



MEDIATION

in cases of

Domestic Abuse

Helpful Option or
Unacceptable Risk?

The Final Report of the
Domestic Abuse and Mediation Project

Coordinated by the Maine Court Mediation Service and
supported by a grant from the State Justice Institute

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rec'd 9/28/92

January, 1992

Views expressed in this report are those of the project team assembled by the **Maine Court Mediation Service** to carry out this project and do not necessarily represent the official position or policies of the **State Justice Institute** or the **Maine Judicial Department**.

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Domestic Abuse and Mediation Project

Preface and Acknowledgements

The Maine Court Mediation Service is delighted to present to the State Justice Institute, the state courts community, and the public the report of its Domestic Abuse and Mediation Project. For two years, fifteen project members met and carefully questioned the implications of domestic abuse for the practice of mediation.

The results of these efforts are described in this report. Many readers may have expected to find more consensus throughout its pages, hoping that the report would settle what has become an unsettling question for mediators, advocates for abused persons, judges, attorneys, and legislators.

Whatever their personal beliefs or professional biases, readers will discover insights that will broaden their understanding of the issue at hand and help them to formulate policies and procedures for the use and practice of mediation. The report points the way for continued dialogue and sets a heavy agenda for future research and reflection.

The Domestic Abuse and Mediation Project owes its initial inspiration to Jane Orbeton, Esq., former director of the Maine Court Mediation Service. It was her personal dedication to the highest standards of mediation practice and her sensitivity to the needs and concerns of abused persons that prompted her to organize the Mediation and Domestic Abuse Project. We are indeed grateful to her.

The project would not have been possible without the generosity of the State Justice Institute and the gracious assistance of its support personnel, especially Daina Farthing-Capowich, whose wise counsel helped keep the project on course.

The staff from the Administrative Office of the Maine Courts, especially Nancy Riedy, were helpful to the project and are deserving of our recognition. A word of thanks also is extended to Herb Pierce, secretary for the Mediation Service.

The project owes a particular debt of gratitude to Diana Scully, President of the consulting firm of Vantage Point. She facilitated the project's meetings skillfully, with good humor and complete impartiality. She headed the drafting team which produced this report. Her efforts merit our appreciation and praise.

Finally, an enthusiastic THANK YOU is extended to each and every member of the project team. They represent a widely divergent

group of interests and backgrounds. They brought to this work the tenacity of their personal convictions and unstintingly shared the richness of their experience and professional competence. Those of us who were privileged to be part of this project are grateful for having had the opportunity to experience a consensus of friendship.

Paul G. Charbonneau, Director
Maine Court Mediation Service
December 1991

Domestic Abuse and Mediation Project

Members

Honorable Jane S. Bradley

Judge, Maine District Court, at large

Paul G. Charbonneau, Project Director

Director of Maine Court Mediation Service • Belfast, Maine.

Jacqueline Clark, M.P.A.

Mediator, Maine Court Mediation Service • Augusta, Maine. Co-founder and former executive director of family violence project.

Honorable Dana Cleaves

Chief Judge, Maine Administrative Court.

Director of Family Court Pilot Project • Portland, Maine.

Linda Girdner, Ph.D.

Consensus • Alexandria, Virginia. Former board member of Academy of Family Mediators. Guest editor, *Mediation Quarterly*: "Mediation and Spouse Abuse."

Honorable Peter Goranites

Judge, Maine District Court • Portland, Maine.

Phyllis Hanson

Victim Witness Advocate Program, Portland Police Department. Formerly domestic violence paralegal • Portland, Maine.

Barbara Hart, Esq.

Legal counsel to Pennsylvania Coalition against Domestic Violence • Reading, Pennsylvania.

Michael D. Lang, Esq.

Attorney/mediator • Portland, Maine. Past President and current board member of Academy of Family Mediators.

Michael J. Levey, Esq.

Attorney in general practice • Winthrop, Maine.

Ann L. Milne, A.C.S.W.

Executive Director of Association of Family and Conciliation Courts • Madison, Wisconsin.

Jane Orbeton, Esq.

Former Director, Maine Court Mediation Service • Augusta, Maine.

Anita St. Onge, Esq.

Assistant Attorney General, State of Maine • Augusta, Maine.
Formerly in private law practice. Advocate of survivors of domestic abuse.

Anthony J. Salius

Director of Family Division, Connecticut Superior Court • Hartford, Connecticut.

Zena Zumeta, Esq.

Director of Ann Arbor Mediation Center • Ann Arbor, Michigan.
President-Elect of Academy of Family Mediators.

Consultants

Craig A. McEwan, Ph.D.

Professor, Department of Sociology,
Bowdoin College, Brunswick, Maine.

Diana C. Scully, M.S.W.

President of Vantage Point,
a consulting firm in Hallowell, Maine.

(Meeting facilitator and final report drafting team
coordinator for Domestic Abuse and Mediation Project.)

Richard M. Tolman, Ph.D.

Professor, Jane Addams College of Social Work,
University of Illinois in Chicago, Illinois.
Researcher/practitioner with men who batter.

Domestic Abuse and Mediation Project

Executive Summary

BACKGROUND

The Maine Court Mediation Service carried out the Domestic Abuse and Mediation Project with a grant from the State Justice Institute. Project members addressed a serious and vexing question about the use of mediation in both protection from abuse cases and domestic relations matters when abuse has been a factor: Can mediation be a helpful option or is it an unacceptable risk?

Project members were unable to reach consensus about the answer to this question with respect to protection from abuse orders. Half of the members opposed the use of mediation because of safety concerns and the public policy considerations that underlie protection from abuse statutes. An equal number felt that in certain instances and under carefully controlled circumstances, supported by well-designed screening protocols, mediation could indeed be safe, appropriate, and helpful. This report describes both points of view, including alternative models to enhance the protection from abuse process, based on each point of view.

There was greater consensus among project members regarding the use of mediation in domestic relations matters when abuse has been a factor. The report recognizes the great harm caused by domestic abuse and its potential for lethality. Highlighting, first and foremost, the need for safety and protection, the report strongly recommends the required use of screening protocols, a specialized application of mediation techniques to cases that involve domestic abuse, structured training and cross-training in mediation and domestic abuse for court personnel, mediators, and domestic abuse prevention workers.

The report acknowledges that a number of difficult questions remain unanswered and urges courts, mediators and advocates for abused persons to continue their dialogue in an effort to formulate policies and programs that will better serve the populations for whom they are designed.

RECOMMENDATIONS ABOUT MEDIATION IN PROTECTION FROM ABUSE CASES

Recommendations concerning the use of mediation in protection from abuse cases follow:

IN OPPOSITION TO MEDIATION

- The protection from abuse process must uphold the public policy goals embodied in protection from abuse statutes and must provide a clear and strong message that domestic abuse is criminal and intolerable conduct for which the perpetrator is solely responsible. This message must not be diluted by any conciliatory process, including mediation.
- Efforts to alter or improve the protection from abuse process must not impede access to expeditious and extraordinary relief for the abused person, and must promote the public accountability of the perpetrator, enforcement of the protection from abuse order, and the abused person's right to live a life independent of the abuser.
- Mediation should be excluded from protection from abuse cases because it creates an unacceptable risk that abused persons and their children will not be protected from acts of domestic abuse.

IN SUPPORT OF MEDIATION

- After the court enters a protection from abuse order, the case should be assessed by skilled professionals to determine what decisions and interventions are required to resolve issues that are not already settled by the court order and that are of importance to the family.
- Mediation should be part of the protection from abuse order process only if it can be supported by a comprehensive screening process and if participation is fully voluntary.
- The screener should develop an intervention plan to identify what support and services the parties need. This effort should be initiated only after there has been a judicial finding of abuse and after a protection from abuse order has been issued.

RECOMMENDATIONS ABOUT MEDIATION IN DOMESTIC RELATIONS CASES

The following recommendations about screening and mediation in domestic relations cases when there has been abuse nearly represent a consensus among the members of the Domestic Abuse and Mediation Project:

SCREENING

- All domestic relations cases being considered for mediation must be screened for abuse. If screening cannot be instituted, mediation services must not be offered.
- Screening procedures must be simple enough to ensure that they are widely used and uniformly applied, include precautions to ensure safety, and ensure that reliable information is obtained.
- Screeners must be knowledgeable about mediation and domestic abuse and skillful at uncovering acts of abuse and risk factors.
- Screening and mediation policies and procedures must be based on the assumption that the alleged abuse has occurred.
- Mediation programs must develop and implement screening policies and procedures to assess the parties' ability to mediate.
- During screening, the circumstances, nature, and impact of the abuse must be considered in assessing whether mediation is appropriate.
- Screening must include an assessment of the danger posed by the abuser. If there is violence during marital separation, the assessment of the parties' ability to mediate must be done especially carefully. Mediation must be terminated if abuse occurs subsequent to screening or during the mediation process.

MEDIATION

- Mediation programs must assure that screening and mediation are safe for both the abused person and the mediator.
- Participation in the mediation process must be voluntary and based on informed consent.
- Courts authorizing mediation must provide for a safe environment, the presence of third-party supporters, and the ability of the abused party to terminate mediation at any time. Agreements, if

reached, must be based on full disclosure of information, be incorporated into an order of the court, and be readily enforceable. The facts upon which the agreement was based also must be included in the agreement. Offers of settlement and negotiations must be confidential.

- Mediation programs must adapt established mediation theory, skills, and interventions to address the special circumstances of domestic abuse.
- If either party is unable to mediate, the screener or mediator must exclude both parties from mediation. The decision to forego mediation must be conveyed in a way that does not endanger the abused person.
- Prior to mediation, mediators must explain to the parties any exceptions to confidentiality imposed by law or policy. In particular, mediators must acknowledge and explain their duty to warn the parties if their safety or that of their children is at risk.
- Responsibility and authority over the mediation process must rest with the mediator. The mediator must control the process according to established standards of practice and apply specialized principles and techniques to the mediation of domestic relations cases involving abuse.
- Each party and the mediator must have the unqualified right to terminate mediation at any time. The mediator must honor each party's right to terminate mediation.
- Mediators must receive extensive training in domestic abuse to enable them to handle safely, responsibly, and effectively domestic relations cases involving abuse. Training programs must cover assessment of danger, child abuse reporting procedures, and mediator liability for failure to disclose threats made to potential victims. Mediators must have access to supervision and support, a good referral network, and an office and mediation environment that are safe for both themselves and abused persons.

Domestic Abuse and Mediation Project

Table of Contents

	PAGE
Preface and Acknowledgements	iv
Domestic Abuse and Mediation Project Members	vi
Domestic Abuse and Mediation Project Consultants	vii
Executive Summary	viii
Table of Contents	xiii
PART I. <u>OVERVIEW</u>	1
A. The Domestic Abuse and Mediation Project	3
Reasons for Study	3
Questions about Mediation	4
Members	4
Approach	4
B. Definitions	4
Language	4
Domestic Abuse	5
Mediation	5
Protection from Abuse Order	5
Domestic Relations	6
C. The Final Report	7
Focus on Abuse of Women	7
Mediation in Protection from Abuse Cases	7
Mediation in Domestic Relations Cases	8
Unanswered Questions	9
PART II. <u>MEDIATION IN PROTECTION FROM ABUSE CASES: TWO VIEWS</u>	11
A. Introduction	13
Harm Caused by Domestic Abuse	13
Beliefs Shared by Project Members	13
Divergent Views of Project Members	13
Alternative Models	14

B.	Opposition to Mediation in Protection from Abuse Cases	14
	Message Against Domestic Abuse	14
	Assuring Expeditious and Extraordinary Relief	15
	Unacceptable Risk	15
C.	Support for Selected Use of Mediation in Protection from Abuse Cases	17
	System of Screening and Planning	18
	Conditional Use of Screening: Helpful Option	19
	Intervention Plan	21
PART III.	MEDIATION IN <u>DOMESTIC RELATIONS CASES</u>	23
A.	Introduction	25
	Difference Between Protection from Abuse and Domestic Relations Cases	25
	Ability to Mediate	25
	Voluntariness	25
	Specialized Principles and Skills	25
	Recommendations and Analyses	26
B.	Screening	26
	Screening Required	26
	Screening Procedures	26
	Who Does Screening?	28
	Assumption that Abuse Has Occurred	28
	Ability to Mediate	29
	Impact of Abuse	30
	Assessment of Danger	31
C.	Mediation	31
	Safe and Fair Process	31
	Voluntary Participation in Mediation	32
	Structural and Procedural Safeguards	33
	Specialized Principles and Techniques	34
	Exclusion from Mediation	35
	Confidentiality and Duty to Warn	35
	Control of Mediation Process	36
	Termination of Mediation	36
	Training and Support	36

PART IV.	<u>UNANSWERED QUESTIONS</u>	39
A.	Questions about Mediation in Protection from Abuse Cases	41
	Cases That Are Not Pursued	41
	Pilot Project	41
	Role of Advocates	41
B.	Questions about Mediation in Domestic Relations Cases	41
	Duty to Warn	42
	False Accusations	42
	Shared Parenting	42
	Effects of Agreements on Children	42
	Screening of Both Parties	43
D.	Ongoing Work	43

<u>ATTACHMENTS</u>		45
#1	Power and Control Wheel	47
#2	Model for Screening and Intervention Plan Proposed in Support of Use of Mediation in Protection from Abuse Cases	49
#3	Alternative Model with Mediation Component	51
#4	Alternative Model without Mediation Component	63
#5	Tolman Screening Model	73
#6	Ellis Screening Model	79
#7	Sample Protocol for Dangerousness Assessment	87
#8	Sample Agenda for Domestic Abuse and Mediation Training	93

Domestic Abuse and Mediation Project

Part I

OVERVIEW

A. The Domestic Abuse and Mediation Project

REASONS FOR STUDY

Over the last ten years, mediation has emerged as an alternative mechanism for dispute resolution in domestic relations matters. In this process the mediator, a neutral professional, assists the parties involved in a conflict to define the issues in contention, to communicate clearly with each other, and to reach agreements in a non-adversarial context.

Because divorce is a time of emotional upheaval for families, mediation has been found to be a helpful forum for parties to engage in rational discussion of issues and to reach solutions to their problems which better meet the unique needs of family members. Indeed, in Maine, mediated resolutions between parents have been declared by the Legislature to be in the best interest of the minor children, and mediation has become a mandatory procedure prior to trial in divorce and other domestic relations matters where minor children are involved.

