Interpersonal Violence in Mediation: Beyond Families

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Interactive Quiz

- Take out your phones!
Question 1: (word cloud)

What relationships do you think of when you hear the words “Interpersonal Violence”? 
Florida Data

Taken from:

Question 2:

What is the number of forcible sex offenses reported in Florida in 2015?

A. 5 thousand
B. 10 thousand
C. 15 thousand
D. 20 thousand
Question 3:

What is the number of assault offenses reported in Florida in 2015?

A. 25 thousand
B. 35 thousand
C. 50 thousand
D. 60 thousand
Question 4:

What is the number of domestic violence offenses reported in Florida in 2015?

A. 5 thousand
B. 10 thousand
C. 20 thousand
D. Unknown
What is Domestic Violence?

§ 741.28(2)

“Domestic violence” means any assault, aggravated 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.
“Family or household member” means 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, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.
What else is Interpersonal Violence?

§ 784.046 Action by victim of repeat violence, sexual violence, dating violence, or stalking for protective injunction

§ 784.046(1)(a)
  i. “Violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.
“Sexual violence” means any one incident of:

- Sexual battery, as defined in chapter 794;
- A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child, as described in chapter 787;
- Sexual performance by a child, as described in chapter 827; or
- Any other forcible felony wherein a sexual act is committed or attempted,

...
Repeat Violence

§ 784.046(1)(b)

“Repeat violence” means:

• two incidents of violence or stalking,
• one of which must have been within 6 months of the filing of the petition,
• which are directed against the victim or victim’s immediate family member.
§ 784.048(2)

A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.
Stalking Continued

§ 784.048(1)(a)

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
Stalking continued

§ 784.048(1)(b)

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.
Why is all of this considered Interpersonal Violence?

Quiz time.
What’s the first word that comes to mind when I say trauma?
What’s the first response you think of to the question: what are some effects of trauma?
Can the effects of trauma be long-lasting?

Yes

No
Causes of Trauma

- Sexual assault
- Physical abuse
- Physical violence
- Psychological maltreatment
- Neglect
- Witnessing violence
- School / workplace violence
- Disasters
- Community violence
- War / terrorism
- Traumatic grief / separation
Short-term Effects of Trauma

- Physical pain
- Anxiety
- PTSD
- Depression
- Fear/terror
- Fragmented Memory
- Emotional Dysregulation
- Compromised decision-making
- Substance use/abuse
Long-term Effects of Trauma

- Suicidal ideation
- Drug/substance abuse
- Chronic pain
- Anxiety
- PTSD
- Hypervigilance
- Depression
- Compromised decision-making
- Emotional Dysregulation
Why do we care?

Low psychological effect

One-time low level violence

v.

Multiple acts of low to moderate violence

v.

One-time high level violence

v.

Multiple acts of high level violence

High psychological effect
Unable to freely exercise self-determination (10.310)

Encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner (10.410)

Unable or unwilling to participate meaningfully in the process (10.420)
2 minute break
Red Flags
Simulation 1
Write down the first word you think of that you associate with a sign or signal of a violent relationship.
Red Flags: Domestic Abuse

- Signs of substance use / abuse
- Always deferring to the abuser
- Signs of eating disorder (sudden weight gain or loss)
- Signs of anxiety
DA Red Flags cont.

- Hyperawareness (of the abuser’s actions)
- Affected (fake) emotion
- Self-criticism
- Depression
DA Red Flags cont.

- Social withdrawal
- Emotional dysregulation
- Conflict minimization
- Focus on the “rules”
Red Flags: Sexual Abuse

- When Mediation closely follows the abuse:
  - Expressions of shame
  - Expressions of guilt
  - Memory impairment
  - Flat affect – unemotional
Recent SA Flags cont.

