

Introduction to ABA Section on Dispute Resolution Task Force Elder Abuse and Neglect Screening Guidelines for Mediators

The Task Force on Elder Abuse Screening for Mediators has created guidelines that provide information about possible signs of elder neglect and abuse (physical, sexual, emotional, financial, social, and neglect), that negatively impact the ability of older adults' participation in mediation. The guidelines should be used to assess the appropriateness and design of mediation as a response to matters of decision making and disputes. Additionally, the guidelines offer considerations about the value of attorneys and other participants being present in the mediation process or the need for referrals to other professional services.

The pervasiveness of elder abuse is increasingly being recognized. The Guidelines below have been developed to assist mediators in identifying factors of elder abuse that may inform the appropriateness of mediation. The Guidelines can also be used to advise referrals to additional professionals. While the mediator should be aware of all the questions and concerns in the Guidelines, not every question needs to be part of the initial meeting.

1. General Considerations

- a. Because mediation supports the dignity, self-determination, and rights of the older adult, the elder is included in decision making and mediation to the extent possible. The mediator should address cultural considerations and “quality of life” as defined by the older adult for a person-centered approach.
- b. The literature indicates there is a correlation between the risk factors and actual abuse. Direct observation and any reports by the elder, a family member, or others involved in the mediation are important indicators that abuse may be happening. The mediator should take seriously any allegations of abuse, yet maintain their neutrality. However, indicators of abuse do not mean that abuse is present. See chart: IDENTIFYING SIGNS OF ABUSE, NEGLECT AND EXPLOITATION.
- c. The mediator is not an investigator or evaluator to determine the validity of allegations of abuse.
- d. The mediator has the responsibility to determine whether accommodations need to be made in order to proceed with a quality process to make the mediation safe and comfortable and accessible for all participants.
- e. Following the completion of the questionnaire, the mediator should determine the appropriateness and, if appropriate, the format of the mediation. The mediator might consider modifying the mediation process to address safety in the discussion and/or agreement. The mediator should err on the side of caution. The older adult should be central in decision making to the extent possible.
- f. Conducting a screening does not release a mandatory reporter from making a report. Know your state-specific reporting authority and/or entity and report to them as mandated.
- g. It is the mediator’s responsibility to determine how and if the people can participate in mediation without the influence of coercive power and control.
- h. Where appropriate the mediator should consider options such as reporting or referral to Adult Protective Services, Advocates for safety planning, Consumer Protection, law

enforcement, or other appropriate agencies. The mediator should consider the impact of reporting on the older adult.

2. An Intake sheet is provided as a reference that provides guidance for the first phone call. There is space to add the mediator's local referral numbers and websites to the intake sheet.
3. Suggested approaches to pre-mediation interviews and working with elders:
 - a. It is highly recommended that mediators have training in Family Mediation and additional training in Elder Mediation prior to conducting these cases. The training should include information about conducting a screening prior to mediation, elder abuse, and sensitivity to the family dynamics and feelings of individuals.
 - b. It is best practice to screen for abuse in every mediation. Elders are at high risk for abuse.
 - c. Each participant should be interviewed separately, except if they are represented the attorney may be present with them at the interview.
 - d. Since relationships are important, the mediator should develop rapport with parties and non-party participants before asking sensitive questions. It is important that the mediator be sensitive to how people are responding to questions. If the mediator is too intrusive, participants may shut down, refuse to answer questions, or end the mediation.
 - e. Face to Face screening with each person separately, particularly the elderly, is preferred if logistically possible. On-line videos or phone interviews are acceptable when necessary. If it is not possible to schedule a face to face interview prior to the first mediation session, a meeting with one or more participants a few minutes prior to the mediation or after a brief introduction to the process is an option.
 - f. Screening should not end with the initial screening meeting. Screening is ongoing and open-ended throughout the mediation process.
 - g. Assure the older adult is comfortable and has what they need in order to maximize participation. Where appropriate consider the following:
 - i. Be aware of their current situation and condition
 - ii. Make sure that the elder has their glasses/hearing aid/dentures on and working
 - iii. Speak slowly, using short sentences
 - iv. Ask about only one thing at a time
 - v. Speak at eye level
 - vi. Be patient – give them time to answer
 - vii. DON'T correct them
 - viii. Take seriously any allegation of elder abuse or neglect
 - ix. Keep the focus on the elder
 - h. There should be an opening statement preceding the interview questions that explains the purpose of the interview, such as: Sample introduction to the questionnaire: The purpose of this meeting is to explain the process of the mediation and to ask questions about your situation. At the end of our meeting, it gives an opportunity for us to decide whether to go forward with the mediation, and in what format. I have a number of questions I'd like to ask you, and you may have questions you want to ask me as well. This is a confidential conversation. However, if we find that safety is at risk, we may need to report it. Where would you like to begin?

