

## **Hennepin County Family Court Enhancement Project**

### **Guidance on ADR in the Context of Domestic Abuse**

As part of the work of the Family Court Enhancement Project, leaders in the Hennepin County ADR and family law community have worked to determine how to ensure that when domestic abuse is present, the dispute resolution process used will produce a safe and workable outcome for the family. The following guidance was developed after consideration of the research, literature, tools and screening guides related to the domestic abuse implications for mediation. The following guidance was developed by the FCEP in order to improve the ability of mediators, ENE providers, family lawyers and the courts to maximize dispute resolution resources, assist parties in choosing the appropriate dispute resolution process and to assist ADR providers and attorneys to shape ADR process and improve the experience of litigants, producing more safe and workable outcomes for families experiencing domestic abuse.

#### **EXPECTATIONS OF ATTORNEYS REPRESENTING CLIENTS IN FAMILY LAW MATTERS**

Every attorney should:

- (1) Have a screening/assessment discussion (addressing the five areas in the BWJP Mediation Discussion Guide) with every client, regardless of whether the client has raised domestic abuse as an issue.
- (2) Convey to the ADR provider any concerns about whether the process should go forward and request any modifications to the ADR process that are needed in order to account for the abuse or other concerns.
- (3) Before taking any family law case, and in order to fully advise clients about their options, become informed about the range of potential ADR and traditional dispute resolution processes available in the area, including the features of each process and the range of modifications to the process which might be required to account for any concerns.

*NOTE: We need to educate attorneys on how to conduct this conversation with the client, including on how to decide with the client (1) whether the ADR process under consideration will result in safe and workable outcomes for the client and children and (2) what (if any) modifications to the process could account for the effects of the abuse on the part(ies) ability to engage in the ADR process.*

#### **EXPECTATIONS OF ADR PROVIDERS**

**When a party is self-represented, the ADR provider should:**

- (1) In every case and regardless of whether either party has raised domestic abuse as an issue, engage in a screening/assessment discussion (addressing the five areas in the BWJP Mediation Discussion Guide) with each party in separate conversations.
- (2) Before taking a family law case, become informed about the range of potential ADR and traditional dispute resolution processes available in the area, including the features of each process and the full range of modifications to the process which could account for the effects of the abuse on the part(ies) ability to engage in the ADR process.

**When one party is self-represented, the ADR provider should:**

In every case and regardless of whether either party has raised domestic abuse as an issue, engage in a screening/assessment discussion (addressing the five areas in the BWJP Mediation Discussion Guide) with both parties in a pre-process conversation.

**When one or both parties are represented the ADR provider should:**

- (1) Conduct a pre-ADR conversation with the attorney and verify that the attorney has completed the screening/assessment discussion addressing the five areas in the BWJP Mediation Discussion Guide.
- (2) Decide preliminarily whether the process should go forward and, if so, whether any modifications to the ADR process are needed in order to account for the abuse or other concerns.
- (3) Depending on what the ADR provider can determine about whether the attorney has engaged in a full screening/assessment discussion (addressing the five areas in the BWJP Mediation Discussion Guide) with their client, the ADR provider should also conduct their own screening/assessment conversation with each party in separate conversations. In any event, an initial conversation with each party before the ADR process begins is recommended and can serve many purposes beyond screening, including reaching agreement on safe termination procedures, establishing ground rules and signals, and creating a relaxed and productive relationship between each party and the ADR provider.

*NOTE: We need to educate ADR providers on how to conduct this conversation, including on how to decide with the party (1) whether the ADR process under consideration will result in safe and workable outcomes for the client and children and (2) what (if any) modifications to the process could account for the effects of the abuse on the parties' ability to engage in the ADR process.*

**Judicial Considerations**

Initial Case Management Conference (ICMC) scripts have been developed and are currently being utilized by judicial officers in jurisdictions such as Hennepin County, Minnesota to help the Court manage the conversation around domestic abuse in dispute resolution processes. These scripts should discuss the different types of dispute resolution processes and what is expected of parties to successfully participate. They also should reiterate that ADR processes are entirely voluntary and not mandatory, so parties don't feel pressured into participating.

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