



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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Defining Child-Related Relief in Civil Protection Orders to Enhance Safety

Guidance from the



FCEP

FAMILY COURT
ENHANCEMENT PROJECT

Why this Guide?

Many communities around the country are implementing or considering the use of facilitated settlement processes and other forms of alternative dispute resolution in civil protection order cases, a practice that may be safe and beneficial for victims of domestic violence, but only if important safeguards are established. This document is intended to provide guidance on these safeguards and how to design and implement a facilitated settlement process that we term “safety facilitation,” which specifically addresses child-related relief in civil protection orders. **IN NO INSTANCE WOULD IT BE APPROPRIATE FOR THE PARTIES TO ENGAGE IN FACILITATED NEGOTIATIONS OVER WHETHER OR NOT A CIVIL PROTECTION ORDER SHOULD BE ISSUED.** That is a decision that must always rest with the judicial hearing officer. However, as described below, in cases screened for appropriateness safety facilitation may help the parties to craft an agreed upon protection order with child-related relief tailored to their particular needs.

Introduction

- This guidance reflects lessons learned during the course of the Family Court Enhancement Project (FCEP), a four-site demonstration initiative that seeks to improve family court responses to domestic violence in parenting time and access disputes
- One of the FCEP project sites, the Domestic Violence Division of the Cook County (Chicago), IL Circuit Court, developed and implemented a carefully designed, domestic violence-informed process by which a specially trained professional (the Child Relief Expediter) helps parties define child-related relief in their civil protection orders to address their specific safety needs and the safety needs of their children
- The Expediter process in Cook County was designed from the outset to increase the availability of child-related relief in protection orders that is safe, responsive to the parties’ needs, and specific enough to provide concrete guidance to the parties and maximize compliance
- The process in Cook County adheres to the five values identified by the FCEP project partners as underlying a safe, fair, and effective family court responses to domestic violence in custody cases:
 - **Safety and well-being of children and parents;**
 - **Access to justice;**
 - **Due process;**
 - **Collaboration;** and
 - **Accountability and transparency.**¹
- The guidance in this document is intended to assist other communities that seek to use a similar process, which we call “safety facilitation,” to achieve these outcomes
- Many communities around the country are currently implementing, developing, or contemplating facilitated settlement processes in their civil protection order courts, including in cases involving requests for child-related relief²
- If your community implements or is developing such a process, we urge you to use the values

1 Please note that although this document builds upon the Domestic Violence Division of the Cook County, IL Circuit Court’s work on the FCEP project and benefited from the insight of key personnel involved in the Expediter process, the FCEP technical assistance team is responsible for the guidance provided herein and it does not necessarily reflect the views of the Cook County team.

2 We consider facilitated settlement processes to include any court-based or court-managed process, regardless of its name, in which a non-judicial professional helps the parties to a civil protection order define the terms and conditions of the court order. Different names are used to describe such processes in different court systems, including “mediation,” “neutral evaluation,” “settlement facilitation,” and other forms of alternative dispute resolution.

and benchmarks in this document to assess your current process and any proposed changes so local practice is consistent with the guidance herein

Historical background

- For many years, advocates and attorneys who work with domestic violence victims have voiced strong concerns about, and in many instances have opposed, any form of facilitated settlement in cases involving domestic violence, especially in civil protection order cases
- This opposition stems from advocates' and attorneys' understanding of the dynamics of domestic violence and experience working with victims who have been adversely affected by alternative dispute resolution processes, especially court-mandated processes
- The power and control dynamics that characterize many domestic violence cases, including abusers' use and threatened use of physical violence and coercive controlling tactics, undermine the fundamental tenets of facilitated settlement processes, including that they must be predicated on both parties' autonomous decision-making, free from coercion, duress, fear, etc.
- These concerns are exacerbated when a facilitated settlement process includes negotiation over whether issuance of a protection order is appropriate and whether the court should issue cross or mutual protection orders
- In recognition of these concerns, statutes in several states prohibit mandatory, and in some instances voluntary, facilitated settlement in cases involving domestic violence³
- In effect, over the years this has created what is tantamount to a strong presumption against facilitated settlement in civil protection order cases
- The FCEP work in Cook County demonstrates, however, that a safety facilitation process addressing child-related relief can be protective, effective, and beneficial to families, provided the process adheres to the fundamental values discussed above and is consistent with a set of benchmarks we describe below

Specific guidance for communities considering safe facilitation processes for child-related relief in civil protection order cases

Should a court adopt a facilitated settlement process at all?

