

**Alexander Jones**

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DIVORCE + FAMILY LAW

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**Mediation and Relocation**

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# Agenda



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## *Mediation & March 2010 Washington Declaration on International Family Relocation*

### Factors Relevant to Decisions on International Relocation - Paragraph 4

(v) Any history of family violence abuse, whether  
physical or psychological

(ii) The views of the child having regard to the child's  
age and maturity



# AFCC Association of Family and Conciliation Courts

**Model Standards for  
Family & Divorce Mediation**  
Prepared by the AFCC Task Force for the Revisions of Model Standards for Family & Divorce Mediation (2001)  
Task Force Members

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**Collaborating Organizations**

Association for Conflict Resolution  
American Bar Association Family Law Section  
American Bar Association Section of Dispute Resolution  
Academy of Professional Mediators

Draft Standards: <https://lnkd.in/gti2pbhj>

Provide Comments: <https://lnkd.in/gB6jev3Y>

**Domestic abuse:** While the terms are not synonymous, domestic abuse refers to a wide range of harmful behaviors that may also be referred to as Domestic Violence or Intimate Partner Violence. As used in these Standards, domestic abuse includes physically, sexually, economically, psychologically, and coercively controlling aggressive behaviors directed by or against current or former family or household members. These behaviors may occur alone or in combination. They vary from family to family in terms of frequency, recency, severity, manner, directionality, pattern, intention, circumstance, and consequence. – *Model Standards for Family and Divorce Mediation*

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- **Physically aggressive behaviors** involve the intentional use of physical force with the potential to cause injury, harm, disability, or death.
- **Sexually aggressive behaviors** involve unwanted sexual activity that occurs without consent through the use of force, threats, deception, or exploitation.
- **Economically aggressive behaviors** involve the use of financial resources to intentionally diminish or deprive another of economic security, stability, standing, or self-sufficiency.
- **Psychologically aggressive behaviors** involve intentional infliction of harm to emotional safety, security, or wellbeing.
- **Coercively controlling behaviors** involve harmful conduct that subordinates the will of another through violence, intimidation, intrusiveness, isolation, and/or control.

*The mediator shall screen for domestic abuse, assess the nature and context of the abuse, and, in consultation with each party, determine whether a mediation process can be designed to address barriers to self-determination and informed decision-making.*

A. The mediator shall screen each prospective party, separately and confidentially, for the possible existence of past or present domestic abuse, including but not limited to coercive control, prior to seeking their informed consent to mediate. The mediator shall screen and monitor for indications of domestic abuse throughout the mediation process, whether or not it was identified at the outset.

B. When domestic abuse is identified as a possible issue, the mediator shall examine the nature and context of the abuse and help each party assess its impact on their meaningful participation in the mediation. The mediator shall inquire separately and confidentially if parties believe they will be safe and able to make autonomous decisions; will be able to participate in good faith; and will have access to information, the applicable law, and their procedural options. The mediator shall help the parties determine what, if any, safeguards and process modifications will effectively address specific concerns. If barriers to effective participation can't be remediated, the mediator shall help the parties explore other available options for dispute resolution.

C. The mediator shall not undertake mediation without specific training on identifying the nature, context, and dynamics of domestic abuse, including but not limited to coercive control, and its impact on parenting, co-parenting, children, and the mediation process. Mediators shall obtain ongoing and updated training on these topics.

D. The mediator shall facilitate the participants' formulation of parenting plans that protect the physical safety and psychological wellbeing of the parties and their children.

## **STANDARD V: DOMESTIC ABUSE**

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# Screening for Domestic Abuse



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**1. Is the case suitable for mediation?**

**2. If it is, how do you structure the process?**

Joint sessions

Shuttle diplomacy

“Remote” sessions

**3. What additional accommodations are needed for each party to help ensure a safe, voluntary, and appropriate mediation process?**

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

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The MASIC-S is a screening tool for intimate partner violence and abuse and related concerns between current or past intimate partners (spouses or significant others). The questions in the MASIC-S primarily address behaviors that are associated with severe or concerning levels of domestic abuse.

