



SCREENING CASES FOR FAMILY VIOLENCE ISSUES TO DETERMINE SUITABILITY FOR MEDIATION AND OTHER FORMS OF ADR

Screening Protocols and Tools for
Maryland Circuit Courts





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**Copies of the forms including all the appendices are available at
<http://www.courts.state.md.us/family/forms/casemgt.html>.**

preface

This document was developed to guide courts in screening domestic cases including divorce, custody and visitation cases, for the presence of family violence issues, in order that courts might more effectively determine which cases are appropriate for mediation.

This document was developed by a working group comprised of the Maryland Administrative Office of the Courts, Department of Family Administration, in conjunction with the Maryland Network Against Domestic Violence and its members, and the Maryland Mediation and Conflict Resolution Office (MACRO). The Administrative Office of the Courts would like to especially thank the members of the working group.

The document was revised by the Maryland Judicial Conference, Committee on Family Law and its Domestic Violence Subcommittee. Final approval was granted by the Conference of Circuit Judges.

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introduction

Domestic cases should be screened to determine whether there are allegations of family violence, or to determine if the parties or their children may be at risk for family violence. Family violence issues should be identified as early as possible to ensure that appropriate services are ordered or suggested for the family, and to ensure that victims are not compelled to participate in other activities that may place themselves or their children at risk of harm. Mediation and other forms of alternative dispute resolution may be inappropriate where there has been a history of family violence.

Because there are many points of entry into the family justice system, and because family violence issues are often difficult to identify, cases should be screened at several different points in the case management system. Cases should be screened:

1. By programs that provide assistance to self-represented litigants.
2. By the court at the time the pleadings are filed. This can be a “paper screening.”
3. By the court at the time of a scheduling conference or other initial appearance.
4. By the mediator or other ADR professional, at the time the litigants appear for an initial session.

This document provides protocols for Maryland Circuit Courts to use at each of the four different points of entry described above. Two different screening tools are provided:

- An **In-Person Screening Tool** (Appendix A) - to be used:
 - > By programs that provide assistance to self-represented litigants;
 - > By the court at the time of a scheduling conference or initial appearance; and
 - > By the mediator or other ADR professional.
- A **Pleadings Stage Screening Tool** (Appendix B) - to be used:
 - > By the court at the time the pleadings are filed. This tool is designed to be used when the court must conduct a “paper screening” because the parties are not present to be interviewed.

Finally, two additional documents are provided to assist courts:

- A one-page handout entitled **Instructions for Self-Represented Litigants** (Appendix C) that can be given to an individual if a program assisting the self-represented litigant identifies the presence of family violence issues that render the case inappropriate for mediation. These instructions are designed to help the self-represented individual remember information that was provided to them by the program.
- A **Screening Outcome** form (Appendix D) that can be completed by court personnel conducting an in-person screening interview indicating the results of the screening without compromising the confidentiality of the parties or placing one of the litigants inadvertently at risk.



1

Self-Help Programs

1.1 Who Should Interview Self-Represented Individuals to Identify Family Violence Issues?

Individuals should be interviewed to determine if they or their children are at risk for family violence when they request assistance from court-operated programs designed to assist the self-represented. The interview should be conducted by a paralegal or attorney who has been trained in how to identify and respond to the needs of victims of family violence. **The screening should be done in all domestic cases, regardless of whether or not the individual seeking assistance states that there has been family violence or that they need protection from family violence.**

1.2 Conducting a Screening Interview

- a. The interview should be conducted in person in a private, confidential setting, where feasible. It should be done in an area where others, especially members of the public, cannot observe or overhear the conversation. If possible, children should not be present. At a minimum, the other party should not be present.
- b. The interviewer should use the In-Person Screening Tool (*Appendix A*) to identify the presence of family violence issues or risk of future violence.
- c. The interviewer should ask the person seeking assistance whether there have been any previous cases filed in a related domestic, domestic violence, child protection, or related criminal matter in this or any other court.
- d. If possible, the interviewer should conduct a search of the court's information system, and the information system of that jurisdiction's District Court determine if there are any related matters that were not identified by or may be unknown to the person seeking assistance.
- e. The interviewer should shred any written documents, including any written screening tools, completed or prepared in conducting the screening, in order to preserve the confidentiality of the person interviewed.

