

# THE MEDIATOR'S ASSESSMENT OF SAFETY ISSUES AND CONCERNS (MASIC): A SCREENING INTERVIEW FOR INTIMATE PARTNER VIOLENCE AND ABUSE AVAILABLE IN THE PUBLIC DOMAIN

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Screening for intimate partner violence and/or abuse (IPV/A) in family mediation is important, perhaps particularly among cases without attorney representation. While most mediators agree that it is ideal to consider IPV/A in case planning, there is less agreement regarding the need to universally and systematically screen for IPV/A among all cases. Such attitudes are of concern, given research in other fields (e.g., medicine, couples therapy) and our own research in a family mediation clinic, which documents that the lack of consistent and formal IPV/A assessment results in underdetection of IPV/A. While a variety of IPV/A screening measures exist, each has shortcomings. Thus, our research and clinical experience led us to develop a new IPV/A screening measure, the Mediator's Assessment of Safety Issues and Concerns (MASIC). We discuss features of the MASIC and provide the full measure in the Appendix. The MASIC is a behaviorally specific IPV/A screen that assesses various types of abuse (e.g., coercive control, stalking, physical violence) over the course of the relationship and in the past year. It is administered as an interview to build rapport and assesses lethality indicators and offers optional recommendations for procedural changes in mediation based on IPV/A. Although we have begun relevant research, it is important to note that the MASIC has not yet been validated. Nonetheless, we recommend the use of systematic IPV/A screens in family mediation and suggest that such measures may prove especially important in providing unrepresented parties a safe and appropriate environment for mediation.

**Keywords:** *intimate partner violence; divorce and separation mediation; violence screening instrument; intake interview*

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## I. INTRODUCTION

Many professionals working with families involved in mediation agree that there must be adequate screening measures for intimate partner violence and/or abuse (IPV/A) in such settings (Beck & Sales, 2001; Ellis, 2008; Kelly & Johnson, 2008; Mathis & Tanner, 1998; Salem & Dunford-Jackson, 2008; Ver Steegh & Dalton, 2008). Unfortunately, however, this view is not universally held. Though most seem to agree that IPV/A is an important issue to consider in mediation, resistance to universal screening often appears to be based on the perception of many mediators that IPV/A is not a frequently occurring problem among the couples they see in mediation.<sup>1</sup> This assumption is applied to mediation parties regardless of whether either or both are represented by counsel or are self-represented (*pro se*), regardless of whether they are seeking private mediation or were ordered to court-connected mediation, and regardless of whether the mediator is trained in law or mental health disciplines. Indeed, we have heard mediators argue that they simply do not believe, based on experience with clients, that many of the parties they work with have experienced IPV/A.

Yet, past research has demonstrated that professionals in many other fields held the same belief until they began systematically screening for IPV/A using specific, behavioral questions; when such screenings were conducted, detected rates of IPV/A were often quite high. For example, in a study of women seeking health care at a family practice clinic, 23% had been physically assaulted by their partner in the past year (39% in their lifetime), but only 1.7% reported that their physician had ever asked them about violence (Hamberger, Saunders, & Hovey, 1992). The situation is similar among family therapists, who were found to underestimate the severity of family violence in many cases (Hansen, Harway, & Cervantes, 1991). Among a sample of couples seeking marital therapy, Ehrensaft

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and Vivian (1996) found that, while over 60% had a history of IPV/A, less than 10% spontaneously reported the IPV/A during therapy intake interviews, demonstrating the need for direct assessment of IPV/A.

Although failure to detect and consider IPV/A in any mediation setting is of concern, it is especially concerning when a mediation party, particularly a party who has been abused, is self-represented. As observed in another article in this special issue, the self-represented litigant is

the single most important issue facing family courts today . . . and the second most frequently cited problem by judges and court staff who process divorce cases. . . . The number of these cases is substantial, though it varies across jurisdictions and types of proceedings. Studies have indicated that the range of family court cases that have at least one pro se client is 55 to 90 percent . . . (Beck, Walsh, Ballard, Holtzworth-Munroe, Applegate, & Putz, 2010, p. 632).

Despite these statistics,

there is almost no research concerning the number of pro se litigants with IPV/A in mediation . . . , the types of IPV/A among pro se cases, and the possible correlations between type of IPV/A and the types of agreements reached, if any. These data are critically important for mediators working with clients to protect the safety of the victim of IPV/A and the IPV/A-exposed children (Beck et al., 2010, p. 633).

In a series of studies designed to examine varying IPV/A screening methods at the Indiana University Maurer School of Law Viola J. Taliaferro Family and Children Mediation Clinic, we have found that, just as in the fields of medicine and couples therapy, mediators who do not use systematic screening methods may underdetect IPV/A among families entering mediation. While more detailed study findings will be presented in upcoming publications, a brief overview is provided here.

At the Indiana University law school clinic, mediators are second- and third-year law students registered as domestic relations mediators in Indiana. The clinic provides pro bono family law mediation services to low-income and indigent families in south central Indiana. Many of the clients in clinic cases are unrepresented, based primarily on financial constraints rather than voluntary choice. Indeed, there are no attorneys in approximately two thirds of the clinic cases, and in many of the remaining third, only one party has legal representation. Given the nature of these cases, the clinic mediators were particularly concerned about detecting IPV/A.

