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Intimate Partner Violence: Implications for the Domestic Relations Practitioner [2012]

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**INTIMATE PARTNER VIOLENCE:
IMPLICATIONS FOR THE
DOMESTIC RELATIONS
PRACTITIONER**

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Lexington, Kentucky

Kentucky Domestic Relations Practice

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Preface

**SHOOTINGS LEFT A FAMILY SHATTERED:
FEW KNEW OF HIDDEN RAGE THAT KILLED
THREE IN FAMILY**

Excerpted from *Lexington Herald-Leader*, December 30, 1990:

The Whitaker family was in contact the day of the shooting for Myrtle Whitaker to comply with court-ordered visitation for her son Darvin with his father, Allen Whitaker. Their other two children, Kermitt and Burniece were also in the car that day.

The Whitaker family included Myrtle (wife and mother), Allen (husband and father), and their children Burniece, Kermitt and Darvin.

“For years, some relatives said, Allen Whitaker Jr. of Magoffin County used a horse whip and threats of murder to control his family. When they finally left him, he brooded for months. On Dec. 15, he killed two of his children, paralyzed his wife, then committed suicide. . . . [O]n that day, Allen Jr. pointed his pistol into the family car, which was near Myrtle’s apartment building. Myrtle had been reaching into the back seat for a plate of food for him and Darvin. Darvin, 7, pleaded: “Daddy, please don’t. Daddy, I’ll do anything for you. Please don’t, Daddy.” Allen Jr. fired anyway, again and again, until Darvin and Kermitt were dead. A bullet hit Myrtle, paralyzing her. Allen Jr. shot at Burniece and missed. Then he reloaded the gun, aimed it at his forehead and fired, just as he had said he would. The Whitakers’ divorce would have been final five days later.”

I. [13.1] Introduction

The rate of divorce in the United States has increased significantly over the past two decades. Divorce carries with it inherent turmoil and conflict for families, particularly when children are involved and impacted by the separation process. When the family disintegration also involves violence, both the turmoil and complexity is substantially increased. Aside from legal issues pressing any domestic relations case, intimate partner violence can dramatically heighten the complexities of intense conflict, dangerousness to the victim of abuse, and acute impacts on children.

This chapter provides an overview of the problem of intimate partner violence through the lens of a case example. The story of Jane and John Doe is a

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patchwork of actual cases that together raise many of the key issues that will face domestic relations practitioners, including dangerousness, types of violence experienced, allegations of mutual violence, whether women stay in violence, profiles of victims and offenders, and the impact of intimate partner violence on children. A motion, petition and affidavit relating to the case are also provided as a means to highlight the critical legal issues that are pertinent to dissolution of marriages among families experiencing domestic violence. Following the issues section of the chapter, the economic, health and mental health implications of separation are reviewed, and the impact of intimate partner violence in custody cases is examined. The final section of the chapter highlights practice issues for domestic relations attorneys, including ensuring safety for clients and how best to assess intimate partner violence. The appendices to this chapter offer an example safety plan and a table of civil and criminal offenses related to domestic violence.

Domestic relations practitioners play a vital role in representing parties in dissolution actions in which intimate partner violence has occurred. A keen awareness of safety concerns, legal issues, and common pitfalls involved in these cases will improve the practice for attorneys and help ensure effective legal representation for their clients.

II. [13.2] Putting a Face on Intimate Partner Violence: A Case History

A. [13.3] The Story of Jane and John

I never thought I'd be one of those women. You know the kind: beaten down, weak, letting a man run her life. Getting hit. Getting hurt. Being scared all the time. That's not me. Maybe other women, but that's not me.

When I met John, I knew in an instant he was the one. He was athletic, strong and quiet, and treated me like I would break if he touched me too hard. He didn't say much about his childhood, but his mother used to tell me they 'had a hard life' when John was growing up. At my wedding rehearsal dinner, his aunt told me about how violent John's father had been to his mother. But, I thought, that's not John.

The first year of our marriage was great. He was so romantic and I could tell him anything. I even told him secrets that none of my girlfriends knew. I told him I was raped in high school and got so depressed I contemplated suicide; that I had to see a therapist and take antidepressants for a while. He was so supportive and understanding.

Then it changed. The first time John hit me, we had been in a fight. I had bought a dress and John couldn't believe I spent the money. It was just a slap and

didn't hurt that much. Mostly it hurt my pride and I was way too embarrassed to tell anyone. I was certain it would never happen again, because that's not John.

I had always planned to go to law school and join my father's firm. John was very career-focused, too, getting his MBA in no time flat, but something about me doing well seemed to make him angry. When I was accepted at State University College of Law he was so mad. He beat me that night so hard I lost a tooth and had bruises all over my back. But I didn't agree to drop out of school, because that's not me.

I left John for just over a week, but he came to the apartment where I was staying and to campus every day while I was gone. Sometimes angry and threatening. Sometimes seeming desperate and saying he'd kill himself if I didn't come back. Sometimes romantic and solicitous. But always present. My parents couldn't understand and kept telling me to stop having such high expectations of him. His mother didn't say anything at all. After a week I went back home because he seemed genuinely sorry and I genuinely loved him. It really wasn't because I was weak, because that's not me.

Law school was a challenge, but I graduated in the top ten of my class. Law Review, the whole bit. By that time, John was bringing in lots of money, but it seemed like with every successful account, he got increasingly stressed. The abuse started happening more and more. Sometimes when he was mad at me; sometimes when he was drinking; sometimes when he was depressed and unreachable; sometimes I felt like it was my fault; sometimes I knew better. I thought about divorce a few times, but I loved him and didn't want to give up on him. And God knows I didn't want anyone at the firm to know because, well, that's not me.

While I was studying for the bar, I found out I was pregnant. John was overjoyed, I thought this would mean our relationship would improve. At first I was touched by how attentive he was. He didn't want me to work too hard, or cook, or drive places. He really wanted to take care of me. He wanted me to postpone the bar exam and just focus on my pregnancy, but I wouldn't. After four months, I realized his attentiveness was really just his control. I told him he needed to give me room to breathe and that he needed to trust me, but that's not John.

The miscarriage. That was John.

During my first year of practice I was working so many hours a week, just like every other new attorney in the firm, but after a while John started showing up at my office. Sometimes he would even sit in his car and just stare at the building. He kept swearing that I was seeing a guy at the firm, but that wasn't true. No matter how jealous John was and what he accused me of, it wasn't true. I didn't have an affair, because that's not me.

My father died the following year. I felt so alone without him. I dove into my work because I knew now more than ever that I had to make partner and make him proud. For months I felt so depressed, tired and stressed trying to get

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in the expected number of billable hours. A friend started giving me some of her prescription pills as a remedy to my fatigue. I admit that for a time I drank to get to sleep and took pills in the morning to get me going. I rationalized my drug use as just being temporary and that I just needed to be numb for a while. Numb from my grief, numb from my job stress, and numb from John's abuse. It didn't make me a drug addict because that's not me.

One Friday night I went out with all the junior partners after we won a big case and I got home late and a little drunk. John was waiting for me in the bedroom with the light off. He accused me of sleeping with several of the other lawyers at the firm, even telling me he thought my high school rape was probably just me being loose, and then he made me have sex with him. So hard he made me bleed. At one point I hit him to get him off me, but even with that I couldn't bring myself to call it rape because that couldn't be John.

For weeks after, John was apologetic and solicitous, attentive and kind. He wasn't drinking at all and he was even supportive of my career. He was romantic and tender, because that, too, could be John.

I knew I wanted to get pregnant again, so I had to clean up my act. I started going to drug treatment, and the therapy really helped. And sure enough, later that year I became a mother of twins. I tried hard to balance the babies and work, and I know that was hard on John. He hated them being in daycare all day and he felt shut out. He got so jealous of men who didn't exist, and sometimes, I think, even of the babies. Sometimes he just seemed crazy, accusing me of things, telling me no other man could have me or his children. But no one else ever saw him like that, and no one else would have believed me because that's not John.

The end of the marriage began on a Saturday. The fight was like so many others, with him accusing me of infidelity. This time when he hit me, though, I was holding one of the twins. The terror in my child's eyes reflected the end of the marriage. Being a battered wife maybe I could live with, but never a battered child. That's not my child.

I told him the marriage was over, that I would leave him. That I wouldn't any longer be one of those women. You know the kind, beaten down, weak, letting a man run her life, getting hit, getting hurt, being scared all the time. That's no longer me. Maybe other women, but that's no longer me.

Before I had a chance to file, he did.

B. [13.4] The Motion

COMMONWEALTH OF KENTUCKY
_____ COUNTY FAMILY COURT
_____ DIVISION

IN RE THE MARRIAGE OF:

JOHN _____ DOE
PETITIONER

AND _____ NO. XX-CI-XXXX

JANE _____ DOE
RESPONDENT

MOTION FOR TEMPORARY CUSTODY

Comes the Petitioner, John Doe, through counsel, and hereby moves this Court for an Order awarding temporary custody of the parties’ two minor children to him, pursuant to KRS 403.280. In support of this Motion, the Petitioner’s Affidavit is attached hereto and incorporated herein, as if set forth in full.

NOTICE

Notice is hereby given that the foregoing Motion will be brought on for hearing before the County Circuit Court, First Division, County Courthouse, City, Kentucky, on Friday, August 12, 20 __, at the hour of ____ a.m., or as soon thereafter as counsel may be heard.

Respectfully submitted,

ATTORNEY AT LAW

By: _____

Lois L. Lawyer
201 West Main Street
City, Kentucky 40507-0000
Telephone: (859) 555-9000
ATTORNEY FOR PETITIONER

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion has been served this ___ day of August, 20___, by first class mail, postage prepaid, to the following:

Anne A. Attorney
123 West Main Street
City Ky 40507-0000
ATTORNEY FOR RESPONDENT

ATTORNEY FOR RESPONDENT

C. [13.5] The Petition

COMMONWEALTH OF KENTUCKY
_____ COUNTY FAMILY COURT
_____ DIVISION

IN RE THE MARRIAGE OF:

JOHN PETITIONER DOE

AND NO. XX-CI-XXXX

JANE DOE
555 S. BROADWAY
CITY, KENTUCKY 40508-0000
RESPONDENT

PETITION FOR DISSOLUTION OF MARRIAGE
(WITH MINOR CHILDREN)

Comes the Petitioner, John Doe, by counsel, and for his Petition for dissolution of the marriage between the parties, states as follows:

1. Petitioner resides in the Commonwealth of Kentucky and has been a resident thereof for more than 180 days next preceding the filing of this Petition;
2. Petitioner, John Doe, is 30 years of age, SSN: 999-99-9999, currently resides at 555 S. Broadway, Lexington, Kentucky 40508, and is presently employed as a CPA in the firm of Smith, Jones and Wilder, P.S.C. Petitioner has resided in Kentucky since 1994;
3. Respondent, Jane Doe, is 30 years of age, SSN: 888-88-8888, currently resides at 555 S. Broadway, Lexington, Kentucky 40508, and is presently employed as a lawyer with Big Law Firm in City, Kentucky. Respondent has resided in Kentucky since her birth;
4. The parties were married on August 1, 2004, in County, Kentucky, where the marriage is so registered;
5. The parties continue to share the marital residence but separated within the meaning of KRS 403.170(1) on July 1, 2012, and have lived together without sexual cohabitation since that date;
6. There are two (2) living infant children born of this

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marriage, namely, Megan Marie Doe, age 3, born May 1, 2009, SSN: 111-11-1111, and Julia Taylor Doe, age 3, born May 1, 2009, SSN: 222-22-2222. Petitioner states that to the best of his knowledge and belief Respondent is not pregnant;

7. In accordance with KRS 403.150, Petitioner certifies that there are no EPOs or DVOs entered involving these parties;
8. In accordance with KRS 403.383, Petitioner gives the following additional information concerning the minor children:
 - A) Said children have resided with Petitioner and Respondent since birth;
 - B) Petitioner has not participated as a party, witness, or in any other capacity in any other proceeding concerning the custody of or visitation with said children in this or in any other state;
 - C) Petitioner has no information of any custody proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions concerning said children in any court of this or any other State; and
 - D) Petitioner knows of no other person not a party to this proceeding who has physical custody of the children or claims rights of legal custody or physical custody of, or visitation right with, said children;
9. No arrangements have been made between the parties regarding custody, visitation, or support of the minor children or maintenance of Respondent;
10. Neither party is currently in the military service;
11. The marriage between the parties is irretrievably broken;
12. Petitioner states that he is the fit and proper person to have sole custody of said minor children, and that such a custodial arrangement would be in the best interest of the children;
13. There is marital property to be divided by the Court;
14. Petitioner and Respondent have accumulated debts during the marriage that need to be assigned; and
15. Petitioner will claim certain non-marital property.

WHEREFORE, Petitioner prays:

1. For dissolution of the parties' marriage;
2. For the Court to grant sole custody of the parties' twin daughters to Petitioner with visitation established in accordance with the best interests of the children;
3. For the Court to award child support to Petitioner according to the Kentucky state guidelines;
4. For the Court to award maintenance, both temporary and permanent to the Petitioner;
5. For restoration of non-marital property;
6. That the Court make an equitable division of all marital property and debts;
7. That the Court require Respondent to pay Petitioner's attorney's fees and Court costs incurred in this action; and
8. For any and all other appropriate relief to which he may appear entitled.

Grant Masters & Anderson, P.S.C.

Lois L. Lawyer, Esq.
201 West Main Street
City, KY 40507
Telephone: (859) 555-9000
ATTORNEYS FOR PETITIONER

The Petitioner, John Doe, states that he has read the allegations contained in the foregoing document and states that they are true and correct to the best of his knowledge and belief.

John Doe
PETITIONER

COMMONWEALTH OF KENTUCKY)

) SS:

COUNTY OF FAYETTE)

Subscribed and sworn to before me by John Doe on this the
_____ day of _____, 20__.

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My Commission expires: _____

NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

D. [13.6] The Affidavit

COMMONWEALTH OF KENTUCKY
COUNTY FAMILY COURT
FIRST DIVISION

IN RE THE MARRIAGE OF:

JOHN PETITIONER DOE

AND NO. XX-CI-XXXX

JANE RESPONDENT DOE

AFFIDAVIT

Comes the Affiant, John Doe, and after being duly sworn, states as follows:

1. Affiant is the Petitioner in the above-referenced case.
2. Jane and I have been married for eight years.
3. We have two children, twins, date of birth May 1, 2009.
4. Jane and I recently separated after Jane became distant and expressed her desire for a divorce. I strongly suspect that she is having an affair. In fact, I strongly suspect she has had affairs with several different men throughout the course of our marriage.
5. Throughout our marriage, my wife’s first priority has been her career as a lawyer. This has created tremendous stress on Jane, on our marriage and on our family. Jane went through law school during our marriage. She graduated at the top of her class, was on Law Review and studied long hours during that period of time. She had a miscarriage while studying for the bar exam even though I had begged her to postpone the exam until after the baby was born because I could tell she was not handling the stress well.
6. Since she started practicing law five years ago, she has consistently worked long hours and many weekends in her drive for success. About four years ago, the stress of her career caused her to become dependent on alcohol to go to sleep at night and simultaneously dependent on prescription “uppers” to wake up in the morning. She had to go into drug and alcohol rehab. Shortly thereafter, she became pregnant with the twins.

August, 20____.

My Commission expires: _____

NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

III. [13.7] Issues Raised by Jane and John’s Story

A. [13.8] Introduction

The case found within this chapter is written from the perspective of a female victim of intimate partner violence. Her experience is not a terribly unique story; it is a mirror on the stories of thousands of women each year who face violence from an intimate partner. She is not unique by being upper middle class and white, nor does the fact that she is a strong woman contradict her status as a battered woman. Jane’s experience of violence and how it is played out in court is also relatively common. For domestic relations practitioners, Jane’s story can illuminate several issues: How often will I encounter intimate violence in the lives of my clients? Are there profiles for victims and offenders? Do women really stay in violence? And are they sometimes violent, too? What factors influence how dangerous a case will be? What about the children? This section of the chapter will seek to address these key issues.

B. [13.9] The Prevalence of Intimate Partner Violence in General Population and Divorcing Couples

The divorce rate in the United States has increased substantially over the past three decades, with the number of divorced women and men quadrupling between 1970 and 1996 (Saluter & Lugaila, 1998). Research shows that while the vast majority of adults in this country will marry (approximately 92%); up to 50% of those first marriages will end in divorce (Kreider & Fields, 2002). Among remarriages, the divorce rate climbs to almost two-thirds of couples (Bumpass, Sweet, & Castro Martin, 1990; Cherlin, 1992). While in more recent years the divorce rate has begun to plateau, the United States has the highest divorce rates in the world (Goldstein, 1999).

The rate of intimate partner violence is also exceedingly high in the United States. For example, 25% to 41% of women reporting a lifetime history of intimate partner physical or sexual assault (Richardson et al., 2002; Tjaden & Thoennes, 2000; Wilt & Olson, 1996). In the most recent national prevalence study on the subject, the Centers for Disease Control reported that more than one in three women (35.6%) in the United States have experienced rape, physical violence, and/or stalk-

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ing by an intimate partner in their lifetime; and among these victims, more than one third experience multiple forms of victimization (Black, 2011). The vast majority of cases of violence against women represent violence inflicted by a male partner. In fact, a woman is more likely to be physical or sexually assaulted or killed by a current or former male partner than by any other type of offender (Browne & Williams, 1993), a finding not true for men. Additionally, rape of a female victim is a crime least likely to be committed by a stranger; rather, it is most often committed by the victim's intimate partner (Koss, 1992). Similarly, studies find that the majority of women who reported an experience of intimate partner violence reported that the perpetrator was male (Tjaden & Thoennes, 1998).

C. [13.10] Who Are the Victims and Is There a Profile?

While a significant amount of research has focused on battered women, no specific profile has ever been identified. Previous attempts to create profiles, including within the Diagnostic and Statistical Manual, have failed. Battered women, not unlike Jane, come from middle and upper incomes, from families in poverty, from every race and ethnicity, and from every educational bracket and age group. Violence is not an experience from which certain categories or classes of women are not vulnerable or excused. As to profiles of battered women, the greatest similarities lie not in what the women bring to the experience (personality structures or traits), but rather in what is done to them (specific forms of violence, and repeat victimization over time) and the effect that the experience has on cognitions, emotions and behaviors. While no profile exists, there are populations of women who appear to be at particular risk for violence, including women of color and women who live in poverty (e.g., Belle, 1990). In fact, at least one study found that femicide is the leading cause of death in the United States among young African American women aged 15-45 years (Greenfield et al., 1998). Additionally, research has consistently found that household income is one of the best community-level predictors of rates of intimate partner violence (Cunradi, Caetano, & Schafer, 2002; Goodman, Smyth, Borges, & Singer, 2009). For instance, research using data from the National Crime Victimization Survey (NCVS) reported a domestic violence rate five times lower for top-earning households compared to the lowest-earning households (Greenfield et al., 1998), and the highest likelihood of intimate victimization among women 19-29 years old in the lowest income families (Bachman & Saltzman, 1995).

D. [13.11] Who Are the Offenders: Is There a Profile?

The earliest research on intimate partner violence offenders attempted to understand the characteristics of offenders by comparing violent married men to non-violent men, an approach that failed as it became clear that the former group is not homogeneous. Instead, intimate partner offenders are a heterogeneous group, with varying patterns and motivations for violence, and distinguishable personality and psychological traits (Holtzworth-Munroe & Stuart, 1994; Jordan et al., 2004). As in the case of John, some batter only family members, while others are violent in

multiple domains of their lives. John evidenced remorse after his use of violence, but other offenders do not. Some combine substances and violence while others do not drink or use drugs to excess. Still others such as John are episodic drinkers and can be violent sober or under the influence. A significant percentage of offenders were abused as children, and many intimate partner offenders witnessed violence in their childhoods, as is indicated in John's case.

To better understand the population of intimate partner offenders and ultimately structure effective treatment programs for them, researchers have developed several typological models, one of the more widely categorizing offenders into three sub-types: family-only offenders who direct violence solely against the intimate partner; dysphoric/borderline batterers who primarily target family members, but can be aggressive outside the relationship as well; and a the third category of generally violent men whose violence against family members is part of an overall pattern of violent or criminal behavior (Holtzworth-Munroe & Stuart, 1994) (see Table 1 below).

While insufficient detail is available from the case study to accurately compartmentalize John within this typology, evidence does exist of dysphoric or borderline traits. This is particularly true given his apparent emotional volatility, his reaction to Jane leaving him on one occasion, a suicide threat, his episodic substance abuse, and the suggestion of severe childhood abuse history. Dysphoric and borderline traits may also indicate increased dangerousness at the point of separation, a key safety issue for Jane and her children and also for any domestic relations attorney representing her.

Table: The Typology of Intimately Violent Men (Holtzworth-Munroe & Stuart, 1994)

<i>Sub-Categories of Typology</i>	<i>Characteristics</i>
Family Only Batterers	<ul style="list-style-type: none"> • 50% of clinical populations • Least severe, least sexual and emotional abuse • Little psychopathology and either no personality disorder or a passive-dependent personality disorder • Marital violence function of factors such as impulsivity, poor aggression management, stress • Attitudes not accepting of violence • Remorseful; more successful in treatment • Substance abuse common • Abuse is family focused, not external • Less severe or prevalent child abuse history • Most liberal sex role attitudes
Dysphoric/Borderline Batterers	<ul style="list-style-type: none"> • 25% clinical populations • Moderate to severe violence • Violence mostly directed at partner, some extra-familial and criminal behavior may be evident • Dependent on relationship and jealous of partner; preoccupied attachment and obsessiveness • Dangerous at separation • Most dysphoric, psychologically distressed, emotionally volatile; suicide threats • May evidence borderline and schizoid characteristics • Substance abuse • Childhood history more prevalent

<p>Generally Violent/Antisocial Batterer</p>	<ul style="list-style-type: none"> • 25% of clinical samples • Escalating severe physical, sexual & emotional violence • Domestic violence is part of overall pattern of antisocial, criminal behavior • Function of violence is instrumental, used to control victim through fear, low self-esteem • Little remorse; blame others, refuse responsibility; view violence as acceptable; less amenable to treatment • Small sub-sample of psychopaths • Psychological impact on victim severe • Most significant levels of violence in family of origin • History of abuse in prior relationships
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E. [13.12] The Impact of Violence on Divorce Rates: Do Women Really Stay?