With the growing recognition over the last few years of the serious problem of domestic abuse in this country, states have enacted statutes establishing procedures for protection from abuse. These statutes often require courts to enter orders addressing matters relating not only to safety from abuse, but also to other family issues such as parental contact with the minor children, child and spousal support, and allocation of and access to the parties' real and personal property. Because protection from abuse orders appear to raise parenting and property issues similar to those raised in divorce and other domestic relations matters, courts have considered and in some instances have referred protection from abuse cases to the mediation process.

The use of mediation in protection from abuse proceedings may appear to be appropriate not only because of the similarity of issues to other family matter proceedings, but also because of the particular nature of the process. By design, protection from abuse statutes provide for immediate judicial relief. Matters come to hearing quickly, and often the litigants are not represented by counsel. With little detailed information, courts are expected to fashion, without delay, orders meeting the unique circumstances of the family pertaining to parent-child contact, monetary support, or the transfer of property.

To obtain detailed information and in an effort to develop more customized and, therefore, more effective protection from abuse orders, courts may be inclined to turn to the mediation process. This may be especially appealing where courts are burdened by increasing caseloads and declining resources.

QUESTIONS ABOUT MEDIATION

There are serious concerns, however, about the use of mediation in cases where domestic abuse has occurred. Is it a safe forum for abused persons and their children? Is it an appropriate process for persons who have experienced abuse and now require court protection? How can an abused person mediate and negotiate with an abuser under the threat and fear of further violence? Does the mediation process provide the abused person with a better alternative than the adversarial process, which by its very nature promotes competition and potentially further victimizes the abused person? Does the mediation process compromise an abused person's legal rights and safety by placing her in a position of negotiation, conciliation, and compromise with the person who terrorized, assaulted, or injured her and/or her children?

MEMBERS

To consider these and other relevant questions, the Maine Court Mediation Service launched the Domestic Abuse and Mediation Project by assembling a team of fifteen members from seven states: judges, attorneys, mediators, court administrators, domestic abuse prevention workers, advocates for abused persons, and social scientists. A researcher and practitioner in services to men who batter and other consultants also contributed to the project.

APPROACH

The team participated in six two-day meetings during 1990 and 1991. Team members worked in plenary sessions, as well as in smaller groups of sometimes similar and sometimes mixed interests. Between meetings they shared a vast quantity of articles and information. They also drafted a number of papers internal to the group, which helped clarify their own thinking, synthesize the work of others, and identify issues for further development.

B. Definitions

LANGUAGE

The use of language was a matter of concern to project members. In an effort to come to a common understanding of terms, they agreed to use the definitions presented in this section.

DOMESTIC ABUSE

Project members decided to use the term "domestic abuse" to refer to acts of intimidation, harassment, coercion, and violence perpetrated by an abuser against a current or former intimate partner. Nonphysical acts of domestic abuse include but are not limited to emotional abuse, isolation, threats and the use of male privilege. Physical acts include but are not limited to pushing, shoving, choking, slapping, hitting, using weapons, and physically detaining. These acts serve to maintain the abuser's power and control over the abused person. Attachment #1 depicts various dimensions of abuse in the Power and Control Wheel developed by the Domestic Abuse Intervention Project of Duluth, Minnesota.

Legally actionable acts of domestic abuse are primarily physical acts which constitute assault or battery. Assessment of the appropriateness of mediation for both protection from abuse and domestic relations cases must cover actionable and nonactionable acts of domestic abuse.

Some project members were concerned that if screeners and mediators need to determine whether allegations of domestic abuse are true or false, they become triers of fact, which is not a proper role. The project concluded that there should be an assumption that the alleged abuse occurred and an assessment of whether mediation can work, despite the presence of abuse. The project also recognized that levels and forms of domestic abuse vary significantly and may be of determining consequence when dealing with the appropriateness of mediation.

MEDIATION

Project members used the term "mediation" to mean a voluntary dispute resolution process which involves:

- A third-party neutral who has no stake in the outcome.
- Disputants who jointly search for solutions that are creative and practical, that address the separate concerns and interests of the parties, and that are based on objective criteria.
- Mutually satisfactory agreements.

PROTECTION FROM ABUSE ORDER

Project members defined the term "protection from abuse order" as a judicial directive that makes a factual determination that abuse occurred and prohibits the abuser from threatening, assaulting, molesting, attacking, having contact with, or otherwise abusing the abused person.

Violations of these orders are subject to criminal and/or civil sanctions. Depending on the jurisdiction, statutes also may authorize protection from abuse orders to contain provisions dealing with the following issues:

- Parental rights and responsibilities regarding minor children, including primary care of and access to the children; maintenance and payment of the reasonable costs of medical, dental, hospital, and other types of insurance for the children; and temporary support payments for the children.
- Maintenance and payment of the reasonable costs of medical, dental, hospital, and other types of insurance for the abused person; and temporary support payments for the abused person.
- Possession, exclusion, division, and/or utilization of property, including residence, place of employment, automobiles, furniture, bank accounts, etc.
- Prohibition against dissipating assets, including requiring the posting of bonds and issuing injunctions.
- Compensation to the abused person for lost earnings, reasonable expenses for personal injuries or property damage, moving expenses, etc.
- Confidentiality of address of the abused person.
- Counseling for the abuser.
- Prohibition against possession and/or requiring relinquishment of weapons.
- Payment of attorneys' fees and court costs.
- The specific date on which the order expires.
- Other orders necessary and appropriate to the case.

DOMESTIC RELATIONS

Project members defined "domestic relations" matters as disputes over parental rights and responsibilities, child support, parent/child contact, the division of marital property, and spousal support (alimony). These may involve motions brought before a court for an initial decree or a modification. Disputes over parental rights and responsibilities generally involve separated, divorced, or unmarried parents, although they also may occur between a parent and another family member.

C. The Final Report

FOCUS ON ABUSE OF WOMEN

Project members agreed to focus primarily on cases involving the abuse of women, because the vast majority of domestic abuse cases brought before the courts involve women as the abused partners. However, throughout this report the words "she" and "her" are meant to include "he" and "him" in cases where a man is abused.

MEDIATION IN PROTECTION FROM ABUSE CASES

Project members were asked to address a threshold question: **When there is a claim of abuse between household members, can a protection from abuse order sometimes be mediated safely and appropriately?** If the answer was yes, project members were to describe what circumstances and controls might assure a safe and effective mediation model for cases involving protection from abuse orders. Project members also decided to address the wider issue of mediating other domestic relations matters when abuse is a factor.

The project members agreed that two propositions are given in the context of a protection from abuse order:

- **There is no justification for abuse.**
- **The fact or finding of abuse should never be mediated, nor should there be mediation about whether a protection from abuse order should be issued.**

Project members readily adopted these propositions. They emphasized that if mediation is appropriate, it should occur only after the court has made a finding of abuse and has entered an order for protection. They agreed that it is never appropriate, as part of the mediation session, to discuss withdrawing a petition for protection or dropping criminal charges. They also agreed that ending violence must never be mediated, and provisions to assure safety must always be the absolute priority guiding discussion about domestic abuse and mediation. They also agreed that protection from abuse orders should only be issued against the defendant.

Two lines of thinking emerged when project members examined the validity of the threshold question about whether mediation is sometimes appropriate in cases involving protection from abuse orders.

Several members believed that because some instances of domestic abuse involve no or minimal violence and may not involve subjugation of the abused person, it is possible to look at cases individually and use proper screening techniques to identify cases which might benefit from mediation. They felt that for these cases mediation could be used.

Several members expressed the view that mediation should not be used in cases involving protection from abuse orders because mediation would undercut irreparably public policy on domestic abuse which is based on the following principles:

- Domestic abuse must not be tolerated or accommodated in family relationships.
- Perpetrators are solely responsible for their violence and must be held accountable for it.
- Protection from abuse orders and other safeguards must be quickly accessible to abused persons and vigorously enforced to stop violence.

Part II of this report presents the concerns, conclusions, and recommendations both of project members opposed to any use of mediation in the protection from abuse process and of those supporting the carefully designed and structured use of mediation in the process. It also refers to alternative models, found in the attachments to this report, intended to make the process more efficient, safe, and responsive to the needs and circumstances of abused persons and their families.

MEDIATION IN DOMESTIC RELATIONS CASES

Project members also considered the use of mediation in other domestic relations matters in which abuse is a factor. They focused on divorce and post-separation actions, including distribution of marital property, alimony, spousal maintenance, child support and child custody, and injunctions against dissipation of assets. They examined the importance of screening, the skills involved, and the procedures to be used. They discussed the specialized mediation skills and training needed to mediate selected cases in order to assure the safety of the abused partner and the balance of power at the mediation table.

Part III of the report describes the project team's views, conclusions, and recommendations regarding the use of screening and mediation in domestic relations cases involving abuse. This section represents a greater level of consensus among project members. It reveals a vein of collective experience and thought that policymakers and professionals involved with mediation and domestic abuse issues will want to mine and study carefully.

UNANSWERED QUESTIONS

Part IV of the report affirms the need for continued work and collaboration in the areas of mediation and domestic abuse. It challenges judges, lawyers, mediators, domestic abuse prevention professionals, and advocates of abused persons to address aggressively and cooperatively the many worrisome questions that remain unanswered.

Part II

**Mediation in
Protection From Abuse Cases:
TWO VIEWS**

A. Introduction

HARM CAUSED BY DOMESTIC ABUSE

Domestic abuse causes great harm. It contributes to a pattern of long term victimization and escalating violence. It can cause serious physical injury, even death. It always creates an unhealthy and dangerous family environment which is damaging to children.

The harm caused by domestic abuse has been minimized in our society. It has been viewed as a "private" or "family" matter, not needing significant intervention. The abuser has not been held accountable for acts of domestic abuse. Abused persons and their children have not been sufficiently protected and empowered to establish lives independent of the abuser.

State legislatures have responded to domestic abuse and its minimization by creating protection from abuse statutes, designed to address it directly and expressly and provide remedies. These statutes acknowledge the harm caused by domestic abuse; provide for relief and safety for its victims and their children; and impose serious, consistent, and predictable consequences for the persons who commit it. These laws are the major vehicle by which the legal system sends the message to the community that acts of domestic abuse will not be minimized, are harmful, and must be stopped.

BELIEFS SHARED BY PROJECT MEMBERS

All of the project members were concerned about the harm caused by and minimization of domestic abuse. They agreed about the importance of protection from abuse statutes in addressing domestic abuse. Consensus existed about the significance of the message against domestic abuse which these laws embody, and the group shared a commitment not to allow this message to be diluted. Despite these areas of common agreement and commitment, two divergent views emerged in the project about the use of mediation in protection from abuse cases.

DIVERGENT VIEWS OF PROJECT MEMBERS

Approximately half of the project members opposed the use of mediation in protection from abuse cases. They expressed the belief that the process of mediation is contrary to public policy and nullifies the power of the protection from abuse order process. It fails to protect the abused person and fails to deter the perpetrator from future abuse. Mediation also fails to enable the abused person to establish a household independent of the abuser. The discussion in opposition to the use of mediation in protection from abuse cases follows in Section B of this part of the report.

The other half expressed the belief that **mediation is a helpful option** which can be used in properly screened protection from abuse cases to achieve agreements that meet the needs of family members, empower the victim, give the abuser insight, and provide a likelihood of compliance with safety provisions. The discussion in support of mediation in these cases appears in Section C of this part of the report and a mediation model supporting this view is included as Attachment #2.

ALTERNATIVE MODELS

In an attempt to reconcile the two points of view, project members attempted to design an alternative model for information-gathering by a domestic abuse intervention specialist that would protect the abused person's safety as well as make the process more efficient and responsive to her needs and the circumstances of the family.

In the end, however, two alternative models emerged from the project and are presented in Attachments #3 and #4. One of these models includes a mediation component. The other does not.

B. Opposition to Mediation in Protection from Abuse Cases

The views of project members who held the strong belief that mediation is an unacceptable risk and should not be used in protection from abuse cases are outlined in this section. This is an aggregation of viewpoints and does not imply that all of the members opposed to the use of mediation embraced each and all of those points.

MESSAGE AGAINST DOMESTIC ABUSE

The protection from abuse process must uphold the public policy goals embodied in protection from abuse statutes and must provide a clear and strong message that domestic abuse is criminal and intolerable conduct for which the perpetrator is solely responsible. This message must not be diluted by any conciliatory process, including mediation.

Protection from abuse statutes are on the front line of the legal system's effort to stop domestic abuse and send a message to the public about it. Swift and decisive court orders entered against abusers send a message to the parties and the public that acts of violence against intimate partners are criminal offenses and will not be tolerated. Any process

which seeks to engage the abuser in creating the terms of the protection from abuse order undermines the public policy message and risks that the abuser will not understand the seriousness of his behavior.

ASSURING EXPEDITIOUS AND EXTRAORDINARY RELIEF

Efforts to alter or improve the protection from abuse process must not impede access to expeditious and extraordinary relief for the abused person, and must promote the public accountability of the perpetrator, enforcement of the protection from abuse order, and the abused person's right to live a life independent of the abuser.

The mediation of protection from abuse orders will irreparably undercut public policy on domestic abuse which now holds that domestic abuse is criminal conduct, that it must not be tolerated or accommodated in family relationships in this culture, that the perpetrator is solely responsible for the abuse and must be held accountable, that safeguards against abuse must be quickly accessible to abused persons, and that the protection from abuse orders must be vigorously enforced to bring a cessation of abuse.

Mediation privatizes violence, returning it behind closed doors, and eliminating public disclosure which is a significant incentive for the perpetrator to stop the abuse. Mediation treats critical safety and protection issues like parent-child contact, support, and autonomy as ancillary matters helpful for the restructuring of the family but not critical in terms of desistance, safety, or autonomy.

UNACCEPTABLE RISK

Mediation should be excluded from protection from abuse cases because it creates an unacceptable risk that abused persons and their children will not be protected from acts of domestic abuse.

The protection from abuse process functions foremost to provide safeguards for abused persons to protect them from further abuse. Any process, including mediation, that does not facilitate swift, decisive, and uncompromising action creates risks that can undermine the safety of abused persons and their children.

