

THE FLORIDA BAR

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Certificate of Accreditation for Continuing Legal Education

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CLE Credits

General	1.0
Ethics	1.0

Certification Credits

Please provide the attendees the above reference number so they may go online to www.floridabar.org to report their completion of this program.



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741.28 Domestic violence; definitions.

- (1) "Department"
- (2) "Domestic violence"
- (3) "Family or household member"
- (4) "Law enforcement officer"



741.281 Court to order batterers' intervention program attendance.

- If a person is found guilty of, has adjudication withheld on, or pleads nolo contendere to a crime of domestic violence, that person shall be ordered to attend a batterers' intervention program as a condition of probation.
- The court, in its discretion, may determine not to impose the condition

741.283 Minimum term of imprisonment for domestic violence.

- If a person is adjudicated guilty of a crime of domestic violence *and the person has intentionally caused bodily harm to another person*, the court shall order the person to serve a *minimum of 5 days in the county jail*.

Law Enforcement Domestic Violence Policy

Fact or Fiction?

Law enforcement officers **MUST** make an arrest when they are called for an alleged act domestic violence battery.

Fiction – There is no law that requires law enforcement to make an arrest when called for alleged domestic violence battery.

However, nearly all law enforcement agencies (including the PPD and ECSO) have policies that essentially require arrest.

- Must write a special report articulating why an arrest was NOT made.
 - Very rare
- **The great majority of DV calls result in an arrest or warrant affidavit.**
- LEOs try to identify the primary aggressor and arrest them.
- It's possible to have both parties arrested, also a rare situation.

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting – (Continued)

- **Whether or not an arrest is made**, the officer shall make a written report.
- Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence.

Survey on Domestic Violence

Between 2001 and 2012 the number of American women murdered by current or male ex-partners was roughly equivalent to the number of American troops killed in Afghanistan and Iraq during the same time.

True or False

**False –
Roughly double**

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

How many men will be victims of severe violence by an intimate partner in their lifetimes?

- A. 1 in 10
- B. 1 in 7
- C. 1 in 4
- D. 1 in 2

1 in 7

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

Men who are exposed to domestic violence as children are twice as likely to perpetrate partner violence as adults than men who did not experience domestic violence as children.

True or False

False – Three to four times more likely

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

How many women will be victims of severe violence by an intimate partner in their lifetimes?

- A. 1 in 10
- B. 1 in 7
- C. 1 in 4
- D. 1 in 2

1 in 4

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

Women who have children by the age of 21 are twice as likely to be victims of violence by their intimate partners.

True or False

True

www.nij.gov/topics/crime/intimate-partner-violence/Pages

Women who are racial minorities are more likely than other women to suffer intimate partner violence.

True or False

True

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

What percentage of murders of women by their intimate partners was precipitated by their attempt to leave an abuser?

- A. 25%
- B. 35%
- C. 45%
- D. 50%

45%

www.nij.gov/topics/crime/intimate-partner-violence/Pages

Fifty percent of domestic violence perpetrators who commit or attempt to commit homicide used alcohol, drugs, or both during the incident.

True or False

False – 67%

www.nij.gov/topics/crime/intimate-partner-violence/Pages

Women who are disabled are more likely than other women to suffer intimate partner violence.

True or False

True

www.huffingtonpost.com/2014/10/23/domestic-violence-statistics

Men who have children by the age of 21 are three times more likely to be perpetrators of domestic violence.

True or False

True

www.nij.gov/topics/crime/intimate-partner-violence/Pages

You, as an attorney, have a legal obligation to report domestic violence if the victim of the domestic violence is another lawyer in your firm.

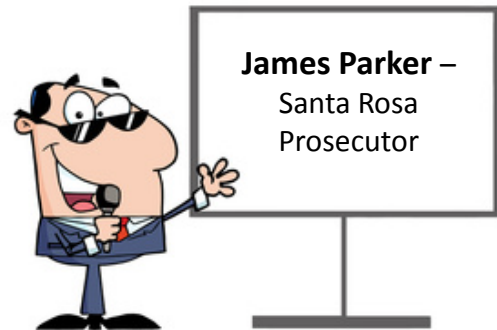
True or False

False – According to The Florida Bar you have no greater obligation than you would to anyone outside your firm.

You, as an attorney, have a professional/ethical obligation to report domestic violence if the perpetrator of the domestic violence is another lawyer in the firm.

True or False

True – Well, maybe. The Florida Bar was a little hesitant to give a clear answer on if you should report it. No reports are kept confidential.



Reporting Domestic Violence Within Your Firm:

Holding Fast to A Higher Standard



Do you have a **legal** obligation to report domestic violence involving co-workers?



Short Answer – No...

- No, no more obligation than an average citizen. Although some medical and mental health professionals may be required to report suspicions of domestic violence¹, most individuals, including attorneys, are not so obligated.

¹ See handouts- two Florida Bar Journal articles on physicians' obligations to report domestic violence: (1) Domestic Violence: Why the Florida Legislature Must Do More to Protect the Silent Victims (1998) and (2) a rebuttal article titled The Case Against Mandatory Reporting of Domestic Violence Injuries (2000).

Unless the victim is a child.

- An exception exists, however, for reporting abuse/neglect of a child. (See Florida Statutes § 39.201.)



Do you have a professional/
ethical obligation to report domestic
violence?



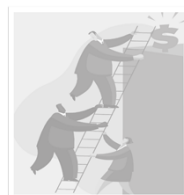
If the perpetrator is not an attorney - No.

- The Florida Bar does not address any obligation to report in the Rules of Professional Conduct or elsewhere, nor does it provide much guidance on how to handle such a situation.
- While no such obligation exists, this should not preclude a self-imposed moral obligation to talk to the individual, address the issue, and report to authorities..

If the perpetrator is an attorney -Yes, perhaps.

- This situation may implicate the Florida Rules of Professional Conduct, in particular Rules 4-8.4(b) and 4-8.3. (see handout) **Composite Exhibit C.**
- Rule 4-8.4 governs general misconduct, and subsection (b) dictates that **"a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."**
- A violation of Rule 4-8.4 may in turn trigger Rule 4-8.3, which requires attorneys to report known misconduct of other attorneys.
- **The best approach is to intervene and request the attorney seek help, and report to the bar if the misconduct raises a substantial question as to the perpetrating lawyer's trustworthiness or fitness.**

Does the standard for reporting domestic
violence change for a partner or officer of your
firm?



No, Violence is indiscriminate.

- Attorneys are held to the same reporting standards regardless of rank.



Where can I report/learn more about DV?

- ☐ **Florida Lawyer's Assistance Program**
☐ (800) 282-8981
- ☐ **Florida Bar Ethics Hotline**
☐ (800)235-8619
- ☐ **Florida Domestic Violence Hotline**
☐ 1-800-500-1119
☐ TDD (800) 621-4202
- ☐ **Workplaces Respond to Domestic Violence**



☐ www.workplacesrespond.org

(Funded by the US Department of Justice Office)

Why should I report Domestic Violence?

- Because ethically it is the right thing to do.
- DV has a cost beyond its physical and emotional toll on the victim.

The Firm/Employer suffers as well. The cost of DV includes, but is not limited to, the following:

- Medical Cost
- Mental Health Cost
- Reduced Productivity

(see cost calculator on the following 2 slides – taken from <http://www.2.texashealth.org/dv/>)

**Texas Health Resources
Domestic Violence Cost Calculator**

COMPANY DATA: Please input the following information for your company and click the Calculate button.

104	TOTAL WORKFORCE
83%	PERCENTAGE FEMALE
\$48	AVERAGE HOURLY WAGE FOR YOUR COMPANY

[Calculate] [Reset]

\$36,123 Total annual cost to your company due to domestic violence

BASED ON YOUR INPUT ABOVE, YOUR COMPANY'S POTENTIAL DOMESTIC VIOLENCE (DV) COSTS ARE HIGHLIGHTED BELOW. THE BLUE TEXT REPRESENTS NATIONAL DV STATISTICS THAT ARE USED TO CALCULATE THE TOTALS.