There is significant evidence that intimate partner violence impacts the rate of divorce. For example, while the percentages offered above represent the rate of violence occurring among all couples, in high-conflict and/or entrenched custody cases, rates of violence are reported to be significantly higher, with estimates in the 72% to 80% range (Johnston & Roseby, 1997; Newmark, Hartell, & Salem, 1995). What these data suggest is that the commonly held view that “battered women stay” in violent marriages is more myth than reality. In fact, studies show that violence early in marriage almost doubles the risk of divorce, with 82% of couples separating within two years. After four years, 93% of couples experiencing severe violence separated, 46% of couples experiencing moderate violence separated, and 38% of non-violent couples separated (Bradbury & Lawrence, 1999).

F. [13.13] Incidence of Violence by Gender: Are Women Equally Violent?

In the affidavit, John alleges that Jane struck him one night while under the influence of alcohol. Given that this is a common allegation in conflicted divorce, this issue merits attention. In addition to the anecdotal experience of judges and attorneys, research studies measuring the incidence of intimate partner violence have documented the use of aggression by both men and women. In fact, in at least

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one national survey, roughly as many women as men reported having used violence on at least one occasion during the pendency of their relationship (Straus, 1990).

However, these data should not be oversimplified to suggest that violence on the part of women and men is equal, as the picture begins to change when such factors as frequency, severity, and motivation for violence are considered. For example, the largest national study documenting equal incidence of violence by gender simply asked women and men in the study if they had used violence; it did not ask why they used violence or what the end result was in terms of injury. Studies that explore frequency in the use of violence find that men commit aggression against a partner significantly more often than women do (21% more often when considering physical assault and 42% more often when the abuse rises to the level of “severe”) (Straus, 1989), and studies on the severity of injuries resulting from acts of aggression consistently find that women are much more likely to sustain injury than are men (Stets & Straus, 1990). Understanding patterns in the use of physical aggression by parties in the relationship also requires considering such factors as the intent of the actor (*i.e.*, was the aggression an act of self-defense or primary aggression) and the overall pattern involved (*i.e.*, is the aggression an isolated act or part of a pattern of systematic control against the partner) (Jordan, Nietzel, Walker & Logan, 2004).

As noted above, women are more likely to be killed by a male intimate partner than by any other type of offender. That same context of intimate relationships comes to play when women commit homicide, as the most likely victim of female offenders is an intimate partner (Rodriguez & Henderson, 1995; Greenfeld & Snell, 1999). Studies find that 42-44% of female homicide offenders killed a male intimate (Greenfeld & Snell, 1999; Gauthier & Bankston, 1997; Starr, Hobert & Fawcett, 2004), while male homicide offenders killed a female intimate only around 7% of the time (Gauthier & Bankston, 1997; Greenfeld & Snell, 1999). There are distinct differences in the motivation for homicidal acts by male and female intimate partners. Studies find that men’s motives for killing female partners frequently relate to jealousy and a need to control the female (Block, 2000; Block & Christakos, 1995; Wilson, Daly, & Daniele, 1995). Men often perpetrate the homicide at the point when a woman attempts to leave the abusive relationship (Kellermann & Heron, 1999; McFarlane et al., 1999). In contrast, a number of studies show that women’s use of violence usually occurs as a response to violence inflicted by male partners (Campbell, 1995; Kellermann & Mercy, 1992). One study, for example, analyzed homicide cases and found that self-defense or a physical attack accounted for 56% of female-perpetrated homicides and 12% of male-perpetrated homicides (Felson & Messner, 1998). Interestingly, rates of intimate partner-related homicides have decreased significantly over the past two decades (Greenfeld et al., 1998); and studies find that the decrease is attributable largely to a drop in the number of female-perpetrated homicidal acts (Greenfeld et al., 1998).

For domestic relations practitioners and judges, the important point is that reports of aggression made by parties in a contested divorce must be contextualized

(Jordan et al., 2004). An accusation of use of violence by both parties does not automatically imply “mutual violence.” That is not to say that females are never violent, nor that they are never the primary aggressor in a relationship. The data tell us, however, that the majority of the time they are not. The data also suggest that when accusations are made, that should not be the end of the investigation, but rather the beginning. In short, “mutuality is, more often than not, a myth that is shattered by understanding the context within which the violence has occurred.” (Jordan et al., 2004, page 7). In the case above, Jane physically assaulted her husband one night, but a closer look reveals her intent (self-defense) and that her reaction was an isolated use of violence to protect herself, not a regular pattern of violence or coercion against her spouse.

G. [13.14] What Does Intimate Partner Violence Look Like: Types of Violence

Another way in which Jane’s experience is extremely common among battered women is that she experiences multiple forms of violence rather than just physical assault. Most often, violence in the context of intimate relationships occurs, not as a singular act or form of abuse, but rather as the aggregate of physically, sexually and psychologically abusive behaviors directed by one partner against another. Research is now clear that when one form of abuse exists, it is coupled with other forms as well (Jordan et al., 2004).

Four primary types of abuse have been documented in intimate relationships: physical, sexual, and psychological abuse, and most recently, stalking victimization (literature cited and descriptions adapted from Jordan, Gleason, Hosea & Sexton, 2003).

1. [13.15] Physical Abuse

Research suggests that each year 4.4 million women are physically abused by a partner, and 1.7 million of these women experience severe abuse (Plichta, 1996). The CDC study noted earlier reported that approximately one in four victims of intimate partner violence have experienced severe physical violence (Black, 2011).

Other studies find that one in three women will be assaulted by an intimate partner during her lifetime (Browne 1993). Physical abuse includes a wide variety of behaviors against the victim, including throwing objects, pushing, shoving, slapping or hitting, grabbing, kicking, biting, burning, trying to hit with a fist or an object, choking, beating, threatening with or using a knife or other weapon, and other like behaviors (Crowell & Burgess, 1996).

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2. [13.16] Sexual Abuse

Sexual violence against women was also documented in the National Violence Against Women Survey, with almost 18% of women reporting being victims of rape or attempted rape. Survey results also indicated that in the 12 months preceding the survey, 302,091 women were the victims of forcible rape. As is the case with other forms of abuse, rape committed by an intimate partner is more common than sexual assault committed against a woman by a stranger (Bachman & Saltzman, 1995). The CDC study reported that nearly one in ten women have experienced forcible rape by an intimate partner (Black, 2011).

3. [13.17] Psychological Abuse

A form of abuse less obvious to attorneys, but extremely relevant to civil cases, is psychological maltreatment. Most often women who experience physical or sexual violence are also victimized by psychological forms of abuse. In one study, for example, a full 99% of women who experienced physical abuse by a partner also experienced psychological abuse (Follingstad, Rutledge, Berg, Hause, & Polek, 1990; Stets & Straus, 1990). Psychological abuse, whether it involves name calling, ridicule, harassment, threats, or other forms, is systematic and purposeful and has the effect of giving power to the abusive partner. Other forms of psychological abuse include forced isolation, harm or torture directed at the woman or other family members, children, friends or pets, and damage or destruction of the woman's personal property or pets (Marshall, 1996; 1999; O'Leary, 1999; Sackett & Saunders, 1999). Psychological forms of abuse also include jealousy, accusations of infidelity, repeated threats of abandonment, monitoring movements, and driving fast and recklessly to frighten someone (American Medical Association, 1992). When threats occur within a relationship in which violence has previously occurred, the ability to induce fear is significantly enhanced. This so-called "psychological battering" is particularly terrorizing, for a victim need not imagine what violence might be like, nor is she able to deny the possibility that violence might actually occur. In the case of psychological battery, the victim's anticipatory anxiety which results from threats can be as debilitating as the violence itself.

4. [13.18] Stalking

In addition to physical and sexual violence, a growing number of studies now document stalking, particularly in the context of intimate partner violence. In a recent review of stalking studies to date, the prevalence rate was reported to be 27% of all women (Spitzberg, 2002). The National Violence Against Women Survey also documented stalking victimization among women and further reported that over three-fourths (77%) of victims in the study were stalked by a person known to them, most often a current or former spouse or cohabitant or a current or former boyfriend or girlfriend (59%) (Tjaden & Thoennes, 1998). The CDC

study reported that more than one in ten women have experienced stalking by an intimate partner (Black, 2011).

Other research has shown that nearly one-fourth of female stalking victims are also physically harmed by the stalker (Bjerregaard, 2000), and there appears to be a high correlation between physical assault and stalking among populations of severely battered women (Mechanic, Weaver, and Resick, 2000).

As a legal matter, stalking became a criminal offense for the first time when codified by the legislature of California in 1990; Kentucky passed anti-stalking legislation in 1992 (Jordan, Quinn, Jordan & Dailander, 2000). In a study looking at stalking cases prosecuted in Kentucky, researchers found that, of approximately 350 misdemeanor and felony cases prosecuted, the vast majority were dismissed. In fact, over of half of the felony charges and over two-thirds of the misdemeanor charges were dismissed by the court (Jordan, Logan, Walker & Nigoff, 2003). A significant percentage of the stalking defendants were also respondents to protective orders and/or had relatively significant criminal histories. Familiarity with the stalking law as a criminal matter is of relevance to domestic relations practitioners as studies have found an important association between stalking, the separation of the couple, and dangerousness (see next section).

H. [13.19] Victim's Physical Safety: The Danger of Separation

Studies on intimate partner violence have shown repeatedly that the most dangerous time in these relationships is the point of separation. Because this is the time when parties seek legal separation and dissolution of a marriage, domestic relations attorneys need to be routinely attentive to whether their clients pose, or are at risk of, danger. One study found that separated women are more at risk than married or divorced women. Specifically, women who are separated from their spouses are three times more likely than divorced women and 25 times more likely than women still married to the violent partner to be victimized (Bachman & Saltzman, 1995). Similarly, in the National Violence Against Women Survey, estranged wives were four times more likely to report that husbands raped, assaulted or stalked them than were women living with their husbands (Tjaden & Thoennes, 2000). In fact, the Survey found that rates of stalking were actually higher after the relationship ended, with 43% of victims reporting post-relationship stalking, 21% reporting stalking during the relationship, and 36% reporting stalking during and after the pendency of the relationship (Tjaden & Thoennes, 2000). In addition to escalated risk of continued physical assault and stalking, separation often entails ongoing psychological abuse of women (Hotton, 2001; Logan, Walker, Jordan, & Campbell, 2004).

Studies of intimate partner-perpetrated homicide also show the serious risk often posed by the act of separation. Numerous studies have found that these types of murder are frequently preceded by a recent attempt at, or completion of, separation by the victim (Arbuckle et al., 1996; Wilson & Daly, 1993; Ellis & De-

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Keseredy, 1997; Sev'er, 1997; Stark & Flitcraft, 1996; Browne & Williams, 1993; Campbell, 1992). For example, in a study of intimate partner violence homicides in Ohio, more than half of the women were killed at the point of separation in the relationship (Campbell, 1992); and in a study of men incarcerated for killing their female intimates, over half the murders occurred during separation (Stout, 1993). Pointedly, most homicides committed by intimates occur within the first few months following separation (Stout, 1993; Wilson & Daly, 1993).