First, mediation creates the risk that the abused person will reach erroneous conclusions about the abuser. The principles in which mediation is grounded assume that both parties can cooperate, identify their independent interests, and work toward a balanced resolution of a

problem. The abused person might assume from participating in mediation that the abuser can be persuaded to act in a non-abusive, non-intimidating manner and can forsake abusive tactics in pursuit of cooperative restructuring of the family relationship; can change his belief system and recognize that she has legitimate interests independent of and even adverse to his own or that her interests are not always subordinated to his; can engage in cooperative problem-solving; is earnestly seeking to change; and will refrain from exerting control over her life. The abused person and the mediator cannot make these assumptions. Mediation implicitly suggests that the abuser has the capacity to mediate in good faith. The abused person may rely to her detriment on this assumption of cooperation.

Second, a risk exists that the mediation process will cause the mediator and the abused person to separate parenting and financial issues from the abuse which led to the protection from abuse order. One might conclude that these issues are not an integral part of abuse and that the abused person can be protected adequately against future abuse without addressing areas such as the danger attendant upon custodial access and the coercive power of economic abandonment.

Third, there is a risk that the abused person will infer from the process of mediation that she is responsible for her own abuse and that she has the power to end it by changing her own behavior. The replacement of a judicial procedure with a consensual process may imply that abuse is a joint problem, generated by both parties, which can be eliminated with the cooperation of the abused person and changes in her behavior.

Fourth, because mediation values cooperative decision-making, there is a risk that an abused person will compromise her rights to autonomy and safety and yield to the abuser's ultimate goal of regaining control over her. She must be accorded the power to safeguard her autonomy and control her own life. In addition, because mediation is a process which values cooperative decision-making, there is also the risk that participation in the mediation may imply to the abuser that he has the right to participate in decisions concerning the abused person's life and daily activities. The abuser, however, must learn that he does not own and is not entitled to control the abused person and her daily life.

Fifth, mediation creates the risk that an evenly balanced outcome will be sought. Mediation usually seeks an outcome which is balanced and represents the interests of both parties. What is needed in a protection from abuse order is an extraordinarily weighted outcome, since the safety of the abused person is of primary concern and is the basis for the court's order.

Sixth, there is a risk that mediation will suggest an imperceptible momentum toward compromise and an implied obligation on the part of the abused person to compromise. The goal of mediation is to resolve a dispute. Mediation programs frequently gauge their success on the

percentage of cases that reach agreement. By participating in the process the abused person may feel pressure to make a compromise, which might put her safety at risk.

Seventh, a risk exists that the abused person will believe that mediation may be relied upon to protect her because the mediation is court sanctioned. She may erroneously assume that she will be safe and thereby place herself at greater risk.

Eighth, mediation creates the risk that the abuser will have direct access to the abused person. The parties may be in the same room or near each other during the process. His presence may adversely affect her ability to remain calm and to evaluate her own interests. Bringing her close to him creates the risk that he might physically harm her. Since mediation encourages interdependence and interaction, abuser access may be promoted, or at least not carefully and intentionally limited, during the mediation process.

Ninth, there is a risk that mediation will give the abuser information about the abused person. Mediation encourages full and open communication and disclosure as a means of resolving problems. This can provide the abuser with information about the abused person's patterns of daily life and safety strategies, putting her at risk.

Tenth, the timing of mediation in a protection from abuse case may occur quickly, shortly after an incident of abuse. A risk exists that the recently abused person will be unable to assess properly her own interests under these circumstances.

Eleventh, there is a risk that mediation will slow down the protection from abuse process. Protection from abuse orders are meant to be quick, decisive, and complete. The time taken to schedule, screen, provide information, explain ground rules, and conduct mediation while caucusing with parties or their advocates over one or more sessions could leave the abused person without the immediate and decisive response she needs.

C. Support for Selected Use of Mediation in Protection from Abuse Cases

The views of project members who expressed the belief that mediation can be a helpful option under certain circumstances in protection from abuse cases are outlined in this section. This is an aggregation of viewpoints and does not imply that all of the members in support of the use of mediation embraced each and all of those points.

SYSTEM OF SCREENING AND PLANNING

After the court enters a protection from abuse order, the case should be assessed by skilled professionals to determine what decisions and interventions are required to resolve issues that are not already settled by the court order and that are of importance to the family.

Limitations of time, resources, and expertise sometimes preclude a judge from being able to address the options for meeting family needs (e.g., support and other financial obligations, schedules for access to the children and other parenting issues, use of the family vehicle, continuing contact between the children and extended family members, and the need for counseling for family members).

In order to resolve such issues, the courts need information and a range of available options for responding to a family's needs and concerns. The courtroom process generally involves a judge listening to competing voices and then imposing a temporary solution that seems appropriate and fair. An improved process would allow these issues to be addressed through negotiation, mediation, or litigation, whichever process protects the abused person and allows for the resolution of these issues.

Courts need to develop a system of screening and planning for protection from abuse cases. Attachment #2 illustrates a conceptual model for such a system. Under the proposed model, the paramount considerations are protection of the abused person and children and ending the violence. Mediation is an available option under the model because it does not contradict public policies underlying protection from abuse statutes and does not necessarily place the abused person at greater risk. The model incorporates the following features:

- The model offers the parties the **same level of personal safety as any other judicial procedure**. Safety features include the use of separate meeting rooms, the availability of security personnel, limiting the contact between the parties, and the vigilance of trained staff. The model does not presume that all cases will be appropriate for mediation. Excluded are cases where the nature, extent, and/or duration of the abuse and its impact on the abused person require a procedure that is more formal and structured. In these cases, the parties would be encouraged to use the courtroom or negotiations assisted by a lawyer or advocate for dealing with issues raised by the protection from abuse order.
- Mediation is structured and practiced to **convey unequivocally the seriousness of the abuse**. The parties' perception of the intervention process is as critical as the results of the process. Under the model, skilled personnel backed by the authority of the court would ensure that both the abused

person and the abuser perceive the process as safe, efficient, and decisive. It would be emphasized that violations of the agreement by the abuser constitute violations of the court order and can result in serious consequences.

- **Mediation does not supplant the public court system with a private process or agreement.** Under the model, mediation would not and should not preclude judicial intervention. The court would review fully any agreement reached in mediation, including its specific terms and rationales and would have the authority to modify the proposed agreement. The agreement would then become a court order, as enforceable as any other court order. There would be insistence upon protection and safety, as well as the workability and relevance of the final order. The court would retain the exclusive authority to modify this order.
- **The model requires an abused person to have sufficient competence and knowledge to participate in mediation.** The abused person's ability to handle herself in negotiations, her access to advocates and counsel, the history of her relationship with the abuser, and other relevant information would be assessed through the screening process. Information gained through screening would be used to help her choose a process and forum that best suits her needs.
- **Under the model, mediators would be trained to recognize and respond to the fact that power differences in an abusive relationship are intensified beyond what is normally encountered in family disputes.** They would learn techniques and strategies to handle efforts by either party to exploit the skewed power relationship in the mediation session and to ensure that adequate protections are identified and agreed upon. They would know how to manage efforts by the abuser or the abused person to minimize the seriousness of the abuse and the validity of the protection process.

CONDITIONAL USE OF MEDIATION: HELPFUL OPTION

Mediation should be part of the protection from abuse order process only if it can be supported by a comprehensive screening process and if participation is fully voluntary.

A screener must assess the needs of the abused person, the abuser, and other significant family members. The safety needs of the abused person and the abuser's potential for further violence must be thoroughly assessed. A screening process must fit into court schedules and procedures and must not result in significant delays.

Mediation is one of several options explored during screening. Screening is used to determine whether or not mediation can be conducted safely and what procedures must be followed. The screener also must evaluate the ability of each party to use mediation wisely and voluntarily.

In some instances, mediation is not an acceptable forum. An abused person, however, has the right to have available and to select and qualify the intervention process best suited to her needs. Mediation should be one of the available court-connected processes.

Many petitioners for protection from abuse orders fail to appear at the final hearing or they ask the court to vacate the order for their protection because they fear reactions from the abuser or are intimidated by the judicial process. The abused person may respond with less fear to a process that allows her more control and choices, including that of mediation.

The mediation process is flexible and capable of providing benefits to abused persons, while not risking their safety and not minimizing the seriousness of domestic abuse. Concerns about mediation do not force the conclusion that mediation is always inappropriate. Screening protocols and specialized mediator training, coupled with proper safeguards, can be developed to assure that an informed, freely chosen use of mediation can be both safe and appropriate. When mediation is an alternative within the judicial system, it can be a helpful option for the following reasons:

- The abused person enters the mediation process voluntarily. She is given full information about her options and the risks, as well as a clear understanding of mediation's advantages and limitations. She may decide that mediation is more effective and responsive to her needs and interests and in some instances safer than an adversarial proceeding.
- Mediation draws upon the needs of each family member in order to address the schedules, circumstances, and logistics involved in planning workable and safe parent-child contact.
- Mediation invests the parties in the process and outcome. It allows them to come to practical, concrete resolutions which they feel are their own. It relies on their knowledge of their family and past and present circumstances.
- Mediation provides for customized plans that can result in flexible temporary arrangements and opportunities for review and evaluation of these temporary plans. Highly individualized plans may be safer for abused persons.
- Mediation can empower the abused person. A well conducted mediation which results in a workable agreement

designed to provide safety can help the abused person to see that she is not powerless and that she has access to a system to help her. However, mediators must be vigilant not to let her assume that she has more power in the situation than she really has.

- Mediation may eliminate or reduce the time and number of appearances of the abused person in court and may lessen the number of issues for which she has to undergo cross-examination. This would protect her from being subjected to a defense that denies or minimizes the violence done to her or that justifies the violence by blaming her.

INTERVENTION PLAN

The screener should develop an intervention plan to identify what support and services the parties need. This effort should be initiated only after there has been a judicial finding of abuse and after a protection from abuse order has been issued.

Under the proposed model, an intervention plan would address the needs of each party and would include a mechanism to review and evaluate its effectiveness for the parties. Depending upon the results of screening, the plan may or may not include mediation. The plan would be designed, implemented, and monitored by skilled professionals familiar with the nature and dynamics of domestic abuse, the judicial system, mediation models, and services available within the community.

Part III

**MEDIATION IN DOMESTIC
RELATIONS CASES**

A. Introduction

DIFFERENCE BETWEEN PROTECTION FROM ABUSE AND DOMESTIC RELATIONS CASES

Project members agreed that domestic relations matters are essentially different from motions for protection from abuse orders and should be recognized as such. A protection from abuse order is meant to be a swift, effective response to end recent violence and protect a family from further violence. The court is asked to find whether the plaintiff was abused and is at risk, and, if so, to issue an order designed to protect her and her children. In contrast, domestic relations cases deal with long term, permanent arrangements for families. Abuse, if it exists, may not be alleged and may not be recent.

ABILITY TO MEDIATE

The existence of abuse in domestic relations matters raises serious questions about the appropriateness of mediation and the ability of the parties to mediate with one another. Mediation may not be appropriate because of safety concerns and the imbalance in power between the parties and because of the limited capacity of either or both parties to advocate effectively for themselves or to reach safe and fair agreements.

A party's ability to mediate can be diminished because of domestic abuse. When abuse exists as a pattern of coercive, controlling, and manipulative behavior, with or without physical violence, it functions to secure power and control for the abuser and to undermine the safety, security, self-confidence and autonomy of the abused person. Because of its insidious nature, domestic abuse can go unidentified during the course of mediation. Mediation services must actively seek to identify domestic abuse through the pre-mediation screening process.

VOLUNTARINESS

Project members agreed that mediation must be voluntary when domestic abuse has been identified during the screening process. When the parties are mandated to attend an orientation session, safety must be paramount and separate orientation sessions must be available.

SPECIALIZED PROCEDURES AND SKILLS

Mediation may be appropriate only if the parties have been screened, when specialized procedures are rigorously followed, and when mediators have received adequate training in mediating domestic relations cases involving abuse.

RECOMMENDATIONS AND ANALYSES

Research on mediation and abuse is in its infancy. The recommendations and analyses in Sections B and C of this report are based on the limited research available about abused persons and abusers' treatment programs as well as on the knowledge and experience of project members and others who have contact with abused persons and abusers.

In domestic relations cases involving abuse, project members recommended a number of policies and procedures concerning screening and mediation. The absence of sound policies and procedures endangers abused parties. Thus, it is critically important that the team's recommendations be considered carefully, if mediation is to be used. **It should not be inferred that the project's recommendations may be used to justify the use of mediation in protection from abuse cases.**

B. Screening

SCREENING REQUIRED

All domestic relations cases being considered for mediation should be screened for abuse. If screening cannot be instituted, mediation services must not be offered.

Project members recognized that economic strains in many state court systems affect the ability of mediation programs to implement screening procedures. There was unanimous agreement that there must never be mediation without screening.

The purpose of screening is to identify and sort cases for which mediation is likely to be appropriate, unlikely to be appropriate, and possibly appropriate if specialized mediation techniques are used. Screening is a means of assessing the appropriateness of mediation by identifying whether and the extent to which physical and psychological abuse exist, the presence of fear and intimidation, and the potential for physical injury and death. Screening also should identify cases that mediators are not qualified or equipped to handle.

SCREENING PROCEDURES

Screening procedures must be simple enough to ensure that they are widely used and uniformly applied, include precautions to ensure safety, and ensure that reliable information is obtained.

Project members felt that an uncomplicated screening tool is more

likely to be used than a comprehensive one that is too cumbersome to administer and evaluate. A simplified approach might miss cases which should be excluded from mediation, but this drawback is outweighed by the benefits of a procedure that is widely used. Attachments #5 and #6 to this report are sample screening tools.

All forms of screening involve a risk of endangering the abused person. Extra precautions must be in place to lower this risk. Since the abused person is less likely to reveal abuse in the presence of the abuser, it is critical that screening be done separately and under safe circumstances.

