

Association for Conflict Resolution Taskforce on Safety in ADR ADR Safety Planning: Recommended Guidance

I. Introduction

A. Purpose of the Taskforce

The Association for Conflict Resolution (ACR) Taskforce on Safety in Alternative Dispute Resolution (ADR) has drafted the ADR Safety Planning: Recommended Guidance¹ hereafter known as the “recommendations” to promote the safety of practitioners and participants in ADR processes. The Recommendations are intended to encourage and assist practitioners and ADR provider organizations when considering, planning for, and implementing safety procedures in all ADR processes they conduct.

Put another way, they are intended to reduce the likelihood of violent altercations in and around ADR processes, and to address them if they occur. The Recommendations are not intended to address other potentially dangerous events, such as severe weather, fire, etc. Any safety protocols you establish should be coordinated with the policies for these other situations.

B. How these Recommendations Should Be Used

When drafting these Recommendations, the Taskforce defined ADR practice widely so these Recommendations might speak to the widest possible audience. It is hoped that this guidance will resonate with practitioners who work in many areas of alternative dispute resolution (ADR) and encourage them to develop specific appropriate procedures for their own processes. These recommendations should not be perceived as the final word on safety but as initial guidance and an invitation to a larger conversation on an often neglected subject.

These Recommendations should be viewed as more of a “list of ingredients” than a “recipe for practice.” There is no single combination that will be right for all circumstances or even for every case handled by an individual practitioner.

The ingredients/recommendations can be used by individual practitioners, provider organizations, practice areas within the ADR field, and the ADR field as a whole. The Recommendations are not addressed to participants in ADR processes.

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1. Individuals

ADR practitioners can use these Recommendations to shape their safety procedures. When doing so, it is particularly important that individual practitioners ensure that those working with them or in their vicinity, e.g., support staff and colleagues, are part of their safety procedures.

2. Provider Organizations

“Provider organization” is defined broadly here. It may include anything from court staff conducting child custody mediations inside a courthouse, to a community mediation program with volunteer mediators operating in a storefront, to a group of private neutrals arbitrating high-dollar-value litigation in a downtown office building.

3. ADR Practice Areas

Some areas of ADR practice have given more thought to safety than others. For example, practitioners who work with family cases know that domestic violence that occurred during a marriage may spill over into the divorce process. As the Taskforce considered examples of violence related to other types of ADR cases, the Recommendations were designed to be applicable to as many situations as possible.

4. The ADR Field

The Taskforce encourages national, regional and local conflict resolution and ADR member organizations to pursue this topic further. More study by academics who are interested in the field could add to the usefulness of this endeavor.

The Recommendations² are designed to address physical safety, not psychological or emotional safety. It is possible, however, that participants’ increased sense of psychological or emotional safety will reduce the chance of something unsafe occurring.

C. How the Taskforce Developed these Recommendations

This Taskforce was established³ in response to violent incidents that took place after ADR processes in 2013, specifically, a horrific incident that occurred after a mediation in Phoenix, Arizona that ended in a double murder and suicide. These incidents highlighted the pressing need for further investigation into how to properly prepare for and hopefully avoid similar future incidents.

One of the early steps in the work of the Taskforce was to reach out to ADR practitioners to solicit examples of incidents that became or almost became physically violent before, during, or after an ADR process. We collected information from numerous news media sources, over two

² The following recommendations are comprised of information gathered from professionals in the field of ADR, crisis negotiations, security and workplace violence. Many of the specific recommendations are derived from the works of Ellis Amdur, and the initial work done on this topic by Nancy Yeend for the Florida court system, as well as conversations with former FBI crisis negotiator and Taskforce advisor Greg Noesner.

³ The members of the Taskforce would like to specifically commend Stephen Kotev and Corey Schlegel for their effort on this Taskforce. Their dedication and contributions to our mission are deeply appreciated. The countless hours and deep commitment to our mission were instrumental to the success of this Taskforce.

dozen ADR practitioners, including screening protocols in family cases with a history of domestic abuse, which were then reviewed, compiled and analyzed.

When analyzing these incidents, one trend emerged. Not surprisingly, family, divorce and domestic violence cases had more incidents of violence and potential violence than other areas of practice.

II. Recommendations

Whether you are using these Recommendations as an ADR practitioner or an organization that provides ADR services, there are three general areas to consider. First, what are your overall safety protocols? Second, how do you deal with individual disputants? Third, what do you do in the case of actual violence or threat of violence? Understanding these factors is essential to properly assessing your exposure to risk. It is also instrumental to determine the most appropriate course of action for your practice and the population with whom you work. Please utilize the following provided resources to create an individualized plan that meets your own specific needs and requirements.