I. [13.20] The Impact on Children of Exposure to Intimate Partner Violence

Among those directly impacted by intimate partner violence are children who live in homes where the violence occurs. Over a decade ago, the National Family Violence Survey projected that ten million American children were exposed to intimate partner violence each year (Straus, 1992), and more recently, a survey of undergraduate college students which asked about witnessing violence estimated that 17.8 million children were exposed to intimate partner violence during their childhoods (Silvern et al., 1995). As would be true in Jane and John's home, studies show that children who witness intimate partner violence are most often exposed to multiple occurrences (Straus, 1992).

Domestic relations practitioners should be aware of three primary ways in which children are impacted by intimate partner violence. First, there are safety concerns for children who live in violent homes where assaultive and threatening behavior, weapons, and high conflict are present. Children are often harmed directly by witnessing or experiencing abuse and by the upheaval and chaos resulting from the use of violence by one parent or parent-figure against another. For example, children growing up in homes in which their mothers are being abused are at serious risk of behavioral disturbance (Cummings, Pepler, & Moore, 1999; Fantuzzo et al., 1991; Holden et al., 1998; Kernic, et al., 2003; Wildin, Williamson, & Wilson, 1991) and poor academic performance (Gleason, 1995; Wildin et al., 1991). As is the case for John, studies also find long-term negative impacts in that the population of intimate partner offenders is largely comprised of males who witnessed violence in their childhoods (Ehrensaft et al., 2003; Fagan & Browne, 1994).

Secondly, children may also be directly harmed as studies of abusive men show that approximately half of those who frequently assault their wives also assault their children (Suh & Abel, 1990). Similarly, reviews of more than 36 studies indicate that 30% to 60% of children of abused mothers are also abused (Appel & Holden, 1998; Edelson, 1999). Female children whose fathers batter their mothers are 6.5 times more likely to be sexually abused by those men than are girls from homes in which there is no violence (Bowker, Arbitell, & McFerron, 1988). Also, a history of violence between the two partners does not bode well for future parental cooperation with regard to child rearing (Austin, 2000). Notably, not only do children suffer from direct exposure to violence and its consequences on their parents, children are also harmed indirectly as they are often made pawns in the conflicted legal process.

IV. [13.21] Factors Associated with Intimate Partner Violence That Impact Separation and Divorce

A. [13.22] Factors to Consider in Dissolution Cases: Introduction

The dissolution of marriage has dramatic impacts on both spouses' social networks, health and psychological well-being, and their standard of living, even when violence has never occurred in the relationship. However, when the marriage includes violence, there is evidence that the impact on the woman will be qualitatively different than the experience women separating from non-violent relationships have (Logan, Walker, Jordan, & Campbell, 2004), and pointedly more negative. Many of these factors are those that make successful separation difficult, if not impossible, for a woman who faces violence, and may be among the primary reasons she returns to an abusive partner.

B. [13.23] Standard of Living and the Economic Impact of Divorce

While the economic status of both spouses is impacted by divorce, there is evidence that women tend to have more significant negative outcomes from the dissolution process. For example, studies find that divorce often significantly diminishes the economic status of women while having less impact, or in some cases even a positive effect, on the income of men (Amato, 2000; Holden & Smock, 1991; McKeever & Wolfinger, 2001; Shapiro, 1996). In one study, 29% of recently divorced women were living below the poverty level compared with 12% of men (Kreider & Fields, 2002). In cases of separation and divorce that involve children, studies find that half of single mother families received limited or no child support (Meyer, 1999; Sorensen & Zibman, 2000). For example, one study found that among single mothers who had a court order for child support, approximately one-fifth received only part of what the court had ordered and over one-third received no support at all (Sorensen & Zibman, 2000). In Jane's case, the fact that she has a well-paying job does not insulate her from a fear of financial concerns, particularly because John includes requests for child support and maintenance payments within his court filings.

C. [13.24] Social Networks and General Social Support

Studies have found that, on average, a separating person's social network is reduced by about 40% after marital separation (Rands, 1988 as cited in Marks & McLanahan, 1993). This typical reduction in social support may be even more acutely felt in cases involving intimate partner violence, as professionals and advocates who work with battered women often find these families to be extremely isolated from others. Whether a result of embarrassment, shame, threats to keep the violence a secret, the jealousy of the offender, or other related factors, women suffering violence are often without social networks or support systems.

D. [13.25] Health and Mental Health Effects on Divorcing and Battered Women

For most women and men, the point of separation or divorce is a stressful time. Whether the dissolution is agreed to or conflicted, often this period is characterized by upheaval and intense emotions. For women, studies support that the end of a committed relationship is a difficult experience that can take a toll on their emotional well-being. For example, one study reported that divorced women had a higher rate of depression symptoms compared to married women, and those with higher rates of depression reported more health problems (Lennon, 1996). For women separating from a violent marriage, the stress can be compounded. First, studies are now clear that the experience of intimate partner violence can have significant impacts on the mental health of a woman. In fact, most of the non-organic forms of mental distress have now been found to be associated with this form of victimization (see Briere & Jordan, 2004 for review of mental health effects). While historically some have minimized the impact of violence inflicted by a spouse or partner as somehow less psychologically traumatizing for the victim than stranger-perpetrated assaults, research now demonstrates that abuse inflicted by an intimate does not mitigate the traumatic impact (Riggs et al., 1992). For example, although even one episode of violence can inflict psychological trauma on a victim, the chronicity and severity characterized by intimate partner assaults can be associated with greater psychological impairment (Follingstad, Brennan et al., 1991). The specific way in which a woman's mental health will be impacted by intimate partner violence is as unique as she is, and is affected by several key factors, including any history of victimization; the severity and recency of assault; and the level of social support now available to her (Jordan et al., 2004).

Many of the most common effects that will be seen by domestic relations practitioners are those that relate to the exposure their clients have endured to chronic and intense levels of violence-induced stress. For many women, the mental health effects seen during the pendency of the relationship and during the time immediately following separation are naturally alleviated by the removal of the primary stressor. For example, studies find that depression is the most common mental health reaction women have to sustained intimate partner violence and that rates of depression among battered women are higher than the general population of women (Gleason, 1993). However, in a study of 234 battered women, most perceived their physical and mental health as deteriorating from the initial stages of the relationship, worsening during the time of abuse, and improving once the relationship ended (Follingstad, Brennan et al., 1991). Similarly, in a study which followed women over two years, 91% experienced decreased depression following the end of the abusive relationship (Campbell et al., 1994).

In the context of disputed dissolution actions, the mental health of the victim may be used as a weapon in the court process, either by abusive partners who threaten to disclose a woman's struggle with mental health concerns, or as a means to show to the court a woman's unfitness as a parent. This is clearly the

strategy being used in Jane and John's case as evidenced in the affidavit. For domestic relations practitioners, it may be helpful to suggest professional support for a battered woman going through divorce (for example, an advocate from the local battered women shelter, or attending support groups with other battered women, or seeing a therapist with special training related to intimate partner violence). As discussed later, care must be taken to protect both the woman and her medical/mental health records from misuse in the court process.

V. [13.26] Factors Associated with Intimate Partner Violence That Impact Custody and Visitation

A. [13.27] Custody Proceedings and Intimate Partner Violence

Each year, more than one million children are the subject of custody determinations by a court in the United States (Clarke, 1995; Munson & Sutton, 2004). Before coming to the attention of the court, more than 150,000 of these children have been exposed to intimate partner violence (Clarke, 1995; Holden, Geffner, & Jouriles, 1998). A number of studies have documented that intimate partner offenders often used custody and visitation as a means to further control, harass or threaten the victim (Bow & Boxer, 2003; Shalansky, Erickson, & Henderson, 1999; Zorza, 1995). For example, studies find that women separated from an abusive partner experience threats of custody disputes (30%), of harm to their children (10%), and threats to abduct their children (17%) (Mechanic, Weaver, & Resick, 2000). In one study that characterizes the difficulties faced by women in these circumstances, researchers found that 25% of intimate partner offenders verbally or emotionally abused their ex-partners, 10% physically abused them, and 34% threatened child kidnapping during child visitation (Liss & Stahly, 1993). Additionally, almost one-fifth of the offenders threatened contesting custody in an effort to force their victims to return to the abusive relationship. Importantly, this study also found that 20% of women report returning to the abusive partner as a result of the offender's threats to hurt or take the children (Liss & Stahly, 1993). Finally, domestic relations practitioners need to be aware that court-ordered visitation can be a time of danger to a woman, as studies find that one-third of violations of protective orders occur during visitation exchanges (McMahon & Pence, 1994). For Kentucky practitioners, no case brings this concern home more compellingly than the case of Myrtle Whitaker and her children described in the preface to this chapter.

B. [13.28] Allegations of Intimate Partner Violence and Custody Decisions by the Court

In 1994, the National Council of Juvenile and Family Court Judges issued a Model Code on Domestic and Family Violence. In addressing custody and

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intimate partner violence, the Model Code declared that “it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence” (National Council of Juvenile and Family Court Judges, 1994, page 33). This view has also been supported by the American Bar Association and the American Medical Association (Drye, 1999; Lemon, 1999). In addition to the Model Code, the statutes of a number of states include a rebuttable presumption that it is not in the best interest of the child to be placed, either through sole or joint custody, with an intimate partner offender, and most states include the presence of intimate partner violence as a factor to be considered when judges make custody and visitation decisions (Roberts & Kurst-Swanger, 2002).

While national legal and health policy bodies and state legislatures have addressed custody and intimate partner violence, studies have identified continuing primary concerns in this area, the first being that during the court process there is a lack of identification of intimate partner violence even among cases with a documented history. For example, in a review of records from marriage dissolutions involving children, researchers in one study found that while 11.4% of dissolution cases involved police- or court-documented intimate partner violence histories, half of those cases made no mention of violence in the case file. In the other half of the cases, the allegation was mentioned in the record, but the available documentation was not included in the file (Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005). This lack of effective presentation of actual, legally-documented intimate partner violence history to courts making determinations regarding custody and visitation is exemplary of the problem of courts having insufficient evidence upon which to make safe decisions regarding the best interests of a child.

A second major problem is that, even when women provide documented evidence to the court of a history of intimate partner violence, they are not more likely than other mothers to be awarded child custody (Kernic et al., 2005). In that same study, over 80% of fathers in these cases who had a substantiated history of intimate partner violence that was known to the court were allowed unsupervised visitation with the children (Kernic et al., 2005). The implication for domestic relations practitioners in these cases is to assess for intimate partner violence experiences in their clients and then to document those allegations to the court thoroughly (through police reports, protective order histories, medical records, mental health records, 911 calls, witnesses, and similar methods). Another critical step is to request court-ordered evaluations of family members, although as indicated below, evaluations must be conducted by trained evaluators or the practice will not be effective and may, in fact, harm the outcome of the case.

C. [13.29] Child Custody Evaluations

Not unlike the court itself, therapists who provide custody evaluations face the difficult challenge of exacting a balance between the safety of a child, the child’s need for parental contact, and the rights of both parents. Studies have found

that this is a balancing test evaluators often face, as evidenced in a recent study in which child custody evaluators reported that 37% of their referrals involved allegations of intimate partner violence (Bow & Boxer, 2003).

