

Approved:
09-09-15

DOMESTIC VIOLENCE GUIDELINES
for
NEW HAMPSHIRE CERTIFIED FAMILY MEDIATORS

These guidelines provide information for, and direction to, New Hampshire Certified Family Mediators regarding screening for domestic violence and how to proceed once domestic violence is identified.

I. Screening for Domestic Violence

All certified family mediators shall engage in routine in-person screening for domestic violence prior to commencing the mediation process. Mediators must use a standardized screening tool that includes questions designed to determine if domestic violence has occurred or is occurring. Screening tools shall include questions in the following areas:

- Control
- Coercion
- Intimidation
- Fear
- Danger

According to the mediator's style, preference or case-specific requirements, mediators may use a standardized screening tool of their choice, either chosen from the following list or another tool, if the mediator is satisfied that the tool meets the standards listed above:

1. MASIC: The Mediator's Assessment of Safety Issues and Concerns
<http://law.indiana.edu/lawlibrary/services/bibliography/documents/Holtzworth-MunroeApplegateBeckFCRarticleonMASIC.pdf>
2. Michigan Supreme Court Domestic Violence Screening Protocol
<http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol.pdf>
3. The Duluth Model: A Guide for Conducting DV Assessments Manual
<https://app.etapestry.com/cart/DomesticAbuseInterventionPr/default/item.php?ref=1605.0.23297071>

NOTE: The NH DCYF DV Protocols (<http://doj.nh.gov/criminal/victim-ssistance/protocols.htm>) is a free resource that includes screening questions inspired (in part) by the Duluth Model Manual

4. The American Judges Association: Screening for Domestic Violence
<http://aja.ncsc.dni.us/courtrv/cr39-2/CR39-2Field.pdf>
5. Battered Women's Justice Project in conjunction w/ the National Council on Juvenile and Family Court Justice Practice Guide's for Family court Decision-Making in Domestic Abuse Related Child Custody.
<http://www.bwjp.org/resource-center/resource-results/practice-guides-for-family-court-decision-making-in-domestic-abuse-related-child-custody-matters.html>

II. Criteria to Mediate When Domestic Violence is Identified or Suspected

Upon disclosure or suspicion of domestic violence, the mediator shall inform the parties that there is a presumption against mediation and that mediation may only proceed if ALL of following items apply:

1. The mediator determines that the victim has an understanding of the limitations of mediation relative to domestic violence.
2. The mediator has advised the victim to consult with an attorney and a domestic violence service provider,
3. The situation is not dangerous for the abused party or the mediator,
4. The mediation is conducted by an experienced and skilled mediator knowledgeable in domestic violence dynamics, available legal alternatives and relief,
5. The mediation is conducted within a specialized process under specific safety conditions, (See Section III and Section IV below) and
6. Both parties agree to the process and these specific conditions.

(See the Model Standards of Practice for Family & Divorce Mediation, Standard VII and Standard X, found here:

<http://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/ModelStandardsOfPracticeForFamilyAndDivorceMediation.pdf>)

III. Specialized Process For Mediating When Domestic Violence Exists

In the event that the mediator has determined that the mediation process may proceed when domestic violence is identified or suspected, the following steps are required to provide the vulnerable party with the ability to safely negotiate and make decisions free of coercion, fear, intimidation, danger and abuser control:

1. Take all discussions of fear and safety seriously,
2. Allow or require the presence of an attorney, advocate, friend, or family member for the vulnerable party during mediation sessions or in the waiting room,
3. Talk with the abused party about what safety precautions she/he would like in place,
4. Inform the abused party of available legal resources, relief and remedies,
5. Mediate the case separately with each party,
6. Provide an environment where the victim is able to share and trust the information will be handled responsibly and confidentially,
7. Ensure a fair balance of power and control between the parties,
8. Ensure that the mediator's neutrality does not support the abuser's belief that abuse is acceptable,

9. Check with the victim between sessions to assess safety and ability to negotiate,
10. Continually re-evaluate the safety of the situation for the abused party and the abused party's ability to negotiate,
11. Ensure that resolutions focused on moving forward do not invalidate or minimize the victim's concerns or history of abuse,
12. Reduce the opportunity for the abuser to take advantage of ambiguities by encouraging the use of specific and detailed language in the agreement,
13. Provide ongoing assessment as to whether the case is better and more safely resolved in mediation, or by other means and
14. Safely terminate mediation at ANY time in the process if the vulnerable party does not have the ability to safely negotiate and make decisions free of coercion, fear, intimidation, danger or abuser control.

CONSIDER the following suggestions when facilitating the crafting of detailed and specific agreements:

- a. Provide for limited and/or a phased parenting time for non-residential parent that may increase if/when the situation improves.
- b. Arrange parenting time that is influenced by the adult victim's concerns and provides for the safety of the vulnerable parent.
- c. Permit refusal of parenting time upon violation of any condition of agreement.
- d. Permit parenting time cancellation if parent is late a specified amount of time.
- e. Prohibit drug use and prohibit/limit drinking alcohol during parenting time.
- f. Require surrender of passport prior to exercising parenting time and/or take other steps to deter child abduction if a risk of abduction or fleeing exists.
- g. Build in automatic agreement review dates with mediator.
- h. Arrange different drop-off and pick-up times to eliminate parent contact.
- i. Explore reasons why and assess benefits versus associated risks if the vulnerable parent wishes to overlap drop-off and pick-up times.
- j. Require that the transfer of children take place in a protected setting in the presence of a third party that the vulnerable party feels comfortable with or use available supervised exchange resources such as programs provided by local Visitation Centers if the parties must meet to transfer the children.
- k. Provide for supervised parenting time and identify supervising third parties.

- I. Prohibit or limit the abuser's access to firearms.

IV. Safety Planning For Mediating When Domestic Violence Exists

1. Require that all meetings, screenings and/or mediations with parties are conducted at a local courthouse or alternative setting with equivalent or enhanced safety features such as metal detectors and security staff.
2. Require that all meetings be held in a safe and separate area where the mediator can speak privately to the abused party.
3. Establish how the vulnerable party will arrive and recommend that the other party not provide transportation for the vulnerable party to or from the session.
4. Notify security staff of the expected arrival and departure of each party and ensure that they are aware of the fact that domestic violence is present in the case.
5. Establish an emergency plan in advance to respond to the unexpected arrival of an abusive party or to any other potential case-specific risk.
6. Routinely consider the party's safety for the rest of the day after mediation by discussing her/his mode of transportation, where the car is parked (if applicable), whether there is a need for a security escort to the car or other mode of transportation, whether she/he has a safe place to spend the night in addition to any other applicable safety-related topic that may arise in discussion with abused party.
7. Offer the use of a phone so that the abused party can contact a local, state or national domestic violence program if she/he wishes to create a safety plan:

New Hampshire 24-hour Domestic Violence service line is 1-866-644-3574

National Domestic Violence Hotline is 1-800-799-SAFE (7233).
8. Safely suspend or terminate mediation at ANY time the specialized process is compromised or as deemed necessary by the mediator.