Some screening systems are two-tiered. Initial screening identifies clearly unsuitable cases. Cases that are not screened out at this point proceed to a more detailed screening procedure. There are three ways to conduct screening:

- Some project members felt that **telephone screening** is an efficient approach. It reduces the number of trips to the courthouse or mediation service by the parties who may need to arrange child care and time off from work in order to make appointments. In cases where there has been abuse, it is important to learn whether the abused person is alone in a safe environment. She should be asked, "Is this a good time for you to speak openly?" If it is not, arrangements must be made for her to be interviewed at another time. It also is important for the other party to have privacy during telephone screening so that he can answer questions openly.
- A **screening questionnaire** can be administered in a number of ways. A questionnaire can be sent to the parties individually and then returned to the office. Even though this eliminates trips to the office by the parties, it may not be a very reliable or safe means of gathering information. The abuser, receiving the same questionnaire, may prevent the abused person from answering it in a truthful manner. The abused person, aware that the abuser knows the contents of the questionnaire and anticipating his reaction, may not include information that might upset him. Alternatively, a questionnaire can be completed by the parties at the screener's office either in separate rooms or at different times. Completing questionnaires may be beyond the ability of some parties because of language or literacy limitations.
- When telephone screening or a questionnaire reveals a reason for concern, the screener should conduct a more lengthy **face to face separate interview**. When resources are available, face to face separate screening interviews are preferable in most cases. This approach increases the conditions of safety, privacy and rapport likely to elicit more reliable information. The drawback is that face to face interviews are

more time consuming and costly for both the screeners and the parties.

Project members felt that once a case goes to mediation, the mediator has an ongoing responsibility to screen and assess the parties' ability to mediate.

WHO DOES SCREENING?

Screeners must be knowledgeable about domestic abuse and mediation and skillful at uncovering acts of abuse and risk factors.

The success of the screening process is largely dependent on who will do the screening. Some project members expressed concern about using **non-mediation court personnel** as screeners. They noted that rapport between the screener and the party being screened is critical because some level of trust is necessary before an abused person will share information about the abuse. Domestic abuse training is necessary to ensure that screening protocols are properly administered by court personnel.

Some members were concerned that using **mediators** as screeners could create a pro-mediation bias, leading to improper referrals to mediation. If a mediator conducts the screening, opinions differed about whether, the same mediator should mediate with the parties. Some felt that information provided during screening could undermine the mediator's ability to work with the parties in an effective and balanced way. Others felt that screening information could assist the mediator in working knowledgeably with the couple.

Another option that was discussed suggested using **advocates** as screeners in cases being considered for mediation. Some project members believed that this would be an effective approach because advocates have knowledge and skill in the area of domestic abuse as well as rapport with women. These screeners would need to be knowledgeable about mediation and would work with court mediation service directors and mediators to identify which cases could be appropriate for mediation.

ASSUMPTION THAT ABUSE HAS OCCURRED

Screening and mediation policies and procedures must be based on the assumption that alleged abuse has occurred.

Simply asking people if abuse has occurred is not likely to elicit accurate responses:

- Abusive persons tend to deny and diminish the significance of the physical and psychological abuse they inflict. They generally do not take responsibility and they often blame the abused person for the abuse.
- Abused persons often are afraid to reveal abuse and may use denial as a defense mechanism to cope. Generally, their description of abuse is more accurate, although it may be a toned-down version of reality. They may not reveal the extent of the abuse for fear that the abuser will retaliate.

It is important for abuse reported by a party to be acknowledged and not dismissed or discounted by screeners. Self-reports should not be viewed as questionable or requiring verification through protection from abuse orders or hospital, police, or court records. Because not all victims use these resources, they are not accurate reflections of reality. In addition, although these records describe incidents of physical abuse, they do not address the presence of psychological abuse.

Some project members felt that if the screeners need to determine whether allegations are true or false, they become triers of fact and that this is not a proper role. Screeners must assume that allegations of abuse are true, so that there is an assessment of whether mediation may be appropriate for the parties.

ABILITY TO MEDIATE

Mediation programs must develop and implement screening policies and procedures to assess the parties' ability to mediate.

Essential to the ethical practice of mediation is the duty to assess and assure that each party is fully able to participate. The ability to mediate involves a number of factors. The parties must understand the mediation process. They must be able to make sound decisions. Their ability to mediate must not be significantly diminished by such varied factors as domestic violence, ignorance of legal rights and available resources, lack of financial data, guilt, anger, stress, fatigue, emotional disorders, or alcohol or drug abuse. If it is determined that a party is not able to mediate, mediation must not go forward.

An abused person who displays characteristics such as the following may be unable to mediate:

- Fear that she will be harmed by the abuser.
- Fear of retribution if she does not make concessions or compromises.

- Expressions of defeatism and subjugation.
- An unwillingness or inability to express her own interests, needs, and wants as separate from his.
- An inclination to promote the abuser's interests over her own.

An abuser who displays characteristics such as the following may be unable to mediate:

- The belief that his are the only interests to be considered or that he is entitled to control the abused person and determine what her needs are.
- An unwillingness to make concessions or to bargain in good faith.
- An unwillingness to take responsibility for his abusive actions.
- A desire to use the mediation process to gain access to the abused person and to have her return to him.
- Attempts to use mediation to threaten or intimidate the abused person.

IMPACT OF ABUSE

During screening, the circumstances, nature, and impact of the abuse must be considered in assessing whether mediation is appropriate.

In some domestic relations cases involving abuse, the parties seem to have the ability to mediate. If both parties wish to attend an orientation or mediation session, the screener needs to determine whether mediation is appropriate for them. The parties must want to participate in mediation and the screener must believe that each party has the ability to mediate and can do so freely. Mediation may be appropriate when the following circumstances exist:

- The abuse was in the past and does not appear to have had a deleterious impact on either party's current ability to mediate.
- The abuser appears to have taken responsibility for the abuse and no longer engages in physical or psychological abuse or controlling behavior.
- The physical or psychological abuse appears not to have been a pattern of power and control.

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- The abused person appears not to be afraid or intimidated by the abuser.

Even under these circumstances there still are cases for which mediation would not be appropriate. The screener must exercise keen judgment.

ASSESSMENT OF DANGER

Screening must include an assessment of the danger posed by the abuser. If there is violence during marital separation, the assessment of the parties' ability to mediate must be done especially carefully. Mediation must be terminated if abuse occurs subsequent to screening or during the mediation process.

Research indicates that the risk of abuse is heightened at the time of physical separation. It is critical that screening include an assessment of danger. Protocols have been developed to help women assess whether they may be in grave danger. Sample protocols are included in Attachment #7.

C. Mediation

SAFE AND FAIR PROCESS

Mediation programs must assure that screening and mediation are safe for both the abused person and the mediator.

Strategies and protocols are needed to help assure the safety of the abused person who participates in screening and mediation. This responsibility is especially important in court-based services. The abused person may assume that she is in a safe and protected environment when in actuality she may not be. To proceed as if there were no potential danger is to place her at greater risk than she already faces.

All parties involved must remember that safety cannot be unconditionally guaranteed. The screening and mediation processes may increase the risk of physical injury to the abused person. When the abused person provides information about her daily routine, she may give the abuser new opportunities to abuse. Also, the abused person's safety may be jeopardized if she affirms her needs or does not accede to the demands of her partner or recognize his concerns.

Project members agreed that there must be strategies and protocols to provide for the safety of mediators. Mediation programs should institute safety measures to protect their employees (e.g., critical incident training, easy access to exits, alarm signals, availability of court officers, metal detectors, etc.).

Some project members questioned whether a mediator can be a neutral facilitator and at the same time give priority to the safety needs of one party. Mediators believe, however, that they have the responsibility to advocate for a safe process and for outcomes that protect the safety needs of all family members.

Mediators have always wrestled with the question of fair outcomes in mediation. Many have resolved the issue by stating the parties' perceptions of fairness are decisive and that it is the responsibility of the courts to review mediated agreements. Nonetheless, the presence of domestic abuse impacts on the question of fairness. An unsafe proposal or agreement is patently unfair. Mediators have an obligation to raise safety issues during mediation when abuse has been a factor. They also have a duty to disallow any proposal or agreement that jeopardizes a person's safety and that makes the mediation process party to an unsafe and potentially lethal outcome.

VOLUNTARY PARTICIPATION IN MEDIATION

Participation in the mediation process must be voluntary and based on informed consent.

It is desirable that, prior to mediation, the parties have an orientation session that will give them a clear understanding of their rights and responsibilities in mediation, the potential risks and benefits involved, and what the process will ask of them. They should also have the right to attend separate orientation sessions. They must be allowed to participate in the process voluntarily and to withdraw from it at will.

Effective mediation can occur only if participation is clearly voluntary. In jurisdictions where mediation is mandatory, failure to properly explain to the parties that they are not required to participate further in mediation after the initial session may cause them to continue when it may not be in their best interest to do so.

Choosing the process by which a party makes decisions affecting his or her children and economic well-being should not be done hastily. There should be an opportunity to reflect on the decision to mediate and to discuss it with an attorney, if desired. The parties should know that they need not decide whether to mediate at the end of an orientation session. However, to prevent prolonged delays it is important for them to be given a reasonable deadline by which to make that decision.

To ensure that participation in mediation is voluntary, some project members believed that mediation should not occur unless the parties have entered into a written agreement to mediate.

STRUCTURAL AND PROCEDURAL SAFEGUARDS

Courts authorizing mediation must provide for a safe environment, the presence of third-party supporters, and the ability of the abused party to terminate mediation at any time. Agreements, if reached, must be based on full disclosure of information, be incorporated into an order of the court, and be readily enforceable. The facts upon which the agreement was based also must be included in the agreement. Offers of settlement and negotiations must be confidential.

The environment for mediation must be safe and must consider the need for security before, during, and after mediation. Examples of safety precautions in the physical setting for mediation are described under the next recommendation.

For mediation to be appropriate, it is important that third parties with legal training assist abused persons. Representation by an attorney satisfies this requirement but does not preclude the presence of other third-party supporters. Prior to mediation, parties should be encouraged to meet with attorneys and be advised of their rights and obligations under applicable domestic relations law. An abused person also should be advised to consult with a domestic abuse prevention worker, if available, to gain further guidance.

Mediation programs must emphasize to all parties that the full and accurate disclosure of relevant information is a prerequisite to meaningful mediation. The factual basis for proposed agreements should be documented and become part of the court record by stipulation. Material omissions, misrepresentations, and fraud should be grounds for rescinding mediated agreements.

Prior to executing any agreement, parties should obtain review and approval or suggestions for modification from their respective attorneys or advocates. Provisions in mediated agreements must be readily enforceable and procedures for enforcement of the resulting court order must include the ability to have expedited hearings.

Parties to a mediated agreement must understand that courts retain the right to evaluate the appropriateness and fairness of any mediated agreement presented to the court for approval. Parties should be told that the court may reject inappropriate, unfair, or incomplete agreements, and may take testimony and/or refer the parties back to mediation.

SPECIALIZED PRINCIPLES AND TECHNIQUES

Mediation programs must adapt established mediation theory, skills, and interventions to address the special circumstances of domestic abuse.

A number of basic principles and accepted techniques underlie the practice of structured family mediation. These are adaptable to ensure that the mediation process is safe and appropriate. The mediation process is valued because it is flexible and responsive to the circumstances of the parties, the nature of the dispute, and other factors. It also can be modified to accommodate differing situations. The application of mediation techniques is limited only by the demands of professional ethics and the imagination and creativity of the mediator.

Following are examples of specialized principles and techniques for the application of mediation to domestic relations cases involving abuse:

- **Contact between the parties should be limited as much as possible.**
- **Ground rules should be in writing, explained at the outset by the mediator, and acknowledged by signature of the parties. Ground rules should stipulate that the parties must not interrupt one another; must refrain from the use of blaming or hurtful language, intimidating behavior, and any discussion about dismissing restraining orders; and must maintain a business-like and respectful attitude.**
- **The physical setting must afford protection and safety. Seating arrangements must allow for the abused person to leave the room without passing in front of her abuser. It is highly desirable to have two exits from the mediation room. The need for security extends to areas beyond the mediation room, such as waiting rooms, hallways, and parking lots. In public buildings court officers should be available at all times.**
- **Collaboration with attorneys can help assure the appropriateness and safety of mediation and guide the application of mediation techniques. Mediation programs may want to provide attorneys with sample questions to use in client interviews to uncover the existence of domestic abuse. Attorneys should advise the mediator of any incidents of domestic abuse which may impair the mediation effort or compromise the safety of the abused person.**
- **Mediation sessions may be structured in different ways to accommodate the needs of the parties. One way is shuttle mediation, with the mediator meeting separately with each**

party, relaying information, and building an agreement using written proposals to define the settlement options. In some situations it may be appropriate for the parties and their attorneys to remain in separate rooms while the mediator moves back and forth between the rooms carrying information, ideas, and possible solutions. In such instances the use of written materials to stay focused on specific issues and alternative solutions is most helpful. Another option is the selected use of joint sessions, with frequent caucuses both to break up the time the parties are together and to monitor the parties' ongoing ability to continue the mediation. Sessions may be structured in such a manner that the parties direct their comments only to the mediator and not to one another.

EXCLUSION FROM MEDIATION

If either party is unable to mediate, the screener or mediator must exclude both parties from mediation. The decision to forego mediation must be conveyed in a way that does not endanger the abused person.

The decision to exclude the parties from mediation must never be attributed to the abused person. To do so, or to discuss factors connected to the abuse with the abuser, could cause him to retaliate against her.

CONFIDENTIALITY AND DUTY TO WARN

Prior to mediation, mediators must explain to the parties any exceptions to confidentiality imposed by law or policy. In particular, mediators must acknowledge and explain their duty to warn the parties if their safety or that of their children is at risk.

Threats to injure or kill one of the parties or to harm or kidnap a child cannot be taken lightly or dismissed as an expression of anger during the mediation process. The presence of domestic abuse should alert mediators to the danger inherent in any threat made. The mediators must assess if a reasonable suspicion exists that a party to mediation is at risk of violence.

The right to safety outweighs the right to confidentiality. Setting limits to confidentiality to protect the safety of others enhances rather than weakens the mediation process. Mediators are responsible for warning potential victims about threats and danger to them. Mediators may be liable by law for failure to do so.

CONTROL OF MEDIATION PROCESS

Responsibility and authority over the mediation process must rest with the mediator. The mediator must control the process according to established standards of practice and apply specialized principles and techniques to the mediation of domestic relations cases involving abuse.