4. Terminating Safely:

If abuse or neglect is suspected or alleged, the mediator may decide to terminate the mediation. In order to avoid compromising safety it is suggested that abuse or neglect not be mentioned as a reason for termination. *Suggestions: a) terminate for benign reasons, such as scheduling problems or normal steps in the process. b) state "I will be back in touch about follow-up." This could be followed up with a letter thanking the parties for meeting with the mediator.]*

Intake for Elder Abuse and Neglect Screening Tool

When a call comes in to your business or organization:

Gather information

- On the current situation
 - Confidentiality
 - Neutrality
- Learn the specific request for services
- Emergency? Refer immediately.
- Provide helpful referrals

Are others interested in mediation?

- Provide information about your services
- Identify interests to come to the table
- Provide helpful referrals

Are there concerns about abuse, neglect, and exploitation?

- Listen for/ask about risk factors and capacity (Screening)
- Has there been an expert evaluation? When? Results?
- What is the trauma history in the family?

Is the mediator qualified and willing to take the case?

- Refer out if not qualified or willing at this time
- What accommodations and resources are needed?
Is an advocate or support person needed?
- What information does the family need to bring and who will bring them
Examples: Bank statements, legal documents, medical reports.

Continue to Screening and Mediation

- Ongoing screening as new information is revealed

Emergency Referrals – Add Phone Numbers

Adult Protective Services (APS)

Police

911 or Emergency room

Professionals and services – Contact Information

Elder Law Attorney

Area Agencies on Aging www.n4a.org

Social Worker; Discharge Planner

Housing Assistance

Bureau of Consumer Protection www.ftc.gov

Medical Assistance

Financial Advisor / Planner

Aging Life Care Professionals (formerly geriatric care managers) www.aginglifecare.org

Criminal Prosecutor

IDENTIFYING SIGNS OF ABUSE, NEGLECT AND EXPLOITATION

RISK FACTORS are attributes, characteristics or exposures that are research or evidence based which when present increase the likelihood that abuse, neglect, or exploitation may be taking place. These risk factors may include: women over the age of 80 (2-3 times a greater risk); family member controlling the elder’s finances or living with, dependent on or caring for the elder (90% of abuse perpetrated by family members); history of violent relationships, bullying; abuse of power and control present in an elder’s significant relationship; weapons in the home; caregiver without employment or financially dependent; cognitive impairment, mental health concerns or substance misuse by elder and/or caregiver.

A mediator may gather information by direct observation or from reporting by the elder or others.

INDICATORS: ORANGE - Further exploration is needed	SIGNS: RED - Consider further action/referral to a professional
<p>PHYSICAL ABUSE Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Elder seems scared; over sedated; unable to collect thoughts • Unexplained bruising, welts, cuts, wounds, burns, blood visible on clothing, internal injuries, various stages of healing of any bruises/fractures; painful body movements; weight loss • Frequent yelling and fighting in the home • Elder not going to the doctor for needed treatment; doesn’t care for food served; being ashamed/scolded/intimidated; being alone a lot • Caregiver is overly protective; dominates the elder 	<p>PHYSICAL ABUSE Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Threat of physical harm or physical harm/touched the elder without permission • Food or water withheld from the elder • Over/under use or misuse of elder’s medication (medical compliance issues, elder not given medicine or is forced to take medication) • Untreated medical concerns or elder receives medical attention by numerous service providers/pattern of changing • Isolated from support (personal and professionals) • History of accidents/injuries <p>History or current involvement/complaint with Adult Protection Services or police (protection/restraining orders)</p>
<p>SEXUAL ABUSE/IPV Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Vague or indirect references to unwelcome physical touch • Overly dominating/protective caregiver • Elder reports or seems anxious or ashamed; • Oral cuts • Urinary tract infections 	<p>SEXUAL ABUSE/IPV Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Someone has harmed the elder physically or touched them without permission, such as unwanted sexual advances or sexual assault • Genital cuts, bruising, discomfort, inflammation, bleeding; sexually transmitted infections;

