

Domestic Violence:

How Lawyers Can Make A Difference

by Savalle C. Sims



Domestic violence is a widespread problem that crosses over gender, racial and socio-economic lines. Domestic violence affects women,¹ children, men and families within their homes, and employees and employers within the workplace.² The impact of domestic violence on employers and the workplace is significant.³ It is estimated that domestic violence costs employers in excess of \$55 million annually in lost wages and other costs.⁴

In Virginia, a domestic violence victim seeks help from a domestic violence program every 18 minutes.⁵ During the 1996–97 fiscal year, 48,197 persons, including 34,668 women and 784 men, requested services from Virginia’s spouse abuse programs.⁶ Among the women victims who contacted domestic violence programs, 12% were referred by the courts, 11% by law enforcement officers, and 8% by a friend or relative.

Domestic violence, also referred to as family abuse, is a pattern of controlling behaviors used by one individual to control or exert power over another individual in the context of an intimate relationship. Domestic violence often extends beyond physical violence and can include psychological abuse, emotional abuse, economic abuse, sexual abuse, physical abuse and legal abuse.⁷

How Lawyers Can Help

Although domestic violence is often viewed as an issue that can only be addressed by domestic relations or criminal law practitioners, all lawyers can help in the fight against domestic violence. It is important that all lawyers recognize how domestic violence relates to their practice and their clients. For instance, a real estate lawyer should know how to advise his or her client if the client’s batterer spouse is forcing the client to convey title to property in the batterer spouse’s name.

Lawyers can help in the following ways:

Recognize Signs of Domestic Violence Within the Workplace:

Domestic violence affects individuals from all walks of life. Victims and batterers can be found among our employers, employees and colleagues. When confronted with signs of domestic violence within the workplace, lawyers can provide victims with brochures or pamphlets regarding domestic violence. They can also refer victims in their workplace to other lawyers and professionals, such as doctors and counselors, who can assist them in getting help. Many outreach programs located in counties and cities throughout the Commonwealth have established domestic violence hotlines that can provide victims with referrals to important resources such as shelters and support groups. Lawyers can refer victims to the Virginia Family Violence and Sexual Assault Hotline 1-800-838-8238 and the Virginia Lawyer Referral Service 1-800-552-7977 so that victims may find help in their area.

Screen Client Cases for Signs of Domestic Violence: Lawyers should carefully ask clients about any history of domestic violence where contact with clients reveals a possibility of domestic violence, whether it be as victims or as batterer. Although lawyers should ask their clients direct questions regarding domestic violence, they should not force clients to disclose information. Forcing clients to disclose that domestic violence is occurring when they are not prepared to do so, may escalate the danger.⁸ Since clients will not typically disclose that they are either batterers or victims of domestic violence, it is important for lawyers to be aware of the basic warning signs.⁹

- The most obvious signs of domestic violence include repeated and inexplicable physical injuries. Evidence of frequent and reoccurring physical injuries such as bruises and broken bones may indicate the presence of domestic violence.
- Batterers often rely upon emotional abuse to control their victims. Batterers often degrade, belittle, insult and level accusations of infidelity against victims in the presence of others. Screening for domestic violence is appropriate where these signs are present.
- Batterers often attempt to isolate and control their victims. Frequent job changes, unexplained and excessive absences from work coupled with frequent doctor’s appointments may point to the presence of domestic violence.
- Batterers also exhibit signs of extreme jealousy, manifested in the following ways:

- ~ Batterers discourage or attempt to prevent clients from retaining counsel in an effort to exert control over their victim. Further, batterers may insist that they accompany the victim to each and every meeting.
- ~ Victims make an excessive number of phone calls to “report in” to their batterer.
- ~ Batterers attempt to isolate their victims from family and friends. Lawyers should be mindful of comments made by victims which indicate that he or she must seek permission from his or her spouse to visit family and friends.

Lawyers Can Challenge Misperceptions of Domestic Violence:

It is not uncommon for victims and batterers to view domestic violence as normative, or for victims and batterers to be unaware of the legal remedies and consequences associated with domestic violence. When domestic violence issues arise within the context of client contact, lawyers can make it clear that domestic violence is not sanctioned by the law and can be addressed in both the state and federal¹⁰ courts.

