



Lawyer's Manual on Domestic Violence

REPRESENTING THE VICTIM, 5TH EDITION

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For Safety

You may learn that your client is living with her abuser and that the abuse is ongoing. She may tell you that he will ignore an order of protection and may seriously hurt or kill her. You will need to find out if she wants to go into a battered woman's shelter or if there are family members or friends she can live with. If she wants to remain in the home with her abuser, you will need to talk with her about strategies should the abuse resume (alerting a sympathetic neighbor, for example) and a plan for quick escape. Be sure that she has all of her important documents in a place the abuser does not have access to. She will need to explore safety precautions such as having her locks changed and installing window guards.

For Counseling

She may tell you that she feels so alone and isolated that she is thinking about going back to her abuser. Tell her that there are support groups for domestic violence victims that can help create a supportive community. Then assist her by making an appropriate referral.

For Therapy or Psychiatric Help

She may tell you that she feels depressed and sometimes considers suicide; she has constant nightmares; she is terrified to leave her home even though she is certain her abuser does not know where she lives. She may describe recurrent nightmares, attacks of insomnia, or intrusive flashbacks to incidents of abuse, all symptoms of post traumatic stress disorder. You will want to urge her to get psychological evaluation and treatment.

You may be thinking, I'm a lawyer, not a social worker. The truth is that this kind of representation does not just entail grappling with legal issues. However, no one expects you to be a social worker or a psychologist. There are many multi-service domestic violence agencies throughout New York State that provide shelter, counseling, and other services. They can assist you with information and referrals to meet your client's needs.

Obtaining the History of Domestic Violence and Gathering Evidence

Almost all cases require a detailed history of the domestic violence. You need to know (1) when each incident occurred; (2) in an order of protection case, whether the occurrences together or separately constitute family offenses; (3) what kinds of injuries she sustained; (4) what her feelings and reactions were; and (5) what kind of corroborating evidence exists (hospital records,

eye-witness accounts, police reports, etc.). Taking her through the elements of the power and control wheel can be an effective way to elicit the full range of the abuse she has received.

As mentioned above, be alert to the fact that you may have key evidence in your office that will not be around for your next interview: bruises, red marks, scratches, and torn or bloodied clothing. Preserve that evidence by taking photographs or asking your client to allow you to keep her bloodied, ripped shirt. Ask her if he damaged her property. If so, she should document it either by saving the property or photographing it. Such evidence will probably enable you to meet your burden of proof at trial. It may also give you the edge to obtain an extremely favorable settlement.

If she has the original receipts for property he damaged, she should send them to you. They can be introduced into evidence in the dispositional phase of her family offense case when she is pursuing restitution.

Ask her about witnesses to the abuse. Even if the beatings happened in private, there may be neighbors who heard her screams or friends who observed her injuries afterward. She may have made “excited utterances” to friends or coworkers. Get the names, addresses, and phone numbers of these individuals, and contact them as soon as possible before their memories fade.

Were the children present? What did they see or hear? How did they react? What changes in their behavior did you observe? The impact of the domestic violence on your client’s children will be relevant in almost every kind of representation — from family offense and custody to matrimonial and immigration. (You can interview the children if a law guardian has not yet been appointed, but if you do so proceed with caution.) Find out what steps your client took to protect the children from the abuse, including by ending the relationship. It may be important to establish that your client knew the domestic violence was harmful to the children and tried to prevent them from being exposed to it.

Contested custody cases require that you know everything about your client’s relationship with the children: her history of care-taking; the children’s social, psychological, and intellectual development; the children’s relationship with the batterer; the children’s relationship with extended family members; even your client’s and her abuser’s life histories. Gathering this extensive information may require several interviews.

An interview for an uncontested divorce will be much more focused and less time-consuming. After you learn the history of domestic violence within the

last five years to establish the ground of cruelty, you will need very straightforward financial and biographical information.

