

Pro Se Mediation: Intake, Screening, and Using Joint Sessions

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What is an intake?

- Prior to mediation
- Individual/private meeting with each party
- Face-to-face (Zoom) preferable
- 20-45 minutes
- Confidential



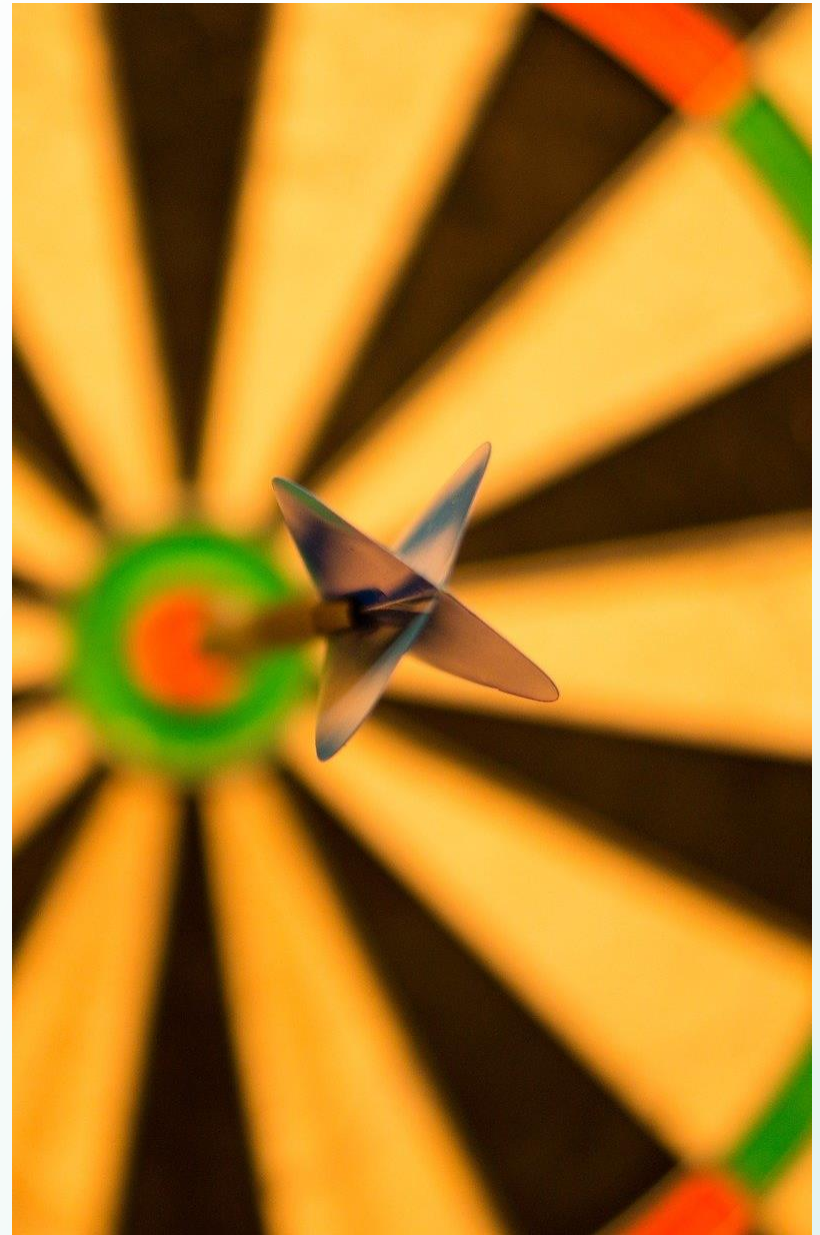
Why conduct a pre-mediation intake?



