

1. INTAKE PROCEDURES

If disputes where there has been violence are to be screened out of mediation there must be an effective intake procedure which will identify as many cases of violence as possible.

- a) Intake interviews must be conducted by a person with good interpersonal skills and with training in relation to violence against women.
- b) Intake interviews should, wherever possible, be conducted in person rather than by telephone. They should be conducted in a quiet and confidential environment.
- c) Intake interviews must **always** be conducted with the disputants separately whatever the circumstances and whatever the desires of the parties. It is unlikely that any interview with both parties present will identify violence. Information about the time and place of the other party's intake interview should be kept confidential.
- d) Separate interpreters should be provided for both parties if there is any suggestion that there may be difficulty in communicating. (This should include hearing interpreters for the deaf). Given that women of non-English speaking background are less likely to be proficient and confident in English than men from similar backgrounds,

particular attention should be paid to providing them with interpreters. Female interpreters should be provided for women when they wish this.

- e) The intake interviewer should ask specific questions about violence. Questions such as "Has your partner ever abused you?" are likely to elicit false negatives.

Specific questions should cover physical, emotional and economic violence and should include questions such as the following:

- Has your partner ever hit, punched, slapped, kicked, bitten you, pulled your hair or pushed you around?
- Does your partner have access to weapons? What sort of weapons?
- Has your partner ever used a weapon on you?
- Has your partner ever forced you to be sexual with him against your will?
- Has your partner ever destroyed or damaged any of your belongings or property or hurt any of your pets?

- Has your partner ever threatened to do any of these things?
- Has your partner ever harassed you, for example by following you around, making unwelcome telephone calls to your work or late at night?
- Has your partner ever threatened to do any of these things?
- Has your partner ever made threats against your children?
- Has your partner ever (any of the above) to your children?
- Have you ever applied to a court for a protection order?
- How is your health? Have you had any visits to the emergency department at the hospital? What were they for?
- Does your partner ever try to convince you that you are mentally ill?
- How are your finances organised? Do you have your own bank account or direct access to your own or your partner's earnings? Has your partner ever kept you short of money?

- Do you have your own friends? How often do you see your family and friends? How does your partner behave towards them?
- f) If the intake questions identify violence (criminal or otherwise) then effective referrals should be made to other agencies with the emphasis on ensuring the safety of the woman. The dispute should not be accepted for mediation.
- g) **Free and informed consent by a victim of violence:** there may be occasional cases where the intake interviewer is satisfied of all of the following things:
- that the woman has expressed a clear wish to proceed with mediation, despite the violence,
 - that she herself has chosen to come to mediation and has not been sent to mediation by anyone in a position of authority or influence over her (such as by a magistrate or a judge or by a body awarding legal aid),
 - that she has a clear understanding of what happens and what will be required of her in mediation,
 - that she understands clearly what the alternatives to mediation are,

- that she is not under any type of duress, persuasion or pressure either from the perpetrator or anyone connected with him, or anyone else,
- that her capacity to make decisions is not in any way affected by the violence,
- that she has received independent legal advice.

If the intake interviewer, who must be trained in the nature and effects of domestic violence, is satisfied of all of these things, she or he may allow the case to proceed to mediation. Any doubt should be resolved in favour of a refusal to accept the case for mediation.

Where such a case is referred to mediation the intake interviewer should give all available information to the mediators. Violence is criminal behaviour: information about violence should not be treated as confidential. The guidelines for mediation of cases where there has been violence (see below) should be followed. Any needed referrals should be made at the time of intake. In particular the disputant should be encouraged to remain in contact with her lawyer and to refer any matters, including any mediated agreement, to her legal advisers. Contact information for local refugees should be given.

The guidelines above could be adapted for use by organisations which refer disputes to mediation. The

ADRA Policy 1994

2.4 Questions

After routine questions on referral source and issues for mediation, agency demographic information should be sought on the length and status of the relationship, the number and ages of the children, any other significant relationships and the housing status of the party. The latter can potentially expedite the questioning process for assessment if the party is in a refuge or group housing situation.