Evaluate how your client will sound and appear to the judge, law guardian, and any forensic evaluators, and what kind of witness she will make at trial. How does she tell her story? Is it consistent and believable or is her account vague, confused, and contradictory? Is she easily rattled? Is her affect appropriate or is she blank and numb? Is she so emotional that she cannot stop crying? Does she dress appropriately?

By considering these issues you are not standing in judgment of your client; you are identifying the most effective strategy to help her get the legal remedies she needs. If she would not make a good witness, it might be best to try to settle the case. Or you might want to call an expert witness to explain her demeanor. Or you might be able to work with her to help her learn to present herself in a way that does justice to her case. One of my clients laughed nervously every time she described the abuse she had suffered — behavior that led the law guardian and judge to doubt her account. When I pointed it out to her, she was able to control her nervous reaction and become an effective witness on the stand.

If court-appropriate clothing is a problem, consider referring her to a program like New York City's Dress for Success, which offers domestic violence victims professional-looking clothing for appearances in court.

During the interview, take detailed and accurate notes. Explain to your client that you are taking notes because what she is saying is very important and that you do not want to forget the details.

Knowing the Worst

Tell your client that her abuser will probably try to make her look bad in court. Explain that you need to know what he is likely to say about her in advance of the court date so that you can quickly respond to his allegations. Ask her, "What is the worst thing he is going to say about you?" If she responds, "That I'm crazy or that I'm a drunk," you will need to ask specific questions. Ask her if she has had psychiatric hospitalizations or seen a therapist and, if so, when, where, why, and for what period of time. Ask her if she has ever had a drug or alcohol problem. If so, find out when, what was the substance, the extent of her addiction, and whether she was in a program. Ask her if her children have ever been removed or if there have been any child welfare investigations. Phrase the

questions in such a way that your client understands that you are not judging her but are getting information necessary to help her.

Longstanding abuse, especially abuse that follows earlier abuse, often causes psychological problems and trauma. Battered women may suffer from depression, post-traumatic stress disorder (hyper-arousal, intrusive thoughts, disassociation), and fears or paranoia.⁹ It is not surprising, for example, that a domestic violence victim might use alcohol and drugs to numb the pain and ward off feelings of despair. Zealous representation means understanding the worst, doing whatever is necessary to help her overcome the worst, and then, if her problems surface in the proceeding, helping evaluators understand their source, the steps she is taking to overcome them, and the strengths she displays in spite of them.

Ask your client how she disciplines the children. Although the law prohibits only excessive corporal punishment, any corporal punishment that comes to the law guardian's or court's attention will reflect poorly on your client. Tell her that. And, if she is disciplining the children inappropriately, refer her to a parenting skills course.

Problems in the Interview

There are certain problems that you may encounter during your representation of your client. Usually they surface during the first interview.

She Minimizes or Erases the Abuse

This is a very common problem in the representation of battered women and far more likely to occur than exaggeration or fabrication. In part, this is a function of denial, a common psychological reaction to abuse. If you realize that she is minimizing, tell her that it is very common for victims of domestic violence to understate the abuse, that it is a way of trying to survive something very painful. Help her understand the severity of the violence she experienced (e.g., "He forced you to have sex with him even though you said no and tried to push him away? That is the crime of rape. It is a felony to force sex on anyone, even if that person is married to you").

She Has Difficulty Remembering When the Incidents Occurred

This often is a function of repression, another common psychological reaction to abuse. It also may be the result of the repetitive nature of the abuse — it is hard to remember specifics of events that occur daily or weekly.

Ask your client to bring calendars, diaries, and any records she keeps that will help her place events in time. Clients with children often can remember when events took place by thinking about how old their children were when they occurred. Help her hone in on the probable date by asking her what season the incident occurred in, then help her place it on or around a holiday or birthday during that season. Reassure her that it is very common not to remember the date of events that occurred months or years ago.

She Goes off on Tangents

This may be the result of a thought disorder, a sign of a psychological problem. Or it may occur because your client wants to avoid painful subjects. It may also be the function of her lack of experience with interviews. If your client does not respond to your questions, remind her to listen carefully and confine her answers to what you have asked. If she continues to be unresponsive, gently cut her off and repeat the question.

She Asserts Herself Inappropriately

Clients who have been controlled by someone for years are often struggling with issues of assertiveness and control. Now that she is free of her abuser, she may have vowed never to let anyone bully her again. She may attempt to take charge of her situation, her legal case, and the courtroom. Clients struggling with issues of self-assertion may ignore your advice to keep quiet in court, reject your advice to comply with a court order, insist on strategies that are counterproductive, and become aggressive and even hostile when you give them bad news. Do not engage, and do not take such behavior personally.

Determine if there is an unmet need behind behavior that seems inappropriate. I once assisted a domestic violence victim who, in the middle of her custody case, wrote a letter to the judge stating that she wanted one of her daughters to live with her husband. The letter seemed inexplicable, especially since her husband had battered both her and this daughter's older sister. During my meeting with the client, I learned that she had a severely disabled young son and was overwhelmed by the demands of caring for him. By assisting her with getting

the help she needed — in this case, a home attendant to help care for her son — the client was better able to cope with her daughter's demands.

Some Don'ts

Don't ask victim-blaming questions that shift the responsibility. They often start with "why:"

- Why did you stay?
- Why didn't you just leave?
- Why did he hit you?

Don't dismiss her fears or concerns. Address them seriously.

Don't let her go into any court-related situation (e.g., a meeting with a child welfare caseworker or the law guardian's social worker) without knowing what to expect and what will be expected of her. Warn her about possible pitfalls, such as openly expressing anger toward her abuser. Explain how important her appearance and demeanor will be in court.

Don't dismiss her thoughts and suggestions about strategy. Consider them seriously. If you disagree, just explain that you have learned that does not work and why.

Don't ignore her phone calls or get irritated with her for calling you, even if you think she is calling you too often. Understand that she is going through a frightening process and needs reassurance. If you feel she is calling you excessively, try making appointments to talk with her and setting time limits on calls. Remember that emergencies often happen in domestic violence cases and there may be urgent reasons for her call.

A Successful Attorney-Client Relationship

The best attorney-client relationships are built on trust and teamwork. When this becomes the dynamic that informs your relationship with your client, there are mutual benefits. Not only will your task be easier and more rewarding, but your client's encounter with the legal system will be a positive experience — one that affirms her value and equips her with the tools she needs to build a safe and independent life.

Notes

1. The “battered woman syndrome” was first identified by Lenore E. Walker in *The Battered Woman* (1979).
2. *Id.* at 65-70.
3. Evan Stark, Anne Flitcraft, *et al.*, *Wife Abuse in the Medical Setting: An Introduction for Health Personnel*, Domestic Violence Monograph Series, No. 7 (Washington, D.C., Office of Domestic Violence, 1981); Julie Blackman, *Intimate Violence: A Study of Injustice* (1989).
4. *See* Evan Stark and Anne Flitcraft, *Women and Children at Risk — A Feminist Perspective on Child Abuse*, *International Journal of Health Services* 10, No. 1 (1988); Linda McKibben *et al.*, *Victimization of Mothers of Abused Children: A Controlled Study*, *Pediatrics* 84, No. 3 (1989); Lee H. Bowker, *et al.*, *On the Relationship Between Wife Beating and Child Abuse*, in *Feminist Perspectives on Wife Abuse*, ed. Kersti Yllo and Michele Bograd (1988).
5. *People v Liberta*, 64 NY2d 152 (1984).
6. Susan Estrich, *Real Rape*, at 72-79 (1987).
7. *See* Ann Jones, *Next Time, She’ll Be Dead: Battering and How to Stop It*, at 106-128 (1994).
8. *Eschbach v Eschbach*, 56 NY2d 167 (1982).
9. *See* Judith Lewis Herman, *Trauma and Recovery* (1992). Herman compares the trauma of victims of domestic violence to that of combat veterans and survivors of political torture.