Free Version Online: <http://odr.com/masic-s>

# Resources on MASIC-S

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Holtzworth-Munroe, A., Beck, C.J.A., & Applegate, A.G. (2010). The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain. *Family Court Review*, Vol. 48, No. 4, 646-662.

Applegate, A.G., Rossi, F.S., Holtzworth Munroe, A., Beck, C.J., & Jiang, L.J. (2020). In a Time of Great Need, a New, Shorter Tool Helps Screen for Intimate Partner Violence. *American Bar Association (ABA) Dispute Resolution Magazine*

Rossi, F. S., Applegate, A. G., Tomlinson, C., & Holtzworth-Munroe, A. (2023). Introduction of Shortened MASIC Intimate partner violence screening for separating or divorcing parents: An introduction to the Mediator's Assessment of Safety Issues and Concerns-Short (MASIC-S). *Family Court Review*, 1-16.



# Decision Tree for Process Based on Screening

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1. Do you mediate? If not, what happens?
2. If so, are you in the room? Same physical space? Virtual mediation?

*The mediator shall assist participants in discussing the best interests of the child and determining how to include a child's voice in the mediation process when one or more children are involved.*

- A. The mediator should encourage the participants to explore options available for parenting arrangements as well as their costs and benefits. The topics for discussion should include, among others, the following:
  1. an age-appropriate parenting plan addressing the child's time-sharing schedule and the parental decision-making responsibilities, with appropriate levels of detail as agreed to by the parties. Inclusion of or referral to a child development specialist may be appropriate;
  2. a plan for revising parenting plans, including but not limited to dispute resolution mechanisms, as the developmental needs of the child and the circumstances of the parents evolve over time;
  3. the effects on the child's development of continuing parental conduct, including but not limited to domestic abuse, child maltreatment, and persistent parental conflict, and how to ameliorate the effects on the child; and
  4. information about community resources and programs that could help families cope with the consequences of family reorganization, parental conflict, domestic abuse, and child maltreatment.
- B. The mediator should be trained about the impact of culture and religion on parenting philosophy and other parenting decisions, as well as their impact on the mediation process.

## **STANDARD X: CHILD-CENTERED PROCESS**

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*The mediator shall assist participants in discussing the best interests of the child and determining how to include a child's voice in the mediation process when one or more children are involved.*

C. The mediator shall inform any court-appointed child representative that the mediation is taking place. If the representative participates, the mediator should, at the outset, discuss with that representative the effects of their participation on the mediation process and the confidentiality of the mediation. Whether the representative participates in the mediation session or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the child.

D. The mediator should inform the parents and court-appointed child representative about the options for the child's input, including but not limited to the child's direct participation.

E. Prior to any child participation or input in the mediation process, the mediator should consult with the parents and the child's court-appointed representative about whether the child will participate and the form of their participation. This should include a discussion of the benefits, financial costs, and emotional risks of the child's participation based on the child's age.

F. The mediator should inform the participants that the child does not decide the parenting plan but that their input can be useful as a factor to consider in a child-centered parenting plan. The mediator should explain the positive and negative consequences of the child's input.

## **STANDARD X: CHILD-CENTERED PROCESS** **(cont.)**

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# TRAINING FOR INTERVIEWING CHILDREN – DO NO HARM!

## Sample Questions

Tell me about...”

“And then what...”

“Tell me more about...”

“What happened when...”

“What did s/he say?”

“What did you do?”

× Never interrupt a narrative.

## What not to do:

*Use jargon*

*Use abstract terms*

*Use multisyllabic words*

*Ask complex questions*

*Ask about numbers, quantities, measurements*

*Ask about time*

*Ask about duration and frequency*

*Ask a child to guess*

*Never ask “Why”*

# Process Questions for Including a Child's Voice

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- Who interviews?
- When?
- Where?
- Consent?
- What do you do with the information?



# Thank you

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