VICTIMIZATION	104	Total workforce
	63%	Percentage female
	65	Total estimated female employees
	0	Number of female employees divided by 1000
	116	National DV rate per 1,000 Female Employees*
	8	Expected number of female DV victims at your company per year
	3.4	Average number of victimizations per DV victim per year*
	27	Total expected victimizations at your company/year
MEDICAL COSTS	38.85%	Percentage of victimizations that result in injury*
	10	Total expected victimizations resulting in injury at your company per year
	29.55%	Average percentage of victims seeking medical care nationally*
	3	Predicted number of your company's DV victims seeking medical care per year
	1.9	Average number of medical visits per victimization*
	6	Predicted total number of medical visits by DV victims for your company
	\$3231	Average medical cost per victimization (adjusted to 2007 prices)*
	75%	Average U.S. percentage paid by insurance*

	\$14,543	Total predicted medical costs/victimization for your company/year
MENTAL HEALTH	29.70%	Average percentage of victimizations resulting in mental health service usage*
	8	Estimated number of victimizations resulting in mental health service usage
	12.65	Average number of visits per victimization*
	101	Total predicted mental health visits
	\$107.29	Average cost per visit (adjusted to 2007 dollars)*
	65%	Average U.S. percentage paid by insurance*
	\$7,183	Total predicted mental health costs/victimization for your company/year
LOST PRODUCTIVITY	19.5%	Percentage of victimizations that result in lost work days*
	5	Estimated number of victimizations resulting in lost work days
	8.09	Average number of lost work days per year per victimization*
	40	Total estimated lost work days due to DV for your company
	\$45	Average hourly wage for your company
	\$1,800	Total estimated productivity lost in your company/year due to DV
	\$26,123	Total annual cost to your company due to domestic violence

***DATA SOURCES:**

- Costs of Intimate Partner Violence against Women in the United States. National Center for Injury Prevention and Control. U.S. Centers for Disease Control and Prevention, 2003.
- Understanding Violence Against Women. Commission on Behavioral and Social Sciences and Education. National Academy Press, 1996.
- Straus, Murray A. and Richard J. Gelles. Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families, 1989. Transaction Publishers.

NOTES:

- For these calculations, domestic violence refers only to rape or physical assault by an intimate partner. It does not include verbal, mental or emotional abuse. Accordingly, the estimates of incidence, medical costs and lost productivity underestimate the actual incidence and costs.
- Average medical & mental health costs are 1995 dollars adjusted to 2007 dollars using the All-Item CPI. Percentages of costs paid by insurance are 1995 values.

How to Identify Domestic Violence as an Attorney

Why is Domestic Violence an Issue for Attorney's?

- Most lawyers have represented a client affected by domestic violence and did not know it
- To ensure you are ethically representing your client and to avoid malpractice
- Knowing about domestic violence in your client's life will help you assess the dynamics of relationship at play and enable you to better understand the facts of a case
- Safety – for you, your client, and your staff
- This is everyone's issue

Signs of Domestic Violence

- Signs of physical abuse such as bruising
- Control over finances
- Limited Access to Resources
- Signs of isolation
- Extreme dependency – always refers to “we”
- “Rules” to follow set out by a partner such as not “allowed” to have a job
- Stalking/harassing behavior
- Emotional abuse –degrading or dominating behavior
- Drug or alcohol abuse

Tools for Identifying Domestic Violence

- Training
- Screening During Client Interviews
 - Written questionnaire
 - Open conversation
- Be on the look out during your representation
 - Look for sudden, inexplicable changes in your client's position

Tips for Attorneys

- Address domestic violence in your client questionnaire and your client interviews
- Ask permission if it is ok to send documents to the client's house
- Know who to contact if you do find out your client is a victim of domestic violence

Hypothetical – Mediator/Civil Lawyer

Wife is Plaintiff in personal injury case. At mediation, her husband is present and the mediator notices that the husband and not the wife is the one making the decisions.

It seems that the Wife is being overpowered and unduly influenced.

- What do you do as a mediator? As an attorney?

Hypothetical – Mediator/Civil Lawyer

The Mediator/lawyer removes the husband from the session and finds out that the wife is scared to accept a low settlement offer and displease her husband. Her husband is physically abusive.

- What steps should the mediator and/or attorney take at this point?

Hypothetical – Civil Lawyer

A woman comes in straight from DV court where her Petition for an Injunction against her ex-boyfriend was just denied. She can't understand how that is possible since there have been several incidents of violence between the two of them in the past couple weeks.

- What steps should the attorney take?

Hypothetical – Civil Lawyer

A woman comes in straight from DV court where her Petition for an Injunction against her ex-boyfriend was just denied. She can't understand how that is possible since there have been several incidents of violence between the two of them in the past couple weeks.

- What steps should the attorney take?

Hypothetical – Criminal Lawyer

You represent F, a 30-year old female whose boyfriend of 2 1/2 years, M, lives with her in an apartment with their two young children.

F comes to see you after receiving an eviction notice, and tells you that she couldn't afford to make the rent payment after her boyfriend was arrested about 3 weeks ago.

She says they had been drinking when a verbal argument started. She also tells you that she lied in parts of the sworn, written statement she gave to police. She wants M out of jail to help with bills, but doesn't want to get in trouble for anything she said in the heat of the moment. She has received a subpoena to meet with the Assistant State Attorney tomorrow and hopes you'll give her some advice on how she should handle the meeting.

Hypothetical – Criminal Lawyer

You represent G who was arrested 6 weeks ago for battery on W, his "wife" of 10 years.

W calls you to say that she wants the charges dropped. She says she filled out the "drop charge" form at the State Attorney's office the day after the incident, and that this was all a big misunderstanding.

She says she received a trial subpoena yesterday, but doesn't want to testify against G. She says she doesn't want to talk to the prosecutor anymore because they threatened to have the judge throw her in jail if she doesn't come to court.

She wants you to tell her what she should do.

Hypothetical – Criminal Lawyer

You are a prosecutor who exclusively handles domestic violence cases. You are prosecuting C for battery on R, his girlfriend.

C and R are college students at UWF. C was arrested at his and R's off-campus apartment on a Friday night about a month ago. C and R are both from Tampa, and C can't make bond. C has been in jail almost a month, R has failed to show up for any office interviews or answer her phone. R finally calls you back a week before trial is scheduled and tells you that she isn't coming to court, she was drunk, and she moved back to Tampa to be with her family. There are no other witnesses to the incident, the Crime Scene Tech never took pictures, and the 911 call was made by a neighbor who only heard screaming but never actually saw anything. R has not been served with a subpoena. You have a status hearing on Friday, but your supervisor says you can't drop the case until jury selection.

C has never spent a day in jail before being arrested on this charge. How do you proceed?

DV Injunction – Essential Elements

- **Concise** – Background drama descriptions should be limited to what applies in evaluating if an injunction is necessary.
- **Directly** address any past physical abuse, threats, harassment, and stalking
- Look at the **elements** from 741.30 (7)(b) that apply and focus on those.

Domestic violence OVERVIEW

• STATISTICS

- *1 in 4: The number of women who have been victims of intimate partner violenceⁱ*
- *3 million: the number of children who witness domestic violence at home each yearⁱⁱ*
- *3 million: the number of men who are victims of physical assault each yearⁱⁱⁱ*
- *3rd: Domestic violence is the third leading cause of homelessness among families^{iv}*
- *Nearly double: nearly double the numbers of casualties lost in the Iraq war from 2001 to 2012 were murdered by ex male partners during the same time period^v*

ⁱ <http://www.safefhorizon.org/page/domestic-violence-statistics--facts-52.html> ⁱⁱ <http://www.ncadv.org/files/Domestic%20Violence%20Stylized--GS%20edits.pdf> ⁱⁱⁱ <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf> ^{iv} [http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-\(1\)/UCR-Domestic-Violence-Data.aspx](http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-(1)/UCR-Domestic-Violence-Data.aspx) ^v http://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics_n_5959776.html

Domestic violence OVERVIEW

• RESOURCES

- Domestic Violence Clerk, Escambia County - Individuals can file Petitions for Injunctions on the 2nd floor in the M.C. Blanchard Judicial Building (850) 595-4331
- Favorhouse – A leading Women's shelter – (850) 434-6600 **Hotline is Confidential**
- Florida Lawyer's Assistance Program – (800)-282-8981
- Online Resources:
- <http://www.safefhorizon.org/page/domestic-violence-statistics--facts-52.html>
- <http://www.ncadv.org/files/Domestic%20Violence%20Stylized--GS%20edits.pdf>
- http://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics_n_5959776.html
- <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>
- [http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-\(1\)/UCR-Domestic-Violence-Data.aspx](http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-(1)/UCR-Domestic-Violence-Data.aspx)



DOMESTIC VIOLENCE SCREENING TOOL FOR CONSUMER LAWYERS

Developed by:

Erika Sussman, Center for Survivor Agency and Justice

Carolyn Carter, National Consumer Law Center

Consumer lawyers are uniquely positioned to provide domestic violence survivors with access to critical economic resources. For survivors of domestic violence, there is no safety without economic security, and there is no economic security without safety. To effectively advocate for remedies that balance economic and physical safety considerations, consumer lawyers need to identify whether their client is a survivor of domestic violence and acquire an understanding of the risks and needs arising out of their client's experience. This document is intended to assist consumer lawyers in determining who, among their clients, is a survivor of domestic violence in order to enhance legal representation and advocacy.

