IMPORTANT:

This is a link to a simple pdf version of your Her Justice manual. Please download this document and then open it in Adobe Acrobat or Google Chrome in order to access all the features of this manual, including bookmarks and page thumbnails.

This training manual is intended for informational purposes only and to be used in consultation with a Her Justice mentor and should not be considered as a substitute for legal advice. Users should always consult with a qualified attorney regarding any specific legal questions or situations arising from their practice. The authors and publishers of this manual assume no responsibility for any errors or omissions contained herein, or for any consequences arising from its use.

Family Offense Manual 2025

HER JUSTICE

FAMILY OFFENSE MANUAL 2025

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FAMILY OFFENSE MANUAL

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SECTION 1 :

GET TO KNOW YOUR CASE & CLIENT

HER JUSTICE

SECTION 1: GET TO KNOW YOUR CASE & CLIENT

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FREQUENTLY ASKED QUESTIONS

Thank you for taking a pro bono case through Her Justice. We hope the following frequently asked questions will help guide your representation and troubleshoot some common challenges in pro bono work. Our manuals provide additional information and guidance specific to each type of case in our program. Of course, your mentor is always available to answer questions about legal strategy and client expectations as your case progresses.

1. What is my firm's relationship with Her Justice for the purpose of this matter?

Her Justice is a consultant to the firm. We provide mentoring, training, sample documents, and will also review any written materials that you produce in the case. When we put a client on our waitlist, we explain to them that they will be represented directly by a firm, and that we will act as consultants to their lawyers. We assert attorney-client privilege over our direct communications with clients and over our communications with our pro bono teams.

We recommend that you explain this relationship to your client at your initial meeting so that they can be reminded of our relationship with the firm and understand that the firm should be their main point of contact going forward. We recommend that Her Justice be described in your retainer agreement as an outside consultant with whom you may have privileged and confidential discussions and share documents and information.

2. This is my first pro bono client and I don't feel like I understand their perspective on the case. What should I do?

Our clients' culture and individual life histories influence their perspectives and priorities in making important decisions. It is possible that your client is making certain considerations in making these decisions or forming their perspective on their case that you are not aware of. This means that the perspective our client has on their case may vary significantly from you. Take this as an opportunity to explore sensitivity and cultural humility. Do not assume. Leave space for inquiry and introspection.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

3. What is required if my client and I do not speak the same languages?

We are grateful to firms that take cases for clients with limited English proficiency, who are even less likely to have access to justice than our similarly situated clients with English fluency. In working with LEP clients it is paramount that you ensure they are accurately understanding the information you are providing them with and that you are understanding the needs they are communicating to you. To do this, work with qualified interpreters. Qualified is a relative term so please consider the nature of the conversation and the language capacity of the interpreter you are working with. It is best practice to work with a qualified interpreter - any staff member that demonstrates written and spoken fluency - at your firm that can consistently interpret during all calls and communications with your client If that is not accessible to you, think creatively about the interpretation and translation services available to you. Ask your pro bono coordinator if it is possible to retain professional interpreter services, or assist you in reviewing the internal staff language capacity. For potentially non-sensitive information it may be appropriate to have a friend or family member interpret. **It is never appropriate to have a client's child interpret**. **It is never appropriate to rely on Google Translate or similar multilingual neural machines translation service.**

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

4. What special considerations are there for working with domestic violence survivors?

Approximately 80% of Her Justice clients self-identify as survivors of Intimate Partner Violence (IPV). Your representation may or may not be directly related to the abuse that they have experienced. Depending on your client's specific circumstances, there are multiple ways that your client's experiences as a survivor may impact your work together. It is best practice in the course of your representation to make your client's safety and autonomy paramount.

For more information, please see the Best Practices and Ethical Considerations, and What is Domestic Violence sections, and Appendix Resources of this manual. Consult your mentor for further guidance.

5. What special considerations are there for working with clients with physical or cognitive disabilities?

Your client may have a physical, developmental, or emotional disability. Their disability may be the result of the abuse they've experienced. Their disability may or may not be

diagnosed and may or may not be visible or obvious to you. Talk with your client about what, if any, accommodation is needed. Check in with your client periodically about what they need in order to work most effectively with you throughout your representation, e.g., instead of handing them a written paper, ask if they are comfortable reading it to themselves or if they would like you to read it out loud to them. Be mindful of potential obstacles like the accessibility of your building or public transportation to get to your office or a court building.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

6. I am having trouble getting in contact with my client. What should I do?

We emphasize to clients that your time is valuable, and that they must be responsive to their pro bono attorney's calls, and respectful of attorney time. It is important for attorneys, however, to remember that Her Justice clients typically fall within 200% of the federal poverty line (approximately $30,000 for a household of one), are juggling multiple urgent needs, and are prioritizing accordingly. For example, in light of food or housing insecurities, your client may choose to forego buying cell phone minutes in order to put food on the table. We understand how this choice may impact you and your ability to communicate with your client, however, we ask for your understanding and compassion. We encourage you to speak with your client during your initial call and establish a safe back-up contact in case this situation arises. Be creative in contacting your client and responsive to their needs. Explore alternatives like using work email, text messages, or mail.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

7. My client has been late to meetings or hasn't shown up to court or my office. What should I do?

We emphasize to clients that they should call you if they need to change or cancel their appointment, or if they are running late. It is helpful if the pro bono attorneys understand that it is not unusual for a client to have trouble keeping an appointment. Our clients are under-resourced. They may be experiencing a more pressing crisis, like an eviction, health crisis, or safety concern. It is possible that attending an appointment may require them to take time off work, pay for round-trip transportation, and coordinate childcare which they may not have the resources to do. Your client, especially at the beginning of your relationship, may feel uncomfortable or embarrassed to share why they cannot make an appointment with you. We ask for your understanding, compassion, patience, and flexibility in this matter. Please keep in mind that the handling and outcome of the case

primarily affects the client and any accommodation that can be provided is greatly appreciated.

Consider whether the firm could pay for a car service or a MetroCard for the client if transportation is a barrier to effective representation. At your first meeting with the client, ask them about their work and childcare schedules so you can select meeting dates and times that are easy to keep. For example, if your case will involve court appearances, tell the client that they should expect to meet with you or attend court during business hours, and that they will have to ask for time off from work or arrange for childcare in order to do so. Plan to meet up early on the day of a court appearance, taking into account the likelihood of the client needing extra time to get to court from home with everything they need and childcare in place. These expectations should be clear at the outset of the case so that the client can plan and does not feel surprised or overwhelmed later on. We thank you for your patience and compassion and encourage you to use your time with your client efficiently, to keep the number of meetings manageable.

