

MEDIATION PRACTICE

THE TRANSFORMATIVE FRAMEWORK

Advance Mediation Training

Presented by

UMPOD Office for
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LEARNING OBJECTIVES

As participants in the workshop, individuals will:

- Acquire a more sophisticated understanding of the transformative framework.
- Recognize the challenges for mediators in performing the core response skills and sustaining effective communication with parties throughout a mediation.
- Develop a reflective approach to practice.
- Recognize the mediator “moves” that characterize competent transformative practice.
- Understand why particular “moves,” in context, support empowerment and recognition shifts.
- Strengthen more advanced skills for practice.
- Strengthen the skill of listening for the interaction and responding supportively to support empowerment and recognition shifts.

What people find most significant about conflict is not that it frustrates their satisfaction of some right, interest, or pursuit, no matter how important, but that it leads and even forces them to behave toward themselves and others in ways that they find uncomfortable and even repellent. More specifically, it alienates them from their sense of their own strength and their sense of connection to others, thereby disrupting and undermining their interaction between them as human beings. (Bush & Folger, 2004)

COMMUNICATION CHALLENGES

Transformative practice poses challenges for mediators in performing the core response skills and sustaining effective communication with parties throughout a mediation.

Mediator Presence and Style

The wording, vocal style and emotional tone of mediators' communication affects parties' interpretations of and reactions to interventions and shapes the overall climate of the interaction.

Communication Anchors

- Rely on a communication style that blends a clear sense of being proactive, non-directive, and supportive simultaneously.
- Remember that a mediator's physical presence alone has an impact on the parties' conflict interaction.
- Matching the energy and emotional tone of the parties is critical in conveying that a mediator is present with the parties and their unfolding conflict.
- Listen for feelings and emotions behind what is being said in order to accurately recognize the emotional state behind what is being said and support the quality of the mediator's response.

POWER IMBALANCES

Improving the quality of deliberation in decision-making through empowerment and recognition shifts is the most important value of a transformative intervention. It is a higher priority than any particular substantive outcome that might be achieved.

- Every participant in mediation has the inherent capacity for both self- determined choice and responsiveness to others.
- The quality of people's interaction matters regardless of the power structures in which they interact.
- Every participant knows how to best work through conflict, including what options to consider and what choices to make.
- People often decide to live with inequities or injustice to avoid challenging power because of the risk associated with seeking change.
- In many situations, people still value the ability to interact constructively, to keep lines of communication open, and to be heard and understood.
- It is disempowering to participants for the mediator to make assumptions or to supplant party choice making, including choices to comment on or raise issues, directly or indirectly, related to power imbalances.

TRANSFORMATIVE PRINCIPLES AND CONFLICT ESCALATION

A relational orientation is not the same as a relationship orientation.

- Transforming the quality of people's interaction is not equivalent to establishing positive, harmonious relationships.
- Achieving recognition does not always mean that people adopt positive views of each other.
- People can understand each other better and based upon that understanding decide to end relationships, create distance between themselves, or protect themselves from each other.

Transformative support for party-driven efforts at conflict resolution can result in parties' choosing to escalate conflict.

- People are supported in making deliberate, reflective decisions that escalate conflicts. These decisions can be based upon greater understanding of the other.
- The choice to escalate a conflict may be a move that someone makes in an attempt to shift power, redistribute resources, or challenge a perceived injustice.
- Increased emotional expression may be an indication of an empowerment shift. When people feel a greater sense of empowerment, they may be willing to take more risks with their emotions.

THE CONNECTION BETWEEN THEORY AND PRACTICE

- Mediation practice is always more than a simple matter of “skills.”
- Mediator *interventions* are shaped by the mediator’s *premises* (fundamental value-based beliefs about the nature of conflict and the capacities of human beings in conflict).
- Stated another way, *purpose drives practice*.
- Mediation cannot be practiced competently or responsibly without a constant awareness of this connection.

ORIENTATION (WHY)



PURPOSE (WHAT)



PRACTICE (HOW)

TRANSFORMATIVE MEDIATION: THE MEDIATOR'S TASK

The **mediator's task** is to use his or her influence *only* to support the parties in their efforts to change the quality of *their own interaction*:

- By supporting *their* efforts to shift the developing patterns of *their* interaction...
 - from relative personal weakness toward greater strength (the empowerment shift) and
 - from relative self-absorption toward greater responsiveness (the recognition shift).
- “Supporting” does not mean forcing the parties, or “getting them” to do something, or substituting the mediator’s choices for the parties’ choices.
- The voluntary nature of the parties’ choices must be respected and preserved as much as possible at all times.

Because the conflict, and the potential for change that lies within the conflict, unfold in the interaction, in the room, moment by moment:

- The essence of the mediator’s work is to **closely attend to the unfolding interaction ---**
 - to observe **emerging patterns** of weakness and self-absorption;
 - to call the parties’ attention to the **opportunities** that lie within those developing patterns;
 - to support parties’ efforts at **decision making**; and
 - to support parties’ efforts at **perspective-taking**.