It is accepted in the mediation field that the mediator controls the mediation process. Decisions about how a session is to be conducted are made by the mediator who is guided by the interests and concerns of the parties, established standards of practice, and the particular requirements of a jurisdiction or program. For the mediator to yield control of the process to any party creates an imbalance of power that contradicts the definition of mediation. The mediator controls the process. Yet, both parties are free to accept or reject decisions made by the mediator about how the process should be managed.

TERMINATION OF MEDIATION

Each party and the mediator must have the unqualified right to terminate mediation at any time. The mediator must honor each party's right to terminate mediation.

Because participation in mediation is voluntary and designed to empower the parties, participants must be allowed to terminate mediation when they judge that the process is no longer productive or protective of their concerns and interests. When asking the parties to explain or reconsider their desire to terminate, the mediator must be careful not to unduly influence them into continuing. The mediator should be aware that persons who have been abused and subjugated frequently see the mediator as an authority figure whose suggestions ought to be followed.

TRAINING AND SUPPORT

Mediators must receive extensive training in domestic abuse to enable them to handle safely, responsibly, and effectively domestic relations cases involving abuse. Training programs must cover assessment of danger, child abuse reporting procedures, and mediator liability for failure to disclose threats made to potential victims. Mediators must have access to supervision and support, a good referral network, and an office and mediation environment that are safe for both themselves and abused persons.

A suggested agenda for basic training for mediators is included in Attachment #8 of this report. Training for mediators will be effective only if it emphasizes the views of and includes joint training sessions with advocates for abused persons. Mediators must become knowledgeable about domestic abuse and its impact on abused persons and children, as well as screening and mediation issues to consider in cases involving abuse. They must learn about:

- Domestic abuse and child abuse laws.
- Safety requirements of children of abused persons and construction of parent-child contact schedules that facilitate safety.
- Domestic abuse definitions and how therapists, lawyers, and advocates conceptualize domestic abuse differently.
- Heightened risks of severe and life-threatening violence during the transition out of the relationship and safety planning related to separation violence.
- Key factors in the assessment of the lethality and the dangerousness of family violence.
- Post-separation adjustment for abused persons and abusers.
- Cultural norms and belief systems that support domestic abuse and create barriers to stopping abusers.
- Evaluation of the parties' capacity to mediate and other screening issues.
- Power balancing, the application of specialized mediation principles and techniques, and defusing potentially violent situations during mediation.

Ongoing support in their professional development is essential for mediators. They need to develop relationships with advocates and abusers' treatment programs and to attend relevant conferences.

Supervision also is critical for mediators working with these difficult cases. Peer or line supervision provides mediators with opportunities to present cases, receive helpful feedback and support, and alleviate frustrations. Supervision involves evaluation of individual staff for the purposes of performance review, quality control, and assessment of staff needs.

Finally, project members suggested that advocates for abused persons should receive training about mediation theory and practice.

Part IV

UNANSWERED QUESTIONS

A. Questions about Mediation in Protection from Abuse Cases

The questions that follow are representative and not exhaustive of the issues that still need to be considered concerning the use of mediation in protection from abuse cases.

CASES THAT ARE NOT PURSUED

In many jurisdictions a large number of protection from abuse cases are not prosecuted or are dismissed at the abused person's request. Many abused persons fail to appear for the final hearing. Are permanent orders for protection not pursued because ex parte orders were a sufficient remedy? Are they not pursued for reasons of safety and for fear of retaliation from the abuser? How do abused persons perceive the courts and the protection from abuse process? How many protection from abuse orders are either informally dismissed or modified by the parties in private exchanges?

PILOT PROJECT

With appropriate guidelines and precautions, and in order to measure user satisfaction, outcomes, and compliance with orders for protection from abuse, should a pilot project involving the use of mediation be undertaken and its results compared with a program that excludes mediation?

ROLE OF ADVOCATES

Should the role of advocates for abused persons be formalized and more fully incorporated in the protection from abuse process?

B. Questions about Mediation in Domestic Relations Cases

The questions that follow raise issues that still need to be addressed with respect to the use of mediation in domestic relations cases when there has been abuse.

DUTY TO WARN

Mediators recognize that they have a duty to warn an abused person about any threats made against her or her children. There is some question among mediators about whether this obligation extends to notifying law enforcement authorities. What is the liability of mediators in these instances? Questions of legal liability aside, what are the moral and ethical obligations of the mediator to alert law enforcement officials?

FALSE ACCUSATIONS

Some project members were concerned that false accusations of abuse are sometimes used to avoid mediation or to gain advantage in divorce proceedings. They believed from anecdotal evidence that some attorneys advise their clients to obtain domestic abuse orders to evict a spouse from the family home. These attorneys, it is believed, find ways to characterize stresses in the marital relationship as abuse in order to gain an advantage in divorce proceedings.

Other members strongly believed that the fabrication of abuse does not exist on any significant level. Data related to protection from abuse orders give strong evidence to the truthfulness of abused persons, even in obtaining orders that give them a potential advantage in divorce proceedings.

The question that needs to be answered is whether false allegations of abuse occur to a significant degree. If they do not, then the characterization of abuse incidents as manufactured to gain advantage serves to harm further victims of abuse. Another question is whether the definition of domestic abuse, which includes psychological abuse, is susceptible to being applied too broadly to all troubled relationships.

SHARED PARENTING

Some project members believed that mediators are predisposed to facilitating agreements that stress shared parenting. Other project members disagreed. Sharing parental rights and responsibilities is contraindicated in families where there has been domestic abuse. What is the obligation of the mediator in these cases?

EFFECTS OF AGREEMENTS ON CHILDREN

Although it is the obligation of the court to review any mediated agreement submitted for incorporation in a court order, does the court have a further obligation to inform itself whether the presence of domestic abuse makes the agreement contrary to the best interests of the children?

SCREENING OF BOTH PARTIES

Further discussion is needed regarding the need and importance of screening both parties for domestic abuse. Some project members felt it would be adequate to screen the woman first and, if safety concerns and the impact of the abuse make mediation inappropriate, it would be unnecessary to screen her partner. Others felt that to protect the abused person from retaliation and further abuse, it would be wiser always to screen both parties, beginning with the man in order to possibly learn about the abuse from him first and to protect the abused person from being blamed or punished for revealing the abuse.

C. Ongoing Work

The members of the Domestic Abuse and Mediation Project urge continued dialogue and collaboration among judges, lawyers, mediators, and advocates from the domestic abuse prevention movement. Future studies and conversations about the use of mediation in the context of domestic abuse must address a number of unsettling and unsettled questions. Policies and recommendations need to be reviewed and revised as findings from scientific research and evaluation projects come to light in the future.

At a time when consensus is seen as one of the great social values, hard questions must still be asked, opinions frankly exchanged, and positions respectfully challenged. A number of unresolved issues will continue to shape future inquiries into the question of domestic abuse and mediation. These issues deal with language and definitions, ideologies and political agendas, and personal and professional biases. These questions may reveal some of the underlying concerns that make these conversations difficult.

Discussions may appear, at times, to be deadlocked. Efforts at persuasion should be made and honored, but may sometimes feel inappropriate and insensitive. The ability to change one's mind is still to be prized, as is the ability to stick to one's convictions. Continued collaboration will enhance the services provided to individuals and families victimized by domestic abuse.

ATTACHMENTS

ATTACHMENT #1

Power and Control Wheel

ATTACHMENT #2

Model for Screening and Intervention Plan Proposed in Support of Use of Mediation in Protection from Abuse Cases

ATTACHMENT #3

Alternative Model with Mediation Component

ATTACHMENT #4

Alternative Model without Mediation Component

ATTACHMENT #5

Tolman Screening Model

ATTACHMENT #6

Ellis Screening Model

ATTACHMENT #7

Sample Protocol for Dangerousness Assessment

ATTACHMENT #8

Sample Agenda for Domestic Abuse and Mediation Training

Domestic Abuse and Mediation Project

Attachment #1

Power and Control Wheel

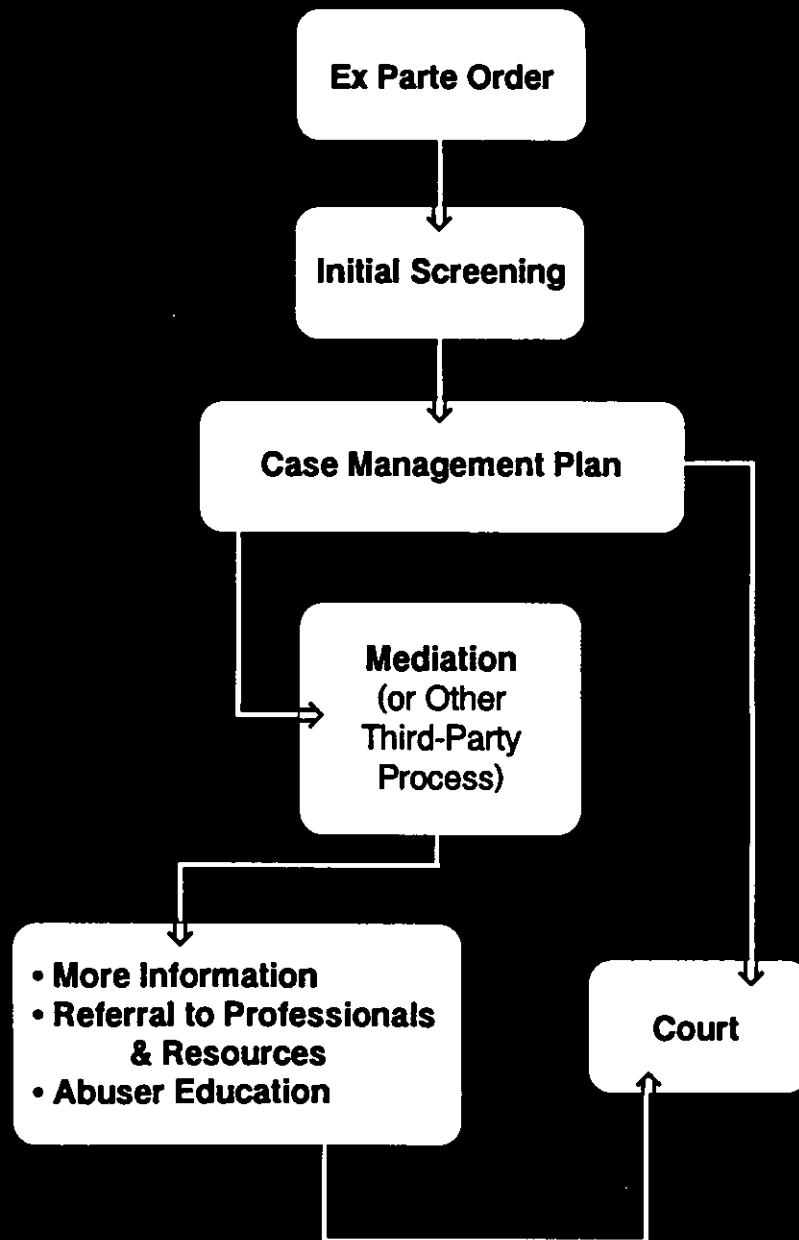


Domestic Abuse Intervention Project
206 West Fourth Street
Duluth, Minnesota 55806
(218) 722-4134

Domestic Abuse and Mediation Project

Attachment #2

Model for Screening and Intervention Plan Proposed in Support of Use of Mediation in Protection from Abuse Cases



Domestic Abuse and Mediation Project

Attachment #3

Alternative Model With Mediation Component

A Model for Judicial Procedure in Protection from Abuse Cases¹

I. TEMPORARY PROTECTION FROM ABUSE ORDERS

- A. The court enters temporary (usually ex-parte) civil protection from abuse orders in response to the filing of an application.
- B. The court order is normally limited to broad protective relief of an emergency or temporary nature when the respondent presents a risk of family violence to the petitioner or children. Components of temporary restraining orders often include exclusion from the partnership domicile; no-contact directives; injunction against harassment, threatening, and other forms of abuse; surrender of weapons, and other temporary relief where circumstances are exigent.
- C. The petitioner should receive a copy of the temporary protection from abuse order and written notification of the date scheduled for the full hearing, provided required service of the protection from abuse order and notice of hearing is made on the respondent.

II. PROTECTION FROM ABUSE ORDER HEARING

- A. On the day scheduled for the full protection from abuse order hearing, the initial phase of court intervention must be a judicial finding of abuse based on either a hearing on the evidence or an acknowledgement by the respondent. Barring unusual circumstances both parties should be present in the courtroom for the judicial determination.
- B. Following the finding, the court should, unless for good cause shown, refer the case to a family violence specialist for the purpose of conducting that day an initial assessment of the case and developing, in conjunction with the parties and attorneys, recommendations for an interim or final disposition. The report and/or recommendation of the family violence specialist is to be made prior to the close of court business that day.

III. FAMILY VIOLENCE SPECIALIST

- A. The family violence specialist should be an employee of the court (full-time or contractual) trained in the following areas: family

¹ See also Program Enhancement Options beginning on page 58

systems², conflict resolution, dynamics of family violence, child development, judicial procedures and related law, lethality assessment, etc.

- B. The objective of the specialist is to provide the court with the information necessary for an informed and meaningful adjudication. Through discussions with abused persons and abusers, their attorneys, and victim advocates and review of other pertinent information, the specialist can do much to assist judges in making the most effective use of their time and to ensure that dispositions are relevant to the unique circumstances of each case.

The intervention of the specialist is guided by two overriding concerns: (1) the focus must always be on ending the violence, protection of victims and holding offenders accountable and (2) the process should be seen as information-gathering and assessment during the initial phase.

- C. The specialist works with the parties and attorneys to identify those issues related to issuance of a protection from abuse order which must be resolved to meet the ongoing needs of the individuals and families. Although a wide range of concerns may require resolution, protection from abuse orders normally address such concerns as:

- parenting issues (visitation, residence)
- child support and other financial matters
- contact of children with extended family
- use of motor vehicle
- exchange of personal property necessary to daily living (clothing, tools, important documents, etc.)
- injunctions, bond, etc., necessary to preclude the dissipation of assets, bank accounts, business holdings, investments, etc.

It is not the purpose of the protection from abuse order to distribute marital or partnership assets or to create permanent child custody arrangements. These and other matters must be resolved in separate judicial proceedings. The purpose of the order is to create an interim structure for the safe and productive functioning of the parties until such time as these issues can be finally resolved.

