

## **Mediating When Domestic Violence/Control Exists**

Domestic Violence is defined as a pattern of coercive behavior used by one partner to control and/or dominate the other. It cuts across all socioeconomic, educational, racial/ethnic, and religious lines. It is one person scaring the other into doing what the abuser wants. Abusers use physical and sexual violence, threats, money, emotional and psychological abuse to control their spouse or intimate partner in order to get their way.

When domestic violence exists, the power and control issues often do not lend themselves to mediation, where the goal is for the parties to equally work together towards a common goal. There are safety concerns (both physical and emotional) for victims of domestic violence who take part in mediation. While victims do have the autonomy to decide whether or not they will participate in mediation, there are some factors that mediators can look for that can assist them in analyzing whether mediation is possible for a given family. Some of the factors to consider are:

- ✓ The use of weapons against the other party
- ✓ Threats to injure or kill the other party
- ✓ Physical injury to the other party in the past six months
- ✓ Threats made to the children or threats made about the children
- ✓ Protection order against the other party (or possessed POs in the past)
- ✓ Conviction of an offense where violence was used against any person

If after careful consideration by both the mediator and the adult victim of domestic violence, mediation is initiated, there are things that can assist the mediator in crafting a safer and more-likely successful mediation session. This information sheet can also be used in situations that do not involve domestic violence, but in which a power imbalance might affect the parties' ability to engage in a fair and safe process. For example, language fluency issues, mental impairment, financial vulnerability, party's fear of consequences for the children as a result of discussions in mediation, and lack of legal representation.

### **Tips and Suggested Practices**

The following are suggestions for specialized conditions that may accommodate safety concerns, and may provide a party with the ability to negotiate and make decisions without coercion or fear.

- Take all discussions of fear and safety seriously.
- Allow the presence of an attorney, advocate, or other third-party for the abused or vulnerable party during mediation.
- Talk with the abused party about what safety precautions s/he would like to see in place.
- Mediate the case separately with each party. Do not schedule sessions with the parties back to back.
- If not mediating separately, suggest that the abused party arrive 10 minutes after the abuser and leave 10 minutes before the abuser.
- Have separate waiting areas for the parties and do not leave the parties alone together.
- Allow an advocate, friend, or family member of the abused party to accompany the abused party to the mediation sessions.
- Regularly inform the parties that continuation of mediation is voluntary and that they may withdraw at any time.
- Check with the abused party between sessions to assess safety and ability to negotiate.
- Continually reevaluate the safety of the situation of the abused party and the abused party's ability to negotiate. Terminate mediation if there are concerns for the abused party's safety or if the mediator believes that the abused party cannot negotiate fairly.
- Facilitate the crafting of specific and detailed agreements to reduce the opportunity for the abuser to take advantage of ambiguities.
- Consider using phone mediation.
- Inform the parties that mediating the dismissal of a protection order is not allowed.

## Safety Planning

A safety plan is a tool to help victims identify ways to stay safe. Most victims of domestic violence and their children have a variety of methods that have helped them keep safe in the past. The mediator should take all discussions of fear and safety seriously. If the mediator has any questions at all during the course of the discussion with the party, call TESSA's 24-hour Crisis Line 719-633-3819.

1. Ensure that there is a safe and private area in the office where the mediator can speak to the abused party alone.
2. Offer the use of a phone so that the abused party can contact TESSA. TESSA has trained professionals who are able to offer confidential services and should be able to help the abused create a safety plan.
3. If the abused party does not want to contact TESSA, the mediator may want to ask the party's permission to call TESSA for consultation. TESSA should be able to walk the mediator through some basic planning strategies. The mediator should assure the abused party that TESSA's services are confidential and that the mediator will not disclose any personal information.
4. The party may be able to identify friends or family that have been helpful in the past or who are able to offer a place to stay. The mediator should offer the use of her/his phone so that the party can contact friends or family, if the party wishes to do so.
5. Discuss with the party what she/he will do with any paperwork that she/he is taking home, especially if she/he still lives with the abusive party.
6. Consider what the party will do when she/he leaves the mediator's office and where she/he will go. Work with the party to ensure that she/he will be safe during the rest of the day. Ask questions like: "What is your mode of transportation and is it safe? Where is your car parked? Do you have a safe place to spend the night?"
7. Request an escort for the party by contacting El Paso County Security (at the Court House) at 520-6500.

**TESSA** offers victims of domestic violence confidential information and referrals, emergency shelter, crisis intervention, counseling, support groups, and safety planning. For more information about TESSA or to speak with a confidential advocate, please call **TESSA's main office 719-633-1462 or the 24-hour Crisis Line 719-633-3819.**