

CHAPTER 2

SCREENING FOR DOMESTIC VIOLENCE IN FAMILY MEDIATION CASES

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INTRODUCTION

Cook County, Illinois is among the largest urban centers in the United States, encompassing the city of Chicago and 77 suburban communities. The Cook County court system is the largest unified county court in the U.S., representing a population as diverse as it is massive. According to the 2000 census, approximately half of the county's 5,376,741 residents were Caucasian, a quarter were Black, a fifth Hispanic, with the remainder a mix of Asian and other ethnic groups. The economic profiles of Cook County residents are equally varied, ranging from abject poverty to extreme wealth. The Circuit Court of Cook County, through its Marriage and Family Counseling Service (MFCS), provides mediation to clients across this spectrum.

MFCS's primary task is to mediate custody and visitation disputes between parents² who are in court disputing custody and visitation arrangements. Virtually all of these cases are ordered by the Domestic Relations Division of the court,

which has approximately 44 judges. About 2,076 cases were mediated at MFCS in 2005.³ These cases include parents who are in the process of divorcing (pre-decree or pre-judgment); are already divorced but are back in court and in conflict over custody or visitation (post-decree or post-judgment); and parents who have never been married to one another (parentage cases). MFCS does not mediate financial, child support, or property issues. Mediation services at MFCS are free.

Rules and Legislation

Mediation at MFCS operates according to the rules set forth by the Illinois Uniform Mediation Act (UMA),⁴ Illinois Supreme Court Rule 905,⁵ and Cook County Circuit Court Rule 13.4.⁶ According to Rule 13.4, mediation is mandated for "...any prejudgment contested custody dispute" and *may* [emphasis added] be ordered "...on any post judgment contested custody dispute within the judge's discretion" and "...on any post judgment contested issue of visitation and/or removal of the minor children from the State of Illinois." Cases can use the free services at MFCS, or parties or attorneys can request that their case be ordered to private mediation where both child custody and visitation as well as financial issues can be handled.

Even though attendance at mediation is required, reaching agreement is not. No decision or solution is ever imposed upon the parents by the mediator. The mediator never provides the court with any recommendations or evaluations.

Court Rule 13.4 goes on to require that "Before mediation may begin, the mediator shall screen for impediments to mediation. An impediment to mediation may include, but is not limited to, family violence (child or spousal abuse has occurred in the past or is occurring on an ongoing basis)..." as well as substance abuse and mental illness. The rule also states that "In the event that the mediator finds an impediment to the mediation, the mediator may, at his or her discretion, institute such protocols [e.g., the precautionary measures delineated in this article and the accompanying appendices] to address the impediment during mediation."

Mediators at MFCS use the "Power and Control Wheel"⁷ from the Domestic Violence Intervention Project as a way of identifying domestic violence. The "Wheel" includes abuse on all levels, including but not limited to, physical (biting, spitting, kicking, hitting, punching, slapping, pushing, shoving, restraining, pinch-

ing, throwing things, etc.), sexual, economic, intimidation, coercion and threats, isolation and emotional and verbal abuse.

Background

The Domestic Relations Division's Conciliation Service started in 1968 for the purpose of assisting divorcing and separating parties in coping with the emotional aspects of their conflict. After receiving mediation training from John Haynes and Steve Erickson in 1982, the Service changed its focus to providing mediation, as well as conciliation and reconciliation, to their clients. By 1985, the department had become the Marriage & Family Counseling Service as designated and defined by court rule. At that time, the MFCS mediation protocol was based on early theories and practices in family mediation which ascribed to the beliefs that (1) it is up to the parties to bring issues to the table, not the mediator; and (2) parents were not to be seen separately. This created situations where domestic and family violence might be unidentified or undisclosed. Furthermore, even if the mediator were made aware of domestic violence, no protocols then existed that directly addressed how to respond to domestic violence in a mediation setting. That mediation cases were not handled differently when a history of domestic violence existed did not go unnoticed by the domestic violence community in the Chicago area, which argued that victims of domestic violence should be excluded from court-mandated mediation at MFCS.