The safety and well-being of victims and children must continue to be the primary consideration in development of the components of "permanent" protection from abuse orders. This could involve, depending on particular circumstances, provisions for

2 This is not to suggest that domestic violence is "family systems" based. However, the family violence specialist should have in depth knowledge of family relationships, communication patterns, and dysfunction.

alternative safe housing; methods for the children to share time with each parent (supervision, restrictions, etc.)³; controlled contacts and communications between parents; and continuation of the "protective" provisions of the interim order. Additionally, long term solutions to the potential for violence should be addressed and provision such as individual counseling and therapy for offenders, substance abuse treatment, support services and advocacy for victims, etc. could be incorporated into the court order or intervention plan.⁴

IV. INTERVENTION PROCEDURES

- A. Following a judicial finding of abuse on the day scheduled for the full protection from abuse order hearing, the family violence specialist meets separately with abused persons and abusers. Attorneys for either party can be seen separately as well as be included in the meeting with their client. Advocates for abused persons should be similarly included. The purpose of the individual or "shuttle" meetings is not initially consensus-building or to fashion an agreement between the parties. The first task is to make an assessment of the level of risk involved in each case, to begin to address the safety needs of the abused persons, and develop plans for the prevention of future abuse.
- B. The next step is to identify those matters which need to be resolved as part of the protection from abuse order and to gain the information necessary to evaluate proposals for the resolution of those issues. It is important to be mindful that all of the information needed for long-term resolution of certain issues may not be available on that particular day. This may include such pertinent information as verification of income and other financial data, medical and psychological information, prior or pending court proceedings, information from other significant persons (extended family, stepparents), etc. Further, some needed information by its own nature requires the passage of time, such as the reaction of the parties to interim orders (cooperation versus unanticipated problems), changes in housing and employment, or continued violence and abuse. In this regard, the most effective course of action for the court and the parties may be to enter those orders necessary for the continued functioning of the parties that day and schedule a subsequent court hearing to dispose of those

3 Courts must be particularly sensitive in protection from abuse order proceedings to the propriety of parental access to children by a parent who has inflicted violence on another parent or has been abusive to the children.

4 This does not suggest that court orders be directed at victims for counseling, advocacy, etc. but rather that the availability of such services be made known and, where appropriate, be incorporated into the informal "casework" plan.

issues where further information is needed. Further, such periods of continuance can be utilized most productively by the court to monitor the compliance of the parties with judicial expectations and orders or to provide a transitional period for the parties to test such options as the restructuring of parenting relationships and child contacts with members of the extended family. The period of continuance could also be productively utilized to permit the mediation of related issues where that form of intervention is determined to be an appropriate alternative.⁵

Communications by the specialist with the parties and others are not confidential. However, where warranted, the specialist will not disclose the address of the victim or the children except as otherwise directed by the court.

V. OUTCOME

A. As a result of individual meetings with the parties, attorneys, and advocates, the family violence specialist has obtained:

- The issues related to the protection from abuse order that must be resolved in court;
- The concerns of the parties regarding those issues and their positions relative to that disposition;
- The background information regarding the issues which will be needed by the court to fashion meaningful and responsive orders.

B. The family violence specialist in conducting the information-gathering meetings with the parties must insure that they clearly understand that the objective is to construct recommendations which will be provided to the court for its consideration in entering orders. Although the needs and concerns of the parties are important to this process, consensus building or negotiated settlement is not the objective. The specialist may include in the recommendation issues for resolution not identified by the parties and may recommend options for resolution not offered by either party.

It is not uncommon that the individual discussions of needs and concerns with the parties will produce, in regard to certain issues, significant commonality between the parties relative to the matters that must be resolved as well as options for resolving them. In this event, the absence of dispute between the parties (provided

5 See cautions concerning the use of mediation in cases involving domestic abuse in the body of this report.

safety concerns are satisfied) is noted and included in the recommendation to the court.

In this regard, the specialist includes in the report to the court any areas which are not disputed by either party and recommends, subject to review of the court, that they be incorporated in the order of the court. The remaining unresolved areas are also noted for the court with the specialist's recommendations for resolution. The specialist must be available to provide further information or testimony regarding the recommendations.

VI. REFERRAL FOR MEDIATION

The role of family violence specialist, as previously discussed, is to gather information concerning the parties' history and individual capabilities for coping with the current situation and to consider a range of options for responding to the needs of the individuals and the family. One option would be the use of mediation to resolve those issues related to the protection from abuse order.

The individual meetings by the specialist with the parties should incorporate an assessment format sufficient to evaluate initially the ability of abused persons to safely and effectively represent their interests in mediation. This would provide for an initial response to a request of the parties for mediation or the suggestion of that option by the attorneys.

In those situations where the specialist is satisfied that the request for mediation is being freely made and it appears that both the parties could benefit, one of the following options for proceeding may apply, depending on the circumstances of the particular case:

- The specialist could immediately shift to a "shuttle" mediation format in the attempt to resolve those issues which need to be resolved that day and continue the remainder of the issues until completion of a more comprehensive mediation process.
- The specialist could resolve the issues which need to be resolved that day through a non-mediation approach and continue the case for further assessment of the appropriateness of mediation prior to initiating the mediation process. If mediation is not the elected option following an in depth assessment, resolution of the issues through the non-mediative intervention of the specialist should be complete prior to the next scheduled court appearance.

Ideally, the in depth screening (assessment) process should be conducted by qualified, independent professionals who have no

programmatic interest in the outcome. Abused persons should be offered an advocate to help assess their ability to safely and effectively participate in mediation and to provide ongoing support if the abused persons voluntarily enter the mediation forum.

All parties entering mediation should be encouraged to engage counsel to review any final plan or, preferably, to represent them throughout the mediation process.

Program Enhancement Options

ENHANCEMENT OPTIONS FOR SECTION I (TEMPORARY PROTECTION FROM ABUSE ORDERS)

- Applicants for civil protection from abuse orders should be provided twenty-four hour access to the courts.
- Courts can develop links with domestic abuse advocacy projects which provide clerical and other non-legal types of assistance in the preparation, filing, and obtaining service of petitions and orders.
- Courts can make staff available to assist applicants with the non-legal tasks involved in the preparation, filing, and service of petitions. Staff can also distribute public information pamphlets describing the protection from abuse order process and the availability of related services.
- No court fees or fees for service can be charged in relation to protection from abuse orders or the costs can be assessed against the prevailing party.
- At the time of application, plaintiffs can be referred to a domestic abuse advocacy project. If court support staff are unable to reach an advocate during the application process, court staff obtain contact information from the applicant and forward this to the advocate who undertakes outreach to the abused person. The responsibilities of the victim advocate are to:
 - Assist abused persons assess their safety needs and those of the dependent children.
 - Craft a safety plan together with the abused person that is individually tailored.
 - If the abused person is not represented by counsel, help her evaluate whether additional claims for relief should be made.

- Assist the abused person to complete relevant forms.
 - Offer support to the abused person at all judicial proceedings and any intervention meetings (as a spokesperson, not the legal representative of the abused person).
 - Provide information and referral to the abused person regarding ancillary, protective services available in the community.
 - Provide ongoing advocacy and support to the abused person during the pendency of the protection from abuse order.
- Following entry of a temporary protection from abuse order, court staff (or a victim advocate) can provide the abused person with educational materials relative to pertinent statutes, the court process, and available services.
 - Depending on the statutes and court rules in a particular jurisdiction, the abused person can be provided with forms to be completed prior to the full protection from abuse order hearing. These might include a sworn income and expense statement, a temporary property disposition (injunctive relief) form, a claim for attorney and filing fees, etc. The availability of such completed forms with sufficient copies for the court and the respondent can avoid unnecessary court delays and continuances, as well as reduce hearing time.

ENHANCEMENT OPTIONS FOR SECTION II (PROTECTION FROM ABUSE ORDER HEARING)

- On days scheduled for full protection from abuse order hearings, courts can arrange to have victim advocates available at the court location to meet with abused persons following a judicial finding of abuse. Victim advocates should not be employees of the judicial system, but should be fully participating members of the protection from abuse order system. Normally, the advocates are employees or volunteers from the local domestic abuse advocacy project, and their presence at the court is governed by a cooperative agreement between the judiciary and the project.
- In locations where courts refer cases to family violence specialists following findings of abuse, the victim advocates simultaneously confer with the abused persons in accordance with formal protocols developed between the court, the specialists, and the advocacy project.

-
- In addition to the functions and responsibilities of the victim advocate, outlined above, the advocates must meet with victims to facilitate more meaningful and informed participation in the judicial process; provide victims with support and access to community services; and develop accurate and complete assessments of victim safety and service needs which are ultimately shared with the specialist and the court.
 - The communication between the victim advocate and the specialist is an integral component in the specialist's task of developing a recommendation for the court. As the primary identification of the advocates is with a domestic abuse advocacy project, their independence from the court system enhances their ability to challenge any stereotypical attitudes, minimizing, and victim-blaming that often affect responses to abused persons.

ENHANCEMENT OPTIONS FOR SECTION III (FAMILY VIOLENCE SPECIALIST)

- Where possible, courts can schedule protection from abuse order cases at locations where it is possible physically to separate (different rooms) abused persons and abusers where the circumstances of the abuse are such that physical separation is a safety precaution or where victims elects such separation to avoid intimidation by the abuser. This avoids the often uncomfortable and dangerous situation of the victim and abuser being in close proximity for extended periods in court hallways awaiting their hearing.
- The family violence specialist, while involved in shuttle information-gathering, should take care to ensure that the parties are securely situated in separate offices and that the abusers do not have access to the abused persons. Specialists should also be concerned with safety considerations during court recesses, lunch breaks, and the timing of the abuser and abused person leaving the courthouse after the case is heard.

ENHANCEMENT OPTIONS FOR SECTION IV (INTERVENTION PROCEDURES)

- Courts should have the authority to appoint counsel for the minor children in those situations where there is an apparent conflict between the interests of the parents and the children in protection from abuse proceedings.
- As described above, abused persons can be assisted by victim advocates.

ENHANCEMENT OPTIONS FOR SECTION V (OUTCOME)

- Courts may provide, through links to the community or contracting, priority access to family violence educational and treatment programs for abusers. It is preferable that the judicial system have some input into the curriculum and standards for such programs to insure a high quality and responsiveness to the needs of the abuser and abused person.
- Courts may provide, through linkages to the community or contracting, priority access to counseling and support group programs for children who have been victims of family violence either through witnessing abuse or being victims of such abuse.
- Where parties have no knowledge of community resources, the family violence specialist should provide information concerning reputable professionals and agencies in the community providing such services as substance abuse treatment, individual counseling and therapy, couples counseling, employment assistance, job training, parenting and homemaking skills, housing, etc.
- Where partners voluntarily elect this option, provide a high quality mediation program with skills and experience working with couples involving a history of violence in their relationship.
- Courts may institute a multidisciplinary standing committee in each judicial district comprised of judges, victim advocates, mental health professionals, prosecutors, members of the bar, legislators, court administrators, police, and victims. The purpose of the committee would be policy development, program evaluation, and collaborative training.

Domestic Abuse and Mediation Project

Attachment #4

Alternative Model Without Mediation Component

Model Protection From Abuse Order System

INTRODUCTION

The demand for civil protection from abuse orders has increased dramatically in the last five years. The consequent burden on the courts has been great; particularly as states have not targeted dollars for critical support staff or for expansion of the judiciary to meet the need.

Judges in some jurisdictions cannot dedicate the time to each case that may be necessary to fashion comprehensive protection from abuse orders. Yet, the efficacy of civil protection from abuse orders appears to be jeopardized by the issuance of limited, boiler-plate relief in accommodation of burdened dockets. Research by the **National Council on Juvenile and Family Court Judges**¹ and the **National Institute of Justice**² reveals that civil protection from abuse orders are most effective when immediately available, when comprehensive in scope and when tailored to the specific circumstances of each family and the particular requirements of the applicant.

Courts are, therefore, in a bind. How can they expeditiously issue informed orders that are detailed enough to prevent future violence when there is insufficient information in the pleadings and too little time in court to obtain data helpful in crafting effective orders?

The Domestic Abuse and Mediation Project convened by the Maine Court Mediation Service deliberated about the design of a protection from abuse order system that could efficiently dispose of these cases in an informed and fair manner, preserving the efficacy of orders. This attachment includes a number of suggestions to enhance and improve the protection from abuse order process.

SUGGESTIONS

1. Applicants for civil protection from abuse orders have 24-hour access to the courts.
2. Applicants may proceed pro se in preparing and filing complaints for civil protection from abuse orders.
3. The courts or a domestic violence advocacy project provide

1 Herrell, S.B. and Hafford, M. 1990. Family Violence: Improving Court Practice - Recommendations from the National Council of Juvenile and Family Court Judges. Reno, Nevada, at 22-24.

2 Finn, P. and Closon, S. 1990. Civil Protection Orders: Legislation, Current Court Practice, and Enforcement. National Institute of Justice, at 1-5.

clerical assistance to applicants, without cost, in preparation and filing of pleadings, photocopying all requisite documents, and in service of orders. Assistance should be available to applicants in the language they speak, whenever possible. If applicants cannot read and write readily, appropriate assistance is provided. Court support staff or advocates are available to escort the applicant through the process until a temporary protection from abuse order is granted or denied.

4. No court or service costs are charged for civil protection from abuse orders (or the assignment of costs is deferred until the final hearing and the prevailing party and indigent parties are not liable for costs).
5. At the time of application, plaintiffs are referred to the domestic violence advocacy project. Court support staff make a telephonic referral to an advocate at the time of filing. During that telephone communication, the advocate sets up an advocacy meeting with the applicant either by telephone or in person. If court support staff are unable to reach an advocate during the application process, court staff obtain contact information from the applicant and forward this to the advocate who undertakes outreach to the battered person. The responsibilities of the advocate are to:
 - Assist the abused person in assessing her safety needs and those of the dependent children of the parties.
 - Craft a safety plan together with the abused person that is individually tailored to the safety needs identified above.
 - If the abused person is not represented by counsel, to help the plaintiff evaluate whether additional claims for relief should be made and the petition for the protection from abuse order modified accordingly.
 - If the abused person is not represented by counsel, to assist her in completing relevant forms in the supplemental information packet. (See #8.)
 - If the plaintiff is not represented by counsel, to help her craft dispositional proposals for the court or intervention worker.
 - Offer support and consultation to the abused person at all judicial proceedings and any intervention meetings.
 - Clearly communicate the dispositional preferences of the abused person to the intervention worker and the judiciary, should she request such assistance. The advocate is a spokesperson, not the legal representative of the abused person.