- To provide information
- To gather information
- To shift perspective
- To build trust
- To make mediation more productive
- To determine the need for a safety plan
- To decide whether to mediate

Tips for Conducting an Intake

- Active listening
- Acknowledging emotions
- Questions
- Coaching, goal-setting
- Identifying interests
- Identifying common interests





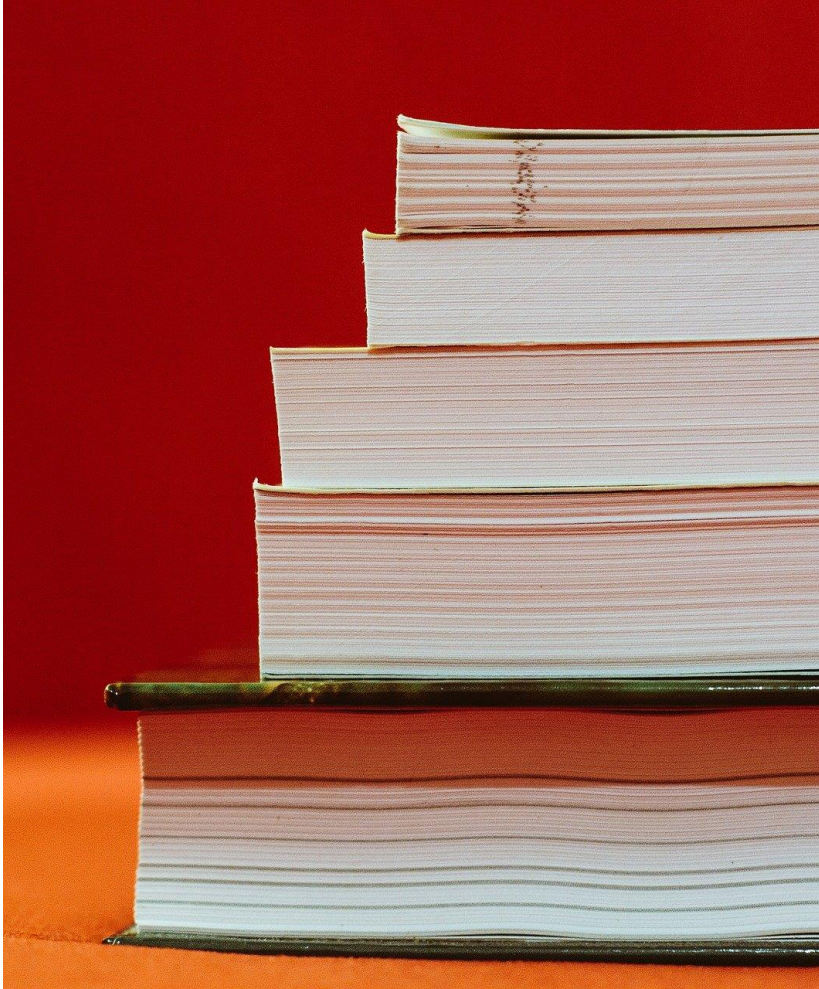
- Trust your instincts
- Have/control the process
- Use a checklist
- Take organized notes
- Provide organized feedback

Screening: Areas to explore

- Power imbalances
- Are parties able to talk to each other?
- History of violence, stalking, threats
- Police calls, RO, OP
- Unreported abuse
- Anger, volatility, potential for escalation



