

Final Report of the  
Iowa Supreme Court  
Mediation and  
Domestic Violence  
Work Group

December 1999

December 10, 1999

To the Chief Justice and Members of the Iowa Supreme Court:

On behalf of the Mediation and Domestic Violence Work Group, I am happy to present this report to you regarding the implementation of Recommendation 55 from the *Final Report of the Supreme Court's Task Force on Courts' and Communities' Response to Domestic Abuse*.

The Mediation and Domestic Violence Work Group labored for eleven months in order to make informed recommendations. We struggled and challenged our own preconceived notions regarding domestic violence and mediation. As a result, I believe we have illuminated a path that will promote safety and preserve choice for litigants in domestic relations cases.

I wish to thank each of the Work Group members for the hours dedicated to this project. Each displayed an extraordinary willingness to evaluate new ideas and search for common ground. The multi-disciplinary approach has enhanced the final product. I want to thank Renee Trumm-Curtis of the YWCA-Domestic Violence Program in Dubuque, who had to resign prior to the completion of this report.

The effort of the Attorney General's mediation committee and the work of Justice Cady's Mediation Study Group have paralleled our own. Our group recognizes that there are several open questions regarding the final form of mediation in Iowa. To the extent that the recommendations in this report would be more appropriate for a group outside the Judicial Branch, we would request that relevant portions be forwarded as appropriate.

Finally, I want to thank members of the court for your continued commitment to improving the administration of justice as it relates to domestic abuse. Your vision and leadership are unparalleled.

Jennifer Juhler  
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# Mediation and Domestic Violence Work Group

December 1999

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## INTRODUCTION

In August 1994, the Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse submitted its final report to the Iowa Supreme Court. The report contained a variety of recommendations including one with regard to mediation:

**Task Force Recommendation #55, p. 86:**

*Mediation should not be used in Iowa Code Chapter 236 cases. Courts should consider the following factors before ordering mediation in a domestic relations/dissolution of marriage case:*

- 1) *assessment of the parties in order to measure the risk of violence, including the risk to children and the mediators;*
- 2) *the voluntariness and the competence of the parties to engage in mediation;*
- 3) *the extent of the power imbalance in the relationship.*

*Mediators should be trained regarding the dynamics of domestic relationships and the issues involved in mediating them.*

Subsequently, the Supreme Court approved the recommendation in the following form:

**Implementation Report, December 1996, p. 15:**

*The factors for mediation will be the subject of a supervisory order. Standards for training mediators should be included in the court rules on standards of practice for mediators.*

Recognizing the contentious debate surrounding domestic violence and mediation, Jennifer Juhler organized a multidisciplinary group to study the issues and make recommendations to the Supreme Court for implementation of the approved recommendation.

The Work Group conducted national searches for best practices and relied upon the work of many that have preceded us. Our dialog was constructive, and while not all members of the Work Group reached total agreement on all issues relating to domestic violence and mediation, the Work Group has reached consensus with regard to the recommendations contained in this report.

## GUIDING PHILOSOPHY OF THE WORK GROUP

Mediation is an important aspect of conflict resolution with an emphasis on self-determination and corollary benefits including building individuals' skills and enhancing relationships. As the Work Group considered mediation with respect to domestic violence,<sup>1</sup> *caution* became the watchword, with the desired result to "do no harm."

While the phenomenon of domestic violence exhibits some well-defined characteristics,<sup>2</sup> a wide variability exists among individual cases involving domestic violence. Not all abusers are the same and not all victims are the same. Abusers can range from those who are in the process of taking responsibility for their actions and ceasing abusive behaviors to those who are potentially homicidal and/or suicidal. Similarly, victims experience varying degrees of trauma as a result of the abuse which may be related to the length and severity of abuse as well as any trauma experienced prior to the domestic violence. Mediation may be an appropriate option when the abuser is in the process of taking responsibility for abuse and the victim experiences little or no traumatic aftereffects.

### **Domestic Violence Dynamics and Mediation**

While research continues in the field of domestic violence, the field itself is still very new. Sometimes it seems as if what we know might fill a booklet while what we would like to know could fill volumes. Much of the debate surrounding domestic violence and mediation is based upon extrapolation from the few things we do know.

Among the things we know is that when the parties separate, and especially when the victim leaves the abuser, the violence can be explosive.<sup>3</sup> This fact alone suggests a cautious approach regarding divorce<sup>4</sup> in general and divorce mediation specifically. In some cases separation violence leads to tragedy. According to statistics maintained by the Attorney General's office, in more than half of the domestic homicides in Iowa since

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<sup>1</sup> Domestic violence, for the purposes of this report, is defined as a *pattern* of behavior employed by an abuser to blunt personal deficits through maintaining enough control in an intimate relationship to avoid abandonment and keep intact pieces of the abuser's fragile self image. Abusers seek to avoid abandonment by any means possible, which paradoxically includes, but is not limited to, sabotage, emotional abuse, sexual abuse, and threats and physical violence.

<sup>2</sup> See Dutton (1995), Walker (1984) and Brown (1989).

<sup>3</sup> See Dutton (1995), Walker (1984) and Brown (1989).

<sup>4</sup> This report is not limited to mediation in the dissolution context only, but also includes custody cases in which the parents are not married as well as modification actions.

1990, the victims were known to have left or were in the process of leaving the abuser.<sup>5</sup> Other victims experience violence or threatening behavior for the first time at separation. All cases involving domestic violence must be treated cautiously. Currently, there is no accurate method to separate the potential homicides from the other domestic violence cases that will proceed through divorce and beyond without a critical incident.

Normal reactions to the trauma suffered by domestic violence victims can render victims unable to assert their own needs especially in the presence of the batterer.<sup>6</sup> This impairment, although temporary for many victims, can have devastating consequences during mediation. This effect can be augmented by ongoing contact with the abuser. A certain look or the mention of what may seem to be an innocuous subject can contain hidden meaning that serves as a reminder of past violence.<sup>7</sup> Such reminders are veiled threats.

