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# Divorce Mediation Domestic Violence &

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# Summary of Findings

As mediation becomes more common in the court system, and as the widespread nature of domestic violence becomes more apparent, the appropriateness of mediation in domestic abuse cases has become an issue of increasing national importance. This report provides a preliminary look at how mediators and court administrators say they are handling the problem. We focus on whether and how mediators and court staff attempt to gauge the level of domestic abuse and the capacity of the parties to mediate. We describe the common adjustments to the mediation process they make in order to enhance safety in cases with domestic abuse. Since the study did not include feedback from victims and batterers, we offer no reading on whether remedial strategies developed by courts have had their intended effects. Rather, we document trends in the evolution of mediation practice in U.S. courts.

We used a variety of information collection procedures to examine how divorce mediation programs address the problem of domestic violence in their caseloads:

- ◆ A mailed survey completed by 136 administrators of public-sector, divorce mediation programs in courts to uncover official policies and procedures for identifying and handling domestic violence among the population served;
- ◆ Telephone interviews with 30 administrators of court-based divorce mediation programs to obtain additional information on the techniques identified in the mailed survey and to discuss how the official procedures and policies are being implemented in day-to-day practice;
- ◆ In-depth study of five court mediation programs concerning methods of screening for domestic violence, determining its severity, allocating staff, and/or altering the format of the mediation session to offset possible dangers.

The sites selected for in-depth analysis mandate mediation in divorce and post-decree cases. They use a variety of techniques to identify and address the problem of domestic violence.

- ◆ **Santa Ana, California:** If a written questionnaire or file review indicates domestic violence is a factor, clients are routed to separate waiting rooms and then have private screening interviews. Shuttle and co-mediation techniques are used extensively in such cases. The court may order couples with serious violence problems to undergo a non-confidential investigation.
- **Tucson, Arizona:** Clients complete a face sheet with basic demographic information and inquiries in regard to the dispute.

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While clients attend a pre-mediation orientation, mediators review the court files and face sheet. All clients are interviewed privately and confidentially prior to mediation to screen for domestic violence, mental competency, and ability to advocate for self and child(ren). Domestic violence cases are typically co-mediated by a male/female team and/or mediated using a shuttle technique. Separate waiting rooms are used as needed and a security guard is available to accompany clients to parking areas. At the end of mediation, parties leave separately with an appropriate time interval between departures.

- ◆ **Chicago, Illinois:** Parties wait in separate reception areas, complete a 14-item questionnaire dealing with the salience of various safety concerns and are interviewed privately prior to mediation to screen for domestic violence. Domestic violence cases are typically co-mediated and security guards provide escort services to parking structures and public transportation. Mediation staff conduct non-confidential, emergency evaluations with couples suspected of having serious endangerment problems.
- ◆ **Middletown and Litchfield, Connecticut:** Custody and visitation disputes are screened by Family Relations Counselors in court at the point of referral for the existence of family violence issues that would contraindicate mediation. If after interviewing the parents and their attorneys mediation appears inappropriate, cases are referred for evaluation rather than mediation. Additionally, counselors become aware of family violence in the course of their involvement in all family violence arrests subject to Connecticut's mandatory arrest law. All mediations are conducted by male/female co-mediation teams and parents may opt out of mediation without fear of sanctions.
- ◆ **Portland, Maine:** All domestic relations cases referred for mediation are screened for abuse. Lawyers routinely attend the divorce mediation sessions which are conducted by community volunteers who have received extensive training in mediation techniques and domestic violence issues.

Based upon this overview of national practices and in-depth examination of five program formats, we reached a variety of conclusions about divorce mediation and domestic violence:

1. **Domestic violence is a frequent problem in divorce mediation programs, but varies greatly from case to case.** Domestic violence is a common factor in divorce mediation cases. Some programs estimate that it occurs in almost 80 percent of cases; none of the programs put the incidence at less than 50 percent. The high incidence rates across the sites, however, belies great diversity in its form, duration

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and severity, with only some types translating into an inability to communicate equally (Johnston and Campbell, 1993; Chandler, 1990). For these reasons, mediators regard a report of domestic violence in and of itself to be an unreliable indicator of power imbalance or incapacity to mediate. Nor is the restraining order regarded as a necessary or sufficient indicator of severe domestic violence or capacity to mediate since such filings vary by legal representation and local legal culture. Most program administrators report that fewer than five percent of their cases are excluded from mediation due to domestic violence.

2. **Mediator attitudes toward domestic violence have changed.** Seventy percent of national program providers report that their mediators attend regular inter-professional forums and training sessions dealing with domestic violence. Training on the dynamics of domestic violence is required for certification by key mediator professional associations in the U.S. and Canada. It is a regularly featured topic at local, regional and national conferences and is highlighted in key practitioner publications. As a result, mediators now acknowledge that domestic violence is pervasive and that mediation procedures frequently need to be changed to accommodate the phenomenon.
3. **There is a need for multiple and individualistic methods for identifying domestic violence.** Mediators favor private, in-person screenings where they have an opportunity to question clients explicitly about violence and explore the capacity to mediate, salient safety issues, needed modifications of the mediation process or incapacity to mediate, as well as other substance abuse and conflict issues. Nationally, while 80 percent of programs report screening for domestic violence, only about half utilize separate, private interviews to question clients explicitly about violence. Mediators also use written questionnaires and check court records for prior restraining orders and criminal filings.
4. **Most mediation programs have changed their procedures to enhance the safety of victims during and after mediation.** Virtually all programs (96%) report making use of special techniques to address the problem, including: on-site metal detectors; security guards and escort services; written intake questionnaires and in-person interviews; shuttle or separate mediation sessions; male-female, co-mediation teams; separate waiting rooms and orientations for men and women; attendance by victim advocates, attorneys and other support people; negotiation of detailed safety plans including neutral exchange sites and supervised visitation; termination of mediation by the mediator; and referrals to shelters and counseling programs.

Some programs have adapted mediation in more idiosyncratic ways, including the routine participation of attorneys in the mediation process (Maine) and the conduct of non-confidential domestic relations investigations leading to the promulgation of a safety plan concerning the exchange of the children (Cook and Orange Counties). Mediators also report making more subtle changes in their mediation

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approach in response to domestic violence, such as taking a more active and directive role in the mediation.

5. **Mediation programs have changed their definition of "success" due to domestic violence.** Mediation programs place less emphasis on reaching agreements than used to be the case with some programs dispensing with the calculation of mediator-specific agreement rates completely. In cases with safety concerns, mediators prefer to terminate mediation themselves, rather than placing the burden on clients. The mediator can also alert the court by referring the couple for an emergency investigation or evaluation. Finally, mediators can be more lenient on no-shows in domestic violence cases or treat the private screening session as satisfaction of the mandatory mediation requirement.
6. **Communication between the mediation and advocacy communities is vital to program quality and acceptance.** Mediation programs generally enjoy more acceptance by advocates for victims of domestic violence when representatives of the two communities have direct contact. For example, it is helpful that several of Maine's contract mediators are also advocates for victims of domestic violence. In Connecticut, advocates and mediators work together at many court sites to conduct assessments of batterers and victims. In Tucson and Orange County, mediators and advocates have collaborated to conduct training programs on domestic violence.
7. **Reactions of advocates for victims of domestic violence are mixed.** Some advocates feel that mediation is preferable to conventional adversarial interventions because mediators are better trained than judicial officers and the forum affords more opportunity for safety issues to be addressed and safety plans to be crafted. They are skeptical and question the durability of legal remedies, the training and sensitivity of judicial personnel, and the limited availability of legal representation and advocacy.

Other advocates, however, worry about the courts throwing up too many counseling and mediation hurdles to victims who need legal remedies or diluting the message that domestic violence is a crime. They feel that mandatory mediation should be avoided because: victims feel coerced into participating even if given the chance to opt out; the procedure has inherent risks since the adequacy of screening procedures and the use of safe mediation practices varies with individual mediators; its cooperative and compromise-oriented focus is inappropriate for victims; and it assumes that abusive individuals will bargain in good faith.

8. **Many concerns about mediation expressed by advocates for victims and batterers are more general concerns about the laws governing custody and visitation.** Both advocates for men and women are frustrated by the lack of evaluation in mediation and the confidentiality of the process. They sometimes favor more evaluative interventions that address the veracity of the allegations or non-confidential formats where insights gleaned in the mediation process can be



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conveyed to evaluators and treatment providers. For example, advocates for victims of domestic violence are concerned that judges do not place enough weight on domestic violence factors in awarding joint custody or generous visitation. They are frustrated by their inability to prove that a man's contact will be harmful to the children when it has been clearly harmful to the children's mother. In a similar vein, some lawyers who represent fathers are frustrated by the frequent use of restraining orders and other allegations regarding domestic violence which they perceive to be pursued for tactical advantages in the divorce process.

9. **Reactions of attorneys and judges are generally favorable.** Attorneys and judges typically support mandatory mediation interventions because they feel that mediators are better trained about domestic violence and are more sensitive to domestic violence than most judicial officers. They worry that many domestic violence victims present themselves poorly in court settings and wind up with more disadvantaged outcomes. They believe that mediation affords unrepresented victims more opportunity than court hearings to design custody and visitation arrangements that enhance safety. Legal service attorneys who represent domestic violence victims sometimes take exception to this view and favor aggressive advocacy and directive court hearings. They cite their clients' irrationality, their tendencies to back down and the unwillingness and inability of many batterers to play by the rules and abide by agreements.
10. **Victims of domestic violence need a variety of community services and forums of dispute resolution.** Court mediation programs report seeing families with more serious dysfunctions and limited financial resources than ever before. Frequently unrepresented, these families need many services including affordable legal services, counseling for batterers and victims, substance abuse treatment, housing and job training resources for victims, monitoring services to enforce counseling and treatment orders and supervised visitation programs. Some high conflict and violent couples may also need new court intervention like combinations of mediation, evaluation and arbitration. Among the recommended approaches are more intensive therapeutic/legal interventions that combine mediation with counseling, evaluation and longer-term therapy (Cantelon, 1992); arbitration, where trained and experienced mental health professionals assess issues and make binding decisions in disputes that involve children (Zibbell, 1995); and hybrids of evaluation and mediation where mental health professionals conduct assessments, make recommendations, present them to parents and their attorneys and use the feedback phase to stimulate parties to engage in decision-making regarding their post-separation parenting arrangements.
11. **Research should focus on the experiences of victims of domestic violence who use mediation and other dispute resolution forms.** At this point, the critique of divorce mediation remains largely theoretical or anecdotal. The few empirical studies that have been conducted with victims and non-abused mediation clients find no differences in client satisfaction, rates of compliance, or re-abuse. Some

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remaining questions about safety and fairness in divorce mediation will only be resolved with more explicit research with consumers.

- 12. All dispute resolution forums are perceived to have inherent risks and advantages.** Every dispute resolution forum presents dangers for victims of domestic violence. Custody evaluations are faulted for being protracted and exposing the victim to potential harm. Researchers find that power imbalances are sustained through attorney-assisted negotiations (Erlanger *et al*, 1987); many lawyers maintain that domestic violence is often invisible to them and that victims may experience the same dangers in both mediation and attorney-negotiated forums. Judges rotate through domestic violence and domestic relations calendars as often as every three months and operate under mass production conditions with little training and often harmful biases. Finally, the incidence of *pro se* divorce is on the rise, suggesting that victims are increasingly pursuing separation and divorce with no third-party assistance.

While it is encouraging that court mediation programs are grappling with the issue of domestic violence in their caseloads and that many have changed existing services as a result of thinking and discussion prompted by advocates for victims of domestic violence, it would be a mistake to gloss over the dangers that remain. Fully 20 percent of the program administrators we surveyed reported no use of screening procedures to detect domestic violence; only 50 percent reported the use of private, face-to-face screening interventions preferred by mediators and advocates. Similarly, 30 percent of responding administrators reported that their mediation staff had received no training on domestic violence. Six percent reported no use of special techniques and at least 30 percent reported no use of the special mediation techniques most favored in domestic violence cases: shuttle approaches and co-mediation.

There are several ways that court mediation programs can improve the way they address the problem of domestic violence in their caseloads. One is to conduct training on the dynamics of families in which there is domestic violence and techniques of achieving a safe environment in mediation. Mediation program directors should involve their local advocacy community in the training effort. The collaboration affords mediators with the best opportunity to learn about the scope and nature of the problem from front-line workers and to dispel misconceptions about the mediation process that many advocates may hold.

Screening for domestic violence prior to mediation is also a key feature of effective program response. The features of a credible screening effort are contained in the guidelines adopted by various organizations for mediation practitioners. Still other examples of screening tools are available in the published literature, like the Conflict Assessment Protocol (Girdner, 1990). Among the fundamental features of recommended identification processes are: universal screening of mediation candidates prior to the conduct of mediation, the use of separate and private interviews, reliance on more than one method of identification, eliciting information in a neutral, safe atmosphere and making

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assessments that lead to the conduct of mediation as usual, the conduct of mediation with special conditions, or case referral for alternative treatments.

Still another component of desirable program practice is the review of current procedures and their assessment for their potential safety impacts. Among the accommodations to conventional mediation practice that are recommended to maximize safety are the use of security personnel, shuttle techniques, co-mediation procedures, non-agreement, and safe termination of the mediation process.

Finally, in an era of declining resources for social programming, advocates for victims of domestic violence, the judiciary, the legal community and the mediation profession must all work together to prevent domestic violence from occurring and to develop treatment interventions and community resources that promote safe living and parenting following its identification.

# Chapter 1: Divorce Mediation and Domestic Violence

This report describes how divorce mediation programs in the U.S. courts handle the problem of domestic violence in their caseloads. It is based on the reports of administrators of court-based divorce mediation programs and in-depth study of procedures in five settings using qualitative interview and observation techniques. As mediation becomes more common in the court system, and as the widespread nature of domestic violence becomes more apparent, the appropriateness of mediation in domestic abuse cases has become an issue of increasing national importance. This report provides a preliminary look at how mediators and court administrators say they are handling the problem. We focus on whether and how mediators and court staff attempt to gauge the level of domestic abuse and the capacity of the parties to mediate. We describe the common adjustments to the mediation process they make in order to enhance safety in cases with domestic abuse. Since we did not survey mediation participants with and without a domestic abuse history to gauge their reactions to these procedures and the impact, if any, of their mediation experiences on the level of domestic abuse they experience, this study must be regarded as preliminary rather than conclusive.

Divorce mediation essentially began with a 1973 pilot program in Los Angeles County, California. Court-based mediation of custody and visitation disputes has now spread to jurisdictions in 38 states and Washington, D.C. The National Center for State Courts estimates that there are approximately 205 mediation programs currently operating in the courts of which a substantial proportion mandate participation categorically (36.6%) or permit judicial (mandatory or permissive) referrals (36.6%) (McEwen *et al*, 1994). Coinciding with the surge in public sector mediation is a growing community of private mediators.

Mediation proponents espouse the benefits of the mediation process to both the court system and users. Some research supports these claims. Mediation programs generally resolve between 50-70 percent of referrals allowing judges to devote additional time to the most difficult cases (Pearson, 1994). A recent study by the National Center for State Courts (Keilitz *et al*, 1992) compared mediation with more traditional custody evaluation services. Participants in the study reported that mediation was perceived as more fair, involved less pressure to make unwanted agreements, produced more satisfying outcomes, and gave parents more control over decisions than the traditional adversary process. These findings are consistent with previous research on mediation (Brown, 1988; Camplair and Stolberg, 1990; Kelly, 1989; Pearson and Thoennes, 1988).

As the popularity of mediation grew during the 1980's, an important source of dissent also emerged. (See Perry, 1994, for a review of the literature on mediation and wife abuse.)

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Advocates for battered women and feminist scholars raised concerns about issues such as gender-related power imbalances and, particularly, the impact of mediation on victims of domestic abuse. While the strongest criticisms have been directed toward the practice of mandating abused women to participate in mediation (Hart, 1990), some advocates object to the use of mediation when there has been any domestic abuse (Treuthart, 1993). They feel that advocacy and attorney-assisted negotiation are the preferred means to handle cases involving domestic abuse (Treuthart, 1996).

Feminists and battered women's advocates have raised many important objections to the use of mediation where there has been domestic abuse. (See generally, Bryan, 1992; Gagnon, 1992; Germane, et al., 1985; Grillo, 1991; Lerman, 1984.) One concern is that mediation decriminalizes domestic abuse and encourages a conciliatory approach that does not hold the abuser accountable for his behavior. If abusers are allowed to participate in a conciliatory process, they may learn that there are no adverse consequences to their violence. Not only might abusers avoid accepting responsibility, but victims might be made to feel partially to blame. As a private process, mediation may shield abusers from the public opprobrium they are more apt to receive in the criminal process. Indeed, a major risk of mediation is that it will undermine the great strides that the women's movement has made in defining domestic abuse and treating it in the justice system.

Another concern has to do with safety. There are inherent risks in an intervention that allows a violent spouse to know the time and place his partner will be present for mediation. Nor can the victim be safeguarded from future abuse. Mediators can not fully understand the dynamics of abuse and predict future violence between men and their victims or build in ways to protect victims. Even when they are in writing, mediated agreements do not always provide a victim with protection. Nor are they enforceable by the courts when there is noncompliance.

“Since the mediation process is not designed to deter violent behavior or to protect victims, its use is particularly perilous for battered women. Protection of one's safety should be considered too important to entrust to any other but the legal system, which has the power to remove the batterer from the home, to arrest when necessary, and to enforce the terms of a decree if a new assault occurs.” (Treuthart, 1996: 246)

Women's advocates also take issue with the notion that mediation can occur with parties who have unequal bargaining power. They contend that domestic violence always introduces power imbalances that may render mediation inherently unfair. Fear factors may make it difficult for a victim to face her abuser and negotiate an agreement that meets her needs. A victim may seem willing to participate in mediation because she believes she

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has no other option (Treuthart, 1996). Advocates argue that a victim and abuser can never negotiate on an equal footing, even with the assistance of skilled mediators. Because victims run the risk of giving up too much, a consensual or collaborative decision-making process should be avoided (Gagnon, 1992; Hart, 1990; Sun and Woods, 1989).

“It is not possible to provide a non-adversarial means of settling disputes in a neutral environment when one party is using overt or covert intimidation.”  
(Pagelow, 1990:354)

Many mediation critics are troubled by the conjoint and compromising nature of the mediation process. They feel that mediation may discourage abused women from expressing anger thereby denying them its benefits including the “potential to teach, heal and energize.” (Grillo, 1991). They maintain that mediators favor joint custody arrangements, that often run counter to what is best for the victim and children (Bruch, 1988; Grillo, 1990; Hart, 1990). Mediation may also erode their financial status and deprive them of the economic advantages they have won through divorce litigation (Grillo, 1991; Polikoff, 1983; Wertzman, 1992).

Finally, feminists and advocates for battered women are concerned about the caliber of court-based and community-based mediation programs and the ability of staff to properly screen and handle cases with domestic abuse. Public programs are often under pressure to handle large numbers of cases in short amounts of time. Community programs may rely on volunteer mediators who have only minimal amounts of training. These conditions make it inappropriate and potentially dangerous for mediation programs to handle cases with domestic violence.

The concerns expressed by advocates for abused women and feminist scholars are important and must be seriously considered. Indeed, there is compelling evidence that spousal abuse is present in at least half of custody and visitation disputes referred to family court mediation programs (Cohen, 1991; Depner *et al*, 1992; Newmark *et al*, 1995). There is also evidence that many women will continue to be subjected to abuse after separation (US Department of Justice, 1986; Bernard *et al*, 1982) and many experts in the field of domestic abuse contend that violence escalates when the woman tries to leave the relationship (Mahoney, 1990; Hart, 1990). Divorced and separated women report being physically abused 14 times as often as women living with their partners (Harlow, 1991, as cited in Raphael, 1996, n.5).

In recent years, there have been several large-scale convenings of leaders in the women's advocacy and mediation communities to discuss concerns about mediation and domestic violence. These include the Association of Family and Conciliation Courts (AFCC) Symposium on Mediation and Domestic Abuse (1989), the Maine Mediation and Domestic

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Abuse Project (1990-1992), and the Toronto Forum on Woman Abuse and Mediation (1993). The Model Code on Domestic and Family Violence of NCJFCJ (1994) was another interdisciplinary effort to address the issue of battered women in the legal system. Numerous interdisciplinary discussions of this type have occurred at the state and local level as well.

Simultaneously, legislation exempting battered women from mediation has been enacted in numerous states (Hart, 1992; National Center on Women and Family Law, 1993). Indeed, with the exception of West Virginia and Arizona, all states with mandatory divorce and child custody mediation provide a domestic abuse exemption ( e.g., California, Delaware, Hawaii, Maine, Nevada, New Mexico, North Carolina, Oregon, South Dakota, Utah, Wisconsin). Similarly, many states (Colorado, Florida, Illinois, Iowa, Louisiana, Maryland, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Virginia, Washington), but not all (Alaska, Connecticut, Kansas, Michigan, New York, Rhode Island), with discretionary mediation also include a provision exempting parties with a domestic abuse situation (Gerenster, 1995).

Not surprisingly, mediation proponents are reluctant to abandon the process outright and believe that there is a role for mediation in domestic abuse cases. They maintain that some critics have compared the best possible litigation with the worst examples of mediation (Rosenberg, 1991) and that many of the shortcomings attributed to mediation are also present during attorney-assisted negotiations and litigation (Chandler, 1990; Milne *et al*, 1992). Indeed, by encouraging parties to adopt extreme positions in negotiations or attempting to portray the other parent in the least favorable light in court documents, the judicial system can escalate and prolong conflict in ways that increase the level of danger for the victim (Johnston and Campbell, 1988). And because the client is usually the passive recipient of the lawyer's expertise, this can reinforce patterns of domination for women (Rifkin, 1984).

Perhaps the most significant way the judicial system fails victims of domestic abuse is by frequently neglecting to provide them with any legal representation. Increasingly, divorcing parents are self-represented and have no attorney. The incidence of self representation ranges from 40 percent in Alameda County, California (Duryee, 1992) to 90 percent in Maricopa County, Arizona (Sales, et al., 1992). It is clearly unrealistic to compare mediation to a system of strong, assertive advocacy when no advocacy is increasingly the norm.

Most mediators and their supporters believe that there are mechanisms such as screening, individual caucusing, and the use of advocates in mediation sessions, which can help mitigate safety and fairness concerns in domestic violence cases. They argue that techniques such as these can allow abuse victims to experience the benefits of mediation,

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while reducing the likelihood of future abuse and increasing the probability of positive post-divorce interaction (Erickson and McKnight, 1990).

According to mediation advocates, the appropriateness of mediation and its format depends upon the type of domestic violence in the relationship. Relationships differ with respect to the history and nature of violence and the degree of power each partner possesses (Chandler, 1990; Johnson and Campbell, 1993). For example, Yellott (1990) argues that there is a continuum of family violence, and a wide diversity of families function at different positions on the continuum. Johnson and Campbell (1993) identify four major profiles of violent relationships and argue that each requires different types of intervention at separation and/or divorce. Although it is never considered appropriate to mediate violence, mediation supporters contend that it is sometimes useful to: help a victim communicate safely with her abuser about stopping the violence (Yellott, 1990); help an abuser and a victim explore treatment options (Erickson and McKnight, 1990); and help a family arrive at visitation arrangements that control the abuser's contact with the victim (Chandler, 1990; Erickson and McKnight, 1990).

The limited divorce mediation research conducted to date with victims of domestic violence seems to confirm that many cases can be effectively mediated. For example, a comparison of 49 abuse cases and 61 nonviolent cases mediated in Hawaii revealed a higher agreement rate among the abuse cases (Chandler, 1990). An Australian study of satisfaction with mediation found no differences between clients of both sexes with domestic violence and their non-violent counterparts (Davies, et al, 1995). Finally, a Canadian comparison of mediation and lawyer-represented divorce clients found statistically comparable levels of harassment and post-processing abuse in both samples of cases along with identical rates of compliance and re-litigation (Ellis and Stuckless, 1996).

Feminists and advocates for battered women differ in their assessments of mediation. While some favor voluntary mediation, most strongly oppose requiring victims to mediate, and a few have gone so far as to insist that women who have been abused *cannot be allowed* to mediate. In point is an Alaska pilot mediation project which was legislatively prohibited from serving abused and formerly abused women. This prohibition resulted in the elimination of more than 60 percent of prospective users. The program staff concluded that:

"Many of the women who were excluded believed that the prohibition (against mediating) was damaging, rather than helpful, to them. While women's advocates perceived the potential risks of mediation to outweigh any possible benefits, the victims often believed first, that they should be the ones to make that choice and second, that in their own cost-benefit assessment the services offered by the pilot mediation project were valuable enough to overcome the risks as they perceived them." (DiPietro, 1992:24)



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The Alaska project operated in a system where free or low-cost legal advocacy was not readily available, as is true in virtually all American communities. Thus, it is impossible to tell whether battered women would have opted to mediate had other similarly priced legal interventions been available.

One area of consensus between mediators and advocates for abused women is the conviction that mediation must be designed to try to ensure the safety of battered women and children. To accomplish this, both groups support the need for adequate training of mediators and the practice of screening all couples referred to mediation for domestic abuse (Gerenscer, 1995; Lerman, 1984; Marthaler, 1989; Sun and Woods, 1989; Erickson and McKnight, 1990). Indeed, the need for screening and training are among the key recommendations to emerge from the Model Code advisory group of NCJFCJ (1994), as well as the Toronto Forum (1993). At least one state (Georgia) has proposed court guidelines that include mandatory domestic violence screening for court-based family mediations, with intake procedures to identify cases that should not be referred to mediation (Gerenscer, 1995, note 3). And in a recent publication, one legal scholar and mediation program administrator called for legislatures to require domestic violence screening by all those participating in the family law process including lawyers, the clerk of the court, judges and mediators (Gerenscer, 1995).

Despite limited areas of agreement between the sides on this issue, the debate over the suitability of mediation for cases involving domestic abuse shows little likelihood of subsiding; the solutions are far from clear. This report documents the results of some preliminary research intended to address the problem and explore some commonly proposed remedies.

The study included the following elements:

- ◆ A mailed survey to approximately 200 U.S. court mediation and custody evaluation programs to identify and describe the range of practices utilized to identify and handle cases with a history of domestic violence.
- Telephone interviews with administrators of approximately 30 programs that represent the most common ways of handling domestic abuse cases including: no screening, use of victim advocates, shuttle mediation, pre-mediation counseling or orientation programs, and co-mediation. These interviews contrasted formal court policies with reports of actual practices when handling cases with a history of domestic violence.
- Visits to courts in five different jurisdictions to observe how screening and service approaches operate to identify and serve families with a history of domestic violence. In addition, these visits afforded an opportunity to interview local judges, court administrators, mediation staff and domestic violence advocates concerning

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the perceived strengths and weaknesses of approaches to domestic violence adopted at each site and perceptions of needed program modifications.

- ◆ A review of mediation, custody, visitation and domestic violence statutes and court rules in each of the five selected jurisdiction.

Each of the divorce mediation sites selected for in-depth study mandate mediation in divorce and post-decree cases that involve disputes, generally with respect to custody and/or visitation. Thus, each site utilizes the form of divorce mediation (i.e., mandatory) that has been subject to the greatest amount of controversy and criticism by domestic violence advocates.

Partly in response to the debate about mediation and domestic violence, each program site selected for intensive analysis has grappled with the issue of safety, and each has developed program responses aimed at ensuring safety. Thus, the selected programs utilize a variety of methods of: screening for domestic violence; determining its severity; allocating staff and/or altering the format of the mediation session to offset the possible dangers.

The sites selected for in-depth analysis and the techniques they utilize with respect to domestic violence are:

- ◆ **Santa Ana, California:** If a written questionnaire or file review indicates domestic violence is a factor, clients are routed to separate waiting rooms and then have private screening interviews. Shuttle and co-mediation techniques are used extensively in such cases. The court may order couples with serious violence problems to undergo a non-confidential investigation.
- **Tucson, Arizona:** Clients complete a face sheet with basic demographic information and inquiries in regard to the dispute. While clients attend a pre-mediation orientation, mediators review the court files and face sheet. All clients are interviewed privately and confidentially prior to mediation to screen for domestic violence, mental competency, and ability to advocate for self and child(ren). Domestic violence cases are typically co-mediated by a male/female team and/or mediated using a shuttle technique. Separate waiting rooms are used as needed and a security guard is available to accompany clients to parking areas. At the end of mediation, parties leave separately with an appropriate time interval between departures.
- ◆ **Chicago, Illinois:** Parties wait in separate reception areas, complete a 14-item questionnaire dealing with the salience of various safety concerns and are interviewed privately prior to mediation to screen for domestic violence. Domestic violence cases are typically co-mediated and security guards provide escort services to parking structures and public transportation. Mediation staff

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conduct non-confidential, emergency evaluations with couples suspected of having serious endangerment problems.

- ◆ **Middletown and Litchfield Connecticut:** Custody and visitation disputes are screened by Family Relations Counselors in court at the point of referral for the existence of family violence issues that would contraindicate mediation. If after interviewing the parents and their attorneys mediation appears inappropriate, cases are referred for evaluation rather than mediation. Additionally, counselors become aware of family violence in the course of their involvement in all family violence arrests subject to Connecticut's mandatory arrest law. All mediations are conducted by male/female co-mediation teams and parents may opt out of mediation without fear of sanctions.
- **Portland, Maine:** All domestic relations cases referred for mediation are screened for abuse. Lawyers routinely attend the divorce mediation sessions which are conducted by community volunteers who have received extensive training in mediation techniques and domestic violence issues.

The following chapters present the results of this multi-faceted investigation of how court programs have responded to the challenge of providing mandated mediation services to divorcing or previously divorced couples who may have a history of domestic violence.

# C hapter 2: An Overview of Research Methods

We used a variety of information collection procedures to examine how divorce mediation programs address the problem of domestic violence in their caseloads. The first phase of data collection involved a survey that was mailed to public-sector, divorce mediation providers to identify official policies and procedures for identifying and handling domestic violence among the population served.

The second phase of data collection involved telephone interviews with program administrators to obtain additional information on the techniques identified in the mailed survey and to discuss how the official procedures and policies were being implemented in day-to-day practice.

The third phase of data collection involved the selection of five jurisdictions for in-depth investigation including observations of staff practices and in-person interviews with relevant professional groups and advocates. The following describes each phase of data collection in greater detail.

**Mail Survey:** Our preliminary data strategy was to collaborate with the Association of Family and Conciliation Courts (AFCC) in the administration and analysis of a survey of court programs providing divorce mediation and/or custody evaluations. The questionnaire was mailed in late 1993 to institutional members of the AFCC, an interdisciplinary professional organization primarily comprised of those who work in public sector programs for the divorcing population. We supplemented the AFCC mailing with active providers of family and divorce services listed on a database maintained by the National Center for State Courts. Questionnaires were mailed to 200 administrators of court-based programs for divorcing families. A total of 149 questionnaires were returned and analyzed. This comprised a response rate of 75 percent.

The survey included questions on program characteristics and the specific practices used by staff to deal with the problem of domestic violence. Respondents were asked to characterize the amount and type of training on domestic violence accorded to program staff. They were also asked about standard methods used to screen referrals to mediators for domestic violence and other issues that may affect capacity to mediate. Next, the survey elicited information on staff reactions to identification of domestic violence including exclusion of cases from mediation, conduct of mediation as usual and conduct of mediation using modified techniques. Among the special techniques explored in the survey were:

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- ◆ The use of additional screening;
  - ◆ The use of support personnel;
  - ◆ The use of co-mediators, caucus and joint sessions, telephone mediation, and separate "shuttle" mediation techniques.

Respondents were asked to describe staff discretion in the decision to use special techniques and the estimated incidence of domestic violence in the program caseload.

A comparable set of questions was used to elicit information on custody evaluations, the most common alternative to mediation in courts for parents who have disputes regarding custody and/or visitation. Information was collected on the use of separate versus conjoint sessions in custody evaluations, methods of eliciting information on domestic violence, modification of the custody evaluation process as a result of domestic violence and the conduct of staff training dealing with domestic violence.

Information on mediation practices was supplied by respondents representing 136 programs offering mediation services in courts located in 31 states. Information on custody evaluation practices was supplied by respondents from 103 programs, 90 of which provide both mediation and custody evaluations. The jurisdictions represented in the survey varied widely in size: approximately 20 percent have populations smaller than 100,000 and approximately 25 percent have populations over 500,000. Program sizes were also quite varied. The average and median number of mediations completed in 1992 were 656 and 225, respectively. The average and median number of custody evaluations completed in 1992 were 210 and 100, respectively. Since most courts offering both services use mediation as a first step in resolving disputes and provide evaluations only for those unable to reach agreements in mediation, it is not surprising that the number of completed evaluations is substantially lower than the number of completed mediation in the same jurisdiction.

**Telephone Interviews:** From the 149 mediation programs responding to our mailed questionnaire, we selected 45 programs for more intensive scrutiny with the goal of conducting approximately 30 telephone interviews. We chose programs that varied with respect to size and geographic area, legal environment, domestic violence screening practices, and the use of special mediation techniques in domestic violence cases. Program administrators were mailed a letter describing the objectives of the research project and the telephone interview. Next, a project staff member contacted program administrators by telephone to schedule an interview. Interviews were approximately 45 minutes in length.

The telephone interviewer used a general interview guide with all program administrators. In addition, respondents were asked program-specific questions triggered by their responses to the mailed questionnaire. Interviewees were asked to describe the array of

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laws and court rules governing the operation of the divorce mediation program. Next, the interview turned to program procedures for identifying domestic violence, the use of special mediation techniques if domestic violence was identified, relationships between the mediation program and the local domestic violence community, the nature of mediated agreements generated in cases with a history of domestic violence, the training provided to mediators dealing with domestic violence and current program concerns.

Ultimately, we conducted telephone interviews with administrators of 34 court-based divorce mediation programs located in 17 states. One-third of the respondents were based in programs in California. The interviews were conducted during January and February 1995.

The interviews involved administrators of both mandatory and voluntary mediation programs. The mandatory group consisted of 27 programs of which 48 percent mandated mediation by state statute; 41 percent mandated mediation by state or local court rule; and 11 percent mandated mediation by local court practice. The voluntary group consisted of five programs that lacked official laws or regulations requiring disputing parents to attempt to mediate their differences.

Only two of the states included in the telephone interview (Delaware and New Jersey) had statutes requiring that domestic violence cases be excluded from mediation, although several jurisdictions operated under statutes or court rules that permitted cases to be excluded from mediation because of domestic violence or other safety concerns such as child abuse. At most of the interviewed sites, mediation was a confidential process, but in approximately one-fifth of the programs, mediators made recommendations to the court if parties could not reach an agreement on their own.

Eighty-seven percent of the programs included in the telephone interview were court-based services providing mediation with in-house staff. Of the remaining programs, one was an independent agency with a contract to provide mediation services to the court; and three utilized court staff to conduct a mediation assessment or screening followed by either referral to a community-based mediator or provision of a list of private mediators for client selection purposes.

The programs selected for telephone interviews were among the larger ones in the mail survey. Four-fifths (79%) served jurisdictions with populations of 250,000 or more, and the majority (57%) of programs served jurisdictions with populations in excess of 500,000. The average number of paid professional mediators in the programs with court-based staff was twelve. Half of the programs employed ten mediators or less. The average and median number of mediations completed in 1992 were 1,374 and 935, respectively.

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**Observations and Interviews at Five Program Sites:** Based on the results of the mailed surveys and telephone interviews, we selected five mediation programs for in-depth study. We restricted our selection to the most controversial type of programs: those that mandate participation in mediation by statute or court rule, or those with de facto mandates where judges "strongly recommended" that disputing couples attempt to mediate.

Two project staff members visited each selected site for approximately three days. In the course of each visit, we observed all relevant orientation and screening procedures aimed at detecting the incidence and nature of domestic violence. To the extent it was feasible, we also observed a mediation session that involved an allegation of domestic violence. We conducted focus groups with program mediators. We also interviewed family law judges, court administrators, domestic relations attorneys and domestic violence advocates. At one site, we conducted a focus group with victims of domestic violence affiliated with local shelters for battered women. At several sites, we also interviewed program administrators and/or staff affiliated with victim witness programs and criminal court interventions for perpetrators and victims of domestic violence.

We explored a variety of issues with each professional group we interviewed. For example, the interviews with mediation program administrators and mediators dealt with the following topics:

- ◆ The specific questions and procedures used to identify domestic violence;
- ◆ The perceived adequacy and reliability of these screening procedures;
- ◆ How information about domestic violence is used to determine whether and how to provide mediation;
- ◆ What mediators do differently as a result of discovering domestic violence;
- ◆ The estimated incidence of various types of domestic violence in the caseload;
- ◆ The evolution of program response to the problem of mediating divorce cases with domestic violence;
- ◆ Other sources of power imbalance that mediators encounter in their practice and how they are handled;
- ◆ The impact of domestic violence on the incidence and nature of mediated agreements;
- ◆ The utility of various types of training on domestic violence;
- ◆ Nature of the relationship between the court and the domestic violence community;
- ◆ Useful community resources and areas of needed service;
- ◆ Future plans for program development.

Family law judges were asked to discuss the following types of issues:

- ◆ The role of the judiciary in divorce cases with domestic violence;
- ◆ The incidence of domestic violence in the divorce cases seen in courts;
- ◆ The role of the judiciary in developing the screening procedure and other safety measures utilized by the mediation program;

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- ◆ The perceived adequacy of the program's response to the problem of domestic violence;
  - ◆ Alternatives to mediation;
  - ◆ Judicial training on domestic violence;
  - ◆ Desired changes in the mediation program; and
  - ◆ The adequacy of resources for divorcing families with a history of domestic violence in the community.

Interviews with domestic relations attorneys dealt with:

- ◆ Attorney perceptions of the incidence of domestic violence in their caseload and the caseload seen by the court mediation program;
- ◆ The screening procedures utilized by attorneys to detect domestic violence;
- ◆ The level and nature of attorney exposure to the court mediation program;
- ◆ The nature and adequacy of the program's response to domestic violence;
- ◆ The role of the attorney in cases with domestic violence;
- ◆ Alternatives to mediation;
- ◆ Attorney training on domestic violence;
- ◆ The adequacy of resources for families with a history of domestic violence in the community.

Interviews with advocates for battered women focused on:

- ◆ The historical relationship between the mediation and domestic violence community;
- ◆ The level and nature of advocate exposure to the court mediation program;
- ◆ The nature and adequacy of the mediation program's response to domestic violence;
- ◆ The perceived level of sensitivity exhibited by domestic relations attorneys and family law judges to the issue of domestic violence;
- ◆ Alternatives to mediation and recommendations for program change.

We concluded the in-depth analysis of five program sites with an analysis of relevant statutes and court rules dealing with divorce mediation, custody, visitation and domestic violence.



# Chapter 3: An Overview of National Practices

Our portrait of national practices and policies concerning mediation and domestic violence is based on responses of 136 administrators in 31 states to a survey mailed jointly by the Association of Family and Conciliation Courts and the Center for Policy Research. We also conducted telephone interviews with administrators of 34 court-based, divorce mediation programs located in 17 states. This chapter provides a summary of what program administrators say they are doing to identify and treat domestic violence. A published article based on the mail survey appears in Appendix A (Thoennes *et al*, 1995).

## Awareness of the Problem

Administrators of divorce mediation programs appear to be keenly aware of domestic violence and the controversy concerning mediation in such cases. One administrator characterizes the issue of whether and how to mediate custody and visitation in light of violence allegations as "one of the most controversial issues going." Program representatives suggest that this awareness has led to increased efforts to train mediators about the dynamics of family violence.

Approximately 70 percent of the survey respondents report that mediators receive specific training in domestic violence. Training is most likely to occur in relatively large mediation programs. For example 93 percent of the mediation programs with more than ten mediators on staff provide training, compared to only 60 percent of the programs with fewer than ten mediators.

Although training is widespread, it takes different forms. About half of the programs represented in the survey say that domestic violence training is provided through staff attendance at state and national level conferences. For about a third of the programs the domestic violence training is described as "in-house" and provided by mediators. The remaining 20 percent of the respondents report that the training is conducted by members of the local domestic violence community.

Several mediation program administrators report that they have made concerted efforts to reach out to domestic violence advocates about mediation in general, and the local program in particular. In some locations that outreach has taken the form of coalitions or task forces. In other sites, the contact has been less formal. For example, in one program, mediators who are assigned on a rotating basis to meet and screen clients in the courtroom meet on a daily basis with the domestic violence advocates who act as liaisons to the criminal court. In another program, mediators and domestic violence advocates are

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brought into frequent contact by the physical siting of the mediation program next to a clinic for domestic violence restraining orders.

In general, the increased contact and heightened awareness is viewed as positive by mediation program administrators. One program administrator explains that the mediation community has been educated about the risks and consequences of violence. He says:

“I think the mediation field has been served well by the dialogue with the domestic violence community...Now mediators ask the questions about domestic violence, and we now believe that domestic violence is child abuse, so we have been educated...The dialogue has been important in raising the consciousness of mediators.”

The dialogue has also provided mediators with an opportunity to clarify misconceptions about the process that sometimes are the root of opposition to mediation by domestic violence advocates. For example, an administrator of one California mediation program noted that the relationship with the domestic violence community improved after he explained that there is no pressure on mediators to produce agreements. Another said the relationship with the domestic violence community improved appreciably when he had an opportunity to emphasize the right of the mediator to exclude cases from mediation. Still another mediation program administrator described this situation:

“Initially, the domestic violence community was very skeptical about mediation. They thought we were not aware of power imbalances. However, after having several of their counselors come to observe us, their concerns evaporated.”

The dialogue has also undoubtedly contributed to the growing trend among court-based mediation services to screen for domestic violence and to consider special techniques to allow for the safe provision of mediation. These trends are discussed below.

### **Domestic Violence Screening**

Many of the mediation program administrators we interviewed reported their staff initially resisted the idea of screening cases for domestic violence. For some mediators the problem was that meeting with parents individually and asking about violence seemed to contradict the confidential, neutral role of the mediator. In addition, some mediators were concerned that allegations of abuse would be made simply to avoid mediation, or, alternatively, as one mediator put it, “as a card to get custody of the children.”

Despite these reservations, the mail survey indicates that most mediation programs are doing some type of screening for domestic violence. Almost two-thirds of the programs

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responding to the survey noted that they made some attempt to identify domestic violence cases prior to the start of mediation. Another 10 percent said they did not ask the parties about violence, but did consult secondary sources, such as court files, for evidence of violence. Only about 20 percent reported making no attempt to collect information about domestic violence prior to the start of mediation. These tend to be smaller mediation services, particularly those handling fewer than 400 mediations per year.

Although mediation programs seem to have accepted the need to screen cases for domestic violence, there is no clear cut consensus about how this screening should be done. Programs responding to our survey indicated using a variety of approaches, including written questionnaires, in-person interviews, and background checks. Some written questionnaires explicitly ask about violence, others ask more general questions about how conflict is resolved.

In general, program administrators responding to our survey indicated that few cases are eliminated from the mediation process due to allegations of domestic violence. Based on their best estimates, no more than five percent of the cases set for mediation are diverted from the process due to concerns about spousal violence. Not surprisingly, the smallest percentage of cases is eliminated in sites relying primarily on self-referrals from disputants. However, programs requiring mediation by legislation or court rule are also unlikely to report that significant numbers of cases are diverted from the process due to concerns about violence. Nor is there evidence of higher exclusion rates among programs collecting data directly from the parties compared to those relying on a check of secondary sources.

It is possible that these low exclusion levels may be due to the fact that some proportion of parents are excused from mediation due to domestic violence prior to the official referral to mediation and are, thus, not included in program administrators' estimates. However, it seems just as likely that the screening is not used primarily to eliminate cases, but rather to help mediators to identify violence as an issue so that informed decisions can be made about how to conduct the session. In part this may be because mediators see few safe alternatives to mediation.

"The court is not safe at all. The court will tell the parents to work out their plan in the hallway. If there were alternatives to mediation, then maybe [I could see excluding domestic violence cases]--- but there's nothing else in place."

### **Special Mediation Techniques**

Virtually all the program representatives responding to our mail survey indicated that special mediation techniques *may* be employed in cases with histories of domestic violence.

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According to the survey, two-thirds of the programs “sometimes” or “always” offer the parent the opportunity to have a support person present during mediation. However, telephone conversations with program administrators indicate that the use of a support person is quite rare. Similarly, although most survey respondents (80%) say they “sometimes” or “always” give the client the option of withdrawing from mediation, follow-up conversations indicate that few cases actually result in a termination.

The mail survey suggests that shuttle mediation is used with some frequency. This calls for the parties to remain apart while the mediator moves between them. Telephone interviews with program administrators confirm that shuttle mediation is used, although the parties are typically together at some point or points during the mediation. Only in rare instances is the negotiation achieved solely through the use of shuttle mediation techniques.

Co-mediation is described by many survey respondents as a way to provide mediation with greater safety. The presence of two mediators allows for a tighter control of the session, greater scrutiny of the proposals being offered, and two people to be alert to uneasiness or fear. Follow-up interviews confirm that co-mediation is a popular approach in domestic violence cases, although one that is available only in relatively well-staffed programs. Even when co-mediation is not an option, mediators may shift to a more “controlling” mediation style if the family has a known history of violence. Mediators describe the more directive style they adopt with such couples in this way:

“If I see any attempt by the abuser to continue to intimidate the other person, I stop it immediately and give him a choice — stop it or go back to court.”

“We do more ‘voice over’ [in cases with violence]. We help the client develop the options and then we use voice over where we speak on behalf of the client.”

“I will turn off the mediation if I sense that the victim wants to stop. I will not allow someone to sign an agreement if I think they feel coerced.”

## **Discussion**

The survey of mediation practitioners and the more qualitative interviews conducted following the survey indicate that most court-based family mediators are aware of, and concerned with, domestic violence. Many note that the controversy surrounding the use of mediation, especially mandatory mediation in light of domestic violence, has led them to reevaluate both the phenomenon of family violence and mediation practice. One administrator noted that:

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"Before we started the screening, we thought one-third of our cases had some form of domestic violence. Now we believe *at least half* have some domestic violence."

While it is relatively easy to document heightened awareness, it is more difficult to determine whether substantial changes in mediation practice have actually occurred. Do mediation programs actually screen for domestic violence, or as one administrator speculated, do the screeners think, "Domestic violence is an issue for the police, not mediators?" Once identified, do couples with domestic violence actually receive mediation services that have been altered to provide extra security? If special mediation techniques are employed, are they sufficient to protect clients and to ease the fears of the domestic violence community?

A full answer to these questions is beyond the scope of this report, and perhaps beyond the scope of any single study. However, in the following chapters we explore in greater detail how divorce mediation and domestic violence co-exist in five court-based mediation programs around the nation. A profile of these programs and a discussion of how they have dealt with the complex issue of mediating in light of family violence is a first step in measuring the progress made thus far and the steps that may still need to be taken.

# Chapter 4: Five Court-Based Mediation Programs

Using the results elicited in the national survey of court-based divorce mediation programs, we selected five court programs for intensive analysis. Each program mandates the use of mediation in certain kinds of contested divorce cases. Thus, each program has grappled with the issue of screening for domestic violence and assuring safety in the mediation setting.

To generate a portrait of each program, we visited each site, observed relevant screening and mediation processes, and conducted interviews with key program personnel and relevant professionals. This included: family law attorneys, judges, mediators, court administrators, and domestic violence advocates.

In this chapter, we describe each program selected for intense analysis based upon our on-site observations and interviews.

## 1. The Family Center of the Conciliation Court of Pima County, Arizona

**Program Background:** The Family Center of the Conciliation Court (FCCC) of Pima County, Arizona serves a jurisdiction of close to a million people living in metropolitan Tucson and outlying Pima County. In recent years, FCCC has handled 1,000 to 1,100 mediation petitions per year. These include modifications of existing divorce orders and a portion of Pima County's 5,000 annual new filings for divorce. In addition to mediation, which comprises approximately half of program services, FCCC also conducts custody evaluations and marriage counseling. The program employs 15 full time staff including eight counselors who mediate and one counselor who conducts custody evaluations but does not mediate. Counselors have at least a masters' degree with a specialty in marriage and family counseling, plus specific mediation training. The agency's annual budget is \$601,400.