From R.A.B. Bush & J.P. Folger (1994). The Promise of Mediation.

BROAD PATTERNS OF TRANSFORMATIVE PRACTICE

There are three broad patterns that characterize transformative practice in mediation (Bush & Folger, 1994, p. 100):

“First, mediators adopt a **microfocus**, concentrating on the presentation of the conflict by the parties that takes place in the mediation session itself.

Second, mediators take conscious steps to encourage parties to engage in **deliberation and choice making**.

Third, mediators consciously invite and help the parties to **consider each other’s perspectives.**” (Emphasis added)

TRANSFORMATIVE MEDIATION PRACTICE: THE CORE

There are 3 core practices a transformative mediator must master. These are not “steps,” “stages,” or even “skills,” but *a core approach to interaction in-the-moment* that is enacted over and over again in the session as the conflict conversation unfolds.

Attend

The mediator pays close attention to the unfolding conversation, in order to *identify opportunities* for empowerment and recognition as they arise. This is also known as maintaining a “*microfocus*.”

Monitor/Maintain

The mediator thinks before intervening, in order to *check his or her own intentions* for intervening, ensuring she/he *maintains a transformative purpose* and is not directive or leading.

Respond

The mediator responds, *when appropriate*, only *to support the parties’ own efforts* to make empowerment and recognition *shifts*.

MOVES IN CONTEXT: RESPONDING TO OPPORTUNITIES

In studying and assessing mediator talk, **context** is an essential consideration.

- Whether any given mediator move is **consistent** with the transformative framework **depends** upon the context in which it is enacted --- especially the context of **preceding party moves**.
- Mediators should not be “ahead of the parties.”
- Each mediator move should respond to an **opportunity for empowerment or recognition** that was presented in the **parties’ own talk**.

BUT --- WHEN TO INTERVENE?

Mediator moves *must be considered in context*. Although the moves outlined here are those most likely to support empowerment and recognition, the real test of whether they are being used consistently with the transformative model is whether and how they *respond to opportunities* for empowerment and recognition shifts that arise in the parties’ own conversation.

The mediator does not create opportunities for transformation, nor does the mediator force the parties to transform anything. The mediator pays close attention to the unfolding interaction in order to:

- Notice the opportunities for transformation --- for empowerment and recognition shifts in the interaction --- that appear in the parties’ own conversation
- Highlight those opportunities for the parties
- Allow the parties to choose whether and how to respond to the opportunities they themselves present
- Support whatever choice the parties make and continue to work with their interaction

One way to think of opportunities --- and to notice them in the course of interaction --- is as “places of instability” or “fractures” in the destructive conflict interaction cycle or pattern.

- These places of instability --- tiny fractures in the pattern --- are actually opportunities for change.
- They are places where the parties themselves signal that it might be possible to interact in a different --- more constructive --- way.

THE DANCE (OR, “DO I POUNCE ON EVERY OPPORTUNITY?”)

Even brief segments of conversation are rich with opportunities for empowerment and recognition. All opportunities cannot be responded to; some choice is inevitably necessary. Things to consider:

The Flow of the Conversation

- Parties can notice and work with opportunities for transformation themselves, without any assistance. They do this every day in ordinary conversation and argument. They do not need you to intervene if “shifts are happening.”
- If parties get stuck in the destructive cycle, opportunities for transformation are still likely to be arising, but the parties are not likely to be noticing or acting upon them. This is an appropriate time to intervene.

Invitation from the Parties

- Parties sometimes stay quite engaged, even when the conflict looks to the mediator like it might be in a destructive cycle.
- Parties may signal to the mediator that they want help with their interaction, however, by:
 - Turning to look at the mediator
 - Asking directly for help in some way
 - Asking indirectly for help, e.g., “Do I have to keep doing this?”
 - Shifting their engagement with the other party from second person to third person (from “talking to” to “talking about”)

Timing

- Some degree of empowerment generally comes before an offer of recognition. Consider whether the parties are interacting with relative increases in personal empowerment before highlighting recognition opportunities.
- Conversation tends to have “rhythms”, with periods of intensity and then points where the conversation “lulls”. The “lulls” or “pauses” in the conversation can provide opportunities to intervene without interrupting the parties’ own flow.

A TEMPLATE FOR REFLECTIVE PRACTICE: MOMENT-TO-MOMENT ANALYSIS

When Party does / Parties do X (present an *opportunity* for Empowerment or Recognition)...

e.g., attempt to engage directly with each other
engage in “conflict talk”

Mediator makes Y move...

e.g., summarizes all elements of party-to-party talk including the “conflict” talk reflects what a party has said using the second person “you” asks open-ended questions that invite elaboration of a point of contention

Because it supports party efforts at party empowerment and/or inter-party recognition...

i.e., shift toward greater clarity, ability to make decisions
shift toward greater interpersonal understanding

By having Z effect on the ongoing conversation

e.g., framing mediation as a constructive conversation
supporting the parties’ sense of their agency
supporting the parties’ orientation to each other
supporting the parties’ conflict talk
supporting the parties’ decision-making process

“SIGNPOST” EVENTS

There are many moments in a mediation where a mediator confronts a crossroad, and must make a choice of which path to follow.