Many scholars have concluded that, as a general rule, mediation is not advised in cases involving domestic violence.<sup>8</sup> Abusers often lack the capacity to mediate in good faith.<sup>9</sup> The same partitioning in the brain that allows abusers alternately to idolize and vilify their intimate partners leads them to make agreements at one point and then deny such agreements later. These denials can be accompanied by rage directed at the intimate partner and, perhaps, the mediator. As a result, safety becomes a crucial issue for all involved.

While it may be our greatest hope to see separated parents who can communicate effectively for the benefit of their children, mediation cannot accomplish this due to the distorted way that abusers think. Restructuring the way participants think is not a purpose of mediation.

### **Self-determination and Domestic Violence**

Self-determination is the foundation of mediation and is the strength of mediated agreements. That is, an agreement that is reached jointly is more likely to be enforced jointly by the parties. Further, the satisfaction with the final agreement is likely to be greater than the satisfaction with a decision rendered by an outside third party.

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<sup>5</sup>Information regarding the victim having left or being in the process of leaving was gathered from police reports. No inquiries were made beyond police reports suggesting the likelihood that a greater percentage of victims would fall into this category.

<sup>6</sup>See Walker (1984) and Herman (1992).

<sup>7</sup>See Buss as referenced in Dutton (1995) and Walker (1984).

<sup>8</sup>See American Bar Association. (1999), Charbonneau (1993), Maine Court Mediation Service (1992), and National Council of Juvenile and Family Court Judges (1994).

<sup>9</sup>Private conversation between Jennifer Juhler and Donald Dutton.

However, the issue of self-determination is complicated when there is a history of domestic violence.

An abuser has incorporated the concept of self-determination to a pathological degree. For mediation to be a safe and viable option, the abuser must have made cognitive changes that curb the previous sense of entitlement to unquestioned, uncompromising self-determination. Noted researcher, Ed Gondolf, describes a batterer's nonviolent tactics as "inflated and intrusive self-empowerment within a relationship."<sup>10</sup> A current batterer cannot be considered appropriate for mediation. A former batterer should be able to demonstrate significant change in these cognitive distortions before mediation can be considered appropriate.

A victim of domestic violence has lived under the tyranny of choices being limited and even prohibited. Self-determination is beneficial for victims of domestic violence. Unfortunately, self-determination may not be genuinely achieved given the level of traumatic aftereffects experienced by the victim. Once separation from the abuser has been established and the violence and intimidation stops, a victim will, in time, recover from the traumatic aftereffects. However, the time period necessary for this recovery is unspecified and highly individualized. Victims may have the ability to mediate with others, but may never have the ability to mediate with the abuser. Until recovery is complete, professionals should assume that decisions made by the victim will be subject to coercion and manipulation of the batterer.

### **Sexual Abuse and Mediation**

Although sexual abuse is part of domestic violence, the topic of sexual abuse and its impact on mediation is less well researched. Sexual abuse of the adult partner, sometimes called marital rape, is common in cases with a history of domestic violence.<sup>11</sup> Sexual abuse of one's adult partner is a characteristic of the most violent domestic violence offenders.<sup>12</sup> Child sexual abuse is often present when there is domestic violence that is perpetrated against a parent.<sup>13</sup> In a few cases, domestic violence will not be the primary complaint; the primary complaint will be either sexual abuse of an adult partner or intrafamilial child sexual abuse.

Perpetrators of child sexual abuse exhibit many of the same characteristics as perpetrators of domestic violence.<sup>14</sup> The Work Group believes that allegations of sexual abuse by a parent against the other parent or allegations of sexual abuse against a child should be treated the same as if domestic violence were the primary complaint.

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<sup>10</sup> "Programs for Men Who Batter" *Next Millenium Conference: Ending Domestic Violence*, Chicago, IL, August 1999.

<sup>11</sup> See Campbell (1989).

<sup>12</sup> See Hanneke, et al (1986) and Pagelow (1992).

<sup>13</sup> See Bancroft (1997).

<sup>14</sup> Ibid.

## **Safety and Capacity**

Safety of the parties and the mediator is a primary concern. While absolute safety cannot be assured, the Work Group agreed upon two mechanisms that could be employed to maximize safety: (1) an assessment for capacity of the parties and (2) adapting the mediation process, for example, to minimize contact between the parties.

Capacity to mediate is

- the mental ability to understand the nature and effects of one's acts;
- the fundamental ability and willingness to be accountable for one's actions; and
- the actual ability and willingness to express and act upon one's individual needs.

### **Appropriate Mediation When Domestic Violence Is Identified**

The Work Group determined that mediation can be an appropriate option. Appropriate mediation requires that each party:

- Makes a decision to enter mediation freely and without coercion;
- Enters mediation with informed consent (parties had the opportunity to learn about mediation, including a full disclosure of the dangers of mediation when a history of domestic violence exists, its pros and cons, and alternatives to it);
- Provides full disclosure without being afraid or endangered;
- Is aware that he or she can withdraw from mediation at any time, without retribution;
- Is able to recognize that the other party has rights and needs separate from his or her own;
- Recognizes that all mediated outcomes must be agreed upon voluntarily by both parties;
- Is willing to and invested in carrying out mutual agreements;
- Is free from cognitive or emotional impairments (e.g., severe depression) that affects capacity to mediate;
- Is free from incapacity due to drug or alcohol abuse.

As a result, the Work Group concluded there can be a role for mediation when domestic violence has been identified. The Work Group defined the following parameters that make mediation an acceptable option:

- Once domestic or sexual violence is identified, the decision to mediate is made through an informed decision-making process, which includes explaining the risks of mediation and possible benefits.
- Each party must desire to mediate.
- The mediator has the obligation to terminate mediation based upon finding that one or both parties lack the capacity to mediate.
- The system leading to mediation has multiple, built-in safety precautions that involve a variety of institutions and professionals

knowledgeable about domestic violence and sexual abuse and the effects of domestic violence and sexual abuse.