Screening for Domestic Violence is Critical to Effective Representation

Asking a client whether or not she/he is a survivor of domestic violence can be a difficult undertaking for many reasons. The client may not identify a relationship as abusive. Or perhaps, as attorneys, we believe it is not our place to ask such personal questions. We might feel that we are ill equipped to respond to the possible answers. However, if an attorney's client is a survivor of domestic violence, such information can change their advocacy and provide access to unique and valuable legal remedies.

Screening clients for domestic violence is necessary to ensure that attorneys are providing the most competent and appropriate legal representation. Under the Model Rules of Professional Conduct, competent representation requires inquiry into and analysis of the factual and legal problem.¹ The experience of domestic violence often impacts the risks that an individual client faces, and therefore, significantly shapes their advocacy needs. Consumer lawyers (indeed, all lawyers) should consider how the context of domestic abuse impacts their legal strategizing—the nature of the legal claims they seek, the defenses available, the presentation of the case (testimony, evidence, arguments), and the types of remedies they pursue. For example, a tax attorney who is unaware of the presence of domestic violence may not avail the client of “innocent spouse relief.” A foreclosure defense attorney who is unaware of the fact that a financially abusive husband has failed to make mortgage payments may not think to coordinate with family lawyers to compel the abuser to make payments or may neglect to mention hardships

¹ The Model Rules of Professional Conduct mandate that attorneys “provide competent representation to a client” which “requires the legal knowledge, skills, thoroughness and preparation necessary for the representation.” Rule 1.1.

posed by the abuse when advocating with lenders or before a foreclosure court. And, an attorney assisting a client with prioritizing debt may not dispute credit card charges that were fraudulently incurred by an abusive partner.

At the same time, a consumer lawyer unaware of the continuing safety risks posed by the threat of retaliatory abuse will not know to move the court to keep a client's information confidential or to request that payments by an abusive spouse be made to a third-party, rather than directly to a survivor in hiding. Such safeguards can mean the difference between security and violence. Legal strategies that fail to integrate safety and privacy considerations can lead to enormous collateral consequences for a survivor (e.g. loss of employment, housing, child custody)-- harms that may outweigh the benefits of seeking consumer remedies in the first instance. Simply put, competent representation of domestic violence survivors requires that attorneys and survivors partner to share information and devise strategies that integrate both safety *and* economic considerations.

While it is an attorney's duty to screen for domestic violence, the attorney also must respect the client's decision to not disclose information about the abuse. The client may determine that sharing the information with her or his attorney poses a safety risk. Or, the trauma may be too difficult for the client to discuss, despite the benefit to her or his legal case. Attorneys and advocates need to respect that choice. Attorneys should ask direct questions about domestic violence; however, if the client does not want to discuss the issue, the attorney should clearly communicate that the door is always open for further discussion and assistance, on that or any other topic.

The Nature of Domestic Violence

In order to screen for domestic violence, practitioners must have a fundamental understanding of its basic nature. Below is a summary; however, it is advisable that attorneys obtain training in the dynamics of domestic violence so that they can identify the common cues.

Domestic violence is coercive control. Social science literature describes intimate partner violence as an array of physical assaults, sexual abuse, economic exploitation, psychological degradation, property destruction, hostage-taking, terroristic threats, stalking, burglary, theft, slander, and homicide. Domestic violence is not a discrete act of violence. Rather, batterers engage in a pattern of abusive conduct designed to achieve and maintain control over their partner and to induce fear of the consequences for failure to comply.

Although violence is common in abusive relationships, there are many additional tactics that abusers use to control and harm survivors. For example, an abuser may control a survivor by threatening to take their children, refusing to follow through on the sponsorship of documented immigration status, or controlling the survivor's finances. The physical violence is but a "moment" within a larger context of coercive control, used to re-enforce the abuser's other controlling non-physical behaviors. Abuse can impact all areas of a survivor's life including work, school, healthcare, housing, standard of living, and relationships with family, friends, and children.

Economic abuse often plays an integral role in a batterer's coercive control tactics. Batterers often sabotage their partners' educational, job training, and employment opportunities; destroy their credit either directly or by engaging in identity theft; and maintain complete control over bank accounts and ATM cards. Batterers employ all of these acts of economic control and sabotage to keep their partners financially dependent and expose them to increased risks of violence.

Contrary to popular wisdom, leaving an abuser does not ensure the safety of a battered partner; rather, separation increases the risk of retaliatory violence. Batterers use violence to prevent their partners from leaving, to retaliate for the separation, and to force them to return. This increased risk of violence is critical for attorneys to keep in mind as they strategize with their clients. All consumer law strategies must be assessed in light of the survivor's broader safety plan.

When trying to discern whether or not a client is a survivor of domestic violence, it is important for attorneys to be careful not to make assumptions based on a client's race, gender, socio-economic class, age, or sexuality. Also attorneys should be aware of any stereotypes we possess about the demeanor of a survivor of domestic violence. Each survivor will present differently. For that reason, context is key. Only by gathering such information can the attorney determine whether a client is a survivor of domestic violence.

Trust is Key to Effective Representation

People share information when they feel that they can trust the person with whom they are talking. Because comprehensive representation requires information sharing by both advocate and client, it is critical for attorneys to devote significant time and care to building trust with their clients. As with all interviews, it will be important to explain to clients that communication with their attorneys are protected by the attorney-client privilege. As attorneys know, explaining privilege in simple terms is always important (i.e., that everything the client tells an attorney is "between the two of you" and that attorneys can disclose only if they have the client's permission ahead of time). Attorneys must be sure to explain any exceptions to confidentiality that apply, such as mandatory reporting laws.² A trusting relationship also requires that attorneys engage in active-listening by paying close attention to what the client is telling them and repeating back what they heard. An attorney who does most of the talking is not hearing the client's story and not establishing trust. While we all have judgments as humans, our clients can pick up on these judgments if we are not careful. To help ensure that attorneys obtain honest answers and important information, they should approach these questions with empathy and tolerance.

² Before conducting a screening, it is critical that attorneys familiarize themselves with any reporting obligations that may exist in their state. While preserving the confidentiality of survivors is paramount, attorneys should know that, in some instances, they may be required by law to report certain information, including suspected child abuse and serious and immediate threats to the safety of the survivor or others. The parameters of these reporting obligations vary widely from state-to-state. The same facts may, depending on the state, trigger a mandatory report, a voluntary report, or no reporting obligation or right whatsoever.

SAMPLE QUESTIONS

These questions are sample questions. *This is not designed to be a checklist of questions for you to recite.* You will need to use your interviewing acumen and judgment to determine how to inject these screening questions into your practice. It will vary case-by-case. Sometimes, during the course of an interview, a client will offer information that naturally lends itself to a follow-up question, which will enable you to explore whether the client is or was in an abusive relationship. In other instances, you might ask questions that apply to the subject matter of the legal issue that your client has brought to your attention. And, in still other instances, you may need to approach the topic more generically. Under all of these circumstances, it makes sense to begin with a few open-ended questions and develop the conversation with the client from there. Allow the client to tell her or his story without too much direction and ask more specific questions when you believe you need more information. Of course, for privilege, privacy and safety reasons, you should only engage in this conversation when your client is alone.