These Recommendations encourage you to be aware of safety issues, plan for how to reduce the chances of violence occurring, and respond when something happens or threatens to happen. But no amount of planning will substitute for each individual's gut sense of when something seems "off."

The human body has an innate sense of conveying danger. Our research highlights a necessity to honor your instincts on safety. If something does not look or feel right, do not ignore that sensation. Do not let the abnormal become normal. If you do, you short-circuit your instinctual defenses and open yourself and others to greater harm. Stay aware and stay safe.

Understanding escalation and aggression in the context of culture is also necessary to properly modulate this instinctual sense of danger. Our own cultural norms deeply influence how we communicate and interpret violent intentions. Additionally, mental health issues can sometimes be painted as culture and vice versa. Practitioners must first identify our own assumptions of what aggression and escalation look like within our own culture. Then we must work to identify how this is expressed among the parties with whom we work. Just as it is imperative to understand different styles of communication, we must also seek to understand the expectations and expressions of aggression and escalation in others. Gaining this cultural competency will help modulate our instinctual defenses and improve our understanding of our parties. Recognizing and understanding different patterns of communication may assist the mediator in early identification of potential risks.

A. Overall Safety Protocols

The essential ingredient to create a safe ADR setting is a safety plan. A safety plan is a list of procedures to follow to maintain a safe work environment. These procedures can be tailored to specific needs of a work environment and customized to meet needs of staff and clients. Ideally,

safety plans are developed by management with input from staff as appropriate. Plans should be explained to all staff members and reviewed regularly for maintenance and updates.

The benefit of a safety plan is that potential aggressors will see fewer opportunities to attack, find fewer pretexts to justify an attack in their mind, and see little chance of success in carrying out an attack. These benefits depend on whether you have properly executed your safety plan. In the event you are working, before 9:00 am and or after 5:00 pm, make sure you have a colleague close by who is aware of your work schedule.

Basic Elements of a Safety Plan:

1. Site Safety

- a. Determine relative safety of location/building.
- b. Identify the safest ways to enter and exit your location.
- c. Control ingress and egress of the location if possible. Ideally:
 - i. The door leading from the reception area into your office should remain locked at all times.
 - ii. Someone, either an employee, or in high security facilities, a security professional should escort each individual into and out of the office.
 - iii. Never allow an individual to wander unescorted through the office.
 - iv. Be aware of who is in your building/location.
- d. Establish a “no weapons” policy. Consider what you want to do in special circumstances such as public safety personnel in uniform.
- e. If working with potentially violent individuals:
 - i. Alert staff to the possibility of an emergency and have intervention procedures in place.
 - ii. Set up the room to ensure there is an escape route.
 - iii. Be prepared to call law enforcement for assistance.
 - iv. If there is any concern of violence notify law enforcement before the meeting starts, so a unit can either be in position or on patrol nearby.
- f. Security doors remain locked to be effective.
 - i. Do not allow security doors to remain unlocked. Altering this designation lessens the effectiveness of your security plan.
- g. Outside of your ADR room, give consideration to hallways, stairwells, staff and public elevators, parking and storage areas, and the reception area.
 - i. Ensure adequate lighting in the hallways, stairwells, and parking areas

- ii. Ensure adequate lines-of-sight to determine who is entering the reception area
 - iii. Identify any likely hiding spaces that aggressive individuals could use.
- h. Map out your exit strategy.
- i. Know your exits and alternative exits.
 - ii. Identify 'safe places' within your location, such as an office or other room with a door that can be locked. Think about whether windows might make those in the office visible in an unsafe way.
 - iii. Depending on your location, there may already be predestinated 'shelter-in-place' areas that can be used for tornado or other similar dangers. These locations may be useful to either avoid or detain aggressive individuals.
- i. If security personnel are available, be sure to co-create and coordinate your safety plan with them.
- j. Have a phone inside the ADR meeting space.
- k. Develop an emergency code word.
- i. Determine the meaning of the code word
 - ii. Determine who should know this code word
 - iii. Outline what actions should be taken once the code word has been given.
- l. If possible, consider installing/purchasing panic buttons or key fobs. Conduct regular drills to ensure that devices actually work and that designated staff members or security personnel respond properly.
- m. Consider communication for emergencies:
- i. Use a land line, whenever possible, to call for emergency assistance
 - ii. 911, poison control, child protective services, and mental health professionals who are responsible to place severely mentally ill people in hospital should be programed into all office/personal phone systems and posted near each telephone.
- n. Ensure everyone in your office knows and can implement the safety plan:
- i. Teach new hires about the safety plan
 - ii. Regularly drill implementing your safety plan
 - iv. There must be consistent training so that all staff members' reactions are as immediate as they would be if they heard a police siren.