In 1986, the mediation was made mandatory in all domestic relations cases with a custody or visitation dispute. The mandate to mediate is satisfied if parents attend an hour-long orientation and at least one mediation session. Mediation in FCCC focuses exclusively on custody and visitation issues; mediators are prohibited from discussing child support, property division, alimony and other financial matters. Although the court may grant exemptions from mandatory mediation, the standard for waiving it calls for "substantial good cause" and a hearing. Typically, considerable evidence would be needed for a waiver to be granted, such as a finding of domestic violence, an uncontested Order of Protection, police reports, medical records, or corroborating testimony by a third-party witness.

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**Statutory Framework:** FCCC operates in a statutory environment that is sensitive both to the issue of child contact with noncustodial parents and domestic violence issues. Arizona law requires that the Superior Court determine child custody in accordance with the best interests of the child. One of the factors to be considered by the court in its determination is which parent is more likely to allow frequent and meaningful contact between the child and the noncustodial parent. Another factor to be considered is the nature and extent of coercion used by a parent in obtaining an agreement regarding custody. Willingness to mediate is generally regarded as an indicator of willingness to allow contact; coercion is less easily operationalized.

In 1986, evidence of domestic violence was added to the list of factors that the court must consider in making custody and visitation decisions. Visitation with the noncustodial parent was limited in cases with a domestic violence finding, with the perpetrator bearing the burden of proof that visitation will not endanger the child physically or emotionally. In addition, Arizona statutes were amended in 1989 to prohibit joint custody in cases with a significant history of domestic violence. In 1991, the law was again amended in cases of domestic violence to allow a parent to petition the court for an expedited hearing at which time the court might enforce visitation, suspend it, or change custody ex parte.

Arizona makes domestic violence a crime but gives police discretion on how to handle persons who commit domestic violence. If there is probable cause, police may arrest perpetrators of domestic violence with or without a warrant. On the other hand, if there are grounds to believe that the victim will be protected from further injury, police may choose not to arrest, even when physical injury or a deadly weapon is involved.

In all legal separations or dissolution actions, the court issues a preliminary injunction to prevent the parties from molesting or harassing one another or committing an assault or battery on the other party or any child of the parties. The court order is effective until a final decree is filed or the action is dismissed. Either party may also request a temporary restraining order or preliminary injunction to exclude a party from the family home upon a showing that physical or emotional harm may otherwise result. Disobeying or resisting a temporary restraining order or preliminary injunction issued pursuant to a dissolution of marriage or a legal separation action is a crime and the perpetrator is subject to arrest, with or without a warrant. If a protection order is sought while a divorce action is pending, the order is issued simultaneously by the Superior Court and the Municipal Court.

**Community Awareness of Domestic Violence:** The Southern Arizona Task Force, an organization for agencies and individuals concerned about domestic violence, was formed in 1984. In that same year, the Tucson Police Department instituted a "must arrest" policy. Arrests for domestic violence surged from 182 per month in 1986 to 600 per month

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in 1990. Because most victims asked that charges be dropped, police officers and others in the community began to question the efficacy of a must-arrest policy. In 1985, the city prosecutor began to require that parties attend mediation before charges could be dropped in a domestic violence case. The policy was soon modified to include counseling in lieu of mediation when the case volume exceeded the mediation capacity of the private mediation contractor retained to provide the intervention.

Currently, the city of Tucson requires domestic violence defendants to attend ten hours of psycho-educational counseling focusing on anger management. Staff in the county attorney's Adult Diversion Program also conduct an assessment of a defendant's dangerousness. These assessments are used to make referrals for services beyond the ten-hour group and for sentencing if a subsequent arrest occurs. Upon completion of the ten-hour group, charges can be dropped if the victim desires. The mediation intervention for domestic violence cases was recently dropped due to lack of funding.

**The Family Court Response:** Tucson's experiences with mediation and counseling in domestic violence cases convinced some members of the domestic violence community that mediation could be a useful tool for developing visitation arrangements when an order of protection had been issued (Yellott, 1990). Simultaneously, the FCCC mediators began to discuss the issue of safety when mediating divorce cases in which domestic violence was an issue. They formed an in-house committee on domestic violence and began to solicit training on the issue from local sources including advocates and Municipal Court mediators who had mediated domestic violence matters.

Gradually, the mediators considered alternative ways of identifying domestic violence and formalized a procedure to be used in all cases. They rejected the idea of mailing out screening questionnaires or conducting screening interviews over the telephone because of the possible influence of the batterer in these situations. Instead, they developed the practice of getting together to review all cases prior to mediation while clients attend an hour-long mandatory orientation session explaining the mediation process, the harmful effects of parental conflict on children and the benefits of regular contact with both parents. The mediators jointly examine case histories, including prior restraining orders and other information included on the petition and a written questionnaire completed privately by each parent prior to the orientation. If domestic violence is noted, the case is assigned to a male/female team.

In all cases, mediators meet individually with parents to determine whether mediation is appropriate. In many circuitous and direct ways, each parent is asked about a variety of family problems - health, substance abuse - as well as harassment, threats, violence and physical abuse. Each parent is asked whether they feel able to mediate and told that they are "not required to reach an agreement." Cases labeled as having a domestic violence



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history are assigned to mediators on a rotating basis and handled with strategies agreed upon by the entire staff. While shuttle mediation techniques are used, mediators prefer the assignment of a team of male and female co-mediators as a first option. Teams also use shuttle mediation where appropriate.

Peer consultation is key to the FCCC's response to domestic violence. In addition to reviewing cases together and co-mediating, mediators seek advice from one another during the sessions. Mediators start their sessions simultaneously and try to take breaks at the same time so that they can get feedback from their peers during the mediation process.

Over time, the FCCC added several additional safety features including screening parties on separate days, escorting parents to and from the orientation sessions, providing separate waiting rooms for mothers and fathers upon request, and retaining a security guard (but no metal detector). They also changed the way they interviewed parents about violence and used more direct, behavioral questions rather than general ones. Thus, rather than asking parents, "Has there ever been any violence?" they asked "Has he ever shoved or pushed you during an argument?" One result of the use of direct, behavioral questions was that the incidence of domestic violence "started to skyrocket."

Mediators maintain that 80 to 90 percent of the FCCC caseload involves at least one episode of domestic violence. Nevertheless, most staff believe that the majority of domestic violence cases can be safely mediated and benefit the parties. FCCC believes that the "bottom line" is not whether violence has occurred, but whether the parties can safely advocate for themselves and their children at the present moment. To this end, mediators routinely ask parents the "bottom line" question: "Do you feel you can mediate?" Ultimately, it is up to the mediator to decide whether to proceed or terminate the mediation process. If they decide not to proceed, mediators always take responsibility for terminating the process. Thus, the mediator might say, "I am making a determination that it is not in your best interest to proceed," and never "Your ex-wife does not wish to continue with mediation."

In actual practice, only about five percent of FCCC cases are terminated for domestic violence. This is consistent with patterns gleaned in the national survey of program practices. More typically, domestic violence clients fail to reach agreements in mediation. Indeed, a key result of FCCC's deliberations about case-handling procedures in domestic violence cases has been to de-emphasize the agreement rate as a measure of mediator performance. Instead of maintaining individual agreement rates for each mediator and circulating them at staff meetings, as had previously been the case, mediators and FCCC administrators began to believe that non-agreement was an acceptable, or even desirable, outcome in a domestic violence case. Currently, only 57 percent of cases mediated at

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FCCC result in agreement after the first session as opposed to 90-95 percent in the early years of mandatory mediation.

**Reactions of the Community:** While mediation and counseling interventions have been integral to Tucson's domestic violence policies, there are several issues over which the two groups continue to disagree. Some members of the domestic violence community oppose mandatory mediation because it coerces victims into meeting with their abusers; they take issue with FCCC's contention that victims can easily terminate mediation if they express safety concerns. Some advocates also have problems with the notion of mediator neutrality. They believe that when neutrality is applied to abusive relationships, it serves to underscore the imbalance of power. As a result, they feel that victims of abuse perceive mediator neutrality as bias toward the other party or a bias toward compromise. Indeed, some advocates maintain that the screening procedures FCCC has developed to detect domestic violence may be perceived by victims to be "retraumatizing." Victims may view questions about whether they feel "strong enough" to participate in mediation as a vote of "no confidence" in her personal fortitude.

Some advocates also take issue with the FCCC's strict policy of confidentiality. They believe that relevant information obtained in mediation should be released to counselors in the city's diversion program who do assessments of dangerousness in domestic violence cases, as well as to criminal justice agencies who treat domestic violence perpetrators and victims. Finally, some advocates are troubled by the brief nature of the mediation intervention and the narrow slice of issues it addresses. They would like mediators to assume broader and longer-term responsibilities including phoning the victim after the mediation session and doing other forms of follow-up.

Judges and family law attorneys are enthusiastic about FCCC. They tend to feel that victims are better served in mediation than in the adversarial process because mediators are better educated about domestic violence and lack many of the prejudices against victims of domestic violence held by judges and other members of the criminal justice system.

Attorneys are also enthusiastic about mandatory mediation but feel that affordable legal services are a necessary accompaniment to mediation and that final mediation agreements should be reviewed by attorneys to assess financial or other legal consequences. Another needed service is supervised visitation. Through supervised visitation and monitoring, contact between alleged abusers and their children can be maintained, future abuse can be avoided and/or false allegations can be prevented. Appendix B contains materials on Tucson's FCCC and its procedures for handling domestic violence.

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## 2. Mediation and Investigative Services of Orange County, California

**Background:** Mediation and Investigative Services (MIS) of the Superior Court of Orange County began offering custody and visitation mediation services in 1978. In 1981, California became the first state in the nation to make mediation mandatory in all contested custody and visitation cases. In 1994, MIS handled close to 7,500 cases, most of which involved mediation of custody or visitation disputes, but also some investigations and marriage counseling cases.

From the inception of MIS, judges also routinely referred non-divorcing couples with temporary restraining orders (TRO) who needed visitation plans. The program's director recalls that during these early days, restraining order cases didn't seem to merit special treatment aside from the obvious need for supervised visitation arrangements.

When mediation was made mandatory in all cases of contested custody and visitation in 1981, the requirement was extended to TRO cases in Orange County. Today about 20 percent of the mediation cases are parties alleging domestic violence and filing ex parte for a temporary, civil restraining order.

As the decade progressed, mediators at MIS began to learn about the dynamics of violence and to experience major changes in their level of sensitivity to the issue. Simultaneously, the feminist and domestic violence communities began to launch an attack on mandatory mediation alleging that the procedure disadvantaged women in general and victims of domestic violence in particular.

The catalyst for change in Orange County came in the late 1980s in the wake of a fatal accident involving a couple with a temporary restraining order scheduled for mediation. This was to be the family's second contact with MIS. Following a first mediation session to address visitation issues, the mother had decided to drop the restraining order. Soon afterwards, she filed for a restraining order once again and was scheduled to meet for mediation three weeks later. The director of MIS describes the events that followed this way:

"At that time, we didn't give TRO cases priority, and (TRO cases) didn't come down with any message from the judge. The parents came down together from court to set the mediation appointment. We were given no clues that this would be a tragedy. Several days after the mediation appointment was set, we saw a newspaper headline that (on a weekend visit) the father took the kids to the woodshed and shot the three of them and then shot and killed himself."

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The mother in the case became an outspoken opponent of mandatory mediation. Public hearings were held in Sacramento, and Orange County was held out as an example of bad practice in court-based mediation. The director and other mediators felt unfairly treated and maligned by the hearing process, during which they were never invited to testify. In-house, MIS staff replayed the experience over and over again and emerged unsure about how the tragedy might have been averted.

“I can say the declarations didn’t stand out (as being lethal). They had a long history of separations, and of violence never escalating to guns or higher levels of violence. This guy didn’t seem capable of this, and they never painted a profile (of a lethal case).”

Nevertheless, as a result of this staff review process, there was a decision to develop a better way of identifying cases at risk of future violence.

Simultaneously, the director of the mediation program in the adjacent Los Angeles Conciliation Court began to convene regular, monthly meetings of staff who worked at battered women’s shelters, other service providers who assist victims of domestic violence, and mediators. The goal of these sessions was to educate mediators about the dynamics of domestic violence and familiarize advocates with the practice of mediation and the population performing these interventions. Mediators and supervisors in Orange County participated in the ongoing forums and also began to do local outreach with comparable advocates and service providers closer to home.

**Statutory Framework:** California has adopted both mandatory mediation and aggressive protections for victims of domestic violence and any minor children. Pursuant to a law enacted in 1981, mediation is mandatory in all cases of contested child custody and visitation and victims of domestic violence are required to participate in the mandatory mediation intervention. Indeed, a bill to make it non-mandatory in violence cases was defeated in 1993. Nevertheless, the statutes address the issue of safety in the mediation process and provide a variety of civil and criminal procedures to prevent domestic violence and address it when it occurs.

Pursuant to 1993 revisions in the family code, the mediation process in California was amended in several key ways to address the problem of domestic violence. For example, in cases with a history of domestic violence or where a protective order is in effect, mediators are required to meet with the parties separately. If a protective order is in effect, a support person may accompany a party protected by the order during a mediation session. The support person is not a legal advisor and does not participate in the mediation session, but sits with the party at the table that is generally reserved for the party and the party’s attorney. The mediator retains the authority to exclude a support person from a mediation session if his or her presence is disruptive.

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As a result of the family code revision, the court was given the option of requiring parents with custody or visitation disputes to participate in outpatient counseling for up to a year with separate sessions for mothers and fathers in domestic violence cases. Although the legislature embraced the basic policy of assuring minor children frequent and continuing contact with both parents, the court was instructed to consider the history of abuse by one parent against the child or the other parent in making a custody or visitation order. Contrary to an earlier California law encouraging joint custody, current California statutes adopt no preference in favor of any custody arrangement. The court is encouraged to avoid custody and visitation orders that are inconsistent with civil restraining or criminal protective orders.

The California family code makes violation of a protective order a crime with punishments specified in the penal code according to the severity of the violation and the amount of physical injury. If a defendant is arrested for domestic violence, the court must determine whether the defendant is suitable for diversion. Upon successful completion of a diversion program, the arrest is deemed to have never occurred. A person convicted of domestic violence may be ordered to undergo counseling, and, if appropriate, to complete a batterer's treatment program. As part of probation, the defendant may be required to make payments to a battered women's shelter and/or reimburse the victim for reasonable costs of counseling and other reasonable expenses resulting from the defendant's offense.

**Community Awareness of Domestic Violence:** There has been heated and public conflict between domestic violence advocates and mediators in Orange County and the state of California as a whole. California led the nation in embracing mandatory mediation and presumptive joint custody. It has also been the locus of feminist legal theory and domestic violence advocacy. The conflict between mediators and advocates in Orange County is rooted in the court's routine use of mediation techniques to develop temporary visitation plans for couples who obtain temporary restraining orders for domestic violence and a well-publicized tragedy with one agency case.

At the initiative of a presiding family law judge, the Orange County Superior Court hosts a local interagency task force on domestic violence. Aimed at improving the county's coordinated response to domestic violence, the task force brings together top professionals from courts, law enforcement, battered women's shelters and the medical community on a regular basis.

**Family Court Response:** MIS developed an elaborate protocol of divorce mediation that incorporates procedures for working with families that have a history of spousal abuse (Magana and Taylor, 1993). The first step involves learning whether there has been a history of spousal abuse. This information is obtained from court files and client screening forms. All mediation clients at MIS complete a written intake sheet that asks each parent

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explicitly about domestic violence. All cases with a positive response on the written intake sheet, and all temporary restraining order cases automatically undergo a private screening session. Following this screening, the couple may be referred for co-mediation by a male and female mediation team, or may be referred to a Domestic Relations Investigation (DRI) conducted by another member of the MIS staff. The court may also order couples directly into the Investigation. These investigations are conducted at no charge to clients and are not confidential. In 1994, 11 percent of mediation cases with a domestic violence allegation or history were referred for Domestic Relations Investigation. The conclusions of the Domestic Relations Investigation can be used to generate treatment recommendations and detailed safety plans that the court can subsequently promulgate.

In 1990, MIS adopted a new protocol to be used for all families with suspected violence, regardless of whether the case was referred as a result of a temporary restraining order filing, or a contested divorce. In the years since its adoption, the protocol has been further refined. The new protocol took an unambiguous stand on safety for the parent who has been battered and the children. It requires separate, private interviews with the mother and father to address their respective concerns about safety for themselves and their children; the use of a male-female mediation team; the involvement of a support person upon request; and the presence of a marshal in the mediation office room to ensure the safety of the parties while in the waiting area and/or the mediators' offices and to escort clients from the mediation office to their vehicles when needed. All mediators have a "duress button" on their phone to enable them to summon a marshal during a mediation session.

If the parties are able to reach a temporary agreement in mediation, the mediation team incorporates a variety of relevant safeguards in the visitation plan. These safeguards might include: no contact between a parent and child when there are serious threats of violence or abduction, visits monitored by a third party to protect the safety of the child, recommendation to the court that the restraining order limiting contact between the parents be initiated or extended, use of a third-party to assist with transporting the children or a neutral pick-up and drop-off site to avoid conflict during exchanges of the children, use of public places to neutralize the exchange of the child, arrangement of contact to allow one or both parents to keep their current address confidential, visitation specificity to avoid ambiguities which might give rise to conflict, and agreements to refrain from using alcohol or drugs while caring for the child if alcohol or substance abuse is alleged.

The MIS protocol also addresses the issues of power imbalances, intimidation and threats with a commitment to avoid joint mediation sessions unless the victim feels comfortable and the mediation team concurs that there are no safety risks. Mediators may also recommend an attorney for the minor child, psychological evaluation, a child custody

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investigation or a domestic relations investigation. Such investigations are recommended in 22 percent of TRO cases.

A new orientation system was recently adopted so that men and women involved with TRO cases have separate waiting rooms (equipped with sex-appropriate literature on battered women's shelters and other community resources dealing with violence) and separate orientations. The orientations explicitly address the fact that there are pending allegations of violence and describe the restraining order process and the behaviors prohibited in the TRO. Another issue addressed in the orientation is the harmful effect of conflict on children. The orientation addresses the elements of a safe parenting plan including neutral exchange sites, clear and concise plans, third party exchanges, and civil contact with the other parent. The orientation concludes with a description of the mediation protocol in cases with a temporary restraining order and notes that the exceptions to confidentiality in mediation are safety issues regarding children which must be reported to the county's child protective services agency and threats of harm to another individual which must be reported to the police.

Finally, MIS staff undergo an estimated 75-100 hours of training on domestic violence every year. Some of these are conducted jointly with the judiciary. They involve presentations by therapists who work with batterers, police officers, district attorneys and shelter personnel.

Data collected on 100 couples seen in mediation who reported a history of spousal abuse suggest that MIS mediators use the protocol to guide clients into more protective outcomes. While half the clients reached an agreement during their first session, a large proportion contained specific protective elements, such as monitored visitation, no visitation or exchanges through a third party. Approximately half of the cases that did not come to agreement were referred for an investigation or a psychological evaluation. These cases tended to have more serious risk issues (Magana and Taylor, 1993).

**Reactions of the Community:** Despite these accommodations, mandatory mediation in domestic violence cases remains controversial in California. In Orange County, there is particular controversy concerning the court's routine use of mediation techniques to develop temporary visitation plans for couples who obtain temporary restraining orders for domestic violence. There are regular legislative attempts to remove the mandatory mediation requirement. For example, in 1993, the McCorquadale Bill (SB 302), which would "optionalize" mediation in cases where there is a history of domestic violence or if a temporary restraining order exists, was narrowly defeated. Mediation advocates opposed the bill because of the low level of public education on the benefits of alternative dispute resolution methods and the public's perceived inability to make an informed decision about mediation. Mediators maintain that cases with domestic violence histories are often

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effectively handled within the mediation process; by eliminating mediation as a viable option, families will be left with no special provisions for making custody or visitation arrangements or handling the specific safety concerns of victims and children. Most parents in TRO cases are unrepresented by attorneys; without mediation they would have little or no third-party assistance in developing temporary agreements. As one mediation administrator put it:

"The (only alternative to mediation) the domestic violence advocates have is to "let them go to court." I don't believe these victims get better justice in a court hearing given the limited training of judicial officers and their limited time and case backlog."

Judges are also supportive of mediation in cases with a temporary restraining order which they perceive to be granted routinely on an ex parte basis to clients who are almost always unrepresented. Judges emphasize that temporary restraining orders offer no "magic protections" and are far from being "bullet proof or knife proof." They worry about couples who get restraining orders without any discussion about interim custody or visitation arrangements and view MIS as doing an excellent job in structuring a safe reality for these people.

"These advocates are in another world. Mediation is ten times more effective than judicial hearings...You are more secure with a temporary restraining order and a mediation agreement about custody and visitation that both sides bought into. Or that the man is recognizing his problem and is in anger management. That is more protection than an order from the bench."

Judges actually see more potential danger in regular divorce and post-decree cases where domestic violence may be harder to flag. They are distressed by the lack of no-cost and low-cost services for substance abuse, supervised visitation and counseling.

Appendix C contains materials on Mediation and Investigative Services of the Superior Court of Orange County, California.

### **3. Marriage and Family Counseling Service of Cook County, Illinois**

**Background:** The Marriage and Family Counseling Service (MFCS) of the Domestic Relations Division of the Circuit Court of Cook County in Chicago, Illinois, began mediating divorce disputes in 1982. The largest unified court system in the nation, Cook County handles over 21,000 new divorce filings each year. MFCS's in-house staff of 21 mediate approximately 2,100 custody and visitation disputes in new divorces and 1,000 disputes in post-decree or paternity cases. MFCS mediators also conduct approximately 200 "emergency evaluations" in cases where judges suspect there might be a risk of



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abductions or serious safety issues and want immediate feedback to guide their custody and visitation determinations (generally of a temporary nature). MFCS does not mediate access issues in protective order cases.

With the exception of emergency evaluations, all interventions with mediators are confidential. Only the parents' agreements are reported to the court. MFCS does not conduct child custody evaluations which are conducted by a separate wing of the court. Nor do mediators discuss financial issues in mediation, or make recommendations to the court following inconclusive mediations. MFCS's mediation services are provided at no charge to disputing parents.

By local court rule enacted in 1986, Cook County requires that its judges order mediation for couples in new divorce cases with custody disputes. In visitation disputes, post-decree and paternity cases, domestic relations judges have discretion over whether to require a mediation intervention. Some judges have higher order rates than others. Judges may also order parents to participate in an evaluation which is conducted by a separate court agency.

Virtually all MFCS mediators are trained mental health professionals with at least 40 hours of mediation training. The typical mediation case in Cook County requires two or three sessions, each lasting two hours. Approximately 65 percent of mediated cases result in full agreements and another 15-20 percent result in partial agreements. Clients attend an orientation prior to their first mediation where the process is explained along with its mandatory status, the difference between mediation and evaluation and the right of the parties to reach an agreement or to refuse to agree with no prejudice to the court.

**Statutory Framework:** The Illinois statutes are very attentive to the protection of victims of domestic violence and any involved minor children. Although Cook County makes mediation mandatory by Local Court Rule, the state statutes indicate that mediation is a voluntary process. All mediators must receive at least 30 hours of training in conflict resolution techniques and participate in an ongoing peer review program. In 1993, Illinois added a provision to its statute requiring that couples participate in a conciliation conference if the court or any party indicates there is a prospect of reconciliation. The court was also given authority to require that divorcing parents of minor children participate in an education program dealing with the effects of divorce on children and to prohibit mediation, conciliation or other processes that require the parties to meet and confer without counsel upon demonstration of good cause.

Illinois statutes make no presumption in favor of or against joint custody and child custody is determined in accordance with the best interest of the child. In its determinations, the court is instructed to consider, among other factors, ongoing abuse

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and physical violence or threat of physical violence by the child's potential custodian. Although Illinois has a "friendly parent" provision and presumes that the maximum involvement and cooperation of both parents is in the best interest of the child, the presumption is explicitly limited to situations where there is no ongoing abuse.

Noncustodial parents are entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, moral or emotional health. An expedited procedure is provided for enforcement of court-ordered visitation in cases of visitation abuse, which may include make-up visitation, supervised visitation or an order for counseling or mediation, except when there is evidence of domestic violence.

Either party to a marital action may move for a temporary restraining order or a preliminary injunction enjoining a party from striking the other party, but this can only be issued without notice to the respondent if irreparable injury will result to the moving party. Protective orders may be issued by the state's attorney without notice upon a showing of immediate and present danger of abuse to the victim or minor children. The order may direct the defendant to initiate no contact with the alleged victim and to refrain from entering the residence. Divorce mediation is not addressed in Illinois statutes. The State Supreme Court has issued guidelines to individual jurisdictions contemplating mediation programs that permit an opt-out for domestic violence, screening of clients and mediation training. Jurisdictions that have adopted mandatory mediation have done so by Local Court Rule.

**Community Awareness of Domestic Violence:** Under the Illinois Domestic Violence Act of 1986, domestic violence is recognized as serious crime. The legal system is faulted for dealing with family violence ineffectively and for allowing abusers to escape prosecution or financial liability. The Act exhorts courts to enforce court orders prohibiting abuse and when necessary, reduce the abuser's access to the victim and make any related decisions on the issues of child custody and economic support, so that victims are not trapped in abusive situations by fear of retaliation, loss of child or financial dependence.

In 1990, domestic battery was made a class A misdemeanor. In 1994, a second and subsequent violation was made a class 4 felony. Any second conviction of committing an act of domestic battery within five years of a previous conviction results in a mandatory sentence to a minimum of 48 consecutive hours of imprisonment without the possibility of probation or sentence reduction. Violations of an order of protection for the first time, or a second, subsequent time, are also class A misdemeanors and class 4 felonies, respectively, with minimum penalties of 24 hours of imprisonment for a second or subsequent violation. In 1992, Illinois statutes were amended to criminalize stalking.

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When determining whether to issue an order of protection, the court cannot require physical evidence of injury. Many remedies are available to the victim including exclusive possession of the residence, mandatory counseling in a program on domestic violence, physical custody of the minor child, temporary legal custody, restricted visitation, payment of child support, and payment of shelter services. The court must consider the severity and pattern of abuse and future danger in deciding whether to grant a specific remedy other than payment of support. Remedies may not be denied based on evidence that the respondent had cause for any use of force or was voluntarily intoxicated. Mutual orders of protection are also prohibited. If it is believed that notice will precipitate violence, emergency orders may be granted without notice for not less than 14 nor more than 21 days. Interim orders are effective up to 30 days. Plenary orders are valid for a fixed period of time, not to exceed two years.

Illinois police officers may arrest without a warrant persons who violate an order of protection. They must also take action to prevent further abuse, neglect or exploitation. When a law officer does not exercise arrest powers or otherwise initiate criminal proceedings, the officer is required to make a police report, inform the victim of the victim's right to request that a criminal proceeding be initiated, and advise the victim of the importance of seeking medical attention and preserving evidence.

**Family Court Response:** MFCS's response to the problem of domestic violence was precipitated by a variety of internal and external pressures. When the new court rule mandating mediation went into effect in 1986, the agency experienced a tremendous growth in case volume and a shift in focus from marriage counseling to divorce mediation. Although the court's sensitivity to violence had been heightened in a 1983 shooting of a judge and attorney by an irate husband with a concealed weapon, and metal detectors and security personnel were instituted at the court, domestic violence was invisible to most MFCS mediators. At the agency's first mediation training program in 1982, John Haynes stressed a "pure" model of mediation and warned mediators about compromising their neutrality by meeting privately with the parties. MFCS mediator embraced cooperative dispute resolution and rejected the idea of caucusing with parties or using shuttle mediation techniques.

MFCS' reaction to the debate about mediation and domestic violence was due to local and national events. At the May 1988 annual conference of the Association of Family and Conciliation Courts, presenters accused mediators of victimizing battered women. The following year, AFCC sponsored a National Forum on Mediation and Domestic Violence in Chicago. It was attended by representatives of the National Women Abuse Prevention Project and the Battered Women and Mediation Project of the National Center on Women and Family Law. While MFCS mediators attempted to describe their new safety policies

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for treating cases with domestic violence, the advocates seized control of the stage to voice their concerns. The forum ended with a public relations debacle.

These events served to jolt the Circuit Court to examine its approach to domestic violence and to develop policies that were responsive to the program's local and national critics. In 1988, the presiding judge created a Family Violence Committee (FVC) comprised of MFCS mediators. They were instructed to develop a mediation process responsive to families with severe imbalances of power who were ordered by the court to mediate. In 1990, the Illinois Supreme Court formed a sub-committee to study mediation of child custody, support, and visitation disputes when domestic violence is present.

One of FVC's first acts was to study the incidence of domestic violence cases in the mediation program and their treatment by MFCS mediators. During a two-month period in 1989, mediators identified domestic violence in one-third of their caseload. They subsequently completed questionnaires recording outcomes in 80 cases with and 149 cases without domestic violence. The research revealed that domestic violence cases were more apt to result in no agreement, to proceed to non-confidential emergency assessments and to proceed to trial. They were also less apt to result in joint custody. Over half of the domestic violence cases had orders of protection and a quarter left mediation with supervised or restricted visitation arrangements (Massaquoi, 1989).

Simultaneously, FVC developed a protocol aimed at assisting mediators with assessing and working effectively with severe imbalances of power. The new protocol called for screening all parents for hidden weapons, the creation of several waiting rooms so that parents could be physically separated, and the conduct of an orientation program aimed at explaining the mediation process and dispelling misconceptions that clients held about mediation. FVC also developed an intake procedure that ultimately consisted of both a written screening and separate, in-person meetings.

The written component of MFCS's intake procedure consists of a 14-item questionnaire that each parent must complete separately. It deals with the salience of various safety concerns, physical confrontation between the parents, fear about meeting with the other parent and the mediator, and sense of equality in the relationship. In more recent years, the intake procedure has been amended to include individual interviews with each parent to clarify concerns that have been identified in the questionnaire and/or to gain more information about the level of conflict between the parents, patterns of decision-making, the degree of power imbalance, the degree of abuse and the need for a safety plan. Intakes are conducted on the day the couple is ordered to mediate by the judge, not on the day of mediation.

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Following the intake, couples are scheduled for orientation and mediation. Co-mediation by male-female teams may be utilized in domestic violence cases, along with shuttle mediation. In these situations, parties are kept physically separate and their proposals are brought back and forth. Finally, parties can opt out of mediation at any time although this has fallen into disuse in favor of screening because the opt out may be perceived as burdensome to victims.

Several MFCS mediators have become experts at screening for domestic violence in divorce mediation cases and routinely conduct training programs on the topic at regional and national conferences. A research project comparing the responses of 35 female and 26 male clients with a domestic violence history who mediated at MFCS between November 1, 1990 and June 1, 1991 revealed higher levels of user satisfaction for women than for men. Women were more apt to report feeling safe discussing their thoughts in mediation, suggesting that the "measures" taken at MCFS to address safety and fairness issues in mediation with clients who have a history of domestic violence have met with some success (Raisner, 1993).

**Reactions of the Community:** In 1980, women in Chicago who provided services to victims of domestic abuse formed the Chicago Metropolitan Battered Women's Network (CMBWN). They met regularly in order to improve the range of services available to victims, from shelter and safe space to reforming the legal system. In their quest to improve the legal protections afforded to women, MFCS became one of their prime areas of concern. CMBWN maintained that battered women were required to participate in mediation with abusive male partners and found these meetings unproductive, intimidating, or coercive. CMBWN met with the director of MFCS and requested that mediators suspend mediation in cases of physical abuse. The request was denied, as was a request for mediators to meet with parents separately in cases of physical abuse. The result was a stand-off that persists to this day. Although there has been some rapprochement in recent months, as the current clinical director of MFCS put it:

"In the Chicago area, when domestic violence community advocates came to the office to request separate sessions, the former director refused and they have never revised their view of us."

A more recent example of the rift between the mediator and domestic violence communities occurred with respect to a parent education program initiated by MFCS in April, 1994. Originally designed to be a four-hour intervention for all parents with minor-aged children, Focus on Children was made mandatory by local court rule. Soon after the program began, however, an attorney brought a class action suit challenging the constitutionality of mandatory attendance. Currently program participation is based on judicial discretion and the program rules are being written to permit parents to be excused from attending because of domestic violence and other problems.

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Appendix D contains materials on the Marriage and Family Counseling Service of the Domestic Relations Division of the Circuit Court of Cook County.

#### **4. Family Services Unit of the Connecticut Superior Court**

**Background:** The Family Services Unit (FSU) of the State of Connecticut Superior Court assists Connecticut's twenty-two criminal courts and fourteen family relations courts in virtually all family matters including divorce and domestic abuse. The statewide Unit currently consists of 115 paid professional staff (Family Relations Counselors) who are based in twelve principal and seven satellite offices. The agency is funded by the Judicial Department and offers a uniform mix of services throughout the state.

By rule of the Chief Administrative Judge of the Family Division, most family cases pass through the FSU's "court negotiation" process. The exceptions to this are paternity and IV-D cases which are handled by magistrates who do not refer cases to Family Service counselors.

Initially conceived as a way to divert inappropriate cases from the judges' calendars, the negotiation process now results in many settlements and also serves as an entry point to mediation. Family Relations Counselors meet with attorneys and parties to discuss and negotiate any and all disputed issues pertaining to divorce including the terms of restraining orders, child support, division of property, custody, visitation, etc. Cases involving civil restraining orders are also handled through the Family Services' court negotiation process (including visitation disputes that arise in restraining order cases). By court rule, new divorce or modification cases with custody or visitation disputes are referred to Family Service's program, if appropriate. Cases inappropriate for mediation, including cases involving serious issues of family violence, are referred to the Family Service Unit for evaluation.

In addition to court negotiations and mediation, Family Services provides a mandatory divorce education program, parenting evaluations, final settlement conferences, and criminal court case evaluations and counseling. Couples who do not reach agreements in mediation and fail to resolve their custody access disagreements are referred for a parenting evaluation with Family Services. Following the parenting evaluations, parents may attend a Final Settlement Conference at which they have an opportunity to hear and respond to the results of their parenting evaluation. While mediations are confidential, Family Services makes recommendations to the court following the Final Settlement Conference.

Connecticut's Family Violence Act of 1986 authorized Family Services to intervene in criminal family violence cases and conduct assessments of danger. The results of these

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dangerousness assessments are reported to the court along with recommendations for treatment. Family Services provides counseling for batterers through contracts with community agencies.

The Family Services unit conducts approximately 3,000 mediations per year and 850 evaluations. It also disposes of 22,000 family violence cases, principally consisting of assault, breach of peace and disorderly conduct matters. Three-quarters of the matters disposed of by the Family Services Unit are nolle prosequi following variable levels of services and 15 percent are dismissed upon satisfactory participation in a family violence education program.

**Statutory Framework:** Family violence is defined as an incident resulting in physical harm and not verbal abuse or argument. As of 1986, a person suspected of committing an act of family violence, must be arrested and charged with the appropriate crime. The victim does not have to consent to the arrest or charge. Also in 1986, family violence response and intervention units were established in the Connecticut judicial system. These units conduct court assessments of batterers, provide services to victims and offer family violence education for persons charged with family violence crimes for the first time. Defendants who complete family violence education and comply with conditions imposed by the court can have charges dismissed. Violations of treatment orders and other court-imposed conditions are prosecuted.

Connecticut's 1986 Family Violence Prevention and Response Program also calls for ongoing training for judges, family division personnel, bail commissioners and clerks about family violence and relief available for victims.

All household members subject to threat of physical injury are instructed to apply to the Superior Court for a Restraining Order which may include temporary child custody or visitation rights. Ex parte orders may be granted if an applicant alleges an immediate physical danger. The court may impose appropriate sanctions for violating a restraining order at an expedited hearing.

Only in cases where both parents request joint custody is there a presumption that it is in the best interests of a minor child. Where one parent seeks joint custody, the court may order both parents to submit to conciliation at their own expense.

**Approach to Domestic Violence:** Connecticut's response to domestic violence was shaped by the Tracy Thurmon case of 1985 in which a victim of domestic abuse successfully sued the Torrington Police Department for their lackluster behavior when responding to her call for emergency help. A Governor's Task Force on Family Violence was established in late 1985 with a mandate to strengthen the statewide response to

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family violence. The result was Connecticut's Family Violence Prevention and Response Act which went into effect on October 1, 1986. Although much of the Act focused on police and prosecutorial behaviors (mandatory arrest, next court day arraignment, increased availability of criminal court protective orders), the Family Services Unit was given the job of conducting assessments of batterers and recommending treatment for batterers and services to victims. The Family Division was given responsibility for overseeing the response of the state's family violence intervention units.

The Governor's Task Force evolved into an interagency response committee which, in turn, evolved into an ongoing collaboration between the Family Division and the Connecticut Coalition Against Domestic Violence (CCADV). The Family Division contracts with CCADV for victim advocacy services and in the ensuing decade, the domestic violence community and the Family Relations Unit have worked together to accommodate the case volume increases due to the mandatory arrest policy. To avoid multiple interviews of victims, Family Relations Counselors and domestic violence advocates developed a certain rapport and a division of labor that varies from locality to locality. Connecticut's approach precludes the use of mediation, as traditionally defined, in criminal court cases (Menard and Salius, 1990).

Connecticut's response to domestic violence through its criminal court intervention units has overshadowed concerns about divorce mediation and domestic violence. Indeed, there is a perception that the state's mandatory arrest policy serves as a "front line of defense" for the court's mediation program because "if there was violence, the woman would have called the police and there would have been an arrest." As a result, the Family Services Unit has adopted an informal and eclectic approach to identifying and treating domestic violence in its divorce mediation caseload. As a Family Services Unit supervisor put it:

"Domestic violence is one of many issues. It is not a burning issue. It is more flexible. We don't have rigid guidelines and procedures. But we do have flexibility and can shape the process, use the opt out and do what is needed to meet the needs of clients."

There are no screenings before the negotiation phase. This is an in-court attempt to work out an agreement dealing with the immediate financial aspects of a divorce (although some custody and visitation issues may be addressed). Family Relations Counselors maintain that attorneys are typically the prime actors in this phase of case processing and that attorney participation shields couples from the potential imbalances and dangers associated with a domestic violence history. Nor is there any requirement for the parties to sit together in the same room. Negotiators might deal only with attorneys or the clients can be in separate rooms. The outcome of a court negotiation might be a settlement, a court hearing or referral to another Family Service Unit function like mediation or evaluation.



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Couples who have disputes about custody and visitation are generally ordered by the court to attempt to mediate. Screening for domestic violence prior to the mediation phase occurs at the point of referral through intake interviews in court. (See Referral Form in Appendix E.) The mediation process is explained to clients who are then questioned about the nature and extent of any violence that might have occurred in their relationship. Clients are then asked if they have any concerns about meeting jointly with their partner in mediation. Custody or visitation disputes in which either the client or counsel has concerns about family violence impacting the mediation process are referred for evaluation rather than mediation. Additionally, since all family violence arrests are referred to the Family Services Unit for assessment and recommendation, counselors are generally aware of any family violence situations that culminate in arrest.

A parent's ability to opt out of mediation, without fear of sanction, is regarded as another form of protection for couples with a domestic violence history or extreme imbalance of power. Counselors regard the order to mediate as an opportunity rather than a mandatory intervention. Although counselors may try to reschedule a mediation when a couple fails to show, the case is typically referred for an evaluation prior to a judicial hearing. It is unclear how often parents opt out of mediation by failing to appear. No statistics are kept on the numbers of scheduled mediations that fail to go forward because of non-appearance but counselors estimate that it is not large.

Once mediation begins, the dangers of domestic violence are monitored using several techniques. Most mediations are conducted by male-female teams and it is believed that this staffing pattern minimizes power imbalances and helps mediators better monitor the process and identify couples who are mediating inappropriately. Another typical pattern is to conduct multi-session mediations with opportunities for mediators to contact parents between the sessions and determine whether there are safety concerns.

Counselors have the option of caucusing separately with each parent. They note that when a parent is "too compliant," they will "caucus with them privately and warn them not to give in." Still another layer of protection comes from the review of all agreements reached in mediation by attorneys for the parties.

As part of the 1986 Family Violence Act, Family Service Unit counselors were given the job of conducting assessments of batterers and recommending sanctions and treatments. Counselors see each case that passes through criminal court on charges of family violence. Family Services works with leading researchers in the field of domestic violence to develop and test assessment tools to measure risk among batterers and to determine alternative sanctions for prosecutors.

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Connecticut has sponsored several studies to evaluate various aspects of the Family Violence Prevention and Response Act, including a study of the services provided by family violence victim advocates, the family violence offender education program, and the post-arrest processing of family violence cases in the criminal courts (Connecticut Office of Policy Management, 1933; Appendix E). The Family Services Unit was also part of a multi-site evaluation of short and longer-term client reactions to divorce mediation. That study showed that 59 percent reached an agreement in mediation. Mediation clients also registered impressive levels of satisfaction with the process, especially when compared with their reactions to the legal system in general (Lyons *et al*, 1985).

**Reactions of the Community:** Although the Family Service Unit's negotiation and mediation interventions are extensive, they have aroused relatively little controversy from the state's domestic violence coalition. This is the case for several reasons.

The state's mandatory arrest policy has led some advocates to feel as though victims are readily flagged and treated in the criminal court setting and that there is another place for domestic violence to be addressed. The state has adopted the firm premise that family violence is most appropriately treated as a criminal matter and no aspect of a family violence case before a criminal court is mediated, either formally or informally. If custody or visitation issues need to be addressed in the context of a criminal case, "information is solicited from both parties separately, either directly or through any attorneys or victim advocates involved. Family Relations Counselors use this input to develop the recommendations that will be presented to the court on the day an order of protection is issued" (Menard and Salius, 1990:298).

The dangers of domestic violence in the negotiation process, which is conducted without any prior screening, are diffused by the participation of attorneys. Perhaps, like Maine, where attorney participation appears to diffuse some of the perceived risks to mandatory mediation, the presence of attorneys and their active involvement in court negotiations appears to make this intervention less controversial.

The lenient policy toward no shows in the mediation program is also believed to diffuse some of the controversy concerning mediation and domestic violence. Although mediation is court-ordered, there is no sanction for non-attendance. Although Family Service Unit counselors may make informal efforts to reschedule a mediation with a couple who fails to appear, the more typical procedure is to notify the court that mediation did not occur and schedule the family for an evaluation. Women known to the court to be currently battered are not forced into mediation in a civil court context.

Still another reason for the lack of controversy is the strong relationship between the Family Service Unit and the domestic violence community. The Judicial Department

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contracts with CCADV to provide victim advocates in the criminal court. These contracts amount to nearly one half million dollars per year and buy the equivalent of 24.5 full-time victim advocates. Victim advocates feel that they have been included at local and statewide policy levels and are active partners involved with training Family Service Unit counselors, judges and other members of the criminal justice system.

There is also functional overlap between advocates and counselors. In many localities, Family Services Unit counselors and victim advocates have developed a comfortable division of labor whereby they divide interviewing duties to avoid multiple interviews with victims. In court settings where judges frequently rotate every six months and there is often job turnover among state's attorneys, Family Service Unit counselors and victim advocates are often the most stable players in the system.

Finally, advocates and counselors share certain philosophical perspectives. According to advocates, the mandatory arrest policy has brought them into contact with many clients who intend to stay in the relationship. Advocates have come to recognize the need for safety plans and other court remedies for women who continue to have contact with batterers, which is the goal of many divorce mediation agreements negotiated by counselors with the Family Service Unit. As one victim advocate put it:

“Because of mandatory arrest, we are seeing women who do not want domestic violence services. They are not willing clients. So we began to focus on safety plans for staying. That has resulted in bringing us closer to where Family Relations counselors have always been...We are pragmatists. Battered women have to live in the real world and they have to live with real options, not theoretical options. Our advocates do not believe that the legal response is the only response.”

While mediators express comfort with their approach to domestic violence identification and treatment, they acknowledge that more formal screening procedures might become more necessary as the number of pro se litigants rises and attorneys vanish from the court negotiation process.

Appendix E contains materials on the Family Division of the Superior Court of Connecticut and research abstracts relating to the Family Violence Prevention and Response Act.

## **5. Court Mediation Service of the Maine Judicial Department**

**Background:** Court mediation in Maine began in 1979 with a pilot project dealing with the mediation of contested small claims cases. A comprehensive evaluation of this project (McEwen and Maiman, 1981) revealed that mediation was an effective way to produce compromise agreements and to produce compliance. In 1981, mediation was extended to

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divorce disputes. Prior to this, judges had ordered couples seeking divorce to go to a counselor to prove that their differences were irreconcilable.

In 1984, the Court Mediation Service was established by statute and mediation was made mandatory in all contested domestic relations cases with minor children. Mandatory mediation applies to married and unmarried parents seeking orders with regard to their children; it applies at temporary, final and modification phases of an action.

Maine's Court Mediation Service (CMS) is part of the Maine Judicial Department and serves 32 District and 16 Superior Courts throughout the state. All mediators are independent contractors who work part-time. They are paid \$50 for each two-hour mediation session that they conduct. The Court Mediation Committee, comprised of chief judges and administrators of the various Maine courts, sets policy and monitors the program; the District Court provides facilities, office space and clerical assistance. One mediator is selected by the Chief Judge of the District Court to serve as the Director of CMS.

Currently, CMS handles more than 3,000 mediation cases each year. CMS reports that roughly one-half of all mediation sessions conclude with an agreement. The remaining sessions conclude without settlement, although about twenty percent are rescheduled for further mediation. Divorcing parties are now assessed a fee of \$120 for mediation, although fees are waived for indigents.

Maine mediators address all the issues in dispute: custody, visitation, child support, property division and alimony. Parties are encouraged to have their attorneys with them at the mediation sessions if they wish. Attorneys assist in the process of mediation and provide legal advice to their clients. All custody evaluations are performed by court-appointed Guardians Ad Litem (GALS) who are empowered to investigate the circumstances of both parents and make recommendations to the court. CMS mediators do not mediate civil or criminal protective order cases.

**Statutory Framework:** Both Maine's mediation and domestic violence prevention efforts operate within the state's commitment to the best interest of the child as the standard for determining parental rights and responsibility. The statute lists physical access and domestic violence among the factors to be considered by the court. Thus, in making determinations about parental rights and responsibilities, the court is instructed to consider the capacity of each parent to allow frequent and continuing contact with the child as well as the existence of a history of domestic abuse between the parties and child abuse by a parent. Joint custody is the prerogative of the parents and it must be awarded if the parents agree to a shared parental rights and responsibilities arrangement. Abandonment of the family home cannot feature in the court's determinations about

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parental rights and responsibilities if the abandoning parent has been physically harmed or threatened with harm.

Domestic abuse is recognized as a serious crime. In 1993, mutual orders of protection were prohibited and the statutes stated that victims should be protected through the prompt issuance and enforcement of court orders that prohibit abuse, reduce the abuser's access to the victim, and address relevant child custody and economic support issues. Within 21 days of filing a complaint for protection from abuse, the court must hold a hearing at which the plaintiff must prove allegations of abuse by a preponderance of the evidence. Upon a showing of good cause, the court may enter an emergency temporary order which may include provisions concerning the custody of any minor child. The order may be granted on an ex parte basis and remains in effect pending the hearing or, as of 1989, service of the final order.

A protective order issued after a hearing or a conviction lasts for up to a year and may provide relief from abuse as well as required counseling. Other relief may include payment of temporary support. At the end of the year, the order may be extended or otherwise modified, but the plaintiff must take a legal action; inaction does not diminish or negate the effectiveness of the order. The criminal code also provides that a protective order may be issued for domestic violence or likelihood of future violence. The order may include restricted visitation and staying away from the home, school or place of employment of the victim. Violations of any type of protective order is classified as a crime.

Police officers are mandated to arrest alleged offenders when they have probable cause to believe that there has been a criminal violation of a court-approved consent agreement or a protection order or an offense between family or household members has occurred.

Maine statutes specifically address protection from harassment in addition to protection from abuse and there are provisions for the issuance of temporary orders prohibiting harassment without written or oral notice to the defendant, hearings, protection orders and penalties for violation of protection orders. Police officers are required to be trained in the problem of harassment.

**Procedures Dealing with Domestic Violence:** The Court Mediation Service has been very involved in the debate about mandatory mediation and domestic violence. In 1989, CMS applied for and received a grant from the State Justice Institute to examine the question of using mediation in both protection from abuse cases and domestic violence matters when abuse has been a factor. The project involved convening a national panel of mediators, judges, domestic violence advocates, attorneys and court administrators to determine whether mediation was "a helpful option" or "an unacceptable risk" in both types of cases. The project members were unable to reach consensus about this matter with

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respect to protection from abuse orders with about half opposing and half favoring the use of mediation in these matters. There was greater consensus among project members regarding mediation in domestic relations matters when abuse has been a factor. The group recommended the use of screening protocols, a specialized application of mediation techniques in cases with domestic abuse, and cross-training in mediation and domestic abuse for court personnel, mediators and domestic abuse prevention workers.