## FACTORS FOR MEDIATION

Iowa Code section 598.7A (1999) prohibits judges from ordering parties into mediation when there is a history of domestic abuse.<sup>15</sup> Section 598.41(3)(j) (1999) defines a history of domestic abuse as

including, but not limited to, the commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 236.8, the response of a peace officer to the scene of an alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

To a great extent this code section, enacted as a result of the Domestic Abuse Task Force Report, establishes the factors a judge should consider when ordering mediation. Upon analysis, the Work Group concluded that a broader systemic response is required to enhance the safety of the parties and the safety of professionals within the system.

### Screening

The Work Group agreed that screening for domestic violence and sexual assault is essential. Other groups examining domestic violence and mediation have made similar conclusions. For example, the Domestic Abuse and Mediation Project asserted that “all domestic relations cases being considered for mediation should be screened for abuse. If screening cannot be instituted, mediation services must not be offered.”<sup>16</sup> The Work Group concluded that a multi-tiered system of screening is indicated. Multi-tiered screening offers the most reliable approach for weeding out the cases that are not appropriate for mediation.

***Recommendation 1:*** *The Judicial Branch should implement a multi-tiered identification and assessment strategy with an emphasis on early detection upon the entrance of a case into the system. Family law attorneys, the court and mediators should all screen for domestic violence and sexual assault.*

Ideally, the issue of domestic violence will be identified early in the legal process. Since the point of entry for most litigants is an attorney, attorneys should screen all cases for domestic violence and sexual assault. Early identification enhances the safety of the parties and the professionals involved with the proceeding. Early identification also

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<sup>15</sup> For the purposes of this document, references to “domestic abuse,” as opposed to “domestic violence,” should be interpreted as the legal definition of domestic abuse found at Code of Iowa section 236.2(2) 1999.

<sup>16</sup> Maine Court Mediation Service (1992), p. 26.

allows attorneys to provide guidance to clients regarding the appropriateness of mediation and other legal remedies that may be available.

The court system should conduct a computer search to screen for the presence of sexual assault perpetrated against family members and the presence of domestic abuse as defined in section 598.41(3)(j). The results of these searches should be available to judges when considering issuing an order to mediation. Cases with a history of domestic abuse or intrafamilial sexual abuse should be diverted away from mandatory mediation programs.

Policy erring on the side of excluding parties from the mediation process helps to ensure that only those victims who are empowered and desire mediation will receive it and minimizes the possibility that unempowered victims will find themselves in mediation. The parties may wish to mediate despite the fact that a history of domestic abuse or sexual abuse has been found. When the parties desire to mediate but have been screened out, the parties may use an attorney or another advocate in order to access mediation.

All cases referred to mediation should be screened for domestic violence and sexual abuse by the mediator. Even if no domestic violence or sexual abuse is found, the mediator should remain vigilant through the mediation process for signs of abuse or a power imbalance.

### **Assessment**

Once domestic violence or sexual abuse has been identified, the parties must be informed about the mediation process, and educated about the possible problems of mediation when there is a history of domestic or sexual violence. Additionally, the parties must be assessed for the capacity to mediate.

***Recommendation 2:*** *When domestic violence or sexual abuse is identified, the attorney and/or the mediator has the responsibility to inform the party(ies) regarding the mediation process and the possible problems of mediation when domestic or sexual violence has been part of the family. These sessions should be conducted with the parties separately. If after this process, both parties desire to mediate, the mediator must conduct separate assessments to establish the capacity of each party to mediate.*

***Recommendation 3:*** *When both parties are found to have the capacity to mediate, the mediator should inform the parties of the options to adapt the mediation process in order to accommodate special needs. For example, the parties may choose shuttle mediation, co-mediation, telephone mediation, face to face mediation with an advocate, or a combination of these.*

### **Screening and Assessment Tools**

In order to screen for domestic violence or sexual assault, ideally a screener could ask a simple question such as “Is there domestic violence?” Unfortunately, the dynamics of domestic violence and intrafamilial sexual abuse make this question unproductive in most cases in which violence should be identified. Screening for domestic and sexual violence is currently more art than science. While there are some screening instruments created through empirical research, all these instruments require further study and validation.

Effective screening requires a person well versed in the dynamics of domestic violence and intrafamilial sexual abuse who can ask questions in a manner that is likely to uncover abuse. Often follow-up questions are key to effective screening. Observing body language and asking well-worded follow-up questions requires training, skill, and time.

The Work Group developed a questionnaire (Appendix A) and assessment guidelines (Appendix B) after a review of existing tools and combining the best pieces of those tools. The questionnaire will be tested as a master’s thesis by Work Group member, Katie Von De Linde, who is currently a student at the University of Iowa School of Social Work. The questionnaire could be used as part of the screening process by both attorneys and mediators.

### **Centralized Screening**

The Work Group spent considerable time debating the merits of centralized screening. In order to accomplish centralized screening, the Judicial Branch would hire or contract with persons to conduct screening and assessment. Such screening would assure earlier identification of domestic and sexual violence and would therefore enhance safety. Further, centralized screening would maintain the appearance of neutrality of the mediator and would remove any question of bias from the screening and assessment process.

Persons hired to conduct centralized screening would have to demonstrate an understanding and appreciation of the benefits of mediation including special concerns raised when domestic violence or intrafamilial sexual abuse is present. Information uncovered by screening staff should be completely confidential and should not be discoverable during litigation. The only exception to confidentiality would be that screening staff (and mediators) should be mandatory reporters of child abuse.