2. ADR Meeting Location Safety

- a. Consider table placement and your own personal positioning relative to the exit. Generally, you should sit so that it is easiest for you to exit the room to seek help.
- b. Create a ‘sterile weapon environment’ in your ADR rooms.
 - i. Meeting rooms should remain free of extraneous clutter, office equipment, and furniture, leaving the room free of many potential weapons such as: staplers, paper punches, ceramic mugs, and extra pens and pencils.
 - ii. Consider safety in addition to aesthetics when purchasing office furniture. Ornate glass lamps may be pleasing to the eye, but could easily be turned into a weapon. Consider more practical items that pose less threat when outfitting your meeting location.
- c. Consider who should be present in the room.
- d. If you were to call a caucus, determine where you would send the participants.
 - i. Are there safety issues with your proposed location?
 - ii. How will the participants get to and from that location?
 - iii. Having a room available for caucus or separate meetings will reduce the number of times you will need to shuffle the participants back and forth between a single room.

If you meet with participants in your personal office space, consider the following:

- a. There should be a minimum of furniture and clutter.
- b. Any object on your desk or in your office can become a weapon, including, pens, pencils, letter openers, staplers, and other office equipment.
- c. Personal photographs of family members and loved ones should not be able to be viewed by individuals. With current cellphone technology they can easily be imaged and used inappropriately.
- d. Picture frames, corkboards, and other items can easily be removed from walls and also used as weapons.
- e. Lamps, light furniture, and chairs can also be used as weapons.

B. Working with Individual Disputants

Some areas of ADR practice, such as family mediation, have long accepted the need to screen participants prior to ADR processes. This serves to identify parties who may not be able represent their own interests due to factors such as domestic abuse or substance abuse. ADR practitioners and organizations in other areas of ADR can learn from family protocols and adapt them to their own areas of practice.

1. Implement Screening and Intake Procedures to Assess Potential for Violence

Consider drafting a series of follow-up questions that could be added to your existing intake and screening protocols and asked during the intake process. These questions would be tailored to your own unique needs and requirements. These Recommendations can serve as guidelines for your creation of these protocols. You should continue to do your screening as you have, following best practices, and supplement them with these Recommendations.

2. Common Threat Assessment Factors for Screening and/or Intake

These factors are primarily presented to build awareness of potential factors that may lead to violence. The Taskforce does not assume, and you should not assume, that presence of these factors will definitively result in violence, merely that they could contribute to a violent incident.

Consider the following threat assessment factors when designing intake and screening processes:

a. Past history of impulsive behavior

A participant's past history of impulsive behavior is a major indicator of potential violence. Warning signs include excessive expressions of anger and hostile reactions or threats with little provocation. Or, as Taskforce member and retired FBI Crisis Negotiator succinctly states, "The best predictor of behavior is past behavior."

b. Past history of violence, bullying or intimidation

Violence can be a source of power that is either innately channeled or deliberately cultivated. For some, violence is an efficient means to get what they want. It can enhance feelings of power and control over others and become a common response to confrontation or challenge.

Bullying is the psychological counterpart to physical violence. Participants' use of bullying and intimidation may be revealed during any phase of an ADR process.

c. Prior arrest

Any arrest is a heightened risk factor even if it was for a non-violent crime. The individual may be terrified or outraged at the idea of being arrested again or having more contact with law enforcement or other authorities. With the prevalence of physical and sexual assault within correctional institutions, the non-violent arrestee may have come out a very different person than they went in. The possibility of incarceration could trigger feeling of resentment and fear of re-victimization, depending on the circumstances.

d. Possession of weapons, fascination with weapons, or past history of weapon use

With the ease of access to firearms and other weapons, any prior history or fascination with weapons should be serious cause for concern. This behavior can also be accompanied by a known history of brandishing or using weapons and vocalization of fantasizing about weapons in a pathological manner.

e. Past history of physical abuse or the witnessing of physical abuse or violence

Beyond a history of personal victimization, it is particularly traumatic to have witnessed the abuse of a family member. Abuse victims often hate their own weakness, and begin hating weakness in others as well. Once this occurs, it is natural for some to begin victimizing what they hate: the weak

f. Head injury, dementia, and/or Post Traumatic Stress Disorder (PTSD)

A history of head injury and/or dementia may lead to participants' to a loss of impulse control. Without this control violence or aggression may become more prevalent.