Based upon the panel's recommendations, CMS adopted a protocol in 1989 (amended in 1994) dealing with mediation and domestic violence. To uphold the public policy message that domestic abuse is "criminal and intolerable behavior," CMS decided not to mediate civil or criminal protective order cases and avoid diluting the message with a conciliatory procedure.

CMS retained mandatory mediation in domestic relations cases when abuse is a factor but has adopted many of the panel's recommendations regarding screening and mediation practice. At the first mediation session, mediators meet together with their parties and their attorneys to give introductory information about mediation. Next, mediators meet privately with each party and his or her attorney to ask questions to uncover the possible existence of domestic abuse and to assess its impact on the parties' safety and their ability to mediate meaningfully. CMS recommends that certain questions be asked, but it is up to each mediator to determine how to conduct the screening.

If warranted, the mediation may be conducted with the parties remaining in separate meeting rooms. These "shuttle mediation techniques" require that mediators and attorneys travel back and forth. Threats are exempt from confidentiality and the mediator may terminate mediation and warn the person threatened. The mediator may terminate mediation in dangerous or extremely unbalanced situations. In these instances, the mediator marks the report, "Unresolved" and the matter is referred to the court. Alternatively, parties can file a motion to waive mediation for domestic violence reasons. Although judges tend to approve waivers if a protective order is in place, relatively few parents apply for them and only about five percent of contested divorce filings are eliminated from mediation because of domestic violence.

CMS remains unique in routinely inviting attorneys to participate in the mediation process along with their clients. This is widely regarded as a key protection for victims of domestic abuse and others who may be passive and otherwise disadvantaged by virtue of a power imbalance. According to many mediators, advocates and attorneys, CMS's "lawyer-participant" approach to mediation addresses many of the concerns about safety and fairness in divorce mediation. A recent comparison of mediation practice in Maine and New Hampshire concluded that, by attending mediation sessions, Maine lawyers prevent clients from making inappropriate settlements, protect clients against mediator pressures,

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and balance unfair bargaining advantages that the other party may have (McEwen *et al.*, 1995).

**Reactions of the Community:** Maine's mandatory divorce mediation policy never came under very heated attack. One reason for this was the routine participation of lawyers in the mediation process. It is estimated that in urban areas, virtually all divorce mediations are attended by attorneys. Lawyer participation is more problematic in rural parts of the state. Nevertheless, Maine's approach to mediation addresses at least some of the concerns identified in the recent attack on mediation.

Another reason why the mediation and domestic violence communities have co-existed relatively amicably in Maine is because of a high level of communication and familiarity. Following the 1976 publication of Del Martin's *Battered Wives*, independent shelter movements began in Portland, Bangor and Augusta. In 1977, the Maine Coalition for Family Crisis Services (MCFS) was formed and in 1979, the coalition obtained state funding for domestic violence shelters. About this time, pilot projects were initiated dealing with small claims and divorce mediation. With its reliance on "humanists" and other community volunteers to be mediators, several individuals who were prominent in the shelter movement became mediators. These "crossover" individuals were instrumental in keeping the two communities informed about one another, dispelling misconceptions that frequently develop in the absence of communication, and conducting training programs on domestic violence for mediators.

Still another reason for the lack of rancor between mediators and domestic violence advocates in Maine is the responsiveness of the mediation community to safety concerns. In 1989, CMS submitted a successful application to SJI and received a grant to convene a national forum to discuss mediation and domestic violence. It was the first of several multi-disciplinary dialogues aimed at addressing the issue of safety in divorce mediation practice. In 1992, the Maine Court Mediation Service published the Final Report of the Domestic Abuse and Mediation Project, which contained important recommendations on screening and mediation practice that have been widely adopted in other jurisdictions.

Finally, potential conflict in Maine may have been diffused by official recognition of the importance of both social issues and services. During the 1980s, Maine underscored its commitment to both mediation and domestic violence prevention. As the Judicial Department's mediation program grew, so did allocations for shelters and domestic violence prevention programs. Indeed, by 1989, the state was appropriating about one million dollars per year to domestic violence programs for outreach and other services aimed at preventing domestic violence.

Appendix F contains materials on Maine's court mediation service.

# C hapter 5: **Procedures to Detect Domestic Violence**

Mediation programs screen for domestic violence in different ways, but in all settings it is generally regarded as an "art" rather than a science. The process depends heavily upon individual judgment calls by mediators to determine whether and how mediation should occur with a particular couple. Thus, at heart, each program utilizes subjective assessments by mediators to make critical decisions about mediation.

**Informal Screening:** Programs with the least formal screening procedures tend to have the strongest external mechanisms for flagging and diverting serious domestic violence cases. For example, the Family Service Unit in Connecticut eschews a formal screening process in part because program administrators and mediators feel confident that family violence is detected through the state's mandatory arrest procedure and the Unit's related screening, victim advocacy and counseling interventions with family violence cases. Domestic violence is also flagged by counselors who negotiate temporary financial arrangements at the court and/or subjective assessments by mediators at the start of the mediation session. Finally, since mediation staff also handle criminal domestic violence matters, the same counselors often handle the same families in both contexts. As one mediator put it:

"There is some sentiment that there is another front line of defense for domestic violence with the criminal court. If there was violence, the woman would have called the police and there would have been an arrest. That sort of feeling."

Similarly, while mediators in Maine are required to do a private, in-person interview with parents regarding domestic violence, each mediator screens differently using unique introductory remarks, questions and interview styles. As one mediator explained, "We have a suggested script, but we can deviate." One reason mediators have this latitude is because mediation sessions in Maine are routinely attended by attorneys who actively participate in the process and, presumably, protect their clients from power imbalances and other disadvantages. Maine attorneys say they can't imagine victims mediating with no representation; mediators feel attorneys add an element of protection:

"I feel safer mediating with an attorney. We can say, 'would you like to talk with your attorney', or the attorney can say, 'we'll think about this'. They are a safety buffer."

Although programs with informal screening procedures tend to rely on clients to opt out of the mediation, this is challenged by mediators who use more structured screening



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devices. For example, Chicago mediators feel as though parents are generally too intimidated to resist an order to mediate from a judge in the largest unified court system in the nation. They feel that many "terrified and depressed" women come through the court and need one-on-one assessment of the viability of mediation.

**Written Screening:** Questions about domestic violence and other safety concerns routinely appear on program intake sheets and other written questionnaires completed by parents prior to mediation. Due to the potential influence of batterers, these forms are filled out in person rather than mailed to parents in advance or completed over the telephone. While informational forms are regarded as useful, they are not viewed as a substitute for an in-person interview. Many mediators feel that couples are reluctant to disclose violence and other safety problems in writing. Rather than being definitive, written screening tools are often used as exploratory tools to alert mediators to issues they might pursue in an in-person format. For example, all mediation clients in Chicago complete a confidential questionnaire that includes 14 items dealing with domestic violence and other safety concerns. This is reviewed by mediators during an ensuing private interview with each client. Based on this assessment, the mediator decides whether to proceed with mediation and the style of mediation to be used. Telephone screening is rejected by most mediators because of potential intimidation factors and the importance of "visual clues" in detecting power differentials.

**Court Records:** Restraining orders are also viewed as suggestive rather than conclusive evidence that mediation is or is not appropriate. In most jurisdictions, restraining orders are granted on an ex parte basis, without any airing of the circumstances. There is also a tremendous degree of variability in judicial policy toward restraining orders with some judges granting them liberally to any woman who alleges a threat of violence and others granting mutual restraining orders to give the appearance of fairness and balance. Many mediation proponents and opponents suspect that restraining orders are frequently pursued to obtain a tactical advantage in the divorce process. According to some attorneys, abuse of the restraining order process has led to its devaluation. The net effect is that judges and mediators alike often lack confidence in the true meaning of a restraining order and prefer not to use it as the basis of an automatic opt-out in mediation. For example, in Tucson, the restraining order triggers the mediation staff to conduct a more extensive, in-person, private interview with each parent to determine their suitability for mediation, but does not exempt the couple from the court's mandatory mediation intervention. Since many cases with abuse do not have a restraining or protective order, program staff in Chicago feel they must approach "all cases with caution." Indeed, in their view, the most frightened victims may refuse to get orders while those who seek them may be in a position of "relative safety." Research on 100 mediations with domestic violence factors in Orange County, California revealed that 82 percent could be flagged from documents in court files. In 18 percent of the cases, however, the problem

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could only be surfaced through intake procedures with mediators (Magana and Taylor, 1993).

**Formal Interview Protocols:** Although some mediation programs like Connecticut lack formal screening checklists and ask parents more generally whether they can "proceed comfortably" in mediation, most programs use written screening protocols to guide their interviews with parents. In Tucson, mediators follow a ten-question checklist that begins with more neutral questions about whether either parent is taking medication or has any major health problems. In Chicago, mediators review a 14-item questionnaire that the parties complete privately prior to the interview. Using a conversational style, mediators invite parents to volunteer relevant personal information without being "caught" by more intrusive and direct questioning. The sequence of questions moves from less controversial issues to styles of disagreement, arguments, threats and fights.

In screening interviews, mediators also try to gauge the severity of domestic violence. Parents are asked whether their arguments have "escalated to a physical level at any time." They are asked about police, hospital involvement, participation in a shelter program, destruction of property, orders of protection and use of a weapon. Some questions are designed to gauge the frequency of abusive incidents. Effort is made to distinguish between verbal and physical abuse. Across all program sites, mediators emphasize the need to ask behavioral questions rather than general ones. Thus, while relatively few parents admit to a history of domestic violence, many are willing to report pushing, hitting and other fighting behaviors, along with harassment and threats of violence.

Virtually all screening protocols include a point-blank question to the parent about their capacity to mediate. This requires that each parent make a global assessment of their own situation and determine whether they can meet with the other parent to discuss their divorce disagreement. In Tucson, this information is elicited by the questions:

"Do you have any concerns about being here today? Are you comfortable about meeting with him? With all that is going on, do you think you could mediate? Can you bring up your concerns with him in the room?"

In Maine, mediators look for "imminent threat and ability to mediate." They often ask: "Are you going to be uncomfortable, and will it be hard to hold your own end up?" Mediators in Chicago ask victims whether they feel able to "say no" in mediation.

**Interview Techniques:** To enhance disclosures, some mediation programs (Tucson) use a male-female mediation team to conduct the screening interview with the mediator questioning the parent of the same sex. Another technique is to ask repeated questions about styles of disputing, and the client's perceived ability to mediate. Still other

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mediators emphasize the importance of "meandering" during the interview. A Maine mediator explains:

"The point of meandering is based on the fact that the victim and abuser tend to minimize abuse, so we go through the back door. We ask, 'How do you handle anger? How do you make decisions?' It is not the physical violence issue, it is the fear that is engendered that is my indicator. "Are you afraid of him?"

Mediators in Chicago are trained to pay attention to body language, resistance to separate interviews with each family member, appearances of incompetence and charm, extreme behaviors, and attempts by one party to speak for the other. When there is a disclosure, they look for evidence of denial, minimization, or responsibility on the part of the person who acted abusively. Among victims, they look for willingness to hold the abuser responsible or engage in self blame. Other signs of concern are disclosures of extreme family isolation and the use of religion to control another family member.

The private interview is presented as an opportunity to determine whether mediation is appropriate and, if so, whether specialized techniques should be used to enhance safety. Mediators can spend as little as ten minutes with each parent, or more than forty, to accomplish this task. Parents are often eager to present their story and mediators must frequently redirect them to the narrower scope of the screening: domestic violence and capacity to mediate.

**Mediator Assessments:** At all program sites, mediators report that the majority of couples have had some history of domestic violence. For example, in Tucson, mediators estimate the incidence to be 80-90 percent. This compares with the incidence of abuse reported in several research studies ranging from 61 percent (Davies *et al*, 1995) to 75 percent (Johnston and Campbell, 1993) to 80% (Newmark *et al*, 1995).

At the same time, no site reports that more than five percent of clients are excluded from mediation due to domestic violence. Thus, the common perception by mediators and program administrators is that episodes of hitting, pushing, shoving and other more serious forms of violence are pervasive among separating and divorced couples, but that relatively few are unable to mediate. When they interview couples, mediators try to gauge the nature and level of violence, the level of denial regarding violence, the episodic versus systemic nature of the violence, and the parents' subjective assessment of their ability to participate. As a Maine mediator observes:

"The key thing is a person's ability to negotiate. A person with one incident of violence can be less able to negotiate than someone with many incidents of violence. You look for the extent of denial and control."

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Another factor that comes into play in the mediator's assessment of a couple's ability to mediate is the complexity of the allegations made by each parent. Abuse allegations are rarely simple and, in many families, each parent comes to mediation somewhat compromised. For example, in one mediation scenario, a father who is an admitted substance abuser negotiates with a mother who is in a violent and abusive relationship with a new partner. Mediators feel that substance abuse often underlies many physical abuse situations and there are many other family problems that are equally or more compelling than domestic violence in determining suitability for mediation. This might include child abuse, substance abuse, criminal behavior and certain personality disorders.

Mediators tend to view power as complex and a domestic violence history an unreliable indicator of power differentials and disparities. They distinguish between "situational" violence and intimidation. According to some mediators, verbal skills, emotional distress over the end of a marriage, familiarity with the children's lives and other attributes of a relationship may be more important indicators of power than episodes of fighting and physical manifestations of disagreement. They caution against simplistic classifications of power or rigid rules and formulas that equate certain behaviors with the possession or absence of power. One attorney notes that there are few stereotypes that hold up with domestic violence, with some victims "calling the shots" and being verbally abusive even though the other parent reacts physically. Often both parents bear some responsibility in a "fight situation." While there is little doubt about who the victim is and who has power in the most severe cases, mediators say that most of their cases are much less clear-cut:

"Most people when they talk about domestic violence talk about the most extreme 10 percent. They talk about the classic cases. There is situational violence. We don't condone it, but it isn't black or white."

This appears to jibe with the research literature that finds variety in interparental violence in disputed custody cases including "uncharacteristic acts of violence" that are precipitated by the separation or are reactions to traumatic post divorce events (Johnston and Campbell, 1993). Still another researcher finds great variation in domestic violence with victims reporting discrete patterns pertaining to "prior violence, fear of current violence and inability to communicate equally." For this reason, this researcher places the incidence of "serious domestic violence in voluntary mediation programs closer to 10 percent than 50 percent" (Chandler, 1990).

Finally, many mediators and attorneys have seen victims of domestic violence become empowered during the mediation process. They characterize mediation as a safe setting for some victims to stand up for themselves and see benefit in the process of taking charge and making critical life decisions. As one Tucson attorney observed:

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"I think it is sexist for feminists to deny women the opportunity to take power. To say they can't handle the mediation."

Similarly, Chicago mediators feel that victims are often "validated" in mediation. It might be the first situation in which men are not "fully in charge":

"The victim often feels validated and empowered - the mediator may be the first one they have ever told about it. Many attorneys do not search for this because it may impair negotiations. The blanket indictment of mediation in domestic violence cases is wrong."

**Effectiveness of Screening:** There is no clear consensus on the ability of current mediation screening practices to identify couples with domestic violence and eliminate from the process those who cannot safely participate. Mediators feel confident that relatively few couples come to mediation with fears and power imbalances due to domestic violence that make them poor candidates for mediation. They point out that relatively few clients opt not to mediate and cite this as evidence that mediation is viewed as safe by those who participate. In the rare instances where cases are excluded due to domestic violence, mediators are careful to blame exclusions from mediation on the mediator rather than the client. Mediators feel that one perceived benefit of the screening is the ability to provide victims with extensive referral information.

Others, however, question the mediator's ability to assess "gross emotional disparity" in one or two mediation sessions, let alone a brief preliminary interview. All service providers tend to concede that they inevitably miss at least some cases if people are not forthcoming. They also question whether a mandatory mediation environment ever affords a practical opportunity for couples to opt out. When parents repeatedly, albeit privately, are asked whether they feel able to mediate, this may come across as a pressure to mediate. And in a statutory climate where cooperative parents are favored in custody decisions, there may be a stigma to not mediating, regardless of the reason. As one Tucson attorney put it:

"One of the criteria for custody is which parent is most willing to allow continued contact...I urge clients to go through mediation...Not a lot of people try to waive it. There may be a stigma to wanting to avoid mediation."

Finally, there are elements of the screening process that may unintentionally offend victims or make them uncomfortable. Many screening protocols call for repeated questions about capacity to mediate. Victims may view this as a vote of "no-confidence" or a challenge to her capacity. Another common feature of the screening protocol is detailed questioning about the nature and frequency of abuse. Some victims may be offended by this degree of specificity and perceive this to indicate disbelief of her

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disclosure. Still other victims may be put off by the neutral, non-reactive stance of the mediator and find this dispassion to be unsupportive and inappropriate.

# Chapter 6: Special Mediation Techniques in Domestic Violence Cases

Mediators have changed the mediation process and have adopted new techniques to enhance safety with couples who have a domestic violence history. For example, the sites we studied variously use: separate orientations for mothers and fathers, co-mediation, shuttle techniques, mediation terminations, the presence of attorneys or other support persons, and the production of agreements that emphasize safety. Programs have also responded to the issue by de-emphasizing the need to produce agreements in mediation and emphasizing family violence training. The following describes each of these accommodations in greater detail.

**Separate Orientations to Mediation:** To dispel misconceptions about mediation, mediators have developed orientations to the process that they typically require couples to attend. In these explanatory sessions, the mediation process is described and distinguished from evaluation, and the response of children to divorce is explained. Some programs also emphasize the benefits of parental cooperation, the advantages of mediating, and the child's right to a continuing relationship with both parents.

To address the distinct needs of couples with a domestic violence history, some programs have elected to separate the parties during the orientation session. Minimally, program presenters clarify that couples with a domestic violence history might need to take special steps to ensure safety. As presenters at a mediation orientation in Tucson note:

"The (orientation) material assumes that the child and the parents are safe. If this is not true, you need to tell the mediator. Children need to be protected. If they are not, this will modify what you hear from me."

Similarly, mediators at the Chicago orientation point out that "child abuse and domestic violence are special considerations" that may require a different approach to divorce and conflict resolution:

"Some things I am saying may not apply because children and adults have to be safe. If this is a problem in your family, talk to your mediator about this."

In Orange County, California, couples who mediate when they have a protective order attend a totally different orientation session. Here the emphasis is on the protective order process and the domestic violence allegation.

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**Co-Mediation:** Co-mediation is another intervention that several programs use in cases with a history of domestic violence. Although Connecticut uses it routinely in all mediation cases, Chicago, Tucson and Orange County tend to reserve co-mediation teams for cases with safety concerns and power imbalances.

According to mediators, the team approach offers many opportunities to enhance safety that a single mediator format does not afford. Mediators hypothesize that each parent feels better supported in a co-mediation setting. For example, a male mediator in Chicago observes that a father may feel as though the court system is less biased toward women if there is a male co-mediator in the room. No one would consider mediating with a domestic violence victim with only a male mediator on scene.

Mediators also feel better about working in a team fashion. They can consult with one another and check their clinical judgements. In an area fraught with subjectivity, it is comforting to have a partner. Another way that mediators incorporate the advice and opinions of their peers is to schedule simultaneous breaks in the mediation session so that mediators can consult with one another about case strategy during a break. For example, in Tucson, all mediators in the program try to adhere to a common start, break and end time. In this manner, they can consult with one another before the session begins, after the screening process and after the couple has reached tentative agreement. Co-mediation is also believed to have important role-modeling effects.

**Shuttle and Caucus Mediation:** Every program retains the option of keeping mediation parties apart and relaying proposals back and forth. This tends to be used most frequently by mediators in Chicago. More typically, mediators bring parents together and separate them for private, caucus sessions. During these sessions, they can check with a parent about a proposal or their level of comfort with the process. Caucus sessions also afford an opportunity to see if problems are developing and whether the mediation process should be terminated. For example, in Chicago, a woman with a domestic violence history is instructed to ask to "take a break" if she feels her ex-husband is being threatening.

**Participation of Attorneys and Support Persons:** Still another way programs address the problem of domestic violence is to include third parties to help support victims and balance power. Maine's mediation program is unique in encouraging attorney attendance and participation in the mediation sessions. By all accounts, this has moderated the debate about mediation and domestic violence. A Maine mediator explains why:

"Your responsibility for fairness is not as burdensome with attorneys in the room. With clients with poor verbal skills, the attorney is the mouthpiece. In a domestic violence case, the attorney might be more of a mouthpiece. They feel better about their agreement with attorney



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approval. And the burden on the mediator is lighter to be well-versed in substantive law.”

In larger jurisdictions in Maine, attorneys routinely participate in the mediation process. Indeed, sometimes attorneys are the only ones to actively participate. They look out for their client's interests in mediation and balance any power differentials between the parties. One Maine attorney describes what happens in mediation in the following way:

“I can have a client sit there and not say a word but feel satisfied speaking through me. My clients will talk if they want to and have something to say. I will say what I feel and then ask her how she feels. I will negotiate, fend off attacks. I am their spokesperson and an advocate. I do not decide for them.”

Although some note that there may well be disparities in skill between lawyer participants that could transfer to their clients, Maine's lawyer-participant model of mediation addresses many of the fairness criticisms leveled against mediation by domestic violence advocates and other critics. The exception to this, of course, is the unrepresented case, which appears to be common in rural areas. As one attorney observed:

“I worry about the *pro se* population. These are potentially intimidated and coerced and there is no one monitoring how the agreement was developed and whether it was agreed upon voluntarily. And who knows what happens to those screened out? Maybe they go through an uncontested divorce and he intimidates her anyway.”

Like most mediation programs in the U.S., the other sites we studied prohibit attorneys from participating in the mediation process. Instead, they permit victims to bring a support person with them to the mediation session. In California, this is statutorily guaranteed. At the other sites, it is permitted by program policy.

This option tends to be used infrequently. To the extent that it occurs, it appears to be used with residents of battered women's shelters. For example, in Tucson and Chicago, shelter staff accompany clients to mediation. The support person's role tends to be limited to accompanying a woman to the session, waiting with her, and sitting silently in the mediation session. Support persons may not coach their clients or speak on their behalf. Mediators typically retain the right to ask a support person to leave the session if his or her presence is a problem and tend to view new partners and family members as disruptive to the mediation process.

**Other Safety Arrangements:** Most programs have invested in some additional safety procedures such as: security guards, weapons screenings, escort services to and from the parking lot and separate waiting rooms for mothers and fathers. If there is a restraining order pending in a mediation case in Chicago, mediators automatically have the couple leave

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separately. Typically, the woman will be dismissed first and the man will be kept for some additional conversation.

Administrators and mediators feel that these arrangements underscore safety and establish a tone for the mediation program that is firm in its stance against domestic violence and protective of participants. Others are less sanguine about the effectiveness of in-court security measures and believe it is naive of the court to think it can protect a victim by escorting her to her car. They still view mediation as unsafe because, "he would know she'd be leaving at a set time."

**Agreements that Emphasize Safety:** When couples with a domestic violence history do reach agreement in mediation, mediators feel that they underscore safety. As to custody, they are less apt to involve a joint custody arrangement than agreements produced with a non-domestic violence population. A comparison of 80 cases with domestic violence and 149 cases without domestic violence mediated by Chicago's MFCS in 1989 revealed that the former were significantly less likely to involve joint legal custody, 29% versus 36% (Massaquoi, 1989). Mediators in Tucson tend to frown on joint legal custody for contesting couples in general and estimate that only 20 percent of cases result in this arrangement.

Another characteristic of agreements on domestic violence cases produced in mediation is the incidence of supervised or restrictive visitation arrangements. Chicago's study of MFCS cases mediated in 1989 showed that a quarter of the couples with a domestic violence history left mediation with supervised or restricted visitation. Most typically, a family member or agreed-upon third party provides supervised visitation (Massaquoi, 1989). In Tucson, the court sponsors a supervised visitation service staffed by contract supervisors which is regarded as a useful resource by mediators although it is difficult to access and tends to be used by represented couples who stipulate to supervision. Research on 100 mediated cases with domestic violence in Orange County, California revealed that 17 of the 51 reaching agreement called for monitored visitation or exchanges of the children by a third party (Magana and Taylor, 1993).

Still another feature of agreements in cases with a history of domestic violence is extreme detail and specificity regarding visitation. Mediators tend to favor detailed visitation arrangements in all cases, but feel that it is imperative in situations where there has been violence. They structure agreements to minimize ambiguity and unplanned contacts.

Finally, mediators try to build in safety provisions to minimize the possibility of violence and/or child exposure to violence. These agreements may include plans to exchange children in the presence of a third-party, to avoid exchanging the children during high conflict times, to send the children away during high conflict times or to try to bring a relative into the household to help maintain peace.

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**Evaluations:** In every jurisdiction, some entity of the court conducts evaluations that lead to the promulgation of recommendations concerning custody or visitation. These programs tend to see the most troubled cases with serious allegations and incapacities. For example, in Connecticut, approximately 10-15 percent of divorcing couples with disputes about custody or visitation are referred for evaluation in lieu of mediation. In all jurisdictions, couples who fail to produce mediation agreements or terminate the process may be referred for custody evaluation. Evaluations are generally conducted by a separate staff of workers or minimally by different mediation personnel and no information generated in mediation is relayed to evaluators.

In Chicago, mediation staff conduct "emergency interventions" with couples where there are serious allegations or the potential for abduction is high. These short-term, same-day evaluations lead to the generation of recommendations that are relayed to the court and used by judges to promulgate temporary orders. Advocates, mediators and judges in Chicago express support for this non-confidential forum to handle cases with "horrible allegations."

In Orange County, California, mediators and judges who have concerns about safety can refer couples for a domestic relations investigation aimed at the production of a "safety plan." There is no charge for a domestic relations investigation and it may be ordered in cases with allegations and/or failed mediation attempts.

**Non-Agreement:** One accommodation to domestic violence that all programs have made is to de-emphasize agreement-making and focus instead on reducing the level of contentiousness or clarifying the issues in dispute. This reflects an acknowledgment that some couples with a domestic violence history should not be producing an agreement in mediation, and that evaluations or judicial hearings are preferable outcomes. In Tucson, for example, couples are explicitly told that they are not required to reach an agreement in mediation. In private interview sessions, mediators tell parents that when there are concerns about the fitness of a parent, a parenting arrangement for the children must often be developed with the help of a judge.

Program administrators at all the sites we studied insist that mediators are no longer evaluated according to their agreement rate and many sites do not even calculate mediator-specific agreement statistics. In a related fashion, mediators report conducting fewer sessions with couples who are poor mediation candidates, preferring to refer them more quickly to other more evaluative and directive interventions. According to mediators and administrators, this represents a fundamental change in program philosophy and orientation. As a result, clients face fewer pressures to reach an agreement and can quickly and safely satisfy the mandatory mediation requirement without lasting detriments. Mediators stress the importance of developing tactful ways of ending mediation so that the victim does not experience any repercussions for the termination.

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**Training:** There is unanimous support for training mediators about the issues related to domestic violence. Mediators who are unaware of a domestic violence history may misinterpret a woman's behavior and wrongly conclude she is merely being overprotective or attempting to thwart the father's contact (Senate Task Force Study, 1987). Victims may also be mistakenly assumed to suffer from mental illness (Walker, 1991). To avoid such misinterpretations, it is agreed that mediators need to be aware of the dynamics of spouse abuse.

In recent years, major mediation organizations have adopted a segment on domestic violence as part of their required mediation training programs. Domestic violence has become a regular topic featured at local, regional and national conferences for mediators and other family professionals. Articles on the topic appear regularly in key practitioner journals.

There is a good deal of consensus on the elements of effective training about domestic violence. Among the topics that are considered key in the literature are (Landau, 1995; Yellott, 1990):

- ◆ Types of abuse; definitions of domestic violence; theories on the dynamics of abuse; facts and statistics about abuse;
- ◆ The effects of separation and divorce on abusive behaviors;
- ◆ Characteristics of abused and abusive partners;
- ◆ Verbal and nonverbal indicators of woman and child abuse;
- ◆ The impact of domestic violence on children;
- ◆ Procedures and instruments to screen for abuse before and during mediation;
- ◆ Referral skills that encourage abused and abusive partners to use available treatment resources;
- ◆ Treatment resources in the community;
- ◆ Safety procedures for clients, staff and self;
- ◆ Existing criminal justice system interventions strategies and realities for that community;
- ◆ Alternatives to mediation;
- ◆ Techniques for managing emotional outbursts and efforts at intimidation;
- ◆ Techniques for offering additional safeguards and power balancing techniques;
- ◆ Techniques for terminating mediation safely and appropriately;
- ◆ Safety planning requirements and procedures including the exchange of children;
- ◆ Mediator biases and limitations in dealing with abuse cases;
- ◆ Report of suspected cases of child abuse to proper authorities;
- ◆ Report of threats of violence or endangerment to security officers or law enforcement authorities.

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Another valued feature of training programs on domestic violence is the participation of shelter staff and men's anger control group leaders. Advocates and others with proven skills in working with abuse situations are regarded as extremely helpful in creating training materials, helping to deliver the training program and reviewing program procedures. For example, at the Toronto Forum, mediators role played techniques for screening for domestic violence while advocates for domestic violence victims critiqued them and made helpful suggestions (Landau, 1995).

Finally, there is growing recognition of the need for curriculum content to be cross-cultural and keyed to the needs of culturally diverse and minority populations. Screening for domestic violence in a contested custody situation is recognized to be a challenge. There is a recognized need to differentiate between real and false allegations and to spot it when no one comes forward with an allegation. As one mediator in Tucson explained:

"The first level of training mediators need is to sensitize them to the issue of violence...the classic signs and symptoms. Then there is the question of how to assess violence in the context of custody disputes because some people are saying domestic violence is a red herring. You need a more subtle level of assessment and more sophistication in these cases because there are cases where it is real and cases where people are throwing out allegations."

**Effectiveness of Special Techniques and Training:** While many programs have made radical accommodations to mediation due to domestic violence, certain features of the process remain a concern to some advocates for battered women. One is the issue of mediator neutrality. Although mediators maintain that they are not "neutral about the violence," they do not adopt an advocacy, judgmental or recommending stance. Some find neutrality to be totally inappropriate in a case with a domestic violence history and favor more judgmental and evaluative interventions. For victims who disclose abuse, mediator neutrality may be "retraumatizing" or appear to be implicit approval of violent behavior. For example, one victim in Tucson complained that the mediator had displayed no emotional reaction to her disclosure and she had been hurt by not even getting a "knowing look" from the mediators.

Similarly, lawyers who represent fathers accused of domestic violence complain about the mediator's refusal to evaluate the veracity of abuse allegations. By responding to allegations with extra safety precautions without evaluation, mediators are viewed as accepting them. As one lawyer put it:

"Statutorily, joint custody cannot be awarded in a case involving proven, serious domestic violence. In over one half of the cases I represent, there is some claim by the mother of domestic violence."

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Moms know it can be a tool...Fathers are frustrated because they are held guilty by allegation."

Another feature of mediation that is called into question in an abuse case is the value placed on direct communication and cooperation. Although caucus sessions and separate mediations are offered, one victim reported that she felt "encouraged to confront" her ex-spouse. In a similar vein, some question whether battered women should participate in a process that encourages cooperation:

"The process is helpful for most. The problem is that battered women, who are co-dependent to begin with, do not need to hear that they should be cooperative and co-parent."

An attorney who represents victims in divorce cases finds that these women "back down at the drop of a hat" and are rarely thinking clearly enough to negotiate. In her view, the domestic violence cycle is antithetical to the mediation process:

"If victims are in a situation where they are allowed to compromise, they will do that. They can't be in situations that permit compromise...if they don't have to face the person, they are more apt to do what I say. If you can keep them from being face-to-face, you can try to get her on the right foot."

Still another tenet of mediation that sits uneasily with the domestic violence community is confidentiality. In cases of non-agreement or termination, no information is provided to the court other than the fact that the couple did not agree or ended mediation. Nor do mediators make reports to evaluators or treatment providers in programs for batterers and victims (even with a signed release from the parents). The single exception to this policy is when child abuse allegations are made or safety threats. Some advocates and administrators of diversion programs feel that the confidentiality guarantees in mediation are inappropriate in violence cases.

The limitations of the mediation intervention, both as to scope of issues under consideration and duration, are also of concern. With the exception of the Maine program, all focus exclusively on custody and visitation. Many feel that financial issues were excluded because of early resistance from the legal community, which has since disappeared, and that the failure to address child support and other property issues has serious financial consequences in all cases, including those with a domestic violence history. Similarly, the brevity of the mediation intervention and the lack of follow-up contact by mediators is viewed by some to be problematic with troubled families.

In a related fashion, many people, including mediators, feel that additional community resources are needed to guarantee safety after the mediation session. One needed service

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is supervised visitation by well qualified service providers. Tucson has a publicly-funded service that offers a variety of supervised visitation services at below-market prices. According to attorneys, the service helps to deal with false allegations of abuse as well as insuring parent-child contact while evaluation and treatment takes place. One problem with the Tucson service is that it can be accessed only by court order and is not readily available to non-represented parents. Cost is another problem. Even though the rates charged are below-market, it remains an unaffordable service for many divorcing parents. The lack of supervised visitation resources is mourned by many service providers. As one Tucson attorney put it:

“The only problem with supervised visitation is how to put it in a bottle and sell it. Half of their clients are mine. I prefer it to stopping visits during an investigation and it is useful because the data that comes out of supervised visitation can convince mom that there is no problem.”

Despite the growing need for supervised visitation, this service remains sorely underfunded and undeveloped in most communities. In the absence of supervised visitation services, visitation is either suspended, conducted without third-party oversight or monitored by relatives or grandparents (Strauss, 1995).

Many professionals who work with families with a history of domestic violence also mention the need for affordable counseling, substance abuse treatment and legal representation. Connecticut mediators feel as though alcohol treatment programs have diminished in recent years. As attorneys become more effective negotiators and settle more cases on their own, court mediation programs feel as though they are seeing more difficult cases with serious family problems and many dysfunctions. In these cases, mediation is viewed as an intervention that “can’t hurt” but may be “irrelevant” given the more basic and serious problems at hand.

Finally, mediation programs may bear some displaced frustration about the laws governing custody and visitation by alleged victims and abusers alike. Among alleged victims, there is strong resentment of statutes that guarantee fathers the right to visitation. Some may hold the unrealistic expectation that, “if he hits you, he can’t see the kids.” They feel frustrated that judges do not generalize about a “his-her relationship” to “his relationship with the children.” It is hard to show “serious endangerment for the child” in many domestic violence cases. Among alleged abusers, there is resentment that domestic violence allegations can feature heavily in custody decisions including prohibitions on joint custody and limitations on visitation. Some complain that, on the basis of a woman’s testimony alone, a husband can be “thrown out of the house, torn from the children and forced to pay child support.” They are frustrated by the lack of an accessible, affordable and rapid evaluation procedure to determine the veracity of an allegation of abuse.

## **C**hapter 7: **Reactions to Mediation and its Alternatives**

The attack on the use of mediation in divorce cases with a domestic violence history is based on the implicit presumption that there is some better alternative. Mediators and other court personnel take issue with this presumption. Indeed, the lack of alternative services and interventions for these clients is a concern to many. As the former director of the FCCC in Tucson notes:

“If a case is rejected or terminated in mediation, it goes back to the attorneys or to the community. I don’t know what happens to these people. I am concerned about abandoning these people to no services. I don’t know how the advocate community responds to this.”

For some couples, the alternative to mediation is attorney negotiation. While some battered women’s advocates see attorney negotiation as preferable to mediation, there is some question as to how informed attorneys are about domestic violence in general and within their own caseload. Mediators also question whether attorneys raise the domestic violence issue and risk jeopardizing the negotiation process. As one Maine mediator notes:

“Our mediation screening often surfaces this issue for attorneys. At the beginning folks said, ‘lawyers know if there is a problem so we don’t need to beat our brains out.’ But you can’t be certain attorneys are informed about the situation. Sometimes the first time they meet their clients is in mediation. The screening procedure surfaces it for everyone.”

The growing number of *pro se* litigants who fail to reach agreements in mediation or are excluded from the process and lack the resources for legal intervention are returned to the court for unrepresented judicial intervention. Under prevailing confidentiality guidelines, the domestic violence is invisible to the court unless it is uncovered through other means. As one attorney observes:

“I don’t know if it is any better for *pro se* cases without mediation. They stumble through the process and get before a judge. There is typically no court reporter. The judge has a security guard, but that’s it. The judge acts as a kind of mediator at that point and the result can be the product of intimidation and imbalances, too. The judge does not have the mental health training and is less in tune with sensitivities of the domestic violence community. So the mediation process is probably better than nothing at all.”



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Some courts provide evaluations for couples who fail to reach agreements or are excluded from mediation. For example, in Chicago, couples who make very serious allegations about one another are seen immediately by mediators for an "emergency intervention." This brief evaluation leads to recommendations that judges use in making immediate temporary orders on custody or visitation. In Tucson, couples can be ordered into a therapeutic evaluation by stipulation of the parties and their attorneys. In Orange County, mediators can recommend that a couple pursue a domestic relations investigation for development of a safety plan. Alternatively, if the court receives a mediation case labeled by mediators as "Unable To Assist", the court may order that the couple submit to a domestic relations investigation. In Connecticut, about 10-15 percent of contested divorce cases are referred for evaluation because of domestic violence and other incapacities.

Evaluations are viewed as serving a very useful purpose in a court setting with mandatory mediation. Nevertheless, they are not immune from criticism and similar concerns have been raised about them. Many custody evaluators hold conjoint sessions with mothers and fathers; the evaluation process is typically lengthier than mediation. Although it results in recommendations, the process may expose violent parents to one another over a longer period of time and replicate some of the dangers inherent in mediation interventions.

Among the alternatives favored by many attorneys is greater access to lawyers for even brief consultations. As one attorney recommended:

"The lawyer client relationship has the highest level of confidentiality. Ideally, everyone should have one hour of legal time to hear their options and explain their situation. This will prevent abuses of the system."

Legal advocacy is also favored by many legal services attorneys who tend to serve only low income clients in violent relationships. As one Maine attorney put it:

"The processes that are presumed beneficial in the family law world in ADR are ones that don't work for poor and domestic violence victims. The people who propose them are good, well-intentioned people. They just don't get it. Private attorneys deal with educated people with manners and don't realize what poor people face. What victims need is zealous, informed advocacy."

Advocates for domestic violence victims favor an array of dispute resolution offerings in every community including ready access to negotiation and adjudication and community-based advocates who can assist abused women in assessing their alternatives. They object to compelling victims of abuse to participate in any dispute resolution process and favor training on domestic abuse for all personnel who serve victims: lawyers, mediators, court personnel and judges.

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To some extent, the reactions of judges, family law attorneys and domestic violence advocates to mediation reflect the extent and nature of their exposure to the domestic violence population and their familiarity with mediation programs. As a rule, those with the most exposure to the programs tend to have the most favorable views, while those with limited exposure hold antagonistic views that often have political and ideological roots.

**Reactions of Judges:** Family law judges tend to favor mandatory mediation even though they acknowledge, "you can never be totally sure or make it totally equal with respect to power imbalances." They are convinced that their mediation programs use "state of the art" techniques to identify and treat domestic violence; they are skeptical about whether judges would be better able to detect and deal with domestic violence in trials. The problem is particularly severe in *pro se* cases. As one judge put it, "I ask about domestic violence and tell them we need to know, but who knows?"

Judges want to retain mandatory mediation because they feel mediated agreements inspire more commitment from parents and are better adhered to over time. The sentiment is that mediation should be pursued where it can be accomplished. It is widely felt that removing the mandatory component would reduce the effectiveness of mediation programs. Judges would rather have mediators screen and accommodate each couple's needs than "gut" the program. As one judge explained:

"To take the mandatory part away would make the program ineffectual. So many people say they never believed it would work or help. They would never come and try. We would be just preaching to the choir."

Judges generally feel that they have the authority to waive mediation where it is truly inappropriate. They also feel that victims often get better treatment in mediation than they do in court. Many victims are "unattractive witnesses" and present poorly; judges are often uninformed and unsympathetic. As one judge explained:

"Dealing with victims in court is difficult. They whine, they complain, they act powerless, they don't present well. They are better off in mediation where there is a social science perspective and people who are sympathetic and knowledgeable...Judges deny this but they hate victims. The underlying sentiment is, 'What did you do to make him do this?'"

Judges feel frustrated by a lack of resources to meet the problems of many families. They feel as though the system is overwhelmed with substance abusers, batterers and others who can't afford to pay for services; many feel they are unaware of the services that are available. Most judges feel that advocate opposition to mediation is rooted in unfamiliarity and miscommunication about programs.

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**Reactions of Family Law Attorneys:** Attorneys tend to be supportive of mediation programs, especially in settings where they play an active role in the process (McEwen *et al.*, 1995). For example, in Maine, where attorneys are expected to participate in the process, mediation is thoroughly embraced and there are no restrictions on the range of issues to be negotiated. Divorce mediation in Maine routinely covers all the issues in dispute, including property division, child support and alimony. At the same time, it is unclear whether mediation in Maine always conforms to what is conventionally thought of as "true mediation." Mediators in Maine admit that "it is a continual challenge to keep the party involved," and one attorney described his approach to mediation in the following way:

"I steamroll as much as I can in mediation. The chief value of the mediator is their convening function. Sometimes they do some things that are helpful. But we are seasoned attorneys in family law. We don't need mediator's expertise. A lot of time mediators are alone with attorneys in the room and we talk about the bottom line together."

Attorneys in the other sites we studied are also supportive of mediation which many attribute to the responsiveness of the mediation programs. Mediators generally urge parents to seek legal representation and attorneys play a key role in agreement review and filing. For example, agreements generated in mediation in Tucson and Chicago must be reviewed and filed by attorneys rather than being promulgated as court orders in the absence of an objection.

In many communities, mediators have actively cultivated relationships with attorneys by conducting many projects jointly with the Family Law Section of the Bar Association. For example, on a monthly basis, attorneys and mediators in Tucson hold public seminars on divorce and information sessions at shelters for battered women. Maine's pilot mediation project dealing with small claims disputes in 1979 was initiated by the Cumberland Bar Association.

Indeed, most attorneys at the sites we studied have little quarrel with mediators and express far more concern with the police whom they feel have a "mind set against women when it comes to abuse," or "refuse to recognize that a woman might be abusive." They also tend to feel that domestic violence victims receive more sensitive and informed treatment by mediators than the judiciary who typically rotate rapidly through domestic relations, hold a "blaming the victim" type of mentality, and need more education about domestic violence. As one attorney observed:

"Many judges are uneducated. They don't believe domestic violence belongs in court. They used to think that if domestic violence was so bad, these women wouldn't go back. They are not attuned to the

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difficulties of leaving a batterer. They don't understand that women return over and over again."

Still other attorneys feel that trials and court interventions are extremely damaging to parental relationships and may introduce harm and safety threats. As one Chicago attorney explained:

"Except for mediation, the court system is counterproductive. We are a fact-pleading, case state. You have to trash a parent in the pleading and trial with negative facts to win. Afterwards, they have to deal with each other."

Across the sites, attorneys think that mediators are attentive to domestic violence issues and "protective of people." Unlike private mediators who may have more of a "middle-class focus" and neglect to ask about domestic violence, they feel that court mediators know what to ask and are not timid about asking.

Many attorneys who work with domestic violence victims also feel that mediators acknowledge the "reality" of their client's lives since they often engage in a lot of direct communication and negotiation with batterers. As one Chicago legal aide lawyer who represents domestic violence victims observes:

"My clients opt for irrational arrangements. You are just putting on blinders to think that just because they are in court they aren't seeing one another. My clients in domestic violence cases seem to reconcile more often than other cases. They are still communicating and interacting. Even if you assume that it is better for them not to interact, in practical terms they are meeting and communicating and negotiating. I think mediation can help them. If there are reconciliations, they might have some rules. Maybe advocates fail to recognize the reality of contact in these people's lives."

**Reactions of Advocates for Battered Women:** The domestic violence advocacy community is divided about mediation. Most of the intense opposition dates to an earlier era of divorce mediation practice that stressed cooperation and conjoint sessions in all cases and made no accommodation to domestic violence. Advocates objected to mediation's future-oriented focus on the reconstructed family and inattentiveness to a couple's "past history."

Due to changes in mediator practice, the domestic violence community has become much more comfortable with divorce mediation. As one Chicago advocate explained:

"My feeling is much better in the past 3-4 years. Now, mediators take domestic violence seriously. They call me for domestic violence clients to be represented. They terminate mediation. They confront batterers. Sheriffs escort clients to the train if they have safety fears."

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Nevertheless, tensions remain. Some advocates maintain that a mandatory system of mediation can never be sufficiently sensitive to domestic violence victims. Minimally, they favor a more accessible "opt-out" from mediation without penalty to the victim. They challenge the adequacy of various safety procedures, such as escort services to the parking lot. They criticize mediated agreements for having a "boiler plate" look and not addressing the domestic violence with any specificity.

In several sites, advocates expressed concern about private mediators who were not as trained in the dynamics of domestic violence as mediators in the public sector. Still others feel that domestic violence victims only choose to mediate because they have no access to legal services and hearings with judicial officers. They are troubled by the "drift to social services" in the courts and foresee a time when victims will be unable to "get a hearing for legal relief without being diverted to a million counseling and social work interventions." There is some concern that these trends run counter to making domestic violence be seen as a crime. One legal aid attorney who handles many domestic violence cases explained why she favored judicial interventions over mediation:

"The settlement judge focuses on "this is what a judge will do" while mediators focus on "what do you want" and with stubborn, unrealistic people, you ought to be able to tell them to get real."

In addition to making legal options available to victims, domestic violence advocates often favor the involvement of victim advocates in the mediation process to provide "support for the disempowered party." Chicago advocates say they "coach clients to resist joint custody in mediation." Advocates also strongly support training for judges, mediators and lawyers and the involvement of the local advocacy community in the training process.

Mediation programs that have enjoyed the best relationships with the domestic violence community have had the most interaction and have worked together on training, service and broader community awareness efforts. For example, in Tucson, mediators have built bridges with domestic violence advocates by conducting monthly public education sessions about divorce in shelters for battered women. In Maine, where mediations are conducted by community volunteers who are paid a modest stipend, many individuals are active in both the mediation and domestic violence communities. As one mediator observed:

"Many domestic violence spokesmen serve as mediators and they serve to inform the rest of us. By being present, they educate mediators rather than trying to forbid mediation. So there hasn't been big barriers between the domestic violence and mediation worlds."

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Another avenue for collaboration is advocate participation in training sessions for mediators and other court personnel and review of screening procedures.

The most vociferous opponents of mandatory mediation tend to be advocates based in battered women's shelters who interact with some of the most severely abused victims. This is acknowledged to be a very strong lobbying group. For example, in Maine, the battered women's lobby is credited with recently defeating a bill for mandatory parent education because of concerns about the safety of parents attending the same session together. Sensitivities toward domestic violence are much higher today than they were a few years ago. One Maine attorney wryly observed that "Maine's mediation law would never pass today, but it is too late to go back."

Although mediators and program administrators acknowledge that "advocacy groups must advocate...they can't talk compromise," some resent the politicized nature of the debate and the fact that some prominent advocates have adopted a public stance on mediation that is decidedly more negative than the views they express privately. Indeed, Chicago advocates acknowledge that they must take an extreme position opposing mediation in cases with a domestic violence history because, "without tension there would be back sliding."

Those who work with a broader segment of the domestic violence population tend to be more receptive to mediation, more skeptical about the value of legal remedies, and more hopeful about social service interventions in the courts. One Connecticut advocate who has worked with mediators in the court's Family Relations Unit and meets hundreds of victims identified through the state's mandatory arrest policy observes:

"There are battles between Family Relations and advocates. The old way of thinking was to get rid of the man and prosecute to the limit. But you can't simply end relationships for them. Now the sentiment is to work with the woman where she is. But old attitudes die hard. Advocates just want prosecution, not services and diversion. And then they don't even prosecute. You just get continuance after continuance. So I see real value in the services you get in Family Relations."

Perhaps the most significant reason for the improved relationship between domestic violence advocates and mediators is because both groups have been responsive to one another and changed their ways. Mediators have incorporated domestic violence concerns in their daily practice; advocates have come to recognize the limits of legal interventions. These patterns are acknowledged by the following Connecticut advocates:

"In 1988, advocates and mediators were supposed to be in an oil and water relationship. Now we see eye-to-eye with them because we've

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pushed them. They have changed. I don't think that being effective is being co-opted."