1.3 Action to Take When Family Violence Issues Identified

When the screening process confirms the presence of family violence or the risk of family violence, the program providing assistance to the self-represented litigant shall:

- a. Advise the individual of resources they could use to secure their own or their children's protection, including organizations that may assist them in obtaining a protective order, pressing criminal charges, contacting child protective services, etc.
- b. If appropriate, refer the individual to on-site or local family violence agencies who can assist them with safety planning, assistance with filing the protective order petition, and/or legal representation in protective order hearings.
- c. Advise the individual to indicate on the Civil-Domestic Case Information Report that the case is not appropriate for mediation and that there is an allegation of physical or sexual abuse of a party or child.
- d. Discuss with the individual whether it will be necessary to ask the court to keep her/his address and other contact information confidential.
- e. Provide the individual with the Instructions for Self-Represented Litigants (*Appendix C*) summarizing the information they have been given.



2

Pleadings

2.1 Who Should Screen Case Files for Family Violence Issues?

The case should be screened at the pleading stage by an individual with family law expertise who has been trained in how to identify and respond to the needs of victims of family violence. In many jurisdictions this may be the family support services coordinator.

2.2 When Should the Screening Be Done?

The screener should review the case file once an Answer has been filed in the domestic case.

2.3 Conducting a Paper Screening

The screener should:

- a. Review the entire case file including the petition, the answer, any counter-complaints, the domestic case information reports (DCIRs) and any other documents that have been filed to date in the case.
- b. Use the Pleading Stage Screening Tool (*Appendix B*) when reviewing the documents to identify the existence of family violence issues.
- c. Conduct a related case search using the court's own case information system, and checking, at a minimum, for related cases in that jurisdiction's District Court. Optimally, a statewide search for related domestic violence cases should be conducted.
- d. If the parties are represented, contact counsel if additional information is necessary to determine if family violence issues are present.
- e. If the parties are self-represented, consider scheduling individual interviews on separate days and/or at separate times, with all parties to determine the seriousness of the allegations or the level of risk, if that cannot be clearly determined from a paper review.
- f. Note on the file jacket the presence of any identified

family violence issues.

- g. Note in the file, and provide to the judge or master who will be handling the next proceeding information about: i) related cases; and ii) the presence of family violence issues in the case.
- h. Place a copy of the completed Pleading Stage Screening Tool in the case file.



3

Scheduling Conference or Initial Appearance

All domestic cases should be screened for family violence issues at the time the parties appear in person for the first time in court, if mediation is or will be considered an option. Often this initial appearance will happen at the time of a scheduling conference. Screening should *not* be conducted in open court.

3.1 Who Should Screen Cases for Family Violence Issues at the Time of a Scheduling Conference or Other Initial Appearance?

If possible, the screening should *not* be conducted by a master or judge hearing the scheduling conference. Rather, each individual party should be interviewed separately by a Family Division or Family Services Program professional who has been trained in how to identify and respond to the needs of victims of family violence.

3.2 Screening Cases for Family Violence Issues

- a. Prior to the scheduling conference, litigants should be interviewed individually. If both parties appear for the scheduling conference or other proceeding, both parties should be interviewed as potential victims.
- b. The interviews should be conducted in a private, confidential setting. If possible, children should not be present. At a minimum, the other party should not be present.
- c. The interviewer should use an appropriate screening tool designed to help identify the presence of family violence issues or risk of future violence.
- d. The interviewer should ask the litigant whether there have been any previous cases filed in a related domestic, domestic violence, child protection, or related criminal matter in this or any other court.
- e. If it has not been done already, the interviewer should conduct a search of the court's information system, and the

information system of that jurisdiction's District Court to determine if there are any related matters that were not identified by or may be unknown to the litigant.

- f. The interviewer should shred any written documents, including any written screening tools, completed or prepared in conducting the screening, in order to preserve the confidentiality of the person interviewed. **The screening tool should not be placed in the court file.**
- g. The interviewer should complete the Screening Outcome Form (*Appendix D*) to note in the court file that screening was conducted in person, and to note whether mediation may be or is not appropriate.

