

# Navigating Intimate Partner Violence in Civil Cases: A Guide for Pro Bono Attorneys

By: Stephanie Saad



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# Representing Clients in IPV Cases

- ▶ Understanding trauma!
  - ▶ Hostility, emotional reactions (crying, panic attacks), or emotional numbness (hardly any reaction at all) can be normal responses.
- ▶ Trauma may also affect memory.
  - ▶ Survivors may not recall events in a chronological sequence and it could effect the survivor's credibility in court.
- ▶ For any attorney representing a survivor, safety must be the primary concern.

# Domestic Relations Cases: Personal Protection Orders (PPOs)

- ▶ Three types of PPOs:

- ▶ **Domestic Relations PPO**

- ▶ Spouse or former spouse.
    - ▶ Someone the petitioner currently resides with or HAS resided with in the past.
    - ▶ A person with whom the petitioner has a child in common.
    - ▶ Someone with whom the petitioner has or has had a “dating relationship”.

- ▶ **Stalking PPO**

- ▶ “A willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested.” MCL 750.411h(1)(e)
    - ▶ Requires TWO or more separate and non-continuous acts of harassment.

- ▶ **Sexual assault PPO**

- ▶ To protect a petitioner from a respondent who has been convicted of sexual assault of the petitioner or of furnishing obscene material to a minor petitioner. MCL 750.142
    - ▶ Or who threatens the petition with a sexual assault. MCL 600.2950a(2)(b)
    - ▶ Available regardless of the relationship between the parties and does not require two or more separate acts

# Domestic Relations PPOs

- ▶ Can be entered on an ex-parte basis.
- ▶ Respondent has 14 days upon service to file a *Motion to Terminate*.
- ▶ Appropriate when the petitioner can demonstrate that the respondent has interfered with the petitioner's personal liberty or caused a **reasonable** apprehension of violence. MCL 600.2950(1)
- ▶ The court must find **reasonable cause** exists to believe that the respondent might commit one of the prohibits acts under MCL 600.2950(1)
- ▶ The court must consider testimony, documents, and other evidence.
- ▶ The court cannot refuse to issue a PPO because there is no police report, medical report, or physical signs of abuse or violence.

# Domestic Relations PPO's Cont'd:

## What does a PPO say?

- ▶ A PPO will state these things:
  - That the PPO is effective immediately and can be enforced in any state once served
  - List of prohibited acts
  - Exact date for when the PPO expires
  - What *can* happen if the respondent violates the PPO
  - States the specific law enforcement agency that enters the PPO into LEIN

# Domestic Relations PPOs Cont'd: Prohibited Acts

- Entering your home or another place
- Assaulting, attacking, beating, molesting, or wounding you or another named person
- Threatening to kill or physically injure you or another named person
- Removing your children from you if you have legal custody of them
- Buying or having a gun
- Interfering with you removing your children or personal property from a place the abuser owns or leases
- Interfering with you at your job or school, or acting in a way that harms your job or school relationships or environment
- Having access to your home address, work address, or telephone number in records that concern a child of both of you
- Stalking you
- Intentionally causing you mental distress or controlling you by harming or threatening to harm an animal you own, taking the animal from you, or keeping it from you
- Any other specific act or behavior that interferes with your personal freedom or makes you reasonably afraid of violence (this could include other specific behaviors that you want the judge to prohibit)
- MCL 600.2950(1)

# What should the Petitioner put in their PPO Petition?

MUST allege facts to show imminence of actual or threatened harm and irreparable injury.

Establish the pattern of coercive control.

Do NOT need physical abuse, although any instances of physical abuse or intimidation should be included.

Include most recent events and most serious events.

Include history of abuse.

Ask your local DV organization for help and/or see if there is a DV organization for the courthouse!

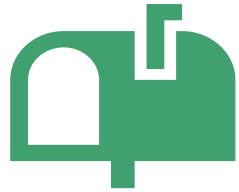
# The PPO Process in a Nutshell



**Petitioner files Petition for PPO.**



**PPO is granted on an Ex-Parte basis (or Petitioner can request a hearing on their Petition).**



**Service must be completed.**

Personal Service; or  
Service by Registered mail.