Consumer Case-specific Questions:

Coercive control can manifest in a variety of contexts. You are likely to find that the abuser has exercised some level of control with respect to the economic issues at hand. The following are examples of screening questions that might derive from a particular consumer issue:

- If you file bankruptcy and [Co-Obligor] is left with responsibility for your debts, will that create any problems for you?
- I see that [name] is also listed on your mortgage [or lease]. Is this person still in the home?
- Do you know the person who used your personal information? Has this person done other things to you? Are you afraid of this person?
- Did you want to sign the lease? Did you have mixed feelings about signing it? How did it happen that you ended up signing it?
- Is there any reason why you can't agree to this? Are you worried about what anyone in your family, your friends, or your partner might think or do?
- It can be common for several people to use a car. Do any other people have use of the car? Are there any issues between you and your partner about who gets to use the car?
- Did your eviction have anything to do with your partner's actions?
- Did you tell your partner that he/she could make these charges? When did you first find out about these charges?

Financial Abuse:

You can more generally explore whether domestic violence is present by asking the client about how finances are handled in the household.

- Since this case involves [a debt that you are being asked to pay, or a mortgage that you were induced to enter into, or a series of mistakes on your credit record, etc.], I'd like to get a full picture of your financial circumstances. May I ask you some questions about how your household handles money?
- Who lives in your household? What income does each of you have?
- How do you and your partner handle finances?
- Do you both have access to the money?
- Is one of you in charge of paying the bills?
- Do you have any bank accounts? Are they joint or separate?
- Do you know where important papers, like checkbooks and financial statements, are kept? Does your partner make it hard for you to see or use them if you want to?
- Are you employed? Are you a student? Does your partner ever do anything that affects your school/job? Does your partner ever make it hard for you to keep your job/ to go to school?

General Screening Questions:

Even when a client does not indicate abuse related to her or his consumer case or financial circumstances, attorneys should screen for domestic violence so they can a) make appropriate referrals and b) integrate safety and privacy measures into the consumer-related case strategizing. ***To reiterate, the following list of questions is not intended as a script.*** We do not suggest that you ask all of these questions. Rather, the following questions are examples of ways to broach the topic of domestic violence. Because these questions touch upon sensitive areas, the questions should only be asked after the attorney has developed some rapport with the client.

- [*Preface*] I ask these questions of all of my clients because abuse and violence are common in relationships and because the information can greatly influence your legal and non-legal options. Some of these questions may feel uncomfortable. If you'd rather not continue, please feel free to stop me at any time.
- Do you have a spouse or partner?
- Would you feel comfortable telling me about your partner? How would your partner describe you?
- Typically, what happens when you and your partner disagree?

- Has your partner ever acted in ways that scare you? If yes, can you tell me some more about that?
- Are you able to speak your mind or express your point of view to your partner?
- When you speak your mind or express your point of view to your partner, does your partner become angry, threatening, or intimidating?
- How are decisions made in your relationship? Who makes what decisions?
- Has your partner ever insulted you, put you down, or called you demeaning names?
- Has your partner ever hurt or threatened to hurt you or members of your family?
- Has your partner ever slapped, hit, pushed, or shoved you?
- Has your partner ever threatened to hurt him or herself?
- Has your partner ever hurt or threatened to hurt your pets?
- Has your partner ever made you do something that you did not want to do?
- Has your partner ever prevented you from taking your medication, seeing a doctor, or going to the hospital?
- Do you have children? Would you feel comfortable telling me about the relationship between your children and your partner?
- Who makes decisions about your children? How does your partner respond to the decisions you make about the children?
- Does your partner ever criticize you or your children in a way that intimidates you or bothers you?
- Has your partner ever threatened to take your children from you or threatened to never let you see them again?
- Does your partner act jealously (for example, frequently calling to check up on you)?
- Has your partner tried to stop you from seeing your family or friends?
- Do you have any concerns about a court case against your partner? What concerns you?
- Do you feel safe at home?
- What is your worst fear about going forward with X case/remedy?

Safety Planning for Consumer Rights

If you determine that your client is a survivor of domestic violence, safety and privacy considerations should guide your representation. Keep in mind that a consumer law remedy is just one among numerous potential strategies that a survivor may employ within the context of a much broader safety plan. A survivor's decision to pursue a consumer legal remedy must make sense in light of all that she/he knows about the risks posed by the batterer and the survivor's own economic and life circumstances. The survivor has expert knowledge of the batterer's conduct and must play an active role in the advocacy process. Therefore, you will serve your client well if you take the time in subsequent interviews to understand the context of the abuse, consider how that abuse might impact your representation strategies, and partner with your client to explore how potential strategies and remedies impact her or his safety and privacy needs. Of course, as the risks change, the client's priorities and advocacy needs will change too. Attorneys must continually re-visit the client's safety assessment and the implications that assessment has for legal strategizing.

Accessing Domestic Violence Resources

If your client is a survivor of domestic violence, you will want to offer community resources so that she/he can learn more about her or his options. A consumer lawyer cannot and should not attempt to handle all of the issues that a survivor faces. Depending upon your office's resources and your clients' needs, you may direct your client to a local domestic violence program to assist with advocacy (non-legal and legal), safety planning, counseling, housing, and access to other community resources. If the client wishes and grants consent, consider contacting the local domestic violence program to coordinate your representation with their safety planning and advocacy efforts.

Domestic violence laws and resources vary from state-to-state and community-to-community. You may wish to learn more about domestic violence resources in your own community and begin developing partnerships with those organizations.

- Each state has a Domestic Violence Coalition, which serves as the policy arm of each state as well as the support center for its local domestic violence programs. To find contact information for your state coalition, go to www.nnedv.org or www.ncadv.org. Your state coalition can connect you and/or your client with local member programs.
- The Center for Survivor Agency and Justice, (202) 552.8304 and www.csaj.org, can connect you with legal services organizations throughout the country that offer representation and advocacy to domestic violence survivors. CSAJ also provides training on a variety of issues related to domestic violence advocacy, as well as case-specific strategy assistance to attorneys and advocates who work with survivors of domestic violence.

ADDITIONAL RESOURCES

Lundy Bancroft and Jay Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002).

Jill Davies, *An Approach to Legal Advocacy with Individual Battered Women*, Greater Hartford Legal Aid (2003).

Julie Kunce Field, *Screening for Domestic Violence: Meeting the Challenges of Identifying Domestic Relations Cases Involving Domestic Violence and Developing Strategies for Those Cases*, 39 CT. REV. 4 (2002).

Barbara J. Hart, *Rulemaking and Enforcement, the Violent and Controlling Tactics of Men who Batter and Rule Compliance and Resistance - The Response of Battered Women*, in *I Am Not Your Victim: Anatomy of Domestic Violence* 258-263 (1996).

National Consumer Law Center, *Guide to Consumer Rights for Domestic Violence Survivors* (2006).

Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).

Roberta L. Valente, *Screening Guidelines*, in *The Impact of Domestic Violence on Your Legal Practice*, The American Bar Association Commission on Domestic Violence (2nd ed., 2004).

Neil Websdale. *Lethality Assessment Tools: A critical analysis* (2000). Available at www.vawnet.org.

This document was produced by the ***Consumer Rights for Domestic Violence Survivors Initiative***, a collaborative project of the Center for Survivor Agency and Justice and the National Consumer Law Center. For more information, contact:



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CLIENT SCREENING TO IDENTIFY DOMESTIC VIOLENCE VICTIMIZATION*

The Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association created the following domestic violence screening tool over a period of years. We worked with attorneys who represented both victims of domestic abuse and perpetrators of domestic abuse, and consulted judges and many other professionals who regularly work with victims and abusers. The goal of this tool is to make it easier for attorneys to incorporate domestic abuse screening as a routine part of practice and to enhance safety for themselves, their staff and their clients. The Committee considers the screening tool a work in progress and would greatly appreciate your feedback as you utilize the tool in your practice. Please direct your feedback via email to Rana Alexander at rana@bwlap.org.

PART I. SCREENING PROTOCOL FOR ATTORNEY

Introduction and Preliminary Matters

The Minnesota Rules of Professional Conduct Rule 1.1 states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” The Comment to this Rule states: “Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.”

The Minnesota courts have recognized the importance of domestic violence and the risks that it may present. The Minnesota Supreme Court provided a Risk Assessment Bench Guide to each judge in the state for use in any kind of case, civil, family or criminal, which involves domestic violence.