Lawyers Can Assist Victims in Developing Safety Plans:

Once approached by a victim—irrespective of whether the victim is a colleague or a client—lawyers can assist victims by helping them develop safety plans.¹¹ Violence often escalates when the victim leaves his or her batterer. Lawyers can help victims address their safety concerns by developing comprehensive safety plans that address the victim’s safety both at home and in the workplace. Safety plans may include making sure that emergency phone numbers are near all telephones within the home and office; planning and practicing an escape route out of the home and office; keeping a bag packed and hidden in a safe place; and advising neighbors, friends and colleagues to call the police if they observe suspicious behavior. Safety plans may also include making alternative arrangements for pets. The Society for the Prevention of Cruelty to Animals has developed a novel new program in Richmond which may assist victims in this particular aspect of their safety planning. Animals of domestic violence victims are picked up by the Society for the Prevention of Cruelty to Animals and provided with a home until victims can secure new housing arrangements.

Lawyers Can Donate their Time: Lawyers can donate their time to assist victims of domestic violence. Through *pro bono* activities and continuing legal education courses, lawyers can receive the necessary training on how to provide *pro bono* services to victims of domestic violence. Such instruction often includes training on unique situations lawyers should consider when representing victims of domestic violence. The Virginia State Bar YLC Domestic Violence Safety Project recently conducted a continuing legal education course providing such training.

The most dangerous time for a victim is when he or she decides to leave his or her attacker.¹² Once a victim of domestic violence takes the courageous step to leave his or her attacker, the victim is confronted with a host of issues some of which can only be addressed by the legal system. There are a variety of civil remedies that are available to victims at both the Circuit Court¹³ and

Juvenile and Domestic Relations Court level. In recent years, the legislature has enacted statutes which give the Juvenile and Domestic Relations Court the authority to issue a range of civil protective orders including emergency protective orders, preliminary protective orders and protective orders when a member of a family or household has suffered “family abuse.”¹⁴

The following protective orders are available to victims:

Emergency Protective Orders:¹⁵ Emergency protective orders can be issued 24 hours a day, 365 days a year. An emergency protective order expires 72 hours after its issuance or at 5 p.m. on the next business day that the court is in session. An emergency protective order may be issued *ex parte*, without any notice to the alleged batterer, upon a showing that the alleged batterer has committed abuse against a family or household member and that there is probable danger of more abuse. An emergency protective order may also be issued automatically if an arrest for assault and battery has been made.¹⁶ Since emergency protective orders are typically issued *ex parte*, they must be served upon the alleged batterer as soon as possible. Additionally, emergency protective orders do not contain the full range of protections included in a full protective order. They can provide the following:

- prohibit further acts of family abuse;
- prohibit contact with family or household members; and/or
- exclude the abuser from the residence.

Preliminary Protective Orders:¹⁷ Victims may obtain a preliminary protective order upon a showing that he or she faces “immediate and present danger” of family abuse or upon a showing that family abuse has recently occurred.¹⁸ A petition for a preliminary protective order must be filed with the court in order to obtain this relief. Victims can file the petition without the assistance of an attorney at the Juvenile and Domestic Relations Court in the county or city in which they live.

A preliminary protective order lasts for 15 days and is effective upon obtaining personal service upon the alleged batterer. After issuing the preliminary protective order, the court will set a date for a full hearing to be held within 15 days. The hearing is held to determine whether to issue a permanent protective order.

A preliminary protective order can provide the following:¹⁹

- prohibit future acts of family abuse;
- prohibit contact by the alleged batterer with the family or household members;
- exclude the alleged batterer from the residence occupied by the parties;
- grant the victim exclusive temporary possession or use of a motor vehicle jointly owned by the parties; and/or

- require the alleged batterer to provide suitable alternative housing for the victim and any other family or household member.

Permanent Protective Order:²⁰ A Court will issue a permanent protective order if the Court finds that the victim has proven his or her allegation of family abuse. A Court will make such a determination following service of process, notice of a hearing date and an opportunity to be heard. A permanent protective order can remain in effect for 2 years.