The key “signpost” events are those where competent transformative practice suggests one set of possible moves, while other forms of practice suggest very different mediator moves in response to those very same events.

These “signpost” events provide a way of assessing competent transformative practice:

- The opening of the session
- A party narrative
- Attempts at direct party-to-party engagement
- “Conflict talk”
- Process choice points

Each of these “signpost” events in the interaction calls forth certain responsive moves from a competent transformative mediator.

RECOGNIZING THE SIGNPOSTS - Opportunities

1. The opening of the session

This event is easy to recognize. It usually occurs during the first minutes of a mediation session.

2. A party narrative

- A *narrative* is when a party attempts to tell a *story* --- generally a story about what the situation is or what it has meant to that party.
- Narratives may contain descriptions of what happened, explanations or justifications of past behavior, attributions about the behavior or motivations about the other party, and/or descriptions of the impact of the conflict on the party’s life.
- Narratives may be articulate and well-organized, with a recognizable beginning, middle and end, or they may be rambling, muddled and confused. They may be long or relatively short.

Examples: “Let me tell you what brings us here...”

“This has been difficult for me in so many ways..”

“Every time we have tried to discuss this in the past...”

“Here’s what this is really about...”

3. Attempts at direct party-to-party engagement

- Attempts at direct party-to-party engagement can usually be recognized by a *shift* --- either *verbally*, as in the shift from a party talking in the third person (talking *about* the other party, or “he/she-talk”) to talking in the second person (talking *to* the other party, or “you-talk”), or *nonverbally*, as in the shift from a party facing the mediator to facing the other party.

Examples: Shift in person addressed, from addressing mediator to addressing other party:

“That’s what *you* always say...”

“*You* know that’s not how it happened...”

Shift in gaze, from mediator to other party

Shift in body posture, from mediator to other party

4. “Conflict talk”

- “Conflict talk” can be recognized by its *oppositional* quality (“opposed to”, that is, against, hostile or contrary). Conflict talk frequently tends to be heated, emotional (e.g., angry, sarcastic, icy), and full of attribution and blame. It can be either directed *toward* the other party (direct engagement) or addressed *to* the mediator *about* the other party.

Examples: “This isn’t about my work. This is about you being a racist!”

“If you hadn’t...”

“He always makes the same excuse...”

5. Process choice points

“Process choice points” are moments in the mediation when it is clear that there are choices to be made about *how to proceed* next. These moments might appear as direct requests in the parties’ own talk, be implied from questions or objections that a party raises about the process, or emerge from a period of discussion that appears to be “recycling” or has “stalled out.”

Examples: Direct requests:

“So what do we do now?”

“Where are we going with this?”

“Now what?”

“Is this over yet?”

“Can we end this?”

“Can I go back to...?”

Questions about or objections to some aspect of the process:

“Why does he get to speak first?”

“I don’t like how you’re talking to me.”

“This isn’t working.”

When discussion has been ongoing for some time, whether between the parties themselves, or between a party and a mediator, and the discussion begins to sound “recycled,” or stalls out completely. The discussion will generally have a repetitive, disorganized, or confused quality to it.

REFLECTION: HOW IT CAN SUPPORT E/R

To practice reflection seriously, it helps to understand just how powerful it can be in supporting both Empowerment and Recognition, for both the “speaking party” and the “listening party”.

- Reflection can help the “speaker” make empowerment shifts by:
 - helping the speaker to “get on the record”, establish their presence in the room
 - giving the speaker the chance to “get clear” by “listening to himself” through the reflection
 - allowing the speaker to deliberate and choose to edit, modify and clarify comments
- Reflection can help the “listener” make empowerment shifts by:
 - allowing the listener to “listen in” to what the speaker is saying without threat, “from a safe distance”, and thus
 - offering the listener the chance to hear and think about “new information” without pressure
- Reflection can help the “speaker” make recognition shifts by:
 - allowing the speaker to hear when he has “gone too far” and reconsider and retract negative comments
- Reflection can help the “listener” make recognition shifts by:
 - allowing the listener to hear the speaker’s comments “for the first time” or “in a different way”, because of the reflector’s voice

In general: Reflection, practiced properly, acts as an “amplifier” of the conversation for each party – it makes what is being said more audible and intelligible to both parties. This gives strong support to party decision making and inter-party communication.