Areas to explore, continued



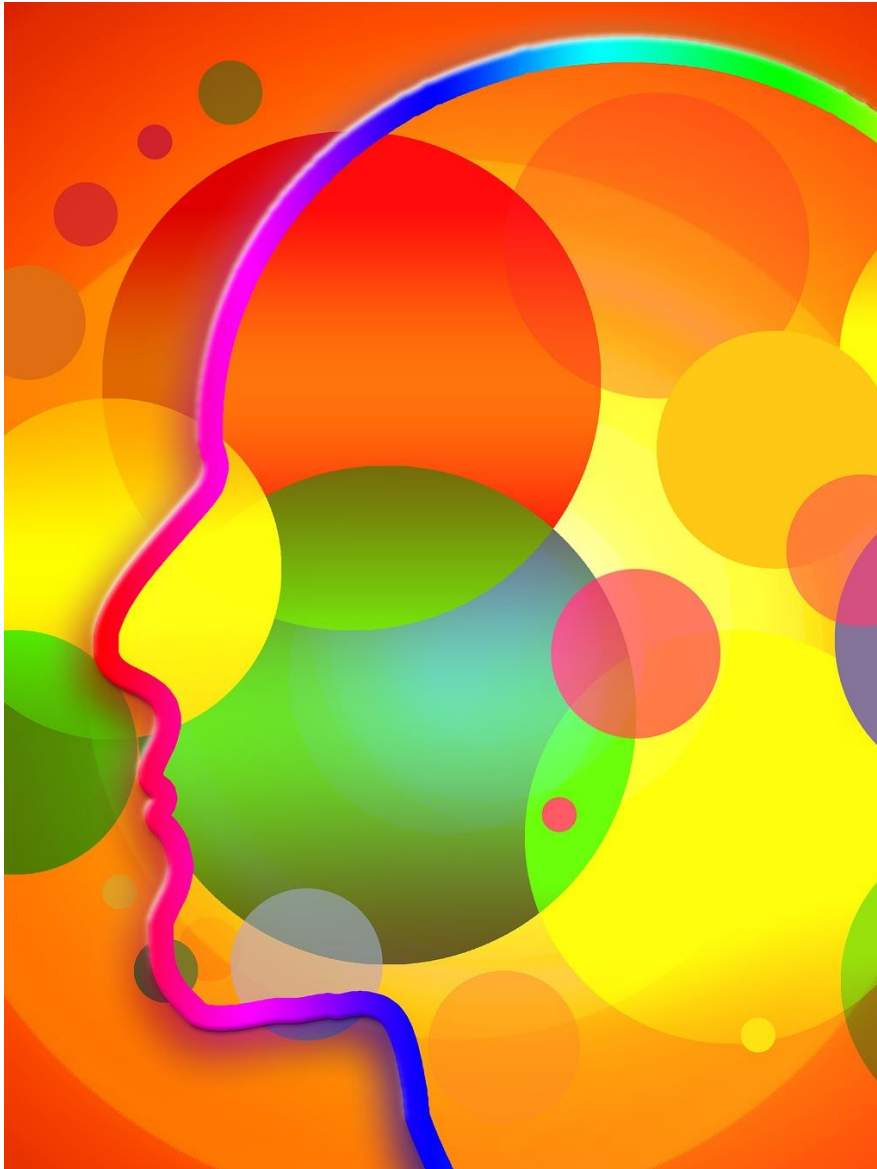
- Necessary homework
- Scope of court case
- Illiteracy
- Language barriers
- Accessibility challenges
- Necessary accommodations

Need for legal advice

- “How would X affect my situation?”
- “What do you think I should do?”
- “What could I get if I just went to Court?”
- Fundamentally flawed perceptions of the law?
- Is there legal information that would help?
- Can the party access that information?



