DOMESTIC VIOLENCE AND MEDIATION: A DANGEROUS INTERSECTION?

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• LEGAL SERVICES OF NORTH FLORIDA
DOMESTIC VIOLENCE
LEGAL DEFINITION

• DOMESTIC VIOLENCE:
  • ANY ASSAULT, BATTERY, AGGRAVATED BATTERY, SEXUAL ASSAULT, SEXUAL BATTERY, STALKING, AGGRAVATED STALKING, KIDNAPPING, FALSE IMPRISONMENT, OR ANY CRIMINAL OFFENSE RESULTING IN PHYSICAL INJURY OR DEATH OF ONE FAMILY OR HOUSEHOLD MEMBER BY ANOTHER
FAMILY OR HOUSEHOLD MEMBER

- SPOUSES
- FORMER SPOUSES
- PERSONS RELATED BY BLOOD OR MARRIAGE
- PERSONS WHO ARE PRESENTLY RESIDING TOGETHER AS IF A FAMILY, OR WHO HAVE RESIDED TOGETHER IN THE PAST AS IF A FAMILY
- PERSONS WHO ARE PARENTS OF A CHILD IN COMMON REGARDLESS OF WHETHER THEY HAVE BEEN MARRIED
- MUST HAVE LIVED TOGETHER UNLESS HAVE A CHILD IN COMMON
OBVIOUS IMPACTS OF DV ON MEDIATION

• FEAR BLOCKS DECISION-MAKING ABILITY
• ABUSER WANTS TO CONTROL THE PROCESS
• VICTIM MAKES ALL OF THE CONCESSIONS
• OFFERS DEEMED “EXTREME” BY THE ABUSER CAN PLACE THE VICTIM IN DANGER
• MAY SUBJECT THE VICTIM TO RETALIATION
• DESIRE FOR CONTROL IS COUNTERPRODUCTIVE TO NEGOCIATION
SUBTLE EFFECTS ON MEDIATION

- BATTERER OMNIPOTENCE
- LASTING EFFECTS OF COERCIVE CONTROL
- MASKING OF FEAR BY VICTIM
- GIVING AWAY THE FARM WITH A SMILE
- ONE GLANCE IS WORTH A THOUSAND WORDS
- BATTERER SEEMS CONGENIAL AND OUTGOING WHILE VICTIM SEEMS GUARDED, SUSPICIOUS, INDECISIVE, OR UNCOOPERATIVE
- POSSESSIVE JEALOUSY MAY IMPACT VIEW OF MEDIATOR AND/OR PARANOIA ABOUT “SECRET” DISCUSSIONS BETWEEN VICTIM AND MEDIATOR
TRAUMA INFORMED PRACTICE

• EFFECT OF TRAUMA ON MEMORY, THOUGHTS, EMOTION
  • IT IS VERY DIFFICULT FOR THE PARTS OF OUR BRAIN WHICH ENCODE AND ORGANIZE INFORMATION TO DO THEIR JOB – PARTLY BECAUSE THEY ARE NEGATIVELY AFFECTED OR HAMPERED BY THE RELEASE OF HORMONES (ADRENALINE; CORTISOL; OXYTOCIN; NATURAL OPIATES) WHICH OCCURS DURING TRAUMA
  • MEMORIES ARE FRAGMENTED AND NONLINEAR
  • CONSIDER IMPACT ON DECISION-MAKING
  • EFFECTS OF PTSD
• CUMULATIVE EFFECT OF TRAUMA ON THE BRAIN – BRAIN LEARNS TO ACTIVATE TRAUMA RESPONSE WITH REGULARITY (FIGHT, FLIGHT, FREEZE)

• EVEN IN SEEMINGLY INOCCUOUS OR “SAFE” SITUATIONS

• IMPACTS VICTIM’S OUTWARD PRESENTATION AND ABILITY TO FREELY PARTICIPATE IN MEDIATION

• MAY BE DIFFICULT TO RECOGNIZE AND MAY APPEAR AS DEFENSIVENESS, APATHY, CONFUSION, AVOIDANCE, OR OTHER EXPRESSION
WHAT TO DO:

• BE EDUCATED ABOUT DOMESTIC VIOLENCE:
  • PARTIES MIGHT NOT DISCLOSE DV IN THE SCREENING PROCESS
  • EVEN IF PARTIES ARE REPRESENTED, THEIR LAWYERS MAY NOT KNOW ABOUT THE DV, AND EVEN IF THEY DO KNOW ABOUT IT, MAY NOT APPRECIATE ITS IMPACT ON THEIR CLIENT AND THE MEDIATION PROCESS
  • MUST BE ABLE TO INDEPENDENTLY RECOGNIZE INDICATORS

• CONDUCT MEDIATION IN SEPARATE ROOMS

• BE SURE TO INQUIRE ABOUT THE PRESENCE OF INJUNCTIONS OR OTHER NO CONTACT ORDERS

• SAFETY PLAN WITH OTHER STAFF IN THE OFFICE
• Give the victim a room with an easy exit
• Prearrange a bailiff to escort the victim to and from the mediation office (have the victim leave first)
• Have the victim arrive later than the abuser to avoid walking in at the same time
• Have liberal policies for telephonic appearance
• Use adjournment
• Relieve signing pressure by allowing parties to leave with drafted agreement to sign after reflection – especially if unrepresented
## WHAT TO DO, CONTINUED

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<tr>
<td>INFORMATION ON LOCAL RESOURCES FOR VICTIMS AVAILABLE IN ALL MEDIATION ROOMS</td>
<td>INFORMATION ON SAFETY PLANNING IN ALL MEDIATION ROOMS</td>
<td>THE VICTIM THE OPTION OF CALLING THE LOCAL DOMESTIC VIOLENCE HOTLINE WHILE IN A SEPARATE MEDIATION ROOM</td>
<td>THE VICTIM’S SAFETY AND COMFORT THROUGHOUT THE MEDIATION, NOT JUST AT THE BEGINNING</td>
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STILL MORE TO DO:

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<td>THE VICTIM IF THE ABUSER HAS TRIED TO PRIVately COMMUNICATE IN ANY WAY WITH HER DURING THE MEDIATION (TEXT/ELECTRONIC COMMUNICATION)</td>
<td>THE VICTIM THROUGHOUT MEDIATION THAT PARTICIPATION IS VOLUNTARY</td>
<td>THE MEDIATION IF AT ANY TIME IT APPEARS A PARTY CANNOT SAFELY AND MEANINGFULLY PARTICIPATE IN THE MEDIATION PROCESS</td>
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WHAT NOT TO DO:

• ACCEPT PARTIES’ EXPRESSED DESIRE TO MEDIATE TOGETHER UNLESS VICTIM HAS HAD OPPORTUNITY TO DECIDE THAT OUTSIDE OF THE PRESENCE OF THE ABUSER (AND STILL USE CAUSUSES THROUGHOUT TO CHECK IN)

• PLAY BOTH SIDES AGAINST THE MIDDLE (MAY BE GENERALLY EFFECTIVE STRATEGY BUT IN CASES WHERE DV IS PRESENT, CAN INCREASE DANGER FOR VICTIM)

• GET IN POWER STRUGGLE WITH ABUSER

• ASSUME YOU CAN BALANCE THE POWER

• GROW IMPATIENT WITH VICTIM’S INDECISIVENESS

• SIMPLY LABEL THE VICTIM AS UNREASONABLE (E.G. REFUSING PARENTING)

• MEDIATE THE DISMISSAL OF AN INJUNCTION/USE IT FOR BARGAINING
• THINK THE ISSUE OF DOMESTIC VIOLENCE CAN BE COMPARTMENTALIZED – IF DOMESTIC VIOLENCE, INCLUDING PSYCHOLOGICAL ABUSE AND COERCIVE CONTROL, EXIST IN THE RELATIONSHIP, EVERYTHING IS IMPACTED:
  • PARENTING (MUST BE AWARE OF THE IMPACT OF DV ON CHILDREN)
  • FINANCES
  • HOW TO DEAL WITH REAL PROPERTY
  • TYPES OF CONTACT GOING FORWARD
  • CHILD SUPPORT…
LETHALITY FACTORS