REFLECTION: PRACTICE GUIDELINES

Reflection is most effective if practiced within some basic guidelines:

- Reflection is usually done with one party at a time, and with complete engagement with that party alone – not moving back and forth between the parties
- Reflection can also be done with both parties to highlight the patterns of interaction between and among them.
- Reflection involves “mirroring” to the speaker whatever s/he has expressed
 - It does NOT mean “carrying” the speaker’s message to the other party
- Reflection means providing an undistorted mirror: this means a reflection should be complete and close.
 - It is most effective when inclusive, capturing the full range of what has been said
 - Try not to edit, soften or filter anything the speaker has said
- Reflection can and should include reflection of emotions expressed – not just what has been said, but how the speaker appears to be feeling
 - There is hardly any form of “comment” that cannot be usefully reflected – even silence, reluctance to speak, etc.
 - In other words, what is being reflected is any and all communication or expression, not just speech
- Reflection is most effective when it “matches” the intensity of the comment – matching the energy, not the emotion

Reflection usually carries its own confirmation:

- An effective reflection will usually evoke an immediate confirmation response from the speaker:
 - “Yes, that’s it,” or
 - “That’s right, and also . . .”
- Even if the reflection missed the mark, it usually evokes a response from the speaker that “cures” the mistake:
 - “That’s not it at all, here’s what I said”
 - “I’m not just mad, I said furious!”
- In other words, provided the mediator is genuinely trying, reflection is self-confirming and self-correcting.
- The positive “empowerment” effect of reflection can be seen whether the speaker confirms or corrects the reflection – in either case, s/he is gaining clarity and strength

SUMMARY: HOW IT CAN SUPPORT E/R

Summary, like reflection, can also be a powerful tool for supporting Empowerment and Recognition shifts, for both parties – depending on how it is used.

- Summary can support empowerment shifts, by:
 - helping the parties to “part the fog” of details and see the “big picture” of their conflict conversation, without confusion
 - allowing them to hear/see a “replay” of what they’ve discussed and edit/add to/subtract from that picture
 - giving the parties the opportunity to assess the whole conversation and choose for themselves what specific area to address next
 - revealing for the parties where their most serious differences are, so they can decide whether/how to address them
- Summary can support recognition shifts, by:
 - highlighting for the parties the differences in how they see things, so they have the opportunity to appreciate the other’s “different reality”
 - allowing the parties the opportunity to see what the other party values (wants to focus on) and why

Like reflection, summary, practiced properly, can have an amplification/ clarification effect, but now at the level of conversation rather than individual comment. It makes the conversation as a whole, including the differences revealed and the choices offered, more “visible” to the parties, so they can make clearer choices about what to do.

SUMMARY: PRACTICE GUIDELINES

Summary is most effective if practiced within some basic guidelines:

- Summary, unlike reflection, directly involves both parties – that is, it involves what both have said during a “chunk” of the conversation, and it is delivered in a way that addresses both parties
- Summary is not a literal “reflection” of everything said, but rather a thematic replay of the “subjects of discussion” that have emerged
 - subjects summarized should include whatever topic either side brought up
 - subjects summarized should include what the parties seem to agree about and, especially, what they disagree about – subjects of disagreement
 - summary of subjects disagreement should include the different views each side expressed on each point
- In summarizing subjects discussed and areas of disagreement, engage with both parties alternately, but directly – not “he said this, she said that,” but “you said this, and you said this”

- Summary, like reflection, should use parties' language where possible, and subjects should not be omitted, edited or prioritized for the parties
 - Most important, summary should not soften or dilute differences and disagreement
 - Rather, summary should highlight sharp differences
- Summary is often usefully followed up with a "check-in"

As with reflection, summary usually produces its own confirmation of effective practice:

- In response to a summary, parties will usually move the conversation in a direction, or choose a next step, that the mediator could not have predicted
- This unpredictable movement is the sign that the summary was effective in supporting party choice, unaffected by any mediator judgment or agenda.

ANATOMY OF A SUMMARY

A summary generally follows a period of party-to-party talk. By intervening, the mediator is likely to draw attention to himself or herself, and away from party interaction. Nonetheless, this intervention is helpful because it supports the goal of party empowerment (fostering strength of self through party clarity and choice), and if done properly and at the right time, also supports inter-party recognition (fostering the development of party-to-party connection through interaction and understanding). Therefore, these guidelines are offered to help you in constructing a summary that is helpful for the parties and consistent with the transformative framework.

1. Begin with a "metacomment."

- A metacomment is a comment on the conversation itself, that acknowledges the fact, richness, and/or complexity of the conversation and the participation of both/all parties.
- Example: *"The two of you have put a lot out on the table in your conversation."*

2. Be transparent.

- State your intent in intervening. Emphasize party agency/control by downgrading your role and using "tentatives."
- Example: *"Maybe it would be helpful to you if I kind of summarize the points where you agree and those where you disagree, so you can decide how to proceed next."*

3. Organize by themes.

- Do not provide a chronological replay of the conversation. Instead, highlight themes that the parties raised, each party's view on that theme, and the reason for each party's view, if stated.
- Example: *"You both agree that a Manual is necessary for training. However, you disagree on the amount of preparation needed with respect to an agenda. Jim, you prefer an agenda that is planned from start to finish, because it takes care of group anxiety and lets everyone know where the program is going. Judy, you prefer to have a detailed agenda for the first day only, and a rough skeleton after that, because you believe this lets you respond to the needs of the group in the moment, and deal with the fact that each training group is different, ..." [and then on to the next theme(s)].*

4. Give control back to the parties.

- Exit the summary by giving control of the conversation back to the parties. Use a check in, along with "you-talk" and tentatives to downgrade mediator agency.

- Example: “So, that is just what I observed in your conversation. You decide what to do from here. For example, you might want to talk more on any of these topics, or raise a new topic, or do something completely different. That is up to you. So what do you think...?”

CHECKING IN: PRACTICE GUIDELINES

- The purpose of a check-in is to allow parties to make decisions about the mediation process and their participation. They are questions that offer parties a choice rather than make a demand, giving parties the opportunity to take control.
- There are many decisions being made during a conflict.
 - Some decisions relate to how a party chooses to express him or herself, including what to bring up and how much to say about a particular topic.
 - Some decisions relate to the process and its structure (e.g. who speaks when, whether to have a private session, how to best use remaining time).
 - Some decisions relate to how a party acts (e.g. interrupting, not saying much, getting visibly upset).
- Check-ins make decision points transparent and provide a context for the question that is being asked.
- Check-ins sometimes follow reflections or summaries and invite the speaker(s) to add or correct what the mediator has said. This allows the speaker to be the final editor of her or his own speech.
- When check-ins are about content, they **follow** from what a speaker says rather than leading the speaker where the mediator thinks he/she should go. They are generally **open-ended**, inviting elaboration. This allows the speaker maximum discretion in terms of how he/she chooses to respond. They may actually be in the form of a question, or the question may be implied.
 - *“You keep referring to November as a turning point. Would you like to say more about what happened then?”*
 - *“It sounds like you might have a lot more to say about xxx . . .”*
 - *“You’ve gone back and forth several times on how to divide up the school week and seem stuck. Would it be helpful to think about other options?”*
- When check-ins are about process, the mediator notes a decision point and invites parties to consider what they would like to do. They are generally directed to both or all parties involved in a session.
 - *“I’m wondering if you have any suggestions about how you want to have this conversation?”*
 - *“You may not realize that there’s about a half-hour left for this session. I wonder if you’re interested in writing down some of these points you’re discussing or if you prefer to leave them as verbal agreements?”*

- When check-ins are about behavior, the mediator describes what she/he sees or senses and then follows with a question that invites party decision-making. Rather than interpreting the behavior, the mediator describes it
 - *“I noticed that you reacted when x was said. I’m wondering if you’re comfortable with what’s being said or might prefer to meet privately?”*
 - *“I’m aware that you haven’t said anything in quite awhile and want to check in with you. Are you okay with how much you’re getting to say?”*

CHECKING IN: HOW IT SUPPORTS E/R

Check-ins are a specific form of questioning that mediators use. They are powerful tools for supporting Empowerment and Recognition shifts for both parties when they are used correctly.

- Check-ins can support empowerment shifts by:
 - providing opportunities for a party to elaborate on and get clearer about what s/he has said
 - allowing a party to correct a mediator reflection or summary, and thus gain clarity and also regain a sense of control and agency
 - highlighting decision points so that parties can take opportunities to make choices for themselves
- Check-ins can support recognition shifts, by:
 - letting the non-speaking party hear fuller elaborations of what the speaker is saying, which may lead to new understandings
 - allowing each party to become aware of the choices and priorities of the other, as decisions are faced and made in different ways
- Check-ins are a concrete manifestation of a transformative mediator’s commitment to keeping decision-making in the hands of the parties.

MICROFOCUS AND ITS IMPLICATIONS

Microfocus --- concentrating on the presentation of the conflict by the parties that takes place in the mediation session itself --- has a number of practical implications.

- The parties “present” the conflict through their interactions. The parties’ interaction ***IS*** the conflict, and thus is of paramount importance in the mediation.
- The opportunities for transformation present themselves ***in*** the parties’ interaction ***as*** the conflict unfolds. “Short-circuiting” the conflict interaction short-circuits these opportunities: they cannot arise, but remain hidden, submerged, and therefore lost.
- One important task of the mediator is to let the interaction, and therefore the conflict, unfold in real time.
 - Research has found that an important difference between the practices of transformative mediators and problem-solving mediators is that transformative mediators attend to and “open up” the unfolding conflict between the parties, while problem-solving mediators “shut it down.” (Della Noce, 2002)
- Another important task of the mediator is to support parties’ efforts at conflict transformation. As the parties engage in the conflict interaction, the places of potential transformation emerge in the parties’ own talk, and can be captured and highlighted by the mediator so that the parties can decide what, if anything, to do about them.

GUIDE TO MOVES AND STRATEGIES

STRATEGY: supporting the parties view of mediation as a constructive conversation

Supportive mediator moves:

- Using a *metaphor of conversation* to describe mediation, the mediator's role, or the party's role.
 - conversation *between the parties*
 - related terms: discussion, talk, chat, etc...
- Identifying *inherent constructive possibilities* in having a conversation, such as:
 - talking over differences
 - increasing clarity and understanding
 - hearing new information
 - being heard by the other
 - seeing choices
 - making decisions
- Talking to parties rather than “at” them
- Reinforcing the conversation metaphor throughout the mediation.

For example, in describing a summary use the phrase “... in the conversation the two of you have been having...”

STRATEGY: supporting the parties sense of their own agency

Supportive mediator moves:

- Using the second person subject, singular and plural (“you”)
- Using second person possessive adjectives (“your”)
- Using parties’ names in the subject position of a sentence, thereby “constructing” them as people capable of action
- Downgrading mediator agency, e.g.:
 - emphasizing role as “helping,” or “assisting”
 - disclaiming power to decide
- Using reflections that “follow” the content and emotional tone of a party’s own comments
- Including parties’ own words and metaphors in reflections & summaries
- “Getting out of the parties’ way,” e.g.:
 - allowing self to be interrupted
 - allowing self to be corrected

- Offering reflections in a tentative manner, when they involve any interpretation or when the meaning is unclear especially by using “check ins” and/or ending with an opening, questioning tone

STRATEGY: orienting the parties to each other

Supportive mediator moves:

- Using the conversation metaphor (it takes two!)
- Using the second person, especially plural subject
- Making explicit references to “the other”
 - by name
 - “both of you,” “each of you,” or “together”
- Allowing parties to speak of and for each other (that is, to step into the other’s shoes)
- Checking in with a party who has not been “in” the conversation for a period of time, to “make space” if the party chooses to speak
- Allowing significant segments of uninterrupted party-to party talk (“intentional silence”)
- “Following” party-to-party discussions through *inclusive* summaries (summaries that include important topics raised by both/all parties, in order to help parties hear each other)
- Ensuring that topics named in a summary relate to what both parties have been talking about and capturing each party’s perspective related to that topic
- Being intentionally silent when a party asks a question of another party

STRATEGY: supporting conflict talk

Supportive mediator moves

- Using minimal encouragers at party pauses to encourage a party to continue speaking (“Mm-hmm,” “Go on,” “Okay”).
- Using key word encouragers, that is, keying in to term a party used that seems to carry “heat” (“Support, as in...?”)
- Using open reflections - (reflections that “follow” the content and emotional tone of party conflict talk and “check in” with party on accuracy of reflection).
- *Using reflections and summaries to mark points of disagreement* (not just agreement or common ground).
- Using reflections and summaries that “follow” conflict storylines.

- Allowing multiple themes / storylines to develop in the course of conversation (not just themes that seem tangible, or solvable)
- Asking questions that invite elaboration
- Allowing conflict talk to continue uninterrupted

STRATEGY: supporting parties' decision making process

Supportive mediator moves

- Summarizing and highlighting available decision-points (no distinction between process and content decisions)
- Offering decision-points to the parties
- Offering any mediator suggestions only tentatively
- Offering any mediator suggestions with alternatives, in order to emphasize opportunity for party choice
- Summarizing decisions that have been made during the mediation – about content and process
- Identifying during the opening of the mediation some of the kinds of decisions available to parties, such as what to do about the issues the parties face, what to say, when to say it, how to say it, how to react to what the other party says, etc.

Appendix I

Incorporating the Voice of the Child

Potential Advantages of Child in Mediation

- Gives child a voice
- Places value on child's opinion
- Can provide parents with information from the child's perspective
- Can influence parental decision-making
- More informed decision-making
- Parenting plans more child sensitive and child focused

Potential disadvantages of Child in Mediation

- Child caught in the middle
- Child subject to individual parental pressure
- Child feels need to choose one parent over the other
- Suffers disappointment if decision is not inclusive of their wishes

When it Might be Appropriate to Include Child in Mediation

- Requested by parent or child and all agree
- Child has capacity – age appropriate and cognitive development
- Child has stated a clear preference
- Child is refusing to spend time with one parent
- Need for clarification or understanding
- Screening negative for domestic violence and/or child abuse

Appendix II

Domestic Violence Screening Tool

Ask these questions in order until you come to the end or the tool indicates that the case is inappropriate for mediation.

1. Are there any Protection from Abuse Orders (PFA) or Orders of Protection in place?
If **YES**, explain that the Center's policy is that mediation cannot be scheduled when a PFA is in place.
If **NO**, continue.
2. Are there recently closed or withdrawn PFAs?
If **YES**, ask questions about safety and appropriateness of a face-to-face meeting.
If **NO**, continue.
3. Are you currently or have you ever been involved with your local domestic violence services (Transitions or SVWIT)?
If **YES**, discuss the following options:
 - Talk to your advocate about the option and benefits of mediation in this situation
 - Talk to your advocate about them joining you at the mediation (this is something that the other party must agree to in advance of the mediation.)
 - Talk to your advocate about any safety plans you may want to use.
 - Sign a release so that Center staff may talk to the advocate.
 - Discuss additional safety options (*see next page*)If **NO**, continue.
4. Do you think that you will be able to speak openly during mediation? ☐ Yes ☐ No
5. Has fear for safety ever been an issue for you or your children or pets? ☐ Yes ☐ No
6. Do you have any concerns about mediating in the same room as _____? ☐ Yes ☐ No
7. Do you have any concerns about what may happen if you disagree with _____ or share information during the mediation?
 ☐ Yes ☐ No