When we began conducting research at the clinic, the mediators there were using IPV/A screening procedures instituted before the clinic director (author Applegate) started actively collaborating with the other authors of this article (both of whom are psychologists with research and clinical experience in the area of IPV/A). At the time, the clinic director and mediators believed that they were adequately screening for IPV/A and were detecting most cases involving IPV/A. Indeed, they were conducting what was considered substantial screening for IPV/A in the mediation community. Specifically, mediators at the clinic received training on IPV/A issues and assessment. Through the training, mediators were taught to obtain IPV/A screening information in multiple ways, including directly from the court, searching court records for criminal and protective order cases, calling parties in advance of mediation to check on issues that might affect the mediation process, and conducting intakes asking about comfort with mediation, concerns about mediation, and how relationship conflict is handled. As part of clinic procedures, clinic mediators discussed IPV/A discovered at any point with the director of the clinic.

In our first study, we examined rates of IPV/A detection among existing clinic case files. These prevalence rates were low (less than 40%), relative to other studies of couples entering mediation where rates of IPV/A are over 50% (Beck, Walsh, Mechanic, & Taylor, 2009; Beck, Walsh, & Weston, 2009; Kelly & Johnson, 2008; Pearson, 1997). This finding suggested that mediators were underdetecting IPV/A (see Ballard, Holtzworth-Munroe, Applegate, & D'Onofrio, in press).

We thus conducted a second study, in which we randomly assigned some mediation cases to receive an enhanced IPV/A screening using a standardized, behaviorally specific questionnaire measure of IPV/A, the Relationships Behavior Rating Scale (RBRS; Beck, Menke, O'Hara Brewster, & Figueredo, 2009), as part of a research protocol. The RBRS questionnaire results were not shared with the mediators, and mediation parties were not given any instructions regarding whether or not to discuss concerns assessed on the RBRS with their mediators. Following mediation, we asked mediators whether the case involved IPV/A. Mediators *did not* detect IPV/A in approximately half the cases reporting IPV/A on the RBRS (see Putz, Ballard, Holtzworth-Munroe, Applegate, & Beck, 2009).

Such findings suggest the need for more systematic screening of IPV/A in mediation cases. Thus, it is fortunate that court-connected mediation programs have begun screening for IPV/A and developing their own in-house screening measures. In 2006, the Michigan Supreme Court developed a protocol for domestic violence (and child abuse) screening in matters referred to domestic relations mediation (<http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf>). The California Administrative Office of the Courts has also developed a violence screening tool for use in court mediation programs in that state (<http://www.courtinfo.ca.gov/courtadmin/aoc/>). There are currently several additional instruments for doing so (e.g., Erickson & McKnight, 1990; Neilson & Guravich, 1999); only some are listed here. The Conflict Assessment Protocol (CAP) was an early screening tool developed for parties who are disputing divorce-related issues (Girdner, 1990). Newmark and colleagues (1995) created an instrument using several existing measures including the Conflict Tactics Scale (CTS) (Straus, 1979), the Procedural Justice Scale (Roehl, 1988), and the Marital Power and Decision-Making Scale (Blood & Wolfe, 1960). The Domestic Violence Evaluation (DOVE) is a 19-item instrument designed to assess and manage risks for couples both before and after divorce (Ellis & Stuckless, 2006). The P<sup>5</sup> is a guideline (not a specific screening measure) outlining a comprehensive set of screening dimensions for IPV/A that are relevant to custody and access planning (e.g., potency of violence, patterns of violence, primary perpetrator of violence, parenting problems, and perspective of the child; Johnston, Roseby, & Kuehnle, 2009). The RBRS, used in our research, is a recently validated instrument used in the court-connected mediation context (Beck et al., 2009).

To further examine the feasibility and ease of use of different available screening measures, in a third study at the Indiana University clinic, we compared two IPV/A screens—a revised version of the RBRS (RBRS-R) and the DOVE. Both were administered to all mediation parties by clinic mediators. The two measures differed in many ways. For example, the DOVE is an interview, while the RBRS-R is a questionnaire. The DOVE asks broader questions (e.g., have you been “physically assaulted”), while the RBRS-R asks behaviorally specific questions (e.g., has your partner choked or strangled you). The DOVE assessed IPV/A over the entire course of the relationship (ever), while the RBRS-R assessed IPV/A in the past 12 months. Some of the study findings included: mediators strongly preferred the interview format; some mediation parties asked for definitions of items such as “physically assaulted” or “sexually assaulted” on the DOVE (which were provided on a separate sheet); asking about any IPV/A over the entire course of the relationship led to higher reports of IPV/A than assessing IPV/A in only the past year; and perhaps as a result of the time frame assessed, the DOVE led to higher female reports of male IPV/A (see Putz et al., 2009). The mediators found the scoring process on both screens complicated and onerous, and they resisted being told what should be included in mediation agreements (as contrary to the key concept of party self determination in mediation).