**Respondent has 14 days to file a Motion to Terminate.**



**Hearing on Motion to Terminate.**



# Pro Bono Assistance with PPO Cases

- ▶ Representing petitioners for a hearing regarding their petition.
- ▶ Representing petitioners for a Motion to Terminate filed by the respondent within 14 days of service. MCR 3.707(A)(1)(b)
- ▶ Representing petitioners for a motion to extend PPO.
- ▶ Positives and Negatives of representation in PPO cases
- ▶ Warning: If the respondent is represented, prepare for the request to enter a Mutual Restraining Order in place of the PPO.



# Criminal vs. Civil Orders of Protection

No Contact Order


- Used in criminal cases

Personal  
Protection Order

- Used in family court

Mutual or Civil  
Restraining Order

- Used in family court (typically in custody/divorce cases)



## Domestic Relations Cases: Divorce (DM or DO), Custody (DC), Support (DS), Paternity (DP)

- ▶ Initial client interview
  - ▶ Longer interview/intake in DV cases
  - ▶ Get client in touch with local DV organization
  - ▶ Have client gather evidence and documentation prior to interview
- ▶ Ask the right questions!
- ▶ What kind of case needs to be filed?

# Initial Filing/Service for a Domestic Relations Case

- ▶ The most dangerous time for DV survivors!!!!
- ▶ Safety planning is imperative
- ▶ Do not file anything without consulting with the survivor first

# Divorce/Custody Procedure

Dependent on county:

Some counties have initial hearings with parties to get an interim custody/parenting time order in place



**Initial  
Complaint**

Ex-Parte  
Orders



**Service on  
Defendant**

Deadline for filing  
an Answer  
Default process



**Motion  
practice**



**Settlement  
Conference/  
Status Conference**

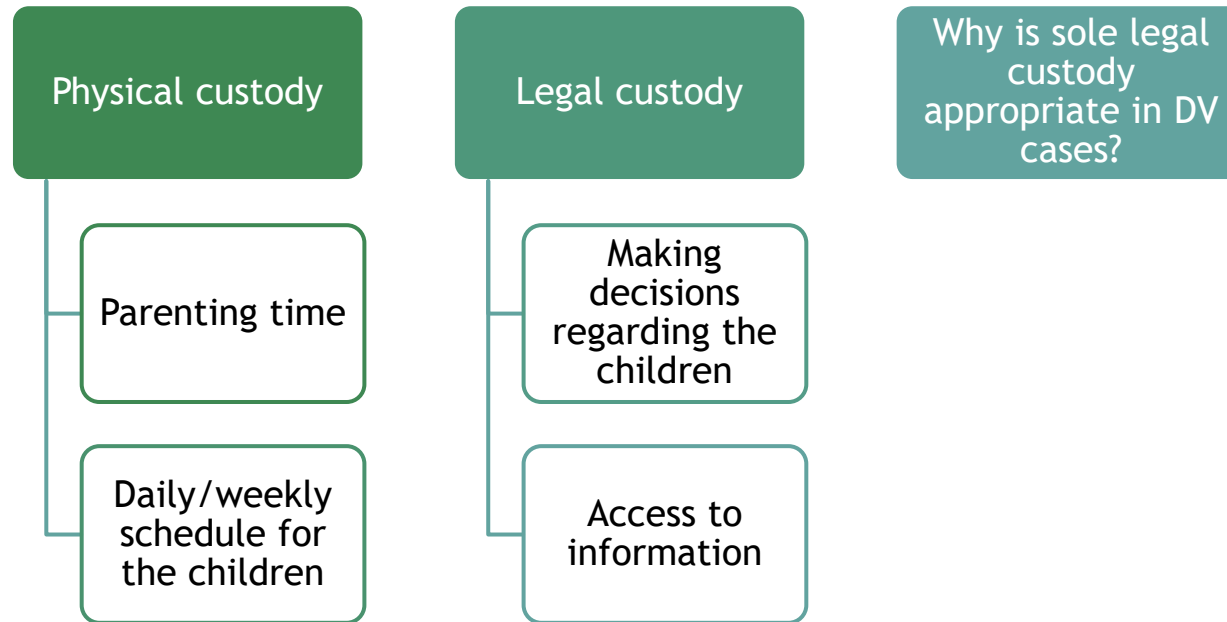


**Mediation**



**Trial date**

# Physical vs. Legal Custody




# Child Custody: Best Interest Factors

- **MCL 722.23**
- **(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.**
- **The trial court MUST consider each best interest factor.**