"We do not reject mandatory mediation. We ask, if no mediation, what else? What are her real world options. And they often come down to a *pro se* hearing with an ill-informed judge. We have shifted in the past five years. We can't deal with fictions about the experience that awaits battered women in the court."

As evidence of their evolution, mediators in Orange County readily acknowledge that they have "moved from not seeing these cases as different to significantly different treatment of these cases." Advocates are credited with improving community awareness of domestic violence and revolutionizing public consciousness.

# Chapter 8: Mediation of Protective Orders

This study deals with custody and visitation mediation in divorce cases with domestic violence factors. It is not an investigation of the use of mediation in protective order cases filed in the criminal court. Nevertheless, because the Mediation and Investigative Service of Orange County, California, routinely mediates these matters, we present information on how a mediation program processes cases that come to the attention of the court because of domestic violence factors. Typically, these are cases in which a parent has obtained a temporary restraining order because of violence issues and there are minor aged children involved. Mediation is required by the court to assist parents in developing a parenting plan prior to a court hearing.

Literature on the protective order distributed by the Superior Court of Orange County states that its purpose is to give parents a "time out" in order to "seek resolutions to the cause of their difficulties." Mediation is viewed as an opportunity for parents to craft a temporary parenting plan for their children. At this point, there has been no finding of truth with regard to the allegations raised regarding domestic violence. Nevertheless, on both an *ex parte* basis and following a hearing, the court may issue orders enjoining contact, excluding a party from a family dwelling, awarding temporary custody and visitation, and determining temporary use of property. Following a hearing, the court may also issue orders requiring counseling and participation in batterers' treatment programs.

Mediators in Orange County follow a specific protocol in cases with temporary restraining orders. The process begins with attendance at a unique, sex-segregated orientation program that reviews the restraining order process, the purpose of mediation and the importance of safety. In the orientation session, parents are also told about the dangers of exposing children to violence. The elements of a safe parenting plan are outlined.

To underscore the safety theme, there is a marshal in the common waiting area for both men and women. In addition, there is a separate waiting area for women only that is stocked with literature on area shelters and other services of interest to battered women.

Following the orientation sessions, each parent is interviewed privately by a mediator. During these screening sessions, the mediator can gauge the level of fear and discomfort and determine whether the mediation format needs to be adjusted. Alternatively, if serious safety concerns are surfaced, the mediators may recommend that the parties proceed directly to an evaluative mode which may take the form of a short-term, domestic relations investigation conducted by mediators; a child custody investigation conducted by a separate division of the court, and/or the appointment of an attorney for the minor child.



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The Orange County protocol for mediation of restraining order cases also calls for the routine use of co-mediation. All sessions are staffed by male and female mediators. It is believed that this staffing pattern creates a balanced approach to the process. Thus, although they comprise only one-third of the program caseload, protective order mediation cases consume two-thirds of program resources. All mediators have a duress button on their phones. If a client is concerned about leaving the building alone, escorts will accompany her from the mediation office to the parking structure.

The mediation process can be conducted in a variety of ways. It can be conjoint or separate using shuttle mediation techniques. Mediators say that they use a shuttle approach if either party objects to being together. They estimate that about half the cases are mediated separately and about half in a conjoint manner. Mediators are flexible about separating the parties and bringing them back together during the session. Four mediators on staff conduct Spanish language mediations.

All parties have the option of bringing a support person to the individual session with the mediator. Support persons may be a friend, family member or someone from a shelter. A support person offers companionship but does not participate in the mediation session and may be ejected from the mediation session if he or she is disruptive.

The purpose of the mediation session is to develop a safe parenting plan governing contact with the children. The mediation does not address the veracity of the allegation. Like mediation in a divorce context, it focuses on the issues of custody and visitation. Among the elements routinely addressed is the exchange of children at neutral, public sites. Designated exchange sites may consist of parks, restaurants, malls, schools, day care centers, or any other public setting where other people are present. In more severe cases, the exchange may be scheduled to occur at the police station; in less severe cases, it may occur outside the parent's home.

Another element of the safe parent plan is extreme specificity with respect to drop off and pick up times. The goal is to eliminate the need to negotiate with the other parent by thinking through contact arrangements and schedules in advance.

Still another feature of the safe parent plan is the use of third party exchange arrangements. Friends, relatives or hired supervisors can all play a critical role in being present at the time of exchange, transporting the children to and from exchange locations and/or supervising the visit.

Since many violence situations are precipitated by substance abuse, mediators in Orange County routinely address the use of alcohol and illicit drugs in their safe parent plans. Typically, the agreements they craft with parents call for refraining from use of alcohol or

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illicit drugs prior to or during the visit and suspension of the visit if a parent arrives under the influence.

If a couple fails to reach an agreement in mediation, or if the mediator is uncomfortable with the plan the parents have developed, the court may order them to pursue a domestic relations investigation. This is a short-term evaluation conducted by mediation personnel. The parties are seen separately during an investigation and mediators craft a set of recommendations regarding custody and visitation and safe contact that are promulgated by the court as a temporary order.

Restraining orders may last up to three years. Often called the "poor man's divorce," parties who seek a temporary restraining order are typically unrepresented. In Orange County, these cases are heard by judicial officers who rotate through the domestic violence calendar every three months. The typical case gets 15-20 minutes of court time.

Mediation of temporary restraining order cases remains highly controversial. The defenders of protective order mediation contend that many issues are identical in both divorce and criminal court cases and that people with restraining orders need help to "work out all the details of their lives." They characterize the courtroom as "intimidating" to victims and the amount of attention that such cases get in court as "woefully inadequate." As the mediation program director in Orange County put it:

"A courtroom is not as user friendly as a mediation room. It is intimidating. You have the perp next to you. You have an unconfident woman who doesn't open up and we're asking her to stand up in court and speak her case next to the perp and in front of a judge who has varying degrees of sophistication and bias about domestic violence.

Mediators who handle misdemeanor and felony cases involving domestic violence feel that mediation is typically feasible and useful. As in a divorce context, they maintain that there is a wide range of behavior that leads to a domestic violence arrest or a temporary restraining order. The history of the relationship is key to the suitability of mediation. They feel that a mandatory arrest policy or a simple, pro se procedure for protective orders may draw in many couples at the lower end of the family violence continuum. Mediation is viewed as a useful way to discuss temporary visitation arrangements and reduce the ambiguity regarding access to children. Mediators are also believed to be more attentive to arrangements that enhance safety such as neutral exchange sites and plan specificity. A victim advocate in Tucson who worked with misdemeanor assault cases recalls that more than half were adequately handled in mediation.

"Not every problem that results in an arrest is a pre-meditated attempt to dominate or subjugate a spouse. Many are

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communication break-downs between equals where things got out of hand...These are people who can benefit from putting problems on the table. The couples with true domestic violence were a waste of time. She couldn't speak up."

In addition to developing agreements related to finances and children, mediation can be an effective means to help a victim to communicate safely with her abusive partner about stopping the violence (Yellott, 1990) and getting an abuser to commit to treatment and obtain services (Erickson and McKnight, 1990).

Most judges in Orange County are supportive of mediation in protective order cases, too. According to one, it is "ten times more effective than judicial hearings" because it leads to plans about the children that "people buy into" and affords more protection than an order from the bench. Rather than objecting to mediation, most judges express frustration with the lack of services for batterers and victims and would welcome better investigative staff, counseling and housing services for victims, treatment for batterers and supervised visitation. They would also like better coordination between and among courts that deal with domestic violence cases to avoid problems with conflicting orders promulgated by family and municipal law judges.

Those who oppose the use of mediation in protective order cases do so for both practical and ideological reasons. For example, the Court Mediation Service in Maine rejected mediation of protective order cases in order to make a public policy statement that domestic violence was a criminal activity that warranted a stern response rather than a conciliatory intervention like mediation. As the program's director put it:

"Mediation in protective order cases is inappropriate. As public policy, the message to the community must be that domestic abuse is unacceptable and you cannot participate in having a say in the custody, visitation or support order. Not that you can't mediate these cases, but the message should be that there will be swift, consistent and effective response to protective order cases.

In a similar vein, the director of Connecticut's Family Division also rejects the use of mediation in criminal court cases surfaced through the state's mandatory arrest policy. In a publication he coauthored in 1990, he writes:

"In the context of the criminal case, these issues are not seen as appropriate for direct negotiation between the parties. Instead, information related to custody, visitation and living arrangement issues is solicited from both parties separately, either directly or through any attorneys or victim advocates involved; family relations counselors use this input to develop the recommendations that will be presented to the court on the day an order of protection is entered (Menard and Salius, 1990:298)."

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One reason for resistance to the use of mediation in criminal court cases is fear that the violence itself will be mediated. Although mediators insist that the violence is never subject to negotiation and virtually all codes of professional practice adopted by key mediator organizations state that, "[t]he issue of the violence itself should never be mediated nor should the cessation of violence be predicated on the behavior of the victim of the violence." (Duryee, 1995:82), concerns persist. It is hard for many to imagine negotiating in such cases without reference to the violence. This is reflected in the following objection to mediation in criminal court cases cited by a legal aid attorney:

"Domestic violence is not treated seriously. It is bargained down. It becomes a 'Let's fix your problem' type thing and 'You are not personally responsible.' This is wrong. What does she give up if he is going to give up the violence?"

Most advocates for victims of domestic violence in Orange County object to conjoint sessions and favor domestic relations investigations over mediations. Nevertheless, those who have had more exposure to the mediation program recognize that mediators perform important functions and that the alternatives to mediation are extremely limited. These advocates see value in mediation's focus on structuring visitation and creating detailed parent plans. They also view mediators as trained and sensitized to domestic violence issues and are frustrated by the rapidity with which judges cycle through the domestic violence calendar, a practice that precludes them from receiving much training or expertise. Advocates are extremely critical of the lack of follow-up at the court. There is no court staff to monitor attendance at treatment programs and no sanction for non-attendance at court-ordered treatment for batterers. Finally, advocates are concerned about visitation orders that commence while a woman is still in the shelter. This has the potential of disclosing the location of a shelter to a batterer even though the exchange may occur at a neutral site.

The debate about the use of mediation in protective order cases remains far from being resolved. While such cases often present issues that are identical to those handled in divorce mediation and parents in both contexts will likely continue to have contact with one another regarding their children, there is concern about the public implications of addressing these matters in a setting that is not adversarial or evaluative. We clearly need more empirical information on the experiences of this population with mediation, litigation and evaluative interventions in the court system.

# Chapter 9: Discussion and Conclusions

In a very short period of time, divorce mediation has moved from an experimental approach to standard practice. Jurisdictions in approximately 33 states now mandate the use of mediation in contested custody and visitation disputes (Newmark *et al*, 1995). One response to the dramatic growth of mandatory mediation was the growth of opposition to its use in cases that involve domestic violence. At first, criticisms focused on parties who were referred to mediation as a result of domestic abuse or restraining order (Lerman, 1984). Eventually, concern spread to mediation in custody and visitation disputes.

Advocates for victims of domestic violence have been extremely effective in translating their concerns into public policy. In 35 states, the law mandates that courts consider domestic violence when determining the best interest of a child. At least 25 states have passed legislation exempting battered women from mediation (Gerenscer, 1995). In 1991, the Ontario government announced that unless mediators could demonstrate that mediation was not harmful to abused women, there would be no further funding or legislative support for family mediation (Landau, 1995).

Several convenings of mediators and advocates have been held to address the concerns of women's advocates and explore ways of making mediation safer. They have been conducted at the local, regional, national and international levels. For example, in 1989, the Association of Family and Conciliation Courts hosted a Symposium on Mediation and Domestic Abuse. During 1990-1992, the Court Mediation Service of the Maine Judicial Department convened a national forum to discuss mediation in divorce and domestic abuse cases. In 1992, representatives of eleven California Bay Area counties met with one another and family violence researchers to develop guidelines for handling cases with domestic violence in Family Court Services programs. And in 1992 and 1993, the Ontario Association for Family Mediation hosted a convening of North American mediators and women's advocates to hear each other's point of view.

One outcome of these convenings was the generation of guidelines and standards addressing mediation practice in cases with domestic violence. In all cases, these guidelines stressed the importance of training mediators about the dynamics of domestic violence, identifying domestic violence factors in cases handled by the mediation agency through the use of screening techniques and insuring the physical safety of participants through the development of special mediation interventions/services (Landau, 1995; Duryee, 1995).

The Toronto Forum of 1992 and 1993 is the most recent of these convenings. It focused on the issues of screening, mediator training and alternative referrals when mediation was

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deemed to be inappropriate. All groups were co-facilitated by a mediator and women's advocate. Women's advocates participated in demonstrations of screening sessions and generated ideas about how to screen, safety planning, how to terminate mediation safely and alternatives to mediation.

Advocates of divorce mediation contend that domestic violence has become a cornerstone of mediation practice and procedure. Currently, all individuals aspiring to become practicing members of the Ontario Association for Family Mediators must take five hours of domestic violence training as part of the 60-hour training requirement. In the U.S., the Academy of Family Mediators adopted an "Abuse Policy" and a minimum standard of two hours of domestic violence training as part of its 60 hour requirement for practitioner members (Landau, 1995). Simultaneously, public divorce mediation programs launched processes of self-reflection and review aimed at adaptive program procedures to better guarantee safety to victims of domestic violence and other power imbalances.

Advocates for battered women question whether mediation is appropriate when there has been domestic violence and believe that it may be harmful. They cite concerns about the decriminalization of domestic violence, the safety of victims who participate, imbalances of power leading to lopsided outcomes and agency limitations including lack of funding, high caseloads, and inexperienced staff (Gerenscer, 199; Perry, 1994; Treuthart, 1996).

This study examined how divorce mediation programs in U. S. courts currently handle the problem of domestic violence in their caseloads. The investigation involved a national review of program practices which was accomplished through a mailed survey to 136 court-based mediation programs in 31 states. To gain a further reading on national program practices and policies, we also conducted telephone interviews with administrators of 34 court-based divorce mediation programs located in 17 states.

Based on this national overview, we selected five mandatory mediation programs for intensive study. The purpose of the investigation was to generate a detailed qualitative portrait of practice in several settings and to elicit the reactions of key program personnel and relevant professionals in the community. Our in-depth examination of programs included Family Center of the Conciliation Court of Pima County, Arizona; the Mediation and Investigative Services of Orange County, California; the Marriage and Family Counseling Service of Cook County, Illinois; the Family Services Unit of the Connecticut Superior Court; and the Court Mediation Service of the Maine Judicial Department.

The following observations are based upon this overview of national practices and in-depth examination of five program formats:

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- 1. Domestic violence is a frequent problem in divorce mediation programs but varies greatly from case to case.** Domestic violence is a common factor in divorce mediation cases. Some programs estimate that it occurs in almost 80 percent of cases; none of the programs put the incidence at less than 50 percent. The high incidence rates across the sites, however, belies great diversity in its form, duration and severity. The public stereotype tends to be of the most extreme cases that involve severe physical violence, injury and shelter residence. In actuality, mediators see many more cases that are "less black and white." These cases often involve distant events, isolated and episodic events, and mutual provocation. These clinical observations appear to be supported by domestic violence researchers who discern many forms of interparental violence with only some types translating into an inability to communicate equally (Johnston and Campbell, 1993; Chandler, 1990). Most program administrators of mediation programs report that fewer than five percent of their cases are excluded from mediation due to domestic violence.

For these reasons, mediators regard a report of domestic violence in and of itself to be an unreliable indicator of power imbalance or incapacity to mediate, in and of itself. Power is more complex and many factors in addition to domestic violence are predictive of a couple's ability to mediate or their unsuitability for mediation. For example, although a recent study found that women reporting abuse felt less empowered than non-abused women, they were not significantly different with respect to several items that come to play in mediation, including: a) giving in on demands just to stop dealing with the abuser; b) feeling guilty for asking for custody and visitation; c) feeling able to speak up for themselves about custody and visitation; and d) getting what they want in disagreements. In addition, overall levels of court empowerment were higher for women than for men, reflecting perhaps the commonly held view that family courts favor women (Newmark *et al*, 1995). Joan Kelly (1995) identifies eight potential sources of power imbalance that may come into play in mediation. She argues that power is fluid rather than being a static entity and that power inequalities may shift from issue to issue.

Nor is the restraining order a necessary or sufficient indicator of severe domestic violence or capacity to mediate. Restraining order filings vary by legal representation and local legal culture. In many settings, they have been overused for financial and tactical reasons and have suffered some devaluation in the eyes of the judiciary. Moreover, since the most fearful victims may avoid getting a restraining order in the first place, an automatic ban of these cases in mediation might not eliminate the most serious cases.

- 2. Mediator attitudes toward domestic violence have changed.** In response to pressure by advocates and the growing incidence of domestic violence in their

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caseloads, mediators are more sensitive to the special issues posed by couples with a history of family violence. Seventy percent of national program providers report that their mediators attend regular inter-professional forums and training sessions dealing with domestic violence. Training on the dynamics of domestic violence is required for certification by key mediator professional associations in the U.S. and Canada. It is a regularly featured topic at local, regional and national conferences and is highlighted in key practitioner publications.

The debate about family violence and mediation has been a catalyst for much self-reflection, dialogue and program development. While many mediators used to resist the idea of separate mediation sessions or private screening and caucusing because it might compromise their neutrality, most mediators now see these techniques as indispensable in domestic violence cases. Mediators now acknowledge that domestic violence is pervasive and that mediation procedures frequently need to be changed to accommodate the phenomenon.

Nevertheless, mediators remain convinced that most victims can mediate safely and usefully. Mediators believe that victims are better served in mediation than in conventional court hearings because of mediator expertise and training, and mediator sensitivity to domestic violence issues. They feel that mediation is less intimidating and more personal than the court system and that it can be manipulated to fit the individual needs of the couple. Because most couples with a domestic violence history will continue to interact with one another concerning visitation and other matters pertaining to the children, they believe that mediation enhances safety by leading to the production of structured and detailed visitation plans. *Pro se* divorce is a growing phenomenon and in the absence of mediation, many domestic violence clients have no personal attention during their divorce process and no help with developing safety plans and visitation arrangements. These views tend to be empirically supported in the growing body of literature pointing to high levels of satisfaction among women with the mediation process and outcome, women's reported ability to express their views in mediation and have equal influence over the terms of the agreement, and their ability to terminate mediation when they perceive that the process is not working for them (Depner *et al.*, 1992; Emery, 1994; Kelly and Duryee, 1992; Kelly and Gigy, 1989).

- 3. There is a need for multiple and individualistic methods for identifying domestic violence.** In light of the variable nature of domestic violence, mediators feel that program responses to domestic violence cases should be individualistic and flexible and avoid rigid policies or rules of procedure. They favor retention of mandatory mediation because they believe mediation is useful to most domestic violence clients. In addition, of course, are their concerns that voluntary approaches



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or automatic exclusions will lead to massive reductions in case volume and the demise of the mediation program. Large programs may have advantages in mediating family violence cases. Perhaps because of their resource base, the largest mandatory mediation programs are most apt to have the most developed training programs dealing with domestic violence and the most elaborate screening procedures.

Programs use a combination of techniques to identify domestic violence: written questionnaires, background checks, clinical observations and in-person interviews. The most favored approach is the in-person screening. During these private interview sessions, mediators feel best able to question and observe clients in order to identify domestic violence, salient safety issues, needed modifications of the mediation process or incapacity to mediate, as well as other substance abuse and conflict issues. Nationally, while 80 percent of programs report screening for domestic violence, only about half utilize separate, private interviews to question clients explicitly about violence. Some legal scholars (Gerenscer, 1995) have called for legislatures to require screening for domestic abuse by all participants in the family law process: lawyers representing the parties, the clerk of the court, the judge, and the family mediator.

Disclosures of domestic violence probably vary according to how questions are worded in screening interviews or surveys. While relatively few people acknowledge domestic violence, when asked explicitly, many report experiencing specific incidents of pushing and hitting. Temporary restraining orders are regarded as suggestive rather than conclusive evidence of domestic violence and invite further questioning by mediators. Mediators also rely on non-verbal cues and other body language for evidence of intimidation and gross power disparities. Many programs have structured interview formats that include questions on many family problems but explicitly ask about each client's ability to negotiate with the other parent.

- 4. Mediation approaches have changed due to the recognition of domestic violence.** During the past five years, domestic violence has been the subject of intense training, internal discussion and staff development efforts. As a result, mediation programs have altered their procedures and practices to enhance the safety of victims during and after mediation. Indeed, the national survey of program practices indicates that only six percent of court mediation programs make no use of special techniques to address domestic violence problems.

The changes that have been adopted include: use of on-site metal detectors, security guards at mediation services and escort services to parking structures; written intake forms and questionnaires; individual, in-person screenings for domestic violence; use of shuttle or separate mediation techniques; the use of male-female co-mediation teams; de-emphasis of agreement-making in domestic violence cases; separate waiting

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rooms and orientations for men and women with domestic violence cases; the attendance of victim advocates and other support people; termination of mediation by the mediator; and referrals to shelters and counseling programs that specialize in domestic violence. Still another change in programs with strong domestic violence policies is the use of alternative measures of mediator performance and avoidance of a focus on agreement rates.

Some programs have adapted mediation in more idiosyncratic ways. For example, in Maine, attorneys routinely participate in the mediation process, and their presence defuses some of the safety concerns about mediation. In Orange County, California, mediators can recommend that couples with serious allegations participate in a non-confidential domestic relations investigation leading to the promulgation of a safety plan concerning the exchange of the children. In Cook County, parents who make serious allegations about one another are ordered to go through a non-confidential, emergency intervention with mediators leading to recommendations that are promulgated by the court as temporary orders.

Many programs have provisions for custody evaluations and other lengthy, therapeutic assessments conducted by a separate division of the court or with separate staff. Couples who fail to reach agreements in mediation and/or are terminated from the process may be referred to custody evaluation.

Mediators also report making more subtle changes in their mediation approach in response to domestic violence, such as taking a more active and directive role in the mediation including monitoring client reaction, speaking on behalf of the client, and playing a more normative-evaluative role.

Some of these techniques are used more commonly than others with co-mediation and caucusing used most often, along with security personnel and escort services. Mediators also report that they routinely provide victims with information on relevant community referrals.

5. **Definitions of "success" in mediation are changing due to domestic violence.** Less than five percent of cases are excluded from mediation due to domestic violence. Clients rarely ask to be excused even when permitted to opt out. In part, this may reflect the lack of alternatives for victims of abuse. More commonly, domestic violence cases terminate mediation without reaching an agreement. The more empowered mediation clients will simply refuse settlements that they feel are unfair or not safe. With less empowered clients, mediators prefer to terminate mediation themselves, rather than placing the burden on clients. In cases with serious safety concerns, the mediator can alert the court by referring the couple for an emergency investigation or

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evaluation. Mediators can also be more lenient on no-shows in domestic violence cases or treat the private screening session as satisfaction of the mandatory mediation requirement.

Mediators contend that agreements reached in mediated cases with a domestic violence history are often more detailed and specific than cases without such history. They frequently call for neutral exchange sites, the use of third parties to monitor exchanges of the children, supervised visitation and other arrangements to enhance safety.

6. **Communication between the domestic violence and mediation communities is vital to program quality and acceptance.** During the past five years, on a local and national basis, many mediators and domestic violence advocates have collaborated to conduct relevant training programs and help review and revise mediation program procedures to enhance safety. Where there has been communication and collaboration between the two communities, mediation programs are more responsive to the problem of domestic violence and generally enjoy more acceptance by advocates. In some settings, the contact has been extensive. For example, several of Maine's contract mediators are also domestic violence advocates and serve to bridge the communication gap between the two communities. And the family court in Connecticut contracts with battered women's shelters to provide victim advocacy services in the court. As a result, in many jurisdictions, advocates and mediators work collaboratively to conduct assessments of batterers and victims and render recommendations to the court concerning needed services. In these settings, mediators and advocates appear to adopt pragmatic views about what works and what doesn't that are rooted in the common cases they handle rather than ideology or politics. Advocates for victims who have direct exposure to mediation programs are also more realistic about the process. Rather than seeing it as a "search for compromise" as is commonly believed, they view mediation as a process of "developing options" for couples (Duryee, 1995).
7. **Reactions of domestic violence advocates are mixed.** Some advocates feel that mediation is preferable to conventional adversarial interventions because mediators are better trained than judicial officers and the forum affords more opportunity for safety issues to be addressed and safety plans to be crafted. There is also some sentiment that mediators in court programs may be better trained in domestic violence than private mediators who have more of a middle class focus and might avoid the issue. Still other advocates hold a dim view of what the legal system affords for victims and question the durability of legal remedies, the training and sensitivity of judicial personnel, and the limited availability of legal representation and advocacy.

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Not all advocates, however, feel this way. Some advocates worry about the courts throwing up too many counseling and mediation hurdles to victims who need legal remedies or diluting the message that domestic violence is a crime. Still others feel that mandatory mediation should be avoided because: victims feel coerced into participating even if given the option to opt out; the procedure has inherent risks since the adequacy of screening procedures and the use of safe mediation practices varies with individual mediators; its cooperative and compromise-oriented focus is inappropriate for victims; and it assumes that abusive individuals will bargain in good faith.

These debates surface in the discussion of mediation in both a divorce and non-divorce context, but are decidedly more charged in protective order cases. While mediation of custody and visitation issues usually occurs in the context of a divorce or a post-dissolution filing, many of the same issues come up in temporary restraining and protective order cases where there are minor-aged children. Indeed, these procedures are sometimes dubbed the "poor man's divorce," and may be used more routinely among the growing population of never-married parents. Many mediation programs routinely avoid restraining order cases or others that enter the court system because of violence. Generally, this decision reflects a desire to send a public message that domestic violence is a crime that should be prosecuted in a judicial intervention rather than negotiated in mediation. On a practical level, these cases are rarely prosecuted unless there are multiple order violations. Moreover, these cases often involve the same issues as those addressed in divorce mediation. And because the domestic violence has been flagged by the parents in the filing, some mediators feel they are sometimes easier to screen and handle with various safety procedures than divorce matters where the violence may be invisible. The debate about mediation in protective order cases remains unresolved, with most jurisdictions avoiding the practice all together. Clearly, more research is needed on the experiences of victims who use different forums to develop plans for visitation following the filing of a protective order.

8. **Many concerns about mediation expressed by advocates for victims and batterers are more general concerns about the laws governing custody and visitation.** Both advocates for men and women are frustrated by the lack of evaluation in mediation and the confidentiality of the process. They sometimes favor more evaluative interventions that address the veracity of the allegations or non-confidential formats where insights gleaned in the mediation process can be conveyed to evaluators and treatment providers.

Underlying these complaints are basic concerns about laws and policies governing custody and visitation in domestic violence cases that transcend the mediation forum.

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For example, domestic violence advocates are concerned that judges do not place enough weight on domestic violence factors in awarding joint custody or generous visitation or that courts order visitation to commence while victims are still in shelter and thereby undermine the confidentiality of the shelter. They are frustrated by their inability to prove that a man's contact will be harmful to the children when it has been clearly harmful to the children's mother.

In a similar vein, many lawyers who represent fathers are frustrated by the frequent use of restraining orders and other allegations regarding domestic violence which they perceive to be pursued for tactical advantages in the divorce process. Based only on a woman's allegations, they contend, a man will be ejected from his home, separated from his children and forced to pay child support. They are frustrated by the limited avenues available to prove that an allegation is unfounded and the delay that might be introduced in generating such proof.

9. **Reactions of attorneys and judges are generally favorable.** Attorneys and judges typically support mandatory mediation interventions because they feel that mediators are better trained about domestic violence and are more sensitive to domestic violence than most judicial officers. Many domestic violence victims, ill-equipped to be strong advocates, come off poorly in court settings and wind up with more disadvantaged outcomes. Less rushed than court hearings, mediation is believed to afford more opportunity to design custody and visitation arrangements that enhance safety. The practice of rotating judges through domestic violence and divorce calendars hinders their ability to acquire training and sensitivity to the domestic violence issue. The practice also precludes effective teaming of judges and mediators.

Legal service attorneys who represent domestic violence victims sometimes take exception to this view and favor aggressive advocacy and directive court hearings. They cite their clients' irrationality, their tendencies to back down and the unwillingness and inability of many batterers to play by the rules and abide by agreements. In most communities we studied, legal services have been severely curtailed for divorcing parties although victims of domestic violence often get a higher priority in service allocation decisions.

10. **Victims of domestic violence need a variety of community services and forums of dispute resolution.** Even strong proponents of mediation recognize that it is of limited help to families who increasingly face severe dysfunctions, limited financial resources and a lack of relevant services. There is a growing need for many adjunctive services including affordable legal services for the review of mediation agreements, counseling for batterers and victims, substance abuse treatment, housing and job training resources for victims, enforcement services to make sure that agreements

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concerning counseling and treatment are adhered to, and supervised visitation programs. With the rise of *pro se* filings and the ability of lawyers to solve many cases on their own using quasi-mediation techniques, court mediation programs report that they are seeing families with more serious dysfunctions and limited financial resources than ever before. Many feel that the range of services available to these families in the community cannot begin to address their needs. And in the absence of follow-up services, court orders and/or mediated agreements have a limited ability to make a difference in people's lives.

There is also growing recognition that some high conflict and violent couples need court interventions other than those currently available to resolve their disputes. This includes more intensive therapeutic/legal interventions that combine mediation with counseling, evaluation and longer-term therapy (Cantelon, 1992). Another recommended approach is arbitration, where trained and experienced mental health professionals assess issues and make binding decisions in disputes that involve children (Zibbell, 1995). Still a third approach to decision-making is a hybrid of evaluation and mediation where mental health professionals conduct an assessment, make recommendations, present them to parents and their attorneys and use the feedback phase to stimulate parties to engage in decision-making regarding their post-separation parenting arrangements. Custody evaluators at the FCCC of Tucson are currently experimenting with this approach and report favorable outcomes. Less formal and stressful than litigation, arbitration, case management and mediation/evaluation hybrids are more evaluative and structured than regular mediation and may offer more protections for victims of domestic violence.

11. **Research should focus on the experiences of victims of domestic violence who use mediation and other dispute resolution forums.** There is a need for "consumer research" that taps the actual experiences of domestic violence victims who go through mediation and/or court to address their custody and visitation problems. At this point, the critique of divorce mediation remains largely theoretical and anecdotal. In most articles, professionals speak for the mothers and fathers seen in divorce mediation. Rarely do these parents speak for themselves. There are few empirical studies that address whether agreements produced in various forums differ, whether victims feel more or less secure, and what their longer-term safety experiences are.

The few empirical studies that have been conducted reach optimistic conclusions about mediation. For example, a recent Australian study of satisfaction with mediation found no differences between clients of both sexes with domestic violence and their non-violent counterparts. This led the authors to conclude that merely knowing whether there was physical or emotional abuse does not predict client satisfaction with mediation (Davies, *et al*, 1995).

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In a similar vein, a comparison of mediation and lawyer-represented divorce clients in Canada found statistically comparable levels of harassment and post-processing abuse in lawyer and mediation samples along with identical rates of compliance and re-litigation. Female mediation clients reported being more informed about their divorce options, higher levels of satisfaction with the process and lower divorce costs. Males and females in the mediation sample did not differ significantly with respect to power imbalances. Overall, the investigators conclude that, compared with lawyer negotiations, mediation makes a greater contribution toward preventing the abuse of separated women by their ex-partners (Ellis and Stuckless, 1996).

A third study that was intended to compare the use of mediation and custody evaluation procedures in custody and visitation disputes involving domestic abuse in Portland, Oregon was revised because so few parties were willing to forego mediation for assignment to the custody evaluation group. Among the reasons conjectured to explain the refusal to bypass mediation is potential confusion about the requirement to mediate; reluctance to forego a settlement opportunity in mediation and undergo a longer custody evaluation; and, preference for mediation to custody evaluation (Newmark *et al*, 1995).

Much of the debate about safety and fairness in divorce mediation will only be resolved with more explicit research with consumers. While the most convincing research design involving random assignment of cases to mediation and non-mediation treatments appears not to be an option, researchers might compare the experiences of mediation clients with a domestic violence history to comparable clients served in jurisdictions that lack mediation resources.

12. **All dispute resolution forums are perceived to have inherent risks and advantages.** Custody evaluations are faulted for being protracted and exposing the victim to potential harm. Although legal interventions are generally favored over mediation by advocates, many lawyers maintain that domestic violence is often invisible to them and that victims may experience the same dangers in both mediation and attorney negotiated forums. Moreover, researchers find that power imbalances are sustained through attorney-assisted negotiations (Erlanger *et al*, 1987).

More to the point, there are reduced resources to deal with the legal problems of a growing impoverished population and the incidence of *pro se* divorce is on the rise. Although many advocates put high hopes on court hearings and judicial interventions, the reality is that many judicial officers rotate through domestic violence and domestic relations calendars as often as every three months and operate under mass production conditions with little training and often harmful biases.

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Those who work intimately with couples with domestic violence problems feel that the violence is often just one of many problems, including substance abuse, economic pressures, and personality disorders. These are dysfunctions that are rarely addressed in any forum. Their amelioration depends upon the availability of a wide array of accessible and affordable services: counseling, supervised visitation and substance abuse treatment, to name a few. Attention might be more appropriately focused on generating these services in communities and insuring follow-up and meaningful sanctions for those who violate court orders, rather than focusing on the manner in which orders are generated in the first place.

This research confirms that court mediation programs are grappling with the issue of domestic violence in their caseloads. Administrators seem more aware of the problem today than in the past, estimating that it is a problem for 50 to 80 percent of the divorcing couples referred to their programs. They report that most mediation services have changed how they do business as a result of thinking and discussion prompted by advocates for victims, with most programs using training, screening, and special mediation techniques designed to enhance safety. They estimate they only exclude about five percent of the families referred to them due to concerns about power imbalances, safety concerns and other factors related to domestic violence, and that the vast majority are being mediated with no apparent harm.

The debate about mediating in cases with domestic violence is far from decided. Moreover, the patterns we report are based on responses by program administrators – a method that can be tainted by social desirability. The other techniques we relied upon – qualitative interviews and observations in five jurisdictions that are leaders in the mediation field – are also subjective. The study did not include feedback from victims and batterers. Thus, we have no reading on whether the remedial strategies developed by court mediation programs have had their intended effects.

More to the point, we cannot assume that all mediation programs are as attentive to safety and as committed to adopting policies aimed at minimizing the dangers associated with domestic violence as are the programs examined in this research. Fully 20 percent of the program administrators we surveyed reported no use of screening procedures to detect domestic violence; only 50 percent reported the use of private, face-to-face screening interventions preferred by mediators and advocates. Similarly, 30 percent of responding administrators reported that their mediation staff had received no training on domestic violence. Six percent reported no use of special techniques and at least 30 percent reported no use of the special mediation techniques most favored in domestic violence cases: shuttle approaches and co-mediation.

Mediation programs should be taking several steps to accommodate the inevitable incidence of domestic violence in their caseloads. One is to involve their mediators in continuing



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training the on the subjects of the dynamics of families in which there is domestic violence and techniques of managing a safe environment. Mediation program directors should involve their local advocacy community in the training effort. The collaboration affords mediators with the best opportunity to learn about the scope and nature of the problem from front-line workers. It also helps to dispel misconceptions about the process that many advocates may hold.

Another key feature of program response is the adoption of screening prior to mediation. It has been suggested that legislatures require all family law participants to engage in screening for domestic violence. This would include lawyers, the clerk of the court, judges and mediators (Gerenscer, 1995). Whether or not screening procedures become statutorily required, they are regarded as the cornerstone of safe mediation. The features of a credible screening effort are contained in the guidelines adopted by various organizations for mediation practitioners. Still other examples of screening tools are available in the published literature, like the Conflict Assessment Protocol (Girdner, 1990). Among the fundamental features of recommended identification processes are: universal screening of mediation candidates prior to the conduct of mediation, the use of separate and private interviews, reliance on more than one method of identification, eliciting information in a neutral, safe atmosphere and making assessments that lead to the conduct of mediation as usual, the conduct of mediation with special conditions, or case referral for alternative treatments.

Still another component of desirable program practice is the review of current procedures and their assessment for their potential safety impacts. Among the accommodations to conventional mediation practice that are recommended to maximize safety are the use of security personnel, shuttle techniques, co-mediation procedures, non-agreement, and safe termination of the mediation process.

Finally, the debate about mediation and domestic violence has prompted many communities to recognize the need for better coordination between and among the criminal justice, court and support agencies that assist families and the need for key legal and treatment interventions. In an era of declining resources for social programming, advocates for victims of domestic violence, the judiciary, the legal community and the mediation profession must all work together to prevent domestic violence from occurring and to develop community resources for safe living and parenting following its identification.

# R

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# A ppendix A

## MEDIATION AND DOMESTIC VIOLENCE

### Current Policies and Practices

Nancy Thoennes, Peter Salem, and Jessica Pearson

*This article summarizes policies and procedures used by various courts in the United States in responding to domestic violence. Over 200 courts and services were contacted under a grant from the State Justice Institute in developing this survey. The article covers the profile of mediation services, mediator training regarding domestic violence, screening for domestic violence and protocols used.*

### INTRODUCTION

Mediation has become a widely adopted method of resolving custody and visitation disputes that would otherwise require litigation. Beginning with a 1973 pilot program in Los Angeles County, California, court-based mediation of custody and visitation disputes developed in San Francisco and San Diego and now has spread to jurisdictions in 38 states and Washington, D.C. The National Center for State Courts estimates that there are approximately 205 mediation programs currently operating in the courts of which a substantial proportion mandate participation categorically (36.6%) or permit judicial (mandatory or permissive) referrals (36.6%) (McEwen, Mather, & Maiman, 1994). Coinciding with the surge in public sector mediation is a growing community of private mediators.

Mediation proponents espouse the benefits of the mediation process to both the court system and users. Some research supports these claims. Mediation programs generally resolve between 50% to 70% of referrals, allowing judges to devote additional time to the most difficult cases. A recent study by the National Center for State Courts (Keilitz, Daley, & Hanson, 1992) compared mediation with more traditional custody evaluation services.

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Participants in the study reported that mediation was perceived as fairer, involved less pressure to make unwanted agreements, produced more satisfying agreements, and gave them more control over decisions than the traditional adversary process. These findings are consistent with previous research on mediation (Brown, 1988; Camplair & Stolberg, 1990; Kelly, 1989; Pearson & Thoennes, 1988).

As the popularity of mediation grew during the 1980s, an important source of dissent also emerged. Advocates for battered women and feminist scholars raised concerns about issues such as gender-related power imbalances and, particularly, the impact of mediation on victims of domestic abuse. The strongest criticisms have been directed toward the practice of mandating abused women to participate in mediation (Hart, 1990). First and foremost, they are concerned that mediation is potentially unsafe. They note the risks inherent in an intervention that allows a violent spouse to know the time and place his partner will be present for mediation. They also warn that power imbalances render mediation inherently unfair and that a consensual or collaborative decision-making process is not possible between a victim and abuser (Gagnon, 1992; Hart, 1990; Sun & Woods, 1989).

It is not possible to provide a non-adversarial means of settling disputes in a neutral environment when one party is using overt or covert intimidation. (Pagelow, 1990, p. 354)

Mediation critics also argue that the conjoint and compromising nature of the mediation process is troublesome. They contend that mediators favor joint custody, which they argue often runs counter to what is best for the victim and children (Bruch, 1988; Grillo, 1991; Hart, 1990).

The concerns expressed by advocates for abused women and feminist scholars are important and must be seriously considered. Indeed, there is compelling evidence that spousal abuse is present in at least half of custody and visitation disputes referred to family court mediation programs (Cohen, 1991; Depner, Cannata, & Session, 1992; Newmark, Harrell, & Salem, 1994). There is also evidence that many women will continue to be subjected to abuse after separation (Barnard, Vera, Vera, & Newman, 1982; U.S. Department of Justice, 1986) and many experts in the field of domestic abuse contend that violence escalates when the woman tries to leave the relationship (Hart, 1990).

In recent years, there have been several large-scale convenings of leaders in the women's advocacy and mediation communities to discuss concerns about mediation and domestic violence. These are the Association of Family and Conciliation Courts (AFCC) Symposium on Mediation and Domestic Abuse (1989), the Maine Mediation and Domestic Abuse Project (1990-



1992), and the Toronto Forum on Women Abuse and Mediation (1993). The Model Code on Domestic and Family Violence of NCJFCJ (1994) was another interdisciplinary group to address the issue of battered women in the legal system. Numerous interdisciplinary discussions of this type have occurred at the state and local level as well. At the same time, legislation exempting battered women from mediation has been enacted in at least 16 states (National Center on Women and Family Law, 1993).

Not surprisingly, mediation proponents are reluctant to abandon the process outright. They maintain that some critics have compared the best case litigation scenarios with the worst examples of mediation (Rosenberg, 1991) and that many of the shortcomings attributed to mediation also are present during attorney-assisted negotiations and litigation (Chandler, 1990; Milne, Salem, & Koeffler, 1992). Because approximately 40% of all divorcing parents will never have an attorney (Duryee, 1991), mediation proponents point out that comparing mediation to a system of strong, assertive advocacy is unrealistic. Naturally, non-attorneys also can provide strong advocacy for battered women, but these services are not readily available either.

Mediation proponents contend that there are mechanisms, such as screening, individual caucusing, and the use of advocates in mediation sessions, that can help mitigate safety and fairness concerns. It also is argued that techniques such as these can allow abuse victims to experience the benefits of mediation, although reducing the likelihood of future abuse and increasing the probability of positive post-divorce interaction (Erickson & McKnight, 1990).

Although some advocates for abused women favor voluntary mediation, all strongly oppose requiring victims to mediate, and some have gone so far as to insist that women who have been abused *cannot be allowed* to mediate. In point is an Alaska pilot mediation project that was legislatively prohibited from serving abused and formerly abused women. This prohibition resulted in the elimination of more than 60% of prospective users. The program staff concluded that:

Many of the women who were excluded believed that the prohibition (against mediating) was damaging, rather than helpful, to them. While women's advocates perceived the potential risks of mediation to outweigh any possible benefits, the victims often believed first, that they should be the ones to make that choice and second, that in their own cost-benefit assessment the services offered by the pilot mediation project were valuable enough to overcome the risks as they perceived them. (DiPietro, 1992, p. 24)

The Alaska project operated in a system where free or low-cost legal advocacy is not readily available, as is true in virtually all American commu-

nities. Thus it is impossible to tell whether battered women would have opted to mediate had other similarly priced interventions been available.

The debate over the suitability of mediation for cases involving domestic abuse shows little likelihood of subsiding, and the solutions are far from clear. One area of consensus between mediators and advocates for abused women is that mediation practice must be designed to try to ensure the safety of battered women and children. To accomplish this, both groups support the need for adequate training of mediators and the practice of screening mediation referrals for domestic abuse (Erickson & McKnight, 1990; Lerman, 1984; Marthaler, 1989; Sun & Woods, 1989). Indeed, the need for screening and training are among, although certainly not the only, recommendations to emerge from the Model Code advisory group of NCJFCJ (1994) as well as the Toronto Forum (1993).

To explore issues related to screening and the use of special techniques following allegations of domestic violence, AFCC and the Center for Policy Research have collaborated on a survey of family court services throughout the United States. The survey elicits information on program policies and procedures related to screening referrals for domestic abuse, excluding domestic violence cases from mediation, and the special techniques, if any, that are used to mediate cases with allegations of domestic violence.

## SURVEY RESULTS

In late 1993, the AFCC, under a grant from the State Justice Institute, designed a survey related to mediation practices and policies in cases with allegations of spousal violence. The questionnaire was mailed to institutional members of the AFCC and programs listed as active providers of family and divorce services in the National Center for State Courts database. Of the 200 surveys that were mailed, approximately 75% were returned and are included in this analysis.

Of the 149 survey respondents, 136 reported that their courts provided mediation to parents with child custody or visitation disputes. The responding mediation programs were located in 31 states. However, approximately 20% of the respondents ( $N = 29$ ) were from California. The only other states with a significant number of multiple respondents were: Michigan ( $N = 10$ ), Virginia ( $N = 8$ ), and Florida and Kansas ( $N = 7$  in each state). Because the questionnaire generally was designed to collect data on individual court programs and jurisdictions rather than state-level data, all surveys were included in the analyses.

### PROFILE OF THE RESPONDING MEDIATION SERVICES

The vast majority of the mediation services participating in the survey were court-based. Only a small percentage were independent agencies providing services on a contract basis or public agencies other than courts. The jurisdictions represented vary widely in size: approximately 20% have populations less than 100,000 and approximately 25% have populations more than 500,000.

Program size also varies widely. On the average, the programs represented in this study had 9.7 professional staff members, with a median of 4.0. The average and median number of mediations completed in 1992 were 656.3 and 225, respectively.

Most of the respondents reported that cases enter mediation in a variety of ways. For example, nearly all of the programs allow parties to request mediation. However, only 5% of the programs report that the only referral mechanism is a request for services by one or both of the parties or their attorneys. Almost 40% of the responding courts have state statutes requiring mediation. This figure is probably higher than the national average, given that the survey had a large number of respondents from a single state with a statute requiring mediation. Including only a single respondent from California would bring the overall percentage of respondents with statutes requiring mediation down to 25%.

Approximately 22% of the respective programs do not have state statutes requiring mediation, but do have court rules requiring that mediation be attempted. Thus the process is mandatory by law or court rule in more than 60% of the responding programs. In the remaining programs, referrals are made by some or all of the judges hearing custody and visitation cases, and such referrals may be routine local court practice.

There is an association between the size of the jurisdiction and the mandated use of mediation. Larger jurisdictions are more likely to require parents to attempt mediation, although smaller jurisdictions are more likely to leave the decision up to individual judges and the parents. For example, more than a third of the jurisdictions with populations below 100,000 report mediation is recommended by some, but not all, judges or left to the parties. In jurisdictions of more than 100,000, the comparable figure is 18%.

### MEDIATOR TRAINING IN DOMESTIC VIOLENCE

In approximately 70% of the represented programs, mediators receive some type of training related to domestic violence. The nature of the training is described as "in-house" by a third of the respondents reporting training.

Table 1  
Percentage of Mediators Trained in Domestic Violence

		Mediation is:		
		Voluntary	Mandatory	
Domestic violence training:	No	39%	22%	
	Yes	60%	78%	
		(53)	(80)	
		Number of annual mediations*		
Domestic violence training:	No	37%	25%	16%
	Yes	63%	75%	84%
		(41)	(40)	(32)
		Number of paid mediators**		
Domestic violence training:	No	33%	42%	7%
	Yes	67%	58%	93%
		(54)	(36)	(31)

\* Differences are significant at .1.

\*\* Differences are significant at .05.

Another 30% say mediators are trained through state-level conferences or state-training programs. Fewer (11%) indicate that national level conferences are the primary source of training. Approximately 20% of the respondents report their mediators have received training from the local domestic violence community, including advocates for battered women and treatment and shelter providers. Finally, 6% of the sites with domestic violence training describe a local university as the primary provider.

Jurisdiction size is not related to whether or not mediators receive training in the area of domestic violence. However, mediator training in domestic violence is significantly more likely in mandatory versus voluntary programs; programs with more than 10 paid mediators on staff; and, to a lesser extent, in programs with large numbers of mediations completed annually. By contrast, the *source* of the domestic violence training does not vary significantly by voluntary/mandatory nature of the process or by program or jurisdiction size (See Table 1).

### SCREENING FOR DOMESTIC VIOLENCE

Approximately 20% of the programs surveyed conduct no screening of mediation referrals. There is only a single factor that appears to distinguish

these programs from those that do screen. Programs with and without screening are similar in jurisdiction and staff size and they are equally likely to be mandatory or voluntary programs. However, we do find that programs conducting no screening also complete fewer mediations each year: an average of 423.1 compared to 702.9 in programs with screening. These differences are statistically significant at the .05 level.

Most programs do conduct some type of screening, and there are a wide variety of ways that mediation programs may elicit information about family violence. Approximately 70% of the respondents said they either administer a questionnaire prior to the first session; complete individual interviews prior to the first session (either by phone or in person); or conduct a joint intake interview. Each of these approaches has the advantage of gathering information directly from the parents. However, interviews conducted jointly with both parents present would seem to have a lower likelihood of eliciting candid reports of domestic violence. A victim of domestic violence might be fearful of reporting domestic violence with an abusive partner present. If we eliminate the joint intake interviews, we find that 63% of the programs collect information *directly and privately* from the parties prior to the start of mediation.

