

Screening for Domestic Violence in Mediation of Family Law Cases: What You Need To Know

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Poll Question: Which of these is true for you?

The Path to Requirement for Screening

- MCR 3.216(A) : “All domestic relations cases . . . are subject to mediation under this rule, unless otherwise provided by statute or court rule.”
- MCR 3.216(C)(3) - If parties are subject to a PPO or an open abuse/neglect case, the case may not be referred to mediation without a hearing.
- MCR 3.216(D): parties may object to, and cases may be exempt from, court referral to mediation on the basis of domestic abuse, inability of a party to negotiate for themselves, or reason to believe that a party’s health or safety would be endangered by mediation.
- MCR 3.216(G): to be eligible for court appointment as mediator, applicant must – among other things – complete training approved by State Court Administrator’s Office

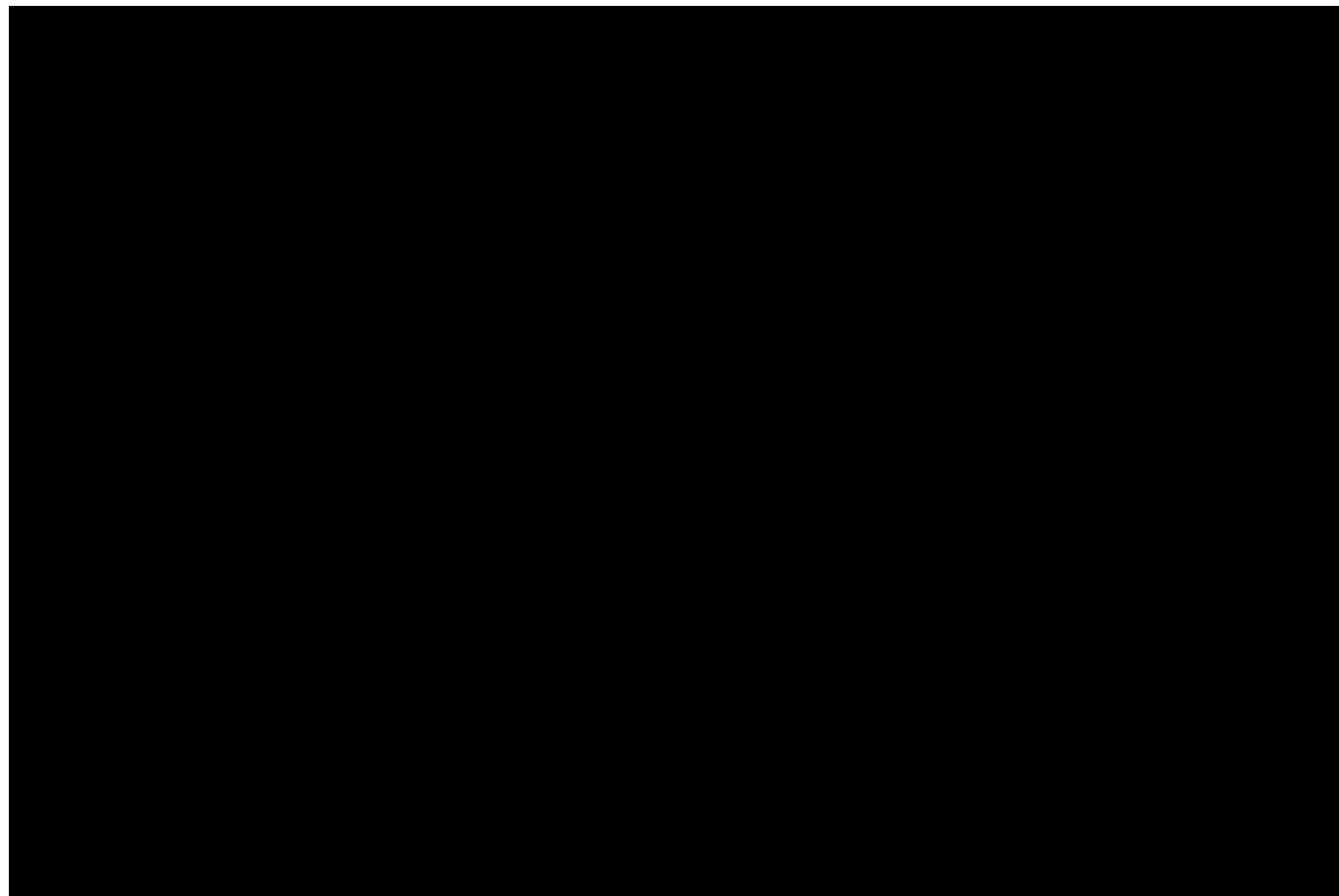
The Path to Requirement for Screening

- SCAO's Michigan Standards of Conduct for Mediators:
 - Standard VI.A: “reasonable efforts shall be made throughout the mediation process to screen for the presence of an impediment that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues. Examples of impediments to the mediation process include: domestic abuse”
 - “In domestic relations cases, ‘reasonable efforts’ should include meeting separately with the parties prior to a joint session and administering the ‘Mediator Screening Protocol’ for domestic violence, published by the State Court Administrative Office