Proceed with the case in one of three ways:

- i) If there are no concerns at this point continue on with the case. Be sure to document that you have done the screening and established that there are no concerns.
 - ii) Continue on with the case after hearing back from the party regarding their conversation with their advocate and plans for mediation are going forward.
 - iii) If anything surfaced so far that indicates a concern, continue on with the following domestic violence screening tool questions:
8. When you are in conflict with another person, how do you generally handle the situation?
 9. Mediation is a process where you and _____, with the mediators facilitating, will be discussing anything that you and _____ feel needs to be addressed. How do you see yourself communicating with _____?
 10. What other alternatives to resolve this conflict have you explored?
 11. Have the police ever been contacted as a result of a disagreement between you and _____? ☐ Yes ☐ No

12. Are you involved with any other service-providing agencies?

- ☐ Yes
- ☐ No If so, which ones?

13. Are there any other persons living with the children? ☐ Yes

- ☐ No

Proceed with the case in one of two ways:

i) If there are no concerns at this point, continue on with the intake being sure to record that this screening took place with no concerns.

OR

ii) If anything surfaced so far that indicates a concern, explain to the party that you have some questions that you would like to discuss with your supervisor. Assure them that you will be back in touch very soon.

Check with your supervisor or the Board member appointed to deal with DV issues. After this discussion, the case will proceed in one of three ways:

- i) Continue on with the intake, noting about the discussion having taken place.
- ii) Supervisor will talk with the party and discuss safety options.
- iii) Party may be requested to meet personally with supervisor to discuss what to do.

An in-depth conversation with supervisor will consist of the same above screening questions as well as a possible consult with a DV advocate which will allow better assessment of the situation.

Proceed with the case in one of two ways:

- i) Close case as screened inappropriate (see below).
- ii) Case continues to mediation with safety

options (see below). Decision on Case Screened

Inappropriate

It is important to be very careful when telling parties that their case will not be mediated. When a relationship includes violence or the threat of violence, indicating that a person has discussed this can put them at risk. Therefore:

1. The Center takes complete responsibility for any decision that mediation is inappropriate independent of what any party does or does not say.
2. If one party asks if the other has refused, indicate simply that "mediation works well in some situations and not in others and we feel mediation is not appropriate for you."

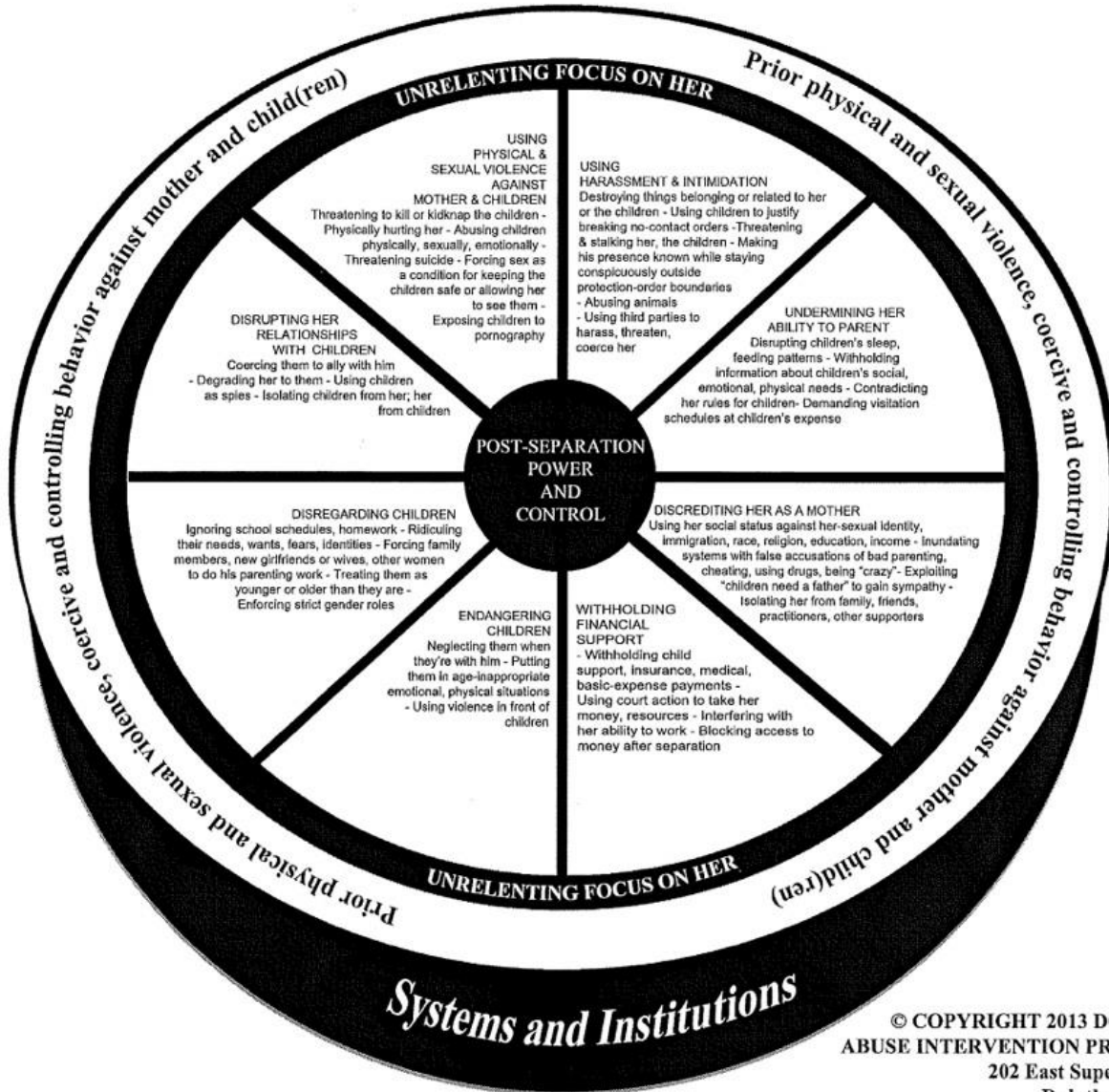
Safety Options for parties who choose to mediate even though some domestic violence, current or historic, is presented during screening

