In Michigan, mediation is governed by statute and by court rule:

- **MCL 552.513; MSA 25.176(13)** requires the Friend of the Court office to “provide, either directly or by contract, domestic relations mediation to assist the parties in settling voluntarily a dispute concerning child custody or parenting time that arises from a domestic relations matter.”
- **MCR 3.216** is a permissive rule that took effect August 1, 2000. It gives a court authority to order mediation of any contested issue in a domestic relations case *if* the court has first submitted a local ADR plan to the State Court Administrator for approval. MCR 3.216(B); see also MCR 2.410(B) on the contents of the local ADR plan.

The following discussion compares these two provisions.

A. Statutory Mediation Provisions for Child Custody and Parenting Time Disputes

Friend of the Court offices are required under MCL 552.513(1); MSA 25.176(13)(1) to provide mediation to the parties in domestic relations matters.* This statute has limited applicability:

- It applies only to mediation of *child custody* or *parenting time* disputes. The Friend of the Court office is not required to provide mediation for support, property division, or other issues.
- Mediation under the statute is strictly voluntary; the court may not require the parties to meet with a mediator.

The statute creates no express limitations on the availability of mediation for cases with special circumstances, such as cases involving domestic violence or child abuse.

MCL 552.513(3); MSA 25.176(13)(3) protects the confidentiality of communications between a domestic relations mediator and the parties to mediation:

“Except as provided in [MCL 552.513(2); MSA 25.176(13)(2)],* a communication between a domestic relations mediator and a party to a domestic relations mediation is confidential. The secrecy of the communication shall be preserved inviolate as a privileged communication. The communication shall not be admitted in evidence in any proceedings. The same protection shall be given to communications between the parties in the presence of the mediator.”

B. Court Rule Mediation Provisions

As noted above, MCR 3.216 is a permissive rule authorizing a court to order parties to attempt mediation. Courts that wish to exercise this authority must

*See MCL 552.502(h); MSA 25.176(2)(h) for a definition of “domestic relations matters.”

*This subsection exempts statements contained in final agreements that are incorporated in consent orders.

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first submit a local ADR plan to the State Court Administrator. MCR 3.216(C)(1) contains the following features that differentiate court rule mediation from mediation under MCL 552.513(1); MSA 25.176(13)(1):

- The court rule has no limitation as to subject matter — it applies to mediation of “*any* contested issue in a domestic relations case, including post-judgment matters.” [Emphasis added.]
- Mediation under the court rule may be voluntary *or* court-ordered — the court may order mediation “[o]n written stipulation of the parties, on written motion of a party, or on the court’s initiative.”

Unlike the domestic relations mediation statute, MCR 3.216 provides for exemptions from mediation in special cases. For example, parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate. MCR 3.216(C)(3). Additionally, parties may object to mediation on the basis of the following circumstances listed in MCR 3.216(D)(3):

“(a) child abuse or neglect;

“(b) domestic abuse, unless attorneys for both parties will be present at the mediation session;

“(c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;

“(d) reason to believe that one or both parties’ health or safety would be endangered by mediation; or

“(e) for other good cause shown.”

An objecting party must file a written motion (and a notice of hearing) with the court and the attorneys of record within 14 days of receiving notice of the order assigning the case to mediation. MCR 3.216(D)(1). A hearing must be set within 14 days after the motion is filed, unless otherwise ordered by the court or by agreement of counsel to adjourn. *Id.*

Another unique feature of mediation under the court rule is that parties may request “evaluative mediation” in the event that they cannot reach agreement. A request for evaluative mediation may be made prior to mediation or at its conclusion, if the mediator is willing to provide an evaluation. If the parties request evaluative mediation, the mediator will prepare a written report to the parties setting forth his or her proposed recommendation for settlement purposes only. This report must be submitted to the parties of record “within a reasonable period after the conclusion of mediation,” and may not be submitted or made available to the court. MCR 3.216(I)(2). Neither the report nor the recommendations may be read by the court, relied upon by the court,

or admitted into evidence without the consent of the parties. MCR 3.216(I)(6). The court cannot request the parties' consent to read the recommendation. *Id.* The parties can either accept or reject the mediator's recommendation. If they accept it, the parties can enter a judgment with the court conforming to the recommendation. MCR 3.216(I)(3). If the parties reject the recommendation and cannot agree on the remaining issues, the mediator must advise the court of the date the process was completed, of the names of the participants, and whether further ADR proceedings are contemplated. MCR 3.216(H), (I)(4). The rule imposes no sanctions on a party who rejects the mediator's recommendation. Moreover, the court may not inquire and neither the parties nor the mediator may inform the court of the identity of a party who rejected the recommendation. MCR 3.216(I)(5).

Like the mediation statute, the court rule protects the confidentiality of communications between mediators and parties to the dispute. MCR 3.216(H)(8) provides:

“Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to

- (a) the report of the mediator under subrule (H)(6),*
- (b) information reasonably required by court personnel to administer and evaluate the mediation program,
- (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
- (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or MCR 3.216(H)(2).”*

6.3 Concerns with Mediation In Cases Involving Domestic Violence

Proponents of mediation generally note that it has the following advantages over traditional court adjudication:*

- **Privacy**

In contrast to statements made during court adjudication, communications between a mediator and the parties to a dispute are confidential. See MCL

*MCR 3.216(H)(6) requires mediators to inform the court of the status of the mediation.

*These rules address sanctions the court may impose for failure to submit materials or attend an ADR proceeding.

*See generally *Berecz, Family Mediation: A Horse of Many Colors*, 79 Mich Bar J 494 (2000).

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552.513(3); MSA 25.176(13)(3) and MCR 3.216(H)(8), cited in Section 6.2. This feature makes mediation a preferred dispute resolution method for parties who wish to keep the details of their relationship private.

- **Empowerment of the parties**

In court adjudication, a judge or referee dictates how the parties' dispute will be resolved after each side has presented its case. This adversarial dynamic may serve to escalate the hostilities between the parties by producing a sense that one side has "won" and the other has "lost." Moreover, the parties have diminished control over the outcome of the dispute, which may lead them to be less than enthusiastic in following the court's orders; indeed, the "losing" party may be inclined to ignore or disobey court orders that he or she feels were imposed by the court. In contrast, agreements in mediation are reached cooperatively, and represent the parties' own resolution of their dispute. Because the parties control the outcome, each party may feel that he or she has "won" and thus be more inclined to abide by the agreement.

The parties may also feel less anxious about participating in mediation because it is a more informal process than court adjudication. Mediation is less dependent upon substantive and procedural rules than is court adjudication, and may thus be easier for parties to understand.

Finally, because it requires communication between the parties, mediation may offer them an opportunity to learn how to communicate with one another in the future in an effective, business-like manner.

- **Cost-effectiveness**

Although mediation is not inexpensive, it is less time-consuming than court adjudication. This feature typically makes it a more cost-effective choice for the parties.

The foregoing advantages can only be gained if the mediation process operates safely and fairly. Many commentators with expertise in mediation and domestic violence have expressed skepticism that the process can work as it was intended to in light of the entrenched patterns of abuse, power, and control that are present in cases involving domestic violence. Concerns with mediation in these cases are as follows:*

- **Accountability**

Domestic violence involves criminal acts. As a matter of policy, assaultive crimes should not be a subject for negotiation and settlement between the crime victim and perpetrator. When crime victims negotiate with perpetrators, it undermines the message that domestic violence is criminal conduct that society will not tolerate. Moreover, mediation sessions in which violence is negotiated may reinforce the abuser's transfer of blame for the abuse to the victim.* The National Council of Juvenile and Family Court Judges states:

*Similar concerns apply to conciliation proceedings.

*See Mich Batterer Intervention Standards, Section 7.3c, discussed in Section 3.4(B).

“Because assault of any kind is a serious crime and needs to be treated as such by the courts, mediation of family violence is simply not an appropriate response. Mediation is a process by which the parties voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. Thus, when the issue before the court is...a criminal family violence charge, mediation should not be mandated. The victim receives no protection from the court with a mediated ‘agreement not to batter.’ And a process which involves both parties mediating the issue of violence implies, and allows the batterer to believe, that the victim is somehow at fault.” Herrell and Hofford, *Family Violence: Improving Court Practice*, 41 *Juvenile and Family Court Journal* 20–21 (1990).

In contrast to mediation, court adjudication is a public forum in which judges can send abusers a public message that domestic violence will not be tolerated. Judges can also hold abusers accountable by invoking enforcement powers that are unavailable to mediators. Unlike mediators, judges can issue orders that intervene in abusive behavior — orders that can be enforced by criminal sanctions or by the contempt powers of the court.

- **Safety**

The mediation process typically requires the parties to a dispute to come into physical contact with one another. Physical proximity gives abusers the opportunity for harassment, threats, and further violence.

An abused individual’s fears about safety preclude meaningful participation in mediation. One victim described the fear she experienced about mediation as follows:

“Mediation does not take into account the fear that I, as a battered woman, have about voicing my needs in the presence of someone who has pushed me and belittled me for expressing any needs at all....I endured two months of weekly meetings with the man who had knocked me to the ground, raped me, and repeatedly violated me....I felt forced to comply, to attend those sessions and thus avoid greater pain. It reminded me of nights spent silently weeping as he raped me. If I complied, the pain ended more quickly....In mediation, if I’d let my ex-husband verbally intimidate me and emotionally abuse me, I wouldn’t have to go to court. The trade-off was not a fair one.” Hart, *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation*, 7 *Mediation Quarterly* 4 (1990), quoting Lenae, *Mediation:*

Psychological Brutalization, National Coalition Against Domestic Violence Voice, p 15 (Winter, 1988).

- **Fairness**

Mediation operates fairly and effectively only when parties with equal bargaining power cooperate to achieve a mutually acceptable agreement to resolve their dispute. In cases involving domestic violence, the prerequisites of equal bargaining power and fair cooperation are absent. Instead, these cases are characterized by a one-sided exercise of power and control by the abusive party. The following comment is typical of scholars who criticize the use of mediation in cases involving domestic violence:

“While mediation presumably requires that both parties be placed on equal footing in order to negotiate a mutually acceptable agreement the abused woman may make concessions to protect herself from further abuse. [The] balance of power in victim/abuser relationships is so weighted that the possibility of victim coercion during mediation is virtually unavoidable. Mediation, by nature, relies to some extent on the mutual goodwill and fairness of both parties. In some kinds of cases, trained mediators may be effective in equalizing the bargaining power of the parties, but they cannot compensate for a long-term pattern in which one party has consistently controlled and manipulated the other. Indeed, the victim may even be afraid to speak up or register disagreement during a mediation session for fear of retaliation. This imbalance of power would continue after the mediation session as well, since the parties’ relationship would not be altered.” Goolkasian, *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*, p 61 (Nat’l Inst of Justice, 1986), cited in Lemon, *Domestic Violence and Children: Resolving Custody and Visitation Disputes*, p 131 (Family Violence Prevention Fund, 1995).

6.4 Responding to Concerns About Mediation: Controversy and Consensus

Despite general agreement that domestic violence presents serious safety and policy obstacles, there is much controversy over the role that mediation can and should play in domestic relations cases where violence is a factor. This section describes the points of controversy, as well as some areas of common ground.

A. Can Mediation Ever Be Safe and Effective?

Some commentators believe that the obstacles to mediation can be overcome in certain cases where domestic violence is present. These commentators advocate screening cases for domestic violence, assessing the risks to the abused party, and — in cases deemed appropriate for mediation — taking steps to promote safety and equalize power imbalances. There is much controversy over the extent to which mediation can be safe and effective in cases involving domestic violence. The following comments reflect some of the range of opinions:

- **Some commentators reject mediation for cases involving domestic violence:**

“[C]ompulsory and voluntary mediation and binding arbitration present overwhelming problems for domestic abuse cases. While there are safeguards which can be built into each system, the safeguards do not reach the level of protection for litigants in the courtroom.” Argiroff, *Domestic Violence and Alternative Dispute Resolution: The Need for Mandatory Exemption*, Mich Family Law Journal, Special Issue, p 53, 55 (1994)

“[M]ediation ideology and practice is incompatible with the rights and safety of victims of spouse abuse. A central tenet of mediation theorists and practitioners is that domestic violence arises out of conflict rather than the pattern of domination and control over the victim that is at its core. By focusing on future behavior, mediation ignores the relational history that is part and parcel of the abuse. Mediation is billed as an empowering, transforming process for the parties in which each participates equally. The mediator is charged with rectifying power imbalances, but, within a culture of battering, correction of power imbalances is unlikely if not impossible. Emerging research also shows that because of mediators’ orientation and training, they do not know how to respond to the signs of violence or threats of violence; thus, they transform them into procedural issues with the consequences that victims’ rights are delegitimized. Finally, mediators’ proclivities to develop written contracts specifying rules of future behavior may force the victim into unwanted contact with her abuser and set the stage for further violence for any perceived infraction of the rules.... We conclude, therefore, that mediation should not be used in cases where a culture of battering exists. While an extremely well-trained mediator might successfully use mediation in some atypical cases, viewed from a system level perspective the odds are much greater that many more victims will have their rights jeopardized.” Fischer, et al, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU Law Review 2117, 2172–2173 (1993).

- **Some commentators believe that mediation can succeed if the abuse is limited:**

“Many family matters can be successfully mediated if abuse has not created an unequal balance of power. The key is to distinguish chronic abuse cases, always inappropriate for mediation, from cases of limited

abuse, where the parties can bargain equally.” Gerencser, *Family Mediation: Screening for Domestic Abuse*, 23 Fla St U Law Review 43 (1995).

- **Some commentators believe that mediation can be a route to empowerment and responsibility if there are adequate safeguards:**

“The issue has evolved from whether there should be...mediation where there has been spousal abuse to whether there is present intimidation, control, or coercion that jeopardizes the abused’s safety or ability to effectively negotiate in mediation. If intimidation, control, or coercion exist and cannot be effectively neutralized by representation, legal protections, and remedial therapy, then mediation should not take place. Mediation should only be allowed as a safe and empowered choice for each participant. Mediation should never be a vehicle for the perpetuation of the cycle of violence and denial. Through heightened discussion of the issues of the abuse and creative measures that protect the abused and direct parties to appropriate therapy, mediation offers successful intervention to constructively and fairly resolve the separation or divorce and to guide the parties in ending their destructive relationship.” Corcoran and Melamed, *From Coercion to Empowerment: Spousal Abuse and Mediation*, 7 *Mediation Quarterly* 303, 314 (1990).

B. Mediation Must Be Voluntary

There appears to be general consensus that mediation should never take place unless it is truly the choice of the abused individual. Moreover, there is agreement that parties should not be required to attend mediation sessions in violation of a protection order. Section 408(A) of the Model State Code on Domestic and Family Violence approved in 1994 by the Board of Trustees of the National Council of Juvenile and Family Court Judges* suggests that courts be prohibited from ordering or referring the parties to attempt mediation in the following circumstances:

“1. In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect, the court shall not order mediation or refer either party to mediation.

