

## ***DOMESTIC ABUSE CONCERNS FOR MEDIATION***

### **CHECKLIST FOR DOMESTIC RELATIONS AND JUVENILE COURT JUDGES AND MAGISTRATES FOR REFERRING CASES TO MEDIATION**

- I. When no allegations of domestic violence are presented:
  - a. Inquire of attorneys or parties (if without counsel) of any allegations of domestic violence. (Note if possible, it would be preferred that this be done separately with the parties, either in person or by a written screening tool. If done separately, the Magistrate or Judge should not personally do the screening so as to avoid exparte communications).
  - b. Inquire of the attorneys, their belief about each party's ability to negotiate with one another, with or without attorneys present.
  - c. Inquire of the attorneys or parties (if without counsel) about their desire to participate in mediation. (Note if possible, it would again be preferred that this be done separately with the parties, either in person or by a written screening tool. If done separately, the Magistrate or Judge should not personally do the screening so as to avoid exparte communications).
  
- II. If there are allegations of domestic violence:
  - a. Inquire of the attorneys their belief about each party's ability to negotiate with one another, with or without attorneys present.
  - b. If attorneys say parties are not able to negotiate with one another, suggest that attorneys either attend mediation or that they send position statements to the mediator and spend adequate time preparing their client.
  - c. Inquire of the parties (if without counsel) or have the attorneys inquire of the parties, separately about their desire to participate in mediation. (Note if without counsel, it would be preferred that this be done separately with the parties, either in person or by a written screening tool. If done separately, the Magistrate or Judge should not personally do the screening so as to avoid exparte communications).
  - d. Suggest that an advocate accompany client.
  - e. Inform mediator of allegations if mediation goes forward.
  - f. If mediation is deemed inappropriate, do not order mediation.
  
- III. When a Temporary Protection Order, Civil Protection Order or Restraining Order has been issued:
  - a. Inquire of attorneys, their belief about each party's ability to negotiate with one another, with or without attorneys present.
  - b. If attorneys say parties are not able to negotiate with one another, suggest that attorneys either attend mediation or that they send position statements to the mediator and spend adequate time preparing client.

- c. Inquire of the parties (if without counsel) or have the attorneys inquire of the parties, separately about their desire to participate in mediation. (Note if without counsel, it would be preferred that this be done separately with the parties, either in person or by a written screening tool. If done separately, the Magistrate or Judge should not personally do the screening so as to avoid ex parte communications).
- d. Suggest that an advocate accompany client.
- e. Provide in the referral entry that the parties' contact with one another during mediation will not be deemed a violation of the order.
- f. If the order was issued through another court, ask that the other court issue an Entry, before mediation begins, that the parties' contact with one another during mediation will not be deemed a violation of the order.
- g. Inform mediator of existing protection orders if mediation goes forward.
- h. Provide copies, or have attorneys provide copies, of all pertinent information including judgment entries to mediator.
- i. If parties should not have direct contact with one another, advise mediator and discuss with attorneys, the need for different appearance times.
- j. If addresses are not be disclosed, advise mediation office.
- k. If mediation is deemed in appropriate, do not order mediation.

IV. If there has been a conviction for domestic violence or child abuse:

- a. Follow guidelines a. through h. in #II above.
- b. Provide written findings of fact pursuant to 3109.052 (A) (See attached sample Judgment Entry).