As noted above, evaluations that ultimately offer recommendations to the court must have adequately assessed for intimate partner violence, have documented its occurrence to the extent that any records or other evidence exists, and must offer recommendations that incorporate the impact of potential future risk to the child. Unfortunately, there is significant evidence in the literature that such comprehensive evaluations are very often not provided, an omission that can place both the child and the adult victim at risk (Logan, Walker, Jordan, & Horvath, 2002). In general, criticisms of child custody evaluators have identified the following pitfalls: (1) having insufficient basic knowledge about intimate partner violence; (2) failing to use collateral sources and record reviews; (3) over-reliance on psychological testing; (4) failing to consider intimate partner violence as a major issue in custody determination by assuming that allegations are exaggerated or fabricated; or (5) operating with a bias in favor of male offenders (Bow & Boxer, 2003; Bancroft & Silverman, 2002; Dalton, 1999; Jaffe & Geffner, 1998).

The National Center for State Courts (1997) offers guidelines for custody evaluations when intimate partner violence is present which include:

- Identify the existence, nature, and potential consequences of intimate partner violence within the family and document any collaborating evidence;
- Identify the strengths, vulnerabilities, and needs of all other members of the family;
- Develop a plan for custody and visitation that builds on the strengths of each family member and that will serve the best interests of the children; and
- If intimate partner violence is a factor in the dispute, develop a plan that addresses the potential dangers of continuing contact between the victim and the batterer, and any need to restrict visitation (pp. 36-37).

A general rule of thumb for domestic relations practitioners is to ensure that custody evaluators are trained on intimate partner violence and child maltreatment. Effective training can help ensure that reports do not over-pathologize trauma symptoms that may be experienced by victims of intimate partner violence (Koss et al., 1994). The mental health responses that some women may have to the experience of victimization, while relevant to any evaluation, do not translate into unfitness as a parent. Training should also aid evaluators in understanding offender typologies to ensure that they are keenly sensitive to how adept offenders may be at projecting an image to evaluators and to the court that is totally incongruent with the violence alleged by an intimate partner (Bancroft & Silverman, 2002). Finally, domestic relations attorneys should be aware of the complexity of child custody

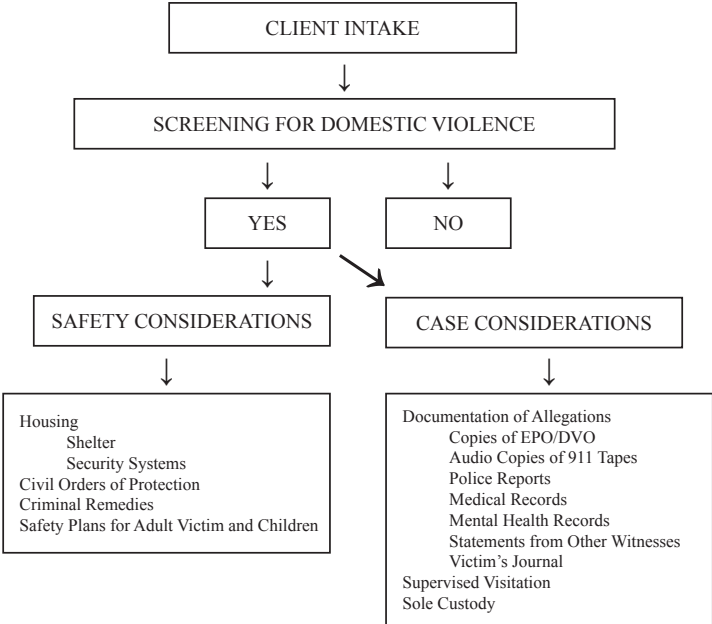
evaluations, as studies have found that the appropriate amount of time for these evaluations is approximately 35 hours (Bow & Boxer, 2003).

VI. [13.30] Practice Issues in Domestic Relations Cases

A. [13.31] Assessing Domestic Violence

The data provided above reveal how often domestic relations practitioners will need to address intimate partner violence in the course of handling a dissolution action. It is advisable, as a result, to routinely ask clients whether violence has or is occurring in the home. That type of universal screening can ensure that all appropriate legal steps are taken and that any needed safety concerns are addressed. The figure below suggests a straightforward process of asking each client about any incidents of physical, sexual, psychological or stalking victimization and then attending to both safety and case considerations.

Intake Procedure for Domestic Relations Practitioners



B. [13.32] Safety Considerations

1. [13.33] Attorney-Client Communication to Prioritize Safety

Safety of both the client and the attorney as civil cases are undertaken should remain a paramount consideration. In situations where the client has experienced interpersonal violence in an intimate relationship, she may be at risk. Offenders are often indiscriminate in who they target when attempting to control and harm their victims. Therefore, these situations can put attorneys at risk personally, and possibly professionally. When confronted with a situation that includes ongoing violence, be sure to advise clients concerning resources for their safety. Recommend that the client have a “safety plan” and/or refer her to a domestic violence or sexual assault resource program. This plan increases the victim’s ability to protect herself and her children. An effective safety plan can provide a tool for continually assessing the level of danger from the offender. Detailed information on making a “safety plan” is included in Appendix B to this chapter.

It is imperative that attorneys address security issues with clients at the outset of the case and throughout the pendency of all related civil matters. Safety concerns in these cases may be quite different depending on whether the client

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knew her offender. However, the fear experienced by the victim can be equally debilitating in both types of cases. Below are some strategies for safety:¹

- Ask for your client when you call and speak only to your client about the case.
- Do not leave messages with unknown individuals or on an answering machine or voice-mail unless your client has specifically given permission to do so. If questioned by an unknown party, give an innocuous reason for the call, such as taking a survey.
- Always ask your client first if it is safe to talk. Never assume the abusive partner is not there, even if they no longer live together.
- Develop a code word to signal danger or the abusive partner's presence.
- Allow clients to use your phone or initiate calls at your client's request.
- To prevent an abusive partner from using "caller ID" to discover that your client is seeking legal assistance, contact your local phone company to identify call block procedures.
- Because abusive partners often track victims through third parties, such as court personnel or social service providers, never disclose your client's addresses, telephone numbers, or information concerning children without her permission and prior knowledge.
- Postal mail or e-mail should be sent only if your client has advised you it is safe.
- If a client misses an appointment or fails to return your calls, make confidential efforts to confirm that your client is safe. Possible approaches include contacting a victim advocate or writing your client an innocuous letter requesting a response without disclosing your identity as an attorney.
- Assist clients in developing plausible explanations for legal appointments.
- Since exposure to the legal system can often exacerbate an already dangerous situation, tell clients when an abusive partner is about to be served or when a hearing is scheduled,

¹ Author's Note: The following is adapted from the *American Bar Association Commission on Domestic Violence, The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook*. (Deborah M. Goelmal et al, eds., 1996). Reprinted with permission. Copyright © 1996 by the American Bar Association.

so the client may take extra safety precautions.

- Depending on the level of risk posed by the abusive partner, it may be important for you to assist with name and social security number changes in order for a client to go into hiding or assume another identity.
- If a client requests that a court action be dropped, try to verify that the client has not been threatened or coerced into making this request.
- Develop a resource list including national and local domestic violence hotline numbers, domestic violence programs, legal advocates, certified offender treatment providers, and social service agencies.

Support services for victims and hotline numbers are described in Appendix C. A list of domestic violence offender treatment providers may be found on the Kentucky court system's website: <<http://www.kycourts.net>>. A list of domestic violence shelters may be found at: <<http://www.kdva.org>>. A list of rape crisis centers may be found at: <<http://www.kasap.org>>.

2. [13.34] Safety in the Courtroom

- If possible, arrange to be in court before your client so that your client will not be alone with the abusive partner.
- Advise your client to bring a friend, relative or advocate to be with her until the case is heard and make security guards or a bailiff aware of the potential risk posed by the abuser.
- With your client's permission, communicate with victim advocates since they may have invaluable information concerning the abusive partner's history of violence.
- Always position yourself between the abusive partner and your client when you are discussing the case or waiting for the case to be called. Threatening body language is a powerful tool used by many abusers in a court setting and may have a negative impact on your client's ability to proceed with the case.
- If it is necessary to discuss court related issues, communicate directly with the batterer or the batterer's attorney and then report back to your client. Do not allow the abusive partner to speak to your client. Even if you are present during a conversation you may be unaware of the complex history of victimization and that the abusive partner is using the conversation as a tool to threaten your client.
- Use the same considerations with the abusive partner's

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family members. It is not uncommon for them to threaten or abuse the victim in court.

- Since abusive partners often stalk or assault victims as punishment for exposing the abuse to public scrutiny through legal action, make certain that your client is safe when exiting the courthouse. This may require asking the judge to keep the abuser in the courtroom while your client exits, or contacting law enforcement for escort from the building.
- Be aware of your own safety. Most abusers focus their controlling and violent behaviors on former or current partners, but attorneys representing victims of domestic violence have also been threatened or assaulted by abusers or their family members.

3. [13.35] Safety Resources for Victims and Their Families

Kentucky offers numerous resources, both legal and physical, for victims of intimate partner violence and their families. One key resource for victims of intimate partner violence is the regional Domestic Violence Program in the community where the victim lives. The programs can offer protective shelter, legal/court advocacy, case management, safety planning, support groups, individual counseling, housing assistance, job search assistance, and support groups for children. Additionally, if a woman needs to leave her home community for safety reasons, Domestic Violence Programs offer assistance in accessing protective shelter in other regions of Kentucky and other states across the nation. Appendix C to this chapter provides a description of support services for victims, including a description and contact information for Domestic Violence Programs.

In addition to civil protective orders (discussed in more detail in Sections [13.41] to [13.67], *infra*), the Kentucky Penal Code sets forth numerous statutes that criminalize behavior such as assault, stalking, forced sexual relations or otherwise harassing their spouses. If a woman chooses to file criminal charges, domestic relations practitioners are advised to recommend the support of a victim advocate for his or her client. Advocates are based in non-profit victim agencies (such as Rape Crisis Centers and Domestic Violence Programs), and in prosecutors' offices (both County and Commonwealth's Attorneys). Practitioners should be advised that statutory privileges provided for victim advocates pursuant to KRE 506 (discussed, *infra*, Section [13.39]) specifically exclude prosecutor-based advocates. Civil remedies are also available for victims who wish to sue the offender.

C. [13.36] Case Considerations

1. [13.37] How Do I Ask the Question?

Asking questions of clients or patients regarding victimization history can be difficult for any professional. Studies have found, however, that women are not offended or angered by questions. For example, studies show that most women want their physicians to inquire about victimization history (Webster, Stratigos & Grimes), and that it was easier for them if health care providers routinely asked about abuse (Gielen et al., 2000). Similarly, the majority of abused (60.5%) and non-abused (80.6%) women in another study said they were not insulted or offended by being asked about abuse (Gielen, et al., 2000). For a woman seeking professional help from a domestic relations practitioner, a professional whose role is to provide aid in the client's best interest, the outcome is likely to be the same. To ease the introduction of a question regarding victimization, domestic relations practitioners should use simple, direct, and normalizing questions. For example:

- “Because violence in relationships is so common, I now ask every woman who I represent whether she has experienced violence or some form of abuse. Is it ok with you if I asked that type of question?”
- “Has your husband ever slapped, hit, punched, kicked, choked or physically hurt you in any way?”
- “Has your husband ever forced you to have sex when you didn't want to do that?”
- “Has your husband ever followed you or spied on you? Stood outside your home or workplace? Showed up at places where you were even though he had no specific reason for being there? Deliberately destroyed something you loved?”
- “Has your husband ever threatened to kill you, your children or other loved ones or himself? Does your husband possess or have access to weapons?”

