

Screening for Safety and Success

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THE SUPREME COURT *of* OHIO **2020**
Dispute Resolution
Conference

Screening Purpose

Identify in advance cases that:

- Should not be mediated
- Require specific protocols or safeguards
- Require referrals to other resources

Screening Goals

Learn if history of abusive or controlling behaviors

Learn about possible safety concerns

Assess capacity to mediate

Determine if and how the case should be mediated

Protect safety through specialized processes

Determine referrals to other resources

What Are You Looking For?

- Physical violence and threats of violence
- Psychological attacks
- Economic control
- Domestic abuse
- Manipulative and controlling behaviors
- Family, intimate partner, workplace, or neighborhood conflicts with power imbalances
- Both criminal and non-criminal behaviors

What Are You Looking For?

- Party is fearful and/or intimidated by another party.
- Party is afraid to express self in mediation
- Party is afraid of repercussions for what he/she says in mediation
- Party minimizes harmful behavior of other party
- Party's body language indicates fear or discomfort
- Party is unable to articulate own interests

Coercive Control

Pattern of multiple tactics and repeated events

Controlling behaviors that are psychologically damaging to victim

May include economic control

May include physical threats and harm

May not be obvious to outside observer

Workplace Precipitants

- Employee sanctioned or terminated
- Workplace relationship conflicts
- Lack of consequences for rule violations
- Rigid and excessive application of rules
- Broken promises by employer
- Lack of opportunity or choice
- Character problems of employee
- Source: Amdur & Cooper, *Safety at Work* p. 261 (2011)

Concerns for Mediation

Physical Safety

Psychological harm, re-traumatization

Effects of post-traumatic stress disorder

Participant's ability to negotiate

Mediator's ability to balance power

Three-Tiered Screening

Document Review

Written Questionnaire

Confidential Interview

Document Review

Court records

Restraining orders and protection orders

Criminal charges and convictions

Probation and parole conditions

Pleadings and affidavits

Questionnaire

Accessible, easy to read language

Safe location to complete

Ask about violent, abusive or controlling behaviors

Ask about attitudes, fears, and special concerns

Ask about contacts with law enforcement

Questionnaire can be designed for specific practice area and mediation setting

Confidential Interview

Build rapport

Inquire about responses to questionnaire indicating fear, violence, coercion or manipulation

Modify questions and approach

Ask follow up questions

Observe body language, non-verbal clues

Address party's concerns

Assessing Capacity to Mediate

Fear can impact party's ability to negotiate

Party must be able to articulate own interests

Party must be able to negotiate without fear of consequences

Party must be willing to mediate

Screeners's Decision

Case not suitable for mediation

Mediate with special conditions

Mediate without special conditions

Mediation with conditions

Safe location

Room set-up

Third parties in session

Ongoing screening

Staggered arrivals and departures

Structured Mediation Process

Mediator controls process

Structured agenda

Behavioral ground rules enforced evenly

Caucus

Adjust process midway if needed

Mediator termination of mediation, if needed

Termination

From caucus

Mediator takes responsibility

Do not blame either party

Use reasons generated by party caucusing
with, if possible

Keep parties separate / protect safety

Mediator Self-Assessment

Strongly held beliefs

Personal / family experiences

Comfort levels

Mediation experience

Capacity for neutrality

Contact Information

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