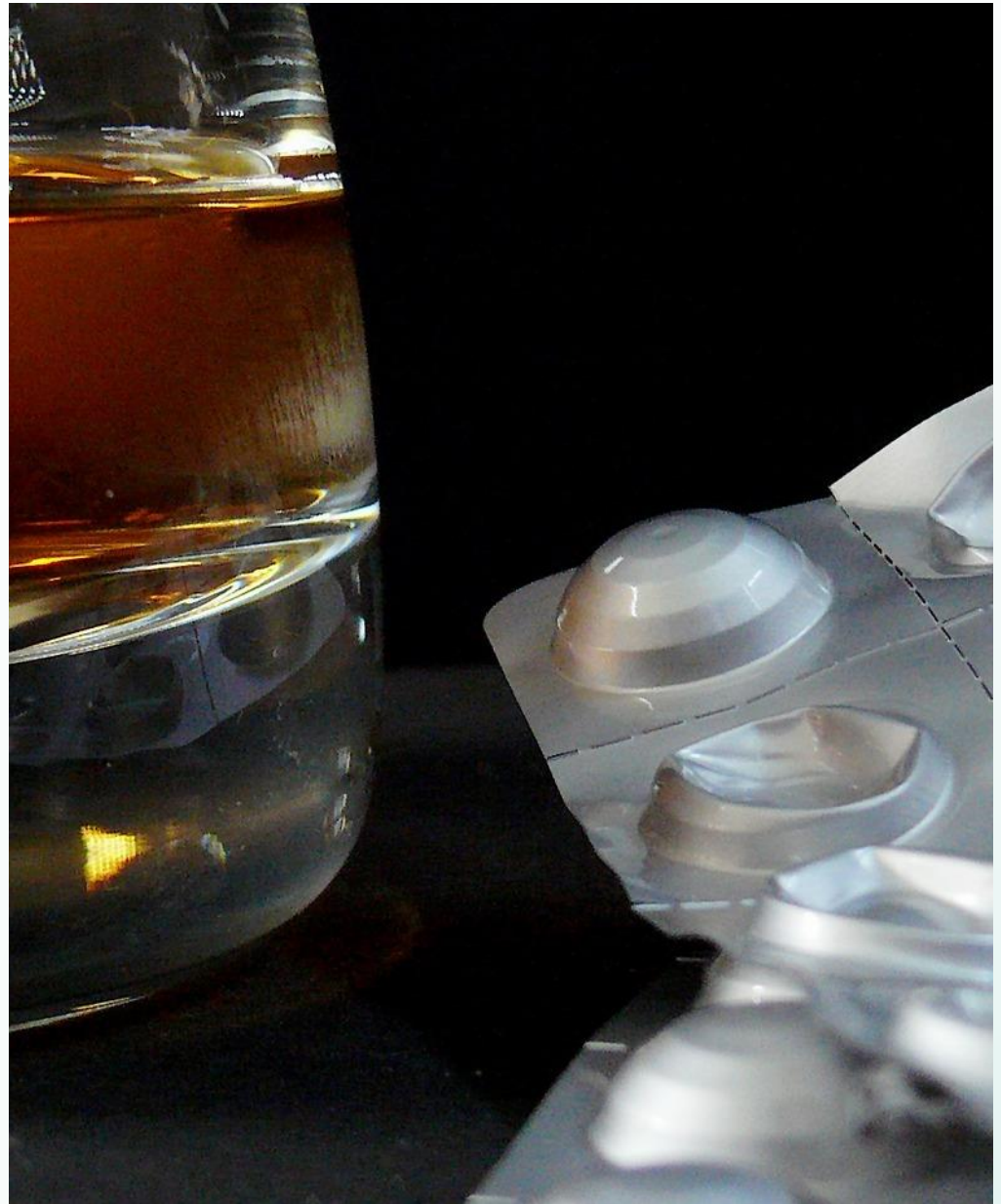
Does the client have capacity to mediate?

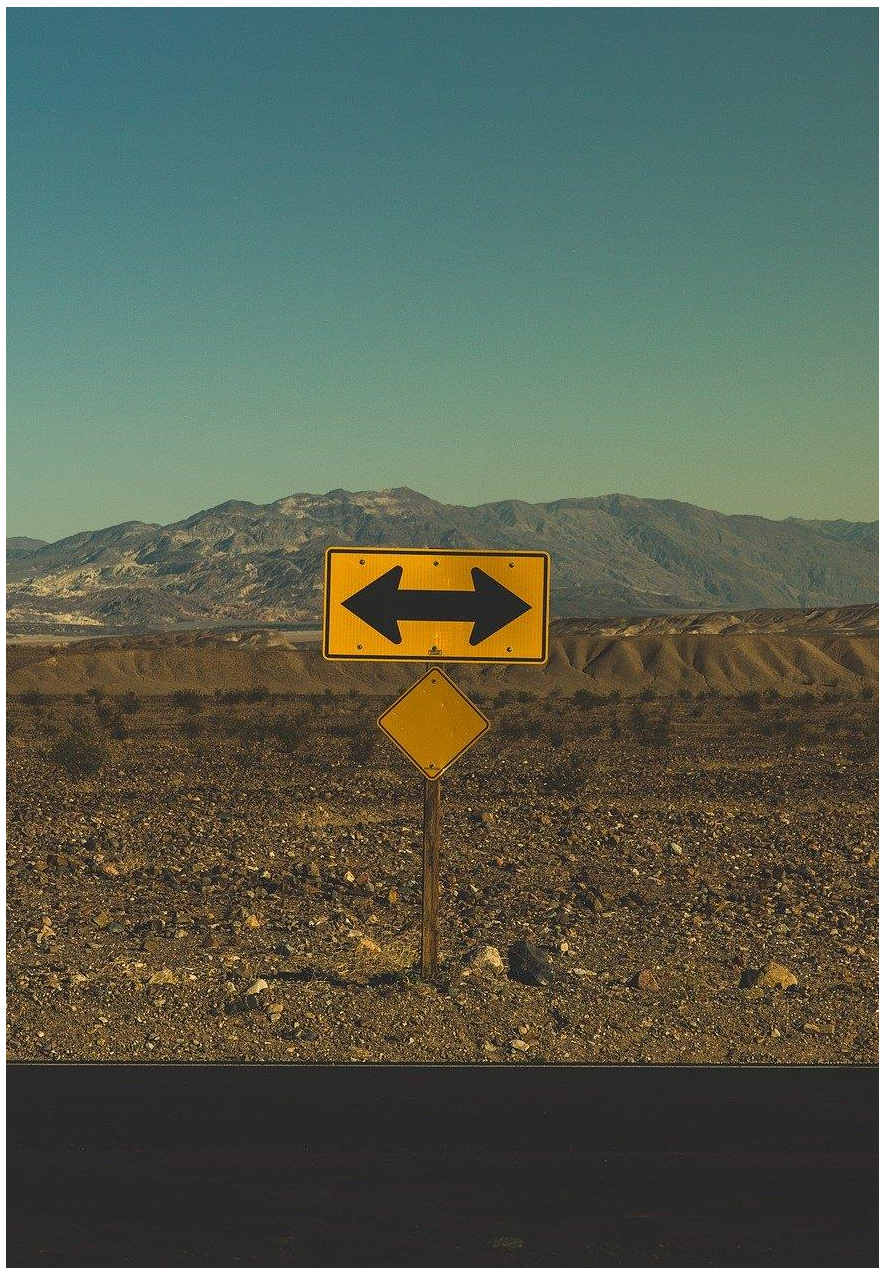


- **Understand** the process
- Give **informed consent**
- **Comprehend** what they hear
- **Self-advocate and effectively negotiate**
- **State** what they want
- **Make a decision / self-determine**