If a client affirms that one or more of these acts has occurred, several types of follow-up questions are in order. Follow-up questions are intended both to elicit additional information and to assess the level of risk to which the client and her children are exposed. These include:

- “You said your husband did _____. Can you tell me if that occurred once or multiple times?”
 - (if multiple times) “Would you estimate less than 5 times, between 5 to 10 times, or more than 10 times?”
- “Were you physically injured by the abuse? Did you seek medical treatment?”

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- “Did you or someone else call the police when that happened?”
- “Did your children witness the abuse?”
- “When was the most recent time the abuse occurred?”

While this minimal number of questions cannot provide a true risk assessment, domestic relations practitioners should be particularly concerned if the abuse occurred recently, in various forms, multiple times, and with injuries to the victim. Additionally, concern should attach if the abuse included stalking (particularly in instances when the client has made previous attempts to leave her husband), if the offender has threatened to harm her or himself, and if he has access to weapons. In these types of cases, domestic relations practitioners need to address the client’s physical safety concerns as the first priority. She and her children may need protective shelter, protective orders, or other aid. It is recommended that, at a minimum, a victim advocate be contacted to assist with completing a fuller risk assessment and safety plan with the victim/client.

2. [13.38] How Do I Document the Allegations?

As noted in the figure in Section [13.31], there are numerous sources of documentation for incidents of abuse that are disclosed by a client. Examples of documentation include copies of emergency protective orders (“EPOs”) or domestic violence orders (“DVOs”), audio copies of 911 tapes if the client/victim or other person contacted law enforcement, police reports, medical or mental health records, statements from other witnesses, and even a journal kept by the victim.

3. [13.39] Confidentiality of Victim Records

While use of mental health records may provide evidence of abuse history or the impact that the violence has had on the client and her children, domestic relations practitioners must be cautioned regarding the potential misuse of such records by the offender. As in Jane’s case, mental health records would also document prior victimization and drug abuse history for Jane, all of which could be inappropriately used by her husband to prove her unfitness as a parent. Domestic relations practitioners should, to the extent possible by court rule, protect the private information of their clients in these cases.

The Kentucky Rules of Evidence (“KRE”) establish two privileges which protect communications between victims (patients or clients) and their mental health providers. KRE 506 defines the Counselor-Client Privilege, which applies to sexual assault counselors, victims advocates (except those employed by Commonwealth’s or county attorneys), certified professional counselors, certified marriage and family therapists, certified school counselors, certified professional art therapists, and individuals who provide community crisis response services. The privilege may be claimed either by the client or by the counselor on the client’s behalf. This rule states that:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.

KRE 506(b).

A communication is confidential if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.

KRE 506(a)(3).

Notably, the Counselor-Client Privilege is subject to certain exceptions. For example, it does not apply to cases in which the client asserts her (or his) physical, mental, or emotional condition as an element of a claim or defense. Moreover, the privilege does not apply if a judge finds that all three of the following conditions exist: (1) that the substance of the communication is relevant to an essential issue in the case; (2) that there are no available alternate means to obtain the substantial equivalent of the communication; and (3) that the need for the information outweighs the interest protected by the privilege. To protect victim records, domestic relations practitioners should seek *in camera* review of requested documents, and if the court determines that certain material in the record meets the relevancy standard, the practitioner should seek to have the court extract only those relevant portions for disclosure.

The second privilege established for mental health professionals is more stringent as it does not contain an exception to permit judges to abolish the privilege based on relevancy. KRE 507 establishes the psychotherapist-patient privilege, defining "psychotherapist" to include those who are licensed to practice medicine while engaged in the diagnosis or treatment of a mental condition (psychiatrists); licensed or certified psychologists; licensed clinical social workers; and licensed registered nurses who practice psychiatric or mental health nursing. This rule states that:

A patient, or the patient's authorized representative, has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purpose of diagnosis or treatment to the patient's mental condition, between the patient, the patient's psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

KRE 507(b).

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The privilege established by KRE 507 does not apply to proceedings to hospitalize the patient for mental illness, when communication was made during a court-ordered examination and the patient was informed that the communication was not privileged, or when the patient asserts a physical, mental, or emotional condition as an element of a claim or defense.

4. [13.40] Practice That Carries Extra Risks for Victims

The application of two common court practices in cases of intimate partner violence merits a note of caution. First, many jurisdictions encourage or even require litigants to mediate conflicts within dissolution actions, including custody decisions. Effective mediation is predicated on a presumption that both parties carry equal power and that one party is not afraid or intimidated by the other. Given that a victim of intimate partner violence is not likely to perceive or to actually have equal power, mediation in cases of intimate partner violence is not advisable. The National Council of Juvenile and Family Court Judges' Model Code on Domestic and Family Violence (NCJFCJ, 1994) specifically prohibits mediation if a protection order is in place. Additionally, the American Bar Association House of Delegates adopted a policy recommending that mediation laws include "opt-out" provisions to allow a victim of intimate partner violence to avoid mediation conditions. *See also*, Section [13.62].

The second ill-advised practice is that of "couples" or marital therapy. There is fairly widespread agreement that couples therapy is not appropriately applied in cases of intimate partner violence, particularly when it is mandated by the court or with severely violent men (Crowell & Burgess, 1996). As an empirical matter, insufficient research on the safety of marital counseling has been conducted to warrant recommended use of conjoint counseling in violent relationships (Al-darondo & Mederos, 2002).

VII. [13.41] The Civil Protective Order Process²

As most domestic relations practitioners are well aware, KRS Chapter 403 provides, within the Domestic Violence and Abuse Act, civil orders of protection. Protective orders, while not a complete assurance of safety, can be a very important safety resource. They can set forth conditions that remove offenders and add the court's authority to instructing the offender to cease any further violence. In fact, with the involvement of the domestic relations practitioner, the court can be petitioned to order conditions that are directly tailored to the woman's needs. Court orders cannot ensure absolute safety, but they do establish a means of enforcement by peace officers in that they are entered into the Law Information Network of

² Adapted from Jordan, C.E., Gleason, M., Hosea, K., & Sexton, M. (Eds.), *CIVIL REMEDIES FOR WOMEN VICTIMIZED BY VIOLENCE: A PRACTICE MANUAL FOR ATTORNEYS (UK/CLE)* (2003).

Kentucky (“LINK” System), such that officers can check the validity of orders 24 hours a day, and can arrest offenders for violations. Additionally, for women being stalked by an offender, having an order of protection in place elevates that offense from a misdemeanor to a felony.

Kentucky has two types of protective orders. These orders are called an emergency protective order (“EPO”) and a domestic violence order (“DVO”). An EPO is only issued if there is an immediate and present danger of domestic violence. Furthermore, it is an *ex parte* order of short duration (usually two weeks). In contrast, a DVO is issued if it is determined that an act or acts of domestic violence have occurred and may again occur. It is issued after a hearing and is of longer duration. These differences and others will be discussed more thoroughly below.

Significantly, this protection is outside the criminal justice system and, as such, an alternative to it. Thus, victims are afforded protection without the necessity of going through the criminal system. Consequently, the domestic violence statutes were enacted to supplement the criminal statutes, and the two types of legislation are not mutually exclusive. Cases may proceed simultaneously through the civil and criminal dockets. However, any testimony offered at a domestic violence hearing is not admissible in a later criminal proceeding involving any of the parties. KRS 403.780.

A. [13.42] What Is Domestic Violence?

KRS 403.715 to 403.785 contain the provisions for the issuance of emergency protective orders and domestic violence orders. Domestic violence and abuse are defined, at KRS 403.720(1), to mean physical injury, serious physical injury, sexual abuse, assault or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault.

B. [13.43] Who Is Eligible for Protective Orders?

The domestic violence statutes provide protection for “family members and members of an unmarried couple.” “Family member” includes a person’s spouse or former spouse and it includes any relative within the second degree of consanguinity, so that the perpetrator’s children, stepchildren, grandparents, and siblings all may file seeking protective orders against the perpetrator. “Members of an unmarried couple” are defined as unmarried couples who have children in common (and the children of such a couple) and couples who are living together or have formerly lived together. The language of the statutes is gender-neutral and does not provide for the denial of protective orders based upon the sexual orientation of the parties. KRS 403.720(2) and (3).

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C. [13.44] Where Should the Petitioner File for a Protective Order?

The petitioner should file the petition in the county where she resides. However, if the petitioner is fleeing her county of residence because of domestic violence, she may file her petition in the county to which she has fled, whether she is fleeing in-state or out-of-state domestic violence. KRS 403.725(1).

D. [13.45] How Does One File the Petition?

When a victim of domestic violence seeks protection from the Kentucky Court system, she will be instructed to complete and file a verified domestic violence petition pursuant to KRS 403.725. A district or circuit judge or trial commissioner then reviews the petition. Based upon a review of the allegations contained in the petition, particularly the determination as to whether an immediate and present danger of domestic violence exists, the judge or trial commissioner will decide whether to issue an *ex parte* EPO.

However, if upon review of the petition, the judge or trial commissioner determines that the allegations in the petition do not indicate an immediate and present danger of domestic violence, the court shall set the date for a hearing and issue a summons to the respondent. KRS 403.745.

E. [13.46] What Forum Is the Proper One for Filing a Petition?

The proper forum for filing such a petition will usually be in district court. KRS 403.725(1). Every county will have a specific location for the filing of petitions. Generally, one would go to the building where district or family court is located.

Further, if a divorce action or child custody action has been filed, the petitioner must inform the district court of that action. KRS 403.725(1). In those cases, the circuit court has jurisdiction to issue a protective order. KRS 403.725(4). If a district judge is unavailable to issue an EPO, then the circuit court shall issue it. KRS 403.725(5).

F. [13.47] What Time of Day Can One File for a Protective Order?

People must be able to obtain an EPO any hour of the day or night. According to statute, all courts are required to provide 24 hour access to emergency protective orders. KRS 403.735.

G. [13.48] How Much Does a Protective Order Cost?

There are no filing fees or court costs for seeking a protective order. KRS 403.730(3). Neither can the petitioner be required to post bond. KRS 403.750(5).

H. [13.49] How are Petitioners Protected from Respondents Finding Out Where They Are?

When the court issues an EPO, authenticates a foreign protective order, or issues a summons, the court clerk shall delete the petitioner's address and the address of any minor children from the document. KRS 403.770(1). This information is protected throughout the process.

I. [13.50] What Protection May Be Granted in an EPO?

The protective options available for inclusion in the EPO are listed in KRS 403.740 and include:

- Restraining the adverse party from contact or communication with the petitioner;
- Restraining the adverse party from committing further acts of domestic violence and abuse;
- Restraining the adverse party from disposing of or damaging any of the parties' property;
- Directing the adverse party to vacate the residence shared by the parties;
- Granting temporary custody using the criteria set forth in the divorce statutes; and
- Entering other orders of assistance to eliminate future acts of domestic violence and abuse.

J. [13.51] What Is LINK?

When a protective order (EPO or DVO) is issued, it is immediately entered into the LINK system, a computerized law enforcement information network. Therefore, when an officer responds to a call, he or she already has the information necessary to serve the respondent with the EPO or arrest the respondent if the situation warrants. KRS 403.737.