Several important questions remain unanswered. It is unclear how many positions would have to be created. Work Group members wondered if centralized screening would create undue time burdens on litigants or the court system. Before implementing such a system statewide, a cost benefit analysis would be required.

***Recommendation 4:*** *The Judicial Branch should conduct a pilot project to study centralized screening.*

## **Evaluation**

**Recommendation 5:** *The Supreme Court should adopt standards of practice for mediation programs connected with the court. These standards should include screening for domestic violence and assessments conducted by roster mediators.*

**Recommendation 6:** *Standards for mediation programs adopted by the Supreme Court should be monitored through state court administration. When periodic reviews identify programs not meeting standards, those programs should be required to meet standards. State court administration could place programs on probation or could cut or withdraw funding for the program.*

**Recommendation 7:** *Mediators should follow basic rules to promote safety in mediation. The Iowa Association of Dispute Resolution should develop core rules for mediation that emphasize safety and that provide consequences.*

**Recommendation 8:** *The Attorney General's office should develop similar standards and oversight for mediation programs not connected to the court.*

## **Victim Advocates**

Victim advocates provide a critical link for victims of domestic and sexual violence. Victim advocates are often the greatest assets to combat the traumatic aftereffects and brainwashing which result from being the target of abuse.

**Recommendation 9:** *Victim advocates should be allowed to attend all screening and mediation sessions at the request of the victim.*

**Recommendation 10:** *Victims desiring to mediate should be referred by attorneys and mediators to the local domestic violence or sexual assault services or to the statewide hotlines for domestic violence and sexual assault.*

## **Representation**

**Recommendation 11:** *The Judicial Branch should encourage the ISBA Volunteer Lawyer's Project to recruit attorneys knowledgeable in domestic violence to handle cases in which there is a history of domestic violence. The ISBA should encourage its members to take on cases in which there is a history of domestic violence.*

## TRAINING

The Work Group was deeply concerned about the safety problems posed by batterers. While the victim is at a tremendously increased risk of injury or death especially at the time of separation, helping professionals may also be the target of attacks. As a result, all those involved with the parties during the legal proceedings should be aware of how to identify domestic violence so that appropriate precautions, legal or otherwise, may be employed. Attorneys, judges, court administrators, mediators, victim advocates, mental health professionals, religious leaders, and the parties should all be educated about domestic violence, sexual abuse, and mediation.

### Attorneys

#### **Recommendation 12:** Attorneys

- *should be conversant in domestic and sexual violence as well as mediation;*
- *should understand the dynamics of domestic violence and intrafamilial sexual abuse;*
- *should recognize indications of domestic violence and sexual abuse;*
- *should practice effective screening in all family law cases; and*
- *should be able to assist clients with immediate safety planning.*

**Recommendation 13:** Attorneys should understand their ethical obligation to identify and respond appropriately to domestic violence. The Judicial Branch, the Iowa Coalition Against Domestic Violence (ICADV), Legal Services Corporation of Iowa (LSCI), the Iowa State Bar Association (ISBA) Family and Juvenile Law Section and other partners should develop a domestic violence ethics CLE. When planning CLE seminars, sponsors should refer to Canon 6 and Ethical Considerations 6-1 and 6-2.

Canon 6 of the Code of Professional Responsibility for Lawyers states that “A Lawyer Should Represent a Client Competently.”

#### Ethical Consideration 6-1:

Because of their vital role in the legal process, lawyers should act with competence and proper care in representing clients. They should strive to become and remain proficient in their practice and should accept employment only in matters which they are or intend to become competent to handle.

#### Ethical Consideration 6-2:

A lawyer is aided in attaining and maintaining competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. A lawyer has the additional ethical obligation to assist in improving the legal profession, and may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of

particular importance is the careful guidance to all lawyers with whom the lawyer consults. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to personally meet those standards.

**Recommendation 14:** *The Judicial Branch should make a formal request to the state's law schools to include and/or expand the teaching of screening for domestic and sexual violence.*

**Recommendation 15:** *The ISBA Family and Juvenile Law Section should examine ways to promote the safety of clients, attorneys, and court personnel. Among measures to promote safety, the Family and Juvenile Law Section should explore mechanisms to promote consistent and competent domestic and sexual violence screening by attorneys.*

**Recommendation 16:** *Employees of the Judicial Branch, the Iowa Coalition Against Domestic Violence, and members of the Family and Juvenile Law Section should submit articles to Family and Juvenile Law Section Newsletter regarding domestic violence and the importance of screening.*

## Judges

**Recommendation 17:** *Judges*

- *should be conversant in domestic and sexual violence as well as mediation;*
- *should understand the dynamics of domestic violence and intrafamilial sexual abuse;*
- *should respond appropriately to screening information;*
- *should be able to evaluate requests from parties to opt in or out of mediation; and*
- *should understand why mediation is discouraged in cases of domestic violence by the Code of Iowa.*

**Recommendation 18:** *The Judicial Branch should conduct a one time mandatory training session for all district court judges utilizing material from the ABA curriculum.<sup>17</sup> After this session, these training materials should be included for all new judges. In order to accommodate this material, the training session for new judges should be expanded by one day and should include other topics that will be relevant to trial court work including substance abuse, mental health, sexual abuse and child abuse/neglect.*

**Recommendation 19:** *Employees of the Judicial Branch, the Iowa Coalition Against Domestic Violence, and members of the Family and Juvenile Law Section should submit articles to the Judicial Branch newsletter regarding mediation and domestic violence.*

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<sup>17</sup> American Bar Association. (1999) *Domestic Abuse and Custody Mediation Training for Judges and Court Administrators*

## **Court Administration**

**Recommendation 20:** *The Iowa Court Information System (ICIS) should create a database to search for a history of domestic abuse as defined in Iowa Code section 598.41(3)(j) and to identify cases of sexual abuse by an adult partner of the other adult partner or the children.*