- As a threshold matter, courts should consider whether a facilitated settlement process to address child-related relief should be offered in civil protection order cases at all
- The risks may outweigh any potential benefits of the process
 - Those risks may include, among other things, that victims will be unsafe during the process and that fear, coercion, and other concerns and pressures will prompt them to agree to orders that are insufficiently protective and do not include all of the relief they seek and to which they are entitled

³ In some states, statutes or court rules prohibit any form of mediation in civil protection order cases. See, e.g., Oregon Revised Statutes 107.718 (“Neither the existence of nor the provisions of a restraining order issued under ORS 107.718 may be mediated”); Ohio Superintendence Rule 16 (“Required provisions for all mediation rules. A local mediation rule shall include ... [p]rocedures for prohibiting the use of mediation in any of the following: 1) As an alternative to the prosecution or adjudication of domestic violence; 2) In determining whether to grant, modify or terminate a protection order; 3) In determining the terms and conditions of a protection order; and 4) In determining the penalty for violation of a protection order”).

Benefits

- Assuming, however, that a court is able to develop a process that meets all of the benchmarks described below, a facilitated settlement process for child-related relief may offer some potential benefits, including:
 - Enhanced victim and child safety as a result of tailored terms for child access and protective provisions
 - A sense of empowerment for both parties to define the terms and conditions of the order
 - An alternative to court-imposed terms that may not adequately address specific safety needs and practical logistics
 - More efficient allocation of court time and resources to cases in which a full adjudication of the terms of the protection order is necessary
 - Better understanding of the terms of the order, which may reduce violations
 - An opportunity for both parties to be heard and influence the outcome, which can lead to greater compliance with the order

Cautions

- If the desire to establish a facilitated settlement process stems primarily from the following considerations, it is far less likely that the process will satisfy the benchmarks described below or that it will be safe, fair, and beneficial to victims:
 - Increasing the efficiency of the civil protection order process by encouraging parties to settle cases and avoid hearings
 - Decreasing the burden judicial officers face in having to adjudicate whether abuse has taken place and how to respond to the abuse in court orders
 - Offering incentives for victims to dismiss their petitions or for respondents to consent to orders without findings of abuse

Benchmarks for a safe, fair, and domestic-violence informed facilitated settlement process

- The benchmarks set forth below reflect the five underlying FCEP values described above, namely:
 - **Safety and well-being of children and parents;**
 - **Access to justice;**
 - **Due process;**
 - **Collaboration;** and
 - **Accountability and transparency**
- These benchmarks, which we consider to be mandatory for a facilitated settlement process in civil protection order cases, are:
 1. **No negotiation until after the court has made the requisite findings of abuse and has decided to issue the protection order (in other words, no negotiation of those issues)**
 2. **Safe involvement**
 3. **Knowing and voluntary participation**
 4. **Good faith and fair dealing**
 5. **Autonomous decision-making**

On the pages that follow, we provide a fuller description and rationale for each benchmark and provide examples of practices that both promote adherence to the benchmark and practices that are inconsistent with the benchmark.

In addition, we describe a set of strategies addressing education, collaboration, and improvement that should communities should adopt to ensure safe and effective implementation of a facilitated settlement process. As noted previously, we call such a process “safety facilitation,” and the professionals responsible for working with the parties a “safety facilitator.” We use these terms below in explaining the benchmarks and their application.

