

Required Domestic Violence Training for Child Custody Mediators

The Implementation of Senate Bill 539

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Background

Prior to the passage of Senate Bill 539, Section 154.052 of the Texas Civil Practices and Remedies Code, QUALIFICATIONS OF IMPARTIAL THIRD PARTY, required that mediators complete a minimum of 40 classroom hours of training in dispute resolution. Further, in order for a mediator to be qualified in a dispute relating to the parent-child relationship, the mediator had to complete an additional 24 hours of training in the fields of family dynamics, child development and family law. Nearly all training in the additional 24 hours, in one form or another, includes some component of domestic violence training.

Nevertheless, the 85th Texas Legislature passed SB 539, requiring that a minimum of four hours of domestic violence training for child custody mediators be part of the required 24 hours of additional training. SB 539 amended Section 154.052 of the Texas Civil Practices and Remedies Code, QUALIFICATIONS OF IMPARTIAL THIRD PARTY, relating to required training for mediators appointed in parent-child relationship (custody) disputes:

(b) To qualify for an appointment as an impartial third party under this subchapter in a dispute relating to the parent-child relationship, a person must complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law, **including a minimum of four hours of family violence dynamics training developed in consultation with a statewide family violence advocacy organization.**

The “*statewide family violence advocacy organization*” referred to above is the Texas Council on Family Violence (TCFV).

SB 539 became effective on September 1, 2017; however, a person who satisfied the qualifications to be an impartial third party in effect immediately before September 1, 2017, was not required to comply with the requirements imposed by SB 539, until January 1, 2018, in order to be qualified to serve as an impartial third party under Subchapter C, Chapter 154, Civil Practice and Remedies Code.

SB 539 was a priority of TCFV’s Public Policy Committee during the 85th Session with the intent of educating mediation professionals from a child and survivor safety perspective in these very important and oftentimes sensitive cases of child custody. This new requirement is not intended to be an endorsement of the mediation process for survivors of domestic violence. The Texas Family Code Section 153.0071 (f) offers an objection to mediation on the basis of family

violence committed by one party against another in recognition of the potential risks and inefficacy of the mediation process when domestic violence is an issue. Texas Family Code Section 153.007 provides:

(f) A party may at any time prior to the final mediation order file a written objection to the referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation. This subsection does not apply to suits filed under Chapter 262.*

*Chapter 262 deals with Child Protective Services.

However, we know that some survivors and some survivor advocates and attorneys find mediation a preferable process to a court trial. Further, several jurisdictions in Texas have local rules requiring mediation in custody disputes prior to the parties having an opportunity in court.

TCFV Efforts

Since SB 539's passage, TCFV has reached out to various mediation groups, agencies, domestic violence services providers, advocates, and experts at the national and state level. Consequently, TCFV has developed a program for trainers in domestic violence.

Curriculum Tool kit

TCFV is in the process of developing a curriculum tool kit for this four-hour training.

This tool kit will include four modules flowing from the core components:

- Dynamics of domestic violence
- Child exposure and resiliency
- Intersection of domestic violence (DV) and child custody, including the Texas statutory framework
- Trauma-informed, safety centered mediation practice

Each module will include a power point slide deck; activity/interactive exercise suggestions; links to relevant multi-media tools, research, and data.

While the tool kit is in the development process, TCFV has been reviewing curricula and training materials of various groups intending on offering this newly required training. Following the release of the tool kit, TCFV will no longer review materials, but will direct trainers to utilize the materials included in the tool kit or a TCFV trained presenter.

TCFV's Implementation Plan and Timeline

- Offer a four-part web-based series on the curriculum that will be the avenue to access the tool kit for each module through TCFV's web platform for non-DV program professionals (Anticipated release: **12/15/2017**)
- Identify and provide the training at strategic forums where mediators gather (**January 2018-August 2018**)
- Offer the TCFV tool kit to TCFV member DV programs and consider "train the trainer" opportunities so program may offer the training in their communities (**January 2018-August 2018**)
- Highlight this requirement and available curriculum tool kit to relevant family law groups and the Judiciary (**Spring-Summer 2018**)

A Mediator's responsibilities

The Texas Supreme Court Ethical Guidelines for Mediators adopted in 2005, and subsequently amended in 2011, together with Texas Civil Practices and Remedies Code, Section 154.023, provide that the Mediator shall be an impartial person, facilitating communication between the parties to promote reconciliation, settlement, or understanding among them. Impartiality is defined in the Ethical Guidelines as meaning freedom from favoritism or bias in word, action, and appearance. It implies a commitment to aid all parties in reaching a settlement. A mediator should arrive at the mediation completely neutral and leave, at the conclusion of the mediation, completely neutral. If the mediator becomes incapable of maintaining impartiality, the mediator should promptly withdraw.

Equally as important as impartiality, is a Mediator's obligation is assist the parties in reaching a *voluntary* settlement. A mediated agreement should be made freely and voluntarily, and not through force, coercion, or threats of any kind. If a party is unwilling or unable to participate meaningfully in the mediation process, or seeks through intimidation and threats to force an agreement, the mediator shall postpone, recess, or even terminate the mediation. Additional education hours on family violence should assist the mediator in determining when domestic violence affects the voluntary nature of a settlement and when to postpone or even terminate the mediation, without sacrificing the mediator's impartiality duties.

Domestic violence is an unfortunate reality, and one that won't disappear. No matter what your background, this training will certainly deepen your understanding of the often hidden danger in relationships. The Texas mediation community has long been a leader in mediation quality and professionalism. Deepening the complex understanding of human dynamics is another piece in our ongoing commitment to that level of competence and expertise. Be sure to get your training soon! Those of us who mediate court-appointed family law cases have a legal and an ethical responsibility to do so.