**Recommendation 21:** *Court administration personnel and/or District ADR Coordinators should be conversant in domestic violence as well as mediation; should be able to create searches of and interpret search results from the ICIS Domestic Abuse Database.*

**Recommendation 22:** *Court administration personnel responsible for implementation and oversight of district mediation programs should have mandatory training from the Domestic Abuse Coordinator and from ICIS training staff regarding domestic violence, mediation and the Domestic Abuse Database.*

**Recommendation 23:** *State Court Administration should include information about mediation on the court's webpage. Information specific to mediation and domestic violence should be included on the domestic abuse page. A hyperlink should connect the two sections*

**Recommendation 24:** *The Supreme Court Commission on Continuing Education should consult the Iowa Coalition Against Domestic Violence in order to evaluate domestic violence educational programs.*

## **Mediators**

**Recommendation 25:** *Mediators*

- *should have expertise in domestic violence;*
- *should be well-versed and comfortable adapting the mediation process to accommodate the needs of the parties;*
- *should recognize red flags for domestic violence;*
- *should practice effective screening;*
- *should understand dynamics of domestic violence;*
- *should be able to evaluate requests from parties to opt in or out of mediation;*
- *should be able to evaluate whether or not parties have the capacity to mediate; and*
- *should be able to assist with immediate safety planning.*

**Recommendation 26:** *The Judicial Branch should make expanded training on domestic violence a requirement for mediators in order to be included on the court's roster. The Judicial Branch should sponsor a number of training sessions for mediators throughout the state utilizing the ABA curriculum.<sup>18</sup> The training sessions should be free of charge to participants and should be offered in a variety of locations to reduce the burden of travel. Trainees must demonstrate an understanding of domestic violence*

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<sup>18</sup> American Bar Association. (1999) *Domestic Abuse and Custody Mediation Training for Mediators*.

*and how it affects the mediation process in order to “pass” the course and be placed on the court’s mediator roster.*

### **Victim Advocates**

#### **Recommendation 27:** *Victim advocates*

- *should receive information about key aspects of safety planning to incorporate when clients are participating in mediation;*
- *should be educated about mediation, including how and when it might be helpful for a client;*
- *should understand how to prepare client for mediation;*
- *should understand the role of an advocate within mediation;*
- *should know when to refer client for legal advice to an attorney; and*
- *should know what information might be helpful to an attorney.*

#### **Recommendation 28:** *The Iowa Coalition Against Domestic Violence should*

- *designate a portion of 20 hour requirement training requirement for mediation;*
- *develop local trainers within the domestic violence projects; and*
- *hold a mandatory training on mediation as a part of the advocate certification process.*

### **Mental Health Professionals**

#### **Recommendation 29:** *Mental health professionals*

- *should be conversant in domestic and sexual violence as well as mediation;*
- *should be able to recognize indicators of domestic violence and intrafamilial sexual abuse;*
- *should know when to refer a client for legal advice to an attorney;*
- *should be able to educate clients that they may opt out of mediation;*
- *should know what information might be helpful to an attorney; and*
- *should be able to assist with immediate safety planning.*

**Recommendation 30:** *Mental health professionals should be invited to attend the regional mediator training sessions and training sessions for victim advocates.*

*Professional organizations such as National Association of Social Workers, Iowa Psychological Association, Association of Marriage and Family Therapists, etc., should be used as the vehicle for invitations and for granting CEU’s.*

### **Religious Leaders**

#### **Recommendation 31:** *Religious leaders*

- *should be conversant in domestic and sexual violence as well as mediation;*
- *should be able to recognize indicators of domestic violence and intrafamilial sexual abuse;*
- *should know when to refer a client for legal advice to an attorney;*

- *should educate people that they may opt out of mediation;*
- *should know what information might be helpful to an attorney; and*
- *should be able to assist with immediate safety planning.*

**Recommendation 32:** *Religious leaders should be invited to attend the regional mediator training sessions and training sessions for victim advocates. Multi-denominational, ecumenical, multi-religious organizations and statewide denominational organizations (such as Catholic Bishops, Lutherans, Methodists, etc.) should be used as the vehicle for invitation.*

### **The Parties**

**Recommendation 33:** *The parties*

- *should understand the mediation process and the domestic abuse exemption;*
- *should be aware of other resources for domestic violence and sexual assault services;*
- *should be aware that the mediator has the power to decide if a case is inappropriate; and*
- *should understand what can and cannot be mediated (e.g., whether or not family violence has occurred cannot be mediated -- nonetheless, a full range of other legal and non-legal issues can be mediated).*

**Recommendation 34:** *The Judicial Branch should develop a brochure, using the Sixth District brochure as a model, that would be distributed to the parties upon filing. A supply of these brochures should be included and distributed to domestic violence projects, clergy and therapists at the regional training sessions. Brochures should be supplied to all courthouses and should be available in public areas.*

**Recommendation 35:** *In areas with court-supported mediation, a 30-minute mandatory mediation class should be included in “children in the middle” classes. Waivers to this class should be granted to persons who do not wish to mediate.*

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# **Appendix A**

## Mediation Readiness Questionnaire

Mediation is a wonderful tool for conflict resolution. However, mediation may not be the best method for the resolution of your problems. Please answer the following questions. All information in this questionnaire is completely confidential and will not be seen by anyone other than screening staff.

1. I am worried about being in the same room with the other party.  

Not at all	A little	Somewhat	Very	Extremely
0	1	2	3	4
  
2. I can speak my mind and express my point of view to the other party.  

I do it easily	I do it often	I do sometimes	I do a little	I can't
0	1	2	3	4
  
3. When I try to speak my mind and express my point of view, the other party makes fun of me or puts me down.  

Never	Rarely	Occasionally	Often	Always
0	1	2	3	4
  
4. When I try to speak my mind and express my point of view, the other party becomes angry or threatening or intimidating.  