For more information, please see the Best Practices and Ethical Considerations section of this manual. Consult your mentor for further guidance.

8. My client wants me to help with a new case or another issue. What should I tell them?

Remember that your firm is retained only for a specific case, and your retainer agreement should state the scope of the representation simply and specifically. For Family Court cases, we recommend that you specify the docket number for your case on the retainer, as you are not obligated to represent the client on future violation and modification petitions. While we encourage firms to assist clients if possible, with related cases, we do not recommend that the firm take on additional cases for a client without consulting with Her Justice or another legal services organization, if the new case is unrelated to family, matrimonial, or immigration work.

Be consistent with the client and maintain appropriate boundaries, remembering that you are their attorney for a discrete issue, and cannot provide social work services or unrelated legal services (for more information on these services, see Question 9, below). If the client has new legal issues, contact Her Justice for a new intake for the client. It is possible that Her Justice can provide advice or an appropriate referral. If the new issue is one that we would typically assist with, we can discuss whether the firm would like to expand its representation to include the new case (for example, the client now has an order of protection case in addition to a child support case).

9. I think my client needs to talk to a counselor or social worker. What should I do?

The litigation process can be very stressful and upsetting for clients. Many clients have underlying mental health concerns, such as depression or post-traumatic stress disorder, or would benefit from extra support in making decisions about the trajectory of their cases. Contact your mentor about connecting your client to the in-house social work program at Her Justice. If your client is a survivor of domestic violence or elder abuse, they also qualify for services at a New York City Family Justice Center (FJC). Your mentor can assist with making a referral. Many clients already have case managers assigned at their local FJC.

10. How can I get up to speed on the substantive law that affects my case?

Our manuals provide an overview of the relevant law for each type of case that we mentor. In addition, we offer live and video training on every type of case, plus some additional advanced topics such as child support enforcement and division of pensions in a litigated divorce. It is imperative that you attend or view the relevant training before you start the case so that you are competent to answer basic questions that your client will have at the first meeting. Your mentor is available to answer your substantive law questions and provide guidance on any research you need to conduct, once you have viewed the training and reviewed our manual. It is also important to remember your general obligation as an attorney to familiarize yourself with the relevant law, so be sure to review, for example, the sections of the Family Court Act, Domestic Relations Law, Civil Practice Law and Rules, or applicable immigration laws you will be relying upon in your case.

11. I have a trial coming up in the Family or Supreme Court and I don't know where to begin. What should I do?

Getting courtroom experience as the lead attorney is one reason that pro bono attorneys, and leadership at their firms, seek out our cases. Our staff attorneys have personally litigated many cases, but we are primarily your consultants on substantive law, client management, and case strategy, rather than trial advocacy skills. For general litigation practice skills (for example, understanding hearsay, entering exhibits into evidence, and conducting cross examination), remember that your firm's litigation department has in-house expertise and resources in addition to the knowledge we can provide.

12. I am going on secondment, parental or other extended leave, or leaving the firm—what happens to my client? Can Her Justice take the case back?

The client has retained your firm, not any individual attorney, for pro bono representation. Her Justice is a pro-bono-first organization. With a relatively small staff of attorneys, we are able to mentor thousands of cases a year because the firms represent the clients directly, aided by our training and mentoring. Because of this leverage model, usually it is not possible for Her Justice to take the case back. Although it is possible to take on a client as

an attorney working alone, it is best if the client has two associates in addition to a supervising partner. This will allow each attorney to accommodate very busy times for billable work and allows for seamless transition of cases in the event that an attorney leaves the firm for any reason. If you are leaving, it is imperative that you find a replacement attorney at the firm before you go. The client should meet their new attorney with you, ideally in person, before you leave, and the new attorney should take possession of all files and materials. Contact Her Justice right away if you are leaving the firm for any significant period of time. Ultimately, when a pro bono attorney is no longer available to the client, it is the responsibility of the firm to re-staff the case. If your firm has taken an uncontested divorce that has become contested, and the firm has a policy against pro-bono contested matrimonial work, speak with your mentor immediately about your options.

BEST PRACTICES AND ETHICAL CONSIDERATIONS

Thank you so much for your time, effort and energy in providing pro bono legal representation to our clients. This document is meant to provide some useful framing of the unique experiences and needs of our clients as well as some best practices and ethical considerations to guide you in your practice.

POVERTY IS A RACE AND GENDER EQUITY ISSUE

The impacts of poverty are felt disproportionately amongst communities of color and communities with Limited English Proficiency (LEP) in New York City and New York State. A comprehensive study of poverty in New York City by the Poverty Tracker Research Group at Columbia University (2021) found that, before the pandemic, nearly one in five adults (or 1.2 million people) in New York City lived in poverty and more than 350,000 children (one in five) live in poverty[1]. Research from the New York State Comptroller shows that one quarter of New York's foreign born population lived below the poverty level in 2021 compared to 15% nationwide[2]. Further, a study by the Poverty Tracker Research Group at Columbia found that every year, from 2016 to 2019, Black and Latino New Yorkers were **twice** as likely as white New Yorkers to experience poverty; 22% of Black New Yorkers, 25% of Latino New Yorkers, 21% Asian New Yorkers lived in poverty from 2016 to 2019 compared to 12% of white New Yorkers.[3] Further, due to structural racism and discrimination, "roughly 40% of Black New Yorkers and 30% of Latino New Yorkers who exited poverty were pushed back below the poverty threshold just a year later"[4]. According to researchers at the Poverty Tracker Research Group at Columbia, "the interaction between racism, discrimination, and economic inequality leaves Black and Latino New Yorkers significantly more likely to endure material hardship than white New Yorkers[5]."

[1] Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.
[2] New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli
[3] Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.
[4] Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.
[5] Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.

People of marginalized gender identity, referring to women and individuals who identify outside of the gender binary[6], in New York City were more likely to experience all forms of disadvantage than cisgender[7] men[8]. In fact, families with female heads of household experience poverty at more than two times the rate of all families and four times the rate of married couples.[9] A study conducted by Legal Services NYC (2016) found that Black Americans in same sex couples have poverty rates at least twice of those of different sex couples and Black people in same-sex couples are more than six times as likely to be impoverished than White men in same-sex couples[10]. This same study found that transgender Americans are nearly four times more likely to have a household income under $10,000 per year than the population as a whole (15% vs. 4%)[11].