Despite the widespread use of some screening mechanism, it is important to note that not all of the interviews specifically ask about spousal violence. Approximately 80% of those using intake questionnaires/interviews say the instrument contains at least one such question, and the mean number of questions related to domestic violence is reported to be 3.5. As Figure 1 illustrates, about half of the programs privately collect information from each parent prior to the start of mediation and specifically ask about spouse abuse.

If screening is done, generally the mediator is responsible for conducting the interview or the intake questionnaire. Ninety-five percent of those using screening questionnaires and 79% of those doing interviews say the mediator reviews the results. Approximately 60% say only the mediator is involved. Specialized intake workers are reported to review questionnaires in only 12% of the jurisdictions using such forms, and specialized intake workers conduct interviews in 26% of the programs using the interview format.

Approximately 80% of the programs relying on mediators to review screening questionnaires or conduct screening interviews provide training to mediators in domestic violence.

As Table 2 indicates, a number of other issues, many of which are related to domestic violence, also are addressed in these screening interviews or questionnaires, including questions related to child abuse, substance abuse, arrests and police involvement, and restraining or no-contact orders.

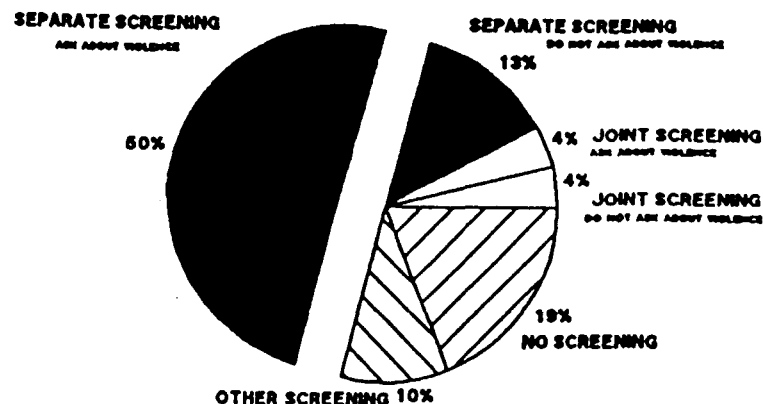


Figure 1. Type of pre-mediation screening.

Ten percent of the respondents said interviews or questionnaires are not completed at their sites, but staff do consult other sources, including court files (92%), criminal records (23%), the prosecutor's office (15%), victim advocacy services (8%), and batterer treatment providers (15%). It should be noted that many (58%) of the programs gathering data directly from the parents also complete these types of "background" checks. When we compare programs that use pre-mediation interviews/questionnaires and those relying entirely on secondary sources, we see no differences according to jurisdiction size, number of paid program staff, number of mediations completed annually, whether the jurisdiction mandates the use of mediation by legislation or court rule, or whether mediators have received training in the area of domestic violence.

The vast majority (83%) of the programs responding to the survey said the party alleging spousal violence would be asked follow-up questions if abuse allegations came to light either before or during the mediation session. The programs most likely to report that allegations will be followed up with additional questions are programs with pre-mediation screening; programs that mandate mediation by law or court rule; and programs where mediators receive training in domestic violence issues.

When follow-up questions are asked, they cover a wide variety of issues. More than half of those reporting follow-up questions say they "always" ask whether the parent alleging the abuse: now feels safe; feels able to participate as an equal party in mediation; is concerned about being coerced into an agreement; fears future abuse; fears for the children's safety; or is aware of and has accessed appropriate support services.

Table 2  
Types of Questions Included in the Screening Interview/Survey

General concerns about mediation	71%
Drug and alcohol problems	52%
Arrests and police involvement	51%
Methods of conflict resolution	46%
Whether domestic violence exists	72%
Drug/alcohol treatment	41%
Perceived ability to safely disagree in mediation	40%
Child abuse or neglect	47%
Perceived safety of mediation	60%
Specific violent behaviors	45%
Restraining or no-contact orders	66%

Slightly more than 70% of the respondents report that follow-up questions are asked of the alleged abuser. These seem to be fairly general questions designed to elicit his or her reaction to the allegations. About 20% of those reporting follow-up questions say the accused party is always asked to "take responsibility for the abuse"; however, many respondents volunteered that these types of questions generally would be inappropriate for a "neutral" mediator.

#### EXCLUDING CASES FROM MEDIATION

Once domestic violence has been identified as an issue, either through screening or during the session, the options are to excuse the case from mediation; proceed with mediation using approaches that are believed to afford special safeguards; or proceed with mediation as usual.

Overall, it appears that relatively few cases were excluded from mediation in 1992 due to a report of domestic violence. The majority of the respondents to this survey said that less than 5% of their cases were eliminated due to spousal abuse allegations. About 85% said less than 15% were eliminated. Of course, these figures generally are not based on empirical data kept by the sites. Although they are the best information currently available, they still are impressionistic estimates offered by program staff and should therefore be viewed with some caution.

There are several factors that might be expected to influence whether or not cases are diverted due to domestic violence allegations. Some of these possibilities cannot be adequately tested with the data at hand, and might even serve to mask real differences in our responding sites. One possibility is that

the sites differ in the incidence of domestic violence in the populations they serve. If this is true, some sites should have higher percentages of cases eliminated simply due to a higher incidence in the population, independent of their screening criteria or exclusionary policies. Indeed, if the incidence of domestic violence in the population varies greatly from site to site, a lack of differences in the percentage of cases eliminated from mediation actually would suggest that the sites are not comparable in their exclusionary practices.

Another possibility that we cannot rule out is that the sites differ in the degree to which parents are excused from mediation prior to an "official" referral to the mediation program. We have seen that in some sites judges or hearing officers decide which cases to send to mediation. If they systematically screen and exclude cases with domestic violence, it may be that the estimates on the number of cases excluded are inaccurate simply because we surveyed mediation program administrators who only had knowledge about post-referral cases.

In Figure 2, we have assumed comparable levels of domestic violence across the responding jurisdictions and comparable levels of pre-referral screening. These admittedly large assumptions allow us to use the data to explore such factors as whether the percentage of cases eliminated due to domestic violence differs by mandatory or voluntary nature of the mediation service; the type of screening conducted; and the authority underlying policies and practices regarding the exclusion of domestic violence cases from mediation. However, given the magnitude of these assumptions, the findings we report should be treated as preliminary.

The programs with the lowest percentage of cases eliminated from mediation are those relying entirely on self-referrals from the parties. All of the programs in our sample that mediate only self-referred cases reported that less than 5% of their cases were eliminated from mediation due to concerns about spousal violence. This finding may reflect the fact that couples with a history of battering self-select out of the process before reaching mediation. There is reason to believe that parents who voluntarily seek mediation may be among the most cooperative divorcing parents and least likely to have problems with domestic violence.

There are no differences in elimination rates when we compare programs in which cases are referred to mediation by state statute, court rule, local court practice, or at the initiative of some or all judges. Across all of these programs, 80% to 90% of the respondents report that fewer than 15% of the cases do not mediate due to spousal violence.

Conducting pre-mediation screening with the parties does appear to influence the percentage of cases that are eliminated from the intervention. Specifically, programs that do some type of screening report that slightly

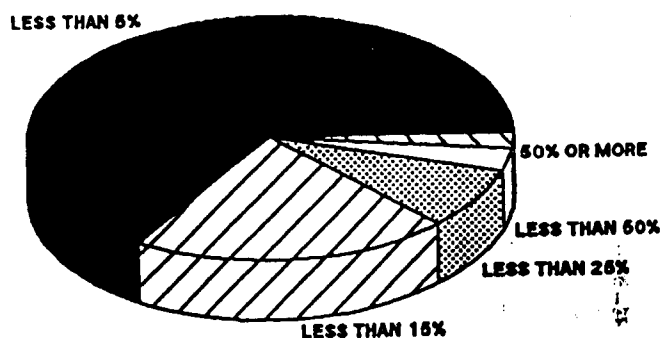


Figure 2. Percent of cases eliminated from mediation due to domestic violence allegations.

higher percentages of cases are eliminated compared to those programs providing no screening. However, as Tables 3 and 4 indicate, having parents privately complete intake surveys or participate in private interviews will not necessarily result in more cases being eliminated when compared to screening that relies solely on other techniques such as a review of court files or other data sources.

Tables 3 and 4 refer to cases being "eliminated" from mediation. For cases to be diverted once abuse has been alleged, there must be some mechanism in place to determine whether or not a case will be excused or sent on to mediate. Respondents to this survey were asked how such decisions are made at their courts. Overall, 62% indicate that exclusions from mediation are made on a case-by-case basis. In these sites, the decision makers are most often mediators or mediators along with judges. The remaining 38% are evenly divided between those where court rules or legislation address the diversion of cases from mediation.

Not surprisingly, sites that mandate the use of mediation through legislation or court rule are more likely than voluntary sites to use these same approaches in specifying exclusions. Only 19% of the sites where mediation is at the discretion of the judge and/or the parties set exclusions from mediation by court rule or legislation, compared to more than half of the sites with mandatory mediation.

At first glance, it appears that equal percentages of cases are eliminated from mediation sites making case-by-case determinations and those with policies set by law/court rule. In both settings, respondents rarely report that more than 15% of their cases are eliminated from mediation due to domestic violence. However, these patterns change slightly if we divide the sites with exclusion policies set by legislation/court rule into those *prohibiting* exclu-

Table 3  
Percentage of Cases Eliminated from Mediation in 1992 by Type of Screening\*

Eliminated in 1992:	Private screening interview/survey	Consult other sources	No screening
Less than 5%	61%	67%	83%
Less than 15%	24%	8%	13%
15% or more	15%	25%	4%
	(85)	(12)	(24)

\* Differences are significant at .3 level.

Table 4  
Elimination of Cases from Mediation by Specific Screening Procedures

Program relies on:	Percent reporting 15% or more eliminated from mediation
Parties complete surveys prior to a joint session	15%
Separate phone interviews with each parent	25%
Separate personal interviews with each parent	22%
Separate personal interviews with other parent waiting	15%
Joint intake interviews prior to mediation	11%
Review of family court file	20%
Search of criminal court records	27%
Contact with victim advocacy programs	15%
Contact with prosecutor's office	30%
Contact with batterer treatment programs	23%
	(132)

sions and those *allowing and specifying* exclusion criteria. As Table 5 indicates, elimination rates are highest in those settings where legislation or court rule specifically allows exclusions and specifies the criteria to be used.

The analysis thus far has focused on differences between programs with formal dictates regarding whether and when to exclude cases and those relying on determinations by various types of professionals. Another possibility is that the party alleging domestic violence will be given the option to terminate the mediation session or to proceed. As shown in Figure 3, almost 40% of the survey respondents indicate that at their programs the alleged victim is "always" given the option of withdrawing from mediation. Another 40% indicate this is "sometimes" done.

Even in programs requiring mediation by legislation or court rule, and in programs with formal mediation exclusion policies, the alleging party is often given the option of stopping the session. Nearly a third of those with

Table 5  
Percentage of Cases Eliminated from Mediation by Decision-Making Authority\*

Percent eliminated	Exclusions made by individuals	Exclusions set by law/court rule	No exclusions allowed
Less than 5%	68%	53%	100%
Less than 15%	20%	28%	0%
15% or more	12%	21%	0%
	(80)	(40)	(12)

\*Differences are significant at the .05 level.

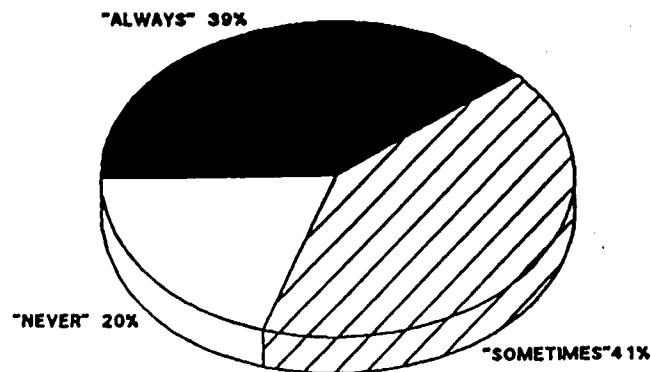


Figure 3. The alleged victim is offered the opportunity to end the mediation session.

mandatory mediation and a third of those with exclusion policies set by court rule or legislation report that the offer to withdraw always is offered.

Programs that "always" provide the party making the accusation the opportunity to stop the mediation session have slightly higher percentages of cases eliminated from mediation. When asked to estimate what percentage of their cases are eliminated due to domestic violence allegations, the response "less than 5%" was selected by 82% of those who "never" offer the alleged victim the option of terminating, 65% of those "sometimes" offering the option, and 54% of those "always" offering the option as shown in Figure 4.

On the other hand, providing the alleging party with the choice of continuing or terminating does not seem to result in exceptionally large numbers of women withdrawing from mediation. Less than 20% of those programs "always" offering the option to stop mediation eliminated more than 15% of their cases from mediation due to alleged violence.

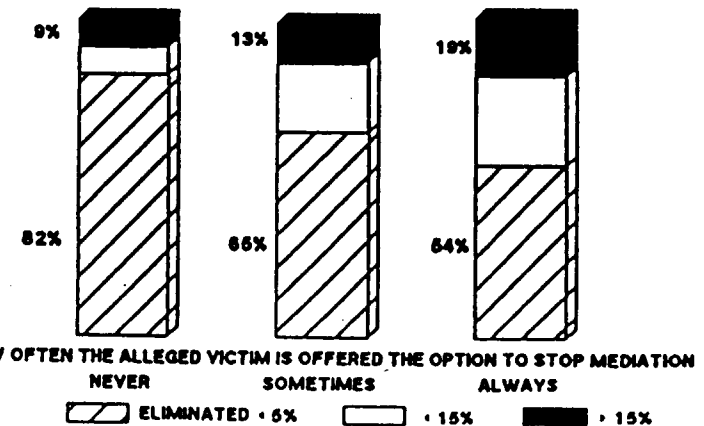


Figure 4. Cases eliminated due to violence allegations, by whether the alleged victim is allowed to terminate mediation.

#### THE USE OF SPECIAL MEDIATION TECHNIQUES

Just as determinations about what cases to exclude from mediation may be made on a case-by-case basis or set by legislation or court rule, so may determinations about the special approaches to be used in handling cases with allegations of violence. Six percent of the respondents ( $N = 8$ ) indicated that the use of special approaches is not an issue at their sites because no special techniques are ever used.

In most (73%) of the sites where special techniques are used, at least on occasion, the decisions about when to use them, and what to use, are made entirely by individual decision makers, including judges, the mediation program staff, and individual mediators. Special approaches are set by court rule or legislation in slightly more than a quarter of the sites. However, as Table 6 indicates, programs governed by legislation or court rule also allow judges and mediators help to make decisions about the use of special techniques on a case-by-case basis almost with exception.

Mandatory mediation programs are more likely than voluntary programs to have special mediation approaches set by court rule or legislation. Based on responses from all programs, we found 39% of the mandatory programs and only 6% of the voluntary programs have special approaches dictated by court rule or law. Differences decline but remain statistically significant when we include only a single California respondent. (We have multiple respondents from California, a site with both mandatory mediation and legislation governing the use of special techniques.)

Table 6  
How Decisions Are Made Regarding the Use of Special Mediation Techniques

Use of special techniques determined by:	All programs	Programs with some approaches set by law/court rule	Programs where approaches are not set by law/court
Legislation	21%	83%	
Court rule	15%	57%	
Judges/masters	27%	29%	26%
Program policy	46%	69%	39%
Mediators	70%	66%	71%
	(130)	(35)	(101)

We also found that programs with court rules or laws governing exclusions from mediation are likely (42%) to have the use of special mediation approaches set by law or court rule. In sites where the decision to exclude cases is left to individual decision makers, it is relatively rare (16%) to find laws or court rules addressing the use of special techniques. In other words, in sites with legislation or court rules relating to mediation, it is common to find multiple issues addressed, including referrals to mediation, exclusions from mediation, and special mediation techniques.

As Figure 5 illustrates, the most common special techniques include additional screening and caucusing with the parents. The least common technique is the routine use of telephone mediation. Other approaches, including the offer of a support person, co-mediator, shuttle mediation, or the use of private sessions, are not routine practice but are used at least some of the time.

As we have noted, virtually all of the programs with some special approaches set by court rule or legislation also allow individual mediators, administrators, and judges to make decisions. As a result, it is impossible for us to compare the types of special approaches set by court rule/law versus individual decision makers.

Comparisons of programs that provide mediator training in domestic violence with those that do not reveal few differences in the specific techniques that are used. However, there is some reason to believe that mediator training serves to heighten awareness of the need to consider special approaches when mediating families with allegations of domestic violence. In programs without training in domestic violence, 17% of the respondents say they "always mediate as usual" and only 8% say they "never mediate as usual," as shown in Figure 6. By contrast, in programs with domestic violence

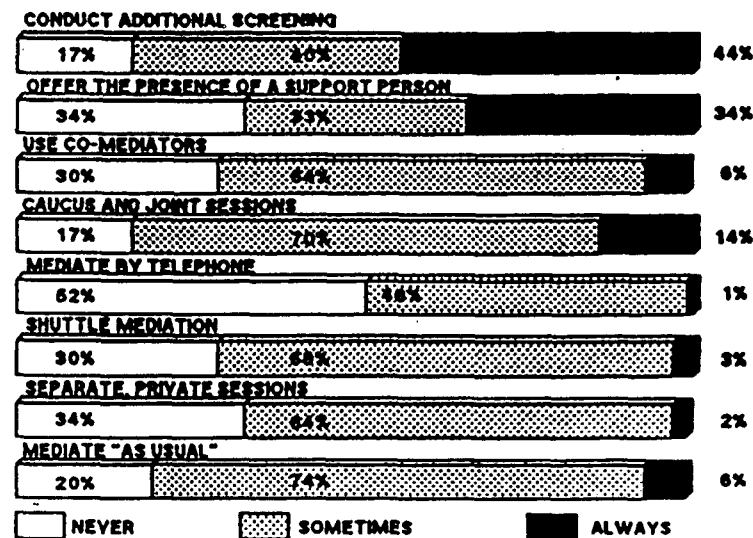


Figure 5. Special techniques when violence is alleged.

training, only 3% of the respondents say they "always mediate as usual" and nearly a quarter say this is "never" done. These differences hold in both mandatory and voluntary mediation programs.

Finally, respondents were asked whether there are any issues that are not negotiable in mediation if domestic violence has been alleged. Several respondents volunteered that "the violence itself" is never negotiable. However, it seems likely that all of the programs would take the position that mediation will not discuss whether or not violence is acceptable. Therefore, only those indicating that more specific substantive issues are non-negotiable have been included in this analysis. Given this definition, approximately 20% indicate there are non-negotiable issues and 80% do not.

Among those indicating that some issues may not be mediated, almost a third indicate that restraining orders or the conditions outlined in restraining orders are not negotiable. Other fairly common responses were: no issues are negotiable in light of domestic violence allegations (17%); issues directly related to safety and situations that are viewed as threatening may not be negotiated (17%); and custody may not be negotiated (13%).

As we have noted, very few programs determine how to handle cases with abuse allegations solely on the basis of court rule or legislation. As a result, it is difficult to compare programs relying on law or court rule versus

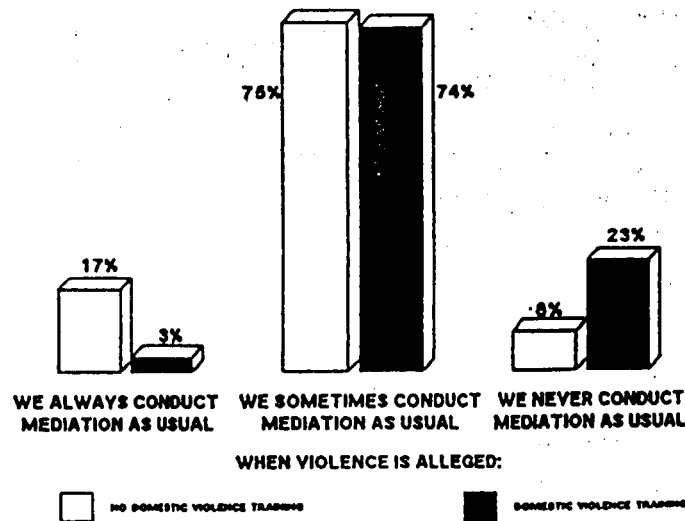


Figure 6. Use of special techniques by mediator training.

individual decision makers. However, despite our small sample sizes, it does appear that programs with domestic violence addressed in court rule or law are significantly more likely to report that there are non-negotiable issues in mediation. Half of these programs say some issues are non-negotiable, compared to only 18% of those relying entirely on individual decision makers.

#### THE CUSTODY EVALUATION ALTERNATIVE

Custody evaluation is a common alternative to mediation. The use of custody evaluations in families with domestic violence has not been subject to the same debate that has erupted over the use of mediation in such cases. In part, this is probably due to the fact that the purpose underlying a custody evaluation is not joint decision making or direct negotiating between the parties. Rather, the process usually is intended to gather information that will allow a judge or hearing officer to make a decision about the custody and visitation arrangement that will serve the child's best interests.

However, little is really known about how well or poorly custody evaluations meet the needs of families with alleged spousal violence. As a result, this final section of the analysis explores respondents' reactions to a variety of issues related to custody evaluation practices in families with violence allegations.

Approximately 65% of the programs providing mediation services ( $N = 90$ ) also conduct custody evaluations. Another 13% of the respondents to the survey indicated that their programs do not offer mediation but do conduct custody evaluations. The 103 respondents who reported on custody evaluation practices represent jurisdictions and programs of all sizes and all geographic areas. The average and median number of custody evaluations completed in 1992 was reported to be 210.1 and 100, respectively. In programs also providing mediations, the comparable numbers of mediations are far higher: 710.2 and 240.5, respectively. The lower numbers of completed evaluations probably can be attributed to two factors: (a) most programs use mediation as a first step in resolving disputes and only those cases unable to reach agreements in mediation proceed to evaluations and (b) custody evaluations are more time-consuming and labor-intensive than mediations.

Although 37% of the respondents indicated that cases can be set for an evaluation at the request of the parties, self-referral is not the primary method of entry at any of the programs. Rather, the programs are evenly divided between those setting all disputes (or all post-mediation disputes) for evaluations and those accepting cases at the discretion of individual judges.

The typical custody evaluation format used at the participating sites varies considerably. When asked about all the custody evaluations they conduct, not merely those with domestic violence allegations, approximately 37% of the respondents described using almost entirely individual meetings with each parent. These respondents indicated that 90% or more of the evaluations entail only individual meetings with each parent. As indicated in Figure 7, another 48% seem to use a mixture of individual and joint sessions. In these programs, both joint and individual sessions were used in slightly more than half of all evaluations. The remaining 15% can be classified as programs relying more heavily on the use of joint sessions, although only 2% said this is the format used in 90% or more of all evaluations.

There are statistically significant differences in the formats typically used by programs that also provide mediation and those only conducting custody evaluations. Programs that also mediate are more likely to use joint evaluation sessions, although those exclusively providing custody evaluations are more likely to do only individual sessions. We cannot be certain why this is so. However, it seems likely that programs with experience in mediation may be predisposed to use forums that encourage parental interaction.

Approximately 70% of the respondents said that the counselors conducting custody evaluations have received training in the area of domestic violence. This is virtually identical to the percentage reporting that mediators



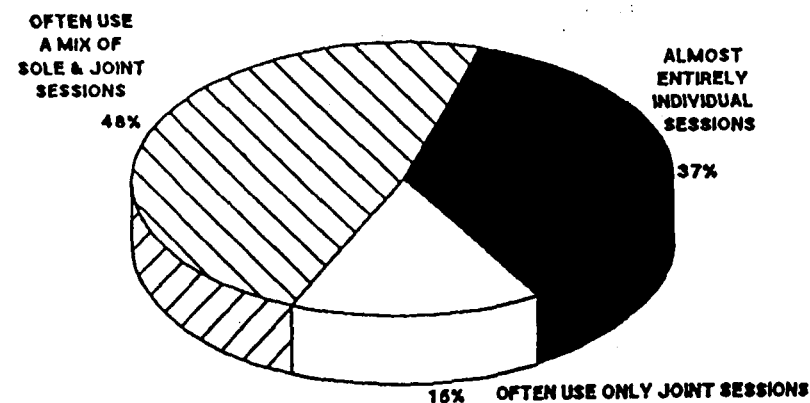


Figure 7. General format used in custody evaluations.

are trained. This is not surprising given that many programs rely on one group of workers to conduct both mediations and custody evaluations.

As seen in Figure 8, virtually all of the respondents indicated that in the course of the custody evaluation counselors collected information about domestic violence as well as other family problems. However, far fewer of the respondents indicated that information is elicited on the specific violent behaviors that have occurred in the home (e.g., hitting, pushing, threats) and whether the alleging party feels he or she can disagree with the other parent without fear of repercussion.

Information about family violence is not only gathered directly from the parties. Slightly more than 65% of the respondents indicated that checks also are made of one or more of the following: criminal records, victim advocacy programs, the prosecutor's office and batterer treatment providers.

If violence emerges as an issue, almost a third of the programs relying on a mixture of separate and joint meetings move to strictly separate meetings. On the other hand, less than 10% of the relatively few programs relying heavily on joint sessions routinely switch to separate meetings. However, in settings relying on joint sessions, it is common for the party alleging violence to be given a choice of joint or solo meetings. Offering the use of a support person is also fairly common. We find no differences in the use of special approaches between programs that do and do not provide domestic violence training.

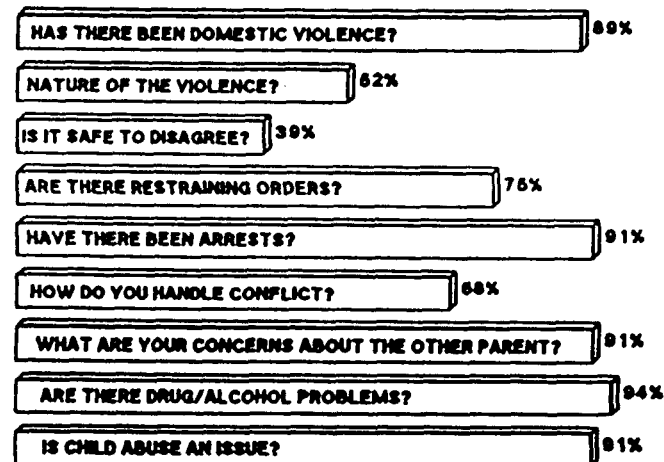


Figure 8. Questions addressed during the evaluation.

## DISCUSSION

The survey was designed as a first step in developing empirical data with which to address the many controversies surrounding the use of custody and divorce mediation in cases involving domestic abuse. Although this analysis may raise many questions, it does begin to present a picture of how family court services currently are dealing with the issue of domestic abuse.

Many family court services appear to recognize the strong likelihood of abuse between parents referred to mediation for resolution of custody and visitation disputes. Training in domestic abuse issues for mediators is quite widespread (70% of the programs) as is some attempt to screen for domestic violence (80% of the programs).

We do not know how comprehensive these training programs are, and we cannot conclude that training needs are being adequately met. However, it is encouraging to find that training does appear to heighten awareness of the issue of domestic violence and to produce tangible improvements in the way cases are handled. For example, the data show that in programs where mediators receive training in domestic violence issues, they are more likely to ask follow-up screening questions and use special mediation techniques to ensure the safety of the parties and the integrity of any mediated agreement.

Those programs with heavier caseloads—including, but not limited to, mandatory mediation programs—are also more likely to have mediators who are trained in the dynamics of domestic abuse, use follow-up questions as

part of their screening, and use special mediation techniques when abuse is identified.

There are several possible explanations for the greater activity level around domestic abuse issues in programs with larger caseloads. Some smaller programs may simply have less exposure to the issue. Programs with larger caseloads are likely to see abuse issues surface more often, making the need for some type of response more apparent. Larger programs may have more resources for training and education than programs that operate with one or two mediators and cannot afford to have staff out of the office. Mediation is often one of many duties for court counselors in small programs. These programs simply may be unable to devote the necessary resources for their staff to learn about the issues. Clearly, there are other possibilities, and further examination of these differences is needed.

There appears to be a good deal of screening activity; however, the implications of this activity are not so clear. For example, although 80% of programs report screening for domestic abuse, nearly 40% do not screen parents in a private setting. When combined with programs that provide a "general screening" (which does not ask specifically about abuse), only half of all responding programs screen each parent *directly and privately* prior to beginning mediation. This represents a serious shortcoming and raises questions about the comprehensiveness and adequacy of screening in general. Further research is needed to help understand the effectiveness of various screening protocols.

Although it is not surprising that screening of any sort increases the percentage of cases eliminated from mediation, it is interesting that relatively few cases are excluded from mediation due to allegations of domestic abuse. Most programs exclude families from mediation on a case-by-case basis rather than relying on more formal rules or guidelines. Indeed, programs report that offers to abuse victims to opt out of mediation do not result in significant numbers withdrawing from the process.

Again, the reason victims do not withdraw from mediation in large numbers is not clear. One argument is that victims are motivated to "choose" mediation out of fear of an abuser who wants to mediate, subtle pressures from the mediator or the court system, or misinformation. Others may contend that a victim of abuse is able to thoughtfully examine the available options, assess potential risks and benefits, and make a decision based on his or her own needs and interests and those of the children. Still another possibility is that victims lack affordable alternatives to mediation like free or low-cost settlement, arbitration, or litigation services. Additional research is needed to determine the reasons victims may or may not decide to participate in mediation.

The list of topics for future research is extensive. We need data to document whether the training provided to mediators covers information that both the domestic violence and mediation communities would view as useful and appropriate. We need more information regarding the impact of various types of mediator training on the decisions of whether to mediate, mediate using special techniques, or terminate. We need additional information about the degree to which the special mediation techniques described by respondents are actually in use, and how decisions are made about when to use these approaches. Future research also will need to examine whether programs are eliminating appropriate cases from mediation, whether all appropriate cases are eliminated, whether programs generally eliminate the same types of cases, and whether there is enormous variation by site. Finally, we need to determine the types of protective safeguards and arrangements that should be included in mediated agreements on custody in the context of domestic violence.

There are a score of questions that can best be addressed by interviewing parents. For example, we need to know whether parents who allege violence feel they should or should not mediate. We also need to know how the duration, degree, and type of violence—and the parents' perceived alternatives to mediation—influence that determination. We need to know the perceived impact of mediation and its alternatives on the safety of parents and children. We need more information about what happens to those parents who are eliminated. This would include consideration of the degree to which families with domestic violence allegations produce mediated agreements or end without settlement, the nature of these agreements, and the degree of satisfaction with both the process and agreement. Similarly, we need empirical information about what happens to parents with domestic violence histories who are excluded from mediation and the types of dispute resolution procedures that work best for them.

Although this study inevitably has left many questions unanswered, it highlights a few immediate steps that mediation providers might take to address the needs of victims of domestic violence. At a minimum, these would include greater involvement of the domestic violence community in providing mediator training; more attention to private, pre-mediation screening; and policies that minimally provide mediator discretion in offering a parent the option of terminating mediation.

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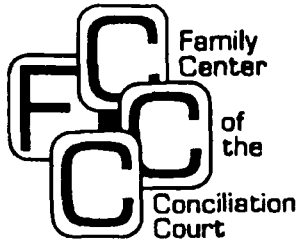
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# A ppendix B



## CUSTODY INFORMATION

The below information has been prepared by the Family Center of the Conciliation Court in conjunction with attorneys from the Family Law Section of the Pima County Bar Association. If you have questions, please consult an attorney.

**LEGAL CUSTODY:** The right of a parent(s) to make major decisions for the children.

**SOLE CUSTODY:** Although parents may consult with one another regarding the children's needs, one parent, the custodial parent, has the final say in major decisions such as medical care, education, religious training, etc.

Visitation with the noncustodial parent will be as stated in the final order.

**VISITATION:** The situation in which a child is placed with a parent who has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care. These decisions must be consistent with the decisions made by a parent having legal custody.

The noncustodial parent has the responsibility to provide emergency medical care when warranted. Every effort must be made to contact the custodial parent before authorizing such care, or if this is not possible, immediately following. Decisions regarding medical care must be consistent with the decisions made by the parent having legal custody.

**JOINT CUSTODY:** Refers to joint legal custody, joint physical custody, or both. The term JOINT CUSTODY does not necessarily mean equal parenting time.

**JOINT LEGAL CUSTODY:** Both parents share the right to make major decisions for their children. The term JOINT LEGAL CUSTODY implies that parents must agree. A parent cannot individually overrule the other parent except as specifically defined by the parents or by the Court and as incorporated into a court order.

**JOINT PHYSICAL CUSTODY:** The residence arrangements are such that the child has "substantially equal" time and contact with both parents. "Substantially equal" is generally considered to mean periods of time ranging from 40% to 60% of the time with each parent.

**ACCESS TO RECORDS:** For all types of legal custody, both parents are entitled to have equal access to medical, school, and other records of the child directly from the custodian of the records or from the other parent unless otherwise provided by a court order.

**JOINT CUSTODY PARENTING PLAN:** Before the Court will order JOINT CUSTODY the parents must submit a proposed plan that includes a description of each parent's rights and responsibilities for the personal care of the child. The term "responsibilities" as used in this Parenting Plan does not mean financial responsibilities.

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The Plan must include:

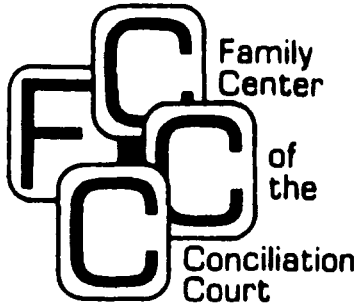
1. Clear statements as to who (either or both parents) will make the decisions and take responsibility for:
  - Personal Care
  - Education
  - Health Care
  - Religious Training
2. A schedule which includes residence, holidays, and vacations.
3. A procedure by which changes, conflicts, or alleged breaches may be resolved. Conciliation services or private counseling may be used.
4. A procedure for periodic review to determine the continued appropriateness of the Plan.
5. A statement that parents understand that JOINT CUSTODY does not necessarily mean equal parenting time (*i.e.*, does not necessarily mean exactly equal time with each parent).

If parents are unable to agree on any element of the plan, the Court shall determine that element. The Court may also at that time consider the ability of the parents to make joint decisions for their children and thus manage Joint Legal Custody.

FCCC #117 1/1/94

Hon MICHAEL D ALFRED  
PRESIDING JUDGE

FREDRIC F MITCHELL Ph.D  
DIRECTOR



GREAT AMERICAN TOWER  
32 N. STONE, SUITE 1704  
TUCSON, ARIZONA 85701-1403  
(602) 740-5600  
FAX (602) 624-4034

JANUARY 30, 1995  
Date

IN RE THE MARRIAGE OF:

\_\_\_\_\_  
Petitioner Superior Court No. D-00000  
( \_\_\_\_\_, Atty)  
and Conciliation Court No. MO-

\_\_\_\_\_  
Respondent  
( \_\_\_\_\_, Atty)

Mediation Ordered By: HONORABLE \_\_\_\_\_

Pursuant to Local Rule 8.7

- \_\_\_ 1. The parties have reached:
- ( ) Full
  - ( ) Temporary
  - ( ) Partial
  - ( ) Settled
  - ( ) Other

agreement concerning living arrangements for the children. Copies of the Memorandum of Understanding have been forwarded to legal counsel.

- \_\_\_ 2. No agreement was reached. If the parties desire a hearing/trial, counsel should advise the Court Administration Office in writing, including estimated length of time for hearing/trial.

cc: Petitioner  
Respondent  
Attorney for Petitioner  
Attorney for Respondent  
D/R File  
Calendar Services

The Superior Court of Pima County

FAMILY CENTER OF THE CONCILIATION COURT

To make the best use of the time available for mediation, please complete the following information sheet. The information will be held in confidence at the Conciliation Court.

NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_ AGE: \_\_\_\_\_

Address: \_\_\_\_\_  
(Please include Zip Code)

Home Ph.: ( ) \_\_\_ - \_\_\_\_\_ Day/Work Ph.: ( ) \_\_\_ - \_\_\_\_\_ Message Ph.: ( ) \_\_\_ - \_\_\_\_\_

Do you wish to keep telephone numbers and address confidential from the other parent?  
Yes \_\_\_ No \_\_\_

Are you married to or divorced from the other parent? If so, date of marriage: \_\_\_\_\_ Date Separated: \_\_\_\_\_ Date Divorced: \_\_\_\_\_

Children:

<u>Name</u>	<u>Age</u>	<u>Birthdate</u>	<u>Name</u>	<u>Age</u>	<u>Birthdate</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_ Gross Monthly Income: \_\_\_\_\_

Have you had professional counseling? \_\_\_\_\_ With Whom? \_\_\_\_\_

Number of sessions: Self: \_\_\_\_\_ You and the other parent: \_\_\_\_\_

Education: \_\_\_\_\_ Religious Preference (Optional): \_\_\_\_\_

Ethnic background (optional) \_\_\_\_\_

If remarried, date: \_\_\_\_\_ Name of present spouse: \_\_\_\_\_

Number of previous marriages and how long each: \_\_\_\_\_

Attorney: \_\_\_\_\_  
(First Name) (Last Name)

What has been the schedule for the child(ren)'s time with each parent since the parents' separation? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What time share plan do you believe is best for the child(ren)? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Today's Date \_\_\_\_\_

Use back side if more space needed  
0006A/pg 7/4-92



Case Number: \_\_\_\_\_  
Parent: Mother \_\_\_\_\_ Father \_\_\_\_\_  
DV Present? Yes No  
Terminated due to DV? Yes No

PRE-MEDIATION INTERVIEW

1. Tape Recorder?                      Weapons?
  
2. Mental and Physical Health Needs of Parents and Children:  
\_\_\_\_ Major health problems or limitations?  
  
\_\_\_\_ Hospitalizations for mental or physical health?  
  
\_\_\_\_ Medications?  
  
\_\_\_\_ Counseling/therapy?  
  
\_\_\_\_ Substance abuse or concerns?
  
3. Safety Concerns:  
\_\_\_\_ Fears or concerns about being here?  
  
\_\_\_\_ Fears or concerns regarding other parent?  
  
\_\_\_\_ Threats, intimidation, coercion, harrassment?  
  
\_\_\_\_ Destruction of property (brcken furniture, dishes, holes in walls or doors, etc.?)  
  
\_\_\_\_ Hitting, shoving, punching, choking, hairpulling or other violent behaviors?  
  
\_\_\_\_ Weapons?  
  
\_\_\_\_ Sexual intimidation or assault?  
  
\_\_\_\_ Orders of protection or restraining orders?  
  
\_\_\_\_ Police called or arrests for DV?  
  
\_\_\_\_ Considered going or actually gone to doctor or hospital for injuries?  
  
\_\_\_\_ Shelter services?  
  
\_\_\_\_ CPS Involvement?

NOTES:

MFORMS/FORMS/TA/7-92  
FCCC #161 5-10-94

No. \_\_\_\_\_

Padre o Madre

¿V.D. Presente? Si No

¿Terminado por V.D.? Si No

ENTREVISTA DE PRE-MEDIACION

1. ¿Trae con usted una grabadora? ¿una arma?

2. Necesidades de Salud Física y Mental de los padres e hijos:

\_\_\_ ¿Problemas mayores de salud o limitaciones?

\_\_\_ Medicamentos

\_\_\_ ¿Consejos/terapia?

\_\_\_ Abuso de sustancias o preocupaciones.

3. Preocupaciones acerca de su seguridad personal

\_\_\_ ¿Siente temor de estar aquí?

\_\_\_ Temor o preocupación de su pareja (esposa (a))

\_\_\_ Amenazas, intimidación, coerción, acoso

\_\_\_ Destrucción de propiedad (¿mobiliario roto, trastes, hoyos en las paredes o puertas, etc?)

\_\_\_ ¿Golpes, empujones, estrangulamiento, jalones de cabello, u otro tipo de conducta violenta?

\_\_\_ ¿Armas?

\_\_\_ ¿Intimidación o violación sexual?

\_\_\_ ¿Ordenes de protección o restricción?

\_\_\_ ¿Llamadas a la policía o arrestos por VD?

\_\_\_ ¿Ha ido al hospital o quizo ir al doctor por lesiones?

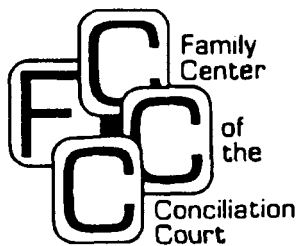
\_\_\_ ¿Servicios de Albergue?

\_\_\_ Ha estado involucrado CPS

Notas:

Spforms 3 (A)

10/27/93



## BASIC PRINCIPLES CONCERNING ACCESS

1. Each child has the right to develop and maintain an independent relationship with each parent.
2. Each child has the right to be free of the conflict between the parents.
3. Each child has the right to be free from having to take over the parental responsibility for making custody/visitation decisions.
4. Each child has the right to be free from having to take sides with, defend, or downgrade either parent.
5. Each child has the right to be guided, taught, supervised, disciplined, and nurtured by each parent, without interference from the other parent.
6. Each child has the right to be financially supported by both parents, regardless of how much time each parent spends with the child.
7. Each child has the right to spend time with each parent, regardless of whether or not financial support is given.
8. Each child has the right to a personal sleeping area and space for possessions in each parent's home.
9. Each child has the right to be physically safe and adequately supervised when in the care of each parent.
10. Each child has the right to a stable, consistent and responsible child care arrangement when not supervised by the parents.
11. Each child has the right to develop and maintain meaningful relationships with other significant adults, (i.e., grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the parents.
12. Each child has the right to expect that both parents will follow through with the child care plan, honoring specific commitments for scheduled time with the child.
13. Each child has the right to both parents being informed about medical, dental, educational, and legal matters concerning the child, unless such disclosure would prove harmful to the child.
14. Each child with special needs (developmental, mental, emotional and physical) has the right to appropriate consideration and adaptation in any child care plan.
15. Each child has the right to participate in age appropriate activities so long as these activities do not significantly impair the relationship between the child and either parent.

FCCC #116 1/1/94

## COMMUNITY RESOURCES

The following list of services are possible resources for people experiencing a divorce or separation. The Family Center of the Conciliation Court does not assume responsibility for the availability, the effect of, or the quality of service, provided by those listed.

### CRISIS COUNSELING

HELP ON CALL CRISIS LINE (24 hour phone counseling)	323-9373
VICTIM WITNESS PROGRAM (Crisis counseling including Domestic Violence and Child Snatching)	
8:00 a.m. to 5:00 p.m.	740-5525
after 5:00 p.m.	911 Ask for Victim Witness

### COUNSELING SERVICES

The following agencies listed are non profit agencies located throughout the city of Tucson. They provide a variety of services aimed at promoting the well-being of individuals and families. Contact the specific agency or Information and Referral (881-1794) for information on services provided.

CATHOLIC SOCIAL SERVICES	623-0344
FAMILY CENTER OF THE CONCILIATION COURT	740-5590
FAMILY COUNSELING AGENCY	327-4583
JEWISH FAMILY SERVICE	792-3641
LA FRONTERA CENTER	884-9920
OUR TOWN FAMILY CENTER	323-1706
SOUTHERN ARIZONA MENTAL HEALTH CENTER	628-5241

### DOMESTIC VIOLENCE

#### Services for Women and Children:

AVA CRISIS SHELTER	795-4880
THE BREWSTER CENTER FOR VICTIMS OF FAMILY VIOLENCE	622-6347
	(24 hr. crisis line)
TUCSON CENTERS FOR WOMEN AND CHILDREN	795-4266

#### Services for Men:

COUNSELING AND CONSULTING SERVICES	882-0090
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#### Services for Men and Women:

THE BREWSTER CENTER FOR VICTIMS OF FAMILY VIOLENCE	622-6347
	(24 hr. crisis line)
COUNSELING AND CONSULTING SERVICES	882-0090
COUNTY ATTORNEY DIVERSION PROJECT	740-5596
DOMESTIC VIOLENCE MONITORING PROGRAM FOR THE CITY OF TUCSON	629-9913

[The Family Center of the Conciliation Court-Tucson, AZ.: (602) 740-5590]

EDUCATION AND SUPPORT

ARIZONA FATHERS AND PARENTS CONCERNED FOR CHILDREN OF DIVORCE	620-0664
COUNSELING AND CONSULTING SERVICES (Domestic Violence Education Group)	882-0090
DIVORCE RECOVERY	327-4583
ENRICHMENT FOR PARENTS PARENTING CLASSES	881-0935
FAMILY CENTER OF THE CONCILIATION COURT (Divorce Education Groups for Parents and Kids/9-18 yrs. old) ("Considering Divorce")	740-5590
P.H.A.S.E. (Project for Homemakers in Arizona Seeking Employment)	621-5008 or 621-3902
WOMEN HELPING WOMEN (YWCA)	884-7810

The following four resources are psychiatric treatment facilities that may offer outpatient education programs on a variety of subjects including divorce, step family issues, parenting classes etc. Contact each facility for specific programs they may be offering.

DESERT HILLS CENTER FOR YOUTH AND FAMILIES	622-5437
PALO VERDE HOSPITAL	322-4340
TUCSON PSYCHIATRIC INSTITUTE FAMILY DEVELOPMENT CENTER	293-2273
TUCSON PSYCHIATRIC INSTITUTE HOSPITAL	296-2828

FINANCIAL PROBLEMS:

COUNTY ATTORNEY CHILD SUPPORT SERVICES	622-7000
TUCSON FAMILY DEBT COUNSELORS	722-3328

LEGAL SERVICES

LAWYERS' REFERRAL SERVICE	623-4625
SOUTHERN ARIZONA LEGAL AID	623-9461
WOMEN HELPING WOMEN (YWCA)	884-7810

MEDIATION SERVICES

FAMILY CENTER OF THE CONCILIATION COURT	740-5590
JEWISH FAMILY CHILDREN SERVICES	795-0300
OUR TOWN FAMILY CENTER	323-7862

VISITATION ENFORCEMENT

JUDICIAL SUPERVISION PROGRAM (CASA de los NINOS)	792-6393
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[The Family Center of the Conciliation Court-Tucson, AZ.: (602) 740-5590]

0734A/Pg12-13, (5/93)

Hon. MICHAEL D. ALFRED  
PRESIDING JUDGE

FREDRIC F. MITCHELL, Ph.D.  
DIRECTOR



GREAT AMERICAN TOWER  
32 N. STONE, SUITE 1704  
TUCSON, ARIZONA 85701-1403  
(602) 740-6590  
FAX (602) 624-4034

MEMORANDUM OF UNDERSTANDING  
CHILD CARE PLAN

FOR: Mother:

Father:

Child's age and date of birth: , age 1 1/2, DOB: 6-24-93.

Attorney for Mother:

Attorney for Father:

Mediator: Marilyn R. Abbas, M.S.

This agreement is entered into by and in order to plan for the custody and residence arrangements that we believe to be in our child's best interest.

1. Legal Custody:

We agree that , father, will have sole legal custody of our child.

2. Time Sharing Plan:

a. Residence Arrangements:

We agree to the following plans, one for the present while both parents reside in Tucson, and the other which will take effect in the event either parent moves from the area in such a way that the first plan is rendered impractical.

Plan A:

We agree that will live primarily with his father and will be with his mother on the first and third weekends of each month. Weekends will be counted from the first weekend containing Saturday and Sunday. The time will be from Saturday morning at 10:00 a.m. until Sunday at 6:00 p.m. will also see his mother on Tuesday and Thursday of each week from 5:00 p.m. to 8:00 p.m. Additional time sharing and adjustments to the schedule may be made by mutual agreement in advance.

The Superior Court of Pima County

Plan B:

If either parent moves from the area, we agree that [redacted] will continue to live with his father and [redacted] will be with his mother as follows.

Mother will have [redacted] for a week which includes Easter, or for the school Spring Break if that applies, with specific dates to be arranged by mutual agreement at least 30 days in advance. [redacted] will be with mother for one month in the summer which is to be arranged at least by May first of each year. We agree that each parent will have one week with [redacted] during the winter holidays, the first week to include Christmas and the second week to include New Year. On the first Christmas after a move, mother will have the first week and father will have the second week and then the schedule will alternate between the parents. The Thanksgiving holiday period will alternate between the parents and father will have the holiday first after a move.