Signs of incapacity

- Physical
- Emotional
- Cognitive



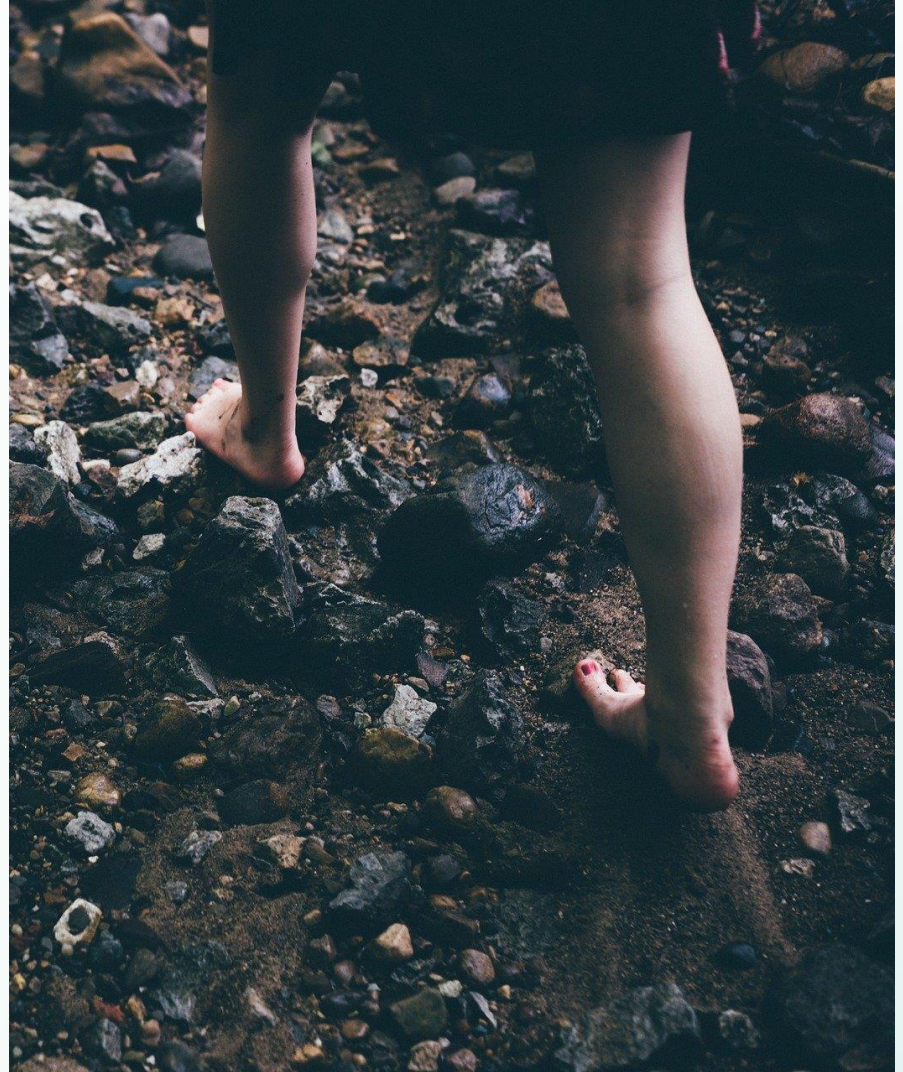


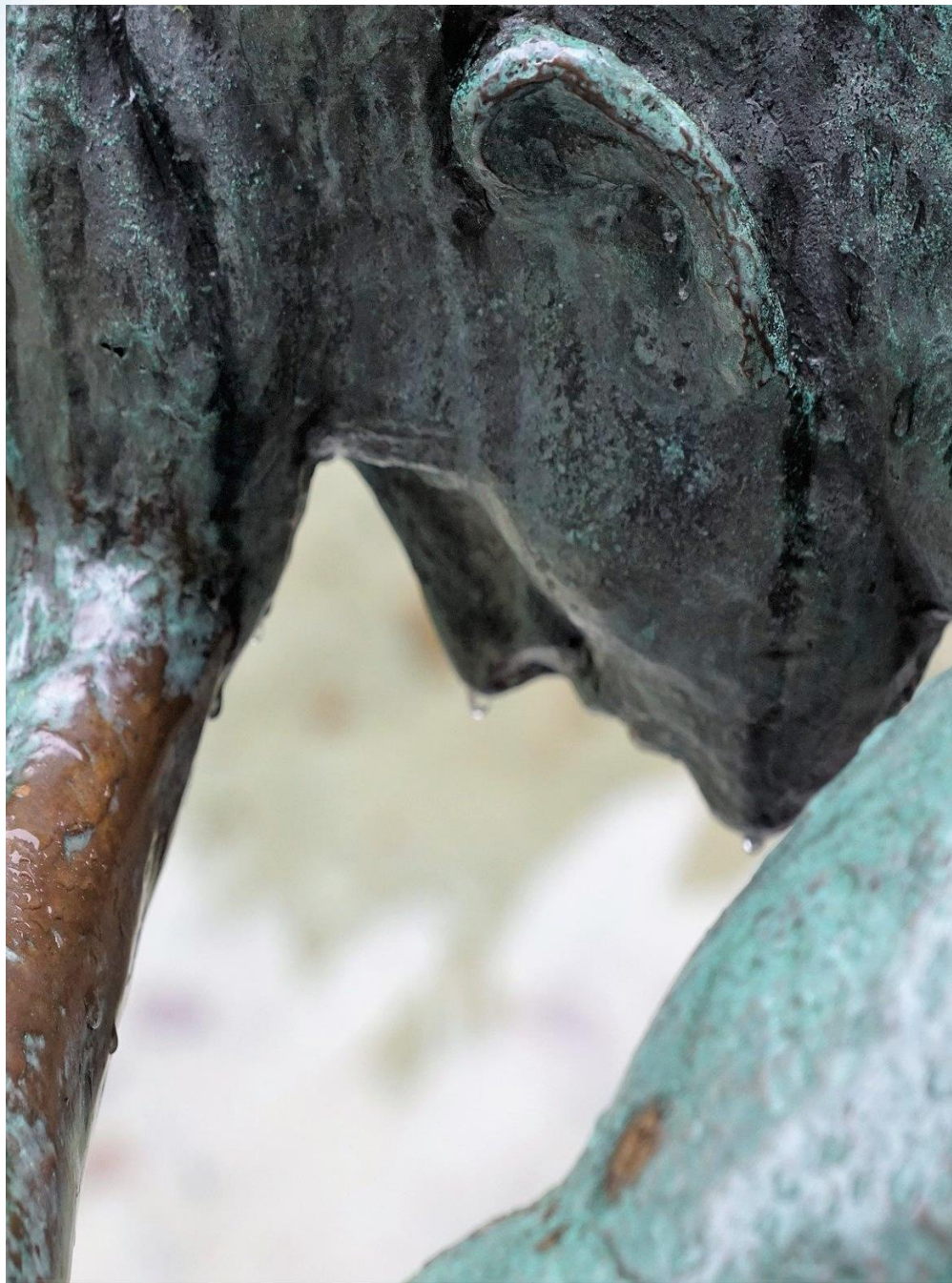
Can the parties self-determine?