3.3 Action to Take When Family Violence Issues Identified

When the screening process confirms the presence of family violence issues or the risk of family violence, the screener should:

- a. Note on the file jacket the presence of any identified family violence issues.
- b. Note in the file, and provide to the judge or master who will be handling the proceeding information about: i) related cases; and ii) the presence of family violence issues in the case.



4

Mediators and ADR Professionals

Even when the court has adequately screened cases, occasionally cases may be referred for alternative dispute resolution (ADR) services where the parties have a history of or are at risk of family violence. Most cases involving family violence are not suitable for mediation or ADR because of safety, control and intimidation issues. In some cases, it may be appropriate to terminate the ADR process once these issues are identified. At a minimum, ADR professionals must be sensitive to family violence issues and know how to respond appropriately.

4.1 Qualifications for Mediators and ADR Professionals.

- a. ADR professionals should be knowledgeable about the symptoms and dynamics of family violence and other forms of domestic abuse and the governing laws and procedures and attend appropriate training programs on these subjects.
- b. ADR professionals should be knowledgeable about the symptoms and dynamics of child abuse and neglect and the governing laws and procedures and attend appropriate training programs on the subject.

4.2 Screening for Family Violence Issues in the ADR Process.

At or before the initial session with the parties, and prior to entering into an agreement to mediate or conduct another ADR process, the ADR professional should screen all clients using the in-person screening tool to identify the presence of family violence issues. This screening can be conducted by telephone if an in-person interview is not feasible.

- a. Both litigants should be interviewed individually.
- b. The interviews should be conducted in a private, confidential setting. If possible, children should not be present. At a minimum, the other party should not be present.
- c. The interviewer should use the In-Person Screening Tool (*Appendix A*) to identify the presence of family violence issues or risk of future violence.

- d. The interviewer should ask the litigant whether there have been any previous cases filed in a related domestic, domestic violence, child protection, or related criminal matter in this or any other court.
- e. If it has not been done already, and if it is available to the interviewer, he or she should conduct a search of the court's information system, and the information system of that jurisdiction's District Court to determine if there are any related matters that were not identified previously.
- f. The interviewer should shred any written documents, including any written screening tools, completed or prepared in conducting the screening, in order to preserve the confidentiality of the person interviewed. **The screening tool should not be placed in a court file.**
- g. The ADR professional should continue to be alert to the possible need for further screening for family violence throughout the mediation process.

4.3 Appropriate Action When Family Violence Is Identified

When the screening process confirms the presence of family violence issues or the risk of family violence, the ADR professional should take appropriate action.

a. Family Violence Identified Before Mediation Commences

If, during a preliminary interview, family violence is identified and it is determined that mediation would be inappropriate, the ADR professional should consider taking the following measures to insure the safety of participants and the ADR professional:

- i. Decline to initiate mediation.
- ii. Notify the court that mediation is inappropriate.

b. Family Violence Issues Identified During Mediation

In conducting a joint or private mediation session, the mediator may pick up on indicators that suggest that there may have been some history of family violence between the parties. If a mediator learns during a mediation session that violence is a component of the parties' relationship, or that the threat of violence may impact the ability of one or more of the parties to effectively participate in mediation the mediator should follow the protocol outlined below.

- i. Do not indicate during the session that you suspect family violence. Doing so might place the abused party at risk of harm. Rather, conclude the mediation session, either at the agreed upon time, or earlier.
 - ii. Tell the parties that you will be contacting them regarding scheduling and next steps. By concluding the session in as near a normal fashion as possible, it is less likely that the participants will be aware that you have concerns about the presence of family violence issues.
 - iii. Be sure the **parties are not left alone until they both drive away from or otherwise leave the mediation site.**
 - iv. **Contact the mediation program coordinator or family support services coordinator** and report on the family violence issue as it is known to you.
- c. Child Abuse or Neglect.

If the ADR professional has reason to believe that the child is abused or neglected within the meaning of Maryland law, the professional may be required to report the suspected abuse to the appropriate authorities:

- i. The ADR professional should be aware of and comply with any mandatory reporting requirements.
- ii. The ADR professional should consider making appropriate referrals for the parents and children for therapy and assessment.
- iii. The ADR professional should consider suspending the ADR process until the allegations are resolved.

d. Withdrawing from the Case

Circumstances under which the ADR professional should consider withdrawing include, but are not limited to:

- i. If a party has committed or is threatening to commit acts constituting domestic violence or child abuse and neglect against the other party or the child;
- ii. If a party is unable to participate further in the ADR process due to drug, alcohol, or other physical or mental capacity limitation;
- iii. If the parties enter into an agreement that the ADR professional reasonably believes to be unconscionable;
- iv. If a party or parties is using the ADR process to further illegal conduct;

- v. If a party's conduct indicates that the party is not participating in the process in good faith.

If the ADR professional does withdraw, the professional should take all reasonable steps to minimize prejudice to the parties which may result from withdrawal.



5

Tips for In-person Screening Interviews

5.1 Demeanor

When screening for family violence, the demeanor of the questioner is critical to getting good information and creating safe outcomes. Some keys to remember in gathering this information are¹:

- The interviewer should not be judgmental when asking the screening questions.
- The questions should be introduced with a non-threatening opening, such as, “Because abuse and violence are so common in intimate relationships, I ask about it routinely.”
- The family violence questions should be asked in every case where intimate partners or family members are involved.
- Remember that it is common for both parties to minimize the abuse or not identify it as “domestic violence.”
- Prioritize the victim’s safety. Be sure to connect her/him to resources and services.
- Take the violence seriously.

5.2 Avoid Harmful Assumptions

There are no typical characteristics or profiles of abusers or victims. Abusers may appear to be very charming or may be explosive or angry individuals. Equally, victims may seem extremely frightened or passive or may be quite angry about what is happening.

Do not assume the person you are interviewing automatically will volunteer information about her/his family violence experiences.

1. Julie Kunce Field, *Screening for Domestic Violence: Meeting the Challenge of Identifying the Domestic Relations Cases Involving Domestic Violence and Developing Strategies for Those Cases*, 39 COURT REVIEW 4 (2002).
2. Goelman, et al., THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER’S MANUAL (American Bar Association 1996).

If the interviewee declines to discuss family violence, consider whether the person's silence may be due to cultural, race, or gender issues that make it difficult to talk about such personal experiences.²

5.3 When Both Parties Are Together

Pay attention to body language: watch for eye contact, stricken looks, possible fear (as opposed to ordinary nervousness), and avoidant posture. Note if one person refuses to have family members interviewed alone.

Note appearances: abusers often appear "normal" – competent, smiling, and charming. Victims often appear to be incompetent, unsure, edgy, indirect, nervous, brittle, and humorless. Victims may have to make frequent visits to the rest rooms.

At the other extreme, abusers may present themselves as pathetic and helpless victims; in these cases, the other party may appear to play a mothering role.

Is one a "steamroller?" Is the attitude of one party antagonistic to the system, complaining that all others (except the interviewer) are inept and incompetent, but he/she wants your assistance to speed things along?³

3. Mildred Daley Pagelow, *Effects of Domestic Violence On Children and Their Consequences For Custody and Visitation Agreements*, 7 MEDIATION Q. 347 (1990)



Appendix A

**Screening Cases for Suitability for Mediation
IN-PERSON SCREENING TOOL**

The following introductory information should be provided to the person being interviewed: This interview will help me determine if mediation or other forms of alternative dispute resolution will be appropriate in your case. In mediation you and the other person will be asked to meet with a neutral third party. The mediator will help you and the other person discuss and possibly reach an agreement in all or some aspect of your case. It is a voluntary process and you do not have to reach an agreement. For mediation to be successful, those participating must be "equals" who are able to talk with one another and agree or disagree without being fearful or intimidated. These questions will help me determine whether mediation may be appropriate in your case. Please answer these questions as truthfully as possible. What you say to me here is confidential and will not be disclosed to the court or your partner. The document I complete will be destroyed after our interview and will not be placed in the court record. There are some exceptions to that confidentiality. If you tell me about a child who is being abused, or about your intent to hurt someone, I may be required by law to report that information to authorities.