The Path to Requirement for Screening

- MCL 600.1035 (effective August 1, 2016):
 - Court shall not submit for mediation any contested issue in a domestic relations matter if a PPO exists against one of the parties and protecting the other party, or if there is a child abuse or neglect proceeding, unless
 - Court first conducts hearing to determine whether mediation is appropriate, or
 - The person protected by the PPO or by an order in the child abuse or neglect proceeding requests mediation.
 - “In a domestic relations mediation, *the mediator shall make reasonable inquiry* as to whether either party has a history of a coercive or violent relationship with the other party. *A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office as directed by the supreme court.*”

The Importance of Screening



Poll Question: Having observed this video, what would you do if you learned of this incident during screening?

What is domestic violence and how does it impact mediation?

- A pattern of physical or sexual force or violence, threats, and other abusive tactics engaged in by one person against their current or former intimate partner in order to control that partner.
- Includes not only acts of force or violence that rise to the level of a crime, but also behaviors that are coercive and yet non-criminal, such as controlling finances, using psychological or emotional abuse and intimidation, isolating a partner from social supports, or interfering with employment or schooling.
- The Power & Control Wheel is a commonly used tool to identify the different ways these criminal and non-criminal coercive acts are used by an abuser against his or her intimate partner.



Impact of domestic violence/abuse on mediation

1. Will abused party be able to speak up or negotiate for self?
 - History of abuse can cause abused party to be unable to do this, even when it appears to others that it is safe to do so
2. Will abused party be able to reach and carry out voluntary agreements?
 - History of abuse can cause abused party to be unable to do this, even when it appears to others that it is safe to do so
3. Will abused party be safe and comfortable during and after mediation sessions?
 - May need special conditions or accommodations to make this possible (and to make 1 and 2 possible as well)
4. Where there is power imbalance, does the lower power party want to mediate?
 - Critical question; cannot and should not proceed if the abused party does not want
5. Is the mediator knowledgeable and experienced enough for this case?

The Screening Tool/Questionnaire

- The history of its creation and its most recent revisions
- Brief review of questionnaire (questionnaire is available at <http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol.pdf>)
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The Screening Tool/Questionnaire: Examples

Section 2(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?)

* * *

Section 3(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 was afraid of?

* * *

Section 3(k): Has [insert name] ever pushed, shoved, hit, kicked, spit on, choked, strangled, restrained, or pulled your hair? If so, what happened?

The Screening Tool/Questionnaire

- How to administer it
 - Separate meetings, in person is preferred
 - Ask questions orally and note responses
 - Don't say "Now I am going to screen for domestic violence". Instead, say "Now I have some questions so we can determine whether mediation makes sense in your situation, and if so what is the best way to approach it."
 - Don't mention the section headings – just ask the questions.
 - Follow the sequence of the questions in the questionnaire

Poll Question: Which of these have been concerns raised about screening in mediation in your community?

Concerns about Screening: What We Have Heard

- If domestic abuse/violence is identified, then we can't mediate.

Concerns about Screening: What We Have Heard

- It takes too long to screen.

Concerns about Screening: What We Have Heard

- Requiring both attorneys presence at sessions too costly.

Concerns about Screening: What We Have Heard

- I feel pressure from the attorneys/the judge to “just get it done.”

Concerns about Screening: What We Have Heard

- When court refers, I assume that the attorneys or court have already screened.

Concerns about Screening: What We Have Heard

- It's repetitive

What if mediator fails to screen for domestic violence/abuse?

- Possibility of coercion if “agreement” reached because one party unable to stand up for self, unable to negotiate freely, and unable to voluntarily reach agreement
- Creates risk of increased physical and psychological harm to abused party (and possibly to children as well)
- Mediator liability for harm caused to abused party?
- There are a lot of objections to agreements, shot down by the courts almost universally. But now, if someone claims there was DV, they were coerced, and screening wasn't done, that could lead to it being upheld.

“But the court process will be so much worse for the abused party”

- It can be, but doesn't have to be
- What safeguards can be put in place to enhance safety and ability for abused party to safely navigate the court process?

Questions?

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