K. [13.52] When Is the Hearing Following the Issuance of an EPO or Summons?

After the respondent is served, a hearing is held to determine whether an act of domestic violence and abuse did in fact occur. The hearing shall occur within 14 days of the issuance of the summons. If the respondent has not been served, the summons may be reissued, and the EPO remains in place (prior to 2010, Kentucky statute required that in the event of lack of service or a failure to appear on the part of the adverse party, the court would have to issue a new order). The continuation of an EPO under these circumstances may not extend beyond a six month period of time. After that point, the victim may petition for a new protective order, but

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the length of time that a series of EPOs may remain in effect without service upon the respondent is limited to two years. KRS 403.740(5), (6).

L. [13.53] When Is a DVO Issued, and What Protection Is Available?

If the court determines that an act of domestic violence and abuse did occur and might occur again, it may issue a domestic violence order (DVO) pursuant to KRS 403.750, which can include all of the features listed in 403.740, as well as provisions for temporary child support and counseling services.

M. [13.54] Should Petitioners Bring Any Information with Them to the Hearing?

Because child support can be awarded at DVO hearings, the petitioner should be prepared to testify regarding her own income. She should bring recent pay stubs, W-2 forms, or the previous year's income tax return, if possible. If she has access to the respondent's financial documents, she should bring those as well. If these documents are not available, then she should be prepared to testify regarding the current, recent, and past income of herself and the respondent. Also helpful will be documentary proof of child care expenses, maintenance paid to a prior spouse, support paid for a prior-born child, and expenditures for health insurance. The child support guidelines provided in KRS 403.212 will be used.

N. [13.55] How Long Will a DVO Be Effective?

Domestic violence orders may be issued for a period of time not to exceed three years. Although the statute provides that the court may reissue a DVO any number of times "upon expiration," the petitioner should be advised to make such a motion for reissuance approximately one month before the actual date of expiration. KRS 403.750.

O. [13.56] Does the Issuance of a Protective Order Affect Gun Ownership?

Upon the issuance of protective orders, respondents are subject to legal prohibitions regarding their gun ownership and possession. According to state statutes, a respondent is required to immediately surrender a permit to carry a concealed weapon to either the judge or the officer serving the protective order. KRS 237.110(10). Surrender is required for both EPOs and DVOs, and the permit must be surrendered during the duration of the protective order.

Federal law also provides that persons restrained under a DVO may not, with certain exceptions, possess or attempt to possess a firearm. The Brady Bill has been amended so that individuals subject to a domestic violence protective order are banned from possessing guns or ammunition. 18 USC § 922(g). Not all DVO's issued in Kentucky trigger the gun ban. The federal law applies only to protective orders between an intimate partner or child of the respondent and it only applies to

certain types of weapons (the federal gun ban does not apply to antique weapons or replicas, or to service weapons issued for the use of government agencies). The penalty for knowingly violating the federal gun ban is up to ten years in prison.

P. [13.57] Can a Petitioner Be Notified When the Respondent Attempts to Purchase a Gun?

KRS 237.100 authorizes notification of petitioners when the respondents attempt to purchase firearms. Under the authority of 18 USC § 922(g)(8), Kentucky has introduced a notification system, which has been implemented by the Appriss Company. This Brady notification system operates like the VINE system. When information is received that a respondent has attempted to purchase a firearm, the petitioner, who meets state and federal qualifications, will be contacted and informed about this attempt.

Q. [13.58] When Does the Violation of a Protective Order Become a Criminal Offense?

Violation of a protective order prosecuted criminally is a Class A misdemeanor. KRS 403.763. Alternatively, the offender may be held in contempt by the court. KRS 403.760. By statute, the violation must be prosecuted criminally **or** handled as a civil matter, since civil and criminal proceedings for the same violation of a protective order are “mutually exclusive.” KRS 403.760(5). “Once either proceeding has been initiated the other shall not be undertaken regardless of the outcome of the original proceeding.” KRS 403.760(5).

If a prosecutor or the court is acting upon the violation, nothing precludes the Commonwealth for also proceeding criminally against the respondent for any other criminal offenses committed in addition to violation of the order. Although the violation of a protective order is a criminal offense, the restrained party must have received notice of the order to be convicted of violating it. Without service, the restrained party might be successfully prosecuted for an underlying offense, such as battery, but not for violation of the EPO.

If the respondent commits what the statute defines as a “substantial violation” of an order, the court shall advise the petitioner that the court may require the respondent to wear a global positional monitoring system device and to pay the costs associated with operating that system (KRS 403.761).

R. [13.59] Why Are Protective Orders More Effective Than Restraining Orders?

Because a person who violates an emergency protective order or domestic violence order can be immediately arrested by the police when there is probable cause to believe a violation of the order has occurred, protective orders are more effective than civil restraining orders, which are enforceable only by motion be-

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fore the civil court. This means that protective orders are realistically and reliably enforceable 24 hours a day.

S. [13.60] Do Police Officers Have Any Special Powers to Arrest Violators of Protective Orders?

Police officers have different arrest powers in domestic violence situations. Generally speaking, a police officer may only make warrantless arrests of offenders who commit misdemeanors in the officer's presence or offenders whom the officer has reasonable cause to believe have committed a felony crime. KRS 431.005. However, the officer may make a warrantless arrest when he believes an individual has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple. KRS 403.715. If a protective order has been issued, the police may immediately arrest an offender whom they have probable cause to believe has violated the order. KRS 403.715(3). Finally, if an offender is released in accordance with KRS 431.064 (pre-trial release conditions for domestic violence and sexual assault perpetrators), the officer shall arrest the offender without a warrant if the officer has probable cause to believe the offender has violated the pre-trial release conditions and the officer verifies that the offender received notice of the conditions. KRS 431.005(4).

T. [13.61] What Special Duties Do Police Officers Have Toward Domestic Violence Victims?

Police officers have special duties with regard to domestic violence victims. By statute, when a police officer has reasonable cause to suspect that an act of domestic violence and abuse has occurred, the officer is required to "use all reasonable means to prevent further abuse." KRS 403.785. These duties include, but are not limited to, remaining at the location of the violence as long as the officer reasonably suspects there is danger to the safety of those present; assisting the victim in obtaining medical treatment and providing transportation for such; and advising the victim immediately of the rights available to her.

U. [13.62] What About Mediation and Protective Orders?

KRS 403.275(5) provides that courts may not require mediation, conciliation or counseling as a condition precedent to entry of a protective order. Some courts require parties to "discuss" whether an agreement can be reached before a domestic violence hearing will be held. This practice raises several concerns.

First, the practice may be in violation of the above statute, as the "discussion" may very well constitute mediation or conciliation for the purpose of the above statute. Second, an unrepresented and often frightened petitioner may be at a significant disadvantage if negotiating with an attorney for a respondent. An agreement may be reached that the parties will "stay away" from each other. The protective order entered will very likely fail to include a finding that a perpetrator

committed an act of domestic violence. **Remember, without this finding, any order entered is merely a civil restraining order and cannot be prosecuted criminally.** (Emphasis added.)

Notably, KRS 403.036 provides that a court may not require mediation between parties in divorce or child custody cases when a finding has been made pursuant to 403.720 that an act of domestic violence and abuse has occurred between them, except under certain circumstances. This prohibition exists because mediation is predicated upon the belief that two parties to a dispute can represent their own interests well enough to state their respective position and negotiate toward an equitable result. Domestic violence is based upon one party's attempts to control the other through physical violence or threats. When parties are involved in the cycle of abuse, these attempts to control have likely had some degree of success in the past. The mediation process is tainted by the perpetrator's attempts to control the survivor, and the survivor's fear of being a strong advocate for herself and her position.

The General Assembly recognized this dynamic when it included provisions in KRS 403.036 requiring that mediation may be ordered only when the victim specifically requests the mediation. Further, the court must conduct an additional inquiry resulting in a finding that the request is voluntary and not a result of coercion, and that the mediation will, despite the violence, be a realistic and viable alternative. The court is in this way given the burden of examining the dynamics between the parties in question before ordering any mediation. Although this examination may very well consist only of brief interviews of the parties, it should be seen as significant that the legislature has placed this burden upon the court.

V. [13.63] What About Mutual Protective Orders?

KRS 403.735(2) provides that courts may issue mutual protective orders only if both parties file separate petitions. Cross-petitions are not uncommon, as perpetrators often engage in a "race to the courthouse," or file a cross-petition as a response to receipt of an EPO. Without separate petitions and separate findings of domestic violence, such protective orders are not entitled to Full Faith and Credit.³ Because of provisions with the Violence Against Women Act ("VAWA"), other states will not recognize protective orders that do not have a finding of domestic violence for each party. Furthermore, federal funding for programs to assist victims of domestic violence could be jeopardized if state laws do not require separate petitions and separate findings of domestic violence.⁴

Even in the absence of a cross-petition, some courts attempt to restrain the petitioner from contacting the respondent by entering a restraining order under authority of KRS 403.750(h), which permits the court to "enter other orders the court believes will be of assistance in eliminating future acts of domestic violence

³ 18 USC § 2265.

⁴ 42 USC § 3796hh.

and abuse.” The attorney should attempt to convince the court that this might not be the best course of action. One problem with mutual orders is that they often make it difficult for law enforcement to recognize who is the perpetrator and who is the victim. The General Assembly recognized this potential problem when KRS 403.735(2) was adopted, which provides that, if mutual orders (pursuant to cross-petitions) are issued, “the court shall then provide orders, sufficiently specific to apprise any peace officer as to which party has violated the order if there is probable cause to believe a violation of the order has occurred.”

Entry of a restraining order against a domestic violence survivor could send a wrong message to both parties that the survivor has done something wrong. If the parties are deeply involved in the cycle of domestic violence, the court’s action in restraining the petitioner could reinforce the perpetrator’s idea that he remains in control, and the survivor’s idea that she has no control.

If a cross-order is properly entered pursuant to a cross-petition, the attorney will want to utilize KRS 403.735(2) to have very specific orders entered providing for when parties are to be in specific places. Each party would likely have no good reason to be at the workplace or home of the other. Very detailed provisions regarding exchange of children during visitation should be requested, and clients should be advised to follow those provisions diligently.

W. [13.64] Are Civil Protective Orders Accorded Full Faith and Credit?

The Violence Against Women Act provides for mandatory interstate enforcement of domestic violence protective orders: “**any** protection order...**shall** be accorded full faith and credit by the court of another State or Indian tribe.” 18 USC § 2265. (Emphasis added.) In addition, the federal statute has no requirement that such orders be authenticated or otherwise registered or domesticated in the sister (*i.e.*, non-originating) state. However, while the protective order is entitled to full faith and credit, any support and custody orders therein do not receive full faith and credit. 18 USC § 2266. Rather, the only requirement listed in the federal legislation for mandatory, interstate enforcement of such orders is that the court have jurisdiction over the parties, subject matter jurisdiction, and the respondent must have reasonable notice and an opportunity to be heard. *Id.*

X. [13.65] What About Protective Orders for Victims of Stalking Who Do Not Qualify for Protective Orders Under KRS Chapter 403?

KRS 508.155 allows for a “restraining order” upon conviction for Stalking I or Stalking II. A verdict of guilty or a plea of guilty to these offenses (KRS 508.140 or KRS 508.150) shall operate as an application for a restraining order limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise. The court must give the defendant notice of the right to request a hearing if the victim requests a restraining order. If the defendant waives this right, the court may issue the restraining order without a hearing. However, if

the defendant does not waive the right to the hearing, it will be heard in the court where the verdict or plea of guilty was entered.