As suggested by our third study, no one IPV/A measure is perfect and each of the currently available measures presents certain limitations or concerns. For example, some have a relatively limited scope of questions (e.g., CTS, CAP) or only assess certain types of abuse (e.g., physical violence but not coercive control). Others do not include behaviorally specific or detailed questions (e.g., DOVE, P<sup>5</sup>). In addition, some of these measures require hours of specialized training to use (e.g., DOVE) or are copyrighted and must be purchased to use (e.g., RBRS, RBRS-R), making them less easily accessible to mediators.

## II. DEVELOPMENT OF A NEW MEASURE

Based on concerns about the existing IPV/A screening measures, we wished to combine the best features of some of the measures, particularly the two we had piloted in our research (i.e., the RBRS-R and the DOVE). Unfortunately, the RBRS and RBRS-R are copyrighted measures. Further, the DOVE requires specialized workshop training to administer and was not as behaviorally specific as we desired, given research in other areas (e.g., medicine, couples therapy) suggesting that behaviorally specific questions increase rates of detection of IPV/A. Thus, we chose to develop a new measure that would not be copyrighted and would not require extensive training to use, and which thus could be widely disseminated.

The result is a new screening measure for IPV/A: the Mediator's Assessment of Safety Issues and Concerns (MASIC), provided in the Appendix to this article. As already noted, it is not copyrighted and is freely available to others to use. The MASIC is intended to be a detailed and extensive screening tool for mediators. The MASIC was derived from previous IPV/A screens that have been standardized, have good psychometric data (e.g., reliability figures), and have been validated. That said, however, the MASIC is a new screening instrument that has not been proven reliable or validated at this time.

*The MASIC is Designed to be Given as an Interview.* In our third study, we learned that the mediators preferred to conduct an interview (as opposed to giving a client a written questionnaire) as it helped to build rapport with mediation parties and led to a more thorough understanding of any reported IPV/A. Also, an interview measure is necessary with parties who have difficulty reading.

*The MASIC Assesses Each Mediation Party's Report of the Other Party's IPV/A Perpetration.* From the research perspective, obtaining both self- and partnerreports of IPV/A perpetration is considered the optimal way to screen for IPV/A (i.e., two reporters). From the practice perspective, however, we are uncomfortable asking mediation parties to provide information about their own perpetration of IPV/A, which could result in statements of self-incrimination that under Indiana law are potentially discoverable in another proceeding (e.g., a criminal case).<sup>2</sup> Thus, to protect mediation parties from possible self-incrimination, the MASIC only asks parties to report on their partner's perpetration of IPV/A.

*The MASIC Asks a Series of Behaviorally Specific Questions about IPV/A.* There are many issues to consider regarding how to ask about IPV/A. Given research findings that many parties do not apply labels such as "violence," "abuse," or "assault" to their experiences, the MASIC does not use these labels. We believe parents will be more likely to report the occurrence of a specific IPV/A behavior than to say they have been "abused" or "assaulted."

*The MASIC Assesses Multiple Types of IPV/A.* Psychological abuse, coercive control, physical violence and extreme physical violence, sexual assault/abuse, stalking, and fear are all assessed on the MASIC. Recent research demonstrates important differences across varying types of abuse in mediation (Beck et al., 2009; Beck et al., 2009; Kelly & Johnson, 2008). Issues such as coercive control and stalking, while not involving physical contact, may impact the parties' levels of concerns and fears when entering mediation and thus deserve attention. Recent research found that, if mediators focused only on physical violence when deciding whether a case has IPV/A, they risked missing the majority of victims of sexual forms of assault and coercive control (Beck & Raghavan, in press), as not all victims of these latter forms of IPV/A were also victims of physical forms of IPV/A.

*The MASIC Assesses Whether or Not Each of the Listed IPV/A Behaviors Has Occurred Over Two Time Periods.* Some IPV/A screening instruments phrase questions in a manner that assumes such behaviors have occurred (e.g., "who has been sexually abused in your family?"), on the belief that normalizing the occurrence of IPV/A may lead to increased reports of IPV/A. However, in the settings

where we work, mediators were not comfortable asking questions in this manner, believing that such an approach was accusatory and often upsetting to parties who have not experienced any IPV/A.

Thus, using a response format modeled on the CTS and other measures, the MASIC assesses IPV/A over two time periods: (1) ever (i.e., during the entire history of the couple's relationship) (answered yes or no) and (2) in the past 12 months (more specific frequency response options given—see MASIC). Gathering reports of IPV/A over both time frames is informative for the mediator. In some cases, past IPV/A, particularly if severe, may continue to impact the relationship even though it is not currently ongoing. For example, the victim may still be afraid of, and thus easily coerced by, the previously abusive partner. In other cases, parties have reported that their past relationship IPV/A is irrelevant to their current situation; they believe they have emotionally moved on, are not intimidated by their partner, and are not worried about the possible occurrence of future IPV/A. In all cases, it is important to assess for more recently occurring IPV/A, both because such behaviors may have a current impact on the relationship dynamics and because recent behavior is the best predictor of future behavior. Indeed, there is particular concern about any IPV/A that has occurred since the parties separated, as such information suggests that physical separation alone has not stopped the abuse.

Thus, *the MASIC also asks how long the parties have been separated*, allowing the mediator to consider the occurrence of IPV/A during the period of separation as a risk factor for continued IPV/A following legal separation or divorce. It is important to note, however, that while the best predictor of future IPV/A is past IPV/A, no screening instrument can be relied upon as an accurate predictor of future IPV/A. Instead, the MASIC assesses past IPV/A that may have impacted the parties' relationship and thus be relevant to mediation and which may indicate increased risk of future IPV/A.