Never	Rarely	Occasionally	Often	Always
0	1	2	3	4
  
5. I am concerned that the other party will not want me to talk openly when we are in front of a counselor or mediator.  

Not at all	A little	Somewhat	Very	Extremely
0	1	2	3	4
  
6. The other party has threatened to take away the children or has threatened to stop me from seeing them.  

N/A or Never	Rarely	Occasionally	Several times	Frequently
0	1	2	3	4
  
7. I have been afraid for myself or others based on how the other party looked or acted.  

Never	Rarely	Occasionally	Several times	Frequently
0	1	2	3	4
  
8. The other party swears at me or calls me demeaning names during arguments.  

Never	Rarely	Occasionally	Often	Always
0	1	2	3	4
  
9. I am afraid the other party might hurt me or might try to get revenge because of what I say when we are in front of a counselor or mediator.  

Not at all	A little	Somewhat	Very	Extremely
0	1	2	3	4

10. The other party has been extremely jealous of how I spend my time with family or friends or even people I barely know.
- |            |             |                   |            |             |
|------------|-------------|-------------------|------------|-------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Often<br>3 | Always<br>4 |
|------------|-------------|-------------------|------------|-------------|
11. I have stopped seeing family and friends due to the other party.
- |           |                 |           |           |           |
|-----------|-----------------|-----------|-----------|-----------|
| None<br>0 | One or two<br>1 | Some<br>2 | Many<br>3 | Most<br>4 |
|-----------|-----------------|-----------|-----------|-----------|
12. The other party has kept me under surveillance. (Surveillance includes keeping tabs on you by calling you frequently, or by opening your mail, or by listening to phone calls, or by using caller ID, or by looking at your e-mail, or by tracking the mileage on the car.)
- |            |             |                   |            |             |
|------------|-------------|-------------------|------------|-------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Often<br>3 | Always<br>4 |
|------------|-------------|-------------------|------------|-------------|
13. The other party uses friends or family members (including children) to try to convince me to change my mind.
- |            |             |                   |            |             |
|------------|-------------|-------------------|------------|-------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Often<br>3 | Always<br>4 |
|------------|-------------|-------------------|------------|-------------|
14. The other party has destroyed my things or other family members' things on purpose.
- |            |             |                   |                    |                 |
|------------|-------------|-------------------|--------------------|-----------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Several times<br>3 | Frequently<br>4 |
|------------|-------------|-------------------|--------------------|-----------------|
15. The other party has harmed my animal(s) or other family members' animal(s) on purpose.
- |            |             |                   |                    |                 |
|------------|-------------|-------------------|--------------------|-----------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Several times<br>3 | Frequently<br>4 |
|------------|-------------|-------------------|--------------------|-----------------|
16. I am concerned the other party has physically or sexually abused the children.
- |                 |        |               |               |           |                |
|-----------------|--------|---------------|---------------|-----------|----------------|
| N/A or Not<br>0 | at all | A little<br>1 | Somewhat<br>2 | Very<br>3 | Extremely<br>4 |
|-----------------|--------|---------------|---------------|-----------|----------------|
17. The other party has limited my ability to get food, shelter, clothing or medical help.
- |            |             |                   |                    |                 |
|------------|-------------|-------------------|--------------------|-----------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Several times<br>3 | Frequently<br>4 |
|------------|-------------|-------------------|--------------------|-----------------|
18. The other party has threatened to hurt her/himself.
- |            |             |                   |                    |                 |
|------------|-------------|-------------------|--------------------|-----------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Several times<br>3 | Frequently<br>4 |
|------------|-------------|-------------------|--------------------|-----------------|
19. The other party gets drunk or high.
- |            |             |                   |                    |                       |
|------------|-------------|-------------------|--------------------|-----------------------|
| Never<br>0 | Rarely<br>1 | Occasionally<br>2 | Several times<br>3 | Almost every day<br>4 |
|------------|-------------|-------------------|--------------------|-----------------------|

20. I feel like hurting myself or committing suicide.
- |       |        |              |       |        |
|-------|--------|--------------|-------|--------|
| Never | Rarely | Occasionally | Often | Always |
| 0     | 1      | 2            | 3     | 4      |
21. The other party has threatened to hit me or has made other threats to harm me.
- |       |               |             |               |            |
|-------|---------------|-------------|---------------|------------|
| Never | Once or twice | A few times | Several times | Frequently |
| 0     | 1             | 2           | 3             | 4          |
22. The other party has hit me, or shoved me, or pushed me.
- |       |               |             |               |            |
|-------|---------------|-------------|---------------|------------|
| Never | Once or twice | A few times | Several times | Frequently |
| 0     | 1             | 2           | 3             | 4          |
23. The other party has physically hurt me in front of the children.
- |              |        |              |               |            |
|--------------|--------|--------------|---------------|------------|
| N/A or Never | Rarely | Occasionally | Several times | Frequently |
| 0            | 1      | 2            | 3             | 4          |
24. The other party has forced me into sexual situations in which I did not want to be involved.
- |       |               |             |               |            |
|-------|---------------|-------------|---------------|------------|
| Never | Once or twice | A few times | Several times | Frequently |
| 0     | 1             | 2           | 3             | 4          |
25. I am worried because the other party owns or can easily get hold of handguns, or shotguns, or rifles, or other weapons.
- |            |          |          |      |           |
|------------|----------|----------|------|-----------|
| Not at all | A little | Somewhat | Very | Extremely |
| 0          | 1        | 2        | 3    | 4         |
26. I or another family member has needed medical treatment because of an injury caused by the other party.
- |       |               |             |               |            |
|-------|---------------|-------------|---------------|------------|
| Never | Once or twice | A few times | Several times | Frequently |
| 0     | 1             | 2           | 3             | 4          |
27. The other party has followed me, or tracked how I spent my money, or tracked how I spent my time, or has waited places I was likely to be in order to track my movements.
- |       |        |              |       |        |
|-------|--------|--------------|-------|--------|
| Never | Rarely | Occasionally | Often | Always |
| 0     | 1      | 2            | 3     | 4      |
28. I am eager to meet with and resolve my problems with the other party.
- |            |          |          |      |           |
|------------|----------|----------|------|-----------|
| Not at all | A little | Somewhat | Very | Extremely |
| 0          | 1        | 2        | 3    | 4         |
29. I am worried about truthfully answering some or all of the questions on this questionnaire.
- |            |          |          |      |           |
|------------|----------|----------|------|-----------|
| Not at all | A little | Somewhat | Very | Extremely |
| 0          | 1        | 2        | 3    | 4         |