In 1988, Benjamin Mackoff, Presiding Judge of the Domestic Relations Division of the Circuit Court of Cook County, formed the MFCS Family Violence Committee. Under the chairmanship of Sharon Zingery, a former supervisory mediator at MFCS, and supervision of Joan Massaquoi, then Director of MFCS, research was conducted and a protocol was devised to effectively and ethically conduct custody and visitation mediation for parents with a history of domestic violence. The Family Violence Committee met with representatives of local domestic violence advocacy groups and studied their concerns, which included that mediation further victimizes the abused party. Taking their concerns into account, MFCS also recognized that (1) domestic violence cases would still be ordered to mediation; and (2) far more often than not, a spouse/partner abuser would still receive visitation rights from the court, supervised or unsupervised.

The challenge was to make MFCS a place where mediation would be done appropriately even when there is a history of domestic violence. Categorically denying domestic violence victims access to mediation services that are available to non-victims denies the victim the possibility of reaching a detailed, structured and safer parenting plan on their own and the possible empowerment resulting from the mediation process. Therefore, effective protocols and procedures needed to be developed.

Training mediators is a key part of the protocols. The 17 MFCS mediators do their own screening of cases, rather than using a specified intake worker, in order to provide continuous screening while building rapport with clients. In order to do effective screening, all MFCS mediators go through extensive domestic violence on-site training before screening and mediating their first case. This prepares them to respond appropriately to cases where domestic violence may and does exist. Domestic Violence training and education continues throughout their tenure at MFCS and includes readings, presentations and hands-on training in skill development in screening, basic dynamics of domestic violence, and safer termination. Supervisors observe screenings of clients by trainees. In addition, MFCS mediators all have advanced academic degrees, primarily in the mental health field.⁸

Mediators who deal with cases where domestic violence may be an issue must have the capacity to assess the combination of nuances they are hearing, seeing, feeling and experiencing from the parents seated before them. Therefore, individual in-person screening is necessary and required. Further, mediators continually filter and assess all this information through their totality of training and experiences in order to determine a case's initial and continuing appropriateness for mediation. This is based in large part on each party's ability to negotiate in their own best interest, free of coercion, fear and intimidation. It is important that the mediator not rely upon their first assessment but continually assess the dynamics of the couple throughout the entire mediation.

MFCS practices a facilitative model of mediation which is based upon party self-determination. The process is confidential; however, MFCS clearly reveals to clients that an exception to the promise of confidentiality is the reasonable suspicion or belief that there is harm or the possibility of harm to anyone inside or outside the mediation session (e.g., parents, children, mediator and others). This assessment may be based on the parents' and children's statements and actions

during mediation, including actual harm or threats of harm.

THE MEDIATION PROCESS AT MFCS

Referral to Mediation

The mediation process starts with a Domestic Relations Division judge ordering a case to MFCS for mediation pursuant to court rule. Parents must be in the court system and must be ordered by the judge in order to participate in mediation at MFCS. The Mediation Intake Order and the Mediation Referral Order used by the court (see Appendix A and Appendix B) specify the mediation intake and screening date as well as set a status date for the parents to return to court after mediation has been completed.

Though all parents are encouraged to have legal representation when they come to MFCS, many parents are unrepresented, or *pro se*, during the mediation process. If parties are represented by counsel and the mediator uncovers any violence or safety issues, the mediator will encourage them to disclose it to their respective attorneys immediately if they have not already done so. Unless mediators are witnesses to harm or threats of harm, they do not report alleged abuse to the parties' attorneys.

Mediation normally takes place after parties have attended the court-mandated Focus on Children program⁹ and before the appointment of a legal representative for the child or orders for home studies, psychological evaluations or substance abuse evaluations. Generally, the court seeks the speediest and most efficacious resolution of a case, wanting to avoid extensive and costly litigation approaches. When mediation is successful, these further interventions may not be necessary. Some parents have reported increased willingness to set aside their marital differences for the sake of their children after attending the Focus on Children program, making their mediation a smoother process.

Mediation Screening and Intake

Each judge determines his or her individualized intake and screening procedures. The procedures are the same whether or not there has been a history of domestic

violence. Parties arrive at either the Judge's courtroom or at the MFCS Office on the scheduled mediation intake date for their "Mediation Screening and Intake." While separated from the other parent, parties complete a "Confidential Mediation Questionnaire" (see Appendix C) to maximize confidentiality by minimizing the ability of each parent to influence or observe each other's answers. The mediator will not share any information from the questionnaire with the other parent or with anyone outside of MFCS. It will be up to each parent to raise his or her own concerns and issues indicated on his or her questionnaire or during the individual screening, in the joint mediation sessions, if he or she so chooses. The Intake Mediator (preferably, but not necessarily, the assigned mediator) then gives an oral description of the mediation process to the parents. This description includes, but is not limited to, how mediation works, the benefits, what will and will not be discussed, and confidentiality and its exceptions.

During the screening, a sheriff is either in the same room or close by. The mediator is concerned with providing as safe an environment as possible, both during screening and during joint sessions. Mediating in a court setting with security measures in place adds increased safety for all concerned. Private mediators do not usually have the advantage of security personnel in their offices and usually avoid mediating cases where there is any domestic violence. All mediators should err on the side of caution.

The mediator then meets with each parent separately using the questionnaire as the basis for screening. A separate and direct face-to-face screening of each party, *prior* to the joint mediation session, is essential to making as accurate an assessment as possible of the case's appropriateness for mediation. Based upon a party's responses to the questions on the Confidential Interview Questionnaire, the MFCS mediator is prepared to question more extensively, using the questions in the "Domestic Violence Protocol Follow-up Questions." (See Appendix D.)

If the screening uncovers safety issues or other impediments to mediation (e.g., substance abuse or mental illness), the mediator then determines what actions to take using the "Mediation Screening Protocol Flow Chart" (see Appendix) as a guide. The mediator will choose one of the following routes:

- 1. Yes, Mediate (both parties can mediate in own best interest).**

If the mediator determines that mediation is appropriate, he or she and the parents will schedule two two-hour mediation appointments, or more,

if necessary. MFCS has several security arrangements that are always in place: (a) two sheriffs on the premises at all times, (b) metal detectors that all clients must pass through, (c) separate banks of elevators, and (d) separate waiting rooms for mothers and fathers.

2. **Yes, Mediate (with precautions).**

If the mediator determines that the mediation might be feasible for the parents with certain precautions, the mediator can set up one or more of the following; however, no precautionary measures can ever guarantee an absolutely safe mediation, only a safer mediation.

- A. *Co-Mediation* – When possible, co-mediation at MFCS is done in pairs by mediators of different genders. Since there are more females than males at MFCS at this time, sometimes two women will mediate together.

There are a number of reasons to co-mediate in domestic violence cases. Co-mediation may provide a safer mediation environment. It enables the mediators to better and more easily manage the mediation process. For example, if either mediator observes signals or body language between the parties indicative of intimidation, the mediators, in consultation with each other, may decide to meet individually with the parties or terminate the mediation entirely. Also, mediators can model effective negotiation and communication skills with each other in the presence of the parties. The process is more efficient through both the increased awareness of the co-mediators in the session and their ability to interact differently with each client, perhaps based upon gender issues, especially if it is a male-female co-mediation team.

At times it is necessary for the mediators to each caucus with a separate parent. Normally, when caucus is used, the mediators caucus together with each parent. On occasion, co-mediators may determine that it will be more effective for the female mediator to meet with the female client and the male mediator to meet with the male client. Based upon rapport development, one mediator may be able to more pointedly reality test or address emotional issues with a particular parent. Together, two mediators may more easily strategize and assess what the mediation requires.

B. *Separate Arrival and Departure* – Parties are asked to travel separately to and from mediation appointments when there are allegations of abuse. They are instructed to arrive 15 minutes apart, use separate banks of elevators, and sit in separate waiting rooms. On departure, a sheriff can escort a party to the main lobby or to public transportation. At the end of the mediation session, the alleged batterer will remain at MFCS for 15 minutes while the abused parent is instructed to leave the building immediately. Despite mediator admonitions, some parents will still commute to and from mediation with each other.

The mediator emphasizes to the parties, when together, the importance and expectation that parties do not travel together so that they may increase their ability to negotiate with less tension, and minimize the possibility of repercussions after the session. Though MFCS cannot require parties to adhere to the transportation safety policy, when there are Orders of Protection or Restraining Orders, parties are generally more willing to comply. In caucus, the mediator emphasizes each party's self-interest (i.e., that the victim might feel more comfortable and be less vulnerable to retaliation, and that the abuser might avoid further accusations of improper behavior) in order to improve compliance with the policy that parties travel separately. This separate arrival and departure keeps the parties together as little as possible outside of the supervised space at MFCS.

It is not uncommon in Cook County for parents to still be residing in the same household when ordered to mediation. On these occasions, a mediator carefully questions the suitability and timing of mediation for these parents because of their proximity to each other after mediation, regardless of how they travel to and from the sessions.

C. *Shuttle Mediation* – Parties may only be able to discuss their children when not in direct contact with the other parent. Face-to-face mediation may result in an environment where negotiation is not safe, nor feasible. This could be due to fear of reprisals, accusations and physical or emotional harm. In shuttle mediation, the mediator will place the parties in separate rooms and the mediator is responsible for relaying information between the parents. On very rare occasions, mediation might be held with each party on the phone or with one party in the

mediator's office and one party on the phone. The information can be relayed by the mediator, or the session can be conducted via conference call. For some parents, just the sound of the other's voice or the use of even subtle visual or behavioral intimidation renders that parent unable to proceed in their own best interest. The fact that a parent may not be able to deal with the other parent face-to-face in mediation does not mean that they are incapable of devising effective parenting plans that limit their direct contact. Many parents find it more comfortable to communicate about their children after separation or divorce through e-mails, faxes, letters, text messages, and even willing third parties.

- D. *Caucus* – Meeting separately with the parties at different points in the mediation is an effective way to check out how comfortable and safe each party is feeling, and is done more frequently in cases with a history of impediments. Before finalizing an agreement in a domestic violence situation, a caucus is imperative to offer each party an opportunity to reaffirm their voluntary agreement or report problems with the agreement. The mediator is expected to inquire of each parent if they want to proceed with the agreement.
- E. *Support Person* (e.g., domestic violence advocate, attorney, family member, friend) – If a person feels more empowered to participate in a negotiation when there is someone nearby (e.g., in the waiting room or in the mediation room), and that person's presence does not escalate the conflict (e.g., new paramour), this can increase the viability of the mediation. Sometimes the support person can also act as a “quasi-mediator,” acting as a voice of reason to the parent. A support person also provides additional security coming and going from the session. Each party can bring a support person to the mediation. The other party has the right to decline being in the same room as the support person, in which case the matter is shuttled, or terminated, if necessary. All support persons are advised of and expected to abide by the confidentiality rules set forth.

The Illinois Uniform Mediation Act (710 ILCS 35/10) Sec. 10 specifies that: “...An attorney or other individual designated by a party

may accompany the party to and participate in mediation. A waiver of participation given before the mediation may be rescinded.” This means that an abused party can bring a domestic violence advocate or other support person into the mediation sessions. At MFCS this has happened very little since the passing of the UMA in Illinois. Whether this facilitates the mediation or increases safety is yet to be determined.

- F. *Glass Room* - Another option that MFCS has used is to mediate certain high conflict cases in a conference room with glass windows/doors/walls that enables our security personnel to observe the mediation in progress, and minimizes the likelihood of extreme behavior during the mediation session since the security personnel are in plain view. It is only used when all parties are willing to proceed under these conditions. No party is ever forced or required to continue the mediation process by MFCS.

3. Delay Mediation (to address imbalances).

If the Mediator decides that mediation might be possible but not at this time, the mediator can delay mediation in order for the following to take place:

- A. *Counseling* – Counseling can help increase each parent’s capacity to mediate by aiding in the development of heightened self-awareness and self-esteem. The abuser can work with his or her therapist to develop safer, more effective and legally appropriate coping skills to deal with conflict. The victim can develop sources of support and learn when it is or is not safe to negotiate with the other parent, as well as how to adequately represent his or her own best self-interest and that of the children.

If the victim has not actually perceived himself or herself as a battered spouse/partner, counseling can provide education about the systemic process that has controlled his or her life, and what precautions exist to protect himself or herself and the children when they are at risk. The counseling may enable him or her to feel stronger and more emotionally prepared to discuss parenting issues with the abuser. Counseling also may assist the parent in developing the awareness and willingness to seek out the assistance and support of a domestic vio-

lence advocate. MFCS provides appropriate resource referrals and literature. Maintaining a list of therapists who are experienced in addressing the needs of domestic violence victims, as well as domestic violence support programs, is beneficial to clients.

- B. *Physical Separation* – If the parents are still residing in the same home and the mediator believes that there is a likelihood of conflict after sessions, the mediator may delay mediation until such time that the parents no longer reside in the same household, and thus no longer have to face each other at home after a session.
- C. *Substance Abuse Treatment* – As it pertains to domestic violence, substance abuse (alcohol and drug abuse) is often used as an excuse for, but it is not a cause of, violence. If, however, participants in mediation are currently abusing substances, self control is less likely, thereby elevating the risk of violence. Active substance abuse also brings into question a party’s ability to negotiate in his or her own self interest, and to make and keep agreements.
- D. *Obtain Attorney* – When an imbalance of power situation exists, having a legal advocate in one’s corner is essential. If no Order of Protection (OP) is in place, an attorney may petition the court for an OP for their client. In some jurisdictions, an OP automatically excludes parents from mediation. This is not the case at MFCS. In assessing our clients, the ability to seek protection under an OP can indicate that the victim was able to seek help and advice to protect himself or herself. Consequently, mediation might be more feasible after an OP is in place. Also, an attorney’s strength is paramount in strongly supporting and defending the client, which may help address an unlevel playing field more effectively than self-representation. Safeguards already described or covered elsewhere apply similarly to cases where there is an Order of Protection.
- E. *Domestic Violence Support Programs* – When one or both parties participate in reputable domestic violence education and/or treatment/counseling, they are more likely to make agreements in their own and their children’s best interests. It is possible that the victim and children may be safer if the perpetrator is in treatment; though many question the

effectiveness of batterer treatment programs.¹⁰

4. No Mediation (one party unable to negotiate in own best interests).

Although this is not a common occurrence at MFCS, the mediator may decide during the intake process, or at any other time, that mediation is not appropriate for a case because one or both parties are unable to negotiate in their own best interest. Parties must have an understanding of their options and the choices available to them, meaning they must each be free from coercion, intimidation or threats so that each may make his or her own choices in a free and voluntary manner. Before proceeding, a mediator must determine that both parties can say yes when they want to say yes, and can say no when they want to say no, without fear of consequences.

Parties who are not able to negotiate in their own best interest, who do not have the capacity to understand the effects of different options available to them, or who are not acting out of free will, may not be able to mediate. This may be a result of current domestic violence or threats of harm.

Parents who are unable or unwilling to adhere to the rules of the mediation process may also be unable to participate in mediation. Violations of a current OP, for example, may result in the termination of mediation. Termination may also be based on the inability of MFCS to provide a safe enough environment for a particular mediation to take place.

The existence of domestic violence, mental illness or substance abuse should not be the sole determining factor as to whether a case can be mediated. To terminate mediation, the level of domestic violence, mental illness or substance abuse must be such that (1) either the individual is rendered unable to negotiate competently for himself or herself in the mediation, (2) the mediator is not skilled nor experienced enough to mediate the case, (3) MFCS cannot provide a safe enough environment, and/or (4) consequences to the mediation are predictably unacceptable (e.g., subsequent retaliation towards the abused party). Whether or not mediation will proceed at MFCS is based on the mediator's individual assessment of each party's unique capacity or ability and on each party's willingness to participate. For each individual, capacity is uniquely defined by his or her

own circumstances and individual capacity to handle that specific situation. For example, a sole incident of slapping may incapacitate one individual while hospitalization of another may not. Skilled screening is imperative.

