

Adopt Fam 800 to read as follows:

CHAPTER Fam 800 DOMESTIC VIOLENCE

PART Fam 801 PURPOSE

Fam 801.01 Purpose. Some cases are not suitable for mediation because of safety, control, or intimidation issues. The purpose of this chapter is to provide procedures for mediation cases in which there has been a finding of abuse as described under RSA 173-B:1, I, or domestic violence is disclosed or suspected. The goal is that any mediation occurs in a safe environment free of coercion, fear, intimidation, danger, or abuser control.

PART Fam 802 DEFINITIONS

Fam 802.01 Terms Used. As used in this chapter, the following terms shall have the meanings indicated:

(a) “Domestic violence” or “domestic abuse” means a pattern of coercive behavior used by one person to gain and maintain power and control over another in the context of an intimate or familial relationship. “Domestic violence” includes “abuse” as defined in RSA 173-B:1, I;

(b) “Family mediation proceedings” means all meetings and communications between a certified family mediator and one or both parties in a case

(c) “Meeting separately” means a screening or mediation conducted without the parties being together in the same room. Usually, this is done by the certified family mediator talking alternately to one party and then the other;

(d) “Reason to suspect” means disclosure or evidence of specific behaviors in one or more of the following areas:

- (1) Control;
- (2) Coercion;
- (3) Intimidation;
- (4) Violence; and
- (5) Fear of the other party;

(e) “Screening” means evaluating a person or situation for the current or past existence of domestic violence, including control, coercion, intimidation, and violence;

(f) “Screening tool” means a series of questions asked and observations made by a certified family mediator of each party to explore whether domestic violence has occurred or is occurring between the parties; and

(g) “Starting substantive mediation” means beginning discussion and negotiation of the issues before the court or between the parties, including but not limited to parenting, support, and asset division.

PART Fam 803 STANDARDS

Fam 803.01 Standards.

(a) A certified family mediator shall make reasonable efforts to recognize a family situation involving domestic violence or abuse and shall take appropriate steps to shape the mediation process accordingly, including but not limited to the following:

- (1) Establishing appropriate security arrangements to protect the safety of the participants, including but not limited to the location of mediation sessions, travel arrangements, and the timing of arrivals and departures.
- (2) Holding separate sessions with the participants even without the full agreement of all participants;
- (3) Allowing a friend, representative, advocate, counsel, or attorney to attend the mediation sessions;
- (4) Encouraging the participants to be represented by an attorney, counsel, or advocate throughout the mediation process;
- (5) Referring the participants to appropriate community resources; and
- (6) Suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants, including but not limited to keeping the reason for stopping mediation confidential, and the order of the participants' departures.

(b) A certified family mediator shall make a reasonable effort to screen for the existence of domestic abuse prior to starting substantive mediation. The certified family shall continue to assess for domestic violence or abuse throughout the mediation process.

(c) The certified family mediator shall facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children.

PART Fam 804 REQUIREMENT TO SCREEN

Fam 804.01 Requirement.

(a) In every case, a certified family mediator shall engage in routine in-person screening for domestic violence prior to starting substantive mediation. The screening shall be part of mediation proceeding and the family shall be confidential pursuant to RSA 328-C:9, I.

(b) The screening shall be conducted by meeting separately and privately with each party.

(c) Certified family mediators shall either develop their own screening tool that complies with Fam 804.02 or adopt and use one or more published screening tools that comply with Fam 804.02.

Fam 804.02 Contents of Screening Tool. The purpose of using a screening tool is to gain information that will help in achieving the goal set out in Fam 801.01. In developing, adapting or using a published screening tool, a certified family mediator shall ensure that the screening tool includes, at a minimum:

(a) Questions designed to explore whether domestic violence has occurred between the parties or is occurring;

(b) Questions about specific behaviors in the following areas, including whether the behavior was recent, escalating, or both:

(1) Control;

(2) Coercion;

(3) Intimidation; and

(4) Violence;

(c) Questions about the party's fear of the other and sense of danger from the other.

PART Fam 805 APPROPRIATENESS OF MEDIATION

Fam 805.01 Appropriateness of Mediation. Before going forward, when there is either a finding or a disclosure, the certified family mediator shall confirm that each party agrees to proceed with mediation.

PART Fam 806 PROCEEDING WITH MEDIATION

Fam 806.01 Proceeding with Mediation. In any case where there has been a finding of abuse, domestic violence has been disclosed by either party, or where there is reason to suspect domestic violence, a certified family mediator shall take measures such as:

(a) Encouraging the victim or person who has either disclosed or there is reason to suspect has experienced domestic violence, to consult with a lawyer or domestic violence service provider, or both;

(b) Taking appropriate steps to shape the mediation process in light of the finding, disclosure, or suspicion;

(c) Regularly re-evaluating the ability of each of the parties to negotiate; and

(d) Promoting the use of specific and detailed language in any agreement to avoid ambiguities.

Fam 806.02 Mediator's Knowledge. In any case where there has been a finding of abuse, domestic violence has been disclosed by either party, or where there is reason to suspect domestic violence, a certified family mediator shall proceed with mediation only if he or she has completed required domestic violence training and believes she or he is knowledgeable about domestic violence dynamics and community resources available to those who have experienced domestic violence.

Appendix

Rule	Statute Implemented
Fam 801.01	RSA 541-A:7
Fam 802.01	RSA 541-A:7
Fam 803.01	RSA 328-C:8, I(e)
Fam 804.01	RSA 328-C:8, I(e)
Fam 804.02	RSA 328-C:8, I(e)
Fam 805.01	RSA 328-C:8, I(e)
Fam 806.01	RSA 328-C:8, I(e)
Fam 806.02	RSA 328-C:8, I(e)