The Benchmarks

1 **No negotiation until after court findings/decision to issue the order** (**Values reflected:** Safety and well-being of children and parents; Access to justice; Due process)

- A facilitated settlement process should never be made available to the parties before a judicial officer has made a determination that the requisite legal standard has been met and that a protection order will be issued
- Whether the abuse has occurred as alleged and whether the legal standard for issuance of the protection order has been met are fundamental issues in the case and demand adjudication by a judicial officer
- The court must avoid instances where a facilitated settlement process could prevent the victim from obtaining a civil protection order for which they are eligible as a result of power imbalances, fear, coercion and other concerns typically present in domestic violence cases
- The facilitated settlement process should permit negotiation only over the terms and conditions of the order regarding safe access (custody and parenting time issues) and only: 1) when the judge has deemed that visitation/access is appropriate, and 2) whether there are certain restrictions to visitation/access
 - The court should carefully delineate the issues and disputes to be negotiated; negotiation over the following terms and conditions of the order may be appropriate:
 - Visitation/parenting time schedule
 - Details regarding the exchange (location of exchange, who will be present, transportation to exchange, etc.)
 - Communication between parents regarding visitation and other parenting issues
 - Child support and other financial issues
 - Other restrictions on visitation/access (e.g., participation in treatment programs, communication between parents and/or with third parties)
 - Victims should never be placed in the position of having to negotiate over or compromise their own safety or the safety of their children in the interest of arriving at an agreement
 - The parties should not engage in negotiation over whether visitation/parenting time and/or exchanges will be supervised by a third party or center; the judicial officer should make that determination before the parties engage in a facilitated settlement process
 - If the judicial officer does not determine that supervision is necessary but risk factors are uncovered during the course of the process that indicate the need for supervision, or one of the parties expresses a desire for supervision and the other party does not agree, the facilitator should refer the case back to the court for further hearing on the matter

Benchmark 1: No negotiation until after court findings/decision to issue the order	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
Facilitated settlement is offered by the judicial officer as an option during the hearing, after the judicial officer has made a finding on the record that the legal standard for issuance of the order has been satisfied	Parties are mandated or offered the opportunity to participate in facilitated settlement at any point before the court hearing or before the requisite judicial findings and a decision to issue the order has been made
Access to the process is restricted to judicial referrals; parties and their attorneys may request participation in the process, but a judicial referral is required for participation	The facilitator conducts a session with the parties prior to their hearing without a referral from the judge
Judicial referrals are made where the parties agree, without a hearing, to entry of a protection order that includes child-related relief, but they seek assistance with negotiations over the terms of that relief, provided: <ul style="list-style-type: none"> the judicial officer specifically determines that the case is appropriate for referral; and both parties consent to participation in the facilitated process 	Victims receive messages—from court staff, victim advocates, or others—indicating that there is a strong preference on the part of the court (and possibly other stakeholders) for settlement by the parties and the entry of orders by agreement or consent
All informational brochures and other descriptions of the facilitated process indicate that it is available only through court referral after the determination that an order will be issued has been made	

2 Safe involvement (**Values reflected:** Safety and well-being of children and parents)

- Safe involvement by victims who participate in facilitated settlement processes is a foundational requirement and safety considerations must dictate the design and implementation of the process, as well as how and by whom it is facilitated
- A comprehensive understanding of safety must shape the process, namely safety as freedom from actual or perceived violence, threats of violence, as well as coercive control

Benchmark 2: Safe involvement	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
Judicial officers adhere to protocols for referral of cases to safety facilitation that include a background check regarding the family’s court history and a risk assessment to determine whether the abuser’s access to the children can be safe	Judicial officers do not appropriately screen for safety risks and whether visitation/parenting time for respondent would be safe, prior to referring a case to the facilitator