- Voluntary Participation
- Informed Consent
- Ability make decisions
- Ability to honor the agreement

Best Practices

- Provide a transparent process, easy to understand, with clear ground rules
- Use active listening tools like restatement, tracking ideas
- Attend to body language
- Use white board to get ideas up in front of the parties
- Schedule sessions of a reasonable length of time
- Keep checking for capacity





Not helpful:

- Forget to allow silence
- Overperform, believing that parties are not making the “right” decision
- Be too quick to jump in with a suggestion
- Be too quick to adopt or even push a party proposal because the mediator thinks it’s a good idea
- “Arm-twisting”
- Ignore threats and bullying from the other party
- Hold marathon sessions

When self-determination is missing:

- Lack of trust
- No ownership of the agreement
- Parties not complying with agreements
- Grievances against mediator
- Bad agreements, ongoing or even worsening conflict.
- Actual or perceived harm
- Long-term resentment



Safety Planning over Zoom



- Parties participating from separate locations
- Advise of separate session options
- Work out a signal
- Chat/text to mediators
- Participation of attorney, support person, or DV advocate
- Separate sessions before signing
- Shuttle mediation

Screening is Ongoing

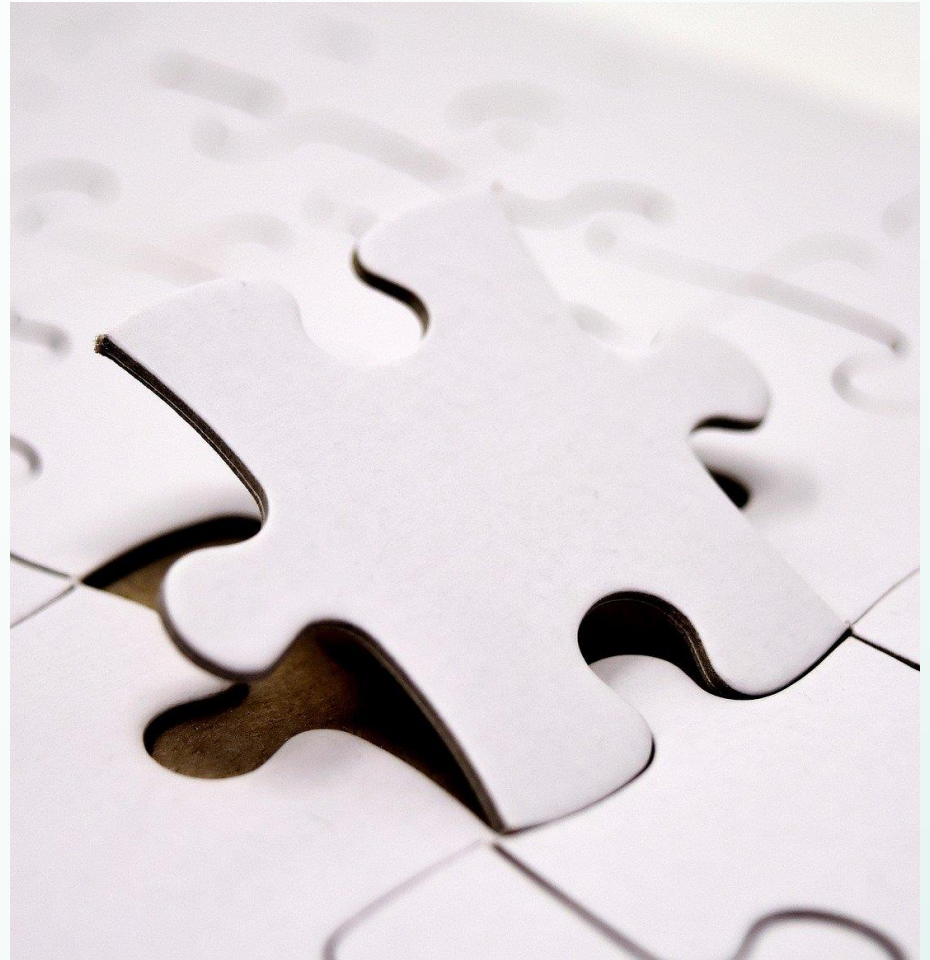


Joint Session Mediation and Strategic Use of Caucus



Benefits of Joint Session

- Build trust and reduce suspicion
- Preserves neutrality
- Clearer picture of dynamics
- Parties hear each other
- Transformative moments
- Clarification in real time
- Problem-solving practice



Tips for mediating in joint session



- Clearly establish ground-rules
- Enforce them equally
- Acknowledge emotions
- Active listening, restating, reframing
- Active listening intervention
- Ask questions
- Avoid directive suggestions
- Use a brainstorming board
- Caucus when needed

Benefits of Caucus

- Refocusing
- Allow for venting
- Opportunity for vulnerability
- Follow up on red flags
- Addressing inappropriate behavior
- Developing proposals
- Goal-setting
- Reality checking
- Pre-impasse



Concluding the Mediation



If a follow-up session is needed

- Clarify the agenda for the next meeting
- Assign homework
- Save notes
- Complete a MAR, coordinate with the CMC
- Set a follow-up session while everyone is still together
- Send out the Zoom link
- Make clear that nothing has been finalized



When there is not an agreement

- Avoid pressuring parties
- Provide info about the next step
- Check in separately with each party when possible
- Avoid giving legal advice
- Fill out a MAR
- Follow up with the CMC about the result
- Fill out final report that can be sent to the Court



Memorializing an Agreement: Scribing

- Capture the parties' own words at the brainstorming and evaluation stage
- Transparent Process
- Share the screen
- Vagueness
- Check accuracy at every step
- Clearly define responsibilities and consequences



Memorializing an Agreement

- Ask clarifying questions
- Use complete sentences
- Active voice
- Mutual terms when possible
- Avoid rubber-stamping outside agreements



Signing an Agreement

- Read everything out loud at the end before uploading for signatures
- Make room for either party who needs to seek advice or review it before signing
- Sign during mediation whenever possible
- Bring parties back together if at all possible to close out the mediation
- Make clear: no agreement until both have signed the final agreement
- Notarization



Forms

- Agreement to Mediate
- Court-approved agreement forms
- Reminder: MAR and final report to Courts



Questions?

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