*The MASIC Includes Other Questions that are Relevant for Determining Levels of IPV/A and Potential Danger.* The MASIC includes questions directly related to IPV/A risk levels (e.g., weapon accessibility, threats of suicide). In addition, many of the questions in the MASIC address potential predictors of lethality (e.g., reason for leaving the relationship, children living in the home from a previous marriage, access to weapons). Indeed, a checklist at the end of the MASIC allows the mediator to consider lethality indicators derived from existing research on predictors of femicide by male intimate partners (Campbell et al., 2003; Dobash, Dobash, Cavanagh, & Medina-Ariza, 2007; Glass, Laughon, Rutto, Bevacqua, & Campbell, 2008).

*The MASIC Provides Options for the Mediator's Consideration.* The last page of the MASIC provides space for the mediator to consider whether the case is appropriate for mediation and, if not, to indicate their reasoning. This is important as the mediator, or a colleague in the clinic, might see the couple again. In addition, there is a final section on procedural accommodations for the mediator to consider in light of the screening results. Previous research has investigated procedural changes and accommodations provided to mediation clients who wanted them or were found to need them in the course of the mediation (Beck et al., 2009). Based on this work, in the MASIC, we included options for accommodations as a list; the mediator can indicate which, if any, were chosen. These options are jurisdiction specific and may be changed to meet the needs of a particular jurisdiction.

*The MASIC Has Become Part of the Intake Process at the Indiana University Law School Clinic.* Intakes are conducted separately from negotiation sessions. At intake, mediators explain the mediation process, administer the screen, and have the parties complete a separate written intake form to provide information about themselves, their families, and the issues to be mediated. This intake proceeds for all parties and, in our area, even in cases where one or both parties have legal counsel, though the attorneys often waive their appearance for the intake.

Our preliminary observation of mediators' use of the MASIC is that, although the MASIC requires mediators to ask sensitive questions that may sometimes be uncomfortable or distressing for the parties, the screen is very helpful to the mediators in determining whether a case can safely or

appropriately be mediated and, if so, how to structure the environment for the mediation. To date, clinic mediators using the MASIC have provided positive feedback, including the following quotes, which have been slightly edited for ease of reading:

- Proper framing of the measure prior to beginning the MASIC is essential. I have found that making an analogy to the forms one fills out at the doctor's office is effective because that is a universal experience people can relate to, and it prepares them for potentially invasive questions.
- I find the MASIC a helpful tool for initiating a discussion about potential IPV/A. The screen is very thorough—nearly any type of violence you can think of has been included. However, even where the MASIC questions do not quite fit the particular circumstances for a particular couple, it often prompts the clients to think and talk about their relationship in a new light. Sadly, I have found that some clients have been victims of IPV/A without even realizing it; they get so accustomed to conflict that they begin to think it is “normal.” The MASIC helps these people to “recalibrate” and recognize violence for what it is.
- It can definitely be uncomfortable asking our clients some of the MASIC questions, but in my experiences, they appreciated the fact that we took the time to look into these issues.
- The MASIC allows mediators to ask questions and get a clear idea of what types of abuse parties have experienced. For example, was it emotional, coercive control, or physical abuse? In addition, rather than telling mediators whether or not the parties are appropriate for mediation, the MASIC gives more general guidelines as to considerations that might be useful or important in the mediation.
- I really appreciate the format of asking if the abusive behaviors EVER happened and then asking if they have happened in the last twelve months. Some other abuse screening measures call for alarm when the participant simply checks that something has happened, but the MASIC keeps things in perspective. I think the MASIC is also good in ensuring that the frequency of behaviors is clarified, so that a relatively clear picture of how much danger currently exists can be created.
- On other IPV/A screens, I was often frustrated by “results” that suggested parties with a violent history were inappropriate for mediation. I prefer to have safety considerations that can be discussed with the parties during the mediation rather than a clear mandate that mediation should not proceed. The MASIC provides such considerations.

We are now beginning research to test the reliability and validity of the MASIC in Indiana and Australia. By administering the MASIC to many mediation cases in different jurisdictions, with represented and self-represented parties who are in private and court-sponsored mediation programs, we will be able to gather psychometric data (e.g., reliability and validity figures) on the MASIC. We also can examine rates of male and female violence and other forms of abuse (e.g., stalking, coercive control) among couples seeking mediation. We can examine demographic correlates of these IPV/A rates, as we are gathering demographic information.

An eventual goal of our work is to conduct research on how the presence of IPV/A relates to the mediation process and outcome. By identifying cases involving IPV/A, we can gather information on the mediation experiences of such couples relative to the experiences of nonviolent couples; some examples are provided here. Regarding mediation processes, we can examine whether (and how) mediators change their procedures to deal with parties experiencing IPV/A (e.g., do they separate the parents and conduct “shuttle” mediation). We can also examine party satisfaction and feelings about the mediation; do parties reporting IPV/A feel safe in mediation and are they satisfied with the mediation process and the outcome of their mediation? Regarding mediation outcomes, do parents experiencing IPV/A reach agreements that differ from those of nonviolent couples (e.g., are the agreements of parties reporting IPV/A more likely to include supervised exchanges of children, to minimize the potential of interparental IPV/A)? And, how do cases involving IPV/A fare if they return to court following mediation?

With large enough study samples, the MASIC will also allow examination of more detailed questions about varying forms and types of IPV/A. For example, are mediators more likely to implement safety procedures in the mediation process in response to female or male reports of IPV/A victimization? Regarding outcome, are reports of particular forms of abuse on the MASIC related to the inclusion of related safety precautions in mediation agreements? For example, do reports of stalking lead to agreements limiting contact between the parties? Such descriptive work will provide a better understanding of how mediators actually use information on IPV/A in their practices. Such findings would ideally lead mediators to examine their practices and consider whether to make further changes in their handling of cases involving IPV/A.

### III. CONCLUSION

Research in other fields, such as medicine and couples therapy, suggests that, regardless of training, professionals consistently underestimate the prevalence of IPV/A among their clients until they begin to systematically screen for IPV/A using behaviorally specific and direct questions. Our own research leads to the same conclusion for mediators. Thus, it is important for mediators to choose a systematic IPV/A screen, using behaviorally specific questions, and to ask every mediating party to complete it. It is particularly important if the clients are self-represented. It may be the only time these clients are asked about IPV/A and provided with information and options for resolving their disputed issues in a safe and/or appropriate environment.

Several IPV/A screening measures already exist and using any of them would help mediators detect IPV/A. Yet given our own research, we believed that it would be useful to develop a new measure of IPV/A that includes measures of lethality, stalking, and sexual abuse/violence. We believed that a broad-based, behaviorally specific measure assessing multiple forms of abuse would be useful.

One of our major goals was to design a measure that would be freely available, in the public domain, to all mediators and researchers. We thus introduce the MASIC and encourage its use. We welcome partnerships in data collection and analysis, reports, and comments from those who adopt the MASIC.

### NOTES

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1. Some mediators are also reluctant to ask any questions about IPV/A on the basis that it might appear to compromise their impartiality and serve to cause the parties to view the mediator as adopting an investigative, rather than neutral, role.

2. In Indiana, although mediation discussions are confidential (Rule 2.11 of the Indiana Rules of Alternative Dispute Resolution), in a 1995 federal case, a mediator in an Indiana civil case was compelled to testify in a federal grand jury proceeding about negotiations during the civil mediation. *In re March 1994—Special Grand Jury*, 897 F. Supp. 1170 (S.D. Ind. 1995). Although this reported case involved a federal criminal proceeding, the local child support prosecutor has taken the position that statements made by a party during mediation, while protected from disclosure to the court in the family law case, could be used against that party in an Indiana criminal proceeding. Despite the fact that representatives of the prosecutor's office do not typically participate in mediations and would presumably have no way of knowing of any incriminating statements made during mediation, theoretically at least, one mediation party might attempt to cause information obtained in the mediation process to be used against the other party in a criminal proceeding. To protect mediation parties from this potential risk, the clinic does not gather any data that could result in a party incriminating him or herself.

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*a new batterer-treatment program and evaluate treatment effectiveness. More recently, she has begun research with colleagues at the Indiana University Maurer School of Law, to study divorce mediation, examine intimate partner violence in mediation, and compare the efficacy of differing forms of mediation.*

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*Amy G. Applegate is a clinical professor of law and the director of the Viola J. Taliaferro Family and Children Mediation Clinic at the Indiana University Maurer School of Law–Bloomington (Law School). She teaches and supervises an interdisciplinary clinical program at the Law School, through which her students become registered domestic relations mediators in Indiana and then provide mediation services to indigent and low-income litigants in disputed custody, parenting-time, and other family law cases. She and her students also collaborate in research and training with faculty and graduate students from the Indiana University Department of Psychological and Brain Sciences in Bloomington, including how to uncover and address violence and abuse in family law settings as part of the mediation process and how to help parents in mediation decrease their conflict and reach parenting agreements that are good for their children. Among other activities, she is the chair of the Executive Committee of the American Association of Law Schools Section on Clinical Legal Education (2010–2011). She has also been extensively involved at the state and local level in the areas of delivery of pro bono services and mediation ethics, including serving as a member of the Indiana Pro Bono Commission (2003–2009) and co-chair of the Indiana State Bar Association Pro Bono Committee (2007–2009).*

## APPENDIX

Date: \_\_\_\_\_ Case Name(s): \_\_\_\_\_ Case Number: \_\_\_\_\_ Circle: Mother/Father

### MEDIATOR'S ASSESSMENT OF SAFETY ISSUES AND CONCERNS (MASIC)<sup>i</sup> (ADMINISTERED VERBALLY BY THE MEDIATOR IN FAMILY LAW CASES WITH CHILDREN)

The authors of this instrument recommend that, if possible, the mediator should (a) obtain any court or police records that might address parties' violent or abusive conduct before completing this Assessment, (b) complete this Assessment in intake session(s) separate from negotiation session(s), and (c) complete this Assessment with each party privately (i.e., separately from the other party).

**[Read introduction and questions to each party:]** In mediation, parents work together to try to make decisions in their children's best interests outside of court. The mediators do not take sides and will not be making any decisions. Rather, the mediators assist both parents in exploring ways to resolve any disagreements in this confidential settlement process. Before the parents start negotiations, we ask parents to give us some background information and to complete a confidential intake form.<sup>ii</sup> Please answer the following background questions to the best of your ability, keeping in mind that we will keep your answers to these questions private and confidential from the court and the other parent:

#### Section 1

1. What is your age: \_\_\_\_\_ What is the other parent's age: \_\_\_\_\_
2. Are you employed?  Yes  No Is the other parent employed?  Yes  No
3. If you have ever lived/stayed with the other parent, when was the last time that you lived or stayed together? [*Focus here on whether the parents are currently living or staying together.*] \_\_\_\_\_
4. If you have ever lived/stayed with the other parent, for how long did you live/stay together? \_\_\_\_\_
5. Which parent left the relationship?  You  The other parent  Both parents decided to end relationship
6. Why did [you/the other parent] leave the relationship? \_\_\_\_\_
7. Do you have any children from another marriage or relationship who live with you?  Yes  No
8. If yes, how does the other parent get along with your other child or children? \_\_\_\_\_
9. Are you comfortable mediating with the other parent?  Yes  No

<sup>i</sup> Amy Holtzworth-Munroe, Connie J.A. Beck, and Amy G. Applegate, Mediator's Assessment of Safety Issues and Concerns (MASIC) (2010). The questions in Section 2 of this assessment have been adapted from Marshall L.L., Development of the Severity of Violence Against Women Scale; Sullivan CM, Parisian JA, Davidson WS, Index of Psychological Abuse; and Tjaden P, Thoennes N, National Violence Against Women Survey. The Marshall, Sullivan, and Tjaden screens, in their entirety, have been validated; however, the adaptation and use of selected questions from validated screens does not validate this screen. The authors wish to acknowledge their law and psychology students who assisted, directly and indirectly, in the development of this Assessment.

<sup>ii</sup> To obtain a copy of the Confidential Intake Form used by mediators in the Viola J. Taliaferro Family and Children Mediation Clinic at the IU Maurer School of Law, contact Professor Amy G. Applegate at [aga@indiana.edu](mailto:aga@indiana.edu).

10. If not, what makes you uncomfortable? \_\_\_\_\_

11. What, if anything, would make you feel more comfortable? \_\_\_\_\_

12. Do you think there is any reason why you should not participate in this mediation?  Yes  No

13. If yes, please explain: \_\_\_\_\_

14. Everyone fights or argues with family members and friends now and then. What happened when you fought or argued with the other parent involved in this mediation?

15. Which of the following statements most correctly describes how you and the other parent have made decisions in the past twelve (12) months? [*If parents ask what kind of decisions, break out question into child/ren's care/finances/other kinds of decisions – ask them to clarify.*]

- Mother has made almost all decisions
- Mother has made the majority of the decisions
- We have shared equally in making decisions
- Father has made the majority of the decisions
- Father has made almost all of the decisions

16. How satisfied are you with your role in influencing and making decisions about your child/ren's care?

- Very satisfied
- Satisfied
- Neutral/it varies
- Unsatisfied
- Very unsatisfied

17. Do you have any of the following concerns about the other parent?

- Overuse of alcohol or prescription medications
- Illegal drug use
- Mental health problems
- Child abuse and/or neglect concerns
- Any criminal history

If yes, please tell me about your concerns:

18. Do you think the other parent will say that s/he has any of the following concerns about you?

- Overuse of alcohol or prescription medications
- Illegal drug use
- Mental health problems
- Child abuse and/or neglect concerns
- Any criminal history

19. During the mediation, would you prefer to sit in the same room with the other parent or in a different room?

- Same room  Different room  No preference

20. If in a different room, why? \_\_\_\_\_

21. If in the same room, why? \_\_\_\_\_

22. Are there any current or past protective orders, restraining orders, or orders of protection issued against the other parent in this case?  Yes  No

23. If yes, please explain: \_\_\_\_\_

24. Does the other parent own or have access to any weapons?  Yes  No  
 25. If yes, what kind(s) of weapons? \_\_\_\_\_

26. Do you own or have access to any weapons?  Yes  No  
 27. If yes, what kind(s) of weapons? \_\_\_\_\_

28. If the Court ordered mediation, why do you believe that the Court ordered this matter to mediation?  
 \_\_\_\_\_  
 \_\_\_\_\_

29. What parenting plan or arrangements do you think would work best for your family?  
 \_\_\_\_\_  
 \_\_\_\_\_

**Section 2**

Now, I am going to ask you a series of questions about your relationship with NAME [the other parent]. I am interested in things that [NAME] may have done during a conflict, disagreement, fight, or in anger, or to scare you or hurt you.

First, I will ask if something ever happened, and you should answer yes or no.

Second, if you answer yes, then I will ask how often it happened within the past 12 months. Please tell me how often based on the sheet I just gave you [explain sheet and ensure it is in front of them when answering].

**A = never, B = once or twice, C = three to six times (approx. once every few months), D = seven to twelve times (approx. every month or two), E = weekly, F = daily**

A. Did the other parent ever (whether living together or not)		B. How often did that happen in the past 12 months?							
1.	Call you names?	Yes	No	A	B	C	D	E	F
2.	Insult you or make you feel bad in front of others?	Yes	No	A	B	C	D	E	F
3.	Yell or scream at you?	Yes	No	A	B	C	D	E	F
4.	Forbid you to go out without him/her?	Yes	No	A	B	C	D	E	F
5.	Try to control how much money you had or spent?	Yes	No	A	B	C	D	E	F
6.	Try to control your activities in or outside the home?	Yes	No	A	B	C	D	E	F
7.	Try to control your contact with family and friends?	Yes	No	A	B	C	D	E	F
8.	Act extremely jealous, or frequently check up on where you've been or who you've been with?	Yes	No	A	B	C	D	E	F
9.	Demand that you obey him/her?	Yes	No	A	B	C	D	E	F
10.	Physically abuse or threaten to abuse pets to scare or hurt you, or when angry at you?	Yes	No	A	B	C	D	E	F
11.	Punish or deprive the children because he/she was angry at you?	Yes	No	A	B	C	D	E	F

12.	Make threatening gestures or faces at you or shake a fist at you?	Yes No	A B C D E F
13.	Threaten to take or have the children taken away from you?	Yes No	A B C D E F
14.	Destroy property, for example, hit or kick a wall, door, or furniture or throw, smash, or break an object?	Yes No	A B C D E F
15.	Drive dangerously to scare you, or when angry at you?	Yes No	A B C D E F
16.	Throw an object at you to scare or hurt you, or when angry at you?	Yes No	A B C D E F
17.	Destroy or harm something you care about?	Yes No	A B C D E F
18.	Threaten to hurt someone you care about?* (If yes, ask for details and write them here)	Yes No	A B C D E F
19.	Threaten to hurt you?* (If yes, ask for details and write them here)	Yes No	A B C D E F
20.	Threaten to kill him/herself?* (If yes, ask for details and write them here)	Yes No	A B C D E F
21.	Threaten to kill you?* (If yes, ask for details and write them here)	Yes No	A B C D E F
22.	Threaten you with a weapon or something like a weapon?* (If yes, ask for details, including, what kind(s) of weapon(s) or object(s); write details here)	Yes No	A B C D E F
<b><i>I want to remind you that all my questions concern things that [NAME] may have done during a conflict, disagreement, or fight, or in anger, or to scare or hurt you.</i></b>			
23.	Hold you down, pinning you in place?	Yes No	A B C D E F
24.	Push, shove, shake or grab you?	Yes No	A B C D E F
25.	Scratch you, or pull your hair, or twist your arm, or bite you?	Yes No	A B C D E F
26.	Slap you?	Yes No	A B C D E F
27.	Hit or punch you?	Yes No	A B C D E F
28.	Kick or stomp on you?	Yes No	A B C D E F
29.	Choke or strangle you?	Yes No	A B C D E F
30.	Burn you with something?	Yes No	A B C D E F
31.	Use a weapon or something like a weapon against you? If yes, what kind(s) of weapon(s) or object(s)?	Yes No	A B C D E F
32.	Demand or insist that you engage in sexual activities against your will?	Yes No	A B C D E F
33.	Physically force you to engage in sexual activities against your will?	Yes No	A B C D E F
34.	Follow or spy on you in a way that made you feel frightened or harassed?	Yes No	A B C D E F

35.	Try to contact you against your will or in a way that made you feel frightened or harassed, for example, by unsolicited written correspondence, phone calls, or other ways of communicating, like text messages, or on Facebook or My Space?	Yes No	A B C D E F
36.	Stand outside your home, school, workplace, or other places where he/she had no business being, and in a way that made you feel frightened or harassed?	Yes No	A B C D E F
37.	Leave items for you to find in a way that made you feel frightened or harassed?	Yes No	A B C D E F
38.	Do anything else similar to the kinds of behaviors we've been discussing? If yes, what kind(s) of behavior(s)?	Yes No	A B C D E F
<b><i>Now consider the things we've been discussing or similar kinds of things:</i></b>			
39.	[If the parent endorsed any of items 22–31, and 33 above]: You said that [NAME] [insert applicable behaviors, e.g., has slapped you and choked you] in the past 12 months. Have these types of behaviors been happening more often recently than before?	Yes No	
40.	[If the parent endorsed any of items 22–31, and 33 above]: Have these types of behaviors been getting worse recently than before?	Yes No	
41.	As a result of the other parent's behaviors, did you feel fearful, scared or afraid of physical harm to yourself or to others?	Yes No	A B C D E F
42.	As a result of the other parent's behaviors, have you ever had a physical injury? If yes, did you seek, or should you have sought medical attention?	Yes No	A B C D E F
43.	As a result of the other parent's behaviors, did you ever call the police? When and what specifically prompted the call?	Yes No	A B C D E F

### Section 3

1. Is there anything else you would like to share with me/us [the mediator(s)]?

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2. Is there anything else you think I/we [the mediator(s)] should know?

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#### PRIVATE INSTRUCTION TO MEDIATORS

Review the information obtained from each parent (with your supervisor, if applicable) to consider whether this case is appropriate for mediation, and if so, whether any accommodations should be made to the process.