A restraining order may grant the following specific relief:

- (1) Restrain the defendant from entering the residence, property, school, or place of employment of the victim; or
- (2) Restrain the defendant from making contact with the victim, either directly or through another person that initiates any communication likely to cause serious alarm, annoyance, intimidation, or harassment, including but not limited to personal, written, telephonic, or any other form of written or electronic communication or contact with the victim.
- (3) While the order shall limit the defendant from communication with the victim in her school, place of business, or similar non-residential location, it shall be sufficiently limited not to interfere with the defendant's right to employment, education, or the right to do legitimate business with the employer of a stalking victim as long as the defendant does not have contact with the stalking victim.
- (4) The provisions of this subsection shall not apply to a contact by an attorney regarding a legal matter.
- (5) These orders are valid for a period of not more than ten years. The court determines the duration.
- (6) These orders ban the defendant from the purchase or possession of a firearm if the defendant has been convicted of a felony or is otherwise ineligible to purchase or possess a firearm under federal law; otherwise, the restraining orders do not operate as a ban on possession or purchase of a gun.
- (7) These orders are entered within 24 hours to the Law Information Network of Kentucky (LINK).
- (8) A violation of a restraining order issued pursuant to KRS 508.155 shall be a Class A misdemeanor.

KRS 508.155.

Y. [13.66] What Should Attorneys Tell Their Clients About Protective Orders?

Attorneys must advise clients of the scope of the protective features of the orders in a very clear fashion. Because the domestic violence hearing is often quite traumatic for the survivor (and she may not understand the order), each

feature of the order should be explained in detail. For instance, clients often do not understand that orders providing for no contact mean exactly that. The client should be encouraged to file criminal warrants upon receiving superficially harmless love letters, flowers, or other tokens of affection because, if the abuser violates the court's order during the honeymoon phase of the domestic violence cycle and no repercussions follow, he is less likely to be deterred from committing even more harmful and dangerous acts in the future. Furthermore, the survivor needs to know to report *all* violations so that when more serious violations occur, she does not blame herself for not reporting sooner. Strictly complying with the order can help restore a sense of control to the survivor.

Z. [13.67] What Should Attorneys Advise Their Clients to Do to Increase the Ability to Prosecute Violators of Protective Orders?

Some violations are difficult to prove. Clients should be advised to keep a journal of suspected violations. Repeated telephone hang-ups, pages, slashed car tires, or drive-bys may not prompt swift action from enforcing courts when it is not clear that the respondent to the protective order is to blame. However, if one incident can be linked to the respondent, and is supported by client testimony and documentation of patterns of harassment indicating time, place, and manner, courts may be more responsive. Clients should be advised to notify neighbors and local law enforcement of the description of the respondent and the respondent's vehicle. Another technique would be to advise clients to carry a camera or to use a cellular telephone to photograph incidents wherein the respondent violates specific zones of no contact. Further, if the victim has a protective order that requires the respondent to remain five hundred feet away from her, she should measure the distance from her house to the road. When the respondent drives by the house, she can then be prepared to testify accurately about the violation.

VIII. [13.68] Appendices

A. [13.69] Appendix A: References

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B. [13.70] Appendix B: Personal Safety Plan

DOMESTIC VIOLENCE PERSONAL SAFETY PLAN

1. [13.71] Your Safety During an Explosive Incident

- If an argument seems unavoidable, try to have it in a room where you have access to an exit. Try to stay away from the bathroom, kitchen, bedroom or where weapons may be available.
- Practice how to safely get out of your home. Identify which doors, windows, elevator or stairwell would be best.
- In order to leave quickly, have a packed bag ready and keep it at a relative's or friend's home.
- Identify one or more neighbors you can tell about the violence and ask that they call the police if they hear a disturbance coming from your home.
- Devise a codeword to use with your children, family, friends and neighbors when you need the police.
- Decide and plan for where you will go if you have to leave home (even if you don't think you will need to).
- Use your instincts and judgment. If the situation is very dangerous, consider giving the abuser what he wants to calm him down. You have the right to protect yourself until you are out of danger.

2. [13.72] Your Safety with a Protective Order

- If you or your children have been threatened or assaulted you can request a protective order from the _____ District Court Clerk, () _____ - _____. You may request a protective order 24 hours a day, 7 days a week. After business hours you will need to go to the _____ Police Department to seek one. Among other things, you may obtain custody, an order for no contact, and/or an order for the batterer to vacate the home.
- Keep your protective order with you at all times. Give a copy to a relative or a friend.
- Call the police if your partner breaks the protective order.
- Inform employees, family, friends, neighbors and your physician that you have a protective order in effect.

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3. [13.73] Your Safety When Preparing to Leave

- Open a savings account and/or credit card in your own name to start to establish or increase your independence. Think of other ways in which you can increase your independence.
- Get your own post office box. You can privately receive checks and letters to begin your independence.
- Leave money, an extra set of keys, copies of important documents, extra medicine and clothes with someone you trust or in a safe place so you can leave quickly.
- Determine who would be able to let you stay with them or lend you some money.
- Keep the shelter or hotline phone numbers close at hand at all times for emergency phone calls or memorize the numbers.
- Review your safety plan as often as possible to plan the safest way to leave the batterer.
- REMEMBER, *leaving your batterer is the most dangerous time.*

4. [13.74] Your Safety in Your Own Home

- Change the lock on your doors as soon as possible. Buy additional locks and safety devises to secure your windows.
- Discuss a safety plan with your children for those times when you are not with them.
- Inform your children's school and day care about who has permission to pick them up.
- Inform neighbors and landlord that your partner no longer lives with you and they should call the police if they see him near your home.

5. [13.75] Your Safety on the Job and in Public

- Decide who at work you will inform of your situation. This should include office or building security. Provide a picture of your batterer, if possible.
- Arrange to have an answering machine, caller ID, or a trusted friend or relative to screen your calls, if possible.
- Devise a safety plan for when you leave work. Have someone escort you to your car or bus. Vary your route when you go home, if possible. Think about what you

would do if something happened while going home (*i.e.*, in your car, on the bus, taxi, etc.)

6. [13.76] A Checklist: What You Need to Take When You Leave

a. [13.77] Legal Papers

- YOUR PROTECTIVE ORDER – keep it with you at all times
- Lease, rental agreement, house deed
- Car title, registration and insurance papers
- Medical records for you and your children
- School records
- Work permits/Green card/VISA
- Passports
- Divorce/custody papers; marriage license

b. [13.78] Other

- House and car keys
- Medications
- Jewelry
- Address book
- Pictures of you, your children and your abuser
- Children's small toys
- Toiletries/diapers
- Change of clothes for you and your children

c. [13.79] Identification

- Driver's license
- Children's birth certificates
- Your birth certificate
- Social Security Cards
- Welfare identification

d. [13.80] Financial

- Money and/or credit cards
- Bank books
- Check book

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Emergency Resources in _____ County
City or County Police Department _____
Sheriff's Department _____
Kentucky State Police 1(800) 222-5555

Other Community Resources

_____ **Mental Health**
_____ **Pre-trial Services**
_____ **Detention Center**
National Hotline 1-800-656-HOPE
Local Center: _____ **Rape Crisis Center**
National Hotline 1-800-799-SAFE
Local Shelter: _____ **Domestic Violence Crisis Line**
_____ **Department for Community Based Services**
_____ **Department for Social Insurance**
_____ **Commonwealth Attorney's Office**
_____ **County Attorney's Office**

C. [13.81] Appendix C: Support Services for Victims of Intimate Partner Violence

1. [13.82] National Hotlines

National Domestic Violence Hotline: 1-800-799-SAFE

National Sexual Assault Hotline: 1-800-656-HOPE

2. [13.83] Direct Services for Kentucky Victims and Survivors

a. [13.84] Domestic Violence Programs

There are 17 Domestic Violence Programs in Kentucky. Recent statistics show that these programs shelter nearly 5,000 survivors of domestic violence and their dependent children each year, and provide non-residential services to an additional 22,000 victims. The nearly 30,000 victims who seek help each year from these programs receive services which include legal/court advocacy, case management, safety planning, support groups, individual counseling, housing assistance, job search assistance, and children's groups. For more information on these programs, visit the website of the Kentucky Domestic Violence Association at: <<http://www.kdva.org>>.

b. [13.85] Rape Crisis Centers

There are 13 Rape Crisis Centers in Kentucky, which served over 8,000 victims/survivors of sexual assault in 2002. Services include hospital advocacy, legal/court advocacy, case management, individual counseling and therapy, support groups, professional referrals, and assistance with victim compensation claims. These services are available regardless of whether the sexual violence occurred recently or long ago, and are provided not only to survivors, but also to their family, friends, partners, or others close to them. For more information on these Centers and their services, visit the website of the Kentucky Association of Sexual Assault Programs at: <<http://www.kasap.org>>.

c. [13.86] Court Advocates

Each of the Domestic Violence Programs and Rape Crisis Centers has at least one court/legal advocate available for those victims who are receiving their services. The court advocate helps the victim navigate the legal system in the event she is called upon to participate in the prosecution of the offender. These advocates have received specialized training in the legal process and are familiar with the legal personnel (prosecutors, judges, clerks) in their communities. They are vital to the well being of the victim as she takes part in court proceedings, often as a witness who is unrepresented by counsel, unfamiliar with the legal rights she may exercise, and inexperienced at testifying in court.

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Significantly, these advocates are permitted by statute to assist the victim. KRS 421.575 provides that “[i]n all court proceedings, a victim advocate, upon request of the victim, shall be allowed to accompany the victim during the proceedings to provide moral and emotional support. The victim advocate shall be allowed to confer orally and in writing with the victim in a reasonable manner.” The statute goes on to admonish the court advocate that she cannot give legal advice or counsel.

In civil litigation, the court advocate can be very important to the attorney representing a victim of domestic violence or sexual assault. The advocate will be familiar with her client’s situation, and any safety issues there may be, or concerns surrounding protective orders that may have been issued or for which the victim may want to apply. The advocate’s knowledge of the victim’s history, her close relationship with the victim, her familiarity with the legal process, and her understanding of the dynamics of domestic violence and sexual assault will likely be invaluable to the attorney. Hopefully, when the victim so desires, these two professionals can work together to provide the very best of legal and support services.

d. [13.87] Children’s Advocacy Centers

There are 13 Children’s Advocacy Centers in Kentucky which offer comprehensive services to child abuse victims and their non-offending family members. These services are provided at each Center by a team of professionals comprised of a law enforcement investigator, child protection worker, prosecutor, mental health professional, victim advocate, and physician. Services offered include forensic interviewing, medical examinations, mental health services, and court-related advocacy services. For more information on the Centers, visit the website of the Governor’s Office of Child Abuse and Domestic Violence Services at: <<http://www.gocadvs.ky.gov>>.

e. [13.88] Prosecutor-Based Victim Advocates

If the offender has been criminally prosecuted, then the client may have already received services from a prosecutor-based Victim Advocate. These advocates, based in the local Commonwealth or County Attorney’s office, act as liaisons between victims of violent crime and the criminal justice system. Their services may include crisis intervention, assistance with protective orders and criminal complaints, court-related services, referrals to supportive community services, assistance in filing for victim compensation benefits, and safety planning. For more information on Kentucky’s Victims’ Advocacy program, visit the website at: <<http://www.kyattorneygeneral.com/crime.htm>>.