

Mediation and Domestic Violence

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Domestic violence is the cancer of intimate relationships. Those of us who work with families, family law, divorce and mediation confront this metastasis far too often. To some of us, it is an almost a daily encounter. It is truly hard to imagine a life living in fear every-hour-of-the-day and for years.

Understanding domestic violence, while a hard sought goal, is probably not possible today even for the experts. Surely a few words here by this mediator/attorney will serve little to enhance the readers perspective regarding the syndrome itself. I do know, however, that we all share a heavy burden, by virtue of our professions, to learn as much as we can and to keep on learning. Only with this approach can we truly help troubled clients.

Is it important? Sheer numbers may hold the answer. During seven years as a family and divorce mediator, having been involved with over a thousand couples, I can report that one third of the couples contacting my office have a history of domestic violence (Please keep in mind that I do not include only physical violence under the definition of domestic violence). While there is no way of knowing if this is a representative sample of our population, my sense is that this scary proportion is not far off.

It may be important, here, to try for a common definition of domestic violence. The one I find most useful is included in *The Final Report of the Iowa Supreme Court Mediation and Domestic Violence Work Group* published in December of 1999. It defines domestic violence as: *a pattern of behavior employed by an abuser to blunt personal deficits through maintaining enough control in an intimate relationship to avoid abandonment and keep intact pieces of the abuser's fragile self image. Abusers seek to avoid abandonment by any means possible, which, paradoxically, includes but is not limited to sabotage, emotional abuse, sexual abuse, threats and/or physical violence.* What is important here, again, is the understanding that domestic violence exists in the absence of physical violence. Further, and particularly in mediation, domestic abuse without physical abuse can be even more insidious.

There are some who insist that mediation is inappropriate in any case where there is a history of domestic violence. There are times when I would like to agree. Given the fact that balance is essential to the conversations and negotiations that occur between parties in mediation, it is hard to imagine a victim who may have experienced manipulation, intimidation and fear, mustering the courage to speak out and to stand up for her own view. Ultimately, however, if we were to make the decision for victims regarding what is or is not appropriate for them, we would be perpetuating the same kind of paternalistic control from which the victim strives to escape.

The more desirable alternative, in my view, is to provide as much information as possible about alternative processes available to the victim in order that the victim is

empowered to make an informed choice. Surely in the face of real fear or even an expectation of intimidation, a victim must be urged to consider avoiding a process that places that victim and her perpetrator in the same room (Since over 90% of victims are female an occasional use of the feminine personal pronoun seems OK). Yet, there have been individuals who face such elements who have, in my experience, made an informed choice to try mediation.

Such extreme instances, of course, call for very special considerations with regard to the setting and the procedures followed in mediation. These special considerations may range from meeting in the courthouse in the presence of an armed deputy to considerations such as which party sits closest to the door and whether there should be separate party departures.

It may be useful to relate a couple of cases where I believe victims made informed choices. Once, during the course of a "screening" interview with me, a victim disclosed what appeared to be a volatile and dangerous situation. While there had never been an adjudication of abuse, the victim had experienced serious injuries and many threats. Upon inquiry, this victim told how she had made elaborate plans for her escape and for the safety of her children. Included in her rationale to try mediation were the following considerations. As is typical of a batterer, his behavior in front of a third party, she expected, would be exemplary. She had considered the increased risk of harm to her and her children as a result of her speaking out in mediation, and had made post mediation safety plans that allowed for such a development.

Most prominent in her decision making was the conclusion that virtually no alternatives were completely safe for her. She believed, however, that mediation was safer than a courtroom in her particular circumstance and here is her logic. She saw many similarities between her situation and a local case that had been much in the news. In that case, a known batterer, having recently experienced an adverse divorce ruling, stalked and viciously murdered his exwife and one of their children as well as attempting to murder their second child. Her view, along with other published opinions, concluded that the batterer, having felt no say in the outcome at trial, went over the edge seeking to regain control. Rightly or wrongly, this victim believed that there would be less chance of such an occurrence if there were an opportunity for participation by both parties in the decision making process. Her decision to mediate was respected.

On the other hand, there was a case involving a relationship of total domination and control. While the victim had never been hit, choked, or beaten, she had been physically restrained and threatened. In this case, their children were grown and only property matters remained. This woman felt virtually helpless and intimidated, having been demeaned throughout their entire relationship. Her relationships with others had been limited by her spouse and her spouse had cut her off from her extended family. She had no access to the checkbook and was given an allowance along with clear instructions as to its use. We discussed the risks and the alternatives of going forward in mediation. She concluded that it would be impossible for her to overcome his intimidation. Her decision, too, was respected.

Both of the above divorce matters came to mediation as a result of the Sixth Judicial District Family Mediation Program which requires mediation in instances where the parties would otherwise be asking the court to make a decision for them. An exception to this requirement is, of course, a history of domestic violence. Mandatory mediation in family law cases exist in other districts as well, and is expected to be the norm throughout the State very soon. All these programs have and will have exceptions for cases with a history of domestic violence.

There are a number of challenges that face all of us working with clients where mediation is an alternative and, particularly, where there are programs in which mediation is required. First, we must become skilled enough in interviewing clients to determine if they are experiencing domestic violence. Second, when domestic violence is a factor, we must be skilled in helping clients deal with this reality as they face the already traumatic experiences of divorce, custody, modifications and other actions.

While interviewing or “screening” for domestic violence sounds like the easy step, it often takes considerable time and patience. Victims rarely self identify. Surely, if we were to ask the direct question, “Are you a victim of domestic abuse,” the answer from a victim would almost always be, “No.” Many screening conversations with victims may last 20 minutes or more pursuing vague and evasive answers before the victim may quietly admit, “Well, he did point a loaded gun at me and the children last Thursday.” Those interested in having effective screening interview tools at hand are welcome to send me a request at Sovern@mediate.com. In addition, Jennifer Juhler is the Domestic Abuse Coordinator for the Iowa Supreme Court. Jennifer chaired the Supreme Court’s Mediation and Domestic Violence Workgroup.

Properly advising and informing victims regarding their options is certainly an equal challenge. Understanding the syndrome of domestic violence is clearly our best chance. The Iowa Bar Association, as the reader probably recalls, took a nationally unprecedented step in sponsoring the highly acclaimed day long Symposium on Domestic Abuse in Des Moines on May 18 of this year. Another source, *Representing Victims of Domestic Abuse: A Lawyer’s Handbook* was distributed in compact disc at that event by the Iowa State Bar Association Volunteer Lawyers Project. This may still be available through the Bar Association office at 800-325-2909. Also, one of the best sources of help and information is your local victim advocacy group.

Mediation is an option that needs to be carefully and thoughtfully employed by victims of domestic violence. In order for that to happen, we must be in a position to identify clients who are victims and to provide them with the kind of information that empowers them to make those careful and thoughtful choices.