	Column A YES	Column B YES
1. Are you generally unable to resolve differences with your spouse/partner in a non-violent, non-threatening way?		
2. Is there anything that you feel you can't say in front of your spouse/partner?		
3. Is there anything that goes on at home that makes you feel afraid?		
4. Has your spouse/partner ever physically hurt or threaten you or your child? Has he/she ever: Hit you? Pushed you? Smacked you? Kicked you? Bit you? Pinched you? Choked you? Hit you with an object other than a hand? <i>[Check YES if any of the above are indicated]</i>		
5. Does your partner/spouse verbally abuse you? Call you names? Put you down?		
6. Has your spouse/partner ever destroyed your clothing, objects, or something you especially cared about?		
7. Have the police ever been called to your house to settle a dispute or because of violence?		
8. Have protective services ever been involved with your children?		
9. Has your spouse/partner ever forced you to have sex when you didn't want to? Make you do sexual things you don't want to do?		
10. Has your spouse/partner ever prevented you from leaving the house, seeing friends, getting a job, or finishing school?		
11. Has your partner/spouse ever used or threatened to use a weapon against you?		
12. Has your spouse/partner ever hurt or threatened to hurt pets?		
13. Is your spouse/partner excessively jealous? Does he/she accuse you of having affairs? Does he/she check up on what you have been doing and not believe your answers?		
14. Do you or your spouse or partner abuse drugs or alcohol? What happens?		
15. Do you have any concerns about your case being sent to mediation?		
Number of boxes checked YES in each column:		
	If ONE or more in this column, MEDIATION is NOT APPROPRIATE	If ONE or more in this column, MEDIATION is PROBABLY NOT APPROPRIATE.

Appendix B

**Screening Cases for Suitability for Mediation
PLEADINGS STAGE SCREENING TOOL**

Case Caption: _____

Screening Date: _____

Case Number: _____

Screener (Name): _____

Document to be Examined	Inquiry	Additional Inquiry Warranted	Conclusion
1. DCIR Forms [EXAMINE DCIRs ATTACHED TO BOTH THE COMPLAINT AND THE ANSWER]	A. Under the section "Alternative Dispute Resolution Information" did the party indicate NO to any form of ADR?	If the party checks YES to mediation, and NO to other forms of ADR, they may be suggesting only mediation is appropriate and not other types. If they check NO to some types of ADR, but there appear to be no references to family violence issues, and no indication as to why mediation is not appropriate, it may be necessary to telephone counsel or the party for clarifying information.	<input type="checkbox"/> Party or counsel believes mediation is inappropriate because of family violence issues or other safety concerns.
	B. Under the final section "Is there an allegation of physical or sexual abuse of party or child?" the party or counsel have indicated "YES."		<input type="checkbox"/> Party or counsel identified the presence of abuse allegations.
2. Complaint / Counter-complaint, Petition or Motion [EXAMINE THE INITIAL PLEADINGS OR OTHER RELEVANT DOCUMENTS FILED BY BOTH PARTIES]	A. Related Case Information: I. Does the party list any domestic violence, peace order cases, Child In Need of Assistance cases from Maryland or other states that might suggest there has been a history of family violence? II. Does the party list any related domestic cases or other case types?	If the cases are old, it might be appropriate to contact counsel to gauge their sense of whether mediation is appropriate. If either party is self-represented it might be advisable to call the parties or bring the parties in for individual in-person screenings. If the party lists other related cases, it might be necessary to look those up in the court's information system to see if they include allegations of domestic violence or child abuse, or suggest a history of family violence.	<input type="checkbox"/> There are cases known to the court that suggest a history of family violence.