HER JUSTICE CLIENT POPULATION

Her Justice serves low-income folks of marginalized gender identities who reside in the 5 boroughs of New York with legal issues in the areas of family, matrimonial, and immigration law. Our clients' annual incomes are at or under 200% below the Federal Poverty Level (FPL), which was approximately $30,000 for a single person and approximately $62,000 for a family of 4 in 2023. Poverty is "when an individual or household does not have the financial resources to meet basic needs such as food, clothing, and shelter, or alternatively, access to a minimum standard of living".[12] Our clients are 92% women of color, 83% self-identify as survivors of intimate partner violence, and 48% have Limited English Proficiency (LEP) and would need an interpreter to effectively engage in court proceedings[13].

[6] The gender binary refers to the idea that there are only two genders
[7] Cisgender refers to someone whose gender identity is the same as the sex they were assigned at birth
[8] Poverty Tracker Research Group at Columbia University. (2021). The State of Poverty and Disadvantage in New York City. Volume 3.
[9] New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli
[10] Legal Services NYC. (2016). Poverty is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People. Legal Services NYC.
[11] Legal Services NYC. (2016). Poverty is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People. Legal Services NYC.
[12] New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade (2022) New York State Comptroller Thomas P. DiNapoli
[13] Her Justice Annual Report FY 2022

Her Justice is a pro bono first organization which means we employ a small highly-skilled staff of attorneys that use their skills and expertise to educate and mentor pro bono attorneys, like yourself, on how to effectively serve and represent our client population. In FY 2022, our model allowed us to leverage the skills and expertise of our 14 in-house attorneys to mentor 2,162 pro bono volunteer attorneys who served 5,313 women children, donating 46,092 hours of their time and energy amounting to a value of $35,958,719 in legal services[14].

BEST PRACTICES

Differences in Perspective – Cultural Humility

Her Justice clients come from diverse backgrounds. Our clients' culture and individual life histories influence their perspectives and priorities in making important decisions. It is possible that your client is making certain considerations in making these decisions or forming their perspective on their case that you are not aware of. This means that the perspective your client has on their case may vary significantly from yours. Take this as an opportunity to explore sensitivity and cultural humility.

The term cultural humility was coined by doctors Melanie Tervalon and Jann Murray-Garcia in 1998 and describes "a lifelong commitment to self-evaluation and self-critique, to redressing of power imbalances in the patient-physician dynamic, and to developing the mutually beneficial and non-paternalistic clinical and advocacy partnerships with communities"[15]. Similar to medical professionals, a power imbalance exists between legal professionals and the people they serve. We acknowledge and are grateful for your professional expertise; however, in challenging this power imbalance, it is important to recognize the client as the expert regarding their life experience and the needs of their

[14] Her Justice Annual Report FY 2022
[15] Tervalon, M. & Murray-Garcia, J. (1998). Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education. Journal of Health Care for the Poor and Underserved. Vol 9.2. pp 117-125

family. Remember "client-centered lawyering prioritizes the client, the client's understanding of the problem, and achievement of the client's goals in the way the client deems best"[16]. Empower your client to make informed decisions by explaining the law, legal processes and possible outcomes. Don't assume things and be sure to leave space for inquiry and introspection.

Respect, Empathy & Trust

Many of our clients are survivors of various forms of victimization frequently related to their gender identity, race, ethnicity, sexual orientation, class, English language proficiency, and/or immigration status. They may have experienced further victimization in attempting to access help from agencies or individuals that did not give them the space to be understood. These experiences may cause them to feel hesitant, unsafe, or distrustful. It is important to prioritize building trust in your attorney-client relationship by approaching your client with respect, empathy, patience, and transparency.

Some suggestions for establishing a good relationship with your client are:

- Be prepared to listen. Do not be in a hurry to give advice without the complete picture
- Validate their experience and believe what they tell you unless there is clear evidence of the contrary
- Be mindful of your asks of the client. Keep in mind the other conflicting demands in their life and any existing restrictions on time or money and be as accommodating as possible
- Be realistic in your deliverables to your client and set clear boundaries
- Confirm with the client that you understand them, and they are understanding you
- Be patient in repeating information and be willing to rephrase information to improve understanding
- Listen carefully and encourage questioning
- Be responsive to the needs your client raises with you. If their need falls outside of the scope of your representation, speak with your mentor for appropriate referrals
- Empower the client's informed decision making and respect the decisions they've made

Considerations for LGBTQ+ Clients

[16] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

LBGTQ+ clients are often among the most marginalized communities served by Her Justice[17]. In working with LGBTQ+ clients it is important to not assume their gender identity or sexual orientation. In your initial conversation with your client introduce yourself by your name and gender pronouns. Ask your client their name and if they feel comfortable sharing their gender pronouns with you. Understand that your client may not feel comfortable sharing their gender pronouns with you initially. If they do not share their gender pronouns with you, please refer to the client by name or using gender neutral pronouns (they/them/theirs). If you make a mistake in your client's gender pronouns, acknowledge the mistake and move on.

Mirror the language the client uses in referring to their gender identity and sexual orientation. Always refer to your client with the name the client gave you. Referring to a client by a name they no longer use is called "deadnaming" and is very traumatizing as it negates your client's identity[18]. If you make a mistake in referring to your client by the wrong name, acknowledge the mistake and move on.

Lastly, be an ally and advocate for your client. According to a Lamba Legal survey of 2,376 LGBTQ+ people, 19% of the survey respondents who had appeared in a court at any time in the past five years had heard a judge, attorney, or other court employee make negative comments about their sexual orientation, gender identity, or gender expression[19]. To the extent the client is comfortable, attempt to address bias in the courtroom and always respect the name, gender, and pronouns they identify with.

Considerations for Clients with Disabilities

Your client may have a physical, developmental, or emotional disability. Their disability may be the result of the abuse they've experienced. Their disability may or may not be diagnosed, and may or may not be visible or obvious to you. Talk with your client about what, if any, accommodations are needed. Be mindful of the accessibility of your building. Be patient with needing to repeat and rephrase information for your client. If you need additional resources to accommodate your client, speak to your Her Justice mentor.

Communication

Be thoughtful about the communication needs of your client. Frequently, our clients do not have experience with the legal system and may be unfamiliar with many of the terms

[17] Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.
[18] Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.
[19] as cited in Meyer, E. (2021). Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients. Proskauer for Good. Proskauer.

commonly used in the court room or legal discourse. Due to circumstance, their formal education may be limited, and they may have a low level of literacy. Be mindful of the needs of your client. Ensure they are able to understand all materials presented to them to the fullest capacity. Always check for comprehension.

For limited English proficiency clients, please review the "Limited English Proficiency (LEP) Clients" on this document.

