



[Home](#) > [Publications](#) > [Dispute Resolution Magazine](#) > [2013](#) > [Fall](#) > [Screening for Intimate Partner Violence in Mediation](#)

## Screening for Intimate Partner Violence in Mediation

Vol. 20 No. 1

By Kelly Browe Olson

Most mediators are aware that intimate partner violence affects parties' abilities to make informed, independent decisions. Many, however, do not know how to identify distinctive types of intimate partner violence and how it can impact a party's ability to negotiate and mediate effectively.

Screening parties for intimate partner violence (IPV) before mediation is a necessity in any case where the parties have had a close personal relationship. Certain types of IPV are directly correlated with fear, control, and power imbalances and can lead to safety, process, and outcome problems in mediation. Effective screening allows mediators to identify cases in which safety and control issues preclude mediation or require the use of additional safeguards. It also provides an opportunity for parties to consider whether they will be able to negotiate effectively with each other.

This article discusses the importance of screening for IPV; suggests who should screen, when screening should happen, and how it should be done; and presents some new screening instruments. The few existing studies on screening in mediation have found that many screeners do not talk to parties individually, ask appropriate questions, or spend enough time on the process. Even when IPV was identified as an issue in a pre-interview questionnaire, some screeners failed to ask any questions about the parties' relationship. All programs should require effective screening for IPV before mediation, and if the parties choose to mediate, screening for IPV should continue throughout the process.

### The Impact of IPV in Mediation

IPV, also known as domestic abuse or domestic violence, is a continuum of behaviors in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, or emotional, sexual, or economic abuse to control the other.[1]

Domestic violence also happens in multi-generational familial relationships and between adults and teens who have never been intimate. While some survivors of IPV are male, this article will use the female pronoun when referencing survivors of IPV because studies continue to show that the vast majority of survivors are female.[2]

Research has identified some important divergences in both IPV typologies and their impacts on parties' ability to negotiate or participate in mediation. There are multiple typologies, but for this article I will focus on two extremes that sociologist Michael P. Johnson and others have identified: coercive controlling violence and situational couple violence.[3] Coercive controlling violence (CCV) is a pattern of abuse that includes intimidation, coercion, and control, coupled with physical violence. Perpetrators of CCV establish ongoing patterns of power and control over their partners. This pattern often limits the survivor's ability to negotiate, even when the perpetrator isn't in the same room. Even skilled and experienced mediators should not attempt to mediate cases that involve CCV. Another typology is situational couple violence (SCV), which is related to anger, rather than fear or power, and is less likely to escalate and recur than coercive

**ABC  
MAC**

DISP  
publi  
the A  
Dispu  
Maga  
resol  
lates  
the c  
throu  
inter  
pract

**Disp  
Edito**

**Chai**  
Josep  
The (C  
of La  
Colur

Andr  
Marq  
Milwa

**Chai**  
Franl  
Caml

**Merr**  
Jame  
Ham  
St. P

Marv  
JAMS  
Silve

Benn

controlling violence.[4] With appropriate safeguards, many experts believe that parties with a history of SCV are capable of mediating their disputes.[5] The different levels of control, coercion, fear, and violence present within these two typologies – not to mention the other typologies – illustrate the importance of screening participants for multiple relationship issues, not just for physical violence.

Some mediators believe that they can easily identify survivors and perpetrators of IPV, but studies have shown that most professionals are mistaken in this belief.[6] The media depictions of uneducated women of lower socioeconomic status with hidden bruises who are abused by powerful, menacing dominant men are not representative. IPV survivors and offenders are members of all classes, races, ethnicities, and religions. Each survivor has a distinct story, and each handles her experience differently.

**The Importance of IPV Screening**

State laws on IPV and mediation vary greatly. In some states, mediation is not allowed in any case in which an order of protection has been issued. In other states, mediation is mandated in family cases whether or not instances of abuse have been reported or documented. Court programs, screeners, and mediators are often uncertain about what IPV is and how to handle cases where it is an issue. Training and consistent use of screening protocols will help minimize the confusion about IPV and about which cases should be excluded from mediation or conducted only with specific safeguards.

Studies in one jurisdiction identified IPV in more than 50 percent of its domestic relations cases;[7] another study in another location found IPV indicators in more than 90 percent of that jurisdiction’s domestic relations cases.[8] Despite the frequency with which it appears, however, mediators habitually fail to recognize IPV. One study found that mediators missed IPV, as self-identified by the parties, in more than 25 percent of their IPV cases, even after additional training.[9] In a California Family Court study of cases in a mandatory mediation program, IPV was reported by at least one parent in 76 percent of the 2,500 cases. [10]

In medical and therapeutic professional studies, researchers have found that IPV was frequently underreported or completely missed unless there was a direct screening assessment with patients.[11]

To ensure that mediation is not used as a tool to manipulate and re-victimize a former partner, screeners need to look closely at the aggressor’s and the survivor’s descriptions of their relationship. Empirical findings from a large study on custody mediation suggest that coercive controlling behavior must be measured in the screening process.[12] While a restraining order should be a clear indicator that an in-depth screening process is required, the presence or absence of a restraining order is not enough information. Screeners need to examine all cases for fear and control issues, listen to the parties’ individual concerns and goals, and help all the parties make informed choices about their dispute resolution process. [13]

**Allowing Parties to Make an Informed Choice**

Screening provides an opportunity for parties to make an informed choice about the processes available to resolve their case and whether mediation is their best option. A screening process with specific questions about each party’s ability to negotiate with the other will help both parties think about decision-making in their relationship. A skillful screener who is mindful of how severely IPV, especially coercive controlling violence, can affect one party’s ability to participate fully will help a survivor decide whether she is ready, willing, and able to negotiate for herself.

Domestic violence specialists have long been concerned about the emphasis mediation puts on collaboration. For example, absent screening, if an IPV survivor is unwilling to discuss visitation or other arrangements directly with the other party, a mediator could perceive the survivor as unreasonable and unsupportive of the other parent’s relationship with the child. The survivor could give in to the other party’s demands out of fear. On the other hand, the mediator could perceive the abuser to be reasonable, understanding, and interested in a good parenting relationship – when what he is really wants is to control the other parent.

For some IPV survivors, being able to mediate and have a voice in the outcome of their case is empowering. Some advocates who originally preferred litigation have become disillusioned by the court system and now suggest that with safeguards, mediation and other private processes may provide more safety or control for

Strac  
Phila  
  
Effie  
McDe  
Miar  
  
Donr  
Fede  
Wast  
  
Zena  
Medi  
Insti  
Ann ,  
  
Nanc  
Carli  
Coun  
  
**Edito**  
Gina  
  
**Asso**  
Louie  
  
**Law**  
Darle  
Joyce  
Penn  
Dicki  
  
The I  
subn  
draft  
dispu  
revie  
decis  
in Di  
guide  
below  
  
**Subs**  
Maga  
  
**Disp**  
the I  
**subs**  
per !  
will  
**Subs**  
onlin  
  
**For i**  
**becc**  
**Merr**

their clients.[14] A research study showed that some women with a history of domestic violence preferred mediation and were happier with their results than similarly situated women who went through litigation. [15] Indeed, some IPV survivors find mediation provides more opportunities to be heard and to make visitation plans that offer more detail and more safety than court-ordered plans. Each domestic relations case is unique; a one-size-fits-all solution will not work, especially in cases involving IPV.

Screening not only protects clients; it protects mediators and others. In a relationship where IPV is a factor, separation is frequently the time when violence is most likely to occur or escalate. Making financial or household arrangements to leave, seeking legal assistance, and particularly the act of leaving threaten a batterer's sense of power and control. Everyone who comes in contact with a potential batterer needs to know this. Parties and screeners need to know about IPV to be able to decide whether and how to proceed with mediation or seek an alternative form of resolution.

## The Screening Process

### *Who Should Screen*

Court programs, mediation programs, individual attorneys, and mediators should all thoroughly screen their cases for IPV.[16] Before mediation begins, screeners should determine whether the case is inappropriate for mediation, appropriate for mediation with specific safeguards, or appropriate for general mediation. Parties often fail to raise IPV concerns with attorneys, so although some attorneys do adequately screen their clients, mediators should not assume that lawyers have asked the right questions or prepared the parties for their roles in the mediation process.

### *When to Screen*

Screening is not a one-time event. While trained court or program personnel should conduct a thorough screening of the parties before a case is assigned to mediation, this isn't always feasible. Furthermore, IPV may develop or worsen at separation, so the mediator should conduct ongoing screening as the mediation process evolves. As parties become comfortable with their attorneys or mediator, they may also choose to reveal more about the IPV in their relationship and their concerns about negotiating with the other party.

### *What Types of Cases*

Screening for IPV should not be limited to traditional domestic relations cases. It is equally important in cases involving never-married couples, same-sex couples who are married or in civil partnerships or unions, in adult guardianship cases, child protection, and other cases where multiple family members are involved or where there are intimate relationships between the parties. This includes small claims and civil cases between family members or long-term roommates. There are increasing numbers of pro se parties filing cases in domestic relations and multiple other areas of law. When parties appear pro se, it is more critical than ever to have effective screening processes in place.

### *Screening Tools and Techniques*

Screening a case should involve a variety of tools and techniques, including written questionnaires, background checks, clinical observations, and in-person interviews. A separate in-person interview helps build rapport and lead to a thorough understanding of the issues facing a particular family. Screeners should reflect on what the parties say and don't say, their facial expressions, tone, behavior while the other party is speaking, and willingness to express their needs. Screening questions should be detailed enough to elicit discussion about the many types of violence that can be present in a relationship. Uniform screening instruments help provide quality and consistency.

To assess power and control dynamics, psychologist Joan Kelly and sociologist Michael P. Johnson suggest, screening instruments must have questions that "identify not only intensity of conflict, frequency, recency, severity, and perpetrator(s) of violence, but also patterns of control, emotional abuse and intimidation, context of violence, extent of injuries, criminal records, and assessment of fear." [17] Screeners need to build trust and raise these issues in a manner that allows parties to respond thoughtfully and not feel judged or re-victimized.

Examples of general questions that may help a screener determine whether someone will be able to negotiate effectively include:

- How are decisions about money made?
- What activities do you engage in outside the home?
- Describe the relationship your children have with your partner.
- What is the worst thing your partner will say about you?

One study on IPV in mediation noted that wording matters and found that explicit questions led to answers that broader questions missed.[18] Standardized interviews should include questions about safety, control, fear, and the parties' perceived ability to negotiate with each other.

An important consideration in screening is what to do with the information. It should never be used to diagnose someone, label complex situations, minimize danger, or assess a party's ability to parent. The information should be used only to determine whether mediation or another dispute resolution process is appropriate and if someone has or should have concerns about safety. If there are safety concerns, the screener should provide appropriate resources and safeguards for the parties, whether or not a mediation will take place.

Screening isn't just important in domestic relations cases or in legal cases. Parties in many different types of situations who are frustrated by the administrative or court processes may act out in violent ways. When judges or administrators order parties to mediation or settlement conferences, it may be perceived as a threat or as justice delayed or denied. Employers should work with their human resource administrators to encourage screening parties for potential violence before referring them to resolution processes. There may be patterns of long-term abuse similar to IPV or the referral process itself may trigger acts of violence. In January 2013, a lawyer and his client were shot and killed by the plaintiff outside their court-ordered settlement conference. The plaintiff, who had a history of anger issues, left in the middle of the session and waited for his victims outside. Screening may not have been able to prevent this tragedy, but screening all parties for control, coercion, and violence will help raise awareness of anger and frustration and could help reduce the number of such incidents.

### *Screening Instruments*

Screening instruments should be focused on risk assessment, be gender neutral in choice of language, and include questions for each partner about both partners' violence. Studies have shown that questionnaires alone are not as effective as a combined written and verbal interview or conversation.

The Michigan Supreme Court has posted a series of helpful online tools to help court personnel and mediators identify and work with parties experiencing domestic violence. These include DV training for mediators and multiple examples of screening tools.

The list of resources on the previous page includes two thorough screening tools recently developed for family mediation: the Relationship Behavior Rating Scale–Revised (RBRS-r) and the Mediator's Assessment of Safety Issues and Concerns (MASIC).

### **Conclusion**

While screening is a daunting task, it is also an essential one. If coercive controlling violence is not a factor and the parties want to mediate, if they are capable of negotiating safely and effectively, mediation should proceed with safeguards and ongoing screening. If the parties or mediator have any doubt about coercion, safety, or effectiveness, mediation should not proceed and screeners must be prepared to prevent or stop mediation.

Mediators and attorneys should seek out IPV training, know the court rules in their jurisdictions, and use standardized screening instruments to ensure the mediation process is safe and effective. More research must be conducted on screening instruments and on the impact of different types of IPV on mediation outcomes. Courts, programs, and mediators need to be vigilant and protect their parties and themselves from dangerous coercion and potential tragedy.

### **Additional Resources**

#### **Five Things You Need to Know about Intimate Partner Violence and Mediation**

1. Every mediation program should incorporate an ongoing standardized screening protocol.
2. Screening should be done with each party separately, preferably in person, before and throughout the mediation process.
3. There is no typical survivor. IPV survivors and offenders are members of all socioeconomic classes, races, ethnicities, and religions. Each survivor has a distinct experience.
4. Intimate Partner Violence can include psychological, emotional, and physical abuse. When deciding whether to proceed with mediation, screeners should look for

patterns of fear, coercion, and control, not just orders of protection or physical harm.

5. Most parties, even those represented by lawyers, have not been asked about IPV issues in their relationship or been adequately prepared for their role in the mediation process.

## **Resources**

### **ABA Commission on Domestic and Sexual Violence** (General Information)

[http://www.americanbar.org/groups/domestic\\_violence/resources.html](http://www.americanbar.org/groups/domestic_violence/resources.html)

### **ABA Commission on Domestic and Sexual Violence** (Chart on Mediation in Family Law Matters Where DV is Present)

[http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/mediation\\_january\\_2008.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/mediation_january_2008.pdf)

### **National Domestic Violence Hotline**

1-800-799-SAFE (7233), 1-800-787-3224 TTY, or [www.ndvh.org](http://www.ndvh.org)

### **National Coalition Against Domestic Violence**

[www.ncadv.org](http://www.ncadv.org)

### **National Sexual Violence Resource Center**

[www.nsvrc.org](http://www.nsvrc.org)

### **Center for Disease Control: Intimate Partner Violence**

<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>

### **Futures Without Violence**

<http://www.futureswithoutviolence.org/>

### **State of Michigan**

*Domestic Violence Screening for Referral to Mediation*

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/alternativedisputeresolution/mc282.pdf>

*Domestic Violence Screening Training for Mediators*

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/Domestic%20Violence%20Screening%20Training%20for%20Mediators.pdf>

### **Relationship Behavior Rating Scale–Revised (RBRS-r)**

<http://dx.doi.org/10.1080/10502556.2012.743830>

### **The Mediator's Assessment of Safety Issues and Concerns (MASIC)**

<http://courtdr.org/library/view.php?ID=5798>

**Kelly Browe Olson** is the Director of the Clinical Programs at the William H. Bowen School of Law at the University of Arkansas. She has taught Family Law, Family Mediation and Mediation Seminars, Alternative Dispute Resolution, and Domestic Violence courses. She can be reached at [kbolson@ualr.edu](mailto:kbolson@ualr.edu).

[1] Joan Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 Fam. Ct. Rev. 476 (2008).

[2] The terms "victim" and "survivor" are both used to describe parties who are in or have been through an abusive relationship. "Survivor" is used more often when a party has recognized the abuse and has left the relationship. While the parties discussed here may still be in their relationship, "survivor" is used here throughout the article to describe someone who is or has been in a relationship where she was subject to IPV.

[3] Kelly & Johnson, *supra* note 1, at 476.

[4] *Id.*

[5] *Id.*

[6] Connie J. A. Beck, J. Michael Menke & Aurelio Jose Figueredo, *Validation of a Measure of Intimate*

*Partner Abuse (Relationship Behavior Rating Scale-Revised) Using Item Response Theory Analysis*, 55 J. Divorce & Remarriage 54 (2013).

[7] R.H. Ballard, Amy Holtzworth-Munroe, Amy Applegate & Connie Beck, *Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening*, 17 Psychol. Pub. Pol'y & L. 241 (2011).

[8] Kelly & Johnson, *supra* note 1, at 476.

[9] Amy Holtzworth-Munroe, Connie Beck & Amy Applegate, *The Mediator's Assessment of Safety Issues and Concerns (MAS1C): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain*, 48 Fam. Ct. Rev. 646 (2010).

[10] *Id.*

[11] Beck et al., *supra* note 6, at 54.

[12] Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 Fam. Ct. Rev. 555 (2010).

[13] Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 Wm. & Mary J. Women & L. 145, 147 (2003).

[14] Amy Holtzworth-Munroe et al., *supra* note 9, at 646.

[15] Kelly & Johnson, *supra* note 1, at 476.

[16] Nancy Ver Steegh, Gabrielle Davis & Loretta Frederick, *Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence*, 95 Marq. L. Rev. 955 (2012).

[17] Kelly & Johnson, *supra* note 1, at 476.

[18] Amy Holtzworth-Munroe et al., *supra* note 9, at 646.