2.4.1 THESE INITIAL QUESTIONS ARE SUGGESTED TO AVOID INTIMIDATING PARTIES WHO HAVE NOT EXPERIENCED VIOLENCE AND TO OPEN THE WAY FOR DISCUSSION FOR THOSE WHO HAVE.

- * Why have you decided to use mediation?
- * Did you decide together? Who is more interested - you or your partner?
- * Have you tried to work out your differences? What happened?
- * Have you been able to work out differences before? Did you think that the decisions made were fair? Did you feel listened to? Do you think your partner felt that the decisions made were fair? Do you think your partner felt listened to?
- * Is there anything about these issues you haven't felt comfortable in raising with your partner that needs to be discussed in the mediation? If so, why is that?

2.4.2 THIS SET OF QUESTIONS IS DESIGNED TO UNCOVER THE PATTERNS OF BEHAVIOUR IN THE COUPLE'S RELATIONSHIP AS WELL AS THE NATURE, FREQUENCY AND REGENCY OF VIOLENT AND ABUSIVE CONTROLS. THE QUESTIONS COVER THE AREAS THAT NEED TO BE EXPLORED AND IT IS EXPECTED THEY WILL BE ASKED WITH FLEXIBILITY AND SENSITIVITY ACCORDING TO THE PARTIES' RESPONSES. INTAKE STAFF SHOULD USE DISCRETION REGARDING THE ORDER OF THESE QUESTIONS, BUT, WHETHER OR NOT VIOLENCE IS DISCLOSED IN ANSWER TO ANY ONE OF THESE QUESTIONS, THEY SHOULD ALL BE ASKED. THE QUESTIONS SHOULD BE PREFACED WITH A STATEMENT SIMILAR TO THIS:

"I need to ask you these next questions because we find that many people have been threatened or hit by their partners and it is important for me to know if this is so in arranging the mediation to make sure you will feel comfortable."⁶ (Confidentiality should be reaffirmed.)

6. Adapted from *Mediation and Domestic Violence Policy and Procedural Guidelines*, 1990, Community Justice Program, Brisbane

- * In your relationship did anger ever reach the point where one of you got hit or was threatened with being hit? Were you ever afraid that you might be hit? Are you afraid now?
- If violence is disclosed, the intake staff should ascertain the recency, frequency and if a weapon or firearm was involved; if medical attention was ever needed, sought or provided, and the current health of the party. The intake staff should then explore the issue of a protection order (see below).

- * Have you ever applied for a protection order? Is there one in place right now? Have you considered getting one? Would you like information or assistance on how to get one?

If a protection order exists it is advisable to get a copy to assist with assessment. The order may provide further information that the party may not be comfortable in sharing and/or provide a basis for open discussion with the partner (*with the victim's permission*). The order may also indicate the need for amendment to avoid breaching the terms of protection should the case proceed to mediation.

- * Have you any concerns about the physical safety or care of the child(ren) by your partner right now?

If concerns are disclosed, the intake staff should ascertain whether the children have been hit, threatened or treated in any way that caused fears for their safety, and whether there are any other concerns about the children.

- * In the relationship, were there any threats of suicide or other acts if you left? Threats to your family, friends, family pets? Personal belongings threatened or destroyed?

- * Were decisions about the family finances ever a problem for you? Do both of you know all the assets and debts of the relationship?

If money is revealed to be a control issue, the intake staff should check whether the victim was ever short of money for basic necessities while her partner spent on his interests, family or friends. It should also be checked whether partners were coerced into providing their signature for purchases or bank loans⁷.

- * Since separating, have you had any difficulty in creating a separate life with your privacy and personal decisions respected?

Intake staff should check if there have been threats of suicide or harassment. Domestic homicides following separation have sometimes been preceded by threats of suicide by the perpetrator.

7. The topic of financial abuse was presented to ADRA's Family Mediation Division in January 1992 by guest speaker, Jocelyn Scutt, barrister. Timothy Cumberland, solicitor, Redfern Legal Centre, Sydney, described debts arising in these circumstances as "Emotionally Transmitted Debts."