Scheduling

Before making your first phone call with your client, review the information we provided you with to ensure it is safe to call the client at the time you are calling and that it is safe to leave a voicemail. Remember that many of our clients self-identify as survivors of intimate partner violence and may still be residing with the opposing party.

In your initial conversation with your client establish what methods and times are best for you to contact your client. Keep in mind that our clients are low income and may not have sufficient resources to maintain a phone plan or continuously purchase more minutes for their phone. If possible, ask if there is a trusted friend or family member whose phone you can contact if you experience difficulty in contacting your client.

In making appointments, especially in person, be mindful of time and economic restrictions your client may be experiencing. Take into account their work and child care schedules in making these appointments. Be mindful of any safety concerns your client may have in terms of what times are most appropriate in scheduling appointments. Consider whether the firm can pay for a car service or a MetroCard for the client if transportation is a barrier to effective representation.

When scheduling in person appointments with your client, consider the security requirements to enter the building. Many law offices require guests to present a valid form of identification and intense security checks to enter. This can be extremely anxiety inducing for undocumented clients that may not have a valid form of ID, LGBTQ+ clients that may not have a valid form of ID that reflects their gender identity, and clients with limited English proficiency. Some clients have difficulty navigating large office buildings and may not know where to enter, which elevator to use, or which security desk to go to.It is a best practice to meet your client in the lobby of your building and escort them to the meeting room or your office.

Missed Appointments

We emphasize to our clients that they should call you in advance if they need to change or cancel their appointment or are running late. However, it is not unusual for clients to have trouble keeping appointments. Our clients are under-resourced. They may be experiencing

a more pressing crisis, like an eviction, health crisis, or safety concern. Or attending the appointment may require them to take time off work, pay for round-trip transportation, and coordinate childcare which they may not have the resources to do. Your client, especially at the beginning of your relationship, may feel uncomfortable or embarrassed to share why they cannot make an appointment with you. We ask for your understanding, compassion, patience, and flexibility in this matter. Please keep in mind that the handling and outcome of the case primarily affects the client and any accommodation that can be provided is greatly appreciated.

Responsiveness

Our clients typically have incomes below 200% of the federal poverty line, which was approximately $30,000 for a single person and approximately $62,000 for a family of 4 in 2024, and are typically juggling multiple urgent needs. Many of our clients do not have a phone plan and instead purchase minutes on a pre-paid phone. However, in light of food or housing insecurities, your client may choose to go without minutes to put food on the table. We understand how this choice may impact you and your ability to communicate with your client, however, we ask for your understanding and compassion. We encourage you to speak with your client during your initial call and establish a safe back-up contact in case this situation arises. Be creative in contacting your client and responsive to their needs. Explore alternatives like using work email, text messages, or mail.

Interacting with the legal system is inherently traumatizing and anxiety-inducing for many of our clients. Remember that for many of our clients the legal system is unfamiliar. This is not their area of expertise and they know they need to rely on your knowledge and support to successfully navigate their case. Be patient when fielding phone calls and questions from your client. Be transparent about your capacity and set clear boundaries with your client. For example, if you are receiving multiple calls a week from a client asking for case updates, call them back and schedule a regular check-in meeting with them that fits with your work schedule to go over any questions they have and provide any case updates. This will help ease the clients' anxiety as they know a schedule to expect regular communication from you on their case.

Interviewing

Clients are often sharing sensitive personal information with you that can be difficult to share. It is imperative to build trust in your attorney-client relationship. Remind your client that the information they share with you is confidential. When asking questions about sensitive information make sure your questioning is grounded in what is needed for the case. It may be helpful to provide the client with some additional framing when asking questions as to why the information is needed and what it will be used for. For example,

- when asking questions regarding sensitive information we suggest this framing: "I am going to ask you some questions to better understand your case and how I can help. Please be as forthcoming as possible so I can provide you with the best assistance possible. Some of these questions may ask you about sensitive or private information. I want to assure you that everything you share with me is confidential, I will not share what you tell me here without your permission. Before we begin, I just want to emphasize that you do not have to share anything with me that you do not feel comfortable sharing. Please let me know if you would like to take a break or stop at any point during our interview."

At the end of the interview thank the client for sharing this information with you. It was likely not easy for them to share that level of vulnerability with you. Reground them in what this information will be used for and provide them with any next steps.

Limited English Proficiency (LEP) Clients

As stated previously, our clients come from diverse backgrounds and speak a multitude of languages. In 2022, 6 million people in New York spoke a language other than English; of that, 2.5 million speak English less well and would be considered Limited English Proficient or LEP.[20] LEPs in New York City speak 151 different languages[21]. New York City has acknowledged the need for greater language access through NYC Local Law No. 33 (LL 30) that requires covered agencies to translate commonly distributed documents into 10 designated languages and provide telephonic interpretation in at least 100 languages[22]. However, LL 30, for the most part, does not apply to most legal organizations including legal nonprofits. This means that there is a huge gap in the legal services available for LEPs. Even in our own work we see cases for LEPs take much longer to receive services than similarly situated English speaking cases.

We greatly appreciate your effort if you are handling a case for an LEP client. In working with LEP clients it is paramount that you ensure they are accurately understanding the information you are providing them with and that you are understanding the needs they are communicating to you. To do this, work with qualified interpreters. Qualified is a relative term so please consider the nature of the conversation and the language capacity of the interpreter you are working with. It is best practice to use an in-house qualified interpreter to work with your client for the duration of the case. If that is not accessible to you, think creatively about the interpretation and translation services available to you. See if it is possible to retain professional interpreter services or review the internal staff language capacity. For potentially non-sensitive information it may be appropriate to have a friend or family member interpret. **It is <u>never</u> appropriate to have a client's child interpret**. **It is never appropriate to rely on Google Translate or similar multilingual**

[20] VOLS. (2022). Language Access in Pro Bono Practice.
[21] VOLS. (2022). Language Access in Pro Bono Practice.
[22] VOLS. (2022). Language Access in Pro Bono Practice.

neural machines translation service. The Spanish Group, an internationally recognized certified translation service list 5 reasons why you should not use Google Translate or a similar software for translations:

- Translation apps translate the text literally. Think about the number of times you speak in expressions in English. For example, the phrase "break a leg" is an expression of good luck, however, if translated literally it gives the impression that you are wishing that someone would break their leg.
- Many of these translation apps are not updated or operated by professional translators
- The translator apps do not account for the regional dialect your client may speak.
- Using a translator app frequently requires proofreading by someone fluent in the language to ensure the grammar and language choices match with the idea being expressed.
- Using a translator app for translating sensitive information is unsafe as the information may be compromised during a data breach[23]

Here are some other best practices in working with interpreters:

- Always brief the interpreter on the nature of the call before starting the meeting with client
- Consult the interpreter regarding whether a legal interpreter is more appropriate for the call
- Speak to the client directly, do not address your comments to the interpreter
- Ask the interpreter to confirm the client can understand them
- Ask the client to ensure they understand you

Managing Your Case

Even if there are no updates in your case for the client, continue to regularly check in with them. Remember our clients are facing many complex issues and conflicting demands. Without regular check-ins you may miss vital information about your client's living situation, access to phone and internet services, and safety.