- Provide information and referral to the abused person regarding ancillary, protective services available in the community.
- Provide ongoing advocacy to the abused person during the pendency of the protection from abuse order, particularly at those times that the defendant violates any outstanding order.

All communications between the advocate and the abused person are confidential and may not be disclosed, absent a release from the abused person.

The domestic violence advocacy project should be housed in a community-based domestic violence program or a victim advocacy organization independent of the court. The protection from abuse order advocate is not an employee of the judicial system, but is a fully participating member of the protection from abuse order system. The advocate should be trained in protection from abuse order and family law and experienced in handling domestic violence cases.

6. The court awards broad protective relief at the emergency or temporary hearing when it appears that the defendant poses a risk of injury or further violence toward the plaintiff or minor children of either party. Critical components of interim orders include injunctions against abuse and criminal conduct, no-contact directives, eviction of the defendant from the partnership domicile or an order providing alternate safe housing, orders to surrender weapons to a designated authority, orders for non-disclosure of confidential addresses and information about school enrollment and records, and awards of temporary, sole custody of the minor children to the plaintiff if she is the primary caretaker or if the abuser appears to pose a risk of abuse or abduction of the children. Other temporary relief should be awarded where circumstances are exigent and the relief will advance the violence-preventing purpose of the statute. Expansion or reduction of the particulars of relief can be made at the hearing on the permanent order.
7. After a court has entered a temporary (usually ex-parte) protection from abuse order, court staff provide the plaintiff with various information sheets to be completed and returned to the court prior to the final hearing. To assure that the plaintiff has adequate time to consult with counsel or an advocate in the completion of the information packet forms, the material should be given to the plaintiff upon entry of the temporary order.

Since most protection order statutes specify that the order may be entered only in favor of the plaintiff and against the defendant,

since protection from abuse orders are short-term, interim measures that do not require answering or responsive pleadings from the defendant, and as the information sheets are actually supplemental pleadings, this packet is directed only to the plaintiff.³

8. The supplemental information packet should include forms for relief authorized by state law and sought by the plaintiff. These might include an income and expense statement, a child custody information sheet, a temporary property disposition form, a losses claim form, and a claim for attorney's fees.
 - When the abused person requests financial support from the defendant, an **income and expense statement** should include information for the calculation of a spousal and/or child support order.
 - Where the abused person and the defendant are parents of minor children, one critical element of relief usually sought is the assignment of custodial and/or visitation rights/responsibilities/constraints. Thus, a **child custody information sheet** should detail the:
 - Schedules (work, educational, recreational, and medical) of the parents and the minor children; and
 - Preferred outcomes for custody and visitation, including the times, method, place of delivery and pick-up of the children, safety provisions to assure the well-being of the children and the abused person, any requests for supervised visitation and suggestions for supervisors, and any rationale for denying or deferring visitation to the abusing parent should be completed.
 - Should the use, possession, or dissipation of any personal property of the party be at issue, the plaintiff should complete a **property disposition form** which provides for the identification of the property and the proposal for the

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- 3 The primary purpose of protection from abuse statutes is to stop domestic violence by constraining the perpetrator and safeguarding the victim(s). It is not the purpose of protection from abuse orders to distribute marital or partnership assets, to create long-term custodial arrangements, or in other ways to anticipate divorce or permanent separation of the parties. Independent of the protection from abuse order proceeding both parties may seek judicial resolution of these issues by filing for divorce, legal separation, support, alimony, distribution of marital assets and permanent custody. However, since divorce proceedings are predictably lengthy and because battered adults and children cannot escape the violence and live independent of the abuser without temporary financial support, restitution and without assignment of custodial rights and responsibilities, these must be incorporated in the protection from abuse order.

use or protection of the asset during the course of the protection from abuse order. For example, if the abused person seeks use of one of the family vehicles which is titled to the abuser or requests an injunction against sale or other distribution of family assets without agreement of the parties during the pendency of the protection from abuse order, the form should be detailed enough to give the court adequate information both as to the asset and the proposed disposition during the protection from abuse order process. Further, should the plaintiff ask that the weapons of the defendant be relinquished to the court for the duration of the order, the form can enable identification and location of each weapon.

- If the plaintiff has sustained losses as a consequence of the abuse and chooses to seek to recoup these from the defendant, the plaintiff should complete a **losses claim form**. Wherever possible, plaintiff should provide documentation of the losses. Not all losses may be realized at the time of the final hearing. Thus, the form should enable the plaintiff to specify anticipated losses resulting from the abuse that will be realized during the course of the protection from abuse period.
 - If the plaintiff elects to ask that the defendant pay for the costs of any attorney retained, the plaintiff should complete the **claim for attorney's fees** and provide information about fees advanced and fees contemplated during the course of the protection from abuse order. The plaintiff might ask that the defendant post a bond to assure ready payment of any attorney's fees associated with the defendant's violation of a protection from abuse order and the plaintiff's attempt to enforce same.
9. Before the date is fixed for the full hearing plaintiff should file completed information forms with the court and copies should be furnished to the defendant.
10. There should be an annual evaluation meeting of the protection from abuse order system. It should be multi-disciplinary and include at least the judiciary, advocates working in the protection from abuse order system, intervention workers, court support staff, law enforcement executives, the district attorney, the court administrator, members of the bar representing both abused persons and abusers. Modification should be tailored to address identified problems and should not compromise the right to victims to protection from abuse.

ALTERNATIVE APPROACHES FOR FASHIONING ORDERS

At this juncture two alternative approaches for fashioning protection from abuse orders are offered. The first retains exclusive authority of the court. The second creates a system whereby an intervention worker provides the court with information and recommendations on the issues addressed in the completed information sheets.

1. At the final hearing, after a finding or admission of abuse, the court fashions a complete protection from abuse order. The information sheets are made a part of the record and the court hears testimony on any supplemental material offered by the plaintiff and any contrary evidence of the defendant. The court then fashions an order based on the pleadings, the information sheets, the testimony and any proposals offered by either party. Should the parties submit an agreement for an order, the court should review the agreement in light of the entire record before approving and entering the agreement as an order of court.
2. At the final hearing the court hears evidence on the allegations of abuse and, upon finding or admission of abuse, fashions an order on all the issues not encompassed by the supplemental information packet, if any. If the plaintiff has requested relief on any of the issues contained in the supplemental information packet, the parties are advised that they may elect to meet with a court intervention worker that day so that the court can promptly dispose of the issues raised in an informed manner. The responsibility of the intervention worker is to gain information pertinent to resolution of the issues addressed in the information sheets and to craft a recommendation to the court that clearly addresses the safety needs of those at risk, facilitates the prevention of future abuse, compensates the plaintiff for losses sustained as a result of the abuse, and affords the plaintiff adequate economic support for independent living.

The meeting with the intervention worker occurs in the courthouse. Either party may be represented by an attorney or assisted by an advocate in the meeting with the intervention worker. The worker meets with the parties separately. If it is agreeable to the plaintiff, the intervention worker can arrange shuttle information-gathering with the parties situated in separate offices. (Should there be shuttle information-gathering, care must be taken that the defendant does not have access to the plaintiff and that the plaintiff is otherwise afforded protection.) The purpose of the individual or shuttle meetings is not to fashion an agreement between the parties, but to provide the intervention worker with sufficient information to craft a recommendation.

Communications by the plaintiff and defendant with the intervention worker are not confidential. However, should the plain-

tiff be residing at a shelter for abused persons or at an address that is confidential and the plaintiff is seeking judicial permission to continue to reside at a confidential address and to enroll children in school in a district undisclosed to the defendant, the intervention worker does not disclose the address of the abused person or dependent children or the school system that the children or abused person are attending.

Should either party dispute the recommendation of the intervention worker, or any portion thereof, the court must hear testimony on all issues in dispute. If any portion of the recommendations is not disputed by either party and incorporated in the court's order, the record must reflect that the parties stipulate to the entry of the provision and to the facts which support it. The court then fashions an order based on the pleadings, the information sheets, the recommendations of the intervention worker, the testimony and any proposal offered by either party.

Prior to the expiration of the protection from abuse order, the intervention worker should apprise the court of the defendant's compliance with the economic and custodial provisions in all cases assisted by the intervention staff. Should the plaintiff elect, the intervention worker initiates contempt charges for non-compliance of these issues prior to the expiration of the protection from abuse order.

Domestic Abuse and Mediation Project

Attachment #5

Tolman Screening Model

RICHARD M. TOLMAN, Ph.D.
Jane Addams College of Social Work
University of Illinois
Chicago, Illinois

Screening Questions

1. **Mediation often occurs with both spouses in the same room together. Do you have any concerns about mediating in the same room together with your spouse?**

The rationale for this question is that it may tap reluctance to participate in mediation because of physical abuse without directly asking for it. Thus, it may be effective as a broad screening question, even if abuse victims are reluctant to directly disclose abuse. On the other hand, reasons other than abuse may result in concerns about mediation, and these would have to be sorted out in further screening.

2. **Are you fearful of your spouse for any reason?**

This question taps the subjective perspective of the respondent. It does not assume fear is a result of physical abuse, nor is it limited to fear of physical harm. It may identify fears of various types (taking children away, fear of humiliation, fear of spouse harming himself, etc.)

3. **Has your spouse ever threatened to hurt you in any way?**

This question is similar to question #2 in that it asks about threats in a broad manner, not limited to physical abuse. It adds information about the spouse's behavior, rather than focusing on the subjective perspective of the respondent.

4. **Has your spouse ever hit you or used any other type of physical force towards you?**

This question directly asks about physical abuse, though it does not use the term abuse. Many women who experience physical abuse may not label it with that term. This question is more neutral in its terminology and may elicit more positive responses. On the other hand, further screening may clarify the physical force used as non-abusive. For example, a spouse's use of physical force may be legitimately self-defensive.

5. **Have you ever called the police, requested a protection from abuse order, or sought help for yourself as a result of abuse by your spouse?**

An affirmative answer to this question would demonstrate that abuse is a significant problem. However, serious abuse might have occurred even if it is answered negatively.

-
- 6. Are you currently afraid that your spouse will physically harm you?**

This repeats #2, except that it more pointedly asks about physical abuse. An affirmative answer to #2 and a negative answer to #6 would point the screening towards a clarification of the nature of the respondent's fears. It also may clarify that while the respondent experienced abuse in the past, she is not currently fearful. This also would indicate a direction for further screening

- 7. Mediation is a process in which divorcing spouses work together with a neutral third person to negotiate details of their divorce. Do you believe you would be able to communicate with your spouse on an equal basis in mediation sessions?**

This question indicates the respondent's subjective perspective about ability to mediate. A negative response would lead to further screening about the reasons for the inequality. If previous questions about abuse were answered negatively, but this question is answered positively, it may indicate that the reason for inequality is not physical abuse, but some other factors, including psychological maltreatment. This could then be clarified further. On the other hand, if abuse questions are answered positively, but this question is answered negatively, it might reflect the respondent's belief that the abuse has not hampered her ability to use mediation effectively.

(If the couple has children, also ask the following questions.)

- 8. Has your partner ever threatened to deny you access to your children?**
- 9. Do you have any concerns about the children's emotional or physical safety with you or the other parent?**
- 10. Has the department of children or family services ever been involved with your family?**

Using the Results

The hope is that this questionnaire quickly would add important triage information. The pattern of response would indicate next steps.

If all the answers indicated no abuse, no fear, and an endorsement of equal communication, the case would be referred on for regular mediation.

If the pattern of response indicates abuse has occurred in the past, but the

respondent is not fearful and feels able to communicate equally, then she may be an appropriate candidate for face to face mediation. This would be explored further in screening, and would be carefully regulated by the mediator if mediation went forward. Either regular or specialized mediation might be the disposition.

If the pattern of responses indicates abuse has occurred, and the respondent is fearful, and/or does not feel able to communicate equally, then mediation would not go forward. Further screening would clarify concerns, and add information about whether specialized mediation might be possible.

Domestic Abuse and Mediation Project

Attachment #6

Ellis Screening Model

DESMOND ELLIS, Ph.D.
Department of Sociology
York University
Downsview, Ontario, Canada

INTAKE QUESTIONNAIRE

Site (HUFC = 1 Court __ (Provincial) = 3 Couple # __
St.C.= 2)
Date _____ Court __ (General) = 2 Court
Mo. Yr. File # _____
Court __ (Unified) = 1
Lawyer _____ Mediator
(circle) 1 2 3 4
Interviewer _____ Judge _____
Male Partner ____ Female Partner ____ (check)

MEDIATION CHOICE

Couples who are separating settle differences about property, financial support, custody of children, assess to children in different ways. THESE INCLUDE THE FIVE WAYS LISTED BELOW. Which of these would be best for you? Answer by circling the number indicating your choice.

- On our Own - Face-to-Face 1
- Mediator/Face-to-Face Meetings 2
- Mediator/Separate Meetings 3
- Lawyer Plus Some Face-to-Face Meetings 4
- Lawyer/Separate Meetings 5

Interviewer: Confirm choice by repeating it. Then say:

"Give reasons why this choice is best FOR YOU:"

Which of these five ways of settling differences with your ex-partner would be WORST for you? (Circle number of the appropriate line)

- On our own/Face-to-Face Meetings 1
- Mediator/Face-to-Face Meetings 2
- Mediator/Separate Meetings 3
- Lawyer/Some Face-to-Face Meetings 4
- Lawyer/Separate Meetings 5

Interviewer: Confirm choice by repeating it. Then say?

"Give reasons why this choice is worst FOR YOU:"

CONTROL SCALE

A. Listed below are a number of statements about how couples who are married or who live together as man and wife, make decisions about various things. For each of these statements, please indicate who made the decision in your relationship by circling the appropriate numbered response.