Benchmark 2: Safe involvement	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
<p>Victims and abusers arrive and depart at separate times and are physically separated (so-called “shuttle” or “caucus” negotiation); strategies are implemented (e.g., a separate and secure waiting room) to keep victims safe while they await the start of the process)</p> <ul style="list-style-type: none"> • Safety facilitators honor victims’ requests for a face-to-face process (some victims feel safer under such circumstances) <p>(Note: these practices are important and can provide a measure of safety, but they alone are insufficient to establish a truly safe process)</p>	<p>Permitting parties to be in the same room or space, at any point of the process, unless freely chosen by the victim and deemed safe and appropriate by the facilitator</p>
<p>Safety facilitators are qualified; specifically they have experience working with domestic violence victims and/or perpetrators and have substantial training on domestic violence, including coercive controlling abuse, risk and dangerousness assessment, trauma, the effects of abuse on children, and other topics</p>	<p>Utilizing untrained, inexperienced, or unskilled personnel to serve as facilitators</p>
<p>Court recognizes that the safety facilitator’s role is functionally different from the role of a traditional mediator or settlement facilitator, and should only be carried out by an experienced and highly skilled professional</p>	<p>Mediation in civil protection order cases involving children is treated no differently by the court than mediation in other family law cases</p>
<p>The safety facilitator asks the abused parent about any safety precautions she or he would like established, and offers examples</p>	<p>If any safety precautions are put in place they are not tailored to the abused parent</p>
<p>The safety facilitator continually monitors for safety concerns during the process and addresses them appropriately, including by terminating the session or overall process where necessary</p>	<p>Ongoing safety of the parties during the process is not a concern of the facilitator</p>
<p>The process is restricted to a pre-defined scope: clearly defined issues and/or disputes related to safe access to children</p>	<p>Facilitators incorporate new issues into the process as they arise, without determining the safety considerations and propriety of facilitating settlement of those issues</p>
<p>Rules and expectations are established at the outset regarding the parties’ participation in the process, and these are enforced</p>	<p>Failing to establish and enforce reasonable ground rules to ensure safety during the mediation process</p>
<p>The process is subject to immediate recess, adjournment, or termination by any party for any reason or for no reason at all; and a party who chooses not to participate or to end the session is not penalized for that decision</p>	<p>Judicial officers expect that the process will result in agreed upon orders and consequently parties feel pressure to reach agreement, despite safety and other concerns</p>

Benchmark 2: Safe involvement

PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
The safety facilitator conducts an initial orientation and intake process that elicits information regarding the nature and context of the abuse and its effects on the children and parents (including their parenting)	
Judicial officers understand the nature of the process and do not pressure safety facilitators to help “settle” cases (and facilitators do not perceive any such pressure)	Judicial officers pressure, explicitly or indirectly, the safety facilitator to settle cases
The safety facilitator may terminate the process for safety or other reasons that make it inappropriate; the safety facilitator continually probes for safety concerns throughout the process	Facilitators are not attuned to or cognizant of safety concerns that arise during the process, and do not ask the parties questions about their perceptions of safety
When deemed appropriate, the safety facilitator may communicate with the judge and/or the other party regarding the reasons for termination if there is a safety risk	No protocol is in place setting forth standards and a process for communication with the court, parties, or others if a safety risk is detected
Professionals providing support to victims (advocates, attorneys, and others) are permitted to be present with the victim during the process	
The safety facilitator may not share information provided or statements made by a party with the other party without the fully informed consent of the originating party	The facilitator strives to maximize transparency and sharing of information, without consideration of safety concerns, to achieve mutually beneficial outcomes
Victims are provided with information about and referrals to relevant court and community-based service providers	
The safety facilitator draws upon his or her expertise regarding domestic violence to strive to ensure that the terms of the order, as negotiated, are not likely to endanger the victim materially or subject the victim and/or child(ren) to continuing abuse, including coercive control	<p>The facilitator fails to ensure that the parties believe that the terms and conditions of the order are safe and workable for them</p> <p>The facilitator does not help the parties appropriately address the safety risks in the proposed parenting agreement</p> <p>The facilitator does not independently assess whether the agreement is likely to be safe (and may deem such action as failing to remain neutral and impartial)</p>

3

Knowing and voluntary participation

(Values reflected: Safety and well-being of children and parents; Access to justice; Due process)

- Mandatory alternative dispute resolution processes have long been recognized to be inappropriate when a case involves domestic violence; statutes in several states have established exceptions (including by-passes, opt-out provisions, etc.) for DV cases
- Especially in the context of civil protection order cases, facilitated settlement processes must not be mandatory
 - An “opt-in” process should be adopted, wherein parties with appropriate⁴ cases are offered the opportunity to participate, rather than an “opt-out” process in which participation is required unless a party actively declines to participate
- In addition to providing for strictly voluntary participation, processes must ensure that parties’ participation is based upon informed consent
- Informed consent requires the following:
 - Understanding the process
 - Understanding the boundaries of confidentiality (if applicable) and that what the facilitator shares/shuttles between the parties is also voluntary
 - Understanding the safety facilitator’s style and approach to the process, as well as limits on the safety facilitator’s authority
 - Awareness and appreciation of the nature and consequences of the issues to be decided and the scope of legal relief available from the proceeding
 - Understanding of any legal waivers, including the right to offer evidence, examine witnesses, make a record, obtain a decision on the merits, file an appeal, etc.
 - Freedom to participate, not participate, or withdraw from participation without pressure, fear, or threat of repercussion from the other party, the person facilitating the process, or the court system