- Expressions of unexpected quick emotions
- Set off by sensory triggers
- Expressions of uninhibition / risk-taking
- Hyperawareness
- Anxiety
- Bodily Pain
- Stomach pain
Red Flags: Sexual Abuse

- When the abuse is not recent:
  - Signs of PTSD
  - Signs of substance use/abuse
  - Signs of anxiety
  - Signs of depression
  - Risk-taking attitude or actions
Distant SA Flags cont.

- Expressions of anger, disgust, regret
- Expressions of repulsion
- Expressions of low self-worth
- Chronic pain
- Obsessive-compulsive behaviors
- Emotional dysregulation
Red Flags: Stalking

- Recent change of address
- Help-seeking behavior
- Changed routine
- Don’t do things that they used to do

NB: Unlikely to demonstrate fear responses
Red Flags: Workplace Abuse

- Avoidant behavior
- Anger
- Expressions of burn-out
- Expressions or reports of underperformance
- Belligerence
- Non-committal behavior W/R/T the employer/company
Simulation 2
What’s the first word you think of when I say “Trauma-informed”?
Question 10:

Does “trauma-informed” mean picking sides?

Yes

No
Question 11:

Must a history of trauma mean termination of the mediation?

Yes
No
Assessment

Can I continue this Mediation?

Will physical safety be endangered?

Can the party meaningfully participate?

Does each party have the ability to bargain?
Caucus?  No Caucus?

Caucus.
1. Understanding how violence and victimization have figured in the lives of people who may come to mediation.

2. Applying that understanding in providing services to accommodate participants’ needs and facilitate participation.

3. Making efforts to avoid more harm and ensure participant safety by minimizing the possibilities of retraumatization.
Core Principles of Trauma-Informed Mediation

- Safety
- Trustworthiness
- Choice
- Collaboration
- Empowerment
Principles in Practice

1. Have a Safety Plan

- Know courthouse layout.
- Have a caucus plan.
- Provide access to exits.
- Verify that a bailiff / deputy is nearby.
2. Attention to Detail

- Signs of discomfort
- Physical reactions
- Language choice
- Active Listening
Principles in Practice

3. Maintain Objectivity
Principles in Practice

4. Maintain a compassionate, non-judgmental mediation.

- Check your demeanor.
- Enforce your rules.
- Give the participants space.
How to End the Mediation

- No Mediation When DV is Present; Rule 10.310(d).
  i. Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

**See the Committee Notes for more detail.**
Rule 10.420(d). Adjournment or termination.

A mediator shall:

- (1) adjourn the mediation upon agreement of the parties;
- (2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;
- (3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;
- (4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and
- (5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.
How to End a Mediation (cont.)

What to tell the parties
i. Mediation is concluded
ii. The next steps in the process are

What to tell the court
i. Was there a mediation? Yes / No.
ii. Was an agreement reached? Yes / No.
Permissive Reporting

- Witness violence in the mediation.
- Witness threats of violence in the mediation.
44.405(4)(a)(3)

i. Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication that requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report.
Mandatory Reporting if Children are involved?

§ 39.201(1)(a)

i. If a child is or is suspected of being abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care

ii. ... shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).
415.1034(1)(a).
  i. ... shall immediately report such knowledge or suspicion to the central abuse hotline.

415.102(27).
  i. “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.
1. Abuse can happen in a variety of situations.

2. Abuse can have serious and long-lasting effects on a victim’s physical, emotional, and psychological well-being.

3. Severe one-time violence or moderate-to-severe repeated violence can affect a person’s ability to self-determine and participate in mediation.
4. Victims of violence can have physical and psychological responses in the presence of their abusers.

5. Attention to detail and behavior can reveal otherwise unknown conflicts that affect self-determination and participation.

6. A trauma-informed approach to mediation can allow parties to feel safe and empowered to participate in the mediation process.
Final Review

7. If the mediation cannot for some reason continue, use a standard termination phrase to protect the parties.

8. Be aware of mandatory versus discretionary reporting requirements.

9. Be aware of to whom you must report, and what may and may not be reported.
The Office of Court Improvement

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