Be affirmative in asking questions to your mentor and informing them of any case updates. It is your responsibility to inform your mentor in a timely fashion when documents are due to be filed in court or immigration authorities, when court dates are scheduled, and when final orders or judgements are received. Without this information we are unable to accurately report on our cases and are unable to monitor the needs of our clients.

[23] The Spanish Group. (2020). 5 Reasons why not to Use Google Translate for Business Purposes. The Spanish Group. https://thespanishgroup.org/blog/top-5-reasons-not-use-google-translate-business-purposes/

Change in Notary Requirements

On January 1, 2024 CPLR 2106 was substantially amended to allow ANY person to submit an affirmation instead of an affidavit, with essentially the same force and effect. Now, in civil proceedings, any Pro Se litigant can swear to the truth of something without the requirement of a notary.

However, we believe it is best practice to continue notarizing all documents that have previously required a notary signature. This limits liability, claims of malfeasance or fraud, and takes very little additional effort. The samples herein include the notary language.

In the event you or your firm choose to submit documents that do not require notarization without a notary signature, you can find the "non-notary" language in the courts' sample forms, located here: https://ww2.nycourts.gov/forms/familycourt/custodyvisitation.shtml

INTRODUCTION AND GUIDELINES FOR REPRESENTING SURVIVORS OF DOMESTIC VIOLENCE

This manual is intended to serve as an introduction to pro bono attorneys and summer associates who will be appearing in one of the five New York County Family or Supreme Courts for the purpose of representing a client who has identified themself to Her Justice as a survivor of domestic violence. This manual will provide the pro bono attorney with general guidelines in the handling of a Family Offense Petition - the pleading filed by the survivor of domestic violence seeking an order of protection.

Each pro bono associate or pro bono team will be assigned a mentor from Her Justice to monitor the assigned case. No matter how many cases you may have handled in the past, it is suggested that you seek guidance from your mentor as your case progresses and at various intervals throughout the case as well as in advance of your court appearances or in event something unexpected arises. Your mentor will be available to provide you with insight on court processes and appropriate strategies that you may consider employing depending on the factors in your client's case. Your law firm is the Attorney of Record and will be appearing in Court as the client's representative for the duration of the specific case for which she signed a retainer. You will be required to file a Notice of Appearance at or before appearing in Court.

Her Justice mentors do not attend Court with you, although the attorney-client privilege does extend to Her Justice mentors and other legal staff while the case is active. From time to time, you may hear from other Her Justice staff on non-privileged client related matters. Any and all information that your client reveals to you is privileged and confidential. Privilege extends to interpreters if you are working with one. Take care not to reveal any client confidences or inadvertently discuss details which would reveal the identity of your client or betray confidences.

Throughout this manual, you will be guided on the various aspects of a Family Offense proceeding. We suggest that you read the manual thoroughly and apply the relevant sections based on the factors involved in your client's case. Please note, you will not likely be representing the client from the initial filing of their case, but rather somewhere along the spectrum of their first or second appearance up through trial if one takes place. You will notice that some sections in the manual cover similar topics, however, we err on the side of giving you more information than less and that users of this manual as a desk reference will have the broadest information to guide you in addition to any supplementary sources from your own library and relevant case law that you research.

WHAT IS DOMESTIC VIOLENCE?

The United Nations defines domestic abuse or domestic violence as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner, child, relative, or any other household member[1]. The epidemic of domestic violence involves physical acts of violence, emotional, psychological, verbal, sexual, legal and financial abuse against an intimate partner or family member[2]. This includes any behaviors that "frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone"[3]. Fundamentally, domestic violence is "a pattern of coercive behavior or tactics that is culturally learned and socially condoned"[4].

> **Domestic violence can impact anyone of any race, age, sexual orientation, gender identity, nationality, religion, socioeconomic background, immigration status, language of fluency, or education level**[5].

Although many domestic violence cases involve individuals in a romantic relationship (typically referred to as intimate partner violence), this may not always be the case. The individuals involved may be dating, cohabitating, married, divorced, separated, and/or have a child in common. Domestic violence can present and be interpreted differently depending on the surrounding cultural and social context of the individuals involved. However, a consistent theme is use of power and control to victimize the other party.

EXAMPLES OF ABUSIVE BEHAVIORS

Physical Abuse

This form of abuse includes acts like spitting, scratching, biting, grabbing, shaking, shoving, pushing, restraining, throwing, twisting, slapping, punching, choking, burning, forcing sexual contact, forcing alcohol and/or drug use, and other acts that inhibit physical well-being. Food and medication may be withheld and access to medical attention or police services may be prevented. They may be kidnapped or confined in an enclosed space

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[1] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse
[2] Breger, M. L., Kennedy, D.A., Zuccardy J.M., & Hon. Elkins, L.H. (2022). New York Law of Domestic Violence. Chapter 1. Domestic Violence Defined.
[3] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse
[4] New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.
[5] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse

or abandoned in an unfamiliar place. Physical abuse may or may not cause visible physical injuries[6].

Sexual Abuse

This form of abuse includes pressured sex when that is not consensual, coerced sex by manipulation or threat, physically forced sex, sexual assault accompanied by violence, or other acts the right to freely and safely express their sexuality[7].

Emotional Abuse

This form of abuse includes acts and behaviors like undermining a person's self-worth though constant criticism; belittle one's abilities; name-calling or other verbal abuse; damaging a partner's relationship with their children; and isolating a partner from friends and family[8].

Psychological Abuse

This form of abuse involves acts or behaviors causing fear or intimidation; threatening physical harm to self, a partner, or child(ren); attacking a partner's property, pets, or others acts of intimidation; and forcing isolation for anyone outside of the relationship or domestic violence situation[9].

Financial or Economic Abuse

Economic abuse occurs when control is invoked over the ability to acquire, use and maintain financial resources, such as transportation, food, clothing, shelter, insurance, credit, and money. This form of abuse involves making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, committing identity theft by opening fraudulent accounts or credit lines in their name, placing sole financial responsibility for supporting their household, and/or forbidding attendance at school or employment[10].