Lawyers in most areas of practice have already had or will have a client who is a victim or perpetrator of domestic violence. Most people experiencing or perpetrating domestic violence are reluctant to share that information with anyone, including their counsel; therefore lawyers may not realize just how many of their clients are affected by domestic violence. However, to effectively represent the client, a family law lawyer *must* be knowledgeable about domestic violence because domestic violence needs to be taken into consideration when determining custody, relocation, parenting time, distribution of assets, whether or not to participate in mediation or other forms of alternative dispute resolution, and the type of parent education. Therefore, screening for domestic violence with every client, every time, is crucial to every attorney’s practice.

Screening must occur within the context of a *conversation* with the client. A tool used simply as a questionnaire will not encourage the type of conversation between an attorney and client that leads the attorney to a full understanding of the client’s situation. When directly questioned about the violence or abuse in their lives, many victims of domestic violence will not identify themselves as victims. However, victims become more willing to self-identify when they feel their allegations will be given the appropriate attention, when they know it is safe to share the information, when they trust the information will be handled responsibly and when they know the information is important to the case.

This screening protocol is not simply a new questionnaire. The protocol and sample questions will, instead, help the attorney apply the lens of domestic violence to existing interviewing processes by guiding the attorney to listen for certain answers and to follow up appropriately. Any one answer may not indicate there is a domestic violence relationship. Sometimes it is evident only after careful reflection on all of the information you receive taken as a whole.

* This protocol is focused on identifying victims of domestic violence, not necessarily perpetrators

One of the most important reasons to screen for domestic violence is its importance to child custody and parenting time. Research shows that a parent's use of violence can have serious implications for parenting. For example, a victim of physical intimidation and domination can suffer temporary or even sustained mental health or parenting problems. Those problems can stem from being under constant fear and stress while trying to protect children from the actions of the abusive parent.

The most dangerous type of domestic violence, and the one that most affects client representation is "battering". A "batterer" - one whose violence is part of a pattern of intimidation, threats and other tactics designed to dominate a partner - is likely to have attitudes and beliefs that seriously compromise his/her ability to parent children and can cause permanent psychological problems for children. Batterers as parents are far more likely than other parents to expose their children to several risks such as: exposure to threats or violence towards the victim parent; increased risk of physical or sexual abuse by the batterer; subjection to rigid, authoritarian parenting; neglectful or irresponsible parenting; psychological abuse and intimidation; being used by the batterer to abuse the other parent; and exposure to violence if the batterer enters into a new relationship.

Screening for domestic violence will help you, it will help your staff and it will help your client and any of the children involved in the case.

1) Screening will help you:

- ✓ Gather all the critical information about the client's situation. Without it, your representation will not be sufficient. Knowing about the domestic violence in your client's life will help you comprehend the dynamics of the relationships with which you are working and enable you to better understand all the relevant facts.
- ✓ Recognize that while an abuser's concern for the children may seem genuine, often the concern only masks the desire to control your client. Abusers are manipulative, charming and tactical. Thus, the sooner you know who your opposing party really is, the better you can advise your client on legal options and strategies.
- ✓ Foster a better relationship between you and your client. A strong relationship is mutually beneficial. If the client is happy, s/he is more likely to consider your advice, believe that you are working in his/her best interest, and pay your bills.
- ✓ Avoid a possible malpractice claim. If you are not screening for domestic violence, you are missing important information essential for ethical representation of your client. Just as you insist on evaluating your client's financial situation, you must determine if domestic violence is occurring in your client's life.

2) Screening will help and protect staff:

- ✓ Everyone is safer if the attorney knows that a situation is dangerous.

3) Screening will help your client:

- ✓ Seek risk assessment and safety planning advice to help prevent death and serious injuries.
- ✓ Stay safe and out of court with competently-crafted court orders, which anticipate and seek to reduce the opportunity for abusive behaviors.

Understanding the dynamics of the relationship can help you obtain better outcomes for the client. You are already interviewing your clients; this tool will help you do it better and more effectively.

What Are You Screening For?

“Domestic violence” and “domestic abuse” are terms which have many different meanings. The legislature has defined “domestic abuse” for purposes of the Order for Protection procedure and the criminal statutes. However, in order to intervene effectively, a practitioner should start by inquiring about a broader range of behaviors which constitute abuse. It is important to understand the complex issues of violence within intimate relationships which include (1) the intent of the offender, (2) the meaning of the act to the victim and (3) the effect of the violence on the victim - in other words, the *context* within which any given act of violence occurs. Other relevant factors include the particulars of the incident, and how much violence, coercion, or intimidation accompanied the violent event.

Much of the domestic violence you will likely encounter in your representation in contested cases is violence in the exercise of coercive control, or “battering”. Battering occurs when a party (usually male) uses violence as *one* tactic in a larger escalating pattern aimed at intimidating and controlling the victim. Threats, psychological and emotional abuse, isolation of the victim, manipulation of children, and exercise of economic control are other tactics used in a battering relationship. In a battering relationship physical or sexual violence does not need to be recent to produce victim intimidation. Just the threat of future violence is often enough for the abuser to continue to assert power and control over a victim.

Sometimes the violence has other features, motivations and implications for representation. For example, some people who use violence against an intimate partner are using it to resist being battered by their violent and dominating partners. This violence can be self-defensive, retaliatory or simply used to “stand up to” an abuser. These perpetrators are victims (usually women) who are employing a range of strategies to cope with the abuse. The strategies include mollifying the abuser, avoiding conflict, being submissive or compliant, and fighting back. While this violence may be criminal or constitute “domestic abuse” for legal purposes, it has very different implications for custody and parenting time than does “battering” violence.

There are also some people who use violence in their relationships WITHOUT a history of intimidation, threats, and coercion. In these cases, the violence does not cause fear, does not cause the victim to change her behavior in response to the threat of harm, and the violence is usually quite minor.

Most important, therefore, is to screen for battering which includes the existence of intimidation, threats and domination, along with violence which need not be recent. As one major component of this screening, you must work with your client to assess the risk of future injury or serious harm to your client or children. You must develop and utilize methods of gathering relevant information to assess the abuser’s history and dangerousness. Knowing you are dealing with a batterer will help you maximize victim safety and account for the likelihood that a batterer will violate court orders and use the legal system to continue to harass your client.

The different contexts within which domestic violence is committed (e.g. coercive controlling, responsive or resistive to being battered) call for different responses. You must ensure that (1) the relevant information is obtained on each person who uses violence in his/her relationship, (2) as appropriate, the information is provided to other professionals such as custody evaluators and the court, and (3) the information is incorporated into decisions about how the case is handled and what relief is requested.

- ✓ **Be alert for the following signs that domestic violence has occurred or is occurring:**
 - ✓ Dominating, intimidating, terrifying, rule-making, stalking, harassing and injurious behaviors; attempts to control and manipulate the actions and responses of spouses/partners and sometimes children
 - ✓ Severe, recurring or life-threatening abuse; for example, repeated bruises, broken bones, and physical attacks or threats with weapons
 - ✓ Slaps, pushes, shoves, threats, emotional and financial abuse, false imprisonment, and any other behavior used to control and coerce the other spouse/partner
 - ✓ Degrading, humiliating or belittling behavior
 - ✓ Use of the legal system to punish or harass partner/spouse
 - ✓ Attempts to control victim-lawyer appointments or communication
 - ✓ Repeated unwanted phone calls or texts to victim at work, home or cell phone
 - ✓ Isolation of victim from relatives, friends, co-workers, or neighbors
- ✓ **Look for risk factors:**
 - ✓ Client expresses concern or fear of abuser's violent behavior
 - ✓ Violence that is severe, increasingly frequent and recent
 - ✓ Client isolated, few social resources
 - ✓ Abuser carries, has access to, uses, or threatens with a weapon
 - ✓ Threats to kill the client, children or pets
 - ✓ Strangulation, attempts to "choke" the client
 - ✓ Stalking
 - ✓ Prior police intervention in one or more domestic violence calls
 - ✓ Threats of suicide by the abuser
 - ✓ Violence outside the home

Violence with a pattern of coercion is a serious marker of high risk violence. Coercion may be displayed as control of children, finances, or activities; sexual aggression; intimidation; hurting pets; or isolating the victim from support systems.

Remember: Research shows that victims' perceptions of high danger are often accurate; their perceptions of low danger are not.

Finally, remember the most dangerous time for a victim is when the abuser becomes aware that the victim has decided to leave the relationship.