# **Appendix B**

## Assessment Guidelines

**Part I**            *Interview clients separately. During the interviews, ask questions to determine if there is or has been physical abuse or a power imbalance. When physical abuse or a power imbalance is uncovered, ask questions to assess the following. When any of these factors is found, the appropriateness of mediation is in question. Proceed to Parts II and III.*

1. The seriousness of physical abuse. (For example, needing to seek medical attention for injuries -- whether allowed to or not; use of weapons; broken bones; chronic injuries; punching in the face; physical abuse in front of children; resisting arrest; public incidents of violence; attempted strangulation; pounding head against objects or pounding head with objects.)
2. The level of obsession the abuser exhibits. (For example, stalking; If I can't have you, no one will; expressing desire to kill partner; lack of regard for court orders to stay away; tracking and surveillance activities; degree of conjugal paranoia -- especially if victim has moved to a new relationship)
3. The seriousness of psychological abuse and its impact on victim.
4. The risk to the children and the ability of the victim to protect children and self.

**Part II**            *Further evaluation should be made with regard to the following. Finding any of these intensifies concerns regarding the appropriateness of mediation.*

1. Current fear experienced by victim.
2. Psychological status of victim. (For example, is the victim sleep deprived? Does the victim have difficulty making everyday decisions?)
3. Substance abuse by one or both parties.
4. Abuser has a history of mental illness.
5. The availability of weapons to the abuser.
6. Stressors in the abuser's life -- lost job, lost status in community, relationship terminated

**Part III**        *Concerns about mediation may be mitigated by the following.*

1. Acceptance of separation by both parties (as opposed to agreeing to mediation as a manipulation to continue the relationship.)
2. Recency of abuse or stalking.
3. Number of incidents and frequency.
4. Whether the abuser denies abuse or admits abuse and expresses remorse.

# Appendix C

## Recommendations

**Recommendation 1:** The Judicial Branch should implement a multi-tiered identification and assessment strategy with an emphasis on early detection upon the entrance of a case into the system. Family law attorneys, the court and mediators should all screen for violence and sexual assault.

**Recommendation 2:** When domestic violence or sexual abuse is identified, the attorney and/or the mediator has the responsibility to inform the party(ies) regarding the mediation process and the possible problems of mediation when domestic or sexual violence has been part of the family. These sessions should be conducted with the parties separately. If after this process, both parties desire to mediate, the mediator must conduct separate assessments to establish the capacity of each party to mediate.

**Recommendation 3:** When both parties are found to have the capacity to mediate, the mediator should inform the parties of the options to adapt the mediation process in order to accommodate special needs. For example, the parties may choose shuttle mediation, co-mediation, telephone mediation, face to face mediation with an advocate, or a combination of these.

**Recommendation 4:** The Judicial Branch should conduct a pilot project to study centralized screening.

**Recommendation 5:** The Supreme Court should adopt standards of practice for mediation programs connected with the court. These standards should include screening for domestic violence and assessments conducted by roster mediators.

**Recommendation 6:** Standards for mediation programs adopted by the Supreme Court should be monitored through state court administration. When periodic reviews identify programs not meeting standards, those programs should be required to meet standards. State court administration could place programs on probation or could cut or withdraw funding for the program.

**Recommendation 7:** Mediators should follow basic rules to promote safety in mediation. The Iowa Association of Dispute Resolution should develop core rules for mediation that emphasize safety and that provide consequences.

**Recommendation 8:** The Attorney General's office should develop similar standards and oversight for mediation programs not connected to the court.

**Recommendation 9:** Victim advocates should be allowed to attend all screening and mediation sessions at the request of the victim.

**Recommendation 10:** Victims desiring to mediate should be referred by attorneys and mediators to the local domestic violence or sexual assault services or to the statewide hotlines for domestic violence and sexual assault.

**Recommendation 11:** The Judicial Branch should encourage the ISBA Volunteer Lawyer's Project to recruit attorneys knowledgeable in domestic violence to handle cases in which there

is a history of domestic violence. The ISBA should encourage its members to take on cases in which there is a history of domestic violence.

**Recommendation 12: Attorneys**

- should be conversant in domestic and sexual violence as well as mediation;
- should understand the dynamics of domestic violence and intrafamilial sexual abuse;
- should recognize indications of domestic violence and sexual abuse;
- should practice effective screening in all family law cases; and
- should be able to assist clients with immediate safety planning.

**Recommendation 13:** Attorneys should understand their ethical obligation to identify and respond appropriately to domestic violence. The Judicial Branch, the Iowa Coalition Against Domestic Violence (ICADV), Legal Services Corporation of Iowa (LSCI), the Iowa State Bar Association (ISBA) Family and Juvenile Law Section and other partners should develop a domestic violence ethics CLE. When planning CLE seminars, sponsors should refer to Canon 6 and Ethical Considerations 6-1 and 6-2.

**Recommendation 14:** The Judicial Branch should make a formal request to the state's law schools to include and/or expand the teaching of screening for domestic and sexual violence.

**Recommendation 15:** The ISBA Family and Juvenile Law Section should examine ways to promote the safety of clients, attorneys, and court personnel. Among measures to promote safety, the Family and Juvenile Law Section should explore mechanisms to promote consistent and competent domestic and sexual violence screening by attorneys.