Benchmark 3: Knowing and voluntary participation	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
Judicial officers use a script to provide parties information about the process and to emphasize the voluntary nature of participation (especially that opting not to participate will not jeopardize their case)	<p>The facilitated settlement process is mandatory or perceived as mandatory by the parties and stakeholders</p> <p>The judicial officer does not appropriately describe the process and the parties don’t feel that they can say no</p> <p>There are adverse consequences for parties when they choose NOT to opt-in to the process</p>

⁴ As noted in the discussion of Benchmark 1, a case is appropriate for referral when the judge has found that a protection order will be issued and that visitation/access is appropriate.

Benchmark 3: Knowing and voluntary participation	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
Parties are provided with written and verbal information about the process, the safety facilitator, the confidential or non-confidential aspects of the process, the parties' right to terminate the process at any time, etc.; a signed agreement to participate may be useful for these purposes	
Parties obtain information, through orientation by the safety facilitator, written materials, or other means, about the nature and consequences of the issues to be decided and the scope of legal relief available as part of a civil protection order	The judicial officer and facilitator make no effort to ensure that the parties are adequately prepared for the process and/or assume that the parties enter the process with whatever legal or non-legal information they need
The safety facilitator reminds the parties at regular intervals that the process is voluntary and that they may withdraw at any time	The judicial officer pressures the facilitator to settle cases

4 **Good faith and fair dealing** (**Values reflected:** Safety and well-being of children and parents; Access to justice; Due process)

- That all parties engage in good faith is a necessary component for any facilitated settlement process; good faith requirements are enshrined in the statutes governing alternative dispute resolution processes in several states (typically in the context of mandatory processes, but in some instances the good-faith requirement is more general and may explicitly include voluntary processes)
- Concerns about good faith participation and the engagement in fair dealing by abusive individuals are prudent and consistent with an understanding of the dynamics of domestic violence and abusers' tactics; the process is readily susceptible to manipulation and other actions that abusers take to maintain power and control over victims even post-separation
- Consequently, facilitated settlement processes must implement safeguards to ensure good faith and fair dealing by all parties
 - Good faith and fair dealing by participants is demonstrated by:
 - Acceptance of and adherence to pre-established ground rules for the process
 - Complete, accurate, and timely disclosure of relevant information
 - Willingness and ability to explore options and proposals
 - Intention and commitment to honor promises and agreements

Benchmark 4: Good faith and fair dealing	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
The court informs the parties of the expectation that they will participate in good faith and that the session will be terminated if it is determined this is not happening	The facilitator moves forward with an agreement on child-related remedies that a) is not likely to work, b) one or both parties do not intend to follow, c) is unsafe, or d) was created under duress or through coercion or deception

Benchmark 4: Good faith and fair dealing	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
The safety facilitator conducts a pre-process assessment to determine whether both parties will negotiate fairly and in good faith	
The safety facilitator terminates the process when a party appears to be acting in bad faith or dealing unfairly and discloses the reason for termination when appropriate <ul style="list-style-type: none"> Unwillingness to agree/settle cannot constitute bad faith 	
The safety facilitator does not allow threats, coercion, deception (including the abuser's refusal to share information important to the victim's decision-making) or other abuse tactics to be utilized during the negotiation process	
The safety facilitator follows protocols for disclosing any threats that are made during the process	
The safety facilitator asks questions before moving forward with an agreement to ensure that both parties are fully informed and intend to follow it and that it was not created under duress or through coercion or deception	The facilitator moves forward with an agreement without probing whether one or both parties do not intend to follow it and whether it was created under duress or through coercion or deception