Cyber Abuse

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[6] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.
[7] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.
[8] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.
[9] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.
[10] United Nations (2023) "What is Domestic Abuse? United Nations. https://www.un.org/en/coronavirus/what-is-domestic-abuse & New York State Coalition Against Domestic Violence (NYSCADV). (2011). Domestic Violence Handbook. NYSCADV.

This form of abuse includes hacking, installation of spyware, cyber stalking, spoofing, identity theft, impersonation (including deep fakes), sexual extortion (colloquially known as sextortion), and the nonconsensual distribution or threat of distribution of sexually explicit images and videos[11].

Abuse of Process

This form of abuse involves misusing and manipulating legal and social processes to weaponize them against the victimized person. This includes acts like making false reports of abuse, substance abuse, or child neglect to police or ACS, filing frivolous or fraudulent immigration or court proceedings, filing retaliatory orders of protection, intentionally delaying court or immigration proceedings, misleading or lying about their legal rights and options, threats of deportation, threats to withdraw or refusal to continue support in immigration applications, stealing newly received immigration benefits or identification – like employment authorization documents, A numbers, and social security numbers – to commit identity theft, etc.

POWER AND CONTROL WHEEL

Below is the original power and control wheel. Since its creation, subsequent power and control wheels have been developed to explore specific accepts of abuse in relation to a person's identity. It describes the tactics a responsible party may use to maintain control over the person they are victimizing[12]. This wheel is not comprehensive but provides helpful framing to understand the aspects of victimization someone may be experiencing. *Other versions of the power and control wheel specific to victimization experienced immigrants and people with a disability can be found in the Appendix section of this manual*

[11] New York Cyber Sexual Abuse Task Force. About Cyber Sexual Abuse. New York Cyber Sexual Abuse Task Force. https://cyberabuse.nyc/

[12] National Domestic Violence Hotline. (2023). Power and Control Break Free from Abuse. National Domestic Violence Hotline. https://www.thehotline.org/identify-abuse/power-and-control/

[13]

"WHY DO THEY STAY?" The Stages of Change Model

Domestic violence is a complex and multi-dimensional issue that's presentation and impact cannot be generalized. Each person processes the complexities of their relationship and their trauma from the abuse they experienced differently. This process is uniquely personal to them and often not a linear process[14]. The psychology field has developed a tool for understanding the complex needs and actions of domestic violence survivors[15]. It describes the process survivors go through when they seek to end the violence and abuse they experienced. The model includes five distinct stages:

(1) *Pre-contemplation*

a. In this stage the person experiencing the abuse is not aware of the extent of the problem and minimizes or denies the abuse. At this point they likely have no intention to change or leave the situation. They may feel responsible for

[13] Copyright by the Domestic Abuse Intervention Project, 202 East Superior Street, Duluth, MN, 55802 218-722-2781
[14] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[15] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

the abuse they are suffering and may be modifying their actions to avoid further abuse[16].

(2) Contemplation

a. Usually in this stage the abuse has increased in its severity. The survivor begins to consider the possibility of changing their current situation and may begin building social, emotional, and financial support. They may make an initial attempt to leave. However, the survivor may express ambivalence and fluctuate between feeling troubled and unconcerned as they consider whether the situation can continue unchanged[17].

(3) Preparation

a. In this stage the survivor beings to understand the abuse they experienced differently. They become more aware of the abuse they are experiencing and attempt to determine the best course of action and develop a plan to carry it out. In this stage the survivor may set aside money; call an abuse hotline; gather information about resources, services, and legal options for survivors of domestic violence; and reconnect with people they were isolated from[18].

(4) Action

a. In this stage the survivor begins to carry out strategies to protect themselves and their children from future violence by taking actions such as going into shelter, seeking a protection order, or having others intervene in the abuse[19].

(5) Maintenance

a. This stage involves a continuation of actions by the survivor that are needed to maintain the change. These actions may involve safety planning, seeking mental health counseling, and rebuilding financial health[20].

This model is cyclical and nonlinear. In fact, it is common for survivors to fluctuate between stages as they move towards maintenance[21]. Again, a survivor's process of leaving a domestic violence situation and healing from the trauma they experienced is specific and personal to them.

OTHER MODELS AND THEIR LIMITATIONS

Two of the most common models used to understand the intricacies of domestic violence are the Battered Woman Syndrome and the Cycle of Violence. The Batter Woman Syndrome and Cycle of Violence models were developed by Lenore Walker in her 1979 book *The Battered Woman* and further developed in her 1984 book *The Battered Woman Syndrome*[22]. The Cycle of Violence describes the cyclical nature of abuse in intimate partner

[16] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[17] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[18] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[19] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[20] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[21] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[22] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

violence. The cycle starts with building tension, acute abuse, and a honeymoon phase or a loving repentant period[23]. Walker defines battered woman syndrome as "a cluster of psychological and behavioral characteristics that abused women develop as a result of how they perceive their batterer's violence"[24]. Walker posits that abused women developed "learned helpless" as a result of the "cycle of violence"[25]. Meaning that the continued and repeated abuse and control will cause the abused women to enter "psychological paralysis" and stop trying to leave the abusive situation[26]. According to Walker, "Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, 'helpless'"[27].

This model conflates domestic violence with intimate partner violence (IPV), imposes a heteronormative cisgender understanding of IPV that positions the cisgender woman as victim and the cisgender man as abuser, disempowers the survivor, and implies the survivor is complicit in the continuation of abuse. In addition, these models are not created to understand domestic violence and intimate partner violence from the perspective of the person being victimized. It instead gives justification to view people who remain in abusive relationships as lost causes.