**Recommendation 16:** Employees of the Judicial Branch, the Iowa Coalition Against Domestic Violence, and members of the Family and Juvenile Law Section should submit articles to Family and Juvenile Law Section Newsletter regarding domestic violence and the importance of screening.

**Recommendation 17: Judges**

- should be conversant in domestic and sexual violence as well as mediation;
- should understand the dynamics of domestic violence and intrafamilial sexual abuse;
- should respond appropriately to screening information;
- should be able to evaluate requests from parties to opt in or out of mediation; and
- should understand why mediation is discouraged in cases of domestic violence by the Code of Iowa.

**Recommendation 18:** The Judicial Branch should conduct a one time mandatory training session for all district court judges utilizing material from the ABA curriculum. After this session, these training materials should be included for all new judges. In order to accommodate this material, the training session for new judges should be expanded by one day and should include other topics that will be relevant to trial court work including substance abuse, mental health, sexual abuse and child abuse/neglect.

**Recommendation 19:** Employees of the Judicial Branch, the Iowa Coalition Against Domestic Violence, and members of the Family and Juvenile Law Section should submit articles to the Judicial Branch newsletter regarding mediation and domestic violence.

**Recommendation 20:** The Iowa Court Information System (ICIS) should create a database to search for a history of domestic abuse as defined in Iowa Code section 598.41(3)(j) and to identify cases of sexual abuse by an adult partner of the other adult partner or the children.

**Recommendation 21:** Court administration personnel and/or District ADR Coordinators should be conversant in domestic violence as well as mediation; should be able to create searches of and interpret search results from the ICIS Domestic Abuse Database.

**Recommendation 22:** Court administration personnel responsible for implementation and oversight of district mediation programs should have mandatory training from the Domestic Abuse Coordinator and from ICIS training staff regarding domestic violence, mediation and the Domestic Abuse Database.

**Recommendation 23:** State Court Administration should include information about mediation on the court's webpage. Information specific to mediation and domestic violence should be included on the domestic abuse page. A hyperlink should connect the two sections

**Recommendation 24:** The Supreme Court Commission on Continuing Education should consult the Iowa Coalition Against Domestic Violence in order to evaluate domestic violence educational programs.

**Recommendation 25: Mediators**

- should have expertise in domestic violence;
- should be well-versed and comfortable adapting the mediation process to accommodate the needs of the parties;
- should recognize red flags for domestic violence;
- should practice effective screening;
- should understand dynamics of domestic violence;
- should be able to evaluate requests from parties to opt in or out of mediation;
- should be able to evaluate whether or not parties have the capacity to mediate; and
- should be able to assist with immediate safety planning.

**Recommendation 26:** The Judicial Branch should make expanded training on domestic violence a requirement for mediators in order to be included on the court's roster. The Judicial Branch should sponsor a number of training sessions for mediators throughout the state utilizing the ABA curriculum. The training sessions should be free of charge to participants and should be offered in a variety of locations to reduce the burden of travel. Trainees must demonstrate an understanding of domestic violence and how it affects the mediation process in order to "pass" the course and be placed on the court's mediator roster.

**Recommendation 27: Victim advocates**

- should receive information about key aspects of safety planning to incorporate when clients are participating in mediation;
- should be educated about mediation, including how and when it might be helpful for a client;
- should understand how to prepare client for mediation;
- should understand the role of an advocate within mediation;
- should know when to refer a client for legal advice to an attorney; and
- should know what information might be helpful to an attorney.

**Recommendation 28:** The Iowa Coalition Against Domestic Violence should

- designate a portion of 20 hour requirement training requirement for mediation;
- develop local trainers within the domestic violence projects; and
- hold a mandatory training on mediation as a part of the advocate certification process.

**Recommendation 29:** Mental health professionals

- should be conversant in domestic and sexual violence as well as mediation;
- should be able to recognize indicators of domestic violence and intrafamilial sexual abuse;
- should know when to refer a client for legal advice to an attorney;
- should be able to educate clients that they may opt out of mediation;
- should know what information might be helpful to an attorney; and
- should be able to assist with immediate safety planning.

**Recommendation 30:** Mental health professionals should be invited to attend the regional mediator training sessions and training sessions for victim advocates. Professional organizations such as National Association of Social Workers, Iowa Psychological Association, Association of Marriage and Family Therapists, etc., should be used as the vehicle for invitations and for granting CEU's.

**Recommendation 31:** Religious leaders

- should be conversant in domestic and sexual violence as well as mediation;
- should be able to recognize indicators of domestic violence and intrafamilial sexual abuse;
- should know when to refer a client for legal advice to an attorney;
- should educate people that they may opt out of mediation;
- should know what information might be helpful to an attorney; and
- should be able to assist with immediate safety planning.

**Recommendation 32:** Religious leaders should be invited to attend the regional mediator training sessions and training sessions for victim advocates. Multi-denominational, ecumenical, multi-religious organizations and statewide denominational organizations (such as Catholic Bishops, Lutherans, Methodists, etc.) should be used as the vehicle for invitation.

**Recommendation 33:** The parties

- should understand the mediation process and the domestic abuse exemption;
- should be aware of other resources for domestic violence and sexual assault services;
- should be aware that the mediator has power to decide if a case is inappropriate; and
- should understand what can and cannot be mediated (e.g., whether or not family violence has occurred cannot be mediated -- nonetheless, a full range of other legal and non-legal issues can be mediated).

**Recommendation 34:** The Judicial Branch should develop a brochure, using the Sixth District brochure as a model, that would be distributed to the parties upon filing. A supply of these brochures should be included and distributed to domestic violence projects, clergy and therapists at the regional training sessions. Brochures should be supplied to all courthouses and should be available in public areas.

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