“2. In a proceeding concerning the custody or visitation of a child, if there is an allegation of domestic or family violence and an order for protection is not in effect, the court may order mediation or refer either party to mediation only if:

(a) Mediation is requested by the victim of the alleged domestic or family violence;

(b) Mediation is provided by a certified mediator who is trained in domestic and family violence in a

*The Model State Code is an educational and advisory document only. Michigan courts are not required to consider or follow it.

specialized manner that protects the safety of the victim; and

(c) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.”

The commentary to this model rule notes that courts should refrain from non-mandatory referrals to mediation because “[j]udicial referrals are compelling and often viewed by litigants as the dispute resolution method preferred by the court.”

Section 407(2) of the Model Code also stresses that mediation should not occur unless the abused individual desires it. This provision requires mediators to refrain from mediating court-ordered or referral cases unless the abused individual wishes to proceed:

“A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that domestic or family violence has occurred unless:

(a) Mediation is requested by the victim of the alleged domestic or family violence;

(b) Mediation is provided in a specialized manner that protects the safety of the victim by a certified mediator who is trained in domestic and family violence; and

(c) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.”

Michigan courts have great discretion in approaching the question of mediation. Although they have the authority to refer or order the parties to mediation under MCL 552.513(1); MSA 25.176(13)(1) and MCR 3.216,* they are not required to exercise it in every case. Consistent with the Model State Code, MCR 3.216 suggests that courts proceed with utmost caution in using mediation when a case involves domestic violence. Under MCR 3.216(C)(3), parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate. Additionally, parties may object to mediation on the basis of the following circumstances listed in MCR 3.216(D)(3):

“(a) child abuse or neglect;

“(b) domestic abuse, unless attorneys for both parties will be present at the mediation session;

*See Section 6.2 for a more complete description of these provisions.

“(c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;

“(d) reason to believe that one or both parties’ health or safety would be endangered by mediation; or

“(e) for other good cause shown.”

Because coercion is so often a factor in cases involving domestic violence, it is important that both parties receive clear, accurate information from the court about their rights to refuse or object to mediation.

C. Screening Is Essential

No matter what view one takes about the use of mediation in cases involving domestic violence, careful screening by both courts and mediators is essential. Any decision to prohibit mediation or to hedge it with safeguards must be based on an adequate understanding about the extent and nature of the violence in the parties’ relationship.

Because screening is so critical, §407(1) of the Model State Code on Domestic and Family Violence gives mediators a duty to screen for domestic violence during mediation referred or ordered by a court:

“A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties.”

The commentary to this model provision states that “[s]creening must include an assessment of the danger posed by the perpetrator, *recognizing that victims of domestic violence are at sharply elevated risk as they attempt to end the relationship and utilize the legal system to gain essential protective safeguards.*” [Emphasis added.] For a discussion of lethality factors, see Section 1.5(B).

Note: Some commentators who are of the position that mediation should not be used in cases involving domestic violence assert that screening should be done by independent persons trained in the nature and dynamics of domestic violence rather than by representatives of mediation interests. Fischer, et al, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU Law Review 2117, 2173 (1993).

Information-gathering strategies for courts are discussed in Chapter 2 of this Resource Book. Guidelines for mediation screening are addressed in Section 6.5; further guidelines and sample screening questions for domestic relations mediators are found in Appendix E.

D. Domestic Violence Training Is Essential

Knowledge of the nature and dynamics of domestic violence is essential to identifying its presence in a case, and to promoting safety where it is a factor. Thus, domestic violence training for mediators and court personnel is essential to promoting safety in the context of mediation, regardless of a court's outlook on the use of mediation in cases where violence is present.

Suggested training for family mediators should include:*

- The dynamics of domestic and family violence, including the dynamics of power and control and lethality indicators. See Sections 1.2–1.6 on this subject.
- The effects of physical and psychological abuse on family members and children. See Sections 1.7–1.8 on this subject.
- Effective techniques for implementing safety measures and safe terminations. See Sections 2.2–2.4 for suggestions on creating a safe environment.
- Appropriate referral resources used in addition to mediation. See Chapter 3 for discussion of referral agencies.
- Sensitivity to cultural, racial, and ethnic differences that may be relevant to domestic violence. Training in this area should include the support and participation of service providers to culturally diverse and minority populations. See Sections 3.5 and 6.6 for more discussion of cross-cultural concerns.

See Sections 3.1–3.2 for domestic violence service agencies that can assist a court with its training efforts.

6.5 Mediation Guidelines

As a practical matter, many cases referred to mediation involve domestic violence. This may be a result of inadequate or ineffective screening, the wishes of the abused individual, or the attitude of the referring court toward mediation in such circumstances. To promote safety, fairness, and accountability in these instances, courts and mediators can develop local mediation guidelines for cases where domestic violence is present. Indeed, the State Court Administrative Office guidelines for courts submitting local ADR plans under MCR 3.216(B) require that courts address the following issues related to domestic violence:

- In domestic relations mediation programs, an ADR plan must identify how courts, mediators, and agencies (if applicable) will screen cases for domestic violence and child abuse and neglect. The guidelines recommend that during screening, courts check for PPOs, domestic

*Ramos, *Cultural Considerations in Domestic Violence Cases: A National Judges' Benchbook*, p 3–22, 3–26 (Family Violence Prevention Fund, 1999), citing Fuller & Lyons, *Mediation Guidelines*, 33 Willamette L Rev 905, 922 (1997).

Section 6.5

violence convictions (both state and city), and child abuse/neglect convictions.

*See Section 6.2(B) on cases that may not be referred to mediation.

- If mediation will be ordered in domestic relations cases, an ADR plan must indicate how the court will disseminate information educating persons about identifying cases that are not appropriate for mediation.*

The guidelines further recommend that in designing a plan to screen cases for domestic violence and child abuse/neglect, the court should consider contacting local domestic violence coordinating councils and service agencies, the local prosecutor, the Michigan Coalition Against Domestic and Sexual Violence, legal assistance organizations, the Domestic Violence Prevention and Treatment Board, and Community Mental Health.

As of the publication date of this Resource Book, no statewide model guidelines for domestic relations mediation exist in Michigan. However, the Domestic Violence Prevention and Treatment Board had convened a task force to develop a model protocol for handling the question of mediation in domestic relations cases involving domestic violence; the work of the task force was in progress as of the publication date of this Resource Book.

* "PPMP" refers to "permanency planning mediation programs" that serve in child protection proceedings.

For use in a different context, the State Court Administrative Office ("SCAO") has developed "Essential Considerations for PPMP Domestic Violence Protocols" (1999).* This advisory document was created to assist mediation programs in developing protocols for handling child abuse and neglect cases involving adult domestic violence. The SCAO developed the Essential Considerations in consultation with Michigan domestic violence experts; it also examined other states' models and protocols for domestic relations mediation in cases involving domestic violence. This gives the Essential Considerations some usefulness in planning for domestic relations mediation, even though this document was developed for use in the child protection area. The full text of the Essential Considerations and supporting documents appears in Appendix F-H.

*Even so, the Essential Considerations start with a **presumption against mediation** in cases involving domestic violence where the perpetrator of adult abuse and the abused adult would both be parties to mediation of the child protection case.

Cautionary Note: In consulting the Essential Considerations and supporting documents, the reader must be mindful that these resources were developed for mediation in *child protection cases*. Child protection cases may be better suited* for mediation than domestic relations cases for the following reasons:

- In child protection cases, the focus of mediation is typically not on disputed issues between the abuser and the abused individual (i.e., custody, property division); rather, mediation in the child protection context is more child-centered, focusing on issues such as services to the family, placement of the child, or visitation with the child during placement. Thus, there is more likelihood in the child protection context that the abuser and abused individual will agree about the desired outcomes in the case than there is in the context of a domestic relations dispute.

- Mediation in child protection cases typically involves participants in addition to the abuser and abused individual, such as Family Independence Agency staff, separate attorneys for children and parents, and therapists. The presence of these additional participants (who would not be present in a domestic relations case) may reduce the level of danger and intimidation for the abused individual.

The reader should also be mindful that the Essential Considerations and supporting documents are works in progress that may be updated in the future as more experience is gained. To determine whether these documents have been updated, contact the Office of Dispute Resolution at the State Court Administrative Office.

In addition to the SCAO's "Essential Considerations" and accompanying documents, the following resources from other states and national organizations may be consulted for guidance on mediation in cases involving domestic violence:

- *Screening for Domestic Violence and Child Abuse: Divorce and Child Custody Mediation* (Women's Law Project, Pennsylvania Coalition Against Domestic Violence, 1998). This document is reproduced in Appendix E.
- Girdner et al, *Domestic Abuse and Custody Mediation Training for Mediators* (ABA Center on Children and the Law, 1999). This training curriculum for mediators includes six three-hour training modules with notes for instructors, small-group and roleplay exercises, presentation slides, and handout materials. Topics covered include; introduction to domestic abuse; children, domestic abuse, and parenting plans; screening for domestic abuse; terminating safely; and conditional mediation. Project consultants include Barbara Hart and Richard Tolman.
- *Mediation of Family Disputes Involving Domestic Violence: Report of the AFM Task Force on Spousal and Child Abuse* (Academy of Family Mediators, 1998). This report addresses some of the issues involved in determining which case may be appropriate for mediation, and offers recommendations regarding ways to safeguard the physical safety and legal rights of all parties. It is intended for educational purposes only and is not intended as an AFM policy.
- Fuller and Lyons, *Mediation Guidelines*, 33 Willamette Law Review 905 (1997). This article offers commentary on and the full text of guidelines for the use of mediation in family law developed by the Mediation Work Group of the Oregon Domestic Violence Council.

6.6 Cross-Cultural Considerations in Mediation

As noted in Section 6.3, the dynamic of power and control in relationships involving domestic violence prevents the abused individual from participating safely and meaningfully in mediation. Measures to overcome the obstacles created by domestic violence will not be effective unless they reflect an awareness of cultural considerations for the parties. Cultural issues to address include:*

*Ramos, *Cultural Considerations in Domestic Violence Cases: A National Judges' Benchmark*, p 3-24-3-25 (Family Violence Prevention Fund, 1999).

- Can the mediator conduct the mediation in the primary language spoken by the abused individual? If not, has the mediator arranged for an interpreter?
- Is there a cost for mediation? If so, are fee waivers available for low-income persons?
- Is the mediator of the same race, ethnicity, religion, or sexual orientation as the parties? If not, have the parties been asked if they have a preference as to the background of the mediator? Has co-mediation been explored where parties of different backgrounds feel strongly about having a mediator who shares their background?
- Has co-mediation been explored where the parties feel strongly about having a mediator of their same gender?
- Can both parties read English or another language? If literacy is a challenge for a party, is the mediator aware that any written agreements should be read out loud to the parties before asking one of them to sign or agree to it?

**Id.*, at 3-26.

Mediators who are culturally aware understand the following:*

- Their own biases and stereotypes, and how biases and stereotypes generally can influence screening for abuse and the mediation process.
- The importance of avoiding assumptions about clients' values, habits, interests, needs, and socialization.
- The effects of social and/or cultural isolation. These effects may relate to health care, fear of deportation, employment, access to services, community contacts, and personal rights under the law.
- Cultural differences can affect the meaning of nonverbal communication.
- In cross-cultural situations, abused individuals may be particularly affected by issues related to housing, public assistance, immigration, refugee policies, and legal aid policies.

Further discussion of cross-cultural communication appears at Section 3.5.

SELF ASSESSMENT TOOL

The protocol is a tool for assessing whether a case is appropriate for mediation or not, and if so, under what conditions. This questionnaire is a tool to help you, the mediator, assess whether you are an appropriate person to handle domestic violence cases which, for reasons described in the protocol, might be mediated. Not all mediators should mediate such cases. Some of you will already know that about yourself. Some of you won't. This questionnaire is designed to help you begin to make such an assessment. It is for your use only. No one will read your answers.

If you are having trouble understanding the importance of such an assessment, take a moment to reflect on the following two scenarios:

1. A therapist's child died at age five. Several years later, that same therapist gets a new case wherein the mother is seriously depressed because her 5 year old died in similar circumstances.
2. An attorney's parents were both alcoholics and abusive, emotionally and physically. He gets a case where his client is an alcoholic, as is the other parent and they are fighting over who gets custody of the child. Allegations of physical abuse are raised about his client.

Now, reflecting on case number one: It may just be that the therapist is the perfect person to handle such a case, as she certainly can be empathetic. However, it may also be that she cannot separate out her stuff from the client's and the therapy will be compromised. So, too, in scenario number two: The attorney may be able to handle this case as well or even better because of his own personal understanding and growth. But it is also true that his past may blind him and he may "act out" his own hurt and pain in this case in ways that are not helpful to his client and the client's family.

Please answer the following questions as best you can.

1. Have I or anyone in my family or close network experienced physical, psychological or verbal abuse? Explain.
2. Has anyone in my family or close network been accused of an act of domestic violence or been arrested for or convicted of domestic violence crime? Explain.
3. Given my answers to #1 and #2 above, how will/might that affect me as a mediator in those domestic violence cases that can be mediated as per the protocol?

4. Am I uncomfortable in situations where there is an imbalance of power? If so, how do I know that I am? And what do I do in these circumstances?

5. Am I uncomfortable in situations where there are victims/perpetrators? If so, how do I know that I am? And what do I do in these circumstances?

6. Looking back over time, how do I feel about victims? And how do I respond to victims?

7. Looking back over time, how do I feel about perpetrators? And how do I respond to perpetrators?

8. What are my beliefs regarding domestic violence?

9. Are there any conditions under which I think it is okay to hit/shove a spouse or family member?

10. What are my beliefs regarding divorce?

11. Do I think that someone should stay married even when domestic violence exists?

12. How confident am I that I understand or will be able to understand the dynamics in domestic violence? What is it that I don't quite understand yet?

13. Given the answers to some of the questions above, and given the importance of maintaining neutrality in mediation, how confident am I that I can stay neutral about the issues to be mediated in domestic violence cases allowed as per the protocol? Explain.

Reflection

Obviously, there are no simple guidelines for interpreting these questions. However, we offer these thoughts for your reflection.

If you answered yes to #9 and #11, and depending upon your answers to #8 and #10, you may be a person who should not mediate such cases, primarily due to your beliefs. That is, your beliefs may be incongruent with the essence of the training you engaged in today. Further, if you answered that you are against divorce, you may not be a person who should mediate any separation or divorce case. It is hard to "fake" neutrality, especially when it comes to beliefs. Our beliefs affect almost every aspect of our being, and in a mediation, they affect our manner, our tone, the type of questions we ask or don't ask, how we analyze a case and so forth.

Depending upon your own personal experiences with abuse/abusers/power imbalances/victims/perpetrators, (Questions 1-7), you may be able to handle these cases or not. Or you may be able to handle some of these cases and not others. No one can answer that question for you. But asking the question is at least a step toward being conscious that these experiences did and do affect who you are and what you do/don't do in the world.

The answer to #12 may lead you to decide you need more continuing education on the subject, or perhaps further discussion with a Domestic Violence specialist in your area. Are there any other actions you can think of to take?

Question #13 is a core issue for mediators. If the answer is no, then do not mediate these cases.

@M. Brady Mikusko, 5/2002

MICHIGAN SUPREME COURT
STATE COURT ADMINISTRATIVE OFFICE

OFFICE OF DISPUTE RESOLUTION

DOMESTIC VIOLENCE
SCREENING TRAINING
FOR MEDIATORS

September, 2002

1

WHY SCREEN FOR DOMESTIC
VIOLENCE??

4

Acknowledgements

Developed by the Michigan Coalition Against Domestic and Sexual
Violence in Collaboration with the Michigan Domestic Violence
Prevention and Treatment Board and the Michigan State Court
Administrative Office

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2

Domestic Relations Cases Are Referred to
Mediation Under MCR 3.216

- Cases may be referred to mediation on written stipulation of the parties, on motion of a party, or on the court's own initiative.
- Parties who are subject to a
 - personal protection order or
 - who are involved in child neglect or abuse proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

5

Overview of Training

- Why Screen for Domestic Violence?
- Nature and Dynamics of Domestic Violence
- Screening by the Court: Overview of Personal Protection Orders (PPOs)/No Contact Provisions
- The Mediator Screening Process I: The Interview
- The Mediator Screening Process II: Handling a Case After Violence is Disclosed
- Mediation if Victim Requests it or Relationship is Controlling with No Violence or Threat of Violence
- Mediation and Confidentiality

3

Parties Can Object to Referral to
Mediation Under MCR 3.216

- A party may object to mediation by filing a written motion to remove the case from mediation. Cases may be exempt from mediation on the basis of the following:
 - Child abuse or neglect;
 - Domestic abuse, unless attorneys for both parties will be present at the mediation session;
 - Inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
 - Reason to believe that one or both parties' health or safety would be endangered by mediation; or
 - For other good cause shown

6

Local ADR Plans: SCAO Model Protocol for Screening for Domestic Violence

- SCAO requires courts to include a protocol for domestic violence screening in local ADR plans
- SCAO has Developed a Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation (SCAO Model Protocol).

7

**SCAO Model Protocol:
Three Tiered Screening Process: Court,
Self, and Mediator Screening**

- **Court Screening:** The court should require parties to complete and file a simple domestic violence screening form that addresses matters of public record, such as the existence of current or expired personal protection orders, pending or resolved domestic violence criminal cases, pending child abuse or neglect proceedings. (Because the court form is discoverable it is limited to matters of public record.)
- See MC 282

SCAO Model Protocol

10

**SCAO Model Protocol:
Presumption Against Mediation when
Domestic Violence Exists**

When domestic violence is present, the case should be presumed inappropriate for mediation. *SCAO Model Protocol Sec. 1*

8

**SCAO Model Protocol:
Three Tiered Screening Process: Court,
Self, and Mediator Screening**

- **Parties' Education and Self-Screening:** Prior to referral to mediation, parties will be provided with educational materials about mediation including information on filing a motion to remove the case from mediation. See self-screen pamphlet: Is Mediation Right for you?

SCAO Model Protocol

11

**Why a Presumption Against
Mediation?**

- An abuser's desire to maintain power and control over the victim is inconsistent with the methods and objectives of mediation.
- Fear of an abuser may prevent victim from asserting needs in mediation.
- Occasion of mediation gives the abuser access to the victim, which exposes the victim, the children, and the mediator to a risk of violence.
- Mediator neutrality may support the abuser's belief that the abuse is acceptable.
- Future-orientation of mediation may discourage discussion of past abuse, which in turn invalidates the victim's concerns and excuses the abuser.

SCAO Model Protocol

9

**SCAO Model Protocol:
Three Tiered Screening Process: Court,
Self, and Mediator Screening**

- **Mediator Screening:** Mediators have the opportunity to conduct the most extensive screening without providing the abuser with access to the information disclosed by the victim.

SCAO Model Protocol

12

Mediator's Role in Screening After a Court Hearing

- Mediators can determine that a case is inappropriate for mediation even if a case has been referred to mediation after a hearing by the court.
- Mediators can determine that a case is inappropriate for mediation even if attorneys for both parties can be present during mediation.

13

The Impact of Domestic Violence on Proceedings in Family Division of Circuit Court

- Separation from an abuser does not always end the abuse. Perpetrators of domestic abuse may resort to (or escalate) physical violence in order to regain control after a separation.
- The perpetrator's knowledge of a partner's daily routine or whereabouts may provide opportunities for harassment, intimidation, and physical violence.
- Domestic violence typically occurs in the privacy of the home, where the only witnesses are under the abuser's control.
- Domestic violence often escalates in frequency and seriousness over time, particularly where there is no effective intervention from the justice system or other social institutions.

16

THE NATURE AND DYNAMICS OF DOMESTIC VIOLENCE

14

Causes of Domestic Violence

Domestic violence is influenced by a combination of social and individual factors.

17

Defining Domestic Violence

The terms "domestic abuse" or "domestic violence" mean:

- A purposeful pattern of physical, psychological, sexual, emotional and/or financial abuse,
- Carried out over a period of time,
- With the aim of controlling an intimate partner or other household member.

- These tactics may include both criminal and non-criminal acts.

15

The Environment of Violence

Three circumstances are generally present in an environment where domestic violence is occurring:

- **The perpetrator has learned to abuse:** Perpetrators have learned violence is an effective means of controlling their partners. In family division proceedings, courts or mediators can inadvertently create an environment that tolerates domestic violence.
- **The perpetrator has found the opportunity to abuse:** Opportunities for domestic violence exist in environments where it is tolerated.
- **The perpetrator has chosen to abuse:** Domestic violence is a choice; it is not "out of control" behavior. Abusers calculate their actions to avoid risk to themselves, while maximizing control over their intimate partners.

Lovik, *Friend of the Court Domestic Violence Resource Book*, p 7 (Michigan Judicial Institute, 2001)

18

Factors That May Accompany Domestic Violence

Many people (including abusers) erroneously characterize domestic violence as out-of-control behavior caused by:

- **Alcohol and drug use;** Alcohol and drug use do not cause domestic violence. However, it may intensify the severity of violence.
- **Stress and anger;** Stress and anger are not primary causes of domestic violence. Domestic violence is regarded as a *pattern* of behavior that unfolds over a period of time.
- **Problems inherent in the relationship;** Abusers escape responsibility for their violent choices by **blaming** the abuse on their intimate partner(s) or on the relationship.

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Lethality Factors

The National Crime Victimization Survey in 1998 reports: domestic violence perpetrators still kill their victims with alarming frequency.

- 1830 murders were attributed to intimate partners in 1998.
- Women are more likely than men to be the victims.
- Lethal violence may occur unexpectedly.
- Leaving a relationship may cause violence to escalate.

22

Illness-based Violence

In some cases, domestic violence may be the product of a mental illness. Illness-based violence can be distinguished from learning-based violence.

- The perpetrator of illness based violence does not usually select a particular consistent victim; instead abuse is directed at any person present when the violent impulse arises.
- Illness based violence is often accompanied by other symptoms of disease (changes in speech or gait, or delusional thinking).
- Poor recall of the abuse does not necessarily indicate illness based violence. Abusers who are not mentally ill often deny or minimize their behavior.

Lovik, *Friend of the Court Domestic Violence Resource Book*, p 10 (Michigan Judicial Institute, 2001)

20

Summary of Circumstances That May Indicate Lethality

- | | |
|--|---|
| • Increasing frequency or severity of violence | • Stalking |
| • Sense of ownership of partner, obsessive about partner or family | • Drug, alcohol consumption |
| • Acute depression or desperation at losing partner | • Pet abuse, threats to pets |
| • Acute mental health problems | • Past police involvement |
| • Access to weapons | • Recent separation of the parties |
| • Threats or fantasies of homicide, suicide | • Victim's fear of lethal violence |
| | • Abuse involves sexual abuse, strangling or biting |
| | • Past disregard for court orders |

23

Understanding the Abuser: The Potential for Lethality

Characteristics of the Abuser: Domestic violence occurs in all social groups, without regard to the parties' racial, ethnic, economic, religious, educational, professional or social backgrounds. Common characteristics include:

- Dependency and jealousy;
- Belief in men's entitlement to dominate women;
- Isolation;
- "Jekyll and Hyde" personality;
- Poor interpersonal skills; and
- Refusal to accept responsibility for the violence.

21

Abusive Tactics

- Emotional abuse
- Using children as vehicles for abuse
- Controlling the finances
- Sexual abuse
- Controlling tactics within the courtroom
- Isolation
- Name calling

24

Power and Control Wheel

- Developed after interview with hundreds of survivors by the Duluth battered women's shelter.
- Many of the women criticized theories that described battering as cyclical rather than as a constant force in their relationship; that attributed the violence to men's inability to cope with stress; and that failed to acknowledge fully the intention of batterers to gain control over their partners' actions, thoughts, and feelings.
- The Power and Control Wheel depicts the primary abusive behaviors experienced by women living with men who batter. It illustrates that violence is part of a pattern of behaviors rather than isolated incidents of abuse or cyclical explosions of pent-up anger.



25

Cycle of Violence

This was one of the first model for understanding the experience of domestic violence and was based on extensive interviews with survivors. It has been useful in moving away from old notions about violence being caused by communication difficulties. The model as described by Lenore Walker has three stages.

- **Tension building:** The abuser expresses dissatisfaction and hostility in order to control the victim's behavior. The victim often "walks on eggshells," trying to placate the abuser.
- **Acute battering incident:** The abuser chooses to use violence to control the survivor and/or the situation.
- **Loving contrition stage:** The abuser may express remorse, behave affectionately toward the victim and promise the abuse will end. The victim's hopes for the future may be reinforced, based on the abuser's promises or some actual changes in behavior.

Walker, *The Battered Woman Syndrome*, (Springer 1984)
Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare L.J. 3, 5 (Fall, 1999)

28

Domestic Violence Victim Responses

- Victims of domestic violence respond to violence in a manner similar to survivors of other life-threatening trauma.
- Those working with victims should expect to see a broad continuum of trauma responses.

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Cycle of Violence Model: Limitations

- May be most helpful to understanding dynamics that occur after "first" or "early" assaults.
- Not all survivors experience violence this way. In the original study only 65% of participants described a tension building phase and only 50% described a loving contrition phase.
- Focuses primarily on the violent incident itself and does not take into account the variety of controlling behaviors that at other times.
- Has lead to inappropriate interventions with victims by categorizing them as being in a certain "phase," rather than a holistic understanding of the violence.

29

Effects of Abuse

Abused individuals may display the same behaviors as survivors of other life-threatening situations or trauma including:

- Shock
- Disbelief
- Fear
- Withdrawal
- Confusion
- Panic or excitement
- A belief that "every thing will be okay"
- Minimization or denial
- Rationalizing or taking responsibility for the abuse

27

"Stockholm Syndrome" Victim/Hostage Syndrome

This was first described in the literature in 1973 after hostages in a bank holdup in Stockholm, Sweden, bonded with the captors. Researchers suggest intense emotional bonding to an abuser or captor may be instinctive survival response for **some** individuals who:

- Perceive a threat to survival and believe that their captor is willing and able to carry out the threat;
- Are isolated from the perspectives of persons other than the captors;
- Believe they cannot escape; and
- Perceive a small kindness from the captor within the context of the terrifying experience.

Graham and Rawlings, *Bonding with Abusive Dating Partners: Dynamics of Stockholm Syndrome*, in *Dating Violence: Young Women in Danger* (Levy, ed, Seal Press, 1991)

30

Progression of Domestic Violence

- Some victims **do leave** after a first assault, but many do not.
- The victim may see the abuse as an aberration. While the victim disapproves of the violence and wants it to end, she/he also may not be willing to give up on the relationship at this point.
- Victims may try a variety of strategies including leaving and returning, changing behaviors, counseling, or court intervention in the hope of ending the violence while preserving the relationship.
- Victims also fear that abuser will follow through with threats of violence for leaving the relationship. Victims may feel trapped in the relationship due to **economic concerns, lack of housing, lack of transportation, concerns for the safety and custody of their children, religious and family pressures.**

Adapted from Schreiber & Garney, *Domestic Violence: A National Curriculum for Family Preservation Practitioners*

31

Survival and the Court System

Efforts to survive or cope with domestic violence may appear in many forms in court proceedings. An abused individual may:

- Publicly agree with the abuser
- Avow love for the abuser
- Make statements supporting the abuser
- Flee the jurisdiction, along with their children
- Abandon proceedings
- Agree to unfair property settlements or support provisions
- Agree to what outsiders see as unsafe provisions for child custody or parenting time

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Coping and Survival Strategies

The following list contains common survival or coping strategies that a victim may display:

- Minimizing or denying the violence
- Seeking help
- Taking responsibility for the violence
- Self defense
- Using alcohol or drugs
- Remaining in the relationship

32

Domestic Abuse and Children

The National Crime Victimization Survey reports between 1993-1998, children under the age of 12 lived in 43% of the households where domestic violence occurred.

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The Decision to Leave

- Leaving **any significant relationship** is difficult whether violence is present or not.
- Victims often describe leaving as losing part of themselves (**grief and loss**). It is hard for many victims to "give up on" a relationship and a person with whom they had shared love, hopes and dreams.
- While some victims leave after the first abusive incident, for others leaving is a process.

33

How Children Are Exposed to Adult Violence

- They witness the violence
- They are used to maintain control in the adult relationship
- They suffer physical consequences of violence

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Effects of Adult Violence on Children

- **Emotional:** Children may feel anxiety that another assault is imminent, rage at both parents, confusion, guilt, shame or helplessness.
- **Cognitive:** Experience may teach them that violence is effective behavior. They may learn that their mother is worthless, and that adults can not be trusted. They frequently believe they are to blame for the abuse.
- **Behavioral:** Domestic violence may cause developmental delays or learning disabilities. Conversely domestic violence may cause a child to be an over-achiever. Some children experience sleeping disorders, withdrawal, over-compliance, clinginess, and aggression.
- **Effects on adult behavior:** Failure to acquire academic or personal or interpersonal skills in childhood may adversely impact an adult's abilities to maintain a job or intimate relationship as an adult.

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PPOs and Mediation

- Parties who are subject to a PPO...may not be referred to mediation without a hearing (MCR 3.216).
- If mediation occurs, the restrained party is still subject to all provisions of the PPO including any no contact provisions. The mediator should not put a party in a position to violate the PPO by allowing the restrained party to have contact with the victim.
- The mediator must screen for domestic violence and terminate the mediation if the case is not appropriate for mediation.
- **SAFETY IS NON-NEGOTIABLE.** The terms of a PPO that protect safety should never be negotiated in mediation.