2. Complaint / Counter-complaint, Petition or Motion (continued)	<p>B. Grounds (Divorce Cases only):</p> <p>I. Does either party seek a divorce on the grounds of cruelty or excessively vicious conduct against him or herself or the minor child?</p> <p>II. Does either party seek a divorce on the grounds of criminal conviction where the underlying complaint stems from family violence or abuse of a child?</p> <p>III. Does either party seek a divorce on the grounds of constructive desertion where the underlying allegations refer to family violence or abuse of a child?</p>		<input type="checkbox"/> The grounds for divorce suggest that there is a history of family violence.
	<p>C. Allegations:</p> <p>Read the factual allegations detailed in the petition. Does the party state any facts that suggest that the complaining party, the opposing party or a child have been the victim of abuse, or are at risk of harm?</p>	<p>If facts are alleged that raise a concern about the safety of either party or a child, but it is not clear whether or not there is risk, it may be wise to request both parties appear in court for an individual, in-person safety screening.</p>	<input type="checkbox"/> A party has alleged facts which suggest that one or more parties, or a child may have been a past victim of violence or at risk of future harm.
	<p>D. Forms of Relief:</p> <p>Even when a party has not stated that they or their children have been a victim of family violence, or are at risk of harm, they may seek forms of relief which put the court on notice. Does the party request some type of stay-away order, no contact provision, or protection from threats or actual harm?</p>	<p>If some type of protective relief is requested, but no facts are stated that support those forms of relief, it may be wise to request both parties appear in court for an individual, in-person safety screening.</p>	<input type="checkbox"/> A party has requested protective relief of some type, suggesting that there is a history of family violence.
3. Answer	<p>A. Affirmations, Denials and Other Allegations:</p> <p>I. Does the answering party confirm allegations of abuse?</p> <p>II. Does the answering party allege new facts that suggest a history of family violence or future risk of harm?</p> <p>III. Does the answering party refer to any other related cases that suggest a history of family violence?</p>		<input type="checkbox"/> The answering party affirms or has not denied allegations suggesting a history of family violence or future risk of harm. <input type="checkbox"/> The answering party has alleged new facts suggesting a history of family violence or future risk of harm. <input type="checkbox"/> The answering party has identified cases suggesting a history of family violence.
4. Other Documents	<p>Review other documents in the file that may be relevant to determining if there are family violence issues that would suggest the case was inappropriate for mediation.</p>		<input type="checkbox"/> Other documents in the file suggest the presence of family violence issues.

NOTE TO SCREENER: If one or more conclusions are checked, the case is NOT appropriate for mediation.

- Based on a review of pleadings only, this case **MAY BE APPROPRIATE** for mediation or other forms of ADR.
- This case is **NOT APPROPRIATE** for mediation or other forms of ADR.
- This case requires **in-person, individualized screenings** to determine if mediation or ADR would be appropriate.

NOTE: This screening was based on a review of the pleadings only and may NOT have identified all possible domestic violence issues.

This document is available for downloading at
<http://www.courts.state.md.us/family/forms/casemgt.html>.

Appendix C

INSTRUCTIONS FOR SELF-REPRESENTED LITIGANTS Where Mediation May Be Inappropriate

During your meeting with staff of the court's self-help program, you were asked questions to determine whether mediation would be appropriate in your case. Based on the information you provided it was determined that:

MEDIATION IS NOT APPROPRIATE IN YOUR FAMILY CASE.

Steps you Should Take:

- 1. Consider getting a lawyer to represent you in your family case.**
 - Call the local lawyer referral service: _____ (phone number).
 - Call the following legal services providers: _____ (name)
_____ (phone number).

- 2. If you or your child(ren) need protection from abuse, contact the following service provider who may be able to provide you with a safe place to stay, help in getting a civil protective order, or information on how press criminal charges, if appropriate:** _____ (name of provider)
_____ (telephone number)

- 3. When you file the papers to begin a divorce, custody or other family case in the Circuit Court, check off the following boxes on the Civil Domestic Case Information Report (DCIR) indicating that:**
 - Mediation is NOT appropriate; and
 - There is an allegation of physical or sexual abuse of a party or child.

- 4. Do NOT put your address or other contact information on any court papers. Tell the Clerk of Court when you file your papers that you want your contact information kept CONFIDENTIAL.**

Appendix D

Circuit Court for _____ **Case No.** _____

 City or County

Name _____ VS. Name _____
 Plaintiff Defendant

SCREENING OUTCOME
Note to File re: Suitability for Mediation

The following individual(s) were interviewed separately to determine the appropriateness of this case for mediation.

Name _____ Name _____

Based on that/those interviews:

- This case **IS NOT** appropriate for mediation.
 This case **MAY BE** appropriate for mediation.

 Date Screener Signature

9/05

Department of Family Administration

Administrative Office of the Courts

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