

Appendix C: Model Mediation Screening Tool

MODEL MEDIATION SCREENING TOOL

SCREENING FOR DOMESTIC VIOLENCE AND CHILD ABUSE IN DIVORCE AND CHILD CUSTODY MEDIATION

I. PURPOSE

This screening process is designed to identify parties or children of parties involved in divorce or custody actions for whom mediation may be inappropriate and who are exempt from mandatory mediation orientation and mediation because of abuse pursuant to 23 Pa. Cons. Stat. § 3901(c)(2).

II. DOMESTIC VIOLENCE AND CHILD ABUSE EXEMPTION

Pennsylvania Law does not permit courts to order an orientation session or mediation in a case in which either party or child of either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action for divorce or child custody or during the twenty-four months preceding the filing of any such action. 23 Pa. Cons. Stat. § 3901(c)(2).

1. Information About Exception.

The court shall provide all parties to actions for divorce and child custody with written information about the exemption from court ordered mediation orientation and mediation provided in 23 Pa. Cons. Stat. § 3901 and the potential risks involved in mediating family law disputes when domestic violence or child abuse has occurred. This information shall include the names and telephone numbers of local domestic violence organizations.

2. Screening in Divorce and Custody Cases.

Prior to ordering a case to mediation orientation or mediation, the court shall screen for domestic violence and child abuse as outlined in section III. Should screening reveal domestic violence or abuse at any time during the pendency of the case or within twenty-four months prior to the filing of the action, the court shall not order mediation orientation or mediation.

3. Referral to Domestic Violence Programs.

If domestic violence or child abuse is identified during the screening process but the abused party expresses an interest in mediation, before ordering a case to mediation orientation or mediation, the court shall refer the abused party to a domestic violence organization to discuss social and legal options and to consider whether mediation is a safe option.

4. Confidentiality.

The screening process is confidential and information about domestic violence or child abuse obtained through any part of the screening process shall not be disclosed.

5. Notice to Parties.

If it appears at any stage of the screening process, as outlined below, that the case is inappropriate for mediation, the court shall send the parties a notice informing them only that the case is inappropriate for mediation. If the case is determined not to be exempt from mediation as a result of the screening process, the court shall send a notice informing the parties of that conclusion.

III. DOMESTIC VIOLENCE AND CHILD ABUSE SCREENING BY THE COURT

1. Domestic Violence or Child Abuse Averred in Pleadings.

When a party to a divorce or child custody action avers in the pleadings that domestic violence or child abuse has occurred during the pendency of an action or during the twenty-four months preceding the filing of the action, the court shall not order mediation orientation or mediation.

2. Telephone Screening.

If domestic abuse or child abuse is not averred in the pleadings, the court shall contact the parties by telephone and inform the parties of the exemption available under the law. If a party discloses abuse on the telephone and claims an exemption, the court shall not order mediation orientation or mediation. A self-disclosing statement about the existence of domestic violence or child abuse, in and of itself, is sufficient to preclude court-ordered mediation orientation or mediation. If a party discloses abuse on the phone, but expresses interest in mediation, the court shall schedule each party separately for an in-person screening to determine the capacity of the parties to mediate successfully. The court shall also refer the abused party to a domestic violence advocacy organization as described in Section II.

3. Court Review.

Prior to the entry of a court order requiring mediation orientation or mediation, court personnel must review the prior criminal history and neglect, abuse, and dependency adjudications and civil action records involving both parties to determine whether the records reflect that domestic violence or child abuse has occurred during the pendency of the action or within twenty-four months prior to the filing of the action. If the records reflect that domestic violence or child abuse has occurred within the statutory exemption period, the court shall not order the case to mediation orientation or mediation.

IV. IN-PERSON SCREENING

It is appropriate that courts as well as mediators screen parties in person to assess whether mediation is an appropriate means of resolving legal disputes. This Section describes when courts as well as mediators should conduct in-person screening. Parties should be fully and regularly informed that mediation is a voluntary process and that they may withdraw for any reason. Both the courts and mediators should use the following method and questionnaire for conducting an in-person screening.

1. In-Person Screening by the Court.

When domestic violence or child abuse has been identified through screening under Section III but the parties express an interest in mediation as a means of attempting to resolve disputes, the court shall screen the parties, separately and in person, to determine whether mediation is appropriate and whether mediation may be reasonably undertaken in a safe and equitable manner. If the court determines that the case is not appropriate for mediation, the court shall not order mediation orientation or mediation. If the parties still express an interest in mediation as a means of dispute resolution, the court shall refer the abused party to a domestic violence advocacy organization.

2. In-Person Screening by Mediators.

Court personnel may have screened the parties and not identified domestic or child abuse. There is a continuing necessity for mediators to screen for domestic violence and child abuse and to assess the appropriateness of each case for mediation, whether the parties have previously identified abuse or not. It is essential that both parties possess the requisite skills and equivalent capacity to mediate, that any mediation is conducted with established safety precautions, and that fair and safe agreements may be accomplished. Some victims of domestic violence and/or child abuse will readily talk about the violence 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 when they think the inquiring professional will believe their allegations, when it is safe to share, when the victim trusts the system to handle the information responsibly, and when the victim has identified the violence as abuse.

a) Structure of the Screening Interview.

- i. The person conducting the screening must be trained in domestic violence.
- ii. Undertake screenings before mediation commences.

- iii. Conduct screening of each party separately, preferably scheduled at different times or locations. Avoid interviewing one party directly after the other. Never ask parties to wait in a room together before or after a screening.
- iv. When scheduling a screening, inquire whether a party has any safety concerns about coming to the screening location. Make arrangements to respond to the safety concerns of the parties. Providing an escort for a party from and to the parking lot or public transportation may enhance safety.
- v. Conduct screenings in an environment that allows the greatest degree possible of privacy. Once a screening session begins, the session should not be interrupted.
- vi. At the election of a party, conduct screening with an attorney or an identified victim advocate present. The other party's lawyer or advocate must not be present during the screening.
- vii. Maintain a policy of strict confidentiality during the screening process. Inform each party of the policy. Assure parties that information shared during the screening will not be revealed to anyone else, except where there is a duty to warn of imminent danger of physical harm to another person or to oneself. However, information may be revealed to others with the informed, written consent of the party to whom confidentiality is owed.

b) Guidelines for screening interview.

- i. Observe behavior during the scheduling phone call, in the waiting room, and during the screening to pick up cues that could indicate an abusive relationship.
- ii. Explain to each party that, as a matter of routine procedure, you are required to meet with parties individually prior to any court ordered mediation orientation session and before beginning mediation.
- iii. Explain the goals and process of mediation. Make inquiries 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. In addition, complete the attached questionnaire to identify 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 legal and/or parenting issues in their case.

- iv. Inform the parties and their attorneys of the policy to keep screening sessions confidential and the exceptions to that policy. Do not disclose information disclosed by any individual party during the screening process to anyone else without the party's consent.
- v. During the interview, GO SLOW! Ask questions slowly and wait for answers. Ask and explore each item in the Screening Questionnaire, below fully. Ask follow-up questions, if necessary, and note answers in the comment section. Explain to attorneys that the process will move faster if the screener proceeds without interruption.
- vi. Preface questions with reassurances to reduce awkwardness in the following way: "We know that domestic violence and child abuse are very common problems. Some of the questions that I'm going to ask you relate to that. I ask every person who I screen for the mediation orientation about the possibility of violence in their relationship with the other party who is involved in the case."
- vii. Explain to each party that the court is not permitted to mandate or refer to an orientation session or mediation in cases in which abuse has been involved. Also explain that parties may choose to attend an orientation session and/or mediation if the screener concludes that the parties have equivalent and adequate capacities to mediate, that mediation may be effectively and safely undertaken, and a fair agreement reached.
- viii. Explain also the potential impact of abuse on the ability of the parties to participate fully and fairly in mediation, the parties' right to address and have accommodated any concerns they may have about safety, and their right to terminate mediation at any time.
- ix. Do not question allegations of abuse, but seek to determine how recently the abuse occurred and both its frequency and severity. Evidence that abuse has occurred during the pendency of the action or within twenty-four months preceding the filing of an action is sufficient to determine that a mandate to mediation orientation and mediation are inappropriate.
- x. Do not mediate divorce or custody issues during the screening.

c) Screening Questionnaire.

These screening questions are intended to identify information about violent, abusive, and intimidating conduct of either party. The parties may not recognize that these behaviors are present in their relationship. However, when patterns of abuse, coercion, threats, or intimidation are identified, these may indicate that the case is inappropriate for mediation orientation and mediation. The frequency and severity of abuse, the occurrence of abuse after separation of the couple, and the nature of the most recent abusive conduct are important factors to consider in assessing whether a couple may be appropriately and safely referred or mandated to mediation orientation or mediation.

1. Do you have concerns about engaging in mediation as a way to resolve the legal and/or parenting disputes in your case?

No Concerns

A Few Concerns

Many Concerns

Comments:

2. Has the other party ever acted in ways that frighten you?

Never

Sometimes

Frequently

Comments:

If yes, recently? _____

3. Are the two of you able to talk to each other without arguing?

Never

Sometimes

Frequently

Always

Comments:

4. Are you fearful about being in the same room with the other party?

Never Sometimes Usually Always

Comments:

5. Are you able to speak your mind and express your point of view to the other party?

Never Sometimes Often Always

Comments:

6. When you speak your mind and express your point of view to the other party, does the other party become angry and threatening or intimidating?

Never Sometimes Often Always

Comments:

7. Has the other party ever threatened to hurt you or members of your family?

Never Sometimes Often

Comments:

If yes, recently? _____

8. Has the other party ever destroyed your property or that of your children intentionally?

Never Sometimes Often

Comments:

If yes, recently? _____

9. Does the other party swear or call you demeaning names during arguments?

Never Sometimes Often

Comments:

10. Has the other party ever threatened to take your children and stop you from seeing them?

Never Sometimes Often

Comments:

If yes, recently? _____

11. Has the other party ever threatened to hurt her/himself?

Never Sometimes Often

Comments:

If yes, recently? _____

12. Do you ever become afraid for yourself or others based on the looks from or actions of the other party?

Never Sometimes Often

Comments:

If yes, recently? _____

13. Has the other party ever hit, shoved, or pushed you?

Never Sometimes Often

Comments:

If yes, recently? _____

14. If the other party has ever used physical force against you, have your children been present?

Never Sometimes Often Never Used Force

Comments:

15. Have you or anyone else ever called the police because of problems in your home?

Never Sometimes Often

Comments:

16. Have you or any family member ever sought medical treatment as a result of an injury caused by the other person?

Never Sometimes Often

Comments:

17. Have your children ever been taken into protective custody by the police, child protection services, or the court?

Never Sometimes Often

Comments:

18. Are you afraid that if you agree to mediation, the other person might retaliate or hurt your children because of what you say in mediation sessions?

Never Sometimes Often

Comments:

19. Did the two of you agree about finances in your relationship?

Never Sometimes Often Always

Comments:

20. Have you or the other party ever sought a Protective Order that involved the other party at any time in any place?

No Once More than Once

Comments:

21. Have you or the other party ever been the subject of any Protective Order?

No Once More than Once

Comments:

22. Are you afraid that there exists a possibility that the other person will not let you talk in the mediation process?

No Yes

Comments:

23. Do you fear that there exists a possibility that the other party will verbally attack you at the mediation session or sometime later?

No Yes

Comments:

24. Do you fear that there exists a possibility that the other person will physically attack you during the mediation or sometime later?

No Yes

Comments:

IV. SAFE AND INFORMED TERMINATION OF MEDIATION.

Anytime during the course of mediation orientation or mediation, if either party opts 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 only revealed for the first time after mediation has commenced, the mediator shall interrupt the proceeding and conduct a screening of both parties separately to determine whether mediation is appropriate and whether the party who has been subject to domestic abuse understands the potential impact of abuse on that party's ability to participate in mediation fully and fairly. If the party subjected to abuse and the mediator agree that neither domestic abuse nor child abuse is an inhibiting factor, the mediation shall proceed. The mediator shall discuss and plan safety precautions with the party who has been subject to violence. If either the party subject to violence or the mediator determines that mediation is inappropriate, then it should be terminated.
2. Should mediation be terminated, the mediator should not advise the parties that the reason for termination is the presence, currently or formerly, of domestic violence or child abuse. Instead, the mediator should offer a less explicit rationale. The mediator should explain that it is not possible to continue, or that it is impossible to maintain neutrality. The mediator should emphasize that he or she is making the decision. If the parties or counsel will not accept this answer, the mediator should refer them to the supervisor of the mediation program.
3. The mediator should consult privately with the abused party to determine whether safety arrangements are necessary. If necessary, the mediator should make arrangements for the parties to leave separately, with the abused party leaving first and permitted reasonable time for departure. The mediator should consider whether to alert court security of potential for violence and arrange for escort of the abused party to transportation. The mediator should not reveal the destination or means of transportation of the abused party to the other party.
4. If possible without endangering the abused party, the mediator should provide the party with information and referrals for assistance.
5. If you have learned of a threat of imminent danger of physical harm to any person, you must inform the person who is the target of the threat or if the threat is against a child, the law may require that a referral to Child Protective Services be made.

6. The mediator should advise court security and the supervisor of the mediation program if he or she learns of a threat of imminent danger of physical harm to any person.
7. The mediator should inform the supervisor of the mediation program if he or she terminates a session due to issues relating to domestic violence or child abuse.

VI REFERRAL AND ASSISTANCE

1. Domestic Violence Advocacy Referral.

If a screener for mediation orientation or a mediator concludes that domestic abuse or child abuse has occurred, the abused party shall be provided with information about and referral to a domestic violence advocacy agency. The information should be provided only when the other party is not present.

2. Availability of Resource Information.

Information about domestic violence and child abuse and referral for assistance should be available in the women's rest room of court and mediation facilities.