The specific dates, times and travel arrangements will be made at least 30 days in advance. We agree that the parent who is to receive [redacted] will provide his transportation.

b. Vacations:

We agree that each parent may have up to two weeks of uninterrupted time for vacation with [redacted] each year and that notice will be given to the other parent at least 30 days in advance. In the event of either parent moving from the area, the schedule described in Plan B above will be in effect.

c. Holidays:

The following holiday plans will suspend the regular residential plan for the duration of the holiday and take precedence over vacation time unless otherwise agreed by the parents. In the event of either parent moving from the area, the schedule described in Plan B above will be in effect.

New Year:

We agree that [redacted] will be with each parent from 10:00 a.m. on New Years Eve Day (December 31st) until 6:00 p.m. on New Years Day (January 1st) in alternate years. In 1996 and all upcoming even-numbered years [redacted] will be with his mother; in all odd-numbered New Years [redacted] will be with his father.

Easter:

[redacted] will spend the Easter holiday, from Saturday evening at 6:00 p.m. until Easter Sunday at 6:00 p.m., with each parent in alternate years. In all odd-numbered years he will be with father and in all even-numbered years he will be with mother.

Mother's Day and Father's Day:

will spend these special days with his appropriate parent from 10:00 a.m. to 6:00 p.m.

Memorial Day/Labor Day:

We agree that these long weekends, from Friday at 6:00 p.m. until Monday at 6:00 p.m., will alternate from year to year beginning in 1995 and all odd-numbered years with his mother. In all even-numbered years will be with his father for these holidays.

Halloween:

Each parent will have for Halloween activities from 10:00 a.m. until 9:00 p.m. in alternate years. In all odd-numbered years will be with his mother and in all even-numbered years with his father.

Thanksgiving:

The Thanksgiving holiday, from 10:00 a.m. to 6:00 p.m., will alternate between the parents. In 1995 and all odd-numbered years will be with father and in all even-numbered years with mother.

Christmas Holidays:

We agree that will be with his mother from 10:00 a.m. on Christmas Eve Day (Dec. 24) until 10:00 p.m. on Christmas Eve and with his father from 10:00 p.m. on Christmas Eve until 10:00 p.m. Christmas night.

Child's Birthday:

We agree that the residential plan will determine where is on his birthday and that the other parent will have access to him for three hours for birthday activities.

3. Travel:

For emergency purposes, whenever either parent travels, with or without the child, one of the following will be provided to the other parent:

- a. An itinerary of travel dates, destinations, and places where the parent and/or child can be reached
- or
- b. the name and telephone number of a third person who would know how to reach the parent who is traveling.



4. Additional Areas of Agreement:

We agree that each parent will be entitled to receive complete and full information regarding legal, medical, dental or educational records or issues affecting our child unless the court finds that such access would seriously endanger the child or a parent. Any conferences or meetings regarding our child's well-being in any of these areas may be attended by either or both parents at their discretion.

5. Areas of disagreement:

6. Areas Not Covered in Memorandum of Understanding:

We understand that this Memorandum pertains to custody and/or time sharing only and does not cover the areas of I.R.S. deductions, child support, spousal maintenance, distribution of property or financial assets or any other areas not specifically included in the above agreement.

-----  
(Please Print)

I \_\_\_\_\_, do \_\_\_ do not \_\_\_ have an attorney.

If you do, attorney's name: \_\_\_\_\_

I \_\_\_\_\_, do \_\_\_ do not \_\_\_ have an attorney.

If you do, attorney's name: \_\_\_\_\_

-----  
OPTIONS FOR SIGNING

1. You may choose to sign this Memorandum of Understanding.

- a. If both parents choose to sign, and neither parent has an attorney at the time of mediation, this agreement may be immediately filed with the court by either parent.
- b. If you choose to sign, and either or both parents have an attorney at the time of mediation, this agreement is not binding until reviewed by such counsel and incorporated into a court order.

2. You may choose not to sign this Memorandum of Understanding until you have spoken with an attorney.

If you choose to delay signing this Memorandum of Understanding, you will be asked to sign a form that states that you have reviewed the above Memorandum of Understanding and wish to speak with an attorney.

3. You may choose not to sign this Memorandum of Understanding or the above mentioned form.

If either of you choose not to sign either the memorandum or the above mentioned form, this document can not be released to either parent and will not be filed with the court.

-----  
SIGNATURE OF APPROVAL

WE HAVE NOT BEEN ADVISED BY THE CONCILIATION COURT AS LEGAL COUNSEL.

We have read the provisions above and have signed below to indicate our approval of this agreement as written.

\_\_\_\_\_  
Signature of Parent

\_\_\_\_\_  
Signature of Parent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

CC: Attorney for Mother  
Attorney for Father  
MO /D-  
VS



# A ppendix C



Superior Court of the State of California  
County of Orange

Mediation and Investigative Services

JAN A. SHAW, Director

Mediation and Investigative Services

Office Location  
341 The City Drive  
Fifth Floor  
Orange, CA  
(714) 935-6550

Direct All Correspondence To:  
P.O. Box 14169  
Orange, CA 92613-1569

MEDIATION AND INVESTIGATIVE SERVICES

The Mediation and Investigative Services division of the Superior Court of the County of Orange provides judicial support to the Family Law, Probate and Juvenile Courts by performing twenty-three (23) different counseling, mediation and investigative functions. The staff performing these specialized programs are Court Mediators, Court Investigators and Probate Court Investigators.

**MEDIATION SERVICES** include underage marriage counseling and assessments; marriage counseling; custody/visitation; dependency; civil harassment; prehearing on guardianships; Temporary Restraining Order (domestic violence) mediations; and reconciliation counseling on Petitions for Conciliation. **MEDIATION** is confidential, the mediator cannot testify regarding communications between the mediator, the parties and/or their attorneys with the exception of any issues of safety for a child or the parties. No fees are charged for mediation. The Court Mediator does provide information to the court regarding: attendance, agreement/no agreement, child/victim safety, a recommendation for an attorney for the child(ren), or a psychological evaluation and/or an investigation.

**INVESTIGATIVE SERVICES** include court ordered expedited (ex parte) child custody/visitation; domestic violence; guardianship suitability; contested guardianship; name change; fact of birth; blocked trust fund withdrawal; and emancipation of minor investigations, all of which are completed by Court Mediators assigned as Court Investigators. Probate Court Investigators conduct investigations on petitions for appointment of a conservator of the person, estate, or person and estate; general plans; annual/biennial reviews; petitions for authority to give consent to medical treatment; community initiated abuse complaints involving conservatees and other special court ordered investigations; e.g., termination of Guardianships and Conservatorships. **INVESTIGATIONS** are not confidential and are available to specific parties as provided by law and/or court policy. A written report is filed with the court, with the exception of the expedited investigation, and an investigator may testify. A fee may be charged for an investigation.

MEDIATION AND INVESTIGATIVE SERVICES  
PAGE TWO

On November 1, 1991, the investigation of Stepparent Adoptions and Abandonment matters was transferred from the Probation Department to Superior Court's Mediation and Investigative Services. Currently, investigators temporarily functioning as "ex officio" Deputy Probation Officers assigned to Investigative Services conduct these investigations.

**QUESTIONS AND/OR FEEDBACK REGARDING A COURT MEDIATOR'S OR INVESTIGATOR'S HANDLING OF A CASE:**

Desirably, any questions and/or feedback regarding a Court Mediator's or Investigator's handling of a case should begin with a discussion with the involved mediator or investigator. However, if preferred, any questions and/or feedback can be directed to the individual's supervisor.

**PLEASE DIRECT INQUIRIES OR CORRESPONDENCE TO:**

*Mediation Services Supervisor: LeRoy Eaton*  
*Investigative Services Supervisor: Marina Nichols*  
*Investigative Services Supervisor: William Persi*  
*(Conservatorships Only)*

**COMMENTS REGARDING PROGRAMS, POLICIES AND/OR PROCEDURES SHOULD BE DIRECTED TO:**

*Director, Mediation and Investigative Services: Jan A. Shaw*

**\*\*WE DESIRE TO ACCOMODATE PERSONS WITH DISABILITIES.\*\***  
**\*\*PLEASE LET US KNOW IN ADVANCE OF ANY NEEDED ASSISTANCE.\*\***

JAS:lg  
9/93

THE SUPERIOR COURT OF THE COUNTY OF ORANGE

POLICIES AND PROCEDURES  
MEDIATION SERVICES

POLICY AND PROCEDURES: MEDIATING CASES WITH DOMESTIC VIOLENCE  
ALLEGATIONS

POLICY

The goal of mediation, when domestic violence is alleged in advance or discovered in the course of a session, is to facilitate the parties reaching an agreement on a safe contact plan. CAVRAT: The mediator(s) have the overriding responsibility that any agreement reached in mediation insures that the parent who has been battered must be safe from the batterer and child(ren) must never be in jeopardy. The role of the mediator(s) also includes educating the parties, especially the batterer that domestic violence is not acceptable or justifiable under any circumstances. Appropriate shelter and/or counseling referrals shall be provided the victim; anger management referrals for the batterer.

PROCEDURE

Special guidelines will be followed when mediating with any family if there are allegations or a history of domestic violence:

1. The mediators will be assigned in a male/female team.
2. The mediators will review, prior to the session, all available information (court file, information sheets filled out by the parents and/or the Mediation and Investigative Services case file if previously mediated).
3. The parents will be interviewed separately, and in the case of a Temporary Restraining Order, beginning with the parent who filed for the restraining order. The female mediator leads in the interview with the woman and vice versa. After both parents have been interviewed separately, they may be brought together only if both parties AND the mediator team determines it to be safe for the victim. If the domestic violence is disclosed in a regular mediation session where there was no prior indication, or when there is intimidation of one spouse by the other, the parents may be separated and interviewed individually.
4. As per Family Code Section 6303(c), the battered spouse may, if requested, be accompanied in the session by a Support Person who does not participate in the session.

5. As determined by the mediator team and the Marshal's Office, added protection will be provided in and around the courthouse as follows:
  - a. A Marshal available outside the mediator's office;
  - b. A Marshal to escort the victim to his/her car (Refer to Mediation and Investigative Services Policy and Procedure: "Request For Marshal's Escort From Mediation and Investigative Services Office");
  - c. Parents may wait for the mediation appointment in separate areas and/or be seen on separate days and times and/or attend a separate mediation orientation;
  - d. The alleged perpetrator waits 10-20 minutes in the mediation waiting area to allow the victim to safely leave the building.
6. The mediator team, will encourage and facilitate counseling to include any/all of the following, as appropriate: drug and alcohol treatment programs, parenting classes, individual and/or family counseling, batterers' groups, women's shelters and other relevant services within the community.
7. If the mediator team determines that the parents are able to reach an agreement that will meet the needs of the child(ren) AND protect the safety of the victim and child(ren), an agreement will be written. Specificity in agreements avoids ambiguities which give rise to conflict.
8. The mediator team will consider including in the written agreement the following safeguards:
  - a. No contact between a parent and child. (May be necessary when there are serious threats of violence or abduction);
  - b. Monitored visitations by a professional monitor, psychologist, or family member;
  - c. Continuing the restraining orders limiting contact between the parents;
  - d. Utilizing a mutually agreed upon third party to provide assistance with transportation OR a neutral pickup and return site;
  - e. Specifying a public place, public agency, a child's school, or in extreme cases, the local police department, to neutralize the exchange of the child.
  - f. Maintaining the confidentiality of the parent(s) addresses;

- g. Specifying that one or both parents not be under the influence of illegal drugs or alcohol while caring for the child and that, if a disagreement should arise over this issue, a peace officer may be called by a parent to assist.
9. All parties to be informed that they may return to mediation at any time, on an informal basis, when one parent feels that the agreement is problematic.
10. If the mediator team determines there are safety issues not appropriately addressed in mediation, a recommendation to the court may be made that the parents be ordered for a Domestic Relation Investigation (DRI) under Family Code 3183(b). (Refer to Mediation Services Policy and Procedure: "Mediator's Recommendation for a Child Custody Investigation (3183(b) Family Code), Domestic Relation Investigation (3183(b) Family Code), Psychological Evaluation (730 Evidence Code) and/or Attorney For the Child (3184 Family Code)") The court may make an Order requiring that a parent repay the County that part, or all, of the expense of the investigation and report.
11. In addition to, or in lieu of, a recommendation for a Domestic Relation Investigation, the mediator team retains the option to recommend a child custody investigation, psychological evaluation and/or an attorney for the minor. (Refer to Mediation Services Policy and Procedure: "Mediator's Recommendation for a Child Custody Investigation (3183(b) Family Code), Domestic Relation Investigation (3183(b) Family Code), Psychological Evaluation (730 Evidence Code) and/or Attorney For the Child (3184 Family Code)")

Policy Established: 1/91  
Revised: 12/93



THE SUPERIOR COURT OF THE COUNTY OF ORANGE

POLICIES AND PROCEDURES  
MEDIATION SERVICES

POLICY AND PROCEDURES: SUPPORT PERSONS IN MEDIATION

POLICY

Family Code 6303(c) provides for a Support Person to appear in court and/or accompany a victim of domestic violence to mediation. A history of domestic violence and a restraining order pursuant to the Domestic Violence Prevention Act qualifies a person to be eligible to have a Support Person in mediation. If the judicial officer or mediator(s) determines that the presence of the Support Person will be or is detrimental to the proceedings the Support Person may be excluded.

The presence of the Support Person does not waive the confidentiality of the mediation and the Support Person shall be bound by the confidentiality of the mediation.

PROCEDURE

1. Orientation of Support Persons

- a. Once identified, the receptionist will alert the Mediator(s) of the Day (M.O.D.) that a Support Person is present. The Mediator of the Day will then notify the assigned mediator.
- b. The Mediator of the Day will give the orientation materials to both the Support Person and the involved parties. Instructions will be given to complete the client information forms and to view the pre-mediation orientation.
- c. Following the orientation, the Mediator of the Day will meet with the Support Person to review their role and to answer any questions. The Mediator of the Day will also review all options for the alleged victim, i.e., leaving before the alleged perpetrator, separate mediation sessions and being escorted out of the building by a Marshal. (Refer to Mediation and Investigative Services Policy and Procedure: "Request For Marshal's Escort From Mediation and Investigative Services Office")
- d. If necessary, the Mediator of the Day will meet with the Support Person following the completion of the mediation

session to answer any questions and assist in the arrangement of a safe departure.

- e. The Mediator of the Day, in providing the orientation of the Support Person, serves as an intermediary, thereby, addressing any concerns that the assigned mediator(s) is not a neutral party.

## 2. The Role of the Support Person

- a. to provide emotional support for the parent requesting assistance;
- b. to assist the parent in their preparation for court or mediation (e.g. completing forms, reading documents, etc.);
- c. to remain silent during the mediation session;
- d. to refrain from answering for the client or making any decisions in their behalf;
- e. to offer no legal advice;
- f. to arrange assistance from the Marshal's Office or other authority, if necessary.

## 3. The Role of the Mediator(s)

- a. clarify the role of the Support Person during the mediation session(s);
- b. use his/her discretion as to how and when the Support Person will be involved in the mediation process, including their possible exclusion from the joint session.

Policy Established: 1/93  
Revised: 12/93

THE SUPERIOR COURT OF THE COUNTY OF ORANGE  
POLICIES AND PROCEDURES  
MEDIATION AND INVESTIGATIVE SERVICES

POLICY AND PROCEDURES:   WOMEN'S WAITING AREA

PURPOSE

To provide alleged victims of domestic violence or emotional abuse a safe waiting area while at the office of Mediation and Investigative Services.

POLICY

All parents who have filed for or who have obtained a restraining order because of alleged domestic violence or any case identified by a mediator or investigator will be provided a separate waiting area. The Marshall assigned to Mediation and Investigative Services may have a woman wait in the separate area if there is a disturbance or conflict between two parents in the main waiting room, or if any parent requests a separate waiting area.

PROCEDURES

1. No children or men will be allowed to be in the women's waiting area. The exceptions will be infants and toddlers that cannot go to the Children's Chambers.
2. All cases set for mediation under the Domestic Violence Prevention Act will be highlighted on the appointment log and they will be directed to the women's waiting area when they check in for their mediation appointment.
3. All cases identified by a mediator or investigator as needing a separate waiting area will be highlighted on the appointment log and the women will be directed to the women's waiting area.
4. All women referred down from Court for mediation as a result of a filing under the Domestic Violence Prevention Act will be directed to the women's waiting area.
5. When both parents are referred from Court for an Expedited Investigation the women will be directed to the women's waiting area to fill out forms and obtain an appointment.

6. All women referred from Court for a Domestic Relations Investigation will be directed to the women's waiting area to fill out forms and obtain appointment.
7. All women identified by the Marshall as needing a separate waiting area because of observed conflict or intimidation in the main waiting area will be directed to the women's waiting area.
8. All women who request a separate waiting area will be directed to the women's waiting area.
9. After the women are in the waiting area they will be given the option to wait in the main waiting area.
10. Female support person(s) for the women will be allowed to wait in the women's waiting area. If a woman has a male support person, she will be given the option to stay in the women's waiting area without her support person or wait by the Marshall's desk with her support person.
11. All women will check in with reception prior to going to the women's waiting area.
12. If a man identifies himself as being threatened or intimidated or has filed for a restraining order under the Domestic Violence Prevention Act, the women will be directed to the women's waiting area. If she refuses to go, the supervisor will be contacted to resolve the conflict.

Policy Established: 1/95  
Revised:

THE SUPERIOR COURT OF THE COUNTY OF ORANGE

POLICIES AND PROCEDURES  
MEDIATION AND INVESTIGATIVE SERVICES

POLICY AND PROCEDURE: REQUEST FOR MARSHAL'S ESCORT FROM  
MEDIATION AND INVESTIGATIVE SERVICES  
OFFICE

POLICY

To assure, whenever possible, the safety of client(s) upon leaving the offices of Mediation and Investigative Services.

PROCEDURE

When a mediator/investigator determines that the safety of a client requires an escort or when a client requests an escort by a Marshal the mediator/investigator should do the following:

1. Consult with the "on duty Marshal" assigned to the waiting room as to the feasibility of asking the other party to wait in the waiting room in order to allow the alleged victim sufficient time to safely reach their car or whether there's an available Marshal to escort the alleged victim.
2. Any employee of Mediation and Investigative Services shall refrain from escorting a client outside the Juvenile Justice Center building.

Policy Established: 1/93  
Revised:

THE SUPERIOR COURT OF THE COUNTY OF ORANGE

POLICIES AND PROCEDURES  
MEDIATION AND INVESTIGATIVE SERVICES

POLICY AND PROCEDURES: CHILD VISITATION MONITORING SERVICES

POLICY

The Superior Courts Executive Committee determined effective October 1, 1994, that court staff shall not refer, train, maintain or distribute any referral list of individuals available to provide paid Child Visitation Monitoring Services.

The record of any individual filing a signed statement, that he/she is in compliance with 11166.5(d) Penal Code is maintained by the staff in the Family Law Clerk's Office. No addresses and telephone numbers are available. The limits of the court's responsibilities are stated on any document(s) available for the viewing to public.

Educating the consumer regarding the role, duties, and responsibilities of a monitor, albeit nonpaid or paid, is expected of any Court Mediator or Investigator that suggests or recommends monitored visitation. Our pamphlet "A Guide to Supervised (Monitored) Visitation" is to be provided to the parties by the Court Mediator or Investigator if supervised visitation is contemplated, agreed or recommended to the parties.

FORM: "A Guide to Supervised (Monitored) Visitation"

Policy Established: 6/93  
Revised: 12/93; 9/21/94; 10/94; 1/95

**MEDIATION INFORMATION**

**THE SUPERIOR COURT OF THE COUNTY OF ORANGE  
MEDIATION SERVICES**

Today's Date: \_\_\_\_\_

**THE INFORMATION PROVIDED ON THIS FORM AND DURING THE  
MEDIATION CONFERENCE IS CONFIDENTIAL. EXCEPTIONS TO  
CONFIDENTIALITY ARE PARENT AND/OR CHILD(REN) SAFETY ISSUES.**

(NAME):

First Middle Initial Last AKA/Maiden Date of Birth

(ADDRESS):

Street City State Zip Code Telephone Number

(OCCUPATION):

Work hours Days off Work Telephone

Court Date \_\_\_\_\_ Attorney Name \_\_\_\_\_

**MARITAL HISTORY TO PETITIONER/RESPONDENT**

Date married \_\_\_\_\_ Date separated \_\_\_\_\_

**IF NEVER MARRIED TO PETITIONER/RESPONDENT**

Lived together? Yes [ ] No [ ]

Date began living together \_\_\_\_\_ Date stopped living together \_\_\_\_\_

Are you presently married or currently in a relationship? Yes [ ] No [ ]

**CHILD(REN) IN THIS MATTER**

Name Date of Birth

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe the frequency of your contact with your child(ren):

\_\_\_\_\_

What are you most interested in resolving today?

\_\_\_\_\_

**\*\*\*CONTINUED ON REVERSE SIDE\*\*\***

**WHERE THERE IS AN ALLEGED HISTORY OF DOMESTIC VIOLENCE AND/OR PROTECTIVE ORDERS, MEDIATION AND INVESTIGATIVE SERVICES' POLICY IS TO BEGIN MEDIATION WITH SEPARATE INTERVIEWS.**

Has there been domestic violence with the other parent? Yes [ ] No [ ]

If yes, how long ago? 0-6 months [ ] 6-12 months [ ] 1 year or more [ ]

How often? \_\_\_\_\_

Were police called? Yes [ ] No [ ] Number of police involvements? \_\_\_\_\_

Were charges filed? Yes [ ] No [ ] Current restraining orders? Yes [ ] No [ ]

Have you received treatment from a hospital or doctor because of injuries due to domestic violence? Yes [ ] No [ ]

Provide details of any injuries:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you living in a shelter? Yes [ ] No [ ]

**COURT MEDIATORS ARE REQUIRED TO REPORT SUSPECTED CHILD ABUSE TO THE CHILD ABUSE REGISTRY.**

Has there ever been any reasonable suspicion of child abuse/neglect? Yes [ ] No [ ]

Is there current involvement with Child Protective Services? Yes [ ] No [ ]

If yes, County \_\_\_\_\_ Name of Social Worker \_\_\_\_\_

Has there been involvement with Child Protective Services? Yes [ ] No [ ]

If yes, County \_\_\_\_\_ Date \_\_\_\_\_

**ALCOHOL/DRUG ABUSE**

Is there alcohol abuse by petitioner/respondent? Yes [ ] No [ ]

If yes, please explain concerns: \_\_\_\_\_

Is there drug abuse by petitioner/respondent? Yes [ ] No [ ]

If yes, please explain concerns: \_\_\_\_\_

(JAS/mjm 11/17/94)



# DOMESTIC VIOLENCE ORIENTATION

## OUTLINE

- I. Introduction
- II. Temporary Restraining Order Process
- III. Impact on Children
- IV. How to Develop a Safe Parenting Plan
- V. Protocol for Handling Cases with TRO's
- VI. Mediation Procedures
- VII. Discuss Referrals/Counseling - Pass out handouts
- VIII. Questions and Answers

## I. INTRODUCTION

1. The purpose of today's meeting is to give you information to help prepare you for mediation and for Court. All of you are here because either you or the other party filed a Temporary Restraining Order; and if there are children involved, Mediation is required to assist you and the other party in developing a parenting plan prior to your upcoming hearing. If the other parent is not here today, and you are not going to mediation, it is hoped that the information given will help you to decide what to request of the courts regarding a safe parenting arrangement. After the orientation, if you need additional information, please feel free to stay and speak to the mediators.
2. The topics we are going to cover today will include information on:
  - Temporary Restraining Orders
  - \* Developing Safe Agreements
  - \* Impact of Domestic Violence on Children
  - \* Mediation Protocol, and a Resource List (which will be given to you today)

We invite you to ask questions, as time permits we may ask you to wait until the end of the orientation to ask questions.

## II. TEMPORARY RESTRAINING ORDER PROCESS

### 1. PURPOSE

As stated in the California Family Code Section 6220 the purposes of the protective orders are to "prevent the reoccurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence."

For this reason it is common that the court issue no contact orders between the restrained parent and the minor children where there had been allegations raised regarding domestic violence. It is important to note that the court has not made a finding of truth with regard to these specific allegations but has issued a restraining order to allow for a "time out" between the parents and to provide sufficient time for the parents to resolve the current difficulties that have led to the current court action.

Mediation is therefore an opportunity for both parents to craft a parenting plan for their children which focuses on the children's needs and any specific concerns either parent may have which need to be incorporated into their plan.

2. NOTICE REQUIREMENT FOR RESTRAINING ORDER

California Family Code Section 241 states that a ex-parte temporary restraining order "may not be granted without notice to respondent unless it appears from the facts shown by the affidavit in support of the application for the order, or in the application for the order, that great or irreparable injury would result to the applicant before the matter can be heard on notice." Additionally, California Family Code Section 6300 states that "an order may be issued, .... with or without notice, to restrain any person for the purpose of preventing a reoccurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse."

This section is important since it clarifies when notice is not required.

3. LENGTH OF TEMPORARY RESTRAINING ORDER

Family Code Section 242 states that if an ex-parte temporary restraining order is issued, the matter shall be made returnable on an order requiring cause to show why a permanent order should be granted, on the earliest day that

the business of the court will permit, but not later than twenty days or, if good cause appears to the court, twenty five days from the date of the order.

4. SPECIFIC ITEMS CONTAINED IN TRO

a. ORDERS ENJOINING CONTACT

Pursuant to Family Code Section 6320 "the court may issue an ex-parte order enjoining a party from contacting, molesting, attacking, striking, threatening, sexual assaulting, battering, telephoning, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, and in the discretion of the court, on a showing of good cause, of other named family and household members."

b. RESIDENCE EXCLUSION

Pursuant to Family Code Section 6321, "the court may issue an ex-parte order excluding a party from a family dwelling, the dwelling of the other party, the common dwelling of both parties or the dwelling of the person who has care, custody and control of a child to be protected from domestic violence for the period of time and on the conditions the court determines, regardless of which party holds legal or equitable title or is the leasee of the dwelling."

c. TEMPORARY CUSTODY AND VISITATION

Pursuant to Family Code Section 6323, "the court may issue an ex-parte order determining the temporary custody of a minor child on the conditions the court determines." In addition the court may issue an ex-parte order determining the right of the other party to visit the minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act or in presuming a marital relationship exists between the parties.

If this is a domestic violence filing (95V...) and no marital relationship exists the court is not required to make visitation orders.

d. **REAL OR PERSONAL PROPERTY**

Family Code Section 6324 states: The court may issue a ex-parte order determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect.

e. **COMMUNITY OR SEPARATE PROPERTY**

Family Code Section 6325 states: The court may issue an ex-parte order restraining a married person from specified acts in relation to community, quasi-community and separate property.

5. **ORDER TO CAUSE HEARING**

After proper notice and a hearing the court may issue orders previously granted ex-parte. In addition, Family Code Section 6343 states that the court may issue an order requiring any party to participate in counselling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household after previous instances of domestic violence. The court may also order a restrained party to participate in batterers' treatment counseling.

Where there is a history domestic violence between the parties or where a protective order is in effect, at the request of the party alleging domestic violence, in a written declaration on a penalty of perjury or who is protected by the order, the party shall participate in counseling separately and at separate times.

## **SUMMARY**

The intent of the temporary restraining order is to provide a safe and non hostile environment for children and their parents, allowing a sufficient period of time to enable these parents to seek resolutions to the cause of their current difficulties. The granting of these orders is not an affirmative finding by the court that in fact events alleged are true. It is merely a temporary remedy to the current conflict and instability that exists in the family environment that has led to the current court filing.

### **III. IMPACT ON CHILDREN**

A. At this time of separation, how can parents be most helpful to their children?

1. Make use of this time out period to come to terms with your anger and upset, to get it behind you and stop fighting. Research indicates that one of the best things that parents can do to help their children through the separation is to guarantee that the exchanges will be peaceful, calm and without fighting. Children who suffer the most after their parents' separation are those who are exposed to continual conflict. This creates a feeling of insecurity and fear in children which is a difficult burden to bear. How parents act, therefore, is important because the child needs to think of his or her parents as reasonable and rational people. The child needs to see the parents as people he or she admires and can emulate, as people who are putting aside their anger and who are seriously concerned about them.

### **IV. HOW TO DEVELOP A SAFE PARENT PLAN**

In those situations where children may have witnessed severe conflict or violence between parents, several safety options have been developed to reduce conflict.

1. **NEUTRAL EXCHANGE SITE**

- a. A park, restaurant, mall, school, daycare, or any other public setting where other people are present.
- b. In less severe cases - Curbside at the parent's home
- c. In more severe cases - Police Station

2. **CLEAR AND CONCISE PLAN**

Be specific about days, times, pickup and drop off locations. A lot of confusion can be eliminated by planning ahead and reducing the need to negotiate with the other partner.

3. **THIRD PARTY EXCHANGE**

- a. A third party is defined as a friend, relative or any other person the parents can mutually agree upon.
- b. Either a third party is present at time of exchange, or
- c. A third party transports the children to and from exchange location.

4. **SUBSTANCE ABUSE CONCERNS**

- a. Parents may agree to refrain from the use of alcohol or illicit drugs 24 hours prior to and while the children are in their care.
- b. This means that if a parent arrives for a visit under the influence - No Visit.
- c. If parents cannot agree to restrictions - ASK THE JUDGE.

5. CONTACT WITH OTHER PARENT

If contact with the other parent is to occur, let the following suggestions guide you:

- a. No derogatory remarks or negative comments.
- b. Show consideration and be respectful.
- c. Do not discuss personal or financial matters in front of the children.
- d. If you can not be polite, BE QUIET.

Remember, try hard to keep your commitments, be on time, call if you are going to be late and be respectful of the other parent. Your children look to you for guidance. Set a good example.

V. PROTOCOL FOR HANDLING CASES WITH TEMPORARY RESTRAINING ORDER

1. Start with separate interviews - Each parent will be given the opportunity to speak with the mediators individually.
2. As staffing permits, the session may be teamed with male and female mediators. This creates a balanced approach to the process.
3. Support Person - You may have a support person in your individual session with the mediator. Not a participant but someone to offer support. This person may be a friend, family member or someone from a shelter.
4. Escort - If there are concerns about leaving the building alone, an escort can be arranged to accompany you to your car. Discuss with your mediator(s).
5. Women's Shelters - If you need a safe place to reside for you and your children for a temporary period, we have some information regarding shelters. Ask your mediator.



## VI. MEDIATION PROCEDURES

### 1. Confidentiality -

#### a. Exceptions:

- Safety issues regarding children must be reported to Children's Services.
- Tarasoff - any threats of harm to another individual are reported to police and the threatened person is warned.

#### b. May recommend next step, such as: Attorney for the minor, psychological evaluation, child custody investigation or a domestic relations investigation.

### 2. No money issues discussed.

### 3. Neutrality.

### 4. Extended Mediation

### 5. Best interest of the Child

## QUESTIONS FREQUENTLY ASKED BY WOMEN:

1. The father frequently calls me and harasses me, even though I have a TRO.
2. The father was ordered to counseling but did not go. What should I do?
3. What do you do when the father arrives to pickup the child intoxicated?
4. The father has been following me and watching me at work, at home, and when I go out.
5. The father has threatened to kill me several times, over the phone.
6. Even though the TRO says no phone calls, should I allow the father to call to speak to our daughter?
7. When I go back to court is the restraining order being made into a permanent order or a temporary one?
8. The father lives in another country. The police there won't enforce the restraining order obtained in this country.

DH:11(2/02/95

0 - 7 - 01 8 The paper work!

# MEDIATION AGREEMENT

CASE NAME: \_\_\_\_\_ WAITING PARENT:  MOTHER  FATHER  
CASE NUMBER: \_\_\_\_\_ REPORT TYPE:  TEMP.  MODIF.  
HEARING DATE: \_\_\_\_\_  JOINT LEGAL DEF.  JOINT PHYSICAL DEF.  
DEPARTMENT: \_\_\_\_\_  SOLE LEGAL DEF.  SOLE PHYSICAL DEF.

## LEGAL & PHYSICAL CUSTODY

- 1 Joint legal custody.
- 1a Primary physical custody shall be with \_\_\_\_\_.
- 1b Children shall reside with \_\_\_\_\_.
- 2 Joint legal and physical custody.
- 3 Joint legal custody, with \_\_\_\_\_ having sole physical custody.
- 4 The \_\_\_\_\_ shall have sole legal and sole physical custody.
- 5 Joint physical custody, with primary residence to be with \_\_\_\_\_.
- 6 Parents agree that the Court will determine the issue of \_\_\_\_\_.

## VISITATION

- 7 The \_\_\_\_\_ shall have contact with the child(ren) as follows:
  - 7a Every other weekend from \_\_\_\_\_ at \_\_\_\_\_ until \_\_\_\_\_ at \_\_\_\_\_, commencing \_\_\_\_\_, 1995.
  - 7b Every \_\_\_\_\_ from \_\_\_\_\_ until \_\_\_\_\_.
  - 7b1 Odd/Even Weekends: Defined as all weekends starting with odd/even numbered dates on Friday/Saturday.
  - 7b2 1st, 2nd, 3rd, 4th, 5th Weekend(s) of each month. Defined as the 1st, 2nd, 3rd, 4th, or 5th Friday/Saturday of the month.
- 8 The child(ren) shall be with the \_\_\_\_\_ at any other time as arranged by mutual agreement. The requesting parent shall provide the other parent with no less than \_\_\_\_\_ prior notice.
- 9 Exchanges of the child(ren) shall occur at \_\_\_\_\_.
- 10 The \_\_\_\_\_ parent will transport the child(ren).
- 10a The parents agree that it is in the best interest of their child(ren) for all exchanges to be calm and peaceful, therefore they agree to not argue or make derogatory remarks about the other in the presence of their child(ren).
- 11 The mother/father agrees to notify the other parent within \_\_\_\_\_ if he/she cannot keep his/her commitment to care for the child(ren) according to the regular schedule of contact.
- 12 If the \_\_\_\_\_ is late more than \_\_\_\_\_ late, the contact for that \_\_\_\_\_ will be cancelled.
- 13 The \_\_\_\_\_ visitation with the child(ren) shall be (in the presence of \_\_\_\_\_) / (supervised by \_\_\_\_\_).

**HOLIDAYS/SPECIAL DAYS:**

- 14 The parents agree that all holidays and special days shall be shared as arranged by mutual agreement.
- 15 \_\_\_\_\_: \_\_\_\_\_ to have the child(ren) from \_\_\_\_ at \_\_\_\_ to \_\_\_\_ at \_\_\_\_ in all \_\_\_\_ numbered years and \_\_\_\_\_ to have the child(ren) in all \_\_\_\_ numbered years.
- 15 \_\_\_\_\_: \_\_\_\_\_ to have the child(ren) from \_\_\_\_ at \_\_\_\_ to \_\_\_\_ at \_\_\_\_ in all \_\_\_\_ numbered years and \_\_\_\_\_ to have the child(ren) in all \_\_\_\_ numbered years.
- 15 \_\_\_\_\_: \_\_\_\_\_ to have the child(ren) from \_\_\_\_ at \_\_\_\_ to \_\_\_\_ at \_\_\_\_ in all \_\_\_\_ numbered years and \_\_\_\_\_ to have the child(ren) in all \_\_\_\_ numbered years.
- 15 \_\_\_\_\_: \_\_\_\_\_ to have the child(ren) from \_\_\_\_ at \_\_\_\_ to \_\_\_\_ at \_\_\_\_ in all \_\_\_\_ numbered years and \_\_\_\_\_ to have the child(ren) in all \_\_\_\_ numbered years.
- 15a \_\_\_\_\_: Every year \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_.
- 15a \_\_\_\_\_: Every year \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_.
- 15a \_\_\_\_\_: Every year \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ to have the child(ren) from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_.
- 16 The child(ren) to be with the respective parent on Mother's Day and on Father's Day from \_\_\_\_ until \_\_\_\_.
- 17 BIRTHDAY: \_\_\_\_\_ to be with \_\_\_\_\_ from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_ in odd/even numbered years.
- 18 All legal/school holidays not otherwise specified that fall on a Monday or Friday will be spent with the parent having the child(ren) according to the regular schedule.
- 19 All other holidays and special days to be arranged by mutual agreement of the parents.
- 20 VACATION: Vacation time with the child(ren) to be arranged by mutual agreement of the parents.
- 21 \_\_\_\_\_ has the option of having up to \_\_\_\_\_ weeks of (non)consecutive vacation time per year with the child(ren). The vacationing parent will give \_\_\_\_\_ advance notice of the desired dates.
- 22 Parents agree to notify each other prior to traveling with the child(ren) \_\_\_\_\_.  
(Seven Southern CA counties/ \_\_\_\_\_ miles)
- 23 The parents agree that they will notify the other parent by telephone/letter prior to traveling with the children out of state. Furthermore, the other parent will be given a travel plan that includes dates of departure and return, address and telephone number.

**MISC:**

- 24 The parents agree to provide the other parent with the opportunity to care for the child(ren) prior to obtaining child care if either parent is unable to do so for more than \_\_\_\_\_ hours.
- 25 The \_\_\_\_\_ will have unrestricted telephone access with the child(ren) on \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_.
- 26 Neither parent shall enroll the child(ren) in activities that will conflict with the other parent's time with the child(ren) without the consent of the other parent.
- 27 The \_\_\_\_\_ agrees to refrain from the usage of illegal drugs and/or alcohol at least \_\_\_\_\_ hours prior to and during his/her/their contact with the child(ren).
- 28 The \_\_\_\_\_ agree(s) not to permit the child(ren) to be in the presence of illegal drugs and/or alcohol.
- 29 Neither parent shall make any derogatory statements to or about the other parent in the presence of the child(ren).
- 30 The \_\_\_\_\_ to provide the \_\_\_\_\_ with the child(ren)'s school reports, medical updates, etc.
- 31 The parents agree to return for further mediation on \_\_\_\_\_, 1995 at \_\_\_\_\_.
- 32 The parents agree to return to Mediation at the request of either parent.

**ORANGE COUNTY  
COMMUNITY RESOURCES**

**WARNING**

**WARNING**

**WARNING**

**DISCLAIMER**

The Superior Court of the County of Orange does not interview, conduct a background investigation, select, evaluate, approve, monitor or otherwise endorse community agencies. Inclusion in this directory does not constitute endorsement of an agency's program or the quality of its services, nor does exclusion imply an unfavorable judgement of the contribution an agency may be making to the community. The information presented in this directory was accurate at the time of printing. Changes in service and service telephone numbers may have occurred since the initial printing.

**WARNING**

**WARNING**

**WARNING**

## ALCOHOL/DRUG ABUSE

Alanon and Alateen . . . . .	• 545-1102
Alcohol Abuse Programs	
Aliso Viejo . . . . .	• 643-6930
Fullerton . . . . .	• 447-7099
Laguna Beach . . . . .	499-1877
Santa Ana . . . . .	• 568-4165
Westminster . . . . .	• 896-7574
Alcoholics Anonymous . . . . .	
South County . . . . .	• 556-4555
South County . . . . .	• 581-2694
Co-Non . . . . .	647-6698
Cocaine Anonymous . . . . .	650-1011
Drug Abuse Program (County of Orange)	
Aliso Viejo . . . . .	643-6960
Anaheim . . . . .	* 490-5258
Costa Mesa . . . . .	850-8431
Santa Ana . . . . .	• 834-7708
Westminster . . . . .	* 898-3000
Hispanic Alcoholism Services Center . . . . .	* 285-1985
Narcotics Anonymous (24-hour hotline) . . . . .	* 776-8581

## CHILDREN/YOUTH SERVICES

Adam Walsh Resource Center . . . . .	• 558-7812
(Referral for parenting groups in Orange County)	
Child Abuse Hotline . . . . .	• 834-5353
Child Guidance Center	
Fullerton . . . . .	* 871-9264
Santa Ana (referral only) . . . . .	• 953-4455
Children's Outpatient Services (County of Orange)	
Anaheim . . . . .	* 577-5400
Costa Mesa . . . . .	850-8408
Costa Mesa . . . . .	• 631-7540
Mission Viejo . . . . .	* 770-0855
San Juan Capistrano . . . . .	* 496-2931
Santa Ana . . . . .	• 568-4378
South Laguna . . . . .	* 499-5346
Westminster . . . . .	* 896-7556

## COUNSELING

### Adult Outpatient Counseling Services

Aliso Viejo	643-6900
Anaheim	* 447-7200
Costa Mesa	850-8463
Fullerton	* 447-7000
Santa Ana	568-4463
South Laguna	499-1877
Westminster	896-7566
C.G.I. Counseling Center - Orange	* 637-5410
Catholic Charities - Santa Ana	* 662-7500
Center of Hope Counseling Services - Westminster	898-8155
Chapman College Community Clinic - Orange	997-6746
Community Counseling Center - S.J. Capistrano	* 493-7333
COPES - Santa Ana	* 836-3601
<b>Creative Alternatives</b>	
Costa Mesa	642-0377
Huntington Beach	* 841-8770
Laguna Hills	588-9335
<b>Family Service Association</b>	
Fullerton	* 441-0471
Irvine	* 660-8020
Laguna Hills	951-7050
Fullerton Community Counseling Center	* 871-4282
Gary Center - La Habra	* 870-6755
Jewish Family Services - Laguna Hills or Orange	939-1111
Laguna Beach Community Clinic	494-9429
Lutheran Social Services - Fullerton	738-1058
Garden Grove	534-6453
Straight Talk Clinic - Cypress	828-2000
Fountain Valley	* 557-1000
Vietnamese Community of Orange County	558-6009
West County Counseling Center - Huntington Beach	* 847-3356

\* Spanish speaking services provided

## DOMESTIC VIOLENCE

- Domestic Violence Assistance ..... \* 935-7956  
Mariposa Women's Center - Orange ..... \* 547-6494

## LEGAL AID

- Bar Association ..... \* 835-8811  
District Attorney  
    Child Abduction ..... 834-2100  
    Child Support ..... \* 541-0257  
Legal Aid Society  
    Anaheim ..... \* 533-7490  
    Huntington Beach ..... \* 536-8864  
    Santa Ana ..... \* 835-8806

\* Spanish speaking services provided

WARNING

WARNING

WARNING

### DISCLAIMER

The Superior Court of the County of Orange does not interview, conduct a background investigation, select, evaluate, approve, monitor or otherwise endorse community agencies. Inclusion in this directory does not constitute endorsement of an agency's program or the quality of its services, nor does exclusion imply an unfavorable judgement of the contribution an agency may be making to the community. The information presented in this directory was accurate at the time of printing. Changes in service and service telephone numbers may have occurred since the initial printing.

WARNING

WARNING

WARNING



# **HOW TO DEVELOP A SAFE PARENTING PLAN:**

In those situations where children may have witnessed severe conflict or violence between parents, several safety options have been developed to reduce conflict.

## **1. NEUTRAL EXCHANGE SITE**

- a. A park, restaurant, mall, school, daycare, or any other public setting where other people are present.
- b. In less severe cases - Curbside at the parent's home.
- c. In more severe cases - Police Station.

## **2. CLEAR AND CONCISE PLAN**

Be specific about days, times, pickup and drop off locations. A lot of confusion can be eliminated by planning ahead and reducing the need to negotiate with the other partner.

## **3. THIRD PARTY EXCHANGE**

- a. A third party is defined as a friend, relative or any other person the parents can mutually agree upon.
- b. Either a third party is present at time of exchange, or;
- c. A third party transports the children to and from exchange location.

## **4. SUBSTANCE ABUSE CONCERNS**

- a. Parents may agree to refrain from the use of alcohol or illicit drugs 24 hours prior to and while the children are in their care.
- b. This means that if a parent arrives for a visit under the influence - No Visit.
- c. If parents cannot agree to restrictions - ASK THE JUDGE.

## 5. CONTACT WITH OTHER PARENT

If contact with the other parent is to occur, let the following suggestions guide you:

- a. No derogatory remarks or negative comments.
- b. Show consideration and be respectful.
- c. Do not discuss personal or financial matters in front of the children.
- d. If you can not be polite, BE QUIET.

Remember, try hard to keep your commitments, be on time, call if you are going to be late and be respectful of the other parent. Your children look to you for guidance. Set a good example.

RH:lp (2/21/95)

# MEDIATION AND INVESTIGATIVE SERVICES

## CLIENT SURVEY

**THE PURPOSE OF THIS SURVEY IS FOR YOU TO TELL US ABOUT YOUR EXPERIENCE WITH OUR SERVICES. YOUR COMMENTS ARE IMPORTANT TO US! THIS INFORMATION WILL NOT BE PLACED IN YOUR MEDIATION OR INVESTIGATIVE SERVICES FILE OR IN YOUR COURT CASE FILE AND IN NO WAY SHALL IT AFFECT THE OUTCOME OF YOUR CASE.**

1. Type of service received: Mediation

2. Was this your first contact at Mediation and Investigative Services in this county?

Yes  No

3. If your case involves a child, please designate your relationship to the child:

Mother

Father

Other (please specify) \_\_\_\_\_

4. If you participated in mediation, was an agreement reached in today's session:

Yes  No

5. Please check off how strongly you agree with the following statement:

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
a. My session/interview was conducted fairly.	[ ]	[ ]	[ ]	[ ]	[ ]
b. My opinions were considered in today's session/interview.	[ ]	[ ]	[ ]	[ ]	[ ]
c. I feel that I was listened to today.	[ ]	[ ]	[ ]	[ ]	[ ]
d. I think that today's session/interview was productive.	[ ]	[ ]	[ ]	[ ]	[ ]
e. I believe that the other parent thinks that today's session/interview was productive.	[ ]	[ ]	[ ]	[ ]	[ ]

6. Please indicate how satisfied you were with the following services:

	Very Satisfied	Satisfied	Unsatisfied	Very Unsatisfied	Not Applicable
a. Scheduling of appointment.	[ ]	[ ]	[ ]	[ ]	[ ]
b. Reception services.	[ ]	[ ]	[ ]	[ ]	[ ]
c. Orientation to today's session.	[ ]	[ ]	[ ]	[ ]	[ ]
d. Information material.	[ ]	[ ]	[ ]	[ ]	[ ]
e. Safety and security of the offices.	[ ]	[ ]	[ ]	[ ]	[ ]

7. What did you find most helpful about today's session/interview?

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8. What suggestions do you have so that we may improve our services?

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9. Other comments:

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**Thank you for taking the time to share your thoughts. Please return this form to the receptionist as you leave or mail to: P.O. Box 14169, Orange, California 92613-1569. This information will not be placed in your Mediation and Investigative Services file or in your court case file.**

**If you have a complaint that needs a response, please obtain a Client Complaint Form from our Mediation and Investigative Services office, (714) 935-6550.**

UG/mjm 11/14/94)

We are interested in your feedback about our services. Before you leave today please take time to fill out our survey and return it to the marked box at our front counter or if you prefer, mail it. Your comments and ideas are important to us!

Jan A. Shaw, Director  
Mediation and Investigative Services

*SUPERIOR COURT  
County of Orange  
Mediation and Investigative Services  
P.O. Box 14169  
Orange, California 92613-1569*

# A ppendix D



CIRCUIT COURT OF COOK COUNTY  
DOMESTIC RELATIONS DIVISION  
MARRIAGE & FAMILY COUNSELING SERVICE

HARRY G. COMERFORD  
CHIEF JUDGE  
CIRCUIT COURT OF COOK COUNTY  
BENJAMIN S. MACKOFF  
PRESIDING JUDGE  
DOMESTIC RELATIONS DIVISION  
JOAN MASSAQUOI, M.S.W., A.C.S.W.  
DIRECTOR

32 WEST RANDOLPH STREET, SUITE 1050  
CHICAGO, ILLINOIS 60601  
(312) 609-8750  
(312) 609-8751  
(312) 609-8752

SHARON ZINGERY, MA.  
CONCILIATOR / MEDIATOR

SCREENING FOR DOMESTIC VIOLENCE

I. SCREENING PROCEDURES - MARRIAGE & FAMILY C.S.

- A. History of Family Violence Committee
- B. Development of Screening Tool
- C. MFCS screening procedures

II. WHY WE SCREEN

- A. Professional ethics
- B. Client safety
- C. Mediator safety
- D. Other considerations

III. EDUCATION & TRAINING ISSUES

- A. Review briefly Family Violence Committee  
training
- B. Review Toronto Forum on Spouse Abuse  
education & training recommendations

## BACKGROUND OF THE FAMILY VIOLENCE COMMITTEE

\* Marriage and Family Counseling Service (MFCS) is the branch of the Domestic Relations Division of the Cook County Circuit Court which provides mediation and conciliation services to families with cases filed in our court. By local rule, parents raising issues of custody at the time of their divorce are mandated to our service for the purpose of mediating a parenting plan between them. Post-decree cases and visitation disputes are ordered to mediation at the judge's discretion. We also receive court-ordered referrals of non-married and grandparent cases.