5 Autonomous decision-making
 (Values reflected: Safety and well-being of children and parents; Access to justice; Due process)

- It is critical that any facilitated settlement process ensures that victims of domestic violence engage in fully autonomous decision-making, especially because many victims have been the target of a course of conduct designed to strip them of their autonomy and control over their own decision-making and lives
- Autonomous decision-making by the parties requires that all decisions are:
 - Voluntary (free from undue pressure, duress, coercion, threats, manipulation and/or intimidation)
 - Sufficiently informed
 - The product of the party's own deliberation and judgment

Benchmark 5: Autonomous decision-making	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
The safety facilitator conducts a pre-process assessment to determine whether both parties are able make autonomous decisions and speak up for themselves	The facilitator fails to screen the parties thoroughly to determine if they can speak up for themselves and negotiate in their own best interest

Benchmark 5: Autonomous decision-making	
PRACTICES PROMOTING THE BENCHMARK	PRACTICES INCONSISTENT WITH THE BENCHMARK
The safety facilitator terminates the process when coercion, duress, threats, deception, etc., appear to be undermining a party's ability to make autonomous decisions	The facilitator misses important cues (verbal and non-verbal) that a party is under duress or allows threats to be communicated through the process The facilitator fails to check in with the parties during the process to confirm that it is free from undue pressure, coercion, etc.
The safety facilitator follows protocols for disclosing any threats that are made during the process	
The safety facilitator engages in “reality testing” of options to make sure the safety concerns of the petitioner and children are addressed in the parenting plan (as part of reality testing, the safety facilitator helps the parties think through possible problems that could arise with the plan and make informed decisions ⁵)	The facilitator moves forward with an agreement on child-related remedies that was created under duress or through coercion
If the parties are in the same room (if the abused parent makes an informed choice to request face-to-face mediation) at some point during the process, the safety facilitator must meet privately again with each party before writing up terms of an agreement to ensure that the agreement was not made under duress	

Additional Strategies to Design, Implement, and Sustain an Effective Safety Facilitation Process

Education and collaboration

(**Values reflected:** Collaboration)

- Courts considering adoption of facilitated settlement processes in civil protection order cases should first offer meaningful opportunities for all relevant stakeholders—especially judicial officers and civil attorneys and advocates who work with victims—to participate in the design of the process and to offer feedback
- Before implementation of the process, training should be offered to judicial officers, court staff, and non-court stakeholders about the process, how it will satisfy the five benchmarks described above, the courts' expectations for how it will be conducted, and opportunities for stakeholders to provide feedback and hold the court accountable for problems identified during implementation
- The safety facilitator collaborates with court and community-based resources and service

⁵ For example, if an option under consideration for the agreed parenting arrangement is that communication between the two parents will be via text message, the safety facilitator can ask the abused parent his or her impression of whether the abuser will respect the boundaries of communication (e.g., if the abuser has the ability to have any contact with the abused parent, what is the likelihood that he or she will take advantage of that and initiate more contact than the abused would like, for instance about things that aren't really important just to stay connected and force a response)

providers to ensure that information is made available for victims and families as appropriate

- Training should be developed and delivered by the safety facilitator. More information on the FCEP work is available from NCJFCJ (<http://www.familycourtenhancementproject.org/>). Additional information is available from the Center for Court Innovation (<https://www.courtinnovation.org/>) and the Battered Women's Justice Project (<https://www.bwjp.org/>)

Evaluation and improvement

(**Values reflected:** Access to justice; Due process; Collaboration; Accountability and transparency)

- Over time, even the most well designed processes can depart from the principles and guidelines established at the outset, to the detriment of the participants in the process
- Consequently, we recommend that courts implementing facilitated settlement processes in civil protection order cases engage in ongoing evaluation activities, including monitoring of whether the benchmarks described above are continuing to be satisfied
- Courts should cast a wide net when they seek feedback on the facilitated settlement process, and use surveys, focus groups, and other means of soliciting information from parties, attorneys, advocates, judicial officers, and other important stakeholders
 - The five benchmarks provide a set of standards which stakeholders could use to assess the process
- The facilitator must also have the opportunity for regular clinical supervision to debrief cases, address concerns, and uncover potential issues in the process
 - For example, in Cook County the safety facilitator obtains this support from experienced colleagues with the Circuit Court's Family Mediation Services program