<p>ABANDONMENT/NEGLECT Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Dehydration, contractures, pressure sores, fecal impaction, malnutrition, poor hygiene, assistive devices not available or broken (dentures, hearing aides, prosthetics, glasses) • Elder has relied on someone for care and now that person fails to help • Elder’s dislike for food prepared or caregiver dismisses elder’s preferences • Elder is withdrawn; has poor eye contact, cuts, bruises, inappropriate clothing for weather (not due to personal preference) • Not receiving medications or medical care 	<p>ABANDONMENT/NEGLECT Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Getting little to no food/water or medical care • Caregiver is withholding medication, assistive devices, medical care • Someone has threatened the elder • Family members/caregivers/or someone close to the elder cannot be trusted
<p>FINANCIAL EXPLOITATION Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Misuse of elder’s money; elder has no personal money to meet daily needs or access to funds/checking account; large withdrawals from a previously inactive account; bounced checks/overdraft fees; unexplained discrepancy between known income and standard of living; low balances; deviations from normal banking patterns or unusual bank/ATM activity; missing or out of sequence checks; overpayment for goods/services; bills not being paid/overdue • Mail redirected to a new address 	<p>FINANCIAL EXPLOITATION Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Elder is forced to sign documents that the elder has not read or understood, or told just to sign document, write bad checks, hand money over, give things to another without permission or make inappropriate investments • Loans, money or possessions are used or taken and not paid/given back to elder • Sudden property transfers or changes in wills/estate planning/ POA/Beneficiaries and other documents; new signers on accounts • Mediator suspects that a guardianship petition is an attempt to deprive the elder of his/her rights
<p>SELF NEGLECT Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Elder is not receiving or taking in proper nutrition or hydration • Elder appears to have poor hygiene <ul style="list-style-type: none"> ○ Elder appears unbathed, malodorous, or dirty clothing • Elder is not getting prescribed medication or is failing to take medication 	<p>SELF NEGLECT Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Elder is in danger of becoming unsheltered or food insecure • Potential risks to the elder’s well-being are not being addressed • Elder’s environment is unsafe <ul style="list-style-type: none"> ○ Elder unable to climb stairs safely ○ Elder unable to call 911

<ul style="list-style-type: none"> • Elder has frequently missed scheduled medical appointments • Elder is inappropriately dressed for weather • Home has infestation 	<ul style="list-style-type: none"> ○ Reports of active APS or police report/investigation
<p>EMOTIONAL/PSYCHOLOGICAL Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Yelling, fighting, high stress in the home • Displays of elder’s emotional distress as in tearfulness, depression, agitation, trembling, withdrawn, flat affect • Elder expresses fear, mistrust, loneliness, lack of privacy, being ashamed, sad, pressure, anxiety, feeling uncomfortable towards primary caregiver or someone else • Elder or another person reports caregiver/someone else has failed to meet elder’s needs 	<p>EMOTIONAL/PSYCHOLOGICAL Elder or another reports or mediator observes:</p> <ul style="list-style-type: none"> • Elder or another reports: Elder threatened; confined to a specific area (ex. Made to stay in bed when not sick); someone close to elder has engaged in frequent disparaging behavior; prevented elder from using any communication devices or communicating with family, friends or others • Elder expresses fear of caregiver or someone that the elder relies upon for needs



QUESTIONS FOR FAMILY MEMBERS / OTHERS

The elder's wellbeing is our focus. The mediator will generally speak with whoever contacts them first, being careful to avoid any actual or appearance of bias.

1. What are your concerns?
 - a. Do you have any concerns about the care and welfare of the elder?

2. And then: same questions for elder but from a different angle -- (if they haven't already been answered)
 - a. Regarding the care of _____(name or relationship), what could they use more help with these days?
 - b. Could you describe their living arrangements?
 - c. Could you describe their health care and needs?
 - d. Could you describe their connections with others?
 - e. How does _____ feel treated by the people around them?
 - f. In mediation, we generally want everyone who has a concern in the room. Who do you think should be at the meeting?
 - g. Is there someone you might not want at the first meeting? What is the concern?
 - h. How are finances handled? How is that working?
If they needed anything, how would they get it?
If they needed to pay for it, how would they get the money?
 - i. Does anyone live with them?
Who?
Do they pay rent or help out with any of the bills like electricity and water?
 - j. Have they been to the hospital or ER recently? Any doctor visits recently?
Is there anything you have concerns about that hasn't been followed up on?

3. Is there anything else you want me to know?

Possible follow-up questions:

-- What type of social activities does the Elder like? When did they last participate in them in any way?

INITIAL QUESTIONS FOR ELDER

NOTE: Before we even start asking questions, it's important to make a connection with the Elder, perhaps by noticing something personal in their surroundings to talk about. In some cases, the older adult may be hesitant or afraid to speak up.

General conversational questions we want to ask the elder to screen for abuse:

- Starter general questions:
- How are you doing? Or How are things going for you?
- How has your care been going?
- What more might you need? Or What do you want?
- Can you give me an idea of what most of your days are like?

Possible Follow-up Questions:

1. CARE
 - a. If you could change something about your care, what would that be?
2. SELF-CARE
 - a. Are there times when life seems a lot to manage/take care of? (*As a reflection, not a question?*)
 - b. Can you tell me more about that...?
3. WELL-BEING
 - a. How do you feel treated by the people around you?
 - b. Is there anyone you're less comfortable around?
4. FINANCES
 - a. Do you have any questions or concerns about your finances or your money?
 - b. Do you have enough money for your care?
 - c. Do you help other people in your life pay for things?
 - d. Do you have any concerns about how your money is being spent?
5. PHYSICAL SAFETY AND COMFORT
 - a. Have you had pain or injury that you didn't go to the doctor for?
 - b. What happened?
 - c. Did you tell anyone about it?
 - d. Has anyone touched you in a way that bothered you? In a place that bothered you?
6. Is there anything else you want me to know?

INTERVENTIONS ACTION CHART

Identified Abuses & Observations	Action to Be Taken	When
<p>Identified risk factors for abuse, neglect, or exploitation</p>	<ul style="list-style-type: none"> • Observe for evidence of abuse, neglect or exploitation • Listen for allegations of abuse, neglect or exploitation • Mediate if otherwise appropriate, but if allegations or evidence emerges, see below 	<ul style="list-style-type: none"> • At intake • During course of mediation • Post-mediation
<p>Credible allegations or evidence of abuse, neglect, or exploitation</p>	<ul style="list-style-type: none"> • Call protective services • Call the police • Call victim service program • Consider not mediating. Only mediate if it can be made safe, or requested by the person experiencing the abuse. • Protect the vulnerable adult in mediation and afterwards; Example: limiting contact between the elder and the alleged-abuser by using caucus and mediating the safety measures for visits • Discuss the situation with the elder's attorney or advocate, or if there is none, strongly encourage the use of an advocate 	<ul style="list-style-type: none"> • At intake • During course of mediation • Post-mediation

Know the elder abuse reporting laws in your area.

https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elder-abuse-reporting-chart.pdf?eType=EmailBlastContent&eld=ed64ab8e-28fa-405b-930d-f4d812fb840d

In addition, check other related laws in your area such as criminal and civil statutes.

The views expressed herein represent the opinions of the authors. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities.