Mediation and Domestic Violence:
A Quick Reference Guide for Mediators

Legal Definitions

Domestic Violence

- Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Fla. Stat. §741.28(2).

  - This form of violence requires that the parties involved be family or household members -- thus spouses, partners, children, siblings, or roommates may be parties to traditional domestic violence, if they live together as if a family.

Dating Violence

- Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:
  - A dating relationship must have existed within the past 6 months;
  - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; AND
  - The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. Fla. Stat. §§784.046(1)(a) & (d).

  - This type of violence applies to romantic relationships between individuals who are not necessarily currently living together. This definition allows for relationships that existed within the past six (6) months and can also apply to former romantic partners if their relationship existed within the past six (6) months.

Repeat Violence

- Two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Fla. Stat. §784.046(1)(b).

  - This form of violence covers **any two people**, one of whom directs at least two (2) acts of violence or stalking against the other. Thus, this definition may cover employers and employees, landlords and tenants, friends, or acquaintances.

Stalking

- A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.
- "Harass" means:
  - to engage in a course of conduct
  - directed at a specific person
  - which causes substantial emotional distress to that person and
  - serves no legitimate purpose. Fla. Stat. §784.048(1)(a).

  - A person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against stalking.

Domestic Violence is More than Physical Abuse

Power and Control Wheel

- Most abusers commit acts of domestic violence to exert power and control over their victims -- regardless of whether their relationship is familial, romantic, or otherwise.
- Domestic violence is best seen as the routine use of coercion and control that includes actions beyond what the law sets out (above).
- The forms of abuse are varied and multi-faceted, including **physical** abuse, **emotional** abuse, **psychological** abuse, **sexual** abuse, and **economic** abuse.

For more information about the Power and Control Wheel, please visit the National Center for Domestic and Sexual Violence at: http://www.ncdsv.org/images/powercontrolwheelnoshading.pdf.

Dynamics of Abuse

Many victims say the violence occurs in phases, marked by these kinds of behaviors. Others report no such patterns or stages.

- **Manipulation Phase**. During this stage, the abuser engages in minimal or no physical violence, instead engaging in emotional/psychological manipulation and intimidation. He or she can be characterized as kind, polite, and gentle, and may make promises that the abuse will never happen again. This phase is often used to persuade the victim to drop any pending criminal charges or dismiss any pending civil issues such as an injunction for protection.
- **Tension Building Phase**. During this stage, the abuser begins to demonstrate anger, contempt, criticism, coercion, or other controlling behaviors. This stage is marked by an increase in non-physical forms of abuse.
- **Physically Violent Phase**. During this phase the abuser will engage in physical or other forms of extreme violence against the victim. Once the abuser passes through this stage of the violence, he or she may return to the Manipulation Phase. Or the abuser may not be physically violent again if threats of repeated physical violence is sufficient to exert control.

General Warning Signs of Abuse

- One party always waits for the other party to speak first. This could be an indicator of control if done by the abuser or fear if done by the abused party.
- One party glances at the other party each time he or she speaks to check for the other's reaction. This could be an indicator of intimidation if done by the abuser or fear of later retribution if done by the abused party.
- One party cringes or jumps at sudden movements by the other party (e.g. when the other party taps the table). This is used by the abuser as a signal of impending violence.
- One party excuses every conflict discussed. This could be a sign that either party is attempting to minimize the abuse.
- One party sends the other party facial cues. This could be a sign of a number of issues. If done by the abuser, it could be a sign of control or intimidation. If done by the abused party, it could be a sign of fear or apology.