• SEPARATION = INCREASED DANGER

• SIGNIFICANCE OF LEAVING – MOST IMPORTANT FACT TO KNOW – VICTIMS ARE IN THE MOST DANGER WHEN LEAVING/SEPARATING/DIVORCING

• MANY ACTS CAN SYMBOLIZE LEAVING:
  • HIRING/CONSULTING ATTORNEY
  • FILING PLEADINGS
  • DISCUSSING DIVORCE
  • SHOWING UP AT MEDIATION
  • FILING INJUNCTION
  • ANY CHANGE THAT VICTIM IS GETTING STRONGER
  • EMPLOYMENT
  • NEW FRIENDS
  • GOING BACK TO SCHOOL
LETHALITY CONTINUED

• PRIOR THREATS TO KILL
• ACTS OF STRANGULATION (“CHOKING”)
• VICTIM’S BELIEF THAT ABUSER IS CAPABLE OF KILLING HER OR THEIR CHILDREN
• THREATS WITH A WEAPON
• ABUSER’S LOSS OF EMPLOYMENT (COMPOUNDING LOSSES)
• USE OF SEXUAL VIOLENCE
• POSSESSIVE JEALOUSY
• KILLING/HARMING PETS
• DRUG/ALCOHOL PROBLEMS
• The absence of these factors does not mean there is no risk, but…

• The presence of these factors will indicate high risk
INJUNCTION FOR PROTECTION

• WHO CAN FILE
  • FAMILY OR HOUSEHOLD MEMBER
  • VICTIM OF DOMESTIC VIOLENCE OR
  • REASONABLE CAUSE TO BELIEVE IN IMMINENT DANGER OF BECOMING VICTIM OF DV
PROCEDURE

• FILE PETITION IN THE CIRCUIT COURT
• RECEIVE TEMPORARY INJUNCTION OR ORDER SETTING HEARING
• RETURN FOR HEARING
• FINAL JUDGMENT OF INJUNCTION OR DISMISSAL
RELIEF

• STAY 500 FEET AWAY FROM RESIDENCE, WORKPLACE, OTHER LISTED LOCATIONS
• STAY 100 FEET FROM VICTIM’S VEHICLE
• NO DIRECT OR INDIRECT CONTACT
• NO POSSESSION OF FIREARMS OR AMMUNITION UNLESS STATE OR LOCAL OFFICER (CANNOT BE CHANGED BY AGREEMENT IN MEDIATION)
RELIEF CONTINUED…

• BATTERERS’ INTERVENTION PROGRAM
• ALCOHOL/SUBSTANCE ABUSE EVALUATIONS
• PARENTING TIME AND RESTRICTIONS
• EXCLUSIVE USE OF A SHARED RESIDENCE
• SUPPORT
• OTHER RELIEF…
ADDITIONAL PROVISIONS

• PETITIONERS MAY FILE A CONFIDENTIAL ADDRESS

• EITHER PARTY MAY MOVE TO MODIFY OR DISSOLVE AN INJUNCTION AT ANY TIME

• INJUNCTIONS RECEIVE FULL FAITH AND CREDIT THROUGHOUT THE UNITED STATES AND MAY BE REGISTERED AT LOCAL SHERIFF’S DEPARTMENTS

• THE PROVISIONS OF CHAPTER 61 RELATING TO PARENTING ORDERS TAKE PRECEDENCE OVER THOSE PROVISIONS IN THE INJUNCTION
RESOURCES

- FLORIDA DOMESTIC VIOLENCE HOTLINE 1-800-500-1119 AND TTY HOTLINE 1-800-621-4202
  - WILL CONNECT CALLERS TO LOCAL DOMESTIC/SEXUAL VIOLENCE PROGRAMS/SHELTERS…
  - WILL CONNECT CALLERS TO THE FLORIDA LEGAL HOTLINE
  - CALLERS CAN BE DIRECTED TO LOCAL LEGAL SERVICES PROVIDERS, MANY OF WHOM SPECIALIZE IN DOMESTIC VIOLENCE REPRESENTATION
  - ASSISTANCE WITH SAFETY PLANNING AND REFERRALS TO OTHER NECESSARY RESOURCES