Screening for Safety and Success

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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
Screener’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
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