The Role of the Safety Facilitator

The benchmarks and examples above suggest four primary differences between a safety facilitator's role and that of a traditional mediator:

1. The safety facilitator assumes some responsibility for the substantive outcome of the negotiation and deciding whether it passes muster
 - a. The safety facilitator does not move forward with an agreement that is not workable, is not likely to be followed, is unsafe, or was created under duress
2. The safety facilitator is a substantive participant who offers ideas, troubleshoots proposals, and raises concerns not expressed by the parties
 - a. The safety facilitator is hypervigilant about introducing and confronting safety issues, as opposed to just responding to them
3. The safety facilitator is very active during the process, keeping tight control over what is discussed, how parties act, and how the process is structured
4. The safety facilitator reports safety concerns directly to the judge
 - a. For example, in Cook County, the process is confidential, but the parties are informed that the Child Relief Expediter may disclose to the court or others, as appropriate, "anything that causes [the Expediter] to be concerned about imminent risk of substantial harm to any person inside or outside of the expediting session... Substantial harm includes, but is not limited to, (1) threats of or actual harm between the parents, (2) threats of or actual harm to persons not present in the expediting process, and (3) suspected child abuse or neglect."

The following chart illustrates how these critical differences between traditional mediation and safety facilitation play out in a real-world example, in which the parties are considering an agreement to allow a third-party to supervise the abusive parent’s parenting time with the parties’ child. The chart contrasts how a professional practicing safety facilitation, as set forth in this guidance, would respond to this scenario and how a mediator engaged in traditional alternative dispute resolution practice would handle the situation.

Traditional mediation versus safety facilitation: A practice example	
<p>Deborah and Allen are engaged in a facilitated settlement process in which the issue being negotiated is who will supervise Allen’s time with the couple’s two young children. Early in the process, Allen states that he would like the couple’s mutual friend, Stuart, to supervise the visitation sessions, and Deborah initially asks about whether there is a way to find a professional who does not know the couple to supervise, but after a bit of back-and-forth she agrees that Stuart would be fine.</p>	
SAFETY FACILITATION	TRADITIONAL MEDIATION
<p>In addition to asking Deborah a series of questions to detect whether she felt any pressure to agree to Stuart as the supervisor, the mediator engages in reality testing with Deborah, asking her questions about Stuart, his relationship with Deborah and with Allen, and how she would expect him to act if Allen behaved inappropriately during the visitation sessions (giving specific examples, such as denigrating Deborah in front of the children, asking them to communicate messages to their mother, attempting to elicit Stuart’s aid in communicating with Deborah, or obtaining a modified order or arrangement, etc.). Even if Deborah decides to move forward with the agreement, if the safety facilitator learns of facts that established, from her experienced perspective, any safety concerns for Deborah and/or the children, that could not be adequately addressed if Stuart supervised the visitation, she would not move forward with the agreement and instead would inform the court and parties that she is terminating the process.</p>	<p>After assuring herself that Deborah’s agreement is fully voluntary and was not based upon coercion or duress, and that both parties understand Stuart’s role as the supervisor, the mediator helps to draft an agreement memorializing the agreement.</p>

Conclusion

The fundamental purpose of civil protection orders is to promote the safety of the protected person, and temporary custody and other forms of child-related relief play a critical role in safeguarding abused parents and their children. Any alternative dispute resolution process made available as part of the civil protection order process must not jeopardize the safety of the parties and their children. In fact, the guidance provided in this document is premised on the belief that no ADR process should be part of the CPO process unless it enhances safety for the vulnerable family members. By adhering to the benchmarks and other recommendations for a safe and effective “safety facilitation” process detailed above, courts and communities can develop and implement a process that empowers abused parents and supports their ability to make choices regarding parenting time that meet their actual needs, while producing orders that are safer and more likely to yield compliance by abusive parents.

For more information regarding the guidance provide in this document, and for technical assistance with the design and implementation of a safety facilitation process, contact the National Council of Juvenile and Family Court Judges at <http://www.familycourtenhancementproject.org/>.

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