To: Legislative Committee on Judicial Rules
From: Michael Kainen, Chair, Supreme Court Advisory Committee on Family Rules
RE: Appointing a mediator when one is not available from the Mediation Program list.
Date: November 25, 2019

I. Introduction

The Family Rules Committee made a proposal to the court on V.R.F.P 18. It is my understanding that this committee (LCJR) had some question about why we thought it necessary for a mediator appointed by the court to have DV training, if DV had not been raised as an issue in the case.

II. The proposal

The Rule is intended to clarify the process for appointing a mediator when appointment has been ordered under Rule 18(b). The parties are always free to choose their own mediator. If they do not agree, or if one party is represented, and the other is not, the court first goes to the mediator program list. Only if a mediator from that program is not available, does the court pick someone off list (most commonly a lawyer who the court is familiar with). The court is to pick another mediator with credentials comparable to those who are on the list including DV training.

The proposal gives the judge some discretion in the appointment. The judge is not going to order mediation if there is obvious domestic violence due to an RFA. However, Domestic violence or control issues may not be obvious from the court's file. There may be intimidation and control without an actual assault, or there may be an assault which was never reported. Our intent is that someone who is appointed have sufficient training in domestic violence to be able to spot a situation where one party's will is overborne by the other based on historical intimidation /control.

Respectfully submitted,

Michael Kainen

Superior Court Judge

Chair, Family Rules