Tips for the attorney:

First contact with a client:

- ✓ Block your office telephone and cell phone numbers and check periodically to insure that they remain blocked.
 - If your client's partner finds out that the client is talking to or seeing an attorney, that in itself can prove dangerous for some clients whose partners are threatened by an impending separation.
- ✓ Find out if client's partner knows s/he is seeking a separation/filing a legal action.
- ✓ Get permission to send documents and letters to the client's house.
 - Ask, "Is it safe to send things to your house"?
- ✓ Always get a safe alternate contact for the client.
 - If your client is a victim of domestic violence and you cannot reach him or her, it could be because s/he is in danger.
- ✓ If you use a written intake questionnaire, include questions about abuse, conflict and control.
- ✓ Tell the client to create a new e-mail account only for communication with the attorney and to create a password that is unlike any other password the client has previously used.
- ✓ Determine the necessity of interpreter services.
- ✓ Ensure your staff understands domestic violence and that what may seem like sound advice to a client who is not a victim of battering, may be potentially lethal to one who is (e.g. suggesting that the children be exchanged at a non-safe location).

The first interview (and on-going during the representation):

- ✓ Explain confidentiality and attorney-client privilege to the client.
 - Do not assume the client understands fully what confidentiality and attorney-client privilege really mean. Many domestic violence victims have been warned by the abuser not to disclose the abuse. The client may, therefore, believe that disclosing this information to you is putting her/him in danger. A clear understanding of confidentiality and attorney-client privilege will help the client feel more comfortable in disclosing important information.
- ✓ Have a calendar (covering the past few years) handy to use when interviewing client.
- ✓ Be comfortable with silence; listen; let your client think.
- ✓ Arrange for an interpreter, if necessary.
- ✓ Ask open ended questions.
- ✓ Look at the client; look for visual clues indicating your client is uncomfortable or may want to say more, but needs encouragement.
- ✓ Use everyday language; avoid acronyms and legal terminology.
- ✓ Check to make sure your client understands; allow and encourage the client to ask questions.
- ✓ Avoid using the label "domestic violence" with which many victims do not identify.
- ✓ Be aware that your client might think the abuse is normal; don't expect all victims to self-identify as victims.
- ✓ Understand that the client might minimize the abuse.
- ✓ Remember that domestic violence is not just physical abuse.
 - Most domestic violence victims say the emotional abuse within the context of physical violence, threats of violence and/or coercion and intimidation was much more harmful than the physical abuse.
- ✓ Do not make victim-blaming statements such as, "I'd never put up with that" or "Why did you stay in this relationship?" or "Why didn't you just leave?"
- ✓ Do make supportive statements such as, "I believe you" or "that must have been difficult for you," or "you did the best you could with the information you had at the time."

- ✓ If your client does not initially disclose domestic violence, inquire periodically about domestic violence throughout the representation; be vigilant and aware of any warning signs.
- ✓ Encourage your client to tell his/her story more than once; as the client's trust in you grows so will the client's belief that it is safe to disclose important details.
- ✓ Determine if there are any prior civil or criminal proceedings, arrests, no contact or other restraining orders.

During representation:

- ✓ Remain mindful of the recommendations above.
- ✓ Look for sudden, inexplicable changes in a client's position (e.g. willingness to enter into agreement).
- ✓ Note speech patterns and behaviors, such as one party consistently referring to "we;" a sense of ownership over the partner; one party speaking for the other; threats/fantasies of homicide/suicide; one party consistently answering first; obsession over the other partner; or insulting statements.
- ✓ Stay alert; the level and type of risk may likely change over time and as circumstances change; determining and managing risk is an ongoing process.

If the attorney has reason to believe that domestic violence is an issue:

- ✓ Let your client know that the abuse is not his/her fault and that the violence is not okay.
- ✓ Do a risk assessment (See "Suggested Screening Questions" and "The Risk Assessment Bench Guide").
- ✓ Assist your client in making an interim safety plan.
- ✓ **Encourage your client to connect with a local domestic violence program for support, safety planning and additional resources. For information about a local domestic violence program in your client's area please visit www.mcbw.org or call Day One at 866-223-1111.**

CLIENT SCREENING TO IDENTIFY DOMESTIC VIOLENCE VICTIMIZATION*

PART II. SUGGESTED SCREENING QUESTIONS

These questions should be used in conjunction with the Screening Protocol for Attorneys, Part I of this packet.

Many of these are questions already asked by attorneys as part of the interviewing process in any family court case. It is important that the attorney be listening for answers that may identify whether the client has experienced domestic violence or coercive controlling abuse. Remember that abusers may use many different tactics to coerce a partner.

This is not to be used as a questionnaire. Instead, each sample question is designed as an invitation to the client to talk about the issue raised. Note for each question what to listen for in the client's answer. Follow up questions may well be appropriate. Be careful when asking "why" questions as they may be experienced by a client as victim-blaming and may undercut your relationship with the client (e.g. "why didn't you call the police?" or "why did you stay in the relationship?").

Opening Questions:

- 1) What do you believe are the issues currently in dispute between you and [insert name]?
- 2) Who wants to end the relationship? Tell me why.
- 3) Does he/she know you are ending the relationship? What will his/her reaction be?
- 4) Would you feel comfortable in a meeting with [insert name]?

What to Listen For:

Control issues; safety of client, children, pets; focus on other party's behavior; fear of harm, risk of violence or lethality

IF CLIENT IS IN DANGER OR EXPRESSES FEAR do immediate risk assessment (see end of document).

Fear; apprehension of being in the same room.

Employment Questions:

- 1) Are you currently employed? Where, doing what, for how long, etc.
- 2) Have you ever lost a job, either by being laid off or by being fired? If yes, please tell me about how that happened.
- 3) Is [insert name] employed?

What to Listen For:

Access to money; isolation; dependency

Job interruption because of partner

Unemployment of the batterer is a lethality factor

Financial Questions:

- 1) How are decisions about money made in your relationship?
- 2) Do you know what your family's assets and debts are?
- 3) Whose name(s) is on the bank and other financial accounts?

What to Listen For:

Control of and access to resources or information about finances; control of partner through financial abuse

* These questions are focused on identifying victims of domestic violence, not necessarily perpetrators

Relationship Questions:

- 1) When you look back over time, how were decisions made in your marriage/relationship?
- 2) Do you feel you had meaningful input in how the decisions were made? Are you comfortable with that?
- 3) What happens when you speak your mind and express your point of view to [insert name]?
- 4) Do you have a say in decisions at home?
- 5) Tell me about your support system.
- 6) Tell me about what kinds of activities you engage in outside the home or your job.
- 7) Does [insert name] engage in activities outside the home or job? If yes, tell me about them.
- 8) Do you think you each trust the other to make decisions for him/herself? For the family? Please tell me more about it.
- 9) Does [insert name] ever try to control you in a way that makes you uncomfortable? (such as whom you see or talk to, how you spend money, what you wear, whether or not you work or go to school.)
- 10) What can you tell me about [insert name]'s upbringing?
- 11) Tell me about your upbringing.

Children, Custody and Parenting Time Questions:

- 1) How are the children doing?
- 2) If the parties are living separately: With whom are the children living now? How did that come about? How did that decision

What to Listen For:

Overbearing partner;
exaggerated jealousy;
possessiveness; controlling
and domination; threats;
who controls money,
decides where to live, with
whom time is spent either
together or separately.

Demeaning; minimizing;
name calling; extreme
argumentativeness;
intimidation; threats

Domination;
powerlessness; control;
coercion

Imbalance between parties;
life balance; client not
allowed to do things alone;
client isolated

Hobbies with potential for
violence directed at your
client (collecting comic
books vs. collecting knives)

Partner questions even
fairly minor decision-
making; tells client what to
do; client denied
meaningful input; one party
taking responsibility for
other party's behavior or life
decisions

Exaggerated control;
inappropriate boundaries;
jealousy; rigid gender roles

Abusive/controlling
behaviors; alcohol; drugs;
family history of abuse

What to Listen For:

Unreasonable control by
partner; fear; safety issues;
other parenting concerns

Flight risk (passports?); one

get made? How is that arrangement working?

- 3) Do any of your children have any special needs such as educational, physical or emotional needs?
- 4) Please describe the relationship between you and your children.
- 5) Please describe the relationship between the children and [insert name].
- 6) How well do you and [insert name] cooperate and communicate about your children? Describe a recent parenting conflict and how it was resolved.
- 7) Do you have any concerns about [insert name]'s parenting?
- 8) Tell me about a time when your child acted out and [insert name] disciplined the child?
- 9) Do you have any concerns about [insert name]'s methods of discipline?
- 10) Have you and [insert name] ever had any disagreements about how to parent your child? Tell me about the most recent disagreement?
- 11) Do you have any concerns about your children or for their safety?
- 12) Have you ever contacted child protection or have they ever contacted you? If yes, please tell me about it.
- 13) Do you have any pets? Do you have any concerns about [insert name]'s methods of caring for or dealing with the pets?
- 14) Has [insert name] ever refused or prevented the children from seeking medical treatment or taking medications? If yes, please tell me what happened.

party removed from home;
parenting time problems; not
seeing children; fear by
client; decision making by
intimidation

Safety; child's coping;
parenting issues

Children acting out, using
violence, acting like batterer;
withdrawn; clingy

Strained relationships;
children feel need to modify
behavior; children used
against client; rigid abusive
parenting

Unreasonable control; other
party undermining client's
parenting; who makes
decisions regarding children;
overly argumentative

Dominating, undermining
decisions, shaming

Physical discipline; rigid;
shaming/humiliation; threats;
destruction of valued
possessions; withholding of
basic needs;
exaggerated/disproportionate
discipline

Undermining of the parent

Abuse of children or children
witnessing domestic violence

Abuse of pets; threats to pets
used to abuse children or
client

Coercive Control Questions:

- 1) When you and [insert name] fight and/or are angry with each other, what happens?

What to Listen For:

Exaggerated anger;
threatening words or actions;
veiled threats to client,
family, her friends, pets;
damage to property,
prevented from leaving
house or room; restrained
client

- | | |
|--|--|
| <p>2) Does [insert name] call you names? What names? Tell me about a situation when that happened.</p> <p>3) Have you ever felt afraid of [insert name]? What are you afraid of? Why are you afraid?</p> <p>4) Please tell me about the time you were most afraid.</p> <p>5) Do you think [insert name] has ever been afraid of you? Please tell me more about it.</p> <p>6) Have you ever changed your behavior because you were afraid of the consequences of a fight? Please tell me more about it.</p> <p>7) Have you ever left the home, even if it was for a couple of hours following an argument? Tell me more about what happened.</p> <p>8) Has [insert name] ever threatened to report you to child protection? Please tell me about it.</p> <p>9) Has [insert name] ever followed you, examined your phone records, interrogated you about where you were and with whom, or otherwise monitored you? Accused you of having an affair?</p> <p>10) Do you ever have to hide things from [insert name] for fear he/she will get upset? Tell me more about that.</p> <p>11) Do you have a driver's license? Access to a car? Is that access ever limited by [insert name]? Do you have your own set of car keys?</p> <p>12) If [insert name] wanted to talk about problems at a time when you didn't want to, what would happen?</p> | <p>Humiliation; degradation; sexual degradation; intimidation</p> <p>Take seriously client's level of fear for self or others; fear of death is strong predictor; if fear seems out of proportion, ask more questions, don't dismiss it</p> <p>Balance of power in the relationship; if client has used violence, was other side fearful; existence or lack of coercive control by client</p> <p>Over-accommodating behavior that seems out of proportion to the circumstances</p> <p>Need for safety; escape abuse; ability to leave</p> <p>Coercion or entrapment by unfounded reporting; child abuse or neglect</p> <p>Stalking; jealousy</p> <p>Expression of fear; disproportionate invasion of privacy</p> <p>Isolation; control; safety (ability to flee); risk of injury; parenting risks</p> <p>Forced conversation; belligerence; use of restraints; withholding of something of value (e.g. car keys)</p> |
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Physical Violence Questions:

- 1) Has there ever been any physical confrontation between you and [insert name]? OR Does [insert name] ever get physical and push, grab or hit you? If so, when was this and what happened?
- 2) Have you or neighbors or family members ever called the police or thought of calling the police because of problems between you and [insert name]. (If no, do not ask "why" a client did not call. If yes, please tell me more about it)
- 3) Has [insert name] ever been arrested for or accused of any crime? If yes, please tell me about it.

What to Listen For:

Context of violence; frequency; degree of harm

Domestic violence related? Frequency; possible set-up by partner (trespass, OFP, child abuse); coercion

History of intervention; context of violence; frequency of incidences; understand client's efforts to stop harm; history of

- | | |
|---|---|
| 4) Have you ever been arrested for any crime? If yes, please tell me about it. Were you convicted of the crime? | compliance with court orders
DV related; violent; high risk behaviors; assaults against anyone; drugs; DWI; possible set-up by partner (trespass, OFP, child abuse); |
| 5) Have you ever seen a doctor or gone to the hospital because of being hurt by [insert name]? | Defensive; minimizing; protective of abuser |
| 6) Have either of you ever had or does either of you currently have a court order such as an order for protection (OFP), harassment restraining order (HRO) or a domestic abuse criminal no contact order (DANCO) either protecting you or against you? | Dynamics of relationship; client's efforts to stop harm |
| 7) If yes, tell me about the circumstances that led to the order. | |
| 8) If yes, has the order ever not been followed? If yes, please tell me about it. | Defiance or disregard for authority; decreasing concern for consequences; client's feelings about the violation |
| 9) If yes, was the order ever vacated or dismissed? If yes, please tell me about it. | Recanting; coercion; compliance with abusers wishes; minimization |
| 10) Do you or [insert name] own or have access to any firearms or weapons? If yes, what kinds of firearms or weapons and how many? Has [insert name] threatened you, the children or [him]self with a weapon or other object? If so, tell me what happened. | Use of or threats with gun or weapon; fear; use of household objects to create fear; do lethality risk assessment; the mere presence is a risk factor |
| 11) Has [insert name] ever forced you to do sexual things you did not want to do? | Rape; injuries; coercion; threats; forced use of pornography |
| 12) Has [insert name] ever refused or prevented you from seeking medical treatment or taking medications? If yes, please tell me what happened. | Hiding abuse; extra vulnerability of client |

Alcohol, Drugs and Mental Health Questions:

- 1) Do you or does [insert name] drink alcohol or use drugs?
- 2) Has your or [insert name]'s use of alcohol or drugs created problems for you or your children? If yes, please tell me more about your concerns.
- 3) Have you or [insert name] ever been in treatment or had treatment ordered or recommended by a professional?
- 4) What is the current status of treatment?
- 5) Is there a history of alcohol or drug abuse in either of your families? If so, please describe.
- 6) Have you or [insert name] been treated for any mental or emotional problems? (If yes, how recently? What is the current status of treatment?) Please tell me about it.

What to Listen For:

Higher level of risk (however alcohol or drugs does not cause domestic violence); self medication; coping mechanism; encouragement by other party

History of abuse

Civil commitment; context of abuse; narcissism; suicide attempts; depression;

- 7) Has [insert name] ever accused you of being mentally ill? Tell me more about that.

anxiety; PTSD

If client states s/he has PTSD, ask about underlying traumatic events/patterns of behavior. Ask follow up questions

Summary Questions:

- 1) What is the worst thing, true or untrue, your partner will say about you? Please tell me more about it.
- 2) What is your biggest fear regarding what will happen during this proceeding? Please tell me more about it.
- 3) Are you currently afraid that [insert name] will harm you? Kill you? If yes, do you believe you are in immediate danger? Please tell me more about it.

What to Listen For:

Other party takes no responsibility for actions (blaming victim); blatant lying by other party; saying client is the violent one
Imminent danger; fear of losing children; fear of use of court system by other party
Emotional and physical risk; safety issues for client and other family members; fear

Risk Assessment Questions

(Adapted from the Minnesota Domestic Violence Risk Assessment Bench Guide)

Additional questions to ask if the client discloses or you suspect domestic violence is occurring:

- 1) Has [insert name] ever used or threatened to use a **weapon** against you?
- 2) Has [insert name] ever attempted to **strangle** or choke you?
- 3) Has [insert name] ever **threatened to or tried to kill** you?
- 4) Has the physical **violence increased in frequency or severity** over the past year?
- 5) Has [insert name] **forced** you to have **sex**?
- 6) Does [insert name] try to **control** most or all of your **daily activities**?
- 7) Is [insert name] constantly or violently **jealous**?
- 8) Has [insert name] ever threatened or tried to commit **suicide**?
- 9) Do you **believe** that [insert name] will re-assault or attempt to kill you?