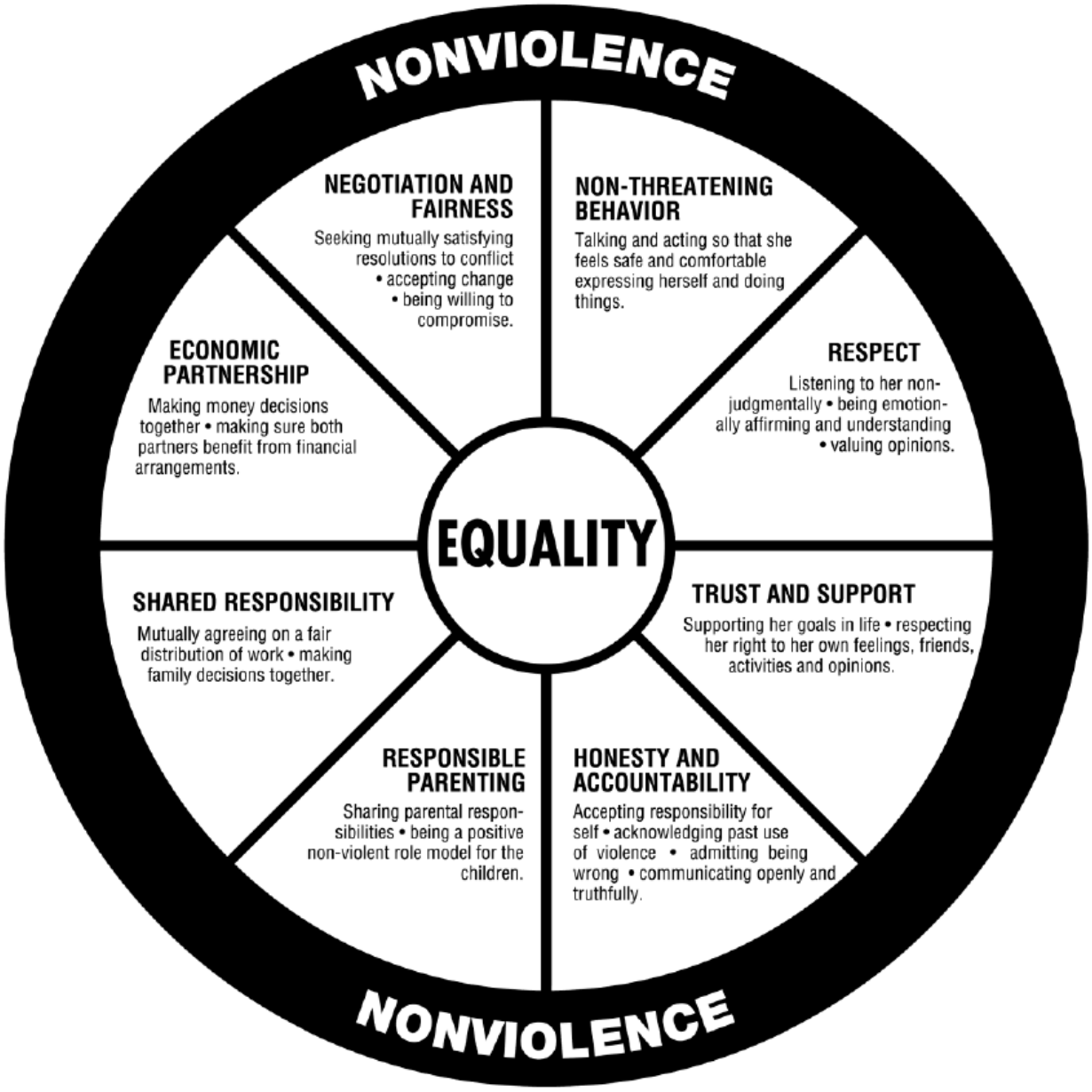
[23] Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[24] as cited in Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[25] as cited in Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[26] as cited in Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.
[27] as cited in Stoever, J. K. (2013). Transforming Domestic Violence Representation. Kentucky Law Journal. Vol. 101.3. Art. 3.

POWER AND CONTROL WHEEL

DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

NON-VIOLENCE EQUALITY WHEEL



DOMESTIC ABUSE INTERVENTION PROJECT
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REPRESENTING SURVIVORS OF DOMESTIC VIOLENCE IN FAMILY OFFENSE PROCEEDINGS: AN OVERVIEW AND PRACTICE GUIDE

By Jill M. Zuccardy, Esq., with edits by Her Justice

INTERVIEWING TIPS

As an advocate for a survivor of domestic violence, you should try to make her feel as comfortable as possible and that she can trust you. Your first interview with her is crucial because if she feels you are not trustworthy or that you are judgmental of her situation and choices, she will not be forthcoming, and you will not be able to provide effective representation. Since she is trying to separate from a relationship in which her trust was betrayed, it might be difficult for your client to trust you immediately.

Often the memory of a survivor of domestic violence will be sharpest at the first meeting with you, so you need to listen carefully and record the information she relates. At the same time, never insist she speak about something she does not want to share with you. As you build up her trust in you over the course of several interviews or conversations, she will feel more comfortable about sharing personal information with you.

Remember that this may be your client's first experience with the legal system, or she may have had prior bad experiences with the legal system. The emotional trauma related to the abuse is likely to be compounded by her fear, intimidation, and confusion about the legal situation she faces.

Some suggestions for establishing a good relationship with your client include:

- Be prepared to listen. Do not be in a hurry to give advice and do not lecture.
- Reassure her that what she tells you will be kept confidential.
- Explain her legal alternatives and the likely outcomes but let her make the final decision about how she wants to proceed, even if you disagree with her choice. Let her know this is her right and that she has the ability to make the decision herself.
- Listen carefully to her responses and questions. Help her organize the issues/problems she faces, which she might see as insurmountable.
- Clarify information by restating what she has said and by asking her leading questions.
- If you do not understand what she is telling you, let her know.
- Validate her experience and believe what she tells you unless there is specific and concrete evidence to the contrary. If the abuser alleges that she did something wrong, be careful not to ask her about his allegations in a way that makes it sound like you believe him or doubt her. She is accustomed to people taking his word over hers, which may be why she stayed in the relationship. Rather, inform her of what the abuser said about her in a way that reassures her that you do not believe him or

that you want to hear her side of the story. For example, explain to her that you need to discuss his statements against her so that you might respond to them together in court.

- Advocate for her safety and help her expand her options. Engage in safety planning with her, as detailed at the start of this manual.

Some things to avoid:

- Try not to encourage dependency on you. Clients often think their attorneys will micromanage their lives. Remind her that she has ultimate power over her life, and you are there to serve as her advocate, not to rescue her. Involve her actively in her case. For example, she can help collect evidence such as prior police reports and prior court orders.
- Try not to be judgmental, blame or criticize. Avoid phrases such as "you are not thinking straight." Remember the pressures and stresses she faces. Support her informed decisions, even if they are not the ones you would make.
- Avoid ordering or commanding her. Stay away from language such as "you must" or "you have to." Such language will just frighten her and create resentment towards you. This can lead to a breakdown in communication.
- Do not threaten or lecture your client. Stay away from phrases such as "you had better" and "if you don't, then" and "that's not right because." Remind yourself that she knows her situation best and what outcomes she can tolerate.
- Avoid psychoanalyzing your client. Though it is supportive and appropriate to give her information about domestic violence support groups and even to encourage her to seek support, make sure you do it in a way that does not make her feel you think she has a mental illness.
- Try not to moralize or preach. Never tell her "You have a duty to protect your children." Instead, say something such as, "I am afraid for your safety and that of your children."