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Risk Factors for Parental Flight or Abduction

- Previous abduction or threats; history of hiding child.
- Parent has no strong ties to child's home jurisdiction
- Parent has a strong support network in another jurisdiction
- Very young child
- Parent engaged in planning activities (applying for passport, liquidating assets, etc.)
- Parent shows disdain for court's authority
- Parent denies value of other parent to child
- Parent believes other parent has abused, neglected child and feels authorities have not protected child
- Parent suffers from irrational, psychotic delusions that other parent will harm child

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Domestic Violence and PPOs/ No Contact Orders

- Mediators should always be aware of the existence of current or previous PPOs and/or No Contact Orders involving the parties (Note: Other states may use different terms for their protective orders).
- PPOs are a type of civil restraining order used in Michigan, primarily between parties that have some type of domestic relationship. PPOs often contain no contact provisions.
- No contact provisions may also appear in bond and probation orders in criminal proceedings.
- A party can be contemporaneously restrained by a PPO and a no contact provision in a criminal court order.

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SCREENING BY THE COURT: OVERVIEW OF PERSONAL PROTECTION ORDERS (PPOs)/NO CONTACT PROVISIONS

39

Types of Behavior Restrained

PPOs and criminal bond or probation orders may prohibit a party from engaging in conduct, including but not limited to:

- Telephone contact with the protected party;
- Indirect contact with the protected party, including contact through third parties;
- Electronic communications, including e-mail;
- Appearing at the protected party's workplace;
- Appearing at other places frequented by the protected party, such as: church, relatives' homes, doctors' offices, children's schools, children's baby sitter or daycare;
- Contacting children and/or removing children from the custody or possession of the protected party.

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PPO Laws

- PPOs can be modified only by the issuing court.
- The mediator has no standing or authority to waive provisions of a PPO.
- The parties cannot waive or amend provisions of the PPO or terminate the PPO without a court order.
- PPOs only prohibit conduct by the restrained party. A protected party cannot violate a PPO intended to protect her or him.

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The Screening Process: Preliminaries

- Screener must be trained in domestic violence (SCAO Domestic Violence Mediation Training Standards).
- In-person individual screening before any joint session.
- NO telephone or written screening – abuser may be present.
- Inquire about party's safety concerns when scheduling. Respond to these concerns, or consider declaring case inappropriate for mediation.

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PPO Effectiveness and Enforceability

- A PPO takes precedence over any existing custody or parenting time order. (MCR 3:70 6(C)).
- Michigan PPOs are immediately effective and enforceable anywhere in the state; service on the restrained party is not required for the PPO to be effective. (MCL 600.2950(20-21)).
- Regardless of terms(s) used, protective orders from other states are fully enforceable in Michigan. (MCL 600.2950(h-m)).
- A restrained party who violates a PPO is subject to immediate arrest, and civil and criminal contempt of court. Penalties for violating a PPO include up to 93 days in jail and a fine of up to \$500.

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The Screening Process: Physical Separation Promotes Safety

- Schedule interviews for different times. Keep interview times confidential and encourage parties to keep time confidential.
- Do not interview one party directly after the other.
- Parties should never have to wait in a room together.
- Screening environment must provide privacy and safety for parties and mediator.
- Allow no interruptions.
- A party may elect to participate in screening with an attorney or advocate present. The other party's representative must **NOT** be present for the screening.
- Always conduct both screening interviews, even if abuse is disclosed in the first interview.

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THE MEDIATOR SCREENING PROCESS I: THE INTERVIEW

45

Screening Interview: Client Introduction

Explain to the Client...

- The purpose of the screening interview. Participation in it meets the requirements for court-ordered mediation.
- The extent of and limits on confidentiality.
- The goals and process of mediation.
- The mediator's role.
- Mediation is not always the best process to resolve all disputes.
- Agreements reached in mediation are voluntary.
- How and why termination of mediation may occur, and that there are no legal repercussions for termination.

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During the Interview

- Observe the party's behavior. (See *Observing the Dynamics of Power in Mediation.*)
- Ask questions slowly and wait for answers.
- Ask follow-up questions if needed.
- Focus on the existence of fear, intimidation, or violence and whether this makes the case inappropriate for mediation. **The mediator's role is not to establish the truth of allegations of abuse.**
- Do not mediate divorce, custody issues during the screening.

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Presence of Control, Fear

"The mediation process relies upon the ability of participants to make their own voluntary and informed decisions." *Model Standards of Practice for Family & Divorce Mediation (AFCC, ABA, 2000)*

- During the relationship how did parties behave during decision-making, discussions, and disagreements? (Sec. 2.a - 2.c)
- Was one party isolated, denied access to basic needs? (Sec. 2.e - 2.f)
- Has either party made threats of suicide? (Sec. 2.g)
- Is either party concerned about physical proximity to the other in mediation, mediated decision-making? (Sec. 2.d, 2.h)

* Threat of suicide may be lethality indicator

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Screening Questions : Overview

- General questions (Sec. 1)
- Presence of control, coercion, fear (Sec. 2)
- Presence of violence or fear of it (Sec. 3)
- Violence/dangerousness assessment (Sec. 4)
- Disclosures to attorney (Sec. 5)
- Safety of children (Sec. 3.j, Sec. 6)
- Other obstacles to participation (Sec. 7)
- Catch-all (Sec. 8)

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Presence of Physical Violence

"A family mediator shall recognize a family situation involving domestic abuse...." *Model Standards of Practice for Family & Divorce Mediation (AFCC, ABA, 2000)*

- Does either party fear physical harm from the other party? (Sec. 3.b, 3.c, 3.n - 3.o)
- Have there been past violence to persons, pets or property? (Sec. 3.a, 3.d - 3.e, 3.g - 3.j)
- Have there been threats to kill or injure partner or others; use of weapons? (Sec. 3.e - 3.g)
- Has there been stalking behavior? (Sec. 3.i)
- Has there ever been court orders against violent behavior? (Sec. 3.k - 3.m)
- Does either party believe that she/he is in immediate danger? (Sec. 3.o)

*May indicate lethality

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General Questions

- Special needs (*language interpretation, physical limitations, etc.*) (Sec. 1.a)
- Party's current situation (Sec. 1.b)
- Desire to mediate (Sec. 1.c)
- Decision to separate or divorce (Sec. 1.d)

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Lethality Assessment Questions

"Circumstances under which a mediator should consider suspending or terminating the mediation may include...the safety of a participant...is threatened." *Model Standards of Practice for Family & Divorce Mediation (AFCC, ABA, 2000)*

- Police involvement in past incidents. (Sec. 4.a)
- Past criminal arrests or convictions. (Sec. 4.b)
- Current access to guns or other weapons. (Sec. 4.c)
- Threats of suicide.

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Safety of Children

"Circumstances under which a mediator should consider suspending or terminating the mediation may include...the well-being of a child is threatened." Model Standards of Practice for Family & Divorce Mediation (AFCC, ABA, 2000)

- What is the general situation of children? (Sec. 6.a)
- Does either party have concerns about children's safety? (Sec. 6.b)
- Have there been threats against children, interference with access to children? (Sec. 6.c)
- Are there any pending abuse/neglect cases involving children? (Sec. 6.d)

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Appropriate/Inappropriate for Mediation

If all apply, the case may be appropriate for mediation:

- Parties do not use fear, force, threats, violence or intimidation to get what they want; **AND**
- Parties are able to:
 - Speak for themselves;
 - Safely express needs and concerns;
 - Listen to and respect each other;
 - Make decisions freely without coercion;
 - Understand the mediation process; and
 - Recognize that the other party has rights and needs separate from their own.

If any apply, the case may be inappropriate for mediation:

- If either party:
 - Uses fear, force, threats, violence or intimidation to get what they want; **OR**
 - Can not safely express needs or; **OR**
 - Is unable to listen to or respect the other; **OR**
 - Cannot decide freely without coercion; **OR**
 - Is not capable of understanding the mediation process; **OR**
 - Is unable to recognize that the other party has rights and needs separate from their own.

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Other Obstacles to Participation

"A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate..."

Model Standards of Practice for Family & Divorce Mediation (AFCC, ABA, 2000)

- Drug or alcohol problems. (Sec. 7.a)
- Mental illness or emotional problems. (Sec. 7.b)
- Attempts, thoughts of suicide. (Sec. 7.c)

(When present with domestic violence, these factors may indicate a higher level of danger.)

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Summary of Circumstances That May Indicate Lethality

- Increasing frequency or severity of violence
- Sense of ownership of partner, obsessive about partner or family
- Acute depression or desperation at losing partner
- Acute mental health problems
- Access to weapons
- Threats or fantasies of homicide, suicide
- Stalking
- Drug, alcohol consumption
- Pet abuse, threats to pets
- Past police involvement
- Recent separation of the parties
- Victim's fear of lethal violence
- Abuse involves sexual abuse, strangling or biting
- Past disregard for court orders

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Catch-All Question

"Is there anything else you think I should know about you, the other party, or your family?" (Sec. 8.a)

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Disclosures to Attorney

- If the party has a lawyer, and the lawyer is not present, ask whether the party has disclosed information about the abuse to the lawyer. (Sec. 5.a).
- Encourage the party to disclose to the lawyer if this has not been done.

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**MEDIATOR SCREENING
PROCESS II: HANDLING A CASE
AFTER VIOLENCE IS DISCLOSED
SAFE/CONFIDENTIAL
TERMINATION**

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**Scenario 1- Getting Help for a
Party in Immediate Danger**

- Speak to the party alone in a safe, private area – state concern for safety.
- Offer use of a phone so the party can call a local domestic violence program, or National Domestic Violence Hotline (1-800-799-SAFE).
- If the party refuses the offer, ask permission to call the NDVH for a confidential consultation on basic safety planning without disclosing the party's personal information.

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Disclosures During Screening

Possible scenarios...

- 1) Immediate physical danger to party.
- 2) Physical violence or fear of other party, but no immediate danger.
- 3) A party is abusive and/or controlling, but no physical violence.
- 4) A party otherwise lacks capacity to mediate, but no physical violence or abuse/control.

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**Scenario 1- Assistance for Parties in
Immediate Danger**

- Consider whether the victim has safe transportation from the office and a safe place to stay during the rest of the day.
- Offer use of a phone to contact friends or family to help with transportation or shelter
- Offer use of a phone to contact police or to request an escort, if the party wishes.
- If written information will be taken home, discuss how it will be handled, especially if the parties still live together.

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Scenario 1 - Immediate Danger

If the answer to Sec. 3.o is "yes"...

- Discontinue use of questionnaire.
- Mediation must not proceed.
- Advise parties that mediation is inappropriate
- Consult separately with the victim regarding safety.
- Advise the court that mediation is inappropriate, without further explanation.

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**Scenario 2 - Violence or Fear,
But No Immediate Danger**

*If the answer is "yes" to any question in
Sec. 3.a - 3.n...*

- Complete the questionnaire (*for event that mediation proceeds*).
- Advise parties that mediation is inappropriate.
- Do not mediate if the victim agrees that mediation is inappropriate. See protocol regarding informed consent.
- Mediation may proceed with conditions only if there is no danger to a party or the mediator and the victim desires it (*Abusive party's willingness to mediate is not relevant*).

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**Scenario 2 –
Can the Parties Negotiate Fairly, Safely,
Voluntarily, and in Good Faith?**

- Most decisions made by one party?
- Party has concerns about mediated decisions
- Party's past or present inability to express point of view
- Party backs down during disagreements
- One party concerned about being in same room with other party
- Party denied access to basic necessities or isolated from friends or family
- Past non-compliance with court orders
- Substance abuse, mental illness

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**Advice to Parties When
Mediation Is Inappropriate**

- Screening process fulfills court requirements.
- No legal repercussions for not mediating.
- No "failure" if case is not mediated.
- Parties should review case with attorney.
- Other options include negotiation between attorneys, referral to FOC for investigation and recommendation, motion to court for decision.

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**Scenario 3 - Abuse/Control
Without Physical Violence**

If "no" to Sec. 3 questions, but "yes" to any question in Sec. 2.d - 2.h, or indications in Sec. 2.a - 2.c...

- Do not mediate if dangerous to a party or the mediator.
- Mediate only if the victim/controlled party desires it.
- If victim/controlled party desires mediation, determine whether either party lacks ability to negotiate under any circumstances, or if mediation could proceed with conditions.

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**Disclosure after Mediation has
Commenced**

- Mediator should interrupt mediation and conduct separate screening interviews to determine if mediation is appropriate. Separate interviews with **both parties** must be held to protect a disclosure by the victim.
- Mediator should discuss with the victim the ramifications and potential dangers of continuing mediation.
- If mediator or victim determines that mediation should not continue due to safety concerns or the inability of the victim to negotiate, the mediation should be terminated.
- Safety plan with the victim.

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**Scenario 4 - Lack of Capacity, No
Violence or Abuse/Control**

If "no" to all questions in Secs. 2-3, but answers in Sec. 7 indicate substance abuse, mental illness, inability to negotiate or express needs, inability to reach agreement voluntarily...

- Mediate only if both parties want to and there is no danger to parties or mediator.
- If mediation desired, determine whether either party lacks ability to negotiate under any circumstances, or if mediation could proceed with conditions.

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**Safety Precautions:
Termination During Screening or
After Mediation has Commenced**

- Consult with victim separately to see if safety arrangements are necessary.
- Elicit how the abuser is likely to respond to mediation being terminated.
- If possible make arrangements for parties to leave separately, the victim should be able to leave before abuser.
- Without endangering the victim, provide her/him with information and referrals for assistance, including safety planning information, national domestic violence hotline phone number (1-800-799-SAFE).

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**Safety Precautions:
Termination During Screening or
After Mediation has Commenced**

- **Provide "safe" reason for termination**
- **Provide referrals and resources**
- **Physical safety**
 - Safety planning for victim.
 - Safety precautions for mediator.
- **Protecting confidentiality of victim**

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Termination: Referral Resources

- Local shelter information available from National Domestic Violence Hotline (1-800-799-SAFE).
- Provide brochures available from local domestic violence program or NDVH.
- Discuss what party will do with written information, brochures taken home, especially if residing with abusive party.

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**Termination: Telling the Parties the
Reason for Termination When Only the
Abused Party Discloses Violence**

- If only the abused person discloses domestic violence, **do not** advise parties that this is the reason mediation will not work.
- Other valid reasons for termination include mediation policies and procedures, parties too far apart in position or interests, inability to negotiate, unwillingness to compromise, substance abuse or mental illness (if known by both).

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**Termination: Protecting
Confidentiality of Victim**

- The existence of domestic violence **SHOULD NOT BE** communicated to the court when a determination is made that the case is not appropriate for mediation. Mediator should only communicate that the case is not appropriate for mediation by completing form MC 280. (SCAO Model Protocol : Safe Termination of Mediation 5)
- An abuse survivor's disclosure of violence **SHOULD NEVER** be disclosed to the abuser or the abuser's attorney without permission of abuse survivor. (SCAO Model Protocol : Safe Termination of Mediation)
- There is no law permitting the mediator to violate confidentiality by reporting past incidents of domestic violence to any authority or agency. (For more on this, see *Mediation and Confidentiality*)
- Disclosure of **past** incidents of domestic violence against the victim does not create a duty to warn. (For more on this, see *Mediation and Confidentiality*)

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**Termination: Telling the Parties the
Reason for Termination When the Abuser
or Both Parties Discloses Violence**

- | | |
|--|--|
| <p>Due to safety concerns, domestic violence experts, professionals who work with batterers and some mediators recommend:</p> <ul style="list-style-type: none"> • The Mediator should NOT advise the parties that the reason for termination is domestic violence regardless of who discloses the violence. • Other valid reasons for termination include mediation policies and procedures, parties too far apart in position or interests, inability to negotiate, unwillingness to compromise, substance abuse or mental illness (if known by both). <p align="right"><small>SCAO Model Protocol</small></p> | <p>Others mediators believe that:</p> <ul style="list-style-type: none"> • If violence disclosed by abuser or both parties it may be appropriate for the mediator to advise the parties that the reason for termination is domestic violence. • If mediator chooses this option, mediator must be careful to provide each party with the same reasons and to place responsibility on the abuser and to protect the confidentiality of each party. • If violence is disclosed by the victim only, mediator should NOT advise the parties that the reason for termination is domestic violence. <p align="right"><small>SCAO Model Protocol</small></p> |
|--|--|

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**MEDIATION IF VICTIM
REQUESTS IT OR RELATIONSHIP
IS CONTROLLING WITH NO
VIOLENCE OR THREAT OF
VIOLENCE**

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Presumption Against Mediation when Domestic Violence Exists

When domestic violence is present, the case should be presumed inappropriate for mediation.

SCAO Model Protocol Sec. 1

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Specialized Process Options for Mediation when Domestic Violence is a Concern

- **Mediate the case separately with each party**
 - If mediating separately DO NOT schedule the appointments back to back.
- **If not mediating separately**
 - first session must be separate,
 - suggest that the abused party arrive 10 minutes after the abuser, and leave 10 minutes before the abuser,
 - provide separate waiting areas, and
 - do not leave parties alone together.
- **Use of third parties in Mediation**
 - Advocate, support person(s), guardian ad litem or attorney for child, mental health professional.
 - Ground rules for third parties: Parameters of role vis-à-vis mediation; ways in which the third party may or may not participate.

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Cases Possibly Permissible for Mediation when Domestic Violence is a Concern

- If the victim wants mediation and both parties have the capacity to mediate.
- When there is no violence or fear of violence but abusive and controlling behaviors are present and both parties have the capacity to mediate. Under these circumstances mediator should use a special process for mediation and continually screen for violence or fear of violence.

SCAO Model Protocol Sec. 1

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Specialized Process Options for Mediation when Domestic Violence is a Concern

- **Co-Mediate** (in order to better oversee and direct process in difficult mediations)
- **Establish and enforce ground rules**
 - no controlling behavior inside or outside of mediation.
 - no criminal behavior inside or outside mediation.
 - basic mediation ground rules strictly enforced (no interrupting, name calling, yelling etc...).
 - violation of ground rules may result in termination of mediation.
- **Consider referrals to external resource**
 - batterers group, drug/alcohol counseling or support, domestic violence support groups counseling for victim, services for children impacted by violence.

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Conditions Required for Mediation to Proceed when Domestic Violence is a Concern

- The victim provides consent to mediate.
- The victim has reviewed and demonstrated an understanding of the materials provided concerning mediation.
- The victim provides compelling reasons to mediate, understand mediation is voluntary.
- The victim has been advised to consult with an attorney and a domestic violence service provider.
- The attorney for victim should be present during mediation.
- The mediator believes that the parties have the ability to negotiate voluntarily, fairly, safely, and in good faith.
- Safety measures for mediation are taken.

SCAO Model Protocol

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Continuing Assessment Is Recommended

"The mediator's job includes continually assessing whether a case is better resolved in mediation, or by other means." SCAO Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation

- Check with the victim between sessions to assess safety and ability to negotiate.
 - Does the victim want to continue?
 - Can both participants stand up for their own interests and their children's interests?
 - Does the victim understand how abuse may affect the ability to mediate?
 - Is the process safe, fair, non-coercive?
- Terminate mediation if there are concerns for the victim's safety.
- Terminate mediation if the mediator believes the victim cannot negotiate fairly.

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Enhancing Physical Safety: Considerations for Mediated Agreements and Evaluative Mediation

- Build in accountability provisions.
- Consider needs of victim for economic independence.
 - does division of assets give abuser continued opportunity to control survivor?
 - revenue generating assets (investments, business) v. revenue depreciating assets (car, house)?
 - introduction/re-introduction into the work place needs?
- Joint Legal/Physical Custody: Required joint decision making gives the abuser an opportunity to continue abuse and exert control. The law requires a court to consider 1) the best interest factors of MCL 722.23 and 2) the ability of the parties to cooperate and generally agree concerning important decisions affecting the welfare of the children. The requirement of cooperation is wholly inconsistent with the dynamics of domestic violence—the coercive and controlling tactics employed by the abuser.

85

MEDIATION AND CONFIDENTIALITY

86

General Considerations for Mediated Agreements and Evaluative Mediation

Craft specific and detailed agreements to reduce the opportunity for the abuser to take advantage of ambiguities

- Specify dates and times if applicable e.g. vacating premise, turning over keys.
- Specify presence/absence of third parties (named if applicable).
- Specify verification mechanism for compliance.
- Specify terms, conditions and amount of any agreement involving financial matters.
- Specify remedies for non-compliance.

86

Confidentiality

- **The mediation process is confidential**
 - MCR 3.216 (H)(8)
 - Michigan Supreme Court, State Court Administrative Office: Standards for Mediators:
 - MI Mediation Model Protocol
 - AFCC Model Standards Standard VII
 - ABA/AAA Model Guidelines

87

Crafting Parenting Time Agreements to Reduce Potential for Abuse

- Avoid non-specific provisions e.g. "reasonable parenting time" or "parenting time as agreed by the parties"
- Specific Parenting Time Agreement may include:
 - specific pick up and drop off locations
 - specific times and days of the week
 - provisions for supervised parenting time
 - specify how parties may communicate with each other
 - arrange parenting time so that parties will not meet
 - require transfers in the presence of a third party
 - require surrender of passport prior to parenting time
 - limit access to firearms
 - permit cancellation of parenting time if party more than 20-30 minutes late
 - require a bond to ensure compliance

87

Confidentiality in Mediation:

Michigan Court Rule 3.216 (H)(8) SCAO Standards of Conduct for Mediators

- Statements made during mediation, including written submissions, may not be used in any other proceeding, including trial.
- Any communications between the parties and the mediator, or counsel and the mediator, relating to mediation are confidential and shall not be disclosed without written consent of all parties.
 - MCR 3.216(H)(8)(a-d) outline exceptions to this general rule allowing for disclosure of general information for administrative purposes.

88

Dangers Created by a Breach of Confidentiality

- Physical danger to the victim.
- Disclosure can jeopardize a victim's efforts to escape the abuse.
- Disclosure can sabotage the victim's plan to end the relationship.

91

Credible and Specific Threats of Future Violence: Mediator May Have a Duty to Warn

- A **Mental Health Professional** who is **treating a patient** has a duty to warn an identifiable third person against whom a credible threat of violence has been made. *MCL 300.1946(2)*.
 - *Is mediator providing treatment?*
- A person has a duty to warn a potential victim of a specific threat of harm if they have a special relationship with the potential assailant that creates a responsibility to control the behavior of the assailant. *Restatement Second Torts*.
 - *Is mediator in a relationship that creates responsibility to control assailant?*

94

Exceptions to Confidentiality

- **If party agrees to disclosure.** (MCR 3.216(H)(8), SCAO Model Protocol).
- **If the mediator has a statutory responsibility to disclose child abuse/neglect.** (SCAO Model Protocol, MCL 722.623)
 - If mediator has a statutory responsibility to report child abuse/neglect the mediator must inform the parties of that duty before mediation begins.
- **Mediator may have a duty to warn if a party discloses threats of future violence.**
- **General administrative information required by the court such as attendance, number of sessions, and general information for program evaluation.** (MCR 3.216(H)(8)(a-d), SCAO Model Protocol).

92

Credible and Specific Threats of Future Violence: Warning of Future Crime may not Violate Confidentiality

- A lawyer may reveal...the intention of a client to commit a crime and the information necessary to prevent that crime. (Michigan Rules of Professional Conduct, April 1999)

95

Disclosure of Past Incidents Domestic Violence is Confidential

- The existence of domestic violence **SHOULD NOT BE** communicated to the court when a determination is made that the case is not appropriate for mediation. Mediator should only communicate that the case is not appropriate for mediation by completing form MC 280. (SCAO Model Protocol: Safe Termination of Mediation)
- An abuse survivor's disclosure of violence **SHOULD NEVER** be disclosed to the abuser or the abuser's attorney without permission of abuse survivor. (SCAO Model Protocol: Safe Termination of Mediation)
- There is no law permitting the mediator to violate confidentiality by reporting past incidents of domestic violence to any authority or agency.
- Disclosure of past incidents of domestic violence against the victim does not create a duty to warn.

93

Credible and Specific Threats of Future Violence: Mediator Should Obtain a Waiver to Report Such Threats

Mediator can obtain a waiver from parties to disclose threats of future violence. This is a recommended practice.

- Such a waiver should be in writing and be specific regarding who will be warned (usually the potential victim and/or law enforcement).
- A standard waiver to report such threats should be obtained at initiation of mediation.
 - It is highly unlikely that a party would provide a waiver after making such a threat.

96

Child Abuse and Neglect : Some Mediators may be Mandatory Reporters

Mandatory Reporters MI Child Protection Law MCL 722.621-638

The following professionals are mandatory reporters of child abuse and neglect under Michigan law.

- psychologist,
- marriage and family therapist,
- licensed professional counselor,
- certified social worker,
- social worker,
- social work technician,
- school administrator, school counselor or teacher,
- law enforcement officer, or
- regulated child care provider
- A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist.

97

Making a Report

- Should be only suspected/actual direct harm to the child.
- Tell non-abusive parent/victim that a report will be made and involve non-abusive parent in reporting.
- Clearly identify the perpetrator as the abuser.
- Identify protective actions (if known) taken by the victim.

100

Child Abuse and Neglect

[P]ersons [mandatory reporters] ...who have **reasonable cause to suspect** child abuse or neglect shall make immediately...a report... of the suspected child abuse or neglect to the department.

- Children's witnessing of domestic violence is not considered reasonable cause to suspect child abuse or neglect. CPS will not substantiate a report of child abuse and neglect based on the witnessing of domestic violence alone. *CPS Best Practice Guidelines (January 1998)*.

98

Consideration for Reporting Child Abuse Neglect

- A CPS reports made on the sole basis of children witnessing domestic violence has the potential to expose the non-abusing parent/victim with failure to protect and/or neglect.
 - This could result in harm to the victim and children.
 - Such a report has a chilling effect on victims future ability or willingness to disclose abuse and seek help for self and children.

99

**Cultural
Considerations**

Cultural Considerations and Violence Against Women

available at the

Michigan Resource Center on Domestic and Sexual Violence
3893 Okemos Rd., Ste. B2 Okemos, MI 48864
Phone: (517) 381-4663 TTY: (517) 381-8470 Fax: (517) 347-1060

BW.N175b Nankani, Sandhya, ed. **BREAKING THE SILENCE: DOMESTIC VIOLENCE IN THE SOUTH ASIAN-AMERICAN COMMUNITY.** USA: Xlibris, 2000.

BW.P398b Pendleton, Gail. **BUILDING THE RHYTHM OF CHANGE: DEVELOPING LEADERSHIP AND IMPROVING SERVICES WITHING THE BATTERED RURAL IMMIGRANT WOMEN'S COMMUNITY.** San Francisco: The Family Violence Prevention Fund.

BW.R531c Richie, Beth E. **COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN.** New York, New York: Routledge, 1996.

BW.W295u Warrior, Sujata Ph.D. (UN) **HEARD VOICES: DOMESTIC VIOLENCE IN THE ASIAN AMERICAN COMMUNITY.** San Francisco, California: Family Violence Prevention Fund.

CO.A273i Agnew, Vijay. **IN SEARCH OF A SAFE PLACE: ABUSED WOMEN AND CULTURALLY SENSITIVE SERVICES.** Toronto, Ontario, Canada: University of Toronto Press, 1998.

CO.C153s California Coalition Against Sexual Assault. **SUPPORT FOR SURVIVORS: TRAINING FOR SEXUAL ASSAULT COUNSELORS.** Oakland, California: California Coalition Against Sexual Assault, 1999.

CO.L983d Lynch, Eleanor and Hanson, Marci J. **DEVELOPING CROSS-CULTURAL COMPETENCE: A GUIDE FOR WORKING WITH CHILDREN AND THEIR FAMILIES.** Baltimore, Maryland: Paul H. Brookes Publishing, 1998.

CO.P825m Pope-Davis, Donald B. **MULTICULTURAL COUNSELING COMPETENCIES: ASSESSMENT, EDUCATION, AND TRAINING, AND SUPERVISION.** Thousand Oaks, California: Sage Publications, 1997.

CO.P861p Ponterotto, Joseph G. **PREVENTING PREJUDICE: A GUIDE FOR COUNSELORS AND EDUCATORS.** Thousand Oaks, California: Sage Publications, 1993.

CO.R545o Ridley, Charles. **OVERCOMING UNINTENTIONAL RACISM IN COUNSELING AND THERAPY: A PRACTITIONER'S GUIDE TO INTENTIONAL INTERVENTION.** Thousand Oaks, California: Sage Publications, 1995.

EC.G618c Goldfarb, Emily. **CAUGHT IN THE PUBLIC POLICY CROSSROADS: THE IMPACT OF WELFARE REFORM ON BATTERED IMMIGRANT WOMEN.** San Francisco, California: Family Violence Prevention Fund, 1999.

LA.B195t Balos, Beverly and Fellows, Mary Louise. **LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION.** Durham, North Carolina: Carolina Academic Press, 1994.

LA.B975b Ptacek, James. **BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES.** Boston, Massachusetts: Northeastern University Press, 1999.

LA.C576w Cionca, Ruth. **WHEN BATTERED WOMEN ARE CHARGED WITH CRIMES: A RESOURCE MANUAL FOR DEFENSE ATTORNEYS AND EXPERT WITNESSES.** Philadelphia, Pennsylvania: National Clearinghouse for the Defense of Battered Women, 1996.

LA.L556do Lemon, Nancy K.D. **DOMESTIC VIOLENCE LAW.** St. Paul, Minnesota: West Group, 2001.

LA.O34c Ogawa, Brian K. COLOR OF JUSTICE: CULTURALLY SENSITIVE TREATMENT OF MINORITY CRIME VICTIMS. Needham Heights, Massachusetts: Allyn and Bacon, 1999.

LA.R175c Ramos, Maria D. and Runner, Michael W. CULTURAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES: A NATIONAL JUDGES BENCHBOOK. San Francisco, California: Family Violence Prevention Fund, 1999.

LA.S897s State Bar of Michigan. STATE BAR OF MICHIGAN TASK FORCE ON RACIAL/ETHNIC AND GENDER ISSUES IN THE COURTS AND THE LEGAL PROFESSION. Lansing, Michigan: State Bar of Michigan, 1998.

MR.A159s Margaret Abraham. SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES. Piscataway, New Jersey: Rutgers University Press, 2000.

MR.A281c Agtuca, Jacqueline R. A COMMUNITY SECRET: FOR THE FILIPINA IN AN ABUSIVE RELATIONSHIP. Seattle, Washington: Seal Press, 1992.

MR.B259d Barndt, Joseph. DISMANTLING RACISM: THE CONTINUING CHALLENGE TO WHITE AMERICA. Minneapolis, Minnesota: Augsburg Fortress, 1991.

MR.B828w Breall, Susan and Adler, Deborah. WORKING WITH BATTERED IMMIGRANT WOMEN: A GUIDEBOOK FOR PROSECUTORS. Volcano, California: Volcano Press, 2000.

MR.B976s Burns, Maryviolet. THE SPEAKING PROFIT US: VIOLENCE IN THE LIVES OF WOMEN OF COLOR. Seattle, Washington: Center for Prevention of Sexual and Domestic Violence, 1986.

MR.B3111 Pennsylvania Coalition Against Domestic Violence. LATINA OUTREACH MANUAL. Philadelphia, Pennsylvania: Pennsylvania Coalition Against Domestic Violence.

MR.C853t Counts, D.; Brown, J. and Campbell, J.C.D. TO HAVE & TO HIT: CULTURAL PERSPECTIVES ON WIFE BEATING. Chicago, Illinois: University of Illinois, 1999.

MR.D979m Dutt, Mallika; Marin, Leni and Zia, Helen. MIGRANT WOMEN'S HUMAN RIGHTS IN G-7 COUNTRIES: ORGANIZING STRATEGIES. San Francisco, California: Family Violence Prevention Fund, 1997.

MR.G633c Gomez, Alma. CUENTOS: STORIES BY LATINAS. New York, New York: Kitchen Table: Women of Color Press, Inc., 1983.

MR.I59i Institute on Domestic Violence in the African American Community. INSTITUTE ON DOMESTIC VIOLENCE IN THE AFRICAN AMERICAN COMMUNITY PROCEEDINGS MAY 31-JUNE 2 1995. Washington, D.C.: United States Department of Health and Human Services, Office of Community Services, 1995.

MR.J33d Jang, Deena. DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN. San Francisco, California: Family Violence Prevention Fund, 1991.

MR.L455u Leclerc, Gustavo; Villa, Raul; Dear, Michael. URBAN LATINO CULTURES. Thousand Oaks, California: Sage Publications, 1999.

MR.L665f Levinson, David. FAMILY VIOLENCE IN CROSS-CULTURAL PERSPECTIVE. Newbury Park, California: Sage Publications, 1989.

MR.M337w The World Conference on Human Rights. WOMEN ON THE MOVE: PROCEEDINGS OF THE WORKSHOP OF HUMAN RIGHTS ABUSES AGAINST IMMIGRANT AND REFUGEE WOMEN. Vienna, Austria: Family Violence Prevention Fund, 1993.

MR.M878t Morrison, Andrew R. and Loreto Biehl, Maria. TOO CLOSE TO HOME: DOMESTIC VIOLENCE IN THE AMERICAS. Washington, D.C.: Inter-American Development Bank, 1999.

MR.N277d National Indian Justice Center. DOMESTIC VIOLENCE IN INDIAN COUNTRY. Petaluma, California: The McNear Building, 1994.

MR.N277i National Institute of Mental Health. INSTITUTIONAL RACISM AND COMMUNITY COMPETENCE. Rockville, Maryland: U.S. Department of Health & Human Services, 1981.

MR.N277m The National Resource Center on Domestic Violence. THE MULTILINGUAL ACCESS MODEL: A MODEL FOR OUTREACH AND SERVICES IN NON-ENGLISH SPEAKING COMMUNITIES. Harrisburg, Pennsylvania: The National Resource Center on Domestic Violence, 1999.

MR.N277o National Coalition Against Domestic Violence. OPEN MINDS OPEN DOORS: TECHNICAL ASSISTANCE MANUAL. Harrisburg, Pennsylvania: National Coalition Against Domestic Violence, 1996.

MR.O71s Orloff, Leslye. SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN. Washington, D.C.: AYUDA, 1999.

MR.P855d Positive Indian Development Center. DOMESTIC ABUSE ACTION TRAINING MANUAL: DOMESTIC ABUSE IS NOT AN INDIAN TRADITION. Green Bay, Wisconsin: Positive Indian Development Center.

MR.V931w Volp, Leti. WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE. San Francisco, California: Family Violence Prevention Fund, 1995.

MR.W583ch White, Evelyn. CHAIN CHAIN CHANGE: FOR BLACK WOMEN IN ABUSIVE RELATIONSHIPS. Seattle, Washington: Seal Press, 1985.

OR.W721i Williams, Theartrice; Ramirez, Sharon and Mayer, Steven. INCLUSIVENESS ASSESSMENT TOOL: A TOOL FOR ASSESSING PROGRESS IN RACIAL AND ETHNIC INCLUSIVENESS AND CULTURAL INCOMPETENCE. Minneapolis, Minnesota: Rainbow Research, Inc., 1994.

RF.C323t Carter, Nita; Dixon, Alicia and Brown, Damita. THE WOMEN OF COLOR NETWORK RESOURCE GUIDE: SUPPORTING OUR LEADERSHIP AND SHARING OUR RESOURCES TO CREATE SAFE COMMUNITIES IN THE NEXT MILLENNIUM. Harrisburg, Pennsylvania: National Resource Center on Domestic Violence, 1999.

RF.I64i Iowa Coalition Against Sexual Assault. IOWA WOMEN OF COLOR DIRECTORY. Des Moines, Iowa: Iowa Coalition Against Sexual Assault, 1999.

RS.M337e Marin, Leni; Zia, Helen and Soler, Esta. ENDING DOMESTIC VIOLENCE: REPORT FROM THE GLOBAL FRONTLINES. San Francisco, California: Family Violence Prevention Fund.

SA.F682s Fontes, Lisa Aronson. SEXUAL ABUSE IN NINE NORTH AMERICAN CULTURES: TREATMENT AND PREVENTION. Thousand Oaks, California: Sage Publications, 1995.

SA.P615s Pierce-Baker, Charlotte. SURVIVING THE SILENCE: BLACK WOMEN'S STORIES OF RAPE. New York, New York: W.W. Norton and Company, 1998.

WI.O87g O'Toole, Laura L. and Schiffman, Jessica R. GENDER VIOLENCE: INTERDISCIPLINARY PERSPECTIVES. New York, New York: New York University Press, 1997.

Video Resources

Domestic Abuse Intervention Project. WALKING IN BALANCE. Duluth, Minnesota: Domestic Abuse Intervention Project.

Duluth Domestic Abuse Intervention Project. BAH-MA-DI-ZI-WIN: THE JOURNEY--PART I AND II. Duluth, Minnesota: Minnesota Program Development, 1987.

Kibben, Jamie. LA CONFIANZA PERDIDA. Seattle, Washington: Intermedia, 1999.

National Training Project DAIP. WORKING WITH NATIVE AMERICAN MEN WHO BATTER. Duluth, Minnesota: Domestic Abuse Intervention Project.

BIHA Women in Action. BROKEN PROMISES: VIOLENCE IN AMERICAN INDIAN FAMILIES. Minneapolis, Minnesota: BIHA Women in Action, 1988.

BIHA Women in Action. **BROKEN PROMISES: FAMILY VIOLENCE WITHIN BLACK COMMUNITY.** Minneapolis, Minnesota: BIHA Women in Action, 1988.

BIHA Women in Action. **BROKEN PROMISES: FAMILY VIOLENCE WITHIN THE HISPANIC COMMUNITY.** Minneapolis, Minnesota: BIHA Women in Action, 1988.

Vertical File Resources

The Michigan Resource Center on Domestic and Sexual Violence maintains a set of subject-oriented vertical files. These files contain articles, brochures, and other print resources covering a broad range of topics on issues relating to violence against women and nonprofit management. Files are easily accessible at the Resource Center or by calling and requesting the information. The following topics are available:

- ◆ AFRICAN AMERICAN: VIOLENCE AGAINST WOMEN.
- ◆ BATTERED IMMIGRANT AND REFUGEE WOMEN.
- ◆ DOMESTIC VIOLENCE IN ASIAN COMMUNITIES.
- ◆ DOMESTIC VIOLENCE IN HISPANIC/ LATINA COMMUNITIES.
- ◆ DOMESTIC VIOLENCE AND INDIAN/ SOUTH ASIAN.
- ◆ DOMESTIC VIOLENCE IN MUSLIM COMMUNITIES.
- ◆ IMMIGRANT WOMEN AND SEXUAL ASSAULT.
- ◆ IMMIGRANT WOMEN AND U VISAS.
- ◆ NATIVE AMERICAN: VIOLENCE AGAINST WOMEN.
- ◆ SEXUAL ASSAULT AND NATIVE AMERICAN WOMEN.
- ◆ VIOLENCE AGAINST WOMEN IN COMMUNITIES OF COLOR.

The Michigan Resource Center is a collaboration of the
Michigan Domestic Violence Prevention and Treatment Board and the
Michigan Coalition Against Domestic and Sexual Violence. The Michigan Domestic Violence Prevention and Treatment Board is the primary funder and owner of the collection. Additional funding is provided by the U.S. Department of Health and Human Services and other generous supporters of the Michigan Coalition Against Domestic and Sexual Violence.

DOMESTIC VIOLENCE PROGRAMS

Funded by the Michigan Domestic Violence Prevention and Treatment Board

(Revised October 2008)

Family Counseling & Svcs/Catherine Cobb

220 North Main Street
Adrian, MI 49221-2749
Contact: Sharon Hudson
Phone: 517/265-5352
Fax: 517/263-6090
Crisis: 517/265-6776
Lenawee

Shelter, Inc.

P.O. Box 797
Alpena, MI 49707-2837
Contact: Sandra Lewis
Phone: 989/356-2560
Fax: 989/356-6659
Crisis: 800/396-9129
Alcona, Alpena, Iosco, Montmorency, Presque Isle

DV Project/SAFE House Center

P.O. Box 7052
Ann Arbor, MI 48107
Contact: Barbara Niess
Phone: 734/973-0242
Fax: 734/973-7817
Crisis: 734/995-5444
Washtenaw

SAFE Place

P.O. Box 199
Battle Creek, MI 49016
Contact: Jennifer McEldowney
Phone: 269/965-6093
Fax: 269/966-2503
Crisis: 269/965-7233 or 888/664-9832
Barry, Calhoun, Eaton

Bay Area Women's Center

P.O. Box 1458
Bay City, MI 48706
Contact: Regina Turner (Interim)
Phone: 989/686-2251
Fax: 989/686-0906
Crisis: 989/686-4551 or 800/834-2098
Arenac, Bay

Safe Shelter, Inc.

P.O. Box 808
Benton Harbor, MI 49023-0808
Contact: Patty Russell
Phone: 269/925-9500
Fax: 269/925-9595
Crisis: 269/983-4275 or 888/983-4275
Berrien

Women's Information Service, Inc.

P.O. Box 1249
Big Rapids, MI 49307
Contact: Patricia Konovalov
Phone: 231/796-6692
Fax: 231/796-0358
Crisis: 231/796-6600 or 800/374-9473
Mecosta, Newaygo, Osceola

Cadillac Area OASIS/Family Resource Center

601 Chestnut Street
Cadillac, MI 49601
Contact: Rhonda Weathers
Phone: 231/775-7299
Fax: 231/775-4074
Crisis: 231/775-7233
Missaukee, Wexford

Barbara Kettle Gundlach Shelter

P.O. Box 8
Calumet, MI 49913
Contact: Emily Newhouse
Phone: 906/337-5632
Fax: 906/337-0966
Crisis: 906/337-5623
Houghton, Keweenaw, Ontonagon

Thumb Area Assault Crisis Center

429 Montague Avenue
Caro, MI 48723
Contact: Peg Davy
Phone: 989/672-1770
Fax: 989/673-2031
Crisis: 800/292-3666
Huron, Sanilac, Tuscola

Branch Cty. Coalition Against Domestic Violence/Shelterhouse

220 North Michigan Avenue
Coldwater, MI 49036-1529
Contact: Julie Grant
Phone: 517/278-3356
Fax: 517/279-2054
Crisis: 517/278-7432
Branch

YWCA/Interim House Metro Detroit

P.O. Box 21904
Detroit, MI 48221
Contact: Curtis France
Phone: 313/862-3580
Fax: 313/862-4190
Crisis: 313/861-5300
Wayne

Looking For My Sister

19161 Schafer Highway - Suite 104
Detroit, Michigan 48235-1208
Contact: Laurie Moore
Phone: 313/861-3221
Fax #: 313/861-3223

Serenity Services

5555 Conner Street - Suite 2079
Detroit, Michigan 48213-3448
Contact: Larmender Davis
Phone: 313/267-1911
Fax #: 313/267-9552

Alliance Against Violence & Abuse Inc.

901 1st Avenue South
Escanaba, MI 49829-3446
Contact: Hazel Satterly
Phone: 906/789-9207
Fax: 906/789-5640
Crisis: 906/789-1166 or 800/682-1649
Delta, Schoolcraft, Menominee

YWCA of Greater Flint/SAFE House

310 East Third Street
Flint, MI 48502
Contact: Candy Mattson
Phone: 810/238-7621
Fax: 810/238-1424
Crisis: 810/238-SAFE (7233)
Genesee

YWCA West Central Michigan

25 Sheldon Boulevard, S.E.
Grand Rapids, MI 49503
Contact: Tom Cottrell
Phone: 616/459-7062 ext. 515
Fax: 616/459-5423
Crisis: 616/451-2744
Kent

River House Inc.

P.O. Box 661
Grayling, MI 49738
Contact: Krisstine Goodroe
Phone: 989/348-3169
Fax: 989/348-1719
Crisis: 888/554-3169
Crawford, Ogemaw, Oscoda, Roscommon

Domestic Harmony

P.O. Box 231
Hillsdale, MI 49242
Contact: Georgia Mason
Phone: 517/439-1454
Fax: 517/439-5144
Crisis: 888/439-1454
Hillsdale

Center for Women in Transition

411 Butternut Drive
Holland, MI 49424
Contact: Charisse Smith Mitchell
Phone: 616/392-2829
Fax: 616/392-9760
Crisis: 616/392-1970 or 800/848-5591
Allegan, Ottawa

Livingston Area Council Against Spouse

Abuse

2895 W. Grand River Ave.

Howell, MI 48843

Contact: Judith Shewach

Phone: 517/548-1350

Fax: 517/548-3034

Crisis: 866/522-2725

Livingston

Caring House, Inc.

1305 South Prospect Avenue

Iron Mountain, MI 49801

Contact: Cheryl O'Neil

Phone: 906/774-1337

Fax: 906/774-0575

Crisis: 906/774-1112

Dickinson, Iron

Domestic Violence Escape, Inc. (DOVE)

P.O. Box 366

Ironwood, MI 49938

Contact: Pam Orr

Phone: 906/932-4990

Fax: 906/932-2040

Crisis: 906/932-0310

Gogebic

AWARE, Inc.

P.O. Box 1526

Jackson, MI 49204

Contact: Rebecca Filip

Phone: 517/783-2861 x40

Fax: 517/990-6769

Crisis: 517/783-2861 x0

Jackson

YWCA of Kalamzoo

353 East Michigan

Kalamazoo, MI 49007

Contact: Jennifer Shoub

Phone: 269/345-5595

Fax: 269/345-8230

Crisis (Domestic): 269/385-3587

Crisis (Sexual): 269/345-3036

Kalamazoo

21. RAVE/Ionia Montcalm Counties

P.O. Box 93

Ionia, MI 48846

Contact: Alisa Schoenborn

Phone: 616/527-3351

Fax: 616/527-4350

Crisis: 800/720-7233

Ionia, Montcalm

Baraga County Shelter Home

P.O. Box 10

L'Anse, MI 49946-0010

Contact: Char Kangas

Phone: 906/524-5017

Fax: 906/524-7572

Crisis: 906/524-7078

Baraga

EVE – End Violent Encounters

P.O. Box 14149

Lansing, MI 48901

Contact: Susan Shoultz

Phone: 517/372-5976

Fax: 517/702-9908

Crisis: 517/372-5572

Ingham

Lapeer Area Citizens Against Domestic Assault

P.O. Box 356

Lapeer, MI 48446

Contact: Kim Hebbert/Tracey Walker

Phone: 810/667-4193

Fax: 810/667-4743

Crisis: 810/667-4175

Lapeer

**Communities Overcoming Violent Encounters
(COVE)**

906 East Ludington Avenue

Ludington, MI 49431

Contact: Marie Waite

Phone: 231/843-2541

Fax: 231/843-7897

Crisis: 800/950-5808

Lake, Mason, Oceana

CHOICES of Manistee

P.O. Box 604
Manistee, MI 49660
Contact: Jacqueline Kiszelik
Phone: 231/723-6597
Fax: 231/723-3010
Crisis: 231/723-6004 or 800/723-7220
Manistee

Women's Center

1310 South Front
Marquette, MI 49855
Contact: Phyllis Loonsfoot (Interim)
Phone: 906/225-1346
Fax: 906/225-1370
Crisis: 906/226-6611
Alger, Marquette

Shelterhouse/Council on DV & Sexual Assault

P.O. Box 2660
Midland, MI 48641
Contact: Sharon Mortensen
Phone: 989/835-6771
Fax: 989/835-7449
Crisis: 989/835-6771
Gladwin, Midland

Family Counseling & Shelter Services

14930 LaPlaisance Road, Suite 106
Monroe, MI 48161
Contact: Dr. S. David Stadler
Phone: 734/241-0180
Fax: 734/241-8259
Crisis: 734/242-7233
Monroe

Turning Point, Inc.

P.O. Box 1123
Mt. Clemens, MI 48046
Contact: Sue Coats
Phone: 586/463-4430
Fax: 586/463-1771
Crisis: 586/463-6990
Macomb

Women's Aid Service, Inc.

P.O. Box 743
Mt. Pleasant, MI 48804-0743
Contact: Jo Willson (Interim)
Phone: 989/773-7960
Fax: 989/773-9470
Crisis: 989/772-9168
Clare, Gratiot, Isabella

Every Woman's Place

1221 West Laketon
Muskegon, MI 49441
Contact: Susan Johnson
Phone: 231/759-7909
Fax: 231/759-8618
Crisis: 231/722-3333
Muskegon

Women's Resource Center of Northern MI

423 Porter
Petoskey, MI 49770
Contact: Jan Mancinelli
Phone: 231/347-0067
Fax: 231/347-5805
Crisis: 231/347-0082 or 800/275-1995
Antrim, Charlevoix, Cheboygan, Emmet, Otsego

First Step Inc.

44567 Pinetree Drive
Plymouth, MI 48170-3840
Contact: Judy Ellis
Phone: 734/416-1111
Fax: 734/416-5555
Crisis: 734/459-5900 or 888/453-5900
Western Wayne

HAVEN

P.O. Box 431045
Pontiac, MI 48343
Contact: Beth Morrison
Phone: 248/334-1284
Fax: 248/334-3161
Crisis: 248/334-1274
Oakland

Safe Horizons

P.O. Box 610968
Port Huron, MI 48061-0968
Contact: Jenny Schultz
Phone: 810/985-4950
Fax: 810/985-5911
Crisis: 810/985-5538
St. Clair

Underground Railroad

P.O. Box 2451
Saginaw, MI 48605
Contact: Valerie Hoffman
Phone: 989/755-0413 ext. 210
Fax: 989/755-3006
Crisis: 888/399-8385
Saginaw

Diane Pepler Resource Center, Inc.

P.O. Box 698
Sault Ste Marie, MI 49783
Contact: Doreen Howson
Phone: 906/635-0566
Fax: 906/635-2952
Crisis: 800/882-1515
Chippewa, Luce, Mackinac

Relief After Violent Encounter (R.A.V.E.)

P.O. Box 472
St. Johns, MI 48879
Contact: Rhoda Hacker
Phone: 989/224-4662
Fax: 989/224-6947
Crisis: 877/952-7283
Clinton, Shiawassee

Domestic and Sexual Abuse Services

P.O. Box 402
Three Rivers, MI 49093
Contact: Mary Lynn Falbe
Phone: 269/279-5122
Shelter Admin. Office: 269/273-6154
Fax: 269/273-9465
Crisis: 800/828-2023
Cass, St. Joseph, VanBuren

Women's Resource Center of Grand Traverse Area

720 South Elmwood, Suite 2
Traverse City, MI 49684
Contact: Jo Bullis
Phone: 231/941-1210
Fax: 231/941-1734
Crisis: 800/554-4972
Benzie, Grand Traverse, Kalkaska, Leelanau

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Michigan Sexual Assault and Domestic Violence Organizations

As compiled by the Michigan Coalition Against Domestic and Sexual Violence

Updated April 2002

Alphabetized by City

Domestic Violence Services

Catherine Cobb DV Program/Family Couns. &
Children's Serv.
213 Toledo St.
Adrian, MI 49221

Business Phone Primary: (517) 265-6776
Business Fax Primary: (517) 266-0733
Crisis Line Toll Free: (800) 874-5936
Crisis Line Alt: (517) 265-6776
E-mail Address Primary: ccdvp@dmci.net
Domestic Violence & Sexual Assault Services

Sylvia's Place
P.O. Box 13
Allegan, MI 49010

Business Phone Primary: (616) 673-8700
Business Fax Primary: (616) 673-8860
Crisis Line Primary: (616) 673-8700
E-mail Address Primary: sylviasplace@allegan.net
Domestic Violence Services

Shelter, Inc.
P.O. Box 797
Alpena, MI 49707

Business Phone Primary: (989) 356-2560
Business Fax Primary: (989) 356-6659
Crisis Line Primary: (517) 356-9650
Crisis Line Alt: (517) 356-6265
E-mail Address Primary: shelterinc@voyager.net
Domestic Violence & Sexual Assault Services

Domestic Violence Project/SAFE House
P.O. Box 7052
Ann Arbor, MI 48107

Business Phone Primary: (734) 973-0242
Business Fax Primary: (734) 973-7817
Crisis Line Primary: (734) 995-5444
E-mail Address Primary: dvps@aol.com
Domestic Violence Services

SAPAC
715 N. University, Ste. 202
Ann Arbor, MI 48104-1611

Business Phone Primary: (734) 998-9368
Business Fax Primary: (734) 998-9380
Crisis Line Primary: (734) 936-3333
E-mail Address Primary: sapac.cords@umich.edu
Sexual Assault Services

Keweenaw Bay Indian Community
102 Superior Ave.
Baraga, MI 49908-9678

Business Phone Primary: (906) 353-4533
Business Fax Primary: (906) 353-8799
E-mail Address Primary: kbicvoca@hotmail.com

SAFE Place
P.O. Box 199
Battle Creek, MI 49016

Business Phone Primary: (616) 965-6093
Business Fax Primary: (616) 966-2503
Crisis Line Primary: (616) 965-7233
E-mail Address Primary: victoria@net-link.net
Domestic Violence Services

Sexual Assault Services of Calhoun County
330 E. Columbia Ave.
Battle Creek, MI 49015

Business Phone Primary: (616) 968-4660
Business Fax Primary: (616) 969-3872
Crisis Line Primary: (888) 383-2192
E-mail Address Primary: siegelj@trinity-health.org
Sexual Assault Services

Bay Area Women's Center
P.O. Box 1458
Bay City, MI 48706

Business Phone Primary: (989) 686-2251
Business Fax Primary: (989) 686-0906
Crisis Line Primary: (800) 834-2098
E-mail Address Primary: womencen@concentric.net
Domestic Violence & Sexual Assault Services

Safe Shelter, Inc.
P.O. Box 808
Benton Harbor, MI 49022

Business Phone Primary: (616) 925-9500
Business Fax Primary: (616) 925-9595
Crisis Line Primary: (616) 983-4275
Crisis Line Toll Free: (888) 983-4275
E-mail Address Primary: sholcomb@qtm.net
Domestic Violence Services

WISE
P.O. Box 1249
Big Rapids, MI 49307

Business Phone Primary: (231) 796-6692
Business Fax Primary: (231) 796-0358
Crisis Line Primary: (800) 374-9473
Crisis Line Alt: (231) 796-6600
E-mail Address Primary: wise@tucker-usa.com
Domestic Violence & Sexual Assault Services

Bay Mills Indian Community
12124 W. Lakeshore Dr.
Brimley, MI 49715

Business Phone Primary: (906) 248-3204
Business Fax Primary: (906) 248-3508
Crisis Line Primary: (888) 422-9645

E-mail Address Primary: kadair@4baymills.com
Domestic Violence Services

Cadillac Area OASIS/Family Resource Center
601 Chestnut St.
Cadillac, MI 49601

Business Phone Primary: (231) 775-7299
Business Fax Primary: (231) 775-4074
Crisis Line Primary: (231) 775-7233
E-mail Address Primary: frcenter@netonecom.net
Domestic Violence & Sexual Assault Services

Barbara Kettle Gundlach Shelter
P.O. Box 8
Calumet, MI 49913

Business Phone Primary: (906) 337-5632
Business Fax Primary: (906) 337-0966
Crisis Line Primary: (906) 337-5623
E-mail Address Primary: bkgghome@pilot.msu.edu
Domestic Violence Services

HDC/Thumb Area Assault Crisis Center
429 Montague Ave.
Caro, MI 48723

Business Phone Primary: (989) 673-4121
Business Fax Primary: (989) 672-1757
Crisis Line Primary: (800) 292-3666
E-mail Address Primary: hdc_caro@century.inter.net
Domestic Violence & Sexual Assault Services

SIREN/Eaton Shelter, Inc.
P.O. Box 369
Charlotte, MI 48813

Business Phone Primary: (517) 543-0478
Business Fax Primary: (517) 543-0883
Crisis Line Primary: (800) 899-9997
E-mail Address Primary: sireneaton@voyager.net
Domestic Violence Services

Branch County CADV/Shelterhouse
220 N. Michigan Ave.
Coldwater, MI 49036

Business Phone Primary: (517) 278-3356
Business Fax Primary: (517) 279-2054
Crisis Line Primary: (517) 278-7432
E-mail Address Primary: shelterhouse@cbpu.com
Domestic Violence & Sexual Assault Services

Detroit Police Dept. Domestic Violence Project
3627 Cass
Detroit, MI 48201

Business Phone Primary: (313) 833-9813
Business Fax Primary: (313) 833-7681
Domestic Violence Services

Detroit Police Dept. Rape Counseling Center
4201 Saint Antoine
Detroit, MI 48201

Business Phone Primary: (313) 833-1660
Business Fax Primary: (313) 833-3694
Crisis Line Primary: (313) 833-1660
E-mail Address Primary: granta758@dphq.ci.detroit.mi.us
Sexual Assault Services

My Sister's Place/Women's Justice Center
1150 Griswold Ave., Ste. 2020
Detroit, MI 48226

Business Phone Primary: (313) 962-4945
Business Fax Primary: (313) 962-4946
Crisis Line Primary: (313) 371-3900
E-mail Address Primary: wjcmisp@ameritech.net
Domestic Violence & Sexual Assault Services

YWCA Interim House
P.O. Box 21904
Detroit, MI 48221-1904

Business Phone Primary: (313) 862-3580
Business Fax Primary: (313) 862-4190
Crisis Line Primary: (313) 861-5300
E-mail Address Primary: ywcaih@aol.com
Domestic Violence Services

Gateway Community Services
910 Abbott Rd., Suite 100
East Lansing, MI 48823

Business Phone Primary: (517) 351-4000
Business Fax Primary: (517) 351-4094
E-mail Address Primary: krabillgrs@aol.com
Domestic Violence & Sexual Assault Services

Listening Ear Crisis Intervention Center
1017 E. Grand River Ave
East Lansing, MI 48823

Business Phone Primary: (517) 337-1728
Crisis Line Primary: (517) 337-1717
E-mail Address Primary: theear@pilot.msu.edu
Sexual Assault Services

MSU Safe Place
G-55 Wilson Hall
East Lansing, MI 48825-1208

Business Phone Primary: (517) 355-1100
Business Fax Primary: (517) 432-6193
Crisis Line Primary: (517) 372-5572
E-mail Address Primary: rosen2@msu.edu
Domestic Violence Services

MSU Sexual Assault Crisis & Safety Educ
Prog/Counseling Ctr.
207 Student Services
East Lansing, MI 48824

Business Phone Primary: (517) 355-8270
Business Fax Primary: (517) 353-5582
Crisis Line Primary: (517) 372-6666
E-mail Address Primary: DianeW@mail.couns.msu.edu
Sexual Assault Services

Michigan Sexual Assault and Domestic Violence Organizations

As compiled by the Michigan Coalition Against Domestic and Sexual Violence

Updated April 2002

Alphabetized by City

Alliance Against Violence & Abuse, Inc.

115 S. 13th St.
Escanaba, MI 49829

Business Phone Primary: (906) 789-9207

Business Fax Primary: (906) 789-5640

Crisis Line Primary: (800) 682-1649

Crisis Line Alt: (906) 428-2121

E-mail Address Primary: AAVAoffice@uplogon.com

Domestic Violence & Sexual Assault Services

YWCA of Greater Flint

310 E. Third St.
Flint, MI 48502

Business Phone Primary: (810) 238-7621

Business Fax Primary: (810) 238-3813

Crisis Line Primary: (810) 238-7233

E-mail Address Primary: candihamel@netzero.net

Domestic Violence & Sexual Assault Services

RAVE of West MI

118 Commerce, SW, Suite 220
Grand Rapids, MI 49503

Business Phone Primary: (616) 454-4673

Business Fax Primary: (616) 454-2059

E-mail Address Primary: RAVE@iserv.net

Sexual Assault Services

Safe Haven Ministries

3501 Lake Eastbrook Blvd. SE, Ste. 335
Grand Rapids, MI 49546

Business Phone Primary: (616) 452-6664

Business Fax Primary: (616) 452-1168

Web Address: www.safehavenministries.org

E-mail Address Primary: jmarcum@safehavenministries.org

Domestic Violence Services

YWCA of Grand Rapids

25 Sheldon Blvd., SE
Grand Rapids, MI 49506-3302

Business Phone Primary: (616) 459-7062

Business Fax Primary: (616) 459-5423

Crisis Line Primary: (616) 776-7273

Crisis Line Alt: (616) 451-2744

E-mail Address Primary: cblinkhorn@gr-ywca.org

Domestic Violence & Sexual Assault Services

River House

P.O. Box 661
Grayling, MI 49738

Business Phone Primary: (989) 348-3169

Business Fax Primary: (989) 348-1719

Crisis Line Toll Free: (888) 554-3169

Crisis Line Primary: (989) 348-8972

E-mail Address Primary: rhl1@voyager.net

Domestic Violence & Sexual Assault Services

Domestic Harmony

P.O. Box 231
Hillsdale, MI 49242

Business Phone Primary: (517) 439-1454

Business Fax Primary: (517) 439-5144

Crisis Line Primary: (888) 439-1454

E-mail Address Primary: dharmony@dmci.net

Domestic Violence Services

Center for Women in Transition

411 Butternut Dr.
Holland, MI 49424

Business Phone Primary: (616) 392-2829

Business Fax Primary: (616) 355-9760

Crisis Line Primary: (616) 392-1970

Crisis Line Alt: (800) 848-5991

E-mail Address Primary: donnac@aplaceforwomen.org

Web Address: www.aplaceforwomen.org

Domestic Violence & Sexual Assault Services

Dial Help, Inc.

P.O. Box 214
Houghton, MI 49931

Business Phone Primary: (906) 482-9077

Business Fax Primary: (906) 482-2502

Crisis Line Primary: (800) 562-7622

E-mail Address Primary: dialhelp@mail.portup.com

Sexual Assault Services

LACASA

P.O. Box 72
Howell, MI 48844

Business Phone Primary: (517) 548-1350

Business Fax Primary: (517) 548-3034

Crisis Line Primary: (810) 227-7100

E-mail Address Primary: lacasa@htdconnect.com

Web Address: www.lacasa1.org

Domestic Violence & Sexual Assault Services

Ionia/Montcalm Domestic & Sexual Violence Program

P.O. Box 93
Ionia, MI 48846

Business Phone Primary: (616) 527-3351

Business Fax Primary: (616) 527-4350

Crisis Line Toll Free: (800) 720-7233

Crisis Line Primary: (616) 527-3351

E-mail Address Primary: ecapdvp@iserv.net

Domestic Violence & Sexual Assault Services

Caring House, Inc.

1305 Prospect St.
Iron Mountain, MI 49801

Business Phone Primary: (906) 774-1337

Business Fax Primary: (906) 774-0575

Crisis Line Primary: (906) 774-1112
E-mail Address Primary: coneil@chartermi.net
Domestic Violence & Sexual Assault Services

Domestic Violence Escape, Inc.
P.O. Box 366
Ironwood, MI 49938

Business Phone Primary: (906) 932-4990
Business Fax Primary: (906) 932-2040
Crisis Line Primary: (906) 932-0310
E-mail Address Primary: dove@up.lib.mi.us
Domestic Violence & Sexual Assault Services

Aware, Inc.
P.O. Box 1526
Jackson, MI 49204

Business Phone Primary: (517) 783-2861
Business Fax Primary: (517) 783-2660
Crisis Line Primary: (517) 783-2861
E-mail Address Primary: aware@voyager.net
Crisis Line Alt: (517) 783-2671
Domestic Violence & Sexual Assault Services

YWCA of Kalamazoo-DV & SA Programs
353 E. Michigan
Kalamazoo, MI 49007

Business Phone Primary: (616) 385-2869
Business Fax Primary: (616) 978-1211
Crisis Line Primary: (616) 345-3036
Crisis Line Alt: (616) 385-3587
E-mail Address Primary: brmills@ywcakalamazoo.org
Domestic Violence & Sexual Assault Services

Baraga County Shelter Home
11 S. 4th St.
L'Anse, MI 49946

Business Phone Primary: (906) 524-5017
Business Fax Primary: (906) 524-7572
Crisis Line Primary: (906) 524-5017
E-mail Address Primary: bcshlter@yahoo.com
Domestic Violence & Sexual Assault Services

EVE, Inc.
P.O. Box 14149
Lansing, MI 48901

Business Phone Primary: (517) 372-5976
Business Fax Primary: (517) 702-9908
Crisis Line Primary: (517) 372-5572
E-mail Address Primary: cdaadmin@pilot.msu.edu
Domestic Violence Services

Sparrow Health System-Sexual Assault Clinic
1215 E. Michigan Ave.
Lansing, MI 48909

Business Fax Primary: (517) 483-2186
Business Phone Primary: (517) 483-2222
Sexual Assault Services

Lapeer Area Citizens Against Domestic Assault

P.O. Box 356
Lapeer, MI 48446

Business Phone Primary: (810) 667-4175
Business Fax Primary: (810) 667-4743
Crisis Line Primary: (810) 667-4175
E-mail Address Primary: lacada@chartermi.net
Domestic Violence Services

Region Four Community Services
906 E. Ludington Ave.
Ludington, MI 49431

Business Phone Primary: (231) 843-2541
Business Fax Primary: (231) 843-7897
Crisis Line Primary: (800) 950-5808
E-mail Address Primary: fmp@mishoreline.com
Domestic Violence & Sexual Assault Services

CHOICES of Manistee County, Inc.
P.O. Box 604
Manistee, MI 49660

Business Phone Primary: (231) 723-6597
Business Fax Primary: (231) 723-3010
Crisis Line Primary: (800) 723-7220
Crisis Line Alt: (231) 723-6004
E-mail Address Primary: Jkiz@jackpine.com
Domestic Violence Services

Women's Center/Harbor House
1310 S. Front St.
Marquette, MI 49855

Business Phone Primary: (906) 225-1346
Business Fax Primary: (906) 225-1370
Crisis Line Primary: (906) 226-6611
E-mail Address Primary: suekensing@aol.com
Domestic Violence & Sexual Assault Services

Shelterhouse/Council on DV & SA
P.O. Box 2660
Midland, MI 48641

Business Phone Primary: (989) 835-6771
Business Fax Primary: (989) 835-7449
Crisis Line Primary: (989) 835-6771
E-mail Address Primary: lasher@cdvsa.org
Domestic Violence & Sexual Assault Services

Family Counseling & Shelter Svcs of Monroe Co.
502 W. Elm Ave., Ste. G-East
Monroe, MI 48162

Business Phone Primary: (734) 241-0180
Business Fax Primary: (734) 241-8259
Crisis Line Primary: (734) 241-7233
E-mail Address Primary: fcssmc@wwnet.net
Domestic Violence & Sexual Assault Services

Turning Point
P.O. Box 1123
Mt. Clemens, MI 48046

Business Phone Primary: (586) 463-4430
Business Fax Primary: (586) 463-1771

Michigan Sexual Assault and Domestic Violence Organizations

As compiled by the Michigan Coalition Against Domestic and Sexual Violence

Updated April 2002

Alphabetized by City

Crisis Line Primary: (586) 463-6990
E-mail Address Primary: scoats@turningpointinc.com
Domestic Violence & Sexual Assault Services

Central Michigan University-Sexual Assault Services
195 Student Activities Center
Mt. Pleasant, MI 48859

Business Phone Primary: (989) 774-6677
Business Fax Primary: (989) 774-3322
Crisis Line Primary: (989) 774-2255
E-mail Address Primary: stephen.m.thompson@cmich.edu
Sexual Assault Services

Saginaw Chippewa Victim of Crime Prog.
6954 E. Broadway
Mt. Pleasant, MI 48858

Business Phone Primary: (989) 775-4814
Business Fax Primary: (989) 775-4820
E-mail Address Primary: jmacdonald@sagchip.org
Domestic Violence Services

Women's Aid Service
P.O. Box 743
Mt. Pleasant, MI 48804

Business Phone Primary: (989) 773-7960
Business Fax Primary: (989) 773-9470
Crisis Line Primary: (989) 772-9168
E-mail Address Primary: was-director@chartermi.net
Domestic Violence & Sexual Assault Services

Every Woman's Place
1221 W. Laketon
Muskegon, MI 49441

Business Phone Primary: (231) 759-7909
Business Fax Primary: (231) 759-8618
Crisis Line Primary: (231) 722-3333
E-mail Address Primary: ewpmuskegon@hotmail.com
Domestic Violence & Sexual Assault Services

Shelter, Inc.
PO Box 658
Oscoda, MI 48750

Business Phone Primary: (989) 739-0144
Business Fax Primary: (989) 739-1179
Crisis Line Toll Free: (800) 396-9129
Domestic Violence Services

Van Buren County DV Coalition, Inc.
303 Paw Paw St., Ste. 14
Paw Paw, MI 49079

Business Phone Primary: (616) 655-9008
Business Fax Primary: (616) 655-1428
Crisis Line Primary: (800) 828-2023
Domestic Violence Services

Women's Resource Center of Northern MI
423 Porter St.
Petoskey, MI 49770

Business Phone Primary: (231) 347-0067
Business Fax Primary: (231) 347-5805
Crisis Line Primary: (231) 347-0082
E-mail Address Primary: jan@wrcnm.org
Domestic Violence & Sexual Assault Services

First Step
44567 Pinetree Dr.
Plymouth, MI 48170

Business Phone Primary: (734) 416-1111
Business Fax Primary: (734) 416-5555
Crisis Line Toll Free: (888) 453-5900
Crisis Line Primary: (734) 459-5900
E-mail Address Primary: fsadsv@aol.com
Domestic Violence & Sexual Assault Services

HAVEN
P.O. Box 431045
Pontiac, MI 48343

Business Phone Primary: (248) 334-2343
Business Fax Primary: (248) 334-3161
Crisis Line Primary: (248) 334-1274
E-mail Address Primary: hnuriel@haven-oakland.org
Domestic Violence & Sexual Assault Services

Safe Horizons
P.O. Box 610968
Port Huron, MI 48061

Business Phone Primary: (810) 985-4950
Business Fax Primary: (810) 985-5911
Crisis Line Primary: (810) 985-5538
E-mail Address Primary: mail@safe-horizons.org
Domestic Violence & Sexual Assault Services

Child & Family Services
2806 Davenport
Saginaw, MI 48602

Business Phone Primary: (989) 790-9118
Business Fax Primary: (989) 790-8037
E-mail Address Primary: sap@tir.com
Sexual Assault Services

Underground Railroad, Inc.
P.O. Box 2451
Saginaw, MI 4860

Business Phone Primary: (989) 755-0413
Business Fax Primary: (989) 755-3006
Crisis Line Primary: (989) 755-0411
E-mail Address Primary: undergnd@pilot.msu.edu
Web Address: www.undergroundrailroadinc.org
Domestic Violence & Sexual Assault Services

Eastern Upper Peninsula/Diane Peppler Resource Ctr
P.O. Box 636
Sault Ste. Marie, MI 4978
Business Phone Primary: (906) 635-0566
Business Fax Primary: (906) 635-2952
Crisis Line Primary: (800) 882-1515
E-mail Address Primary: eupdvp1@30below.com
Domestic Violence & Sexual Assault Services

Hannahville Indian Community
N 14911 Hannahville, B-1 Rd.
Wilson, MI 49896
Business Phone Primary: (906) 466-2342
Business Fax Primary: (906) 466-7377
E-mail Address Primary: ruthoja@hannahville.org
Domestic Violence Services

Sault Ste. Marie Tribe of Chippewa Indians-Victim Serv.
Prog
P.O. Box 1576
Sault Ste. Marie, MI 49783
Business Phone Primary: (906) 635-7705
Business Fax Primary: (906) 635-7706
E-mail Address Primary: lorijump@hotmail.com
Domestic Violence Services

Sexual Assault Crisis Center
2940 Ellsworth
Ypsilanti, MI 48197
Business Phone Primary: (734) 971-3695
Business Fax Primary: (734) 434-1511
Crisis Line Primary: (734) 971-3696
E-mail Address Primary: krysg@ewashtenaw.org
Sexual Assault Services

RAVE
P.O. Box 472
St. Johns, MI 48879
Business Phone Primary: (989) 224-4662
Business Fax Primary: (989) 224-6947
Crisis Line Primary: (989) 224-7283
E-mail Address Primary: rave@voyager.net
Domestic Violence & Sexual Assault Services

Grand Traverse Band of Ottawa & Chippewa Indians
2605 Northwest Bayshore Dr.
Suttons Bay, MI 49682
Business Phone Primary: (231) 271-3538
Business Fax Primary: (231) 271-7646
Crisis Line Primary: (800) 817-5017
Domestic Violence & Sexual Assault Services

Tribal Victims of Crime
2605 Northwest Bay Shore Dr.
Suttons Bay, MI 49682
Business Phone Primary: (231) 271-3538
Business Fax Primary: (231) 271-4861
Domestic Violence Services

Domestic Assault Shelter Coalition
P.O. Box 402
Three Rivers, MI 49093
Business Phone Primary: (616) 273-6154
Business Fax Primary: (616) 273-9465
Crisis Line Primary: (800) 828-2023
E-mail Address Primary: DASC@net-link.net
Domestic Violence & Sexual Assault Services

Women's Resource Center-Traverse City
720 S. Elmwood, Ste. 2
Traverse City, MI 49684
Business Phone Primary: (231) 941-1210
Business Fax Primary: (231) 941-1734
Crisis Line Primary: (800) 554-4972
E-mail Address Primary: wrc@gtii.com
Domestic Violence & Sexual Assault Services