# Special Considerations

- ▶ Mediation
  - ▶ Parenting time exchanges
  - ▶ Property exchanges
  - ▶ Communication apps
  - ▶ Enforcement issues
  - ▶ Guardian Ad Litem
  - ▶ Expert witnesses
  - ▶ Discovery
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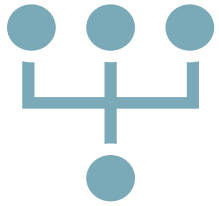
# Special Considerations: Mediation

- ▶ Court-ordered in almost all domestic relations cases unless there is a history of DV.
- ▶ MCL 600.1035
  - (1) Except as provided in this subsection, unless a court first conducts a hearing under the court rules to determine whether mediation is appropriate, the court shall not submit a contested issue in a domestic relations action, including postjudgment proceedings, if either of the following applies:
    - (a) A personal protection order has been issued under section 2950 or 2950a or another order has been entered protecting 1 party and restraining the other party. However, the court may order mediation if the protected party requests mediation.
    - (b) One or both of the parties are involved in a child abuse or neglect proceeding. However, the court may order mediation if a parent protected by an order in the proceeding requests mediation.

# Special Considerations: Parenting Time Exchanges

- ▶ Parenting time exchanges are extra difficult in DV cases.
- ▶ Exchange location should be in any court order regarding parenting time.
- ▶ Need to ensure exchanges are in a safe location.
- ▶ Case example.

# Special Considerations: Property Exchanges



Another difficult part of domestic relations cases when DV is involved.



Request civil standby.



**Court order/Final Judgment should have specific language including:**

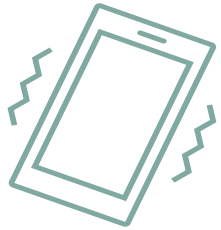
Specific date

Specific times

Who may be present

Whether any recording is allowed

# Special Considerations: Communication Apps



**Numerous options  
available:**

Our Family Wizard  
AppClose



**Court can monitor  
communications**



**Issues with apps**

# Special Considerations: Enforcement Issues

- ▶ Batterers will often use the court system as a way to continue the pattern of abuse.
- ▶ Spousal support enforcement.
- ▶ Parenting time enforcement.



# Special Considerations: Guardian Ad Litem (GALs)

GALs represent the child's best interests.

GALs will speak to the child, both parents, schools, doctors, etc.

Be careful of GALs being appointed in cases where your client is low-income.

If a GAL is appointed, fight for the opposing party to pay all costs.

GAL recommendations are not automatically entered by the court.

# Special Considerations: Expert Witnesses

MRE 702: Governs testimony by a psychologist or other professional regarding issues such as “parental alienation syndrome” and “spousal abuse syndrome”

Using expert witnesses in DV cases

- Divorce and custody
- PPOs

# Special Considerations: Discovery

- ▶ Almost always necessary in DV cases
- ▶ Interrogatories
- ▶ Requests for Admission
- ▶ Subpoenas



# Working with Your Local DV Organization

Don't send subpoenas to the survivor's advocate or therapist.

Request verification letters to prove survivor is seeking treatment for DV but without indulging any privileged/confidential information.

Survivor's advocates should never be forced to come in and testify. There are confidentiality rules that allow those conversations to be private.

Be prepared to fight subpoenas filed by the batterer.

# Address Confidentiality Program (ACP)

- ▶ Created to keep addresses of victims of DV, sexual assault, human trafficking, and individuals at risk of being physically harmed from being located by their perpetrators.
- ▶ Provides survivors with a designated address that can be used in place of their actual address and provides free mail forwarding services.
- ▶ Anyone can apply!
- ▶ <https://www.michigan.gov/ag/initiatives/address-confidentiality/application-assistant-victim-advocate>

# Why Should You Do Pro Bono Work for Survivors?



# How to Contact Lakeshore Legal Aid For Pro Bono Opportunities

- ▶ Heather Herbert: Pro Bono Director
  - ▶ (248)530-9330, ext. 1705
  - ▶ [hherbert@lakeshorelegalaid.org](mailto:hherbert@lakeshorelegalaid.org)
- ▶ Stephanie Saad: VOCA-DV Staff Attorney
  - ▶ (248)530-9330, ext. 1709
  - ▶ [ssaad@lakeshorelegalaid.org](mailto:ssaad@lakeshorelegalaid.org)