\* In 1988, our Family Violence Committee (FVC) was formed at the request of Presiding Judge Benjamin Mackoff and with the support of then director Joan Massaquoi for the purpose of developing a mediation process which is responsive to families with severe imbalances of power and who are court-ordered to mediate their parenting plan. Presently, there are seven mediators on the FVC.

\* The Rules Committee of the Supreme Court of Illinois is currently reviewing the recommendations of the Illinois Supreme Court's Study Committee on Mediation of Child Custody, Support, and Visitation Disputes. The outcome of the decision of the Supreme Court may affect mediation procedures throughout the State. What I will describe today are the recommendations of the FVC to our staff for screening given current court procedures.

\* Our mediation staff of 15 represents several disciplines, graduate level and above, primarily those in the mental health field. Each mediator has completed 40 hours of mediation training or more. On the average, each mediator sees about 12 families per month. Each case usually has an Intake process, followed by Orientation, and then two 2-hour sessions of mediation. All cases return to court for a status report at the end of mediation.

\* In addition to developing a screening process, the FVC has proposed a general protocol as an aid in assessing for and



working effectively with severe imbalances of power. The protocol addresses safety issues and interventions appropriate to the needs of each family. The FVC has provided in-service training for MFCS staff, our Judges, and court investigators on recognizing severe imbalances of power, especially domestic violence, and in selecting appropriate interventions. We have now offered this training at three mediation conferences and will be providing six hours of similar training at the July 1993 Academy of Family Mediators conference.

\* The FVC develops resource materials for MFCS and compiles referral resources for the mediators and the judges. Current projects of the FVC include addressing questions of child abuse and of cultural issues in mediation.

\* My presentation today focuses on FVC screening procedures and upon recommendations of the Toronto Task Force on Spouse Abuse for education and training in the area of screening. I cannot stress enough the importance to the ethics and effectiveness of our profession of screening for severe imbalances of power before commencing mediation. By sharing our experiences in mediating with significant numbers of domestic violence cases, I hope we will assist each other in offering our clients the safest and most appropriate mediation services possible.

#### THE MFCS SCREENING TOOL

A sub-committee of the FVC was formed to research existing screening protocols and to propose to the staff a questionnaire which would facilitate the identification of cases of abuse and/or marked imbalances of power. From this research and the input of the entire staff, our **Confidential Interview Summary** was developed...a copy of which is attached. I would like to acknowledge the organizations who provided a base for our draft protocol:

Consensus - Linda Girdner, Ph.D.  
Conflict Assessment Protocol  
Alexandria, VA

Superior Court of the State of California  
Family Court Services - Conciliation Court  
Los Angeles County, Los Angeles, CA

Superior Court of the State of California  
Mediation & Investigative Services  
Orange County, Santa Ana, CA

Hamilton Unified Family Court  
Family Mediation Pilot Project  
Hamilton, Ontario, Canada

St. Louis County Social Services Department  
Custody & Visitation Mediation Program  
Duluth, MN

#### THE WAY I DO IT

In our court system, judges and mediators form teams and a case is expected to remain within that team, even should it return for post decree work. I am lucky in that all the Judges in my team send all cases to an Intake session in the court itself in which the team coordinating (also pre-trial) judge makes a speech emphasizing what the court expects of both the parents and the attorneys, who are also present in court for the speech. Each mediator on the team then screens the parents for impediments to mediation. At that point, I make an initial assessment as to whether or not to proceed with mediation and if the decision is to proceed, the style of mediation is decided upon. I may choose to co-mediate and/or to implement shuttle mediation.

I always try to start briefly with both parents to explain the process of screening and I then separate the parties and go through the confidential summary with them. The number of clients present will determine how much time I can give each client; so, I will do my best to sort the cases so that those indicating there is some form of violence will get some priority. Often, however, the form is simply insufficient to gather the information I need in making my assessment. It would be hard for me to screen over the telephone because I rely so heavily upon all my senses in screening.

Please refer to the attached checklist for guidelines in screening parties presenting themselves for mediation. Also, review the recommendations for a screening protocol. These basically were developed by the FVC and will probably be useful for you in designing your own protocol.

**CHECKLIST FOR MEDIATORS  
WHEN SCREENING/MEDIATING CASES OF DOMESTIC VIOLENCE  
AND IMBALANCES OF POWER AND CONTROL**

1. Pay attention to body language: watch for eye contact, facial expressions, avoidant posture.
2. Note if one person objects to having family members interviewed alone.
3. Appearances: Abusers often appear "normal," competent, smiling and charming. Victims often appear to be incompetent, unsure (more so in abuser's presence), anxious, nervous, indirect, have blunted or inappropriate affect.
4. Look closely at extremes: Abusers may present as pathetic, helpless victims; the victim may appear to play a mothering role.
5. Listen for "permission" words and gestures between them.
6. Does either party talk about men and women exclusively in terms of traditional stereotypes that are negative about the other sex?
7. Is their projected image of the ideal husband-wife (or parental) relationship unrealistic?
8. Is religion or any other belief system used by a parent to control, influence, or abuse any family members?
9. Is the family isolated? How far are they to the closest friends and relatives of each and how often do they see them?
10. Was there a history of violence in either family of origin?
11. Were either of them abused physically, emotionally, or sexually as children?
12. Is the child(ren) dysfunctional without adequate explanation? For example: school failure, behavioral problems, eating disorders, somatic complaints.
13. Does the child(ren) display extremes in behavior, e.g., overly fearful or overly aggressive?
14. Does one party attempt to take charge of the session or shut down communication directly or indirectly?
15. Does one party attempt to speak for the other?
16. Does the person who acted abusively accept responsibility for the behavior, minimize, blame the victim, or blame other circumstances?
17. Does the victim blame herself/himself or hold the abuser responsible?
18. Is the child(ren) being used as a pawn in the relationship?

(Adapted from protocols by Linda Girdner and Los Angeles County.)

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**RECOMMENDATIONS FOR SCREENING PROTOCOL**

In our court setting, screening may actually take place at different steps and in different locations. Mediators are urged to continuously assess the parties and to caucus if necessary to check for impasses to mediation and to institute alternate procedures as indicated by the ongoing screening.

**AT INTAKE**

1. If the confidential summary questionnaires have not yet been completed by each parent, the mediator will ask that each separately and confidentially complete their forms.
2. The mediator will conduct a separate screening interview with each parent and will assess whether to proceed with regular mediation or to institute special interventions such as co-mediation or shuttle mediation. Safety procedures are to be addressed.

**IN THE OFFICE** - by the Resource Person or Assigned Mediator

1. Parties are to be asked to complete their confidential summary forms separately and privately.
2. Each party is then screened separately and the mediator/resource person determines what interventions are appropriate for this case and institutes them.

**DURING MEDIATION**

The mediator will continually assess for impasses. Even if the initial screening did not uncover domestic violence or other severe impediments to mediation, the mediator will be aware that those imbalances of power may yet reveal themselves and the mediator will utilize appropriate interventions at that time...even terminating mediation if the parties cannot safely proceed.

**SCREENING INTERVIEW:** The purpose of screening is to gather information which may include assessments of:

1. The level of conflict between the parents.
2. The patterns of decision-making and sharing of power in the relationship.
3. The degree of power imbalance between the parents.
4. The involvement of the child(ren) in the parental conflict.
5. The degree of abuse toward either parent or child(ren).
6. The need for a safety plan, support network, referrals, or other social/legal interventions.

I recognize that in my setting, the conditions for screening are very different than in the private sector. Parties are mandated to meet with me, whether they want to or not. They do not pick me and have no reason to trust me initially. All their control issues are exacerbated. Yet, there are advantages. There is a Sheriff at the door who checks for weapons and monitors the office space. The parties see me as an extension of the authority of the court. There is a status date in court in which we can report certain limited matters back to the Judge. We maintain confidentiality but do not protect violence. We are considered mandated reporters of child abuse and neglect. Simply reporting to the Judge that we have co-mediated a case my alert an aware judge as to the imbalance of power in our case. There are many of us in one place and we can rely upon each other and upon our supervisors for consultation and advice.

It is through conferences like this that we are able to share our experiences to improve the profession and make our jobs not only easier but also more ethical and effective.

As Chair of the Family Violence Committee, I fully recognize the incredible work of the volunteers who tirelessly give of themselves to develop these protocols and procedures. Therefore, I wish to give special thanks and acknowledgement to the members of the FVC, both past and present, who have developed the material I have shared with you today:

Ruth Arkiss, Bea Barber, Kathleen Borland, Rose Deckelman, Marion Holtzer, Arturo Hurtado, Michael Karpowicz, Corinne Levitz, Joan Raisner, Bianca Rodriguez, and myself.

MARRIAGE AND FAMILY COUNSELING SERVICE  
32 West Randolph Street - Suite 1050  
Chicago, IL 60601

CONFIDENTIAL INTERVIEW SUMMARY

JUDGE \_\_\_\_\_ INTERVIEW: DATE \_\_\_\_\_ TIME \_\_\_\_\_  
CASE NO. \_\_\_\_\_ FIRST \_\_\_\_\_  
DATE REFERRED \_\_\_\_\_ SECOND \_\_\_\_\_  
MEDIATOR \_\_\_\_\_ THIRD \_\_\_\_\_

=====

FAMILY NAME \_\_\_\_\_ NAMES/AGES OF CHILDREN \_\_\_\_\_  
(live with whom) \_\_\_\_\_  
DATE OF MARRIAGE \_\_\_\_\_ \_\_\_\_\_  
LENGTH OF RELATIONSHIP \_\_\_\_\_ \_\_\_\_\_  
DATE SEPARATED \_\_\_\_\_ DIVORCED \_\_\_\_\_ \_\_\_\_\_

=====

PARENT/CLIENT

NAME \_\_\_\_\_ AGE \_\_\_\_\_  
RELATIONSHIP TO CHILD \_\_\_\_\_  
ADDRESS \_\_\_\_\_ ZIP \_\_\_\_\_  
DISTANCE BETWEEN PARENTS HOMES \_\_\_\_\_  
OTHERS IN HOME (NAME, RELATIONSHIP, AGE) \_\_\_\_\_

IF REMARRIED, SPOUSE \_\_\_\_\_ IF REMARRIED, DATE \_\_\_\_\_  
NAME \_\_\_\_\_  
HOME PHONE NO. \_\_\_\_\_ WORK PHONE NO. \_\_\_\_\_  
OCCUPATION \_\_\_\_\_ EDUCATION \_\_\_\_\_

PREVIOUS MARRIAGE(S) ENDED IN:  
Annulment \_\_\_\_\_ Yrs Married \_\_\_\_\_ No. Children \_\_\_\_\_  
Death \_\_\_\_\_ Yrs Married \_\_\_\_\_ No. Children \_\_\_\_\_  
Divorce \_\_\_\_\_ Yrs Married \_\_\_\_\_ No. Children \_\_\_\_\_

=====

HAVE YOU PREVIOUSLY BEEN INVOLVED IN MEDIATION? \_\_\_\_\_  
IF SO, WHEN? \_\_\_\_\_ WHERE? \_\_\_\_\_ WHO? \_\_\_\_\_

=====

ARE YOU FLUENT IN ORAL AND WRITTEN COMMUNICATION IN ENGLISH? \_\_\_\_\_  
IF NOT, WHAT IS YOUR PRIMARY LANGUAGE? \_\_\_\_\_  
IS A NEUTRAL INTERPRETER AVAILABLE? \_\_\_\_\_

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

(appears on the back of Confidential Interview Summary)

### CONFIDENTIAL QUESTIONNAIRE

#### EACH PARENT MUST SEPARATELY ANSWER HIS/HER OWN QUESTIONNAIRE

	Yes	No
1. Do you have any concerns about the child(ren)'s emotional and/or physical safety with the other parent?	___	___
2. Has the Illinois Department of Children and Family Services been involved with the family regarding allegations of abuse and/or neglect to the child(ren)?	___	___
3. Has an attorney/Guardian ad Litem been appointed to represent the child(ren)?	___	___
4. Have you ever feared that you would not have access to your child(ren)?	___	___
5. Do you have any questions or concerns about your child(ren) speaking with the mediator?	___	___
6. Has there ever been medical treatment or hospitalization for psychiatric disorders in the immediate family?	___	___
7. Do you have any concerns regarding the use of alcohol and/or drugs in the immediate family?	___	___
8. Has there ever been <u>any</u> physical confrontation between you and the other parent?	___	___
9. Do you have any other concerns about your own emotional and/or physical safety with the other parent?	___	___
10. Are there now, or have there previously been, Orders of Protection? If yes, expiration date _____.	___	___
11. Are you in any way afraid to meet with the other parent and the mediator?	___	___
12. Do you feel you were an equal partner in your relationship?	___	___
13. Do you feel you are ready to begin working with the other parent to develop a parenting plan? If no, briefly state why not: _____.	___	___
14. Do you have any fear about answering these questions? If yes, briefly state why _____ _____.	___	___

Completed by: \_\_\_\_\_  
Signature of Parent

Assisted by: \_\_\_\_\_  
Signature Relationship

Screened by: Intake Mediator \_\_\_ Resource Person \_\_\_ Assigned Mediator \_\_\_

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CONFIDENTIAL QUESTIONNAIRE

EACH PARENT MUST ANSWER HIS/HER OWN QUESTIONNAIRE SEPARATELY

- |  | Yes   | No    |
|--|-------|-------|
| 1. Do you have any concerns about the child(ren)'s emotional and/or physical safety with the other parent?   | _____ | _____ |
| 2. Has the Ill. Dept. of Children & Family Services been involved with the family regarding allegations of abuse and/or neglect to the child(ren)? | _____ | _____ |
| 3. Has an attorney/Guardian ad Litem been appointed to represent the children?   | _____ | _____ |
| 4. Have you ever feared that you would not have access to your child(ren)?   | _____ | _____ |
| 5. Do you have any questions or concerns about your child(ren) speaking with the mediator?   | _____ | _____ |
| 6. Has there ever been medical treatment or hospitalization for psychiatric disorders in the immediate family?                                     | _____ | _____ |
| 7. Do you have any concerns regarding the use of alcohol and/or drugs in the immediate family?   | _____ | _____ |
| 8. Has there ever been <u>any</u> physical confrontation between you and the other parent?   | _____ | _____ |
| 9. Do you have any other concerns about your own emotional and/or physical safety with the other parent?   | _____ | _____ |
| 10. Are there now, or have there previously been, Orders of Protection? If yes, expiration date _____.   | _____ | _____ |
| 11. Are you in any way afraid to meet with the other parent and the mediator?  | _____ | _____ |
| 12. Do you feel you were an equal partner in your relationship?  | _____ | _____ |
| 13. Do you feel you are ready to begin working with the other parent to develop a parenting plan? If no, briefly state why not: _____              | _____ | _____ |
| 14. Do you have any fear about answering these questions? If yes, briefly state why: _____<br>_____  | _____ | _____ |

Completed by: \_\_\_\_\_  
Signature of Parent/Client

Assisted by: \_\_\_\_\_  
Signature/Relationship to Client

Screened by: Intake Mediator \_\_\_\_ Resource Person \_\_\_\_ Assigned Mediator \_\_\_\_



HARRY G. COMERFORD  
CHIEF JUDGE  
CIRCUIT COURT OF COOK COUNTY  
BENJAMIN S. MACKOFF  
PRESIDING JUDGE  
DOMESTIC RELATIONS DIVISION  
DR. DAVID ROYKO, Psy.D.  
CLINICAL DIRECTOR

CIRCUIT COURT OF COOK COUNTY  
DOMESTIC RELATIONS DIVISION  
MARRIAGE & FAMILY COUNSELING SERVICE  
32 WEST RANDOLPH STREET, SUITE 1050  
CHICAGO, ILLINOIS 60601  
(312) 609-8750

### SUPERVISED VISITATION

#### What is supervised visitation?

Supervised visitation is an arrangement in which a third party is present during a parent's time with his or her child(ren) in order to provide for the safe access of the child(ren) to family members. It is for the purpose of establishing, re-establishing, or maintaining a familial relationship.

In some situations, the presence of a third party only at the point of the child's transfer from one parent to another protects the participants sufficiently and this is called supervised transfers or supervised drop-off and pick-up.

#### How is supervision instituted?

- . A judge may order supervised visitation when he or she feels that it is in the child's best interest that parental contact be supervised or that one or both parents' safety needs protection.
- . Parties may agree, either on their own, through attorney negotiation, or in mediation, that it is wise to implement supervision for the sake of their child(ren). Such an agreement would also be signed by the judge in the form of an agreed court order.
- . Parents on their own or with the assistance of their attorneys then make arrangements with the supervisor according to the provisions in their agreement or court order. Some professional supervisors also have their own guidelines.

#### What characteristics does a qualified supervisor have?

- . Interest in the welfare of both the child and each parent
- . Respect for the relationship of the child with each parent
- . Commitment to a successful visit
- . Accepted and respected by both parents and the child(ren)
- . Fluent in languages which may be used during the visit
- . Knowledgeable of appropriate child care procedures
- . Able to recognize inappropriate behavior, stop the inappropriate behavior, and terminate visits when necessary

Who serves as the supervisor?

- . An adult
- . A relative, friend of the family, private professional, public or private agency, trained supervisor, or religious resource
- . In special circumstances, the other parent

What is the role of the supervisor?

- . To observe the interaction between child and parent
- . To assure that conversations and interactions are safe and appropriate
- . To foster as natural a relationship as possible between parent and child(ren)
- . To follow guidelines and expectations set by the parents and/or the Court

What are the possible benefits of supervised visitation?

- . A safe setting in which a child may develop, renew, or sustain a healthy relationship with the visiting parent
- . Some reassurance to both parents that no one will be hurt and no accusations of harm can be made about the visit
- . Reduction of tension and conflict
- . An opportunity to reinforce good parenting skills and to learn new ones
- . Time for new trust between parents, as well as between parents and their children, to develop
- . Continued contact between parent and child during prolonged court process

How long does supervised visitation last?

There are no set guidelines indicating how long supervision should continue. Ideally, it will last...

- . Until a healthy, comfortable, and safe child-parent bond has been formed or restored; or,
- . Until both parents agree to end supervision; or
- . Until the court ends supervision.

\* \* \* \* \*

Safe, comfortable, and loving time spent together by parents and their children is absolutely vital to a child's well-being...even when it is supervised time. All children need, and thrive best with, ongoing contact with both parents whenever possible. Parents also do best sharing loving time with their children.

In situations where there is a question of child safety or discomfort, or of any participant's safety or well being, supervised visitation offers an opportunity for a healthy and loving bond between parent and child to grow and flourish.



CIRCUIT COURT OF COOK COUNTY  
DOMESTIC RELATIONS DIVISION  
MARRIAGE & FAMILY COUNSELING SERVICE  
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CHICAGO, ILLINOIS 60601  
(312) 609-8750

HARRY G. COMERFORD  
CHIEF JUDGE  
CIRCUIT COURT OF COOK COUNTY  
BENJAMIN S. MACKOFF  
PRESIDING JUDGE  
DOMESTIC RELATIONS DIVISION  
DR. DAVID ROYKO, Psy.D.  
CLINICAL DIRECTOR

OFTEN ASKED QUESTIONS AND PARENTAL RESPONSES

It is not uncommon for children to become over-involved in the conflict(s) of parents, especially during a divorce. However, this is never in the child's best interest. Parents often say that they do not always know how to answer questions or "investigations" their children have. Below are some concerns parents have expressed:

- . What do I do when the children are manipulating or playing their parents off each other?

Children cannot do this if they are not allowed to do so. If this is happening, ask the other parent what you can do, together, to stop this behavior. Don't accuse!

- . How do I answer my children when they want to know why we're getting a divorce?

If at all possible, both parents should decide beforehand what they both will say. Ideally, parents together explain the divorce to the children.

Assure the children you both love them and both will continue to take care of them. They do not need to know the intimate details of your problems with each other. You are divorcing because of your adult problems which the children are unlikely to understand anyway. Don't blame!

- . How do I respond when the children want to know who they will live with?

Assure the children that you both love them and you are both going to do what is best for them ... please make sure this is what you are going to do before you tell them so. Reassure them that they will not have to choose between you. Reassure them that no matter what, they will still have time with each of you. If you yourself are not sure of future living arrangements, you can let the children know that mom and dad are working together to give them a good home. Don't convey fear and uncertainty!

What do we do when the children tell one parent one thing and the other parent another thing?

Children may be telling you what they think you want to hear. This could be because they are afraid you will leave them or be mad at them if they do not please you. The children may be doing this with one or both of you. Do not assume the other parent is responsible ... check with each other.

It is never in a child's best interest for a parent to talk negatively about the other parent directly to or in front of the child. Encourage others (family, friends, boyfriends, girlfriends) to respect your child by refraining from such comments. Don't automatically believe the worst!

\*\*\*\*\*

REMEMBER! Divorce affects the whole family. Having children go for counseling because they are having difficulty dealing with your conflict is not going to resolve your problems. If you truly want to help your children, get your family emotionally healthy. You are all they've got!



HARRY G. COMERFORD  
CHIEF JUDGE  
CIRCUIT COURT OF COOK COUNTY  
BENJAMIN S. MACKOFF  
PRESIDING JUDGE  
DOMESTIC RELATIONS DIVISION  
DR. DAVID ROYKO, Psy.D.  
CLINICAL DIRECTOR

CIRCUIT COURT OF COOK COUNTY  
DOMESTIC RELATIONS DIVISION  
MARRIAGE & FAMILY COUNSELING SERVICE  
32 WEST RANDOLPH STREET, SUITE 1050  
CHICAGO, ILLINOIS 60601  
(312) 609-8750

### PARENT SUPPORT GROUPS

Parents receiving services from Marriage and Family Counseling Services are often at a time in their lives when they are under considerable stress. We recognize that parents must have their needs met in order to meet the needs of their children. If you have ever traveled on an airline, you will have noted that the flight attendant instructs parents, in the event of depressurization of the plane, to first attach the oxygen mask to their own face and then to their child because they must be functioning well in order to protect their children.

The same is true for parents as they go through the transitions of reorganizing their families. This sheet offers some information on services in the community that offer parents support during times of stress.

#### PARENTS ANONYMOUS - A Service of Children's Home & Aid Society

1122 North Dearborn Street  
Chicago, Illinois 60610  
(312) 944-3313

To find out if a group meets near you, call:  
Greater Rockford Area (815) 968-0944  
Northwest of Chicago (708) 837-6445  
Greater Chicago (312) 649-7311

Parents Anonymous is an international, non-profit organization providing support to parents through self-help groups led by parents. A community human services volunteer participates in each group by listening and by helping facilitate discussions.

- . Parents participate voluntarily. Participation is free, anonymous and confidential.
- . PA helps parents who are feeling frustrated and are angry too often.
- . PA helps parents who are looking for ways to improve their family relations.
- . Most parent groups have companion children's groups where free child care is provided.
- . Children who participate in the children's groups have heightened self-esteem and self-confidence, and a better ability to verbalize feelings and resolve conflicts.

MP00 100 01

PARENTAL STRESS SERVICES - Services for Parents

600 South Federal, Suite 205  
 Chicago, Illinois 60605  
 Office: (312) 427-1161      HOTLINE: (312) 3-PARENT - 24 Hours  
 To Register for Classes: (312) 427-1102 - Monday through  
 Friday from 10am to 2pm

Parental Stress Services offers understanding, support, and education to help parents learn effective ways of dealing with everyday stresses.

- . Parent Support Groups - Six support groups with a seventh scheduled for the South Side in October '94. Weekly support groups ... some offering a children's program.
- . Parenting Skills Classes - Parenting skills such as family communication, understanding children's behavior, building positive self-esteem and discipline. Nine classes on the North and West Side and four South Side.

RAVENSWOOD HOSPITAL MENTAL HEALTH CENTER  
CONSULTATION AND EDUCATION DEPARTMENT - Classes/Self-help Groups

2312 West Irving Park Road  
 Chicago, Illinois 60618  
 (312) 463-7000, Ext. 1455; TDD 728-3737

The Consultation and Education Department offers educational workshops and self-help groups which enhance participants' coping skills and promote mental health. Programs are not intended to be used as a substitute for therapy. Check for current schedule. Sliding scale fees available.

- . Parenting Now - Practical ways to parent well and to cope with stress.
- . Stress Management - A personal stress management program.
- . Divorce Support Group - Share experiences and feelings this life change brings and gain support from others.

JEWISH FAMILY AND COMMUNITY SERVICE

One South Franklin Street  
 Chicago, Illinois 60606-4669  
 Central: (312) 263-5523      Niles Twnshp: (708) 675-0390  
 South Suburban: (708) 799-1869      Northwest: (708) 392-8820  
 Northern: (312) 274-1324      North Suburb: (708) 831-4225  
 Child Development Center/Far Northwest Chgo: (312) 761-4550

Small discussion groups designed to enhance family life through exploration of normal life stages and their stress. Open to all. Fees vary according to program and individual's circumstances.



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CHICAGO, ILLINOIS 60601  
(312) 609-8750

CHILDREN'S BILL OF RIGHTS

1. The right to be treated as important human beings with their own feelings, ideas, and desires.
2. The right to unconditional love in a continuing relationship with both parents.
3. The right to give love and to receive love from each parent without fear of disapproval from either parent.
4. The right to know they did not cause their parents to break up and it is not their responsibility to repair their parents' relationship.
5. The right to the best care and guidance from both parents and the right to share important life events with both parents.
6. The right to honest answers, in age-appropriate language, to their questions about the changing family relationships.
7. The right to know and to appreciate what is good in each parent without one parent degrading the other.
8. The right to stay out of the middle of parental disputes and not to be placed in situations where they can manipulate their parents.
9. The right to have consistent and predictable contact with both parents...contact which is not sabotaged by either parent.
10. The right to expect that promises made by a parent will be kept and the right to reasonable explanations when promises cannot be kept.





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DOMESTIC RELATIONS DIVISION  
DR. DAVID ROYKO, Psy.D.  
CLINICAL DIRECTOR

GUIDELINES FOR SEPARATED PARENTS  
The DO's and DON'Ts

DO:

1. Develop a workable plan that gives children access to both parents.
2. Keep ongoing contact with the children so they don't feel rejected or abandoned.
3. Continue reassuring children that they can still count on both parents.
4. Guard against cancelling plans with your children. Make time with them your priority.
5. Establish a home for the children with a place for their belongings (toys, clothes, etc.) with both parents.
6. Maintain telephone contact with your children.
7. Have children ready in time for the other parent.
8. Be home on time to receive the children.
9. Keep parental communication lines open.

DO NOT:

- A. Pump children for information about the other parent.
- B. Try to control the other parent.
- C. Use your children to carry angry messages back and forth.
- D. Use your children to deliver support payments.
- E. Argue in front of your children.
- F. Speak derogatorily about the other parent.
- G. Ask your children with whom they want to live.
- H. Put children in the position of having to take sides.
- I. Use your children as pawns to hurt their other parent.



# A ppendix E

**JUDICIAL BRANCH  
SUPERIOR COURT - FAMILY SERVICES UNIT**

Accepted:  Y  N

REFERRAL DATE: \_\_\_\_\_ ASSIGNMENT DATE: \_\_\_\_\_ CONTINUANCE DATE(S): \_\_\_\_\_

ROOM (Name of Office)		NAME OF REFERRING JUDGE		FSU NO.	DOCKET NO.
NAME OF PLAINTIFF		ADDRESS OF PLAINTIFF			TELEPHONE NO.
NAME OF EMPLOYER		ADDRESS OF EMPLOYER			(WORK HOURS) TELEPHONE NO.
DATE OF BIRTH	SOCIAL SECURITY NO.	NAME OF PLAINTIFF'S ATTORNEY			TELEPHONE NO.
NAME OF DEFENDANT		ADDRESS OF DEFENDANT			(WORK HOURS) TELEPHONE NO.
NAME OF EMPLOYER		ADDRESS OF EMPLOYER			TELEPHONE NO.
DATE OF BIRTH	SOCIAL SECURITY NO.	NAME OF DEFENDANT'S ATTORNEY			TELEPHONE NO.
NAME OF CHILD		DATE OF BIRTH	RESIDENCE <i>(With Plaintiff, Defendant or Other - specify)</i>		
1.					
2.					
3.					
4.					
NAME(S) OF ATTORNEY(S) FOR CHILD(REN)				TELEPHONE NO.(S)	

FAMILY VIOLENCE SCREENING  PRIOR ARREST(S)/ORDER(S) PROTECTIVE OR RESTRAINING ORDER IN EFFECT?  Y  N ABLE TO MEDIATE?  Y  N

COMMENTS:

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SCOPE OF REFERRAL  MEDIATION  EVALUATION  NO  YES (Date) \_\_\_\_\_ REFERRED TO PARENTING EDUCATION PROGRAM COMPLETED (Date) \_\_\_\_\_  WAIVED

SOURCE OF REFERRAL  COURT  SELF  PENDENTE LITE  POST-JUDGMENT  DISSOLUTION  UNMARRIED  TRO  \_\_\_\_\_ OTHER (Specify) \_\_\_\_\_

CUSTODY  VISITATION  RECONCILIATION  OUT-OF-STATE  FINANCIAL  VACATE  \_\_\_\_\_

ISSUE(S) REFERRED

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ADDITIONAL PERTINENT INFORMATION (Judgment Date, Current Orders)

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PREVIOUS REFERRALS (Dates) \_\_\_\_\_ FORMS DISTRIBUTED  BROCHURE  QUESTIONNAIRE  RELEASES

SCREENED BY \_\_\_\_\_ DATE \_\_\_\_\_ COUNSELOR ASSIGNED \_\_\_\_\_

# **FAMILY VIOLENCE IN CONNECTICUT**

## **COLLECTED ABSTRACTS OF EVALUATION AND RESEARCH RELATING TO THE FAMILY VIOLENCE PREVENTION AND RESPONSE ACT**

STATE OF CONNECTICUT



LOWELL P. WEICKER JR, GOVERNOR

OFFICE OF POLICY AND MANAGEMENT  
STATISTICAL ANALYSIS CENTER FOR CRIMINAL JUSTICE  
JUNE 1993

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*This report was conceived and edited by the Research and Evaluation Subcommittee of the Connecticut Inter-agency Family Violence Response Committee. The goal of this multi-disciplinary subcommittee is to encourage and coordinate efforts to examine the impact of the Family Violence Prevention and Response Act. The Evaluation Subcommittee has been active since 1988, and currently includes the following individuals: Dolly Reed, Director of Connecticut's Statistical Analysis Center for Criminal Justice, Office of Policy and Management; Gary Lopez, Monique Rosales and Carleen Bumsch of the Family Violence Reporting Program, Department of Public Safety; Diana Preice, Family Division, Judicial Branch; Dr. Eleanor Lyon, Research Department, Child and Family Services of Hartford; and Anne Menard, Connecticut Coalition Against Domestic Violence.*

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*Copies of this report may be obtained through the Office of Policy and Management's Statistical Analysis Center, 80 Washington Street, Hartford, CT 06106, Telephone Number (203) 566-3522.*

**Family Violence in Connecticut:  
Collected Abstracts of Evaluation and Research  
Relating to the Family Violence Prevention  
and Response Act**

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State of Connecticut  
Lowell P. Weicker Jr, Governor

Office of Policy and Management  
Policy Development and Planning Division  
Statistical Analysis Center for Criminal Justice

June, 1993

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# Introduction

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On October 1, 1986, Connecticut's "Family Violence Prevention and Response Act" went into effect. This new legislation was among the most comprehensive state-wide family violence responses in the country at that time. It was designed to coordinate and strengthen the law enforcement, court, and social service responses to family violence, and to increase public awareness that abuse within families is criminal behavior.

Connecticut's Family Violence and Prevention and Response Act (FVPRA) defined "family and household members" as well those elements that must be present for an arrest under the new statute. The major provisions of the new law included:

- Mandatory arrest by police in all family violence incidents in which there is probable cause to believe that a crime has occurred.
- Requirements that police notify victims of their rights and the community services available to them.
- Next court day arraignment of family violence cases.
- Increased availability of criminal court protective orders during the pendency of a family violence case.
- Required training for all involved personnel.

A statewide system of "family violence intervention units" was also created under the statute to enhance the court's assessment and handling of these often complex cases, and to improve services to victims. These units function formally within each of the state's geographic area (G.A.) courts by agreement between the Chief State's Attorney's Office and the Judicial Branch. The units are statutorily overseen by the Family Division (Judicial Branch), and include Family Relations counselors, family violence education program providers, and specialized family violence victim advocates.

The law also required specialized data collection and reporting to the Department of Public Safety's Family Violence Reporting Program by law enforcement, the courts and medical facilities. These provisions have significantly enhanced the statistical data available on family violence incidents and the response to them by the various agencies.

An Inter-agency Family Violence Response Committee (IRC) was established under the auspices of the Statistical Analysis Center of the Connecticut Office of Policy and Management to monitor the law's implementation and serve as a multi-disciplinary forum for problem-solving. Included on the IRC are representatives from the Chiefs of Police Association, the Family Division (Judicial Branch), the Department of Public Safety Family Violence Reporting Program, the Department of Children and Youth Services, the Department of Human Resources, the Commission on Victim Services, the Connecticut Coalition Against Domestic Violence, the Connecticut Sexual Assault Crisis Services, and the Research Department of Child and Family Services.



Since 1986, several special projects have been undertaken to examine the impact of the law, in whole or in part. These efforts have been coordinated and supported, and in some cases initiated by the Research and Evaluation Subcommittee of the IRC. The following studies focusing on law enforcement, court system and victim services issues have been completed to date:

- Governor's Task Force on Family Violence - Final Report and Recommendations
- Survey of Police Departments
- The Family Violence Prevention and Response Act - Services Provided by the Family Violence Victim Advocates
- An Evaluation of Connecticut's Family Violence Offender Education Program
- Arresting Violence: A Study of the Connecticut's Courts Response to Mandatory Arrest for Family Violence
- Contacting Victims of Family Violence - A Comparison of Two Approaches
- Family Violence Nolle Study
- Study of Family Violence Incidents which Result in Arrest of Both Parties
- Alternate Sanctions Study

This report provides abstracts of each study, survey or report, including brief discussions of methodology, major findings, and recommendations. A glossary of terms is also included to assist readers in understanding how various terms are used throughout the report.

# Governor's Task Force On Family Violence

## Final Report and Recommendations

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This report summarizes the issues and recommendations brought forth by the Governor's Task Force on Family Violence. The task force was created in 1985 and was charged with enhancing the effectiveness and coordination of Connecticut's response to family violence. The task force held public hearings to solicit opinion regarding family violence, reviewed the family violence data available, and explored the current policies and practices of the state and private agencies that respond to family violence.

The report of the task force identified four major problem areas:

- **Inadequate reporting and data collection:** Under reporting of family violence incidents was found to be widespread among victims, police and other professionals, creating a serious obstacle to the identification of and response to abuse.
- **Insufficient victim support services:** Services for victims of abuse were not uniformly available geographically or by type of victim.
- **Lack of a uniform, coordinated law enforcement and judicial system response:** There was a need to define "family violence" and "family" relationships, and there were no guidelines for arrest.
- **A need for increased public awareness about the serious and criminal nature of family violence:** Increased public awareness about the seriousness of family violence is a key issue in prevention.

The task force made the following recommendations to address the incidence of family violence in the state:

- Adopt a single comprehensive law enforcement and judicial response to family violence.
- Declare that family violence is a crime and the preferred response is to treat it as a crime.
- Expand existing services and establish new services for partner, elder and child abuse victims.
- Establish a reporting mechanism for data collection.

- Launch a statewide public awareness campaign simultaneous with the adoption of the new legislation.
- Provide staff support for implementation and oversight.

Study by: The Governor's Task Force on Family Violence. Parisky and Daniels under contract with Connecticut Office of Policy and Management, Justice Planning Division, were responsible for coordinating the work of the task force and the preparation of the final report (1986).

# Survey of Police Departments

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This report presents the results of a survey of police departments in Connecticut conducted ten months following the implementation of the Family Violence Prevention and Response Act (FVPRA). The survey assessed the impact of the family violence law in three general areas: changes in policy and police procedures as a result of the law; changes in training as a result of the law; and the prevalence and reasons for dual arrests since the law was enacted in 1986.

The survey was distributed to 93 Chiefs of Police during August, 1987; 59 surveys (64 percent) were completed and returned. All of the respondents reported that they currently met or exceeded the requirements of the 1986 law. Half of the respondents indicated that they met the requirements prior to enactment of the legislation. Following passage of the law, 67 percent of the respondents indicated that they adopted new policies, 31 percent modified existing policies, and 2 percent made no changes in their policies.

Family violence training for field officers was provided for or arranged by 88 percent of the respondents. Of the departments that offered training, 90 percent of the officers within these departments had received training. Eighty-eight percent of the respondents indicated that they used the Victim Rights Card developed by the Municipal Police Training Council to meet the notification provisions of the FVPRA.

Chiefs of Police were asked to rate the importance of six factors when investigating cross complaints. Probable cause for making a dual arrest was identified as the most important factor. Legal liability for failure to arrest, whether one or more persons acted out of self defense, and whether a protective or restraining order was in effect were considered very important. Legal liability for false arrest and whether there were differing degrees of injuries were considered moderately important.

The survey elicited responses on other issues relating to family violence. Ninety-three percent of the responding departments reported an increase in the number of persons arrested for family violence since the law was enacted and 55 percent of the respondents indicated a decrease in the number of return calls made to the same residence. Additionally, 55 percent of the respondents indicated no change in the number of reports received from the Department of Children and Youth Services. Finally, 77 percent of the departments responding indicated that, in their view, the new law provides more effective protection to victims of family violence.

Study by: Office of Policy and Management, Justice Planning Division: Dolly Reed, Senior Research Analyst (1987).

# The Family Violence Prevention and Response Act: Services Provided By the Family Violence Victim Advocates

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This report examines the role of the family violence victim advocate in the criminal processing of family violence cases. The study:

- describes the services provided by the family violence victim advocates (FVVAs);
- identifies characteristics of victims who receive services;
- identifies gaps and problems in services provided to victims of domestic violence; and
- defines the services provided by advocates from the Commission on Victim Services to victims of domestic violence.

Data were collected on cases referred to FVVAs in all 21 geographic area courts in Connecticut during November 1988 and January and March of 1989. Data collection resulted in case information for 6,487 victims of family violence.

The report describes characteristics of victims referred to advocates and the family violence incident which led to arrest. Cases in which the victim was female involved more serious charges than those with male victims. More than one party was arrested in nearly a quarter of the cases. These "dual" arrests were associated with co-residence, less serious criminal charges, and cases with male victims.

Data are also presented on the advocates' contact efforts and services to victims. Fifty-seven percent of the victims received direct services in person or by telephone. Analysis of these data demonstrate the complexities involved in contacting family violence victims quickly. While demographic and charge characteristics distinguish victims who could be personally contacted from those who could not, features of the court and community are also significant. In particular, timely referrals on the day of arraignment, close cooperation and collaboration between advocates and family relations staff, and advocates' access to telephones, privacy, and police reports are associated with higher rates of direct services to victims. Attempting phone contact with employed victims at work also is associated with higher service rates.

The study presents detailed results from the statistical and interview data related to the law's implementation in a number of areas. The recommendations emphasize ways to reduce gaps in services to victims. They include:

- Reinforce the importance of police distribution of information cards to victims at the time of arrest in order to increase victim's awareness of available services.
- Encourage advocates to participate in family violence training provided to police.

- Explore ways to improve collaboration between family relations staff and advocates, including use of protocols for these cases. Protocols should include referral procedures and advocates' access to police reports.
- Increase advocate access to privacy and telephones in court.
- Increase opportunities for problem-solving meetings between advocates and family relations representatives.
- Increase attention to strategies to reach African-American and Latino victims more effectively.
- Increase the availability of materials which describe the court process and available services and options in English and Spanish.
- Explore strategies to increase the use of alternative sanctions in family violence cases.
- Increase efforts to improve advocate compensation.
- Continue efforts to conduct additional research related to the law and its implementation, particularly regarding its impact on victims, and the most effective intervention strategies.

Study By: Child and Family Services, Research Department, coordinated by Eleanor Lyon, Ph.D. and submitted to the Connecticut Commission on Victim Services (1989).

# An Evaluation of Connecticut's Family Violence Offender Education Program

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This research examines the operation of the family violence offender education program and assesses the impact of the program on the participants. Data were collected from four sources: from surveys completed by offender education service providers; from a focus group interview with Family Division staff representing seven geographic areas in Connecticut; from a case study of offender education programs in Meriden and Waterbury; and from arrest statistics compiled by the Family Violence Reporting Program. The survey gathered information in six areas: staff background; offender background; the referral process; programmatic issues; suggestions for changes in the program; and recommendations for the future. The case study involved observation of nine classes in three different locations, two group interviews with participants, and discussions with service providers in three locations.

In an effort to assess the impact of the offender education program, rearrest rates were compared for the following four groups of offenders:

- 1) offenders arrested before the family violence law was enacted in 1986 (n=100);
- 2) offenders arrested after the law, but not referred to the education program (n=100);
- 3) offenders arrested after the law, referred to the program, but not successfully completing the program (n=100);
- 4) offenders arrested after the law, referred to the program, and successfully completing the program (n=100).

The first group of offenders was selected from those offenders arrested between August 1986 and October 1986. The offenders in groups two, three, and four were selected from caseloads in various courts starting on July 1, 1987. Because the number of rearrests in each category is small, differences between groups should be interpreted with caution. Results of this analysis should be seen as suggestive, not definitive.

Several major findings emerged from this research.

- The rearrest rate for offenders who completed the program was significantly lower than the rate for those who did not complete the program.
- Of the offenders arrested before the family violence law, 29 percent were rearrested within a one year period, and of the offenders who successfully completed the program, only 14 percent were rearrested within the same time period.
- The offender education programs lack uniformly established goals that are reasonable and attainable within a six week period.

- Offender education programs vary in terms of philosophical and procedural approach. There is disagreement as to whether women offenders should be treated as victims or offenders and concern about the lack of bi-lingual and bi-cultural groups in the programs.
- There is disagreement as to whether six weeks is a sufficient amount of time to satisfy the goals of the offender education program.

The major recommendations arising from this research include:

- Examine the group of offenders who completed the program and their victims to determine whether violence has ceased or been transformed into behaviors which are less "arrestable."
- Develop uniform program goals and criteria for determining successful completion of the program.
- Encourage gender-specific groups in offender education programs and bi-lingual, bi-cultural classes in locations where the need exists.
- Adopt a mandatory program for repeat offenders that would extend over a period of 26 weeks.

Study by: Janet Rifkin, J.D., Julie Lam, Ph.D., Tim Black, MA. Submitted to Anthony Salius, Director of the Superior Court, Family Division (1990). Funds obtained from the Bureau of Justice Statistics by the Connecticut Office of Policy and Management's Statistical Analysis Center.



# Arresting Violence: A Study of the Connecticut Court's Response to Mandatory Arrest for Family Violence

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This report describes the post-arrest processing of family violence cases in the criminal courts since passage of Connecticut's Family Violence Prevention and Response Act of 1986. There were four primary research goals associated with the study. They were: 1) to describe the nature and processing of family violence cases in Connecticut; 2) to establish a profile of variables which were most likely to be associated with prosecutorial screening outcomes; 3) to determine factors that were associated with different sentence outcomes; and 4) to inform the debate about the appropriate and just response of the criminal justice system to family violence.

The study utilized data from the Family Division case records, the family violence incident report submitted to the Department of Public Safety (DPS) by the arresting departments, and information contained in the files of prosecutors in geographic area courts. The Family Division provided information on 4,138 family violence cases disposed during the period July 1, 1988 to December 31, 1988. The DPS Family Violence Reporting Program provided information regarding the arrest incident and prior arrests for a subsample of 448 cases. Finally, 90 prosecutor files were reviewed for a more detailed analysis.

Data from the Family Division showed that half of all defendants were between the ages of 21 to 29, 73 percent of the defendants were male, 62 percent of the cases involved non-married respondents and minorities constituted 37 percent of the cases. DPS records indicated that 37 percent (166 defendants) had been previously arrested between 1 and 10 times between October 1, 1986 and the date of the studied arrest. State prosecutor files showed that 11 of the 90 defendants had previously been incarcerated.

The major finding of the research are presented below:

- Only 14 percent of the 4,138 intimate family violence cases studied were prosecuted. Seventy-nine percent were nolle and the remaining seven percent dismissed.
- Defendants whose cases were nolle, dismissed or prosecuted have different aggregate characteristics. The three groups are differentiated by legal factors, including seriousness of the offense, dual arrest, and criminal history. Defendants who committed more serious offenses were more likely to be prosecuted than those who committed less serious offenses. In addition, when dual arrest occurred the likelihood of prosecution was reduced. Finally, the defendants prior criminal history played a role in whether the defendant would be prosecuted. If there were pending charges or prior arrests, the current case was more likely to be prosecuted.

- Although legal factors were the most strongly associated with prosecution, social factors such as gender, race, ethnicity and marital status were significantly associated with prosecution. More specifically, prosecution was more likely when men were the defendants and when women were the victims. When compared to the norm, blacks were more likely to be prosecuted for domestic violence. Unmarried defendants and defendants who live apart from the victim were more likely to be prosecuted than spouses and cohabitants who were less likely to be prosecuted.
- Victim preference was strongly related to the case outcome. In 75 percent of the cases in which the victim was recorded as desiring prosecution, prosecution occurred. In sixty-three percent of the cases in which the victim was recorded as not wanting prosecution, prosecution did not occur.
- Three-quarters of the nolle and dismissed cases involved defendants who had no prior family violence arrest recorded by the Department of Public Safety.
- Seventy percent of the women arrested were involved in dual arrests.
- Courts varied in their use of prosecution; in the types of sentences imposed; and in the characteristics of the defendants, victims and charges brought.

The major recommendations of the study identified issues for new research and suggested various policy changes. With regard to new research, the report recommended:

- a study that tracks cases from arrest to disposition;
- a study of nolle cases; and
- a qualitative study exploring the experiences of defendants and victims in the system.

With regard to policy changes, the report recommended:

- establish prosecutorial guidelines that specified preferred outcomes and screening criteria;
- develop a mechanism to provide information to prosecutors and the Chief State's Attorney about the treatment of family violence cases in all courts and to compare such treatment with non-domestic violence cases;
- examine police charging practices in family violence cases;
- establish police guidelines with the goal of reducing dual arrests;

- improve the Family Division's ability to provide accurate data to the prosecutor concerning the defendant's prior protective orders and prior family violence history.

Study by: Margaret E. Martin, Ph.D. Dissertation. Florence Heller Graduate School for Advanced Studies in Social Welfare, Brandeis University, (1990).

## Contacting Victims of Family Violence: A Comparison of Two Approaches

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This report describes an effort to compare the efficacy of contacting victims of family violence by direct mail questionnaires and telephone interviews. In the spring of 1990, family violence victim advocates in New London and Hartford courts each selected 200 of the most recent family violence cases involving adult intimates. Two hundred victims were sent a survey in English and Spanish and 200 victims were sent a letter asking them to participate in a telephone interview. Both groups were offered a monetary incentive of \$10 for participation in the survey.

Responses were obtained from 69 victims, a 17 percent response rate. Fifty-two questionnaires were returned through the mail and 17 telephone interviews were completed. There was a marked difference in responses at the two sites. The response rate in New London was nearly twice the response rate in Hartford.

The questionnaire and telephone interview were designed to capture information about victims and their experience with the criminal justice system. Because of the low response rate and the difference in response rates between the two sites, the information resulting from the survey instruments should be interpreted with caution. The information should not be considered representative of all victims in these courts, but rather is suggestive and points to areas which deserve attention.

Of the sample respondents, 94 percent were female and three-quarters were under thirty. For nearly two-thirds of those who participated in the survey, the incident which led to arrest was not the first occurrence of family violence which involved the police. Seventy-eight percent of the victims wanted the police to be called and 71 percent of the victims thought the police took the proper action.

The survey also provided information on a variety of other issues including protective order violations and changes in victim-offender relationships. Regarding protective order violations, the survey showed that 71 percent of respondents who indicated that protective order violations had occurred had not reported them. The survey suggested that victims did not report violations for three reasons: fear or threats, commitment to the relationship, and ignorance of the applicable law. With regard to changes in the victim's relationship with the offender, the survey indicated that in over half of the cases the victim and the defendant had less or no contact following the arrest.