Those affected by PTSD, can become easily panicked and resort to survival instincts. Smells, more than any other sense, seem to be tied directly to memory and are particularly likely to trigger the Fight-or-Flight response. Crowds, traffic, and fireworks can also trigger episodes and should be taken into consideration when engaging with this population.

g. Fear of attack or invasion of personal space

Be conscious of others in close proximity who express paranoia or fear as they can become increasingly agitated or stressed. Such individuals may lash out in defensive violence if they sense their personal space has been compromised. This distance is unique to each individual and is informed by their culture and past history. Be sure to account for these factors when assessing similar situations.

h. Low frustration tolerances

Individuals who experience low tolerance for frustration may have an inability or unwillingness to tolerate limit setting, such as the introduction or enforcement of ground rules. Excessive impatience or significant emotional outbursts can also accompany this behavior.

i. Recent stressors and loss

Bereavement, separation, divorce, job loss, incarceration, or similar circumstances can contribute to violent thoughts and actions. Specifically, loss of status, esteem, property, relationship, or children can trigger feelings of anger, frustration, victimization, righteousness, and vengeance. This sense of loss often triggers powerful emotions of anger and sadness. If individual exhibits this behavior,

seriously consider the likelihood that violence could ensue if addressing loss during a session.

j. A feeling of victimization and grievance

People who feel victimized by a situation and/or other individuals may regard their current predicament as someone else's fault. Certain individuals may feel victimized by society in general or against 'the company,' 'the country' etc. They regard their current predicament as someone else's fault and maintain this attitude no matter what evidence is presented to the contrary. Appropriate consideration should be given to the safety for those who may 'represent' these oppressors, since they may become an available target of aggression

k. Excessive use of intoxicating substances

Use of intoxicating substances can erode impulse control and dampen or repress moral sensibilities that would normally inhibit violence. (Also see severe psychopathological symptoms.)

l. Physical pain or discomfort

Chronic pain and illness can make people feel frustrated and/or desperate. The pain can erode patience and cloud thoughts. Powerful painkillers are often prescribed to help cope with these diagnoses and can also be a factor in behavior and decision-making.

m. The individual has already given up

Individuals who have already given up may expect the interaction during a session to be difficult or absolutely negative. Their response to a conflict might be, 'Nothing will help. If I'm aggressive, at least I can make my mark on the world or on you. What have I got to lose?'

n. Severe psychopathological symptoms

Severe psychopathological symptoms include but are not limited to the following: rapid mood swings, hallucinations, mania, and history of predatory or manipulative behavior. Rapid mood swings may lead to unpredictable behavior and/or responses. Hallucinations include auditory hallucinations, which may tell the individual to do something violent. If someone experiences hearing voices during a session, ask what those voices are saying to gather more information regarding potential for violent behavior. Mania is a heightened state of extreme excitement, typified by rapid speech, grandiose thinking, very poor judgment, and impulsive behavior. Mania is commonly seen in bipolar/manic depression, methamphetamine, cocaine, and some alcohol use. History of predatory or manipulative behavior may reemerge during high-conflict situations.

Please note: Threat assessment recommendations presented in the previous section were synthesized from information presented in Ellis Amdur's book "Safety at Work," see references, and personal communication between Stephen Kotev and former FBI crisis negotiator Gary Noesner.

3. Additional intake/screening/caucus questions

These questions can be used at any time to supplement intake/screening/other inquiries regarding potential violence. They can be integrated into existing screening processes or use during a caucus to further determine the likelihood of violence.

- a. Is there an order of protection in place, for example, a court requirement that one of you stay away from the other?
- b. Have you ever been arrested for assault?
- c. How about for fighting with someone?
- d. Have you ever been involved in a protective order (i.e. restraining order)? Either as a witness, petitioner or defendant?
- e. Have you ever sought police protection?
- f. Has anyone ever sought to place an order of protection (or whatever other relevant term is appropriate) against you?
- g. When was the last time you had to physically defend yourself?
- h. What do you do when someone really makes you angry?
- i. What kind of thing would someone say that would make you mad?
- j. If you got mad at someone, what would you do?
- k. If you did get mad, how could I help you calm down?

C. What to Do in Case of Actual or Threatened Violence

ADR practitioners continuously assess the behavior of parties and their ability to participate safely in the process. Just as the ADR practitioner is responsible overall for the environment in any ADR process, so it is of the utmost importance that the ADR practitioner continues in this role and remains calm and competent during any violent or potentially violent situations.

While you should remain courteous and respectful to the extent possible, you should cease your neutral role and become directive. Your primary focus should shift from resolving the dispute to ensuring safety of all involved. For some ADR practitioners, especially some mediators, this shift of mindset can be difficult. Thinking through your response and practicing it with a colleague, before you are in a dangerous situation, will leave you better prepared should the real situation arise.