A permanent protective order can provide the same protections as a preliminary protective order. In addition, it can also provide the following:²¹

- order the abuser to participate in treatment, counseling or other program;
- grant temporary custody or visitation of a minor child; and/or
- other and further relief.

Domestic violence is an issue that impacts all segments of our society. As more practitioners become aware of the signs of violence and the ways they can assist victims, practitioners can play an important role in the fight against domestic violence. Lawyers who are interested in participating in the Virginia State Bar YLC's efforts to combat domestic violence should contact the chair of the Pro Bono Committee, Maya Eckstein at Hunton & Williams in Richmond. 📞



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ENDNOTES

- 1 Each year approximately one million women are abused by intimate partners. Women are approximately six times more likely than men to experience violence committed by an intimate partner. Violence Against Women: Estimates from the Redesignated Survey, Bureau of Justice Statistics Special Report, August 1995.
- 2 See Domestic Violence: A Workplace Issue; http://www.dol.gov/dol/wb/public/wb_pubs/domestic.htm "In . . . small non-random study of domestic violence victims, 96% of those who were employed had some type of problem in the workplace as a direct result of their abuse or abuser. These included being late (more than 60%), missing work (more than 50%), having difficulty performing one's job (70%), being reprimanded for problems associated with the abuse (60%), or losing a job (30%)."
- 3 In a 1994 survey of senior executives of Fortune 1,000 companies, significant numbers of respondents said "domestic violence has a harmful effect on their company's productivity (49%), attendance (47%), and increases insurance and medical costs (44%)." Women's Work Program, Liz Claiborne, Inc., Survey conducted by Roper Starch Worldwide, New York, Liz Claiborne, Inc., July 18-August 5, 1994.
- 4 Ted R. Miller et al., Nat'l Institute of Justice, U.S. Dep't of Justice, *Victim Costs and Consequences: A New Look* 13 (1996).
- 5 See The Facts About Domestic Violence; www.vpcdv.org/page2.html.
- 6 Virginia Department of Social Services Spouse Abuse Program, fiscal year 1996-97.
- 7 See *Stop Domestic Violence: An Action Plan for Saving Lives*, Lou Brown, Francois Dubau and Merritt McCain, J.D. "The abuser may drag his victim through a vicious custody battle or an expensive court case when she leaves him. He may give her less than she deserves by law and may drag out the proceedings. He may refuse to pay court-ordered support or alimony or to turn over assets."
- 8 The Impact of Domestic Violence on Your Legal Practice, The American Bar Association Commission on Domestic Violence, Chapter 2: The Client, Roberta L. Valente, Esq.
- 9 *Id.*
- 10 In 1994, Congress enacted the Violence Against Women Act (VAWA). The VAWA addresses domestic violence at the federal level and provides, in part, a new federal civil rights cause of action for victims of gender motivated crimes of violence.
- 11 See The Impact of Domestic Violence on Your Legal Practice, The American Bar Association Commission on Domestic Violence, Chapter 2: Safety Planning, Deborah M. Goelman, Esq.
- 12 Women who leave their batterer are at a 75% greater risk of being killed by the batterer than those who stay. Barbara Hart, National Coalition Against Domestic Violence, 1988.
- 13 Pursuant to Va. Code Ann. § 20-103(B), the circuit court in a divorce action can award exclusive use and possession of a jointly owned or jointly rented marital residence upon a showing of "reasonable apprehension of physical harm."
- 14 Family abuse is defined by Va. Code Ann. § 16.1-228 as any act of violence, including any forceful detention, that results in physical injury or places a family or household member in reasonable apprehension of serious bodily injury.
- 15 See Va. Code Ann. § 16.1-253.4.
- 16 See Va. Code Ann. § 16.1-253.4(B).
- 17 See Va. Code Ann. § 16.1-253.1.
- 18 See Va. Code Ann. § 16.1-253.1(A).
- 19 *Id.*
- 20 See Va. Code Ann. § 16.1-279.1.
- 21 See Va. Code Ann. § 16.1-279.1(A).