1. Most of the decisions about how the money was to be spent were made by (circle one)
Me 1
My ex-partner 2
Both of us 3
Not applicable 4
2. Most of the decisions about family vacations were made by
Me 1
My ex-partner 2
Both of us 3
Not applicable 4
3. Decisions about my employment were made by
Me 1
My ex-partner 2
Both of us 3
Not applicable 4
4. Most decisions about moving from one place or home to another were made by
Me 1
My ex-partner 2
Both of us 3
Not applicable 4
5. Decisions about whether to have children or not were made by
Me 1
My ex-partner 2
Both of us 3
Not applicable 4
6. Decisions about how many children we should have were made by
Me 1
My ex-partner 2
Both of us 3
Not applicable 4

7. Decisions about the religious education of our children were made by
- | | |
|----------------------|---|
| Me | 1 |
| My ex-partner | 2 |
| Both of us | 3 |
| Not applicable | 4 |
8. Who decided who your friends were
- | | |
|----------------------|---|
| Me | 1 |
| My ex-partner | 2 |
| Both of us | 3 |
| Not applicable | 4 |
9. The decision to separate was made by
- | | |
|----------------------|---|
| Me | 1 |
| My ex-partner | 2 |
| Both of us | 3 |
| Not applicable | 4 |
10. Most decisions about intimate sexual matters between us were made by
- | | |
|----------------------|---|
| Me | 1 |
| My ex-partner | 2 |
| Both of us | 3 |
| Not applicable | 4 |
11. Most decisions about the children's schooling were made by
- | | |
|----------------------|---|
| Me | 1 |
| My ex-partner | 2 |
| Both of us | 3 |
| Not applicable | 4 |

CONFLICT TACTICS SCALE

- B. No matter how well a couple get along, there are times when they disagree, get annoyed with the other person, or just have spats or fights because they're in a bad mood or tired or for some other reason. They also use many different ways of trying to settle their differences. I'm going to read some things that you and your (spouse/partner) might do when you have an argument. I would like you to tell me how often you have done these during THE 6 MONTHS BEFORE YOUR SEPARATION. Read each statement to the client. Circle the answer for Self and Partner.

- | | | |
|------------------|-------|------------------------------------|
| 1 = Very Often | means | One or more times a DAY |
| 2 = Often | means | One or more times a WEEK |
| 3 = Sometimes | means | One or more times a MONTH |
| 4 = Infrequently | means | One or more times in PAST 6 MONTHS |
| 5 = Never | means | Never during PAST 6 MONTHS |

CR = Can't Remember

ONS = Brief Relationship

ONS ____
(check if applicable)

	DURING THE SIX MONTHS BEFORE YOUR SEPARATION									
	SELF One or More Times:					PARTNER One or More Times				
	Day	Wk.	Mo.	6 Mos.	Never	Day	Wk.	Mo.	6 Mos.	Never
1. Discussed the issue calmly	1	2	3	4	5	1	2	3	4	5
2. Told your partner how upset you were	1	2	3	4	5	1	2	3	4	5
3. Gave in because your partner was right	1	2	3	4	5	1	2	3	4	5
4. Stomped out of the room/house/yard	1	2	3	4	5	1	2	3	4	5
5. Cried	1	2	3	4	5	1	2	3	4	5
6. Threatened to hit or throw something at him/her/you	1	2	3	4	5	1	2	3	4	5
7. Threw/smashed/hit or kicked something	1	2	3	4	5	1	2	3	4	5
8. Pushed, grabbed, or shoved him/her/you	1	2	3	4	5	1	2	3	4	5
9. Slapped him/her/you	1	2	3	4	5	1	2	3	4	5
10. Hit or tried to hit him/her/you with something	1	2	3	4	5	1	2	3	4	5
11. Choked him/her/you	1	2	3	4	5	1	2	3	4	5
12. Threatened him/her/you with knife or gun	1	2	3	4	5	1	2	3	4	5
13. Used a knife or fired a gun	1	2	3	4	5	1	2	3	4	5

14. Did any kind of abuse occur that was not covered? Answer below.

COMPLEMENTARY ABUSE MEASURE

15. If, during the 6 MONTHS BEFORE YOU SEPARATED, you did physically, emotionally or verbally hurt your partner, which of the following reasons applies to most of these incidents?

Defending myself 1
Because he/she hurt me 2
Other (what?) 3

16. Sometimes physical, emotional or verbal hurting occurs even when there is no conflict going on. For example, it may occur "out-of-the-blue", or because this is how your ex-partner reacts to things you do/or don't do, or say, how you dress, spend your time, do chores etc., or simply because of being in a bad mood or angry. Have you experienced physical, emotional or verbal hurting by your ex-partner for any reason not connected with an on-going conflict during the 6 MONTHS BEFORE YOU SEPARATED?

Yes 1
No 2

17. Has your ex-partner physically hurt you intentionally for any reason, ever?

Yes 1
No 2

Comment:

18. Have things between you and your ex-partner changed since you separated?

Yes 1
No 2
Normal separation 3

If Yes, how?

19. At the present time are you or your children afraid of your ex-partner?

	Yes	No
Me	___ 1	___ 2
Child(ren)	___ 1	___ 2

20. Have you experienced physical, emotional or verbal abuse by your ex-partner SINCE YOU SEPARATED?

	Yes	No
Physical	___ 1	___ 2
Emotional	___ 1	___ 2
Verbal	___ 1	___ 2

Attachment #7

**Sample Protocol
for Dangerousness Assessment**

© 1989, Barbara Hart
Pennsylvania Coalition Against Domestic Violence

Dangerousness Assessment

EVALUATING WHETHER BATTERERS WILL KILL

Some batterers are life-endangering. You may want to carefully evaluate whether your partner is likely to kill you, other family members, and/or himself. While it is true that all batterers are dangerous, some are more likely to kill than others and some are more likely to kill at specific times. We hope that your batterer will obey the protection order, but the order is no guarantee of your safety. You should evaluate whether you need to take further protective measures beyond the protection order to assure the well-being of yourself and your children.

The following list is not fool-proof. Once you have thought about all of the indicators listed, you may conclude that your batterer is not life-threatening. You may be right or you may be wrong. You probably are the best evaluator, but you may want to discuss this with a trusted friend or a battered women's advocate at the local domestic violence program. Your batterer may not be life-threatening now, but may become so. Therefore, it is important to continue on-going assessment of his dangerousness.* Contact your local battered women's program to make a safety plan.

In making your assessment, use all of the information you have about the batterer, as well as your intuition. The greater the number of primary indicators that the batterer demonstrates or the greater the intensity of indicators, the greater the likelihood of a life-threatening attack. It is better to make a mistake in over-estimating the dangerousness of a batterer than underestimating it. No matter what is written in this paper, if you conclude that the batterer is becoming more dangerous and may very well try to kill you, act on your assessment.

* We have assumed that the victim is a woman and the abuser is a man in this tool. It may be that the victim is a man and the abuser a woman or that the abuser and the victim are of the same sex. Assessment is basically the same despite these gender differences.

The only additional indicator to be assessed by a gay or lesbian person is whether their abuser has been firmly closeted and is now risking exposure as a gay or lesbian person in order to facilitate their severe, life-endangering attacks. When a person has been desperately closeted, losing the protection of invisibility in order to abuse potentially suggests great desperation and should be included in the indicators above.

PRIMARY INDICATORS

1. **Batterer's "ownership" of the battered partner.** The batterer who says "Death before divorce!" or "You belong to me and will never belong to another!" may be stating his fundamental belief that you have absolutely no right to life separate from him.
2. **Threats of homicide or suicide.** The batterer who has threatened to kill you, himself, the children or your relatives must be considered extremely dangerous.
3. **Fantasies of homicide or suicide.** The more the batterer has developed a fantasy about who, how, when and/or where to kill, the more dangerous he may be. The batterer who has previously acted out part of a homicide or suicide fantasy may be invested in killing as a "solution" to his problems.
4. **Obsessiveness about partner or family.** A batterer who is obsessive about his female partner, who either idolizes you and feels that he cannot live without you or believes he is entitled to you, your services, loyalty and obedience, no matter what, is likely to be life-endangering.
5. **Centrality of battered woman.** If losing you represents or precipitates a total loss of hope for a positive future, your batterer may choose to kill.
6. **Depression.** Where a batterer has been acutely depressed and sees little hope for moving beyond the depression, he may be a candidate for homicide and suicide. Research shows that many people who are hospitalized for depression have killing fantasies.
7. **Weapons.** Where a batterer possesses weapons and has used them or has threatened to use them in the past in his assaults on you, the children or himself, his access to those weapons increases his potential for lethal assault. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.
8. **Timing.** When a desperate batterer believes that he is about to lose you or when he concludes that you are permanently leaving him, if he cannot envision life without you, this may be when he chooses to kill. That is not to say that all batterers kill when they conclude that the battered woman is separating from them. Some kill long before they have any inkling that the battered woman may be thinking about leaving. So, it is not safe to assume that because you haven't made plans to leave, the batterer will not be dangerous.

SECONDARY CONSIDERATIONS

1. **Rage.** The most life-endangering rage often erupts when a batterer believes the battered woman is leaving him.
2. **Drug or alcohol consumption.** Consumption of drugs or alcohol when in a state of despair or fury can elevate the risk of lethality.
3. **Acute mental health problems.** Very few batterers are mentally ill. And many mentally ill batterers are not homicidal. However, when a batterer is having an acute psychotic episode, he may be more dangerous and the effect of the mental illness must be considered in evaluating the risk.
4. **Pet abuse.** Those batterers who mutilate or kill pets are more likely to kill or maim family members.
5. **Access to the battered woman and/or to family members.** If the batterer cannot find you, he cannot kill you. If he does not have access to your children, he cannot use them as a means of access to you. Therefore, careful safety planning should occur for those times when you predict you will have contact with the batterer.

The presence of these **Primary Indicators** may mean that the batterer is contemplating homicide. You should immediately take action to protect yourself and your children. Contact the local battered women's program to further assess lethality and make safety plans.

This is not a formula for certain prediction of dangerousness. Completing this assessment is no guarantee of safety. If you conclude that your batterer is not likely to make a life-threatening attack on you at the present time, you might want to keep this form and use it for comparison at some later date when you assess the dangerousness of your batterer.

Even if you conclude that your batterer is not likely to try to kill you or members of your family, you should consider developing a safety plan. You can do this yourself or with the assistance of advocates at the local domestic violence program. Court staff can refer you to the domestic violence program.

Remember to trust your own assessment. However, when family, friends, and law enforcement conclude that he is more dangerous than you have assessed, be open to hearing their evaluations and using information they give you in a reassessment of the batterer.

Domestic Abuse and Mediation Project

Attachment #8

Sample Agenda for Domestic Abuse and Mediation Training

DAY ONE

TOPIC **INTRODUCTIONS**

Timeline
30 MIN.

Facilitators introduce themselves and review the agenda.
Participants meet in small groups and identify themselves
and their questions/interest in the seminar. Short report-
back.

VIDEO

30 MIN.

Several choices: *It's Not Always Happy at My House*
Children From Violent Homes - Martin Sheen

Objective: Understanding children from violent homes

Video and discussion

BREAK

10 MIN.

CHILDREN FROM VIOLENT HOMES

30 MIN.

Objectives: Identifying the risks of domestic violence to
children; Children's experiences with domes-
tic violence; Impact on children; short and
long-term post-separation adjustment of
children

Lecture and handouts

CHILDREN'S SAFETY NEEDS

45 MIN.

Objectives: Needs Identification process;
Safety planning;
Safety provisions for custody orders;
Role of children's advocates

Role play and pencil exercise

LUNCH

90 MIN.

DOMESTIC VIOLENCE

45 MIN.

Definitions exercise -- marital conflict vs. power/control/ownership
What solutions are suggested/driven by the different definitions?

Objectives: Understanding how therapists, lawyers, and
advocates may conceptualize domestic violence

differently; thus it is not surprising that there may be conflict about how to end domestic violence, to safeguard its victims and to engage in divorce dissolution processes.

Interactive exercise, flip chart and handouts

SEPARATION VIOLENCE

30 MIN.

Objectives: Understanding the heightened risks of severe and life-threatening violence during the process of transition out of the marital/ partnership relationship; Safety planning related to separation violence

Lecture and handouts

LETHALITY ASSESSMENT

30 MIN.

Objectives: Learning the key factors in lethality/ dangerousness assessment in domestic violence

Story, discussion and handouts

BREAK

15 MIN.

SAFETY PLANNING

60 MIN.

Objectives: Identification of community resources helpful in safety planning;
Development of a safety plan;
Role of advocate in safety planning

Story/video and plan development in small groups

DOMESTIC VIOLENCE LAW

60 MIN.

Objectives: Knowledge acquisition about protection orders, relief available and enforcement procedures;
Custody statutes and caselaw relating to domestic violence

Lecture, video and handouts

POST-SEPARATION ADJUSTMENT

30 MIN.

Objectives: Review of the research on domestic violence and custodial arrangements;

Examination of successful interventions with batterers;
Overview of effective assistance and advocacy for battered women

Lecture and handouts

EVALUATION

15 MIN.

DAY TWO

INTRODUCTIONS

30 MIN.

Facilitators introduce themselves and review the agenda. Participants, both mediators and battered women's advocates, meet in cross-disciplinary small groups, identifying themselves and questions yet unanswered in the seminar. Short report-back.

CAPACITY TO MEDIATE

45 MIN.

Objectives: Understanding of the respective abilities of battered women and batterers to participate in mediation; barriers to participation; benchmarks of readiness

Lecture and handouts

SCREENING

60 MIN.

Objectives: Understanding techniques for identification of domestic violence, issues for screening, and decisions about propriety of mediation

Role play, small group discussion, paper and pencil exercise

BREAK

15 MIN.

SPECIAL MEDIATION MODEL

60 MIN.

Objectives: Detailed exploration of the process of specialized mediation

Lecture, discussion and handouts

Special Issues In Agreement Development

15 MIN.

Objectives: Identification of unique issues relating to domestic violence to be addressed in the agreement

Lecture and handouts

EVALUATION AND ACCOUNTABILITY

30 MIN.

Objectives: Identification of the need for collaboration with domestic violence programs in evaluating the efficacy of special mediation models handling domestic violence cases

Lecture

EVALUATION AND CLOSURE

15 MIN.

Objectives: Identification of strengths of seminar and issues requiring further education/discussion

Maine Court Mediation Service
P.O. Box 328
Portland, Maine 04112