Although the mail questionnaire elicited a higher response rate than telephone interviews, the victims who replied by telephone provided supplemental information on their cases which enhanced the data sought by researchers. Furthermore, the study suggested that victims did not always fully understand what happened to them in court. When researchers explained court proceeding to the victims, many victims clarified their answers to some of the questions. Under these circumstances, relying on written surveys alone could be misleading. The study indicates that the richness of the data collected through telephone interviews is valuable in exploratory research, particularly where the issues being investigated are complex.

Study by: Eleanor Lyon, Ph.D., Research and Evaluation Services - Child and Family Services, Inc. (1991). Funds obtained from the Bureau of Justice Statistics by the Office of Policy and Management's Statistical Analysis Center.

# Family Violence Nolle Study

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Of all criminal cases, excluding motor vehicle offenses, handled in Geographical Area courts, approximately two-thirds result in a nolle (a decision not to prosecute); the nolle rate for family violence cases is similar. This report describes an effort to understand more about nolle in family violence cases in Connecticut. Data were collected on arrests which occurred in the last six months of 1987 and which were nolle by prosecutors. A total of 1,125 arrests stemming from 895 incidents were included in the study. The cases were drawn randomly from records maintained by the Family Violence Reporting Program of the Department of Public Safety. The cases covered the Geographic Area court jurisdictions for Hartford, New London and Danbury and were representative of cases heard in those courts during the time period of the study.

The report provides demographic data on offenders, victims and characteristics of the arrest incident. At disposition, 68 percent of the sample cases had one charge pending, 22 percent had two charges pending and 10 percent had more than two charges pending. Within this sample, 91 percent of the cases had all of the charges nolle, and 9 percent had only some of the charges nolle (partial nolle). The study provides an explanation of the characteristics which distinguished partial nolle from those in which all charges were nolle. The best predictor of partial nolle was the number of charges remaining at the point of disposition. In other words, the more charges involved, the more likely it was for only some of them to be nolle regardless of the seriousness of the charge. The number of prior family violence offenses was also significantly associated with partial nolle. Offenders who had a history of family violence arrests were less likely than others to have all of their charges nolle. In addition, the study showed that the number of days between arrest and disposition was also significantly associated with partial nolle. Those cases that required more time between arrest and disposition were less likely to have all of their charges nolle.

The study also provided descriptive information on dual arrests and recidivism. Nolle dual arrest cases were disposed of more quickly and were more likely to involve nolle of all charges. Over 30 percent of the total sample was re-arrested for a family violence crime within a two and one half year period.

The major recommendations arising from this research included:

- The development of a wider array of alternative sanctions to enable prosecutors to recommend appropriate sanctions more frequently;
- The design and implementation of a mechanism for a written record of reasons for disposition to be accessible for administrative and research purposes; and
- The routine use of a separate computer code for tracking family violence cases to make judicial data available for administrative and research purposes.

Study by: The Research and Evaluation Subcommittee of the Connecticut Family Violence Inter-agency Coordinating Committee, coordinated by Eleanor Lyon, Ph.D., Child and Family Services, under contract (1991). Funds obtained by the Office of Policy and Management from the Bureau of Justice Statistics.

# Study of Family Violence Incidents Which Result in Arrest of Both Parties

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This research provides general information on dual arrests in family violence incidents in Connecticut from 1987-1989. Data were obtained from three sources: from statewide arrest records submitted to the Department of Public Safety as required by law; from incident reports requested from police departments; and from surveys completed by local police officers regarding their attitudes towards the family violence law in Connecticut. Because of the different types of data sought and collected in the study, data obtained from each source will be described separately below.

Researchers examined arrest data on family violence incidents that occurred between 1987-1989. Analysis of the data provided information on dual arrests over the three year period. Statewide arrest data showed that dual arrest incidents made up 18.5 percent of family violence incidents in 1987, 19.1 percent in 1988 and 20.0 percent in 1989. The data also showed that dual arrest incidents were significantly different from non-dual arrest incidents. Dual arrest incidents were more likely to involve a less serious type of offense such as disorderly conduct or breach of peace than non-dual arrest incidents which were more likely to involve arrests for assault. Dual arrest incidents were more likely to involve unmarried partners than were non-dual arrest incidents, which were more likely to involve spouses. Finally, dual arrestees were more likely to be between the ages of 16 and 30 than those arrested in other incidents, who were more likely to be over 30.

Ten percent of the 4,347 dual arrest incidents that occurred in 1989 were randomly selected for review. The Commissioner of Public Safety requested the arrest report from the reporting agency for the dual arrest incidents that were selected. Research staff analyzed the arrest reports to obtain more specific information with regard to dual arrests. Of the incident reports requested, 76 percent (329) were received. These reports showed that 20 percent of the incidents were incorrectly classified as dual arrests. Examples of incorrectly classified incidents were cases that did not involve violence, or cases that did not involve family or household members. The data also showed that 20 percent of victims required medical treatment for injuries sustained; an additional 68 percent received injuries not requiring medical treatment.

Surveys of police officers were used to understand why dual arrests were made and to obtain information regarding the officers' attitudes regarding the family violence law. Each police department was asked to have officers complete surveys based on the proportion of family violence arrest incidents reported during 1989. Of the surveys requested 82 percent were returned completed. Survey results provided information on dual arrests, on the impact of mandatory arrest on family violence, and on police training in the area of family violence. The survey showed that 77 percent of the responding officers felt that, due to the mandatory arrest law, family violence was being treated as a serious crime by police. More police officers agreed than disagreed that victims were more likely to call police due to mandatory arrest provisions. The officers were nearly equally divided when asked whether victims were safer with mandatory arrest and a majority of officers indicated that victims needed services. With regard to training, one-third of the officers rated their training in evaluating cross complaints as "inadequate" or "no training

received". When police officers were asked what they would change about the family violence law in Connecticut, officers most frequently suggested increasing officers discretion, improving or changing post-arrest processing, and revising restraining or protective orders.

Finally, when officers were given a list of factors which affected their decision to arrest both parties, the five factors most commonly identified, listed in order of their importance were:

- evidence of injury to both parties;
- probable cause established independently for both parties;
- statements of uninvolved witnesses which implicate both parties;
- assault on or interfering with a police officer by one or more parties;
- a restraining or protective order in effect for one of the parties and the other party invited them in.

Study by: Connecticut Department of Public Safety, Research and Planning Section, Monique Rosales, Research Analyst - Family Violence Reporting Program (1991).

# Alternative Sanctions Study

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This report summarizes research conducted to identify types and categories of offenders, including family violence offenders, who may be appropriately sentenced to alternative sanctions. Information was solicited from key criminal justice system personnel through written questionnaires and focus groups. The questionnaires were distributed to judges, prosecutors, public defenders and bail commissioners. A total of 120 questionnaires were distributed; a total of 85 (71 percent) were completed. In addition to those completing questionnaires, the focus groups also included representatives of community groups working with victims and offenders and various state agencies working with the criminal justice system. The questionnaires and focus group meetings provided information on general criminal justice system practices as well as information specific to family violence. This abstract discusses only those responses to those questions considering the suitability of alternative sanctions for family violence offenders.

- 85 percent of respondents indicated that the number of prior family violence arrests, the severity of the offense, and the use of weapons were considered very important when determining the suitability of intermediate sanctions. A majority of respondents also indicated that a history of mental health problems and evidence of substance abuse problems were also considered very important.
- 51 percent of respondents indicated that the weight of a family violence victim's interest in pursuing charges was heavier than in other criminal cases.
- A total of 94 percent of respondents considered a family violence victim's input either very important (51 percent) or somewhat important (43 percent).
- The table on the following page reflects responses to inquiries about specific types of sanctions as they relate to three categories of family violence offenders.

Study By: Criminal Justice Education Center, Inc. Primary Researcher, Eleanor Lyon (1991).



Appropriate Sanctions for Three Types of Family Violence Offenders			
Type of Sanction	Ist Time Limited Violence %	Chronic Violence Victim Injury Use of Weapon %	Multi-problem Offender %
Family Violence Education Program	94	34	23
Day Incarceration Program	8	62	43
Work release, Community Service	43	52	35
Electronic monitoring	9	51	43
Regular Probation	35	68	57
Intensive Probation	8	62	74
Outpatient Substance Abuse Treatment	49	48	73
Short-term Resudential Substance Abuse Treatment	49	48	73
Long-term Resudential Substance Abuse Treatment	18	45	91
Halfway House (work during day, return at night)	17	64	61
Self-help Groups	78	44	35
Batters Groups			
3 months	57	32	23
6 months	31	57	29
12 months	13	65	51
18 months	8	48	48
24 months	8	40	49
Week-end Incarceration	19	66	45
The Justice Education Center, Inc. Primary Researcher, Eleanor Lyon, Ph.D. (1991).			

# The Development Of Sanctions For Family Violence Offenders: Preliminary Report And Recommendations

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This report built on the information presented in the Alternative Sanctions Study, and included the findings of the Family Violence Sanctions Work Group, a multi-disciplinary committee formed in 1990 to increase the availability of post-conviction options for use by the court in family violence cases. The Sanctions Work Group included representatives from the Family Division of Superior Court, Victim Advocates, and Family Violence Offender treatment providers. Specific recommendations related to the development of family violence sanctions are presented.

According to statistics drawn from the 1990 Annual Report on Family Violence Intervention Unit (FVIU) activities, a total of 31,211 new family violence cases were referred to the Intervention Units during 1990, a 9% increase over 1989 cases. Over 77% of these cases involved adult intimate partners (spouses, ex-spouses and unmarried couples); nearly two-thirds (63%) of the cases referred involved physical violence. Over 5% (1,674) of the cases involved felony charges; the remaining (29,333) involved misdemeanor charges.

In 34% of the cases referred, the most serious charge filed was assault in the third degree, with the next most frequent charges being breach of peace (24.6%) and disorderly conduct (20.7%). Of the 18,734 family violence cases for which dispositions were recorded, 78.4% of the cases were nolle (69.7%) or dismissed (8.7%). The report noted that there was not readily available information on the number of these nolle that were issued in response to or pending a defendant's completion of the Family Violence Education Program or other forms of counseling or attempts at rehabilitation.

The report included experiential data from both Family Relations staff and Family Violence Education Program (FVEP) facilitators, as well as Victim Advocates, and suggested that this family violence offender population could be classified into three major sub-categories:

1. first time offenders who used "low levels" of violence;
2. chronically violent offenders (either chronic against partner only or against partner and other people) and offenders who use weapons as part of their assault or threat and cause victim injury;
3. multi-problem offenders (family violence plus drug/alcohol abuse, chronic mental illness, or gang involvement, or other criminal behavior).

Other screening/assessment criteria identified by the report included personality/psychological characteristics that are increasingly being associated with high levels of dangerousness, special considerations for female offenders, and aggravating factors associated with the incident.

The report concluded with the following preliminary recommendations:

1. Cases that involve family violence should be identifiable at every point in the system - from arrest throughout the court and corrections systems.
2. A case management system should be developed and implemented which makes full use of the information collected by the Family Violence Intervention Units and ensures transfer of information from one part of the system to others. Specifically, enhanced assessment and screening tools must be developed for use by the FVIUs to assist in identifying the most appropriate type of sanction (s) for individual family violence offenders and for screening for self-defense in dual arrest situations.
3. Traditional probation and currently available alternative sanction programs should be enhanced to ensure that these programs can effectively address family violence issues. Where caseloads warrant, special family violence "units" should be established within programs to provide adequate monitoring around victim safety issues.  
The following minimum program enhancements were recommended:
  - the addition of family violence counseling/education components into existing alternative sanction programs;
  - the development of a strong victim contact component;
  - the creation of a system to identify and quickly respond to program or criminal violations with progressively more restrictive sanctions or penalties.
4. The development on a pilot basis of an intensive and dedicated program for serious family violence offenders being released back to the community after a period of incarceration.
5. The implementation of an outcome study designed to provide evaluative and developmental data on the effectiveness of any family violence sanction programs established in order to guide future decision-making in this area.
6. Consideration should be given to using any established residential weekday incarceration programs for a weekend incarceration program for family violence offenders whose violent and threatening behavior is primarily confined to Friday, Saturday, Sunday.
7. Training on family violence issues, coordinated by the Office of Alternative Sanctions in collaboration with local Family Violence Intervention Units, should be provided to all bail, probation, AIC/AIP staff and other community service providers.

Study by: Connecticut Family Violence Sanctions Work Group (November, 1991)

# Endnotes

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The research that grows out of the Family Violence and Prevention and Response Act continues to guide Connecticut's policy decisions. The findings contained in the studies abstracted in this publication have been used to develop policy at all levels of the response to family violence. The following summarizes the research recommendations which have been implemented to date and the recommendations the Research and Evaluation Subcommittee identified as goals.

## Governor's Task Force on Family Violence

The recommendations of the Governor's Task Force on Family Violence were almost wholly incorporated into the 1986 Family Violence Prevention and Response Act. The law represents a uniform, comprehensive response by the criminal justice system to family violence. Under this policy, police were mandated to arrest under certain conditions. Family Violence Intervention Units were established in each court, and services to all victims of family violence crimes were expanded.

The 1986 law mandated reporting of family violence by police, medical care providers and the Family Division of the Superior Court. Medical reporting and Family Division reporting were required for five years only and stopped in 1991.

Mandated police reporting continues with plans to incorporate family violence reporting into the Federal Bureau of Investigation, Uniform Crime Reports National Incident Based Reporting System (NIBRS). Conversion into the NIBRS program will provide more data and an ability to compare family violence to other types of crimes within Connecticut, as well as other states.

At the time the family violence law was passed, there were insufficient funds to provide for a public awareness campaign, although the Task Force identified this as a priority. The Connecticut Coalition Against Domestic Violence (CCADV) has made several attempts to secure funding for a major public awareness campaign, but state budget constraints and limited funding sources have delayed the undertaking. CCADV continues in its efforts and is hopeful that such a campaign will be possible in the near future.

## Services Provided by the Family Violence Victim Advocates

When the victim advocate study was conducted in 1987 (published in 1988), there was a large difference in salaries and other compensation between the specialized Family Violence Victim Advocates and other victim advocates working in the courts. The gap has since been narrowed somewhat, but a divergence remains.

Since publication of the victim advocate study, a law was passed in Connecticut which requires police to inform all victims of crime at the scene about their rights (C.G.S.54-222a). As part of the notification, officers distribute comprehensive "victim rights cards" (C.G.S. 54-222).

Another positive outcome of the study is increased collaboration between the Family Violence Victim Advocates and the Family Division staff. Protocols have been established and referral procedures developed. Relationship building meetings and efforts to facilitate communication between the Family Division staff and Family Violence Victim Advocates continue to be effective.

Privacy and safety for victim advocates and victims in the courts continues to be a concern. Limited access to private offices and phone lines often results in advocates and victims conferring in close proximity to the defendant. These concerns are especially pointed when dealing with family violence cases because of the personal nature of the offenses and the need for discretion when dealing with victims.

Although services to African-Americans and non-English speaking victims have been increased, their need for greater access to services presently available persists.

## An Evaluation of Connecticut's Family Violence Offender Education Program

A number of the recommendations contained in the evaluation of the Family Violence Education Program were implemented. Classes addressed to the needs of women and bilingual, bicultural offenders were formed and continue. Uniform goals and completion criteria for classes have been identified.

Research is still needed to evaluate the effectiveness of the education program in eliminating violent and abusive behavior. Researchers found that those offenders who successfully completed the program were less likely to be re-arrested. To inform policy decisions, it is also critical to understand such factors as why re-arrests were reduced and if the level of violence and threats was lessened. It is not possible to assert the program success without qualification unless there is further study.

## Arresting Violence: A Study of the Connecticut Courts' Response to Mandatory Arrest for Family Violence

This report made recommendations regarding future research and criminal justice policies. In response to the report's research recommendations, the Family Violence Nolle Study was conducted. Because of the experience gathering disposition data for the Nolle Study, a number of efforts are currently under way to make research possible that will track cases from arrest to disposition. These efforts include work to improve the ability to provide accurate data to prosecutors about specific family violence cases and in aggregate so that family violence cases can be compared to other types of cases.

Policy guidelines aimed at reducing dual arrests have not been established, but the area has been addressed through research and police training. The "Study of Family Violence Incidents Which Result in Arrest of Both Parties" was conducted in response to prior research recommendations and concerns voiced by the family violence response network. The CCADV, under a grant from the Department of Justice, undertook a Law Enforcement Training project. The project updated the existing police training and developed a uniform training program for recruits and veteran

officers. Following a standard format, a prosecutor, police trainer and domestic violence program staff member address their areas of responsibility and expertise. Officers are trained in the law, appropriate response and documentation of responsibilities.

The issue of dual arrest is addressed in the police training. This approach was preferred to adopting guidelines to reduce dual arrest through legislation or regulation. The training utilizes scenarios to instruct officers regarding investigative techniques and standards for development of probable cause for arrest. Instructions on classification and reporting of family violence arrests are also included in the training so that dual arrests are not over-estimated.

While a number of research studies have been conducted which greatly add to our knowledge about family violence, there has not been a study devoted to the effects of the law on victims and offenders. "Contacting Victims of Family Violence: A Comparison of Two Approaches" was a first step toward evaluating the 1986 Family Violence Prevention and Response Act's impact. A much larger, fully funded study is needed to assess effects the law has had on those involved. The recommended research would make a large contribution not only to Connecticut but to other states as policy makers everywhere search for the most effective response to family violence.

### Family Violence Nolle Study

Following the recommendations made in the "Family Violence Nolle Study", the lack of appropriate sanctions for family violence offenders was examined more closely. In addition, the Judicial Branch now assigns a unique computer code to family violence cases; this will enable identification of family violence cases for administrative, case management and research purposes.

### Alternative Sanctions Study and Development of Sanctions for Family Violence Offenders: Preliminary Report and Recommendations

The findings of both these reports were included in the "Office of Alternative Sanctions' Judicial Sanctions: A Three Year Strategic Plan" (December, 1991). In this plan, family violence offenders were targeted for "priority focus" in order to provide more effective sentence options for offenders who are not incarcerated. A pilot program is being developed and implemented in the New Haven area court beginning in 1993.

# Glossary

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**Dual Arrest:** When more than one party to a family violence incident are arrested, it is classified as a dual arrest.

**Family Relations Counselor:** An individual employed by the Judicial Branch to evaluate cases and to provide information and recommendations to the court related to case handling and protective orders.

**Family Violence Intervention Unit:** Units established under the 1986 Family Violence Prevention and Response Act in each court to deal exclusively with family violence crimes. They consist of: State's Attorney, Family Relations Counselor, Family Violence Victim Advocate, and Family Violence Offender Education Service Providers.

**Family Violence Offender Education Program:** A six week educational program established as a pre-trial option for certain first time family violence offenders under the 1986 Family Violence Prevention and Response Act.

**Family Violence Victim Advocate:** An individual employed by a community-based domestic violence program and a member of the Family Violence Intervention Unit. Advocates provide information, support and services to family violence victims referred by the courts.

**Nolle Prosequi (Nolle):** A disposition in which the state's attorney decides not to proceed. The prosecutor may reopen the case at any time during a period of thirteen months. If this does not occur, the charges are dismissed and the defendant's arrest record is erased.

**Probable Cause:** A combination of facts, viewed through the eyes of an experienced law enforcement officer, which would lead a reasonable, prudent person to believe that a crime has occurred. Probable cause indicates a probability that the suspect has committed a crime.

**Protective Order:** An order issued by the criminal court for the purpose of protecting a victim from threats, harassment, injury or intimidation by a person arrested for a family violence offense. It may limit or prohibit an offender's contact with a victim, or order him/her to leave a shared residence. Protective orders are conditions of bail or release of the offender and are in effect while the court case is pending or until further order of the court. Violation of a protective order is a criminal offense.

**Restraining Order:** An order issued by the civil court upon application by an individual seeking protection from abuse. The order may limit or prohibit an offenders contact with a victim, order him/her to leave a shared residence, and impose temporary orders related to custody, visitation and support of children. The orders exist for 90 days unless terminated or extended by the court.

**STATE OF CONNECTICUT  
SUPERIOR COURT  
FAMILY DIVISION**

Dear Parent:

The court has referred you to the Family Services Office for an evaluation of issues concerning the parenting of your children.

This pamphlet is intended to help you understand the goals and procedures of the evaluation process. It was prepared by the staff of the Family Division which includes counselors with years of experience working with parents going through the process of separation and divorce.

Where children are involved, divorce or separation is not the end of your family; it is a reorganization. Much will be gained by your working together as parents to help your children become caring, responsible adults. It is hoped that you will be able to use the information and recommendations provided during the evaluation process to develop a healthy parenting arrangement for your children.

The task of all parents, whether or not their marriage continues, is a responsible one. If you have a good relationship with your children and they feel the love and acceptance of both parents, they will thrive and grow.

Honorable Anne C. Dranginis  
Chief Administrative Judge  
Family Division of the  
Superior Court

**Introduction**

The court has referred you to the Family Service Office for an evaluation of the issues concerning the parenting of your children. Separation and divorce are times of turmoil and uncertainty for parents and children alike and disputes about the sharing of parenting responsibilities when parents no longer live together often arise, even years after divorce. Families usually can benefit from the help of professionals such as mediators, court counselors, mental health professionals and attorneys in making plans for the care of their children. The parenting evaluation is designed to provide that assistance.

**The Goals of the Evaluation**

An evaluation is a way of providing information to you, your attorney and, if necessary, the court about any disagreements between parents concerning child care responsibilities and planning for the future needs of children. For most parents, the process becomes a learning experience where parents discover more about the needs and concerns of their children and their own reaction to the family situation. Often the evaluation enables parents to settle their own disagreements without the need for a court hearing.

**What to Expect During the Evaluation**

The evaluation process normally begins with both parents together meeting with a Family Relations Counselor who will be the evaluator. During this conference the reactions of your family to the separation and divorce will be discussed and both parents will be given an opportunity to express

their concerns. Decisions will then be made about what information must be obtained to determine the best possible parenting arrangement for your children. Finally, there will be a discussion of the factors that should be considered in assessing what arrangements would be best for your children.

The second phase of the evaluation involves the counselor obtaining the information needed to evaluate the issues. At this time the counselor will meet with each parent separately to obtain information concerning you and your family as well as to discuss your concerns involving the children.

The counselor will also contact schools, clinics, doctors, and others who may have helpful information. To do this we will need your written permission and you will be asked to sign an Authorization of Release of Information Form for each person or agency being contacted. In addition, the counselor will make arrangements to meet with your children and may ask to visit them in each home. The court may appoint an attorney to represent your children who will also want to meet with your children.

The last phase of the evaluation involves sharing the information that was obtained with both parents and with all attorneys. When it is not possible for the parents and their attorneys to attend this meeting together, it can be held with just the parents or just the attorneys or in some combination ensuring that everyone is provided the information, conclusions and recommendations. A written report will be provided to you that indicates a summary of the facts, an assessment of your family and recommendations for the future parenting of the children.



## What Happens When the Evaluation is Completed?

Once the counselor has shared the results of the evaluation with the parents and attorneys, you will be given an opportunity to review the written report and to discuss the recommendations with your attorney. If necessary, you will be given up to two weeks to consider the recommendations and determine if they present a reasonable solution to the dispute. If the recommendations are agreeable to everyone, the court will be notified.

If one of both parents feel they cannot accept the recommendations, the counselor will submit the report to the court. The written evaluation can be introduced as evidence at a trial and the counselor can be called to testify.

## What is Expected of You During the Evaluation?

Throughout the evaluation process, your participation and cooperation is essential. Without your active involvement in the process, there is no way to ensure that a thorough, meaningful assessment can be provided for your family. Therefore, we ask for your commitment to cooperate with the Family Service Unit in the following ways:

1. **Filing out the Evaluation form and answering the Questionnaire.**
2. **Keeping scheduled appointments.**
3. **Making the children available for interviews at the requested times including an opportunity to observe the children with each parent.**

4. **Signing the necessary Authorization for Release of Information forms.**
5. **Allowing home visits.**
6. **Bringing all requested information to appointments.**
7. **Focusing on the needs of the children and not expecting them to make choices or decisions that parents should make.**
8. **Explaining to the children that a counselor may be meeting and talking to them in order to get to know them, not to ask them to make choices.**
9. **Keeping your attorney informed of how the evaluation is progressing.**

By making this commitment, you are taking the first step towards resolving the difficult issues affecting you and your family. We want to thank you for your anticipated cooperation and we look forward to helping you construct the best possible parenting arrangement.

# CUSTODY/VISITATION EVALUATION PROCEDURES

## A GUIDE FOR PARENTS



Prepared by the Family Division  
of the Connecticut Superior Court

STATE OF CONNECTICUT  
JUDICIAL BRANCH



INFORMATION ABOUT  
PARENTING EDUCATION  
PROGRAMS

JD-FM-152P New 12-94  
P.A. 93-319, 94-1 (May 25, Sp. Sess.)

## **What are Parenting Education Programs?**

Pursuant to Public Act 93-319, which became effective on January 1, 1994, the Judicial Branch (the part of government that runs the court system) established parenting education programs for people involved in most court cases in the family division of the court. A primary goal of this legislation is to make sure that parents are aware of the many issues and problems children face when their family situation changes. The programs will be designed to educate parents about how to help children handle changes in their family, such as divorce or separation. The law requires that the programs include information about, the developmental stages of children, helping children adjust to parent separation, how to provide cooperative parenting, parental dispute resolution and conflict management, guidelines for visitation and stress reduction for children.

## **Who has to go to the programs?**

The Act requires judges to order any person involved in certain court cases in the family division of court to attend the program when a minor child is involved in the case. Family division cases

include, but are not limited to, dissolution of marriage, custody, visitation and child support. Persons involved in restraining order cases and juvenile matters cases **cannot** be ordered to go to the program.

A judge can order that a person does **not** have to go to a program if:

- (1) the people on both sides of the case agree not to participate and the judge approves that agreement,
- (2) the judge determines it is not necessary, or
- (3) the people involved in the case select and participate in a comparable education program.

People only have to go to the Program once.

## **How much will it cost to go to the program?**

The cost will be \$100 per person and will be paid directly to the agency or person running the program. If a person cannot afford to pay the fee, that person can ask the judge for permission to go for free.

## **How long is each program?**

The programs will take six hours. This can be in 2 three-hour classes or 3 two-hour classes.

## **How do I apply?**

A list of service providers and a form which may be completed by you before your hearing is available at all Superior Court Judicial District Clerk's Offices.

## **Who makes decisions about how the programs will be developed?**

The Judicial Branch is responsible for establishing the programs through contracts with service providers. The legislation which requires the programs establishes an advisory committee appointed by the Chief Justice of the Supreme Court which includes members from various areas of knowledge and experience, including child providers. The committee makes recommendations to the Judicial Branch about the development and modification of the curriculum for the programs and also advises on issues involving the service providers, including qualification and selection.

**STATE OF CONNECTICUT  
SUPERIOR COURT  
FAMILY DIVISION**

Dear Parent:

The court has referred you to the Family Services Office of the Superior Court for mediation of conflicts regarding child custody or visitation.

This pamphlet is intended to help you understand the mediation process. You are asked to enter this process with an open mind so that, as parents, you can exchange ideas and concerns regarding your children and work toward a responsible resolution of the issues. The pamphlet was prepared by the Family Division staff, which includes experienced counselors who understand both the court process and the concerns which are common to divorcing parents.

Divorce only ends your marriage. If you have children your family is going through serious change, but it is still a family. How well you can work together and assist your children through this process will determine whether or not your children will become caring and productive adults. You are responsible for your children's happiness, care, support and stability. While the court can assist you in educating yourselves on the needs of your children and in learning new ways to communicate for the benefit of your children, you are relied upon as parents to work together to plan for the future of your family.

You have a great responsibility. We will continue to assist you in making positive and productive decisions for your children. We want them to thrive and grow, nurtured by your love and acceptance.

Honorable Anne C. Dranginis  
Chief Administrative Judge  
Family Division of the  
Superior Court

Mediation is a way of settling your disagreements about the care of your children following separation and divorce without a courtroom battle. The process directly involves both parents in searching for a resolution of the problems which families normally experience during separation and divorce. Through mediation the rights and responsibilities of each parent are identified. The goal is to reorganize the family, not to "award" custody to one parent and make a "visitor" of the other.

With the assistance of trained counselors, parents meet together in an informal setting to decide on a parenting plan for the future which best meets their individual needs and the needs of their children. The counselors are neutral and objective; their role is to help parents work cooperatively in resolving their disputes so they can carry on with the task of parenting their children.

The mediation meetings are normally limited to one to three sessions usually scheduled within thirty days of the date the court referred the family to mediation. A meeting may be scheduled just for the children if the parents and mediators feel that their participation would be helpful.

Parents are encouraged to discuss their own desires and plans as well as the present and future needs of their children in an open and positive way. The focus is on the future rather than the past.

**Why Is Mediation Helpful?**

The mediation program was developed to provide people with a choice, leaving the responsibility for making decisions where it belongs - with the family. While every family may not

resolve all of the disputes regarding the future care of the children, most have found mediation useful in reaching acceptable agreements defining their ongoing relationships and responsibilities to each other as well as to the children.

There are many reasons why people have found mediation helpful and beneficial:

1. Conflict is natural and normal and issues concerning parenting are emotional and personal rather than legal. Mediation is a method of conflict resolution which can deal effectively with complex human relationships.
2. Mediation emphasizes that divorce is not the end of the family and that a way of continuing to be parents together in a reorganized family is possible for most couples.
3. The stress and anxiety associated with separation and divorce, particularly for children, can be reduced. Participation in mediation assists parents in affirming their affection and concern for the children and can reduce the normal fears and anxieties of children concerning the "loss" of one parent.
4. Self-determination and direct involvement in the decision-making process is effective in promoting positive and lasting results for the parents and children. Parents who invest time and energy putting together a plan for their children are more likely to adhere to the plan and less likely to undermine it than those parents whose decision has been made for them.

5. Mediation directs the focus away from the issues which could not be resolved during the marriage and toward the issues which must be resolved prior to the divorce.
6. Many attorneys have found that mediation of custody and visitation disputes improves the ability of couples to work successfully through their attorneys to negotiate a settlement of the financial and property issues accompanying separation and divorce.
7. Research indicates that the successful adjustment of children following separation and divorce is directly related to the level of cooperation between parents and the continued involvement of both parents in the lives of their children. Mediation encourages participants to see themselves and each other as capable parents with a continuing responsibility to plan together for the future of their children.

### **What Happens After Mediation?**

The mediation process normally concludes after one to three sessions with the parents reaching a full or partial agreement.

Following completion of mediation, a report prepared by the mediators is forwarded to the attorneys and the court. This report contains no personal information concerning family members or the marital situation and includes only an outline of the agreements reached by the parties. Following an opportunity for each parent to review and discuss the agreement with their attorneys, the agreement may

be submitted to the court for review. If the agreement is approved by the court, it will be entered as an enforceable order of the court.

In the event that parents are unable to reach an agreement, the attorneys and the court are notified that the issues remain in dispute. The fact that some parents are unable to reach an agreement is not viewed as a 'failure.' Mediation is "hard work" and parents completing the process demonstrate commitment and concern for the well-being of their children.

Most post-divorce child care arrangements will require periodic revision and adjustment due to changes in the situations and life-styles of the parents and the changing needs of the children as they mature. It is hoped that parents will continue to work together to resolve any new disputes and to modify the original agreement where necessary to meet the changing needs of their family.

However, parents are welcomed to contact the Family Division at any time for assistance in mediating future conflicts or disputes.

## **THE MEDIATION PROGRAM**

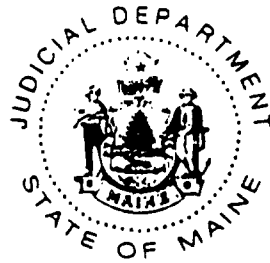


***PARENTS MAKING THEIR OWN DECISIONS  
ABOUT THEIR CHILDREN FOLLOWING  
SEPARATION AND DIVORCE***

Prepared by the Family Division  
of the Connecticut Superior Court

# A ppendix F

COURT MEDIATION SERVICE



Located at:  
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Mailing Address:  
P.O. Box 382  
Belfast, Maine 04915

# Program Information Packet

As an integral part of the Maine Judicial Department, the Court Mediation Service assists parties involved in litigation to reach an informed, consensual and expeditious resolution of their disputes and, in matters affecting minor children, helps parents reach agreements that will serve the best interests of their children.

•Mission Statement, Maine Court Mediation Service

## **Overview of the Court Mediation Service**

- \* The Court Mediation Service is part of the State of Maine Judicial Department.**
- \* Mediators work part-time. They are selected for their maturity, personality, experience and community standing.**
- \* Parties are encouraged to have their attorneys with them at the mediation sessions if they wish. Attorneys assist in the process of mediation and provide legal advice to their clients.**
- \* Mediation is available in all types of court cases in the District and Superior Courts. It is widely used in contested small claims cases. Mediation is mandatory in all contested domestic relations cases in which there are minor children. Mediators handle the full range of questions in domestic relations cases, including children's issues, alimony, marital property and attorneys' fees.**



## **Definition of Mediation**

Mediation is a process in which an impartial person called a mediator helps the parties negotiate resolution of the issues of their court case. The mediator and the parties work to define the issues, develop options, consider alternatives, and reach an agreement that will serve the best interests of everyone. The agreement may be partial or complete and forms the basis for an uncontested hearing before the judge. If an agreement is not reached, the parties may be asked to return to mediation again. They may also be referred to the court for a trial, at which time the judge will make the decisions needed in the case.

## **What Happens in Mediation**

The mediator begins each session by stating the objective -- to seek a workable resolution that is in the best interests of all involved and that is fair and acceptable to the parties. In a good mediated settlement, everyone is a winner.

The special advantages to mediation are informality, privacy and flexibility. Control of the outcome remains with the parties. The mediator does not give legal advice. The mediator may suggest but may not impose ideas for resolution of contested issues. Private meetings may be held between the parties and their attorneys and among the mediator, parties and attorneys attending the session. If an agreement is reached, it forms the basis for an uncontested hearing. If an agreement is not reached, no report on the issues of the case is made by the mediator to the court. At a later date a trial is held and a judge decides the unresolved issues.

## **Mediation Statutes**

### **The Court Mediation Service**

Title 4 M.R.S.A. § 18, enacted in 1984, establishes the Court Mediation Service within the Judicial Department to provide mediation services to the District and Superior Courts. It designates court mediators as independent contractors. The Court Mediation Committee is given policy and monitoring responsibility and the District Court is designated to provide facilities, office space and clerical assistance. An amendment passed in 1986 grants to the mediators civil liability immunity for negligent acts performed within the scope of duty.

### **Mandatory Mediation of Domestic Relations Cases**

Title 19 M.R.S.A. §§ 214, 581 and 752 provide for mandatory mediation of all contested domestic relations cases in which there are minor children. Mandatory mediation applies to actions for divorce and separation and to actions of unmarried parents seeking orders with regard to their children. It applies at all phases of each action, to temporary orders, final orders and amendments. Temporary motions may be heard prior to mediation. The court may order a waiver from the mediation requirement for extraordinary cause. Parties attending mediation are required to make a good faith effort. In non-mandatory domestic relations cases, 19 M.R.S.A. §§ 636 and 665 give to the court authority to refer the parties to mediation. An amendment to Title 4 M.R.S.A. § 18 enacted in 1986 sets a \$60 fee for domestic relations mediations. Provision is made for in forma pauperis applications so that the \$60 may be waived by the court.

## **Mediation Rules of Court**

### **Rules of Evidence**

Rule 408 (b) of the Maine Rules of Evidence, adopted in 1985, provides that "Evidence of conduct or statements by any party or mediator at a court-sponsored domestic relations mediation session is not admissible for any purpose."

### **Rules of Small Claims Procedure**

Rule 5 of the Rules of Small Claims Procedure, adopted in 1982, provides that the court may require the parties to meet to attempt to settle the dispute. The rule states that mediation may be used and that a mediated agreement shall be submitted to the court for approval, shall be approved if reasonable and cannot be appealed once approved. If mediation fails or if an agreement is unreasonable, the rule provides for a court hearing.

## Introduction:

*The Legislature finds and declares as public policy  
that encouraging mediated resolutions of disputes between parents  
is in the best interest of minor children (19 MRSA, Sec 752, 214, 581).*

### **Establishment of the Court Mediation Service [4 MRSA § 18]**

1. **Court Mediation Service.** There is established within the Judicial Department a Court Mediation Service to provide mediation in both Superior and District Courts throughout the State.
2. **Mediators.** The Judicial Department through the State Court Administrator or his designee shall contract for the services of qualified persons to serve as mediators. The mediators shall not be considered employees of the State for any purpose. They shall be paid a reasonable per diem fee plus reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the Administrative Office of the Courts.
- 2-A. **Immunity from civil liability.** A person serving as a mediator under contract with the Judicial Department is immune from any civil liability for negligent acts described in Title 14, section 8111, subsection 1, performed within the scope of the mediator's duties.
3. **Staff.** With the advice and approval of the Court Mediation Committee, the Chief Judge of the District Court shall designate one of the mediators to serve at his pleasure as Director of the Court Mediation Service. The Chief Judge of the District Court may also designate from among the mediators one or more deputy directors, who shall also serve at his pleasure. The Chief Judge of the District Court shall provide necessary clerical assistance to the Court Mediation Service, within the limit of funds available.
4. **Facilities.** The Chief Judge of the District Court shall provide a principal office for the Court Mediation Service and shall arrange for such mediation facilities throughout the State as are necessary and adequate for the conduct of court mediations.
5. **Court Mediation Committee.** A Court Mediation Committee shall be appointed by the Chief Justice of the Supreme Judicial Court to set policy for and monitor the Court Mediation Service. The committee shall consist of the Chief Justice of the Supreme Judicial Court or his designee; the Chief Justice of the Superior Court or his designee; the Chief Judge of the District Court or his designee; the State Court Administrator or his designee. The Chief Justice of the Supreme Judicial Court shall also appoint a Justice of the Superior Court and a Judge of the District Court to the committee, who shall serve at his pleasure.

### **Mission Statement [1/19/93]**

As an integral part of the Maine Judicial Department, the Court Mediation Service assists parties involved in litigation to reach an informed, consensual and expeditious resolution of their disputes and, in matters affecting minor children, helps parents reach agreements that will serve the best interests of their children.

**Code of Ethics [12/6/93]**

Mediation is a conflict resolution process in which an impartial third party helps the participants to negotiate a consensual and informed settlement. Mediators respect the the fundamental rights of individuals to freedom and confidentiality and are responsible for public confidence in the mediation process.

Committed, therefore, to upholding the highest standards of professional practice, court appointed mediators comply with the laws of the State of Maine, conform to the policies and procedures of the Court Mediation Service and assume the obligations described in the following Code of Ethics.

- 1. Mediators assure themselves of each party's ability to mediate effectively and protect the parties' rights to reach voluntary, informed and independent decisions, free from all constraints and forms of intimidation.**
  - a. Mediators make every effort to assure a balanced and fair process. Throughout the mediation process, mediators monitor and assess a participant's ability to mediate. Should it seem that a party is or becomes unable to participate, mediators postpone mediation and refer the parties to appropriate resources, or allow the parties more time to obtain further information or terminate the mediation process.
  - b. Mediators introduce and fully explain mediation to the parties, including the parties' rights to make decisions based on informed consent.
  - c. At the initial session, mediators address the issue of domestic abuse and comply with Court Mediation Service policies and procedures for domestic relations cases.
  
- 2. Mediators promote disclosure of all information relevant to the mediation process and to each issue being mediated.**
  - a. Full disclosure between the parties of all information required for informed decision-making and to a full and fair agreement is essential to the mediation process.
  - b. Mediation is continued until such time as the required information can be exchanged; or the process is terminated if a party is unwilling to disclose essential information.
  
- 3. Mediators uphold the parties' rights to confidentiality and explain the limits of confidentiality which attach to the mediation process.**

Mediators advise the parties of the following:

- a. Maine's Rules of Evidence render the statements or conduct of a party at mediation not admissible in evidence for any purpose.

b. Mediators maintain as confidential the statements and the conduct of the parties at mediation and disclose such statements or conduct to third parties only with the express authorization of the parties.

c. Mediators do not, without the consent of the disclosing party, transmit to the other party any information disclosed during a caucus, except in instances of endangerment as set forth below (§ d and e.) If information is deemed relevant or essential to an issue being mediated, mediators urge its disclosure. Should the disclosing party refuse to allow such disclosure to the other party, mediators terminate the mediation.

d. Mediators disclose to the other party and to court security or other law enforcement authorities conduct or statements of a party made during any stage of the mediation which creates a reasonable belief to the mediator that any person may be in danger of:

1. bodily injury, offensive physical contact, sexual assault;
2. threatening, harassing, or tormenting behavior which may result in fear of bodily injury;
3. being compelled to engage in conduct, or abstain from conduct, by use of force, threat of force or intimidation;
4. bodily restraint, kidnapping, having movement substantially restricted without consent, or being confined for a substantial period without consent.

e. Mediators do not keep confidential and will report to Maine's Department of Human Services any information which gives the mediator reasonable cause to suspect that a child has been or is likely to be abused or neglected.

**4. Mediators uphold the parties' rights to legal representation and also inform them of any appropriate services available in their communities.**

a. If the parties are not represented by attorneys, the option of legal representation is discussed in a balanced and fair manner.

b. Similarly, when appropriate, the availability and use of other resources such as counselors, mental health services and other public and private agencies is discussed in a fair and balanced manner.

c. Mediators refrain from giving legal advice and do not predict how a court will rule in a given situation. Mediators also refrain from giving advice that might be sought more appropriately from other professionals or agencies.

**5. Mediators assure an even-handed process and treat all parties with respect and fairness.**

a. Because mediation is an alternative to the adversarial process, mediators encourage the parties to make a good faith effort at resolving their differences cooperatively and with their full and direct participation.

6. By asking explicit questions regarding the best interests of children, mediators assure that the needs of children receive primary consideration during the mediation process and in any final agreement reached by their parents.

a. Mediators help parents to examine, apart from their own desires, the separate and individual needs of their children as well as the impact of any agreement on their children as members of a family.

7. Mediators avoid conflicts of interest or the appearance of any conflicts of interest.

a. Mediators do not take advantage of, personally profit from, or otherwise exploit information acquired through mediation. Mediators refrain from developing a personal relationship with one party to mediation that might conflict with the interests of the other party or that might jeopardize the public's confidence in the mediation process.

b. Mediators excuse themselves from mediation when they are unable to meet their ethical obligations to the parties because their participation would constitute or appear to constitute a conflict of interest.

c. Mediators identify and disclose any prior knowledge of the case, the parties or their counsel and disclose any potential bias which might exist because of any such prior knowledge. Mediators also disclose any prior social, business or professional relationship with the parties. After such disclosures, mediators do not proceed unless it is with the consent of both parties.

d. Mediators do not solicit parties to court mediation for their own private counselling practices. Mediators do not accept for a period of at least one year individuals or couples for private mediation or counselling whom they previously served as court mediators. Court mediators who practice private mediation inform potential clients of the availability, requirements and costs of mediation through the Court Mediation Service.

## **I. Domestic Violence Policies [7/25/89; 5/94]**

A mandatory court mediation program requires particular standards of conduct for mediators. Mediators must ensure that all parties are able to participate fully in the process and have their concerns recognized and answered by the settlement agreement. Mediators must be aware of the various factors which seriously reduce a person's ability to participate in the process. Among these is domestic violence.

The Court Mediation Service recognizes that the mediation process can be helpful in domestic relations cases where family violence has occurred. The opportunity to benefit from the empowering process that mediation provides should be upheld. Domestic violence, however, can leave an abused person powerless to benefit from mediation and may make the mediation process unfair and unsafe for the abused person, the mediator and support staff.

In the light of these considerations, the Court Mediation Service adopts the following policies and procedures for the mediation of domestic relations cases involving family violence. All mediators under contract with the Court Mediation Service are required to adhere to the following domestic violence policies and procedures.

### **Policies to be Followed:**

Mediators will adhere strictly to the policies of the Court Mediation Service in all domestic relations cases involving domestic violence.

### **Safety First:**

The mediator will always give priority to safety considerations.

### **Ability to Mediate Effectively in One's Own Interest:**

Mediation is not appropriate when domestic violence endangers a person's safety or damages the ability to mediate effectively. When the mediator first becomes aware of domestic violence, the mediator must decide whether mediation should go forward. This decision will be made after considering all information known to the mediator and will be based on the parties' abilities to express themselves safely, independently or through counsel.

### **Termination in Dangerous Situations:**

The mediator is directed to terminate the mediation tactfully and skillfully if the abused person is not able to mediate effectively in her/his self-interest or through counsel because of domestic violence.

The following situations provide compelling reasons to terminate mediation:



- a. one party has used weapons against or made threats to injure or kill the other;
- b. one party has injured the other causing cuts, bruises, soreness or the need for medical treatment or has inflicted physical abuse within the last six months;
- c. one party has made threats towards the parties' children or anyone participating in the mediation.

#### **Additional Reasons for Caution:**

Additional situations which may make the ability to mediate effectively for oneself highly questionable include:

- a. a court finding of abuse or filing of a protection from abuse complaint or an open criminal or child protective case involving the parties;
- b. a pattern of physical or emotional abuse or controlling behaviors;
- c. prior criminal convictions, drug or alcohol abuse;
- d. involvement of the children as victims or witnesses of violence or as a means of coercion and control;
- e. disagreement about domestic violence between the parties; or
- f. one or both parties is unusually passive or aggressive or uses bullying, humiliating or frightening behavior.

#### **Terminate or Continue:**

If the mediator decides not to proceed, the mediator may terminate the mediation and mark the report "Unresolved," or continue the mediation to another day. The mediator will be guided by the preference of the parties in making this decision, mindful that a party's expressions of preference may not be voluntary.

## **Domestic Violence Procedures**

#### **Early Mediation Private Meeting:**

In domestic relations cases mediators will normally meet together with the parties and their attorneys to give introductory information about mediation and to answer questions the parties may have about the mediation process. Mediators will then meet privately with each party and his or her attorney.

During the early mediation private meeting, mediators will ask a number of appropriate questions to uncover the possible existence of domestic abuse and to assess its impact on the parties' safety and their ability to mediate meaningfully. If indicated, domestic violence policies and procedures will apply.

**Procedures to be Followed:**

If the mediator decides to proceed with mediation, the following procedures will be used and mediation will be terminated or continued to another day whenever during the session such action appears to be appropriate.

**Safety First:**

The mediator will always give first priority to safety considerations.

**Separate Rooms:**

The mediator will inform the parties of their right to remain in separate meeting rooms during mediation and may require the use of separate meeting rooms throughout the mediation.

**Avoiding Harm:**

The mediator will not leave the parties alone without the mediator and will avoid situations in which one party could threaten, intimidate or harm the other.

**Threats:**

Threats made by word or action are exempt from confidentiality and the mediator will terminate mediation and warn the person threatened (See p.D-1 on Confidentiality).

**Confidentiality:**

Because domestic violence presents a life threatening situation, information revealed by the mediator could result in increased violence. The mediator will reveal information learned in private only with the greatest caution and prudence and only when the person providing the information clearly agrees that the mediator do so. Mediators will not encourage the disclosure of telephone numbers or addresses in cases where there is a pattern of abuse or in cases where a Protection from Abuse Order is in effect.

**Negotiations Not Allowed:**

The mediator will not allow dismissal of a criminal or protective case as a part of a mediated agreement and will not allow concessions to be made in exchange for end to violence or abuse.

**Mediator's Questions:**

Because of the power imbalance caused by domestic violence, the mediator will ask parties to examine closely:

- a. arrangements calling for direct contact between the parties;
- b. a structure of parental rights and responsibilities that requires frequent negotiations between the parties;
- c. indefinite agreements that require negotiations in the future;
- d. arrangements for unsupervised parent-child contact when there are allegations of child abuse against that parent or when the children have witnessed violence by that parent.

**Mediation Techniques:**

The mediator will use mediation techniques suited to the parties, including but not limited to separate rooms, single text negotiation, hypothetical questions and answers, partial or temporary agreements and use of a man and woman team of mediators.

**Information:**

Whenever appropriate the mediator will provide information to the parties about resources, legal action, and help for families that have experienced domestic violence.

**Closing the Mediation:**

The mediator will close the mediation session skillfully and safely, in a manner that respects the needs and interests of the parties and their children.

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