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk or lethality.

**American Bar Association
Commission on Domestic Violence**

Tool for Attorneys to Screen for Domestic Violence



What is Domestic Violence?

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation or emotional, sexual or economic abuse to control the other partner in the relationship. Domestic violence does not necessarily involve physical violence and it equally affects all aspects of our society, rich or poor, regardless of race, ethnicity, religion or national origin.

***“Domestic violence is
an epidemic.”***

Domestic violence is an epidemic. One out of nearly every three women will be the victim of domestic violence in her lifetime. Between three and ten million children are exposed to domestic violence every year and that exposure has a negative impact on their development. Moreover, studies indicate that forty to sixty percent of men who abuse women also abuse children.

How to Screen Your Clients for Domestic Violence – Examples and Suggestions

It is not easy to bring up these issues, but it is critically important. Think carefully about your manner of speaking and your actions before you begin to ask these questions. Incorporate questions about domestic violence in your standard intake process to minimize the stigma and encourage disclosure.

Here are some examples of questions to integrate into your standard interview for any new client:

- ☐ Has your intimate partner ever pushed, slapped, hit or hurt you in some way?
- ☐ Has your intimate partner ever hurt or threatened you?
- ☐ Has your intimate partner ever forced you to do something you did not want to do?
- ☐ Is there anything that goes on at home that makes you feel afraid?
- ☐ Does your intimate partner prevent you from eating or sleeping, or endanger your health in other ways?
- ☐ Has your intimate partner ever hurt your pets or destroyed your clothing, objects in your home, or something you especially cared about?
- ☐ Has your intimate partner taken the children without permission, threatened to never let them see you again, or otherwise harmed them?

Why Should I Screen My Clients to Determine if they are Victims of Domestic Violence?

Given the prevalence of domestic violence in our society, it is likely that some of your clients are in, or have been in, violent relationships that impact the legal advice you will provide. For example, your client may be seeking advice in a personal injury case and the prospective defendant is the perpetrator of domestic violence. Similarly, in a sexual harassment case, the harasser may have also been in a violent relationship with her and his behavior may also be a violation of an existing protection order. However, your client may not disclose this information to you because she may not think it is related to the advice sought or she is embarrassed or ashamed.

“To make sure you are ethically representing your client and to avoid malpractice...”

To ensure that you are ***ethically representing your client and to avoid malpractice***, it is critical that you learn if she is a survivor and consider how this information affects your representation. Moreover, if their safety is at risk while you are representing them, your safety may be at risk as well.

How Do I Screen My Clients to Determine if they Are Survivors of Domestic Violence?

Interview your client alone. Let your client know that you ask a series of standard questions of all of your clients when you embark on representation.

Explain why you are asking about domestic violence:

It is an epidemic.

It impacts how you provide representation.

You care and can provide referrals and support.

Include direct questions about domestic violence in your standard set of questions such as *“Do you feel safe at home?”*

What Should I Do If My Client Discloses That She is a Victim of Domestic Violence?

Let her know that your conversation with her about the violence is confidential and that it is not her fault.

You do not and should not provide her with counseling or tell her what you think she should do about the situation. Instead, provide information about resources in your community for herself and her children such as a hotline, shelter, or domestic violence legal services.

For advocacy, counseling and referrals 24 hours a day provide her information about how to contact the ***National Domestic Violence Hotline: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).***

Explain that she will reach an advocate who can talk with her about her situation, her safety, and the options available to her. All conversations with advocates at the National Hotline are strictly confidential.

What if I Suspect That My Client is a Victim of Domestic Violence but She Has Not Disclosed?

Remain supportive and let her know that if, at any time, she needs resources about domestic violence she should feel comfortable asking you. Remind her that if she is a victim, that information is important for you to know so that you may best represent her.

Should I Be Concerned for My Client's Safety and Mine If She Discloses That She Is Currently Being Threatened by Her Batterer?

The danger of violence, including the risk of death, escalates when a domestic violence survivor attempts to leave a batterer. Seeking legal assistance is a step towards independence, which threatens a batterer's sense of power and control and may lead to increased violence. If you represent a client who is planning to leave or to take any legal or financial steps to separate from a batterer, alert her to the increased likelihood of violence.

Your safety may also be at risk. Please review the Safety Checklist for Attorneys below for ways to increase your safety.

Safety Checklist For Attorneys Representing Victims of Domestic Violence

- ✓ For your safety and that of your client and your staff, safety planning is crucial. Be aware of your own safety. Most batterers seek to control their former or current partners, rather than their lawyers, and many batterers appear to be well behaved in court.
- ✓ Nevertheless, lawyers for victims of domestic violence may be threatened by batterers and their family members. Take precautions if a problem arises. Carefully review your office security procedures.
- ✓ If the batterer is representing himself and is coming to your office, do not hesitate to ask a law enforcement officer to sit outside your office or seek similar precautions. You may wish to obtain a protection order that includes the batterer staying away from you and your office.
- ✓ Instruct your staff as to how much interaction they should have with a batterer who represents himself and calls your office. All staff should be particularly careful not to reveal last names or personal contact information.
- ✓ Find out the safest way to contact your client and the names of other individuals who will know how to reach her.
- ✓ Ask for your client when you call and speak only to your client about the case. Do not leave messages with other family members or on an answering machine or voice-mail unless your client has told you this is safe.
- ✓ If questioned by family members, do not indicate that you are a lawyer; rather, give an innocuous reason for the call, such as taking a survey. **Avoid leaving your last name if you do leave a message.**

- ✓ Always ask your client first if it is safe to talk. The batterer may be present, even if the batterer no longer lives with your client. Develop a system of coded messages to signal danger or the batterer's presence, or if you should call the police.
- ✓ Block identification of your number when calling your client. ***Suggest that your client block hers.***
- ✓ Keep your client's whereabouts confidential, including during discovery.
- ✓ If your client fails to respond to your calls, make extensive (but confidential) efforts to confirm that your client is safe. If your client has decided to drop the case, try to verify that your client has not been threatened or coerced. Let your client know that she should not be embarrassed to call you in the future.
- ✓ If your client wants you to, or if it may be a life/death matter, call the police if your client is in danger, and, where possible, confirm that a non-responsive client is safe.
- ✓ Talk to your client in advance about what to do if she disappears – does she want you to try and locate her?

“...call the police if your client is in danger...”

Resources For Attorneys Screening For Domestic Violence

Check your local telephone directory or search on line for information about local resources in your community for victims of domestic violence. *These include:* The local police department, victim witness program, local domestic violence hotline, domestic violence shelter, and counseling program. Request information pamphlets and other outreach materials from these organizations. By making these materials available in your waiting room, you will increase the safety and security of your clients as well as increase the likelihood of her disclosure to you.

Each state has at least one statewide coalition on domestic violence that may be a resource such as the Maryland Network Against Domestic Violence or the Washington State Coalition Against Domestic Violence. Most state domestic violence coalition websites provide information on local programs and resources for victims of domestic violence.

Information about state coalitions and other national domestic violence organizations may be found on the website of the National Coalition Against Domestic Violence at **www.ncadv.org**.

The American Bar Association Commission on Domestic Violence provides resources for attorneys nationwide on domestic violence including, publications, a listserv, and technical assistance and training for attorneys representing victims of domestic violence. Information about these resources may be found on our website: **www.abanet.org/domviol**.

If your client requests information for her own safety planning, you may wish to provide information from one of these resources:

Women's Law Initiative, Safety Planning:
www.WomensLaw.org

For information on Technology safety, see this site of the National Network to End Domestic Violence:
www.nnedv.org

The Bureau of Justice Statistics reported that 85% of victimizations by intimate partners in 2001 were against women.

The use of gender specific language, however, should not be construed to mean that domestic violence perpetrators are all male, nor should it be construed to mean that domestic violence exists only in heterosexual relationships. The screening attorney should be sensitive that domestic violence can be present in all intimate relationships.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association except where otherwise indicated, and accordingly, should not be construed as representing the policy of the American Bar Association.

"Each state has at least one statewide coalition on domestic violence"

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