SAFETY PLANNING

It is important to understand that an Order of Protection does not guarantee a woman's safety and often will serve to further enrage an abuser. A woman is often in the greatest danger when she leaves a violent relationship or attempts to seek legal protection for herself. Many women who leave or take action against their abusers are stalked, harassed, attacked, and even killed by their abusers. Any woman who petitions for an Order of Protection should be especially conscious of her safety and plan accordingly before filing her petition.

Safety planning involves assessing the risk an abuser poses to a woman and her children and creating a practical plan to keep her and her children as safe as possible. It is likely that the woman has already engaged in safety planning in the past. Therefore, she can be encouraged to build on what she has already been doing to stay safe.

Safety planning is an ongoing process, which needs to be revisited as new decisions are made and changes occur in a client's circumstances. Safety planning should be done individually with a client, considering her needs, circumstances, and realistic choices and with an understanding of her strengths and her current risks.

Attorneys should discuss the basic need for safety planning with their clients. There are several simple things that attorneys can and should discuss with their clients. Our suggestions are outlined below.

If your client is in immediate danger, have her call 911.

If your client is in crisis and needs help with safety planning, she can call **NYC Domestic**

Violence Hotline: 1-800-621-HOPE (4673) or visit a **Family Justice Center** (one is located in each borough).

For additional assistance with safety planning, pro bono attorneys are encouraged to contact their Her Justice mentors to discuss referring their clients to appropriate counseling or social services, including the social workers Her Justice has on staff.

Although it is advisable for your client to develop a complete safety plan with an experienced domestic violence social worker or advocate, you, as her lawyer, can best support her if you are aware of the many decisions your client will need to make and how her circumstances will affect her choices. One of the most important things you can do as her lawyer is, as you walk your client through the legal options available to her, to encourage her to think about how the abuser might respond and what else she may need in addition to an order of protection to help secure her and her children's safety. For example, if asking to exclude the abuser from the home will result in the abuser no longer paying the rent, the client needs to think about what she may need to do to ensure she can afford her apartment. If asking for the order of protection to include the children might prompt the abuser to file for custody, she needs to be prepared for the scrutiny that may come with a custody proceeding.

<u>If your client is still residing with her abuser, she can:</u>

- Collect telephone numbers and other contact information for agencies and people to call for help in an emergency, such as domestic violence hotlines, local police stations, domestic violence shelters, friends and family members, and the district attorney's office.
- <u>Keep a list of all emergency contacts in her wallet or purse.</u>
- Keep some extra cash with her in case she needs to leave in a hurry.
- Contact the local shelter hotline for information now. Find out what to do in a crisis. Ask about accommodations for herself and her children and pets. Find out how to get there and how long she can stay. Figure out a motel to go to and how to get there, in the event that all shelters are full, and no friends or relatives can house her in an emergency.
- Contact the Domestic Violence Hotline and review safety planning along with exploring her options for shelter.

- Pack a bag with emergency items, including a change of clothing, toiletries, cash, telephone numbers, extra sets of keys to the home and car, and ***copies of important documents*** for herself and any children. Leave the bag either at the home of a trusted friend or relative who lives nearby or at another safe place, such as at work.

    Important documents to take when leaving:

    - Identification/ driver's license
    - Birth certificate for self and children
    - School/vaccination cards
    - Medication
    - Public assistance, Medicaid cards
    - Divorce or separation papers
    - Lease, rental agreement, or house deed
    - Sentimental items, photos
    - Social security cards
    - Credit cards
    - Keys - house, car, office
    - Insurance papers
    - Passports, green cards, work permits
    - Car/mortgage payment book
    - Money, checkbook, bankbook, ATM card
- Remove any knives or other sharp objects, such as scissors, icepicks and letter openers from walls and countertops.
- Think of a safe place to go if an argument occurs, especially avoiding rooms with only one exit, such as bathrooms.
- Locate the nearest payphone to her home in case the abuser cuts the phone lines. Locate the closest all-night restaurant, store, or other location where there will be people present at all hours.
- Plan an escape route, if she has to flee in an emergency.
- Keep gas in her car or money/MetroCard for public transportation.
- Discuss with her children what to do in an emergency if she is being attacked by her abuser, such as calling the police or running to a neighbor's house or nearby store or restaurant for help.

<u>If your client is no longer residing with her abuser, she can:</u>

Change the locks on her house/apartment doors and windows, if the abuser has a set of keys. Install an alarm system and smoke detectors. Safe Horizon will change locks for victims of domestic violence at no charge. Put dead bolts on all outside doors. Keep doors and windows locked, even when at home.

Do not open the door until the knocker identifies himself or herself. Always ask to see identification when it is not a friend or family member (e.g., service, delivery and salespeople, people collecting for charity, or the police).

- Keep the fuse box locked. Keep flashlights and extra batteries on hand.

- Ask your neighbors to call the police if they notice the abuser around the home or ask them to call her if they see suspicious vehicles or people around her home.
- Get an unlisted phone number. Make sure friends, family and colleagues know it is unlisted and to be kept confidential. Discuss with her children that they should not disclose this to their father during visitation. If she has moved to a new apartment or home, make sure people know not to disclose the address to anyone without her permission.
- Leave the lights on in her home even when she is not there or get an automatic timer for the lights.
- Consider getting a watchdog.
- Make sure the children's teachers, school personnel, babysitters and other childcare providers know not to release the children to the abuser's custody or to anyone she has not pre-approved to pick them up.
- Inform her employer of her situation. Provide colleagues at work, especially security guards and receptionists, with a picture of their abuser and a copy of their Order of Protection.
- Remove her home address from personal checks and business cards. Get a private mailbox or use her work address for all personal mail. File a change of address card with the post office listing her new address, and notify all friends, colleagues, creditors, etc., of her new address.
- Park in well-lit or secure areas, even at work. Ask a co-worker or security guard to escort her to the car or to the subway. Keep doors locked while driving. If she thinks she is being followed, drive or walk to the nearest police or fire station.
- Introduce herself to the domestic violence officer in the police precincts nearest her home and her work. The precincts will then be familiar with her and with her situation, should she need assistance.
- Vary her routes to work, the store, and children's school. Get a cell phone for the car and her purse. Safe Horizon provides free cell phones that allow clients to dial 911.
- Make sure to carry a copy of her Order of Protection, once it is granted, with her at all times. Keