

APPENDIX 1

DOMESTIC VIOLENCE SCREENING QUESTIONNAIRE

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DOMESTIC VIOLENCE SCREENING QUESTIONNAIRE

Section 1: General

a) Is there anything you would like to ask me or tell me before we continue?

b) Please tell me about your situation.

c) Could you tell me about how the decision to divorce or separate was reached?

d) Do you want to mediate? If so, why? If not, why not?

Section 2: Control, Coercion, Intimidation, Fear

a) When you look back over time, how were decisions made in your marriage/relationship? Please provide examples. How did you feel about the way decisions were made? Possible follow-up questions as appropriate: How did you make major decisions, for instance, where your children went to school? In making major purchases?

b) What happens when you speak your mind and express your point of view to [insert name]? (Possible follow up questions as appropriate: What happens specifically? Can you give me some examples? What does it look like? And then what happens..., and then what happens..., and then what happens..., etc.)

c) Has [insert name] ever interfered with your relationships with family or friends, or with your children? (Follow up questions as appropriate: Can you tell me more about it? Can you give me some examples?)

d) Has [insert name] ever made it difficult for you to have money you need for things for yourself or the family? (Follow up questions as appropriate: Tell me more about it. Can you give me some examples?)

e) When you and [insert name] disagree, fight and/or are angry with each other, what happens?

f) During mediation, you and [insert name] may meet in the same room to talk about all the issues and problems that need to be resolved. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]?

1) Would you feel more comfortable if your attorney was present with you during the mediation sessions?

Yes _____ No _____

2) Would you feel more comfortable if you and [insert name] were in separate rooms during the mediation sessions?

Yes _____ No _____

3) Would you feel more comfortable if you and [insert name] arrived and departed at separate times or weren't in the building at the same time?

Yes _____ No _____

4) (If the mediator and parties are comfortable with available technology) Would you feel more comfortable if the mediation took place over the telephone, internet, or by video conference?

Yes _____ No _____

Section 3: Violence/Fear of Violence

Caution: If there is a "yes" answer to questions 3a-3p, advise the party that mediation may NOT be appropriate. If the abused party still wants to mediate, continue through the screening process.

a) Have there ever been any physical confrontations between you and [insert name]? (Follow up with questions as appropriate to determine whether mediation can safely occur: Can you tell me what happened? Have there been any other physical confrontations? Can you tell me what happened?)

b) Do you ever feel afraid of [insert name]? What are you afraid of? Tell me about the time you felt most afraid. Do you think that [insert name] has ever felt afraid of you? What do you think he/she may be afraid of?

c) Do you ever feel afraid for yourself, your children, or others based on a look from [insert name] or actions of [insert name]? If so, tell me about it.

d) Has [insert name] ever caused you to feel threatened or harassed by following you, interfering with your work or education, making repeated phone calls to you, using social media or sending you unwanted letters, emails, text messages, faxes, or gifts? Can you tell me more about it?

e) Have either of you ever been arrested? If so, what happened?

f) Have either of you been convicted of a crime? If so, what happened?

g) Is there currently or has there ever been an order limiting contact between the two of you, for example, a Personal Protection Order or a No Contact Order? Can you tell me more about this?

h) Has there ever been a violation of the order, whether or not the violation was ever reported? Can you tell me about that?

i) Have you or [insert name] ever applied for an order to limit contact between the two of you (for example, a PPO) that was denied?

Yes _____ No _____

Can you say more about that?

j) Are either of you currently restrained from contacting any other person by a PPO or other court order?

k) Has [insert name] ever pushed, shoved, hit, kicked, spit on, choked, strangled, restrained, or pulled your hair? If so, what happened?

l) Has [insert name] ever damaged or destroyed your property or harmed or threatened to harm your pets? Your children's property or pets? If so, what happened?

m) Are there any guns or other weapons in your home/either of your homes? If so, do you have any concerns about them?

n) Does [insert name] carry a gun outside of the home? If so, does this cause you any concern?

o) Has [insert name] ever used a weapon in a way that felt threatening to you, or threatened your children? Can you tell me more about it?

p) Have you ever been afraid that [insert name] would kill or injure you or anyone else close to you? Has [insert name] ever threatened to hurt or kill him/herself? Can you tell me more about it?

NOTE: If there is a “YES” answer to the following question, discontinue the screening process. If the parties are together in a mediation session, safely terminate the process and explore safety options.

q) Do you feel you are in danger right now?

Yes _____ No _____

Section 4: Children (if applicable)

a) How are the children doing?

b) Do you have any concerns about the safety of the children? If so, please describe.

c) Has [insert name] ever talked about taking the children away from you? Has [insert name] ever interfered with or prevented you from seeing them? Please describe.

d) Is there an open abuse or neglect case involving your children? Tell me about it.

Section 5: Attorney Awareness of Violence

(If attorney is not present) Have you ever told your attorney what you've told me? It is generally important for your attorney to know about things we've talked about. Is there a concern you have about telling your attorney?

Yes _____ No _____

Section 6: Other Considerations Regarding Ability to Negotiate

Note: In addition to domestic violence, the following are other factors that may affect a parties' ability to mediate. This is not an exhaustive list of screening questions that impact a parties' ability to negotiate. The issues may or may not be present in cases involving domestic violence.

a) Do you believe alcohol or drug use have ever caused difficulties for either of you? (If so, how recent? What is the current status of treatment?) If yes, how do you think this may impact mediation?

b) Do you believe mental health (illness) issues or emotional problems have ever caused difficulties for either of you? (If yes, how recently? What is the current status of treatment?) If yes, how do you think this may impact mediation?

Section 7: Conclusion

Is there anything I haven't asked you about that you'd like to tell me?

Now that we have had a chance to discuss your situation and mediation, how do you feel about going forward with mediation? Do you feel any pressure to mediate?

- b. If both parties have disclosed domestic violence, the mediator may explain to each party that domestic violence is the reason for declining to pursue mediation further. To protect confidentiality, the explanation provided must be based solely on the disclosure of abuse made by that particular party. The parties may also be given another reason, in the mediator's discretion.
- c. Suggested language for concluding mediation during screening, directed to both the abused and abusive parties:

“I have decided to conclude mediation in this case. Many cases are not suitable for mediation. It is my experience that with situations like yours, mediation does not work. [If necessary, insert reasoning appropriate to each party, as described above.] This screening process fulfills the requirement for court ordered mediation. I will be reporting to the court only that this case is not suitable for mediation. I will not be giving the court any further explanation. It is not a “failure” if you don’t continue mediation and there are no legal repercussions for doing so. I would suggest that you review this case with your attorney or seek legal advice as to your next steps. Your options may include negotiation between your attorneys, referral to the Friend of the Court, or asking the court for a decision.”

3. Concluding mediation after initial screening (ongoing screening)

- a. If domestic violence is revealed for the first time after the initial screening has been completed and the parties have begun meeting together, the mediator should:
 - (1) Interrupt the proceedings and separate the parties. If the mediator was aware of domestic violence prior to undertaking mediation, it is generally not appropriate for the parties to participate in a session together. Consult with the abused party first.
 - (2) Further inquire of each party whether mediation is appropriate and whether the party who has been subject to the abuse understands the potential impact of abuse on the party's ability to participate in mediation.
- b. If the party subject to the abuse and the mediator agree that domestic violence is not an inhibiting factor, the mediation may proceed. The mediator must discuss and plan safety precautions with the abused party.
- c. If either the abused party or the mediator determines that the mediation is inappropriate, mediation should be concluded. See Section H(1) (Safely Concluding Mediation), on making a decision whether to mediate and Section F(4), Continuing Mediation with Accommodations despite the presence of domestic violence or child abuse.

- d. If only one party has disclosed domestic violence, the disclosing party may be told that domestic violence is the reason for concluding the mediation. To protect confidentiality, the other party must be given a different reason.
- e. If both parties have disclosed domestic violence, the mediator may explain to each party that domestic violence is the reason for concluding mediation. To protect confidentiality, the explanation provided must be based solely on the disclosure of abuse made by that particular party. The parties may also be given another reason, at the mediator's discretion.
- f. Suggested language for concluding after screening, directed to both the abused and abusive parties:

“After considering the issues between both of you and observing your interactions with each other, I know from your experience that it would be very difficult for you to reach agreements. So rather than taking up your time and resources, I am concluding this mediation [if necessary, insert reasoning appropriate to each party, as described above].

It is not a “failure” to end mediation without an agreement, and there are no legal repercussions for doing so. I will be reporting to the court only that your case was concluded without an agreement, with no further explanation. I would suggest that you review this case with your attorney or seek legal advice. Your options may include negotiation between your attorneys, referral to the Friend of the Court, or asking the court for a decision.”

4. Possible ways to explain concluding mediation without mentioning domestic violence.

The following reasons could be given for explaining a decision to conclude mediation without referring to domestic violence:

- a. Unwillingness or inability to follow mediation policies and procedures.
- b. Parties are too far apart in positions or interests.
- c. Inability to negotiate.
- d. Unwillingness to compromise.
- e. Unwillingness to follow the mediator's ground rules.
- f. Substance abuse or mental illness (if known to both parties).