In some relationships one partner commits all or most of the abuse or violence; in other relationships the abuse or violence may be committed by both partners. Identify the victim(s):

Mother    Father

Consider (and check) the different types of intimate partner abuse or violence that may be present:

- psychological abuse** (e.g., Items 1–3 in Section 2),
- coercive control** (e.g., Items 4–17 in Section 2),
- threats of severe violence** (e.g., Items 18–22 in Section 2),
- physical violence** (e.g. Items 23–27 in Section 2),
- severe physical violence** (e.g., Items 28–31, and 42 in Section 2),
- sexual violence** (e.g., Items 32–33 in Section 2), and/or
- stalking** (e.g., Items 34–37 in Section 2).

There are also differing degrees of abuse and violence, and differing degrees of risk from abuse or violence. Some family situations pose serious safety risks to a parent, child, or others, regardless of whether the person at risk recognizes the risk. Although as mediators we need to maintain our impartiality, in order to consider the risk in a given situation, it may be helpful to identify the apparent “victim” and “abuser” in a relationship. The research tells us that a victim of intimate partner abuse or violence is at risk of serious injury or death when some or all of the risk factors below are present.

Check all risk factors that apply:

- victim expresses fear of abuser** (Questions 9–12 in Section 1, Item 41 in Section 2)\*\*
- abuser is highly controlling** (Question 15 in Section 1, Items 4–17 in Section 2)
- abuser uses drugs and/or alcohol** (Questions 17–18 in Section 1)
- abuser has access to guns or other weapons (note that guns are of particular concern)** (Question 24–27 in Section 1, Items 22 and 31 in Section 2)
- abuser stalks victim** (Items 34–37 in Section 2)
- abuser threatens violence** (Items 18–22 in Section 2) (**note that threats of violence involving detailed plans are of particular concern**)
- abuser is physically violent towards victim, and the violence has been escalating in frequency and/or severity over the past 12 months** (Items 22–31, 33, 39, 40 in Section 2)

Check the following additional risk factors which increase the risk to the victim:

- victim is a woman of child-bearing age** (up to age 50) (Question 1 in Section 1)
- victim has children from another partner/spouse living with her** (Question 7–8 in Section 1)
- victim is leaving her abuser for a new relationship** (Question 5–6 in Section 1)
- abuser is currently unemployed** (Question 2 in Section 1)
- victim and the other parent are still living or staying together** (Question 3 in Section 1)

\*\*As mediators, we should always accommodate someone who expresses *fear* of the other parent (Questions 9 and 12 in Section 1 and Item 41 in Section 2). Accommodation will vary depending on

the circumstances, but a mediator should **not** insist that a party start or continue mediating when that party says that s/he does not want to mediate because of fear of the other party.

Some victims of intimate partner abuse or violence may not believe that they are at risk. Although we generally want to empower a victim of intimate partner abuse or violence who affirmatively wants to mediate, in making the decision whether or not to mediate we must also consider (a) the risks involved and (b) what accommodations to provide if we decide to mediate. In addition to safety risks, be sure to consider, among any other concerns presented in the specific situation, including balance of power issues, the possibility of coercion, the mediator's ethical duty not to facilitate involuntary and/or unconscionable agreements, and the mediator's ethical duty to remain impartial.

In considering the existence and effect of intimate partner abuse or violence in this case, please consider the questions below:

- 1) If you think the case is **not** appropriate for mediation, what are your concerns?
- 2) If you determine not to mediate or to terminate mediation<sup>iii</sup> because of concerns about intimate partner abuse or violence, are there any ethical constraints and/or any safety concerns in how you should communicate this decision with the parties and/or the court?
- 3) If you think the case may be mediated, should any of the following accommodations be implemented (check the ones you think should be implemented and indicate why)?
  - parents to be in separate rooms at all times (shuttle mediation)**
  - parents to be in separate rooms if mediator not present (joint sessions possible, but only if the mediator is present with the parents)**
  - staggered arrival and departure times for parents**
  - support person necessary (for which parent(s)?)**
  - attorney necessary (for which parent(s)?)**
  - referral to DV program or shelter (e.g., Middle Way House in Bloomington, IN)**
  - mediation at secure facility, passing through security, presence of armed guards (e.g., Justice Center in Bloomington, IN)**
  - parent needs escort to/from car**
  - parent needs way to leave the building without being seen by the other parent**
  - parents to appear for mediation on separate days**
  - telephone or on-line mediation**
  - other accommodation?**

<sup>iii</sup> Even with screening, there may be times when a mediator learns belatedly of intimate partner abuse or violence. If during the mediation, you become concerned about the possibility of intimate partner abuse or violence, take a break to consider how to proceed. Be sure to keep the parties separate while you determine the appropriate action to take.

**ANSWER KEY**

**When responding to the questions, please use these choices for your answers about whether something EVER happened:**

**YES or NO**

**When responding to the questions, please use these choices for your answers about the PAST 12 MONTHS:**

<b>Never</b>	<b>A</b>
<b>Once or twice</b>	<b>B</b>
<b>3–6 times (approx. once every few months)</b>	<b>C</b>
<b>7–12 times (approx. every month or two)</b>	<b>D</b>
<b>Once per week</b>	<b>E</b>
<b>Daily</b>	<b>F</b>