5. Termination and Resource Referrals.

Termination in cases of domestic violence requires great finesse. Ill-conceived or ill-planned termination could result in greater risk to the abused party. The batterer may blame the abused party or use the termination as an excuse for further abuse. Therefore, the mediator uses neutral language to terminate the mediation that in no way blames the abused party. The mediator is more likely to reference the policies of the office as the reason. A termination that uses the batterer's own fears, concerns and statements may redirect his or her focus away from blaming the abused party. When there is an OP, for example, and the batterer has expressed concern that the abused party will use this against him or her in the mediation or accuse him or her of violating the OP while entering and exiting the mediation office, the mediator might terminate with the statement, "You've convinced me that this mediation may not be the best forum for resolving your issues." If the batterer insists on mediating, the mediator can fall back on office policies and state that no one should mediate when in fear that participation puts them at risk (e.g., a batterer who fears he or she may be accused of violating the OP). The abused party will usually understand and/or accept the reason given by the mediator. When terminating, the mediator gives appropriate referrals to both parties in caucus.

First Mediation Appointment

Checking In

Parents arrive at MFCS, which is located in a busy downtown location directly across from the courthouse. They check in first with the sheriffs at the front door. Everyone, including parents, children, support persons and attorneys, pass through a standing metal detector. If the sensors go off, a sheriff will then scan whoever set off the sensors with a hand-held metal detector (wand). The parties then check in with the receptionist who instructs parents to sit in separate waiting

rooms. Children are checked into an on-site supervised childcare room by the parent who brought them. They may only be checked out by that same parent. Even if parents indicate that they are okay sitting together in the same waiting room, it is not allowed because one parent may be too afraid to admit that he or she wants to sit separately.

Orientation

Prior to meeting with the mediator, all parties who are present for their first mediation session are gathered into a glass-walled room for orientation. The glass room is designed so that the sheriffs can observe all the parties and all the parties can see the sheriffs. The parties' awareness of the sheriffs' proximity is intended as a deterrent to inappropriate behavior on the part of any party.

The first session starts with a 45-minute group orientation for new mediation clients. A "Mediator's Opening Statement" is presented to the group that describes and explains the mediation process in detail. Emphasis is placed on (1) the process being confidential with certain exceptions (i.e., harm or threats of harm, and suspected child abuse or neglect), (2) the mediator being neutral and impartial, (3) the mediator not being a decision-maker, (4) understanding that there is no agreement in mediation unless both parties agree, and (5) acknowledging that the mediator will never provide the court with an assessment or evaluation. Parents also watch a videotape¹¹ that describes the impact on children of high conflict divorce or separation. The goal of the orientation is to explain mediation and its benefits, and to foster a future- and child-focused mediation process. After the group session, the parents meet with their assigned mediator.

Meeting with the Assigned Mediator

After the orientation and before the joint session, the assigned mediator will first screen the parents *separately* for any impediments, if for some reason intake has not already taken place (e.g., this may result when a judge wants to expedite the scheduling of a case). Mediation begins with the parents seated together unless shuttle mediation is being utilized.

Often, in high conflict cases, the mediator immediately starts with the least threatening topics, such as asking each parent to describe their children, encourag-

ing each parent to share how their children are doing, and eliciting each parent's dreams for their children. This approach enables parents, from the beginning, to focus on their children rather than on the conflict between the two of them. The mediator then tries to uncover common ground and areas of consensus between the parents relating to their children. The mediator works with the parents to create, when possible, a structured agreement, with clear boundaries.

The Second Mediation Appointment

Child Interview

The second mediation session includes the children's interview. It is an expectation of the judges, and part of the MFCS mediation model, that all children, ages four through seventeen, are interviewed by the mediator. Some advocates have urged that all mediators should see children in domestic violence cases to assess how children are affected by the violence.

The second session usually starts with the mediator bringing in both parents and all the children to explain why the children are present. The mediator might say: "Mom and Dad are working on a plan so that you [the children] will know when you spend time with Mom and when you spend time with Dad. I am helping them talk about things. Since you are such an important part of the family, I wanted to meet you. When you meet with me, you don't have to answer anything you don't want to answer. I won't share anything you tell me unless I think you are in some type of danger, or unless you give me permission to share something with your Mom and Dad." The mediator then will ask the parents in front of the children whether it is, in fact, okay for the children to speak with the mediator.

The mediator will meet with the children separately. During their individual meetings with the mediator, children may be asked questions about their school, friends, activities, interests and feelings. Mediators are not conducting a formal psychological assessment of the children but rather are interested in how the divorce or separation is affecting them both positively and negatively. Also, while an abused party (i.e., parent) may fail to reveal abuse, such abuse might be disclosed by the children. Such a revelation by a child would lead to reconsideration of the appropriate protocol for the case.

After the children's interviews are over, the mediator then meets with Mom and Dad together, unless it is a shuttle mediation. During this session, the following are discussed:

1. to review the children's interview when it is not confidential,
2. to give only general impressions about the children's emotional state (never detailed information), when it is confidential,
3. to see what has transpired in the family since the last session, and
4. to continue mediating an agreement when possible and appropriate.

Concluding the Mediation

When there is a full, partial, or temporary agreement, the mediator records it in the parties' words. Copies of the parties' agreement, together with the "Mediation Status Report" form (see Appendix 8),¹² are provided to each parent, sent to all attorneys (if any, including the children's attorney if one has been appointed), and sent to the judge. The mediator instructs the parties to review the agreement with their attorneys prior to the Mediation Status Date, which is assigned to the parties by the court prior to mediation. This date is intended to inform the judge of the results of the mediation. The parties and their attorneys report to the court whether or not the parties still want the mediation agreement or whether they have changed their minds. Either party can withdraw from the agreement with no repercussions from the court since agreements reached in mediation are not signed and are not binding until made part of a court order. If the parties are still in agreement, the judge reviews and approves the agreement and after the attorneys formalize the agreement, it is entered as a court order and incorporated into the divorce decree.

Unless the court orders parties back to mediation for some reason, MFCS is no longer involved. When no agreement is reached, or either party has changed his or her mind, the judge and attorneys determine the next step in the litigation process.

Mediator Competence and Readiness

A mediator who is not fully trained in assessing cases for potential and existing severe power imbalances between the parties puts themselves and the parties at risk. Even if a case is appropriate for mediation, the mediator still needs to ask whether he or she is the appropriate mediator for the case. Questions they should ask themselves include, but are not limited to:

1. With what I have learned about this mother and father, do I feel personally safe mediating this case?
2. Can I remain nonjudgmental and impartial given my personal reaction to the information that has been shared with me during the screening?
3. Do I have the mediation space/environment necessary to safely accommodate these parents?
4. Do I have a personal history that might result in my buttons being pushed more easily by one or both of these parties?
5. Do I understand adequately the impact these issues (of abuse) have on the balance of power between the parties, and how that affects their ability to competently participate and represent their own best interests in the mediation process?
6. Do I have adequate knowledge and skills regarding their dynamics to address these imbalances enough to continue the mediation?

CONCLUSION

Families with a history of domestic violence may reach parenting agreements through mediation at MFCS due to the comprehensive screening and mediation protocol used to address safety concerns. A successful process requires that all parties and the mediator share the capacity and competence to mediate. Effective mediators are well-schooled in mediation tools and techniques, are highly trained in domestic violence dynamics and its effects on families and children, and, most importantly, are aware of their own limitations and the limitations of their parties.

Highly conflictual domestic violence cases are best handled within agencies that are equipped with sufficient resources to provide safer mediation. A system with this type of protocol and resources means that families with a history of domestic violence, like those without domestic violence, are able to enjoy the benefits of mediation.

In order to have the safest mediation possible, mediators must have effective screening tools and mediation protocols.¹³ Effective screening means that the mediator understands that mediation should not go forward when: (1) holding the mediation increases the possibility of harm to the parties, their families, or the mediator, (2) the pattern of violence is such that if the mediation were held, there would be a probability of harm (e.g., a person hearing certain information during the mediation might react in a violent or dangerous manner), or (3) holding the mediation increases the harm to someone after mediation. Although mediation can be a powerful and empowering process for parents in conflict about their children, it is never paramount to the safety of all concerned.

APPENDICES

To access this chapter's appendices, go to:

http://www.afccnet.org/resources/resources_professionals.asp

- Appendix 1: Mediation Intake Order
- Appendix 2: Mediation Referral Order (front page only)
- Appendix 3: Confidential Interview Questionnaire
- Appendix 4: Domestic Violence Protocol Follow-up Questions
- Appendix 5: Mediation Screening Protocol Flow Chart
- Appendix 6: One Mediator's View: Victim Spectrum
- Appendix 7: One Mediator's View: Batterer Spectrum
- Appendix 8: Mediation Status Report
- Appendix 9: Readiness to Mediate Spectrum

NOTES

1. We would like to thank the following persons for their contribution to this chapter: All current and past members of MFCS' Family Violence and Emerging Issues Committee; Jan Lain, L.C.S.W.; and Michael Nathanson, Ph.D., M.S., M.B.A., C.P.A., C.E.P.
2. Parties will be referred to interchangeably as "parties" or "parents" even though parties may be grandparents, uncles, aunts, guardians, or other types of caretakers.
3. In 2005, there were 17,671 Domestic Relations case filings in the Cook County Circuit Court (3,650 pre-decree and 14,021 post-decree); 6,305 never-married Expedited Child Support cases filed; and 1,506 temporary Orders of Protection.
4. Illinois Uniform Mediation Act, 710 ILCS 35 (P.A. 93 399, effective January 1, 2004), <http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=51>.
5. Article IX, Child Custody Proceedings, Rule 905 (effective January 1, 2007), <http://www.state.il.us/court/SupremeCourt/Rules/>.
6. Article IX, Child Custody Proceedings, Rule 905 (effective January 1, 2007), <http://www.state.il.us/court/SupremeCourt/Rules/>.
7. The "Power and Control Wheel" comes from the Domestic Violence Intervention Project of the Minnesota Program Development, Inc., 202 East Superior Street, Duluth, MN 55802, (218) 722-2781.
8. MFCS mediators have had one or more of the following advanced degrees: Psy.D., J.D., M.S.W., M.A. in Counseling, M.A. in Family and Community Counseling, M.A. in Early Childhood Education, M.A. in Dispute Resolution, M.A. in Criminal Justice, M.A. in Divinity, and M.A. in Human Services Administration. Most have state licensure in their professions of origin.
9. The Focus on Children program is a parenting-after-divorce or -separation class that is designed to educate parents about (1) the effects of high conflict divorce and separation on their children, and (2) how to better communicate with the other parent about the children. This class is intended to be a prerequisite for attending mediation, and parents must be court-ordered to attend it. This 4-hour class is conducted through lecture, videotapes, exercises, and small and large group discussions. Parents do not attend the same class. New Illinois Supreme Court Rule 924 requires that "Except when excused by the court for good cause shown, all parties shall be required to attend and complete an approved parenting education program as soon as possible." (Article IX, Child Custody Proceedings, Rule 924 (effective July 1, 2006), <http://www.state.il.us/court/SupremeCourt/Rules/>.)
10. Controversies and Recent Studies of Batterer Program Effectiveness, http://new.vawnet.org/Assoc_Files_VAWnet/AR_bip.pdf.
11. Film: "Don't Forget the Children," Dallas Association of Young Lawyers (edited, in part, for

use by the Marriage and Family Counseling Service, Chicago, IL).

12. The Mediation Status Report form specifies when and if the parties attended mediation, what type of agreement (e.g., full, temporary, partial, or none) if any, was reached, or whether the case was not appropriate for mediation.
13. For an excellent resource on screening for domestic violence in mediation cases, see: Domestic Violence and Child Abuse/Neglect Screening for Domestic Relations Mediation, provided by the Office of Dispute Resolution, State Court Administrative Office, Michigan Supreme Court, April 2005, at either http://courts.michigan.gov/mji/resources/dvbook/DV3_D_appendix.pdf or <http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol-abr.pdf>.