Your first decision is whether you can stop the violent or potentially violent situation. Trust your instincts. Don't hesitate to terminate the session if you feel you are at risk. Seek additional support and/or postpone the session if you need time to do additional research.

If you believe you can stop the violence before it erupts, you may want to consider:

1. Stand up
2. Gain the attention of the participants
3. Give a command to the aggressive participant to disengage and return to their seat.
4. Separate the participants. You will probably want to leave the more violent participant in the ADR room and escort the other out of the room. If you do, be sure to inform a colleague or security officer of the potential threat remaining in the room.
5. Terminate the session with participants separated. Do not bring them back into the room together.
6. Stagger the exit of the participants. Give the threatened participant/s the opportunity to leave first. Ensure that all participants have access to transportation. If both participants took public transportation or shared transportation, consider how to avoid further contact between the participants.
7. You may choose to escort them to their transportation, or ask a colleague to do so.

If you are not able to stop the violence or believe you are unable to do so, you may want to consider:

1. Do not physically confront a violent person.
2. Get out of the room.
3. Enlist another person to assist you in separating the participants.
4. Follow the steps above.

Whether or not you are able to control the violence, you may want to consider:

1. Decide whether to contact the authorities
2. In the event there is physical contact (e.g., biting, hitting, spitting, slapping, throwing liquids), call the police.
3. Call other emergency services, such as ambulance, if needed.

IV. Conclusion

These recommendations are designed to help ADR practitioners and programs identify potential safety concerns and develop safety plans to reduce the risk of violence and address any violent altercations that may occur in their ADR processes. Each practice and program is unique and will require its own individualized safety plan. These recommendations may be used as a guide or starting spot to help inform practitioners and programs as they consider ways to better protect the safety of the practitioners and participants in their practices.

Safety is essential in all types of ADR. The Taskforce encourages practitioners and programs to continue and expand the discussion of ways to promote safety in all ADR processes.

Disclaimer

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Appendix I

Resources

- 1.) "101 California Street Shooting" – Wikipedia. Retrieved from http://en.wikipedia.org/wiki/101_California_Street_shooting
- 2.) "Appendix C: Model Mediation Screening Tool" - Women's Law Project. Retrieved from http://www.womenslawproject.org/resources/Bench_appendixC.pdf
- 3.) "Designing a Mediation Safety Plan". By Nancy Yeend & Carol Borunda. Retrieved from http://jud18.flcourts.org/gen_public/adr/The%20Resolution%20Report/April%202008/r_mediation_safety%20article_Apr08.shtml
- 4.) "Domestic Abuse Issues for Mediators and Other Professionals". By The Supreme Court of Ohio, Dispute Resolution Section, 2014 edition.
- 5.) "Family Mediation: Screening for Domestic Abuse". By Alison E. Gerencser, Florida State Law Review. Retrieved from <http://www.law.fsu.edu/journals/lawreview/issues/231/gerencse.html>
- 6.) "Fatal Shooting After Mediation Leaves Lawyer and Client Dead". By ABA Journal. Retrieved from http://www.abajournal.com/news/article/lawyer_shot_client_executive_killed_after_mediation_session_with_suspected
- 7.) "Man Who Killed His Wife Gets Life Term". By Inside Bay Area. Retrieved from http://www.insidebayarea.com/sanmateocountytimes/localnews/ci_3627153
- 8.) "Mediator Standards of Conduct". By Office of Dispute Resolution: State Court Administrative Office Michigan Supreme Court. Retrieved from <http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Standards%20of%20Conduct%202.1.13.pdf>
- 9.) "Multnomah County Family Court Services Domestic Violence Protocol." Retrieved from <https://www.yumpu.com/en/document/view/18657470/domestic-violence-protocol-oregon-judicial-departmen>
- 10.) "N.C. Domestic Violence Best Practices Guide for District Court Judges ". By North Carolina Courts. Retrieved from <http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf>
- 11.) "Safety at Work." By Ellis Amdur and William Cooper. Retrieved from <http://edgework.info/buy-books-for-law-enforcement.html>

12.) AAA/ABA/ACR Model Standards of Conduct for Mediators. Retrieved from http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf

13.) Safety Screening in Family Mediation” A Discussion Paper, British Columbia Mediator Roster Society. Retrieved from [http://www.mediatebc.com/PDFs/1-23-Resources-\(For-Mediators\)/Screening_Family_Paper.aspx](http://www.mediatebc.com/PDFs/1-23-Resources-(For-Mediators)/Screening_Family_Paper.aspx)

Appendix II

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do not indicate endorsement of these Recommendations.)*

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