Signs of Abuse

SIGNS OF AN ABUSER	SIGNS OF AN ABUSE VICTIM
• Using language that is degrading or embarrassing • Engaging in charming and friendly behavior to third parties (e.g. mediators and court personnel) • Humiliating the other party • Name-calling/intimidating/coercing the other party • Threatening the other party, children, or pets • Patronizing the other party • Being unwilling to understand the other party's perspective • Displaying aggressive or angry behavior when speaking • Being easy to anger • Trying to portray him/herself as the true victim • Attempting to engender sympathy with the mediator • Attempting to create an alliance with the mediator • Speaking for the majority of the time while in the mediator's presence • Constantly interrupting partner • Engaging in behavior that doesn't allow the other party to participate in conversation or make decisions • Directing other party's movement/placement • Developing or enforcing "rules" for other party • Engaging in behavior that suggests the party believes him/herself to be superior in the relationship • Controlling access to money • Threatening suicide • Undermining the other party's ability to parent • Engaging in stalking behavior	• Displaying difficulty when presenting evidence (perhaps from fear, abuse, or the belief that she will not be believed) • Willingly giving up on issues, consistently deferring to the other party's wishes and decisions • Displaying wishy-washy or indecisive behavior • Inappropriately responding as a result of fear, depression, stress, or other abuse • Displaying anxious or unfocused behavior in the presence of the abuser • Displaying stress responses or signs of duress when other party is testifying • Engaging in behavior that appears numb, disinterested, or unaffected • Lack of concentration • Displaying reluctance to speak or answer questions • Cringing or jumping at sudden movements by the other party • Showing or attempting to conceal visible bruises or injuries • Using heavy makeup or inappropriate clothing (long-sleeved turtlenecks in the middle of summer) to hide bruises, injuries • Displaying signs of social isolation • Making statements such as, "He won't let me do that" or, "He got so mad he put his fist right in my face."

What should I do if I spot domestic violence in a mediation?

Caucus

- Separate the parties into different, private rooms. Shuttle between rooms so that interaction between the parties is minimized.
- Determine whether the parties can meaningfully participate in the mediation process.
- In caucus the mediator may ask the suspected victim party about the possible abuse. The suspected victim may not be willing to discuss the violence for fear of reprisal or out of shame or embarrassment, but the mediator must determine whether the party has the ability to freely bargain with the other party and engage in party self-determination.
- The mediator is not required to ask the suspected abuser about the abuse, and may avoid such questions as they could trigger further abuse later.

Alternative format

- Suggest an alternate format for the mediation, if the courthouse/jurisdiction has the capability for such.
- Alternate formats include:
  - Skype, video conference, or other remote presence for mediation.
  - Alternate day format. One party comes in one day, and the other party comes in a different day.
  - Alternate time format. One party comes in during the morning hours, and the other party comes in during the afternoon hours.

Safety Considerations

If there is concern about safety of a party, the mediator can:

- Stagger the time for the parties to leave (allowing the victim to leave first).
- Ask a bailiff to escort the victim to the car.
- Make sure there are options for the parties to be separated, in separate waiting areas as well as during the mediation process.
- Provide information to the parties about local resources such as the local or state domestic violence hotline (1-800-599-1119), local legal aid organizations, and the national domestic violence hotline (1-800-799-SAFE; TTY -1-800-787-3224).

Terminating a Mediation

- If the mediator believes that there is domestic violence present and that a party

cannot meaningfully participate in the mediation process, the mediator must terminate the mediation.

- For more information on when to terminate a mediation, please see Rule for Certified or Court-Appointed Mediators 10.420(d).
- When terminating the mediation, the mediator may not lie to the parties about the termination, but may provide a general reason for termination.
- When reporting the reason for termination to the court, absent an exception to confidentiality, the mediator must simply tell the court that mediation did occur, but no agreement was reached.
- An example of the language to use is as follows: "We are terminating the mediation; no agreement was reached."
- If a mediator is concerned about the safety of the victim, the mediator is allowed to offer services or information to the victim. However, the mediator is discouraged from discussing domestic violence and/or services related to domestic violence while the abuser is present, as this will greatly increase the victim's risk of harm and further abuse.

Discretionary Reporter

- If, in the course of a mediation, the mediator witnesses acts of violence or threats of violence, such activity is non-protected under the mediation's general rule of confidentiality. Fla. Stat. §44.405(4)(a)(2).
  - If the mediator observes threats of violence, the mediator may, at his or her discretion, report the threat to a bailiff or law enforcement officer.
  - If the mediator observes actual violence, the mediator is encouraged to report such activity to a bailiff and/or law enforcement.
  - In either of the above cases (threat of violence or actual violence), the mediator must terminate the mediation.

Mandatory Reporter

- The mediator must report any suspected abuse if such abuse involves children or vulnerable adults. Fla. Stat. §44.405(4)(a)(3).
- Please note that the report must be made to the Department of Children and Families if the suspected victim is a child and to the Central Abuse Hotline if the suspected victim is a vulnerable adult.
- The court is NOT the appropriate entity to which the mediator should report abuse. The mediator must tell the court that mediation did occur, but no agreement was reached.

To report suspected abuse, use the Florida Abuse Hotline, 1- 800-962-2873.