After the full screening is completed with the parties and they are choosing mediation as an option and the staff has determined that this case is appropriate to go forward, offer the following safety options:

1. Mediation session held during the work day in a location where others are not far away.
2. Offer staggered arrival and departure times.
3. Have an advocate present at the mediation (with the other party's agreement).

Appendix III

Post - Separation Power and Control



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ABUSE INTERVENTION PROGRAMS
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Appendix IV

Sample Policy on Domestic Violence

DEFINING DOMESTIC VIOLENCE

CSVMC defines domestic violence as an ongoing pattern of control and domination in a relationship. This may include physical violence, the threat of physical violence, economic abuse, sexual abuse, verbal abuse and/or emotional violence or abuse as an ongoing pattern of control and domination in a relationship.

Many relationships include an occasional power play, especially when parties are in conflict. However, when screening cases for mediation, our concern focuses on a pattern of domination via the use of control and fear of one person by another, because the more likely it is that this domination is present in a relationship, the less likely it is that mediation can succeed in promoting voluntary agreements between the parties.

MEDIATION CENTER'S POSITION ON DOMESTIC VIOLENCE:

Violence is not an acceptable way to resolve conflicts. People should not have to remain in abusive or violent relationships. Violence is not a negotiable issue (e.g. mediation might be used to avoid or prevent violence, never to set conditions for it).

Staff

1. Staff will screen for domestic violence during intake and determine appropriateness for mediation (see domestic violence screening tool).

Mediators

1. If anything in the interaction patterns or conversations of the parties leads you to suspect that abuse may be present, suggest a private meeting to check out your suspicions. Use the private meeting to explore your suspicions by asking about:
 - a. The allegation of abuse
 - b. What the party hopes to achieve in mediation
2. SUGGESTIONS FOR PRIVATE MEETINGS
Generally, it is best to meet first with the suspected abuser. (a listening session can offer opportunities for empowerment and also make them less paranoid about the separate sessions)

In the private meeting, ask each party general questions about the mediation, such as:

- How do you think the mediation is going so far?
- Is the process what you expected?
- What do you hope to get out of the mediation?

- At this point, do you think the issue you brought can be resolved here? Why or why not?

In addition to the above, ask the person who you suspect may be the non-abusive or reporting party:

- You mentioned (allegations of abuse) in the mediation. Are you concerned for this person's health, well being, or physical safety?
- Do you think you can get what you need from this process?
- If so, how? If not, why not?

It is important to be specific and concrete in your questions, noting what made you suspicious and exploring it with the person who made the comments.

If the general questions strengthen your suspicions of abuse, state your opinions directly. Express your concern to the non-abusive or reporting party. Determine how/whether to end the mediation.

Remember, though, you are still a mediator -- not a prosecutor or investigator. Use your mediator skills.

3. After meeting privately with both parties, you and your co-mediator must decide which of the following steps to take:
 - a. You decide that your suspicions were wrong:
 - Continue the mediation.
 - Talk to staff about what happened.
4. You decide that your suspicions were right.
 - End the mediation

TIPS FOR ENDING A MEDIATION WHEN SUSPICIONS OF Domestic Violence ARE CONFIRMED

- Determine whether the police need to be called. If so, send one mediator to do that (dialing 911) while the other mediator continues the session briefly.
- Bring the parties back into a joint session to end the mediation.
- Inform the parties that a CSVMC staff member will be contacting them.
- Do not attribute the end of the session to any suspicion of abuse. Rather, state a plausible reason for ending the session: (e.g. suggest that it seems mediation is not the best/appropriate way to resolve the issues that brought them here and that you would like to refer this back to intake to gather more information)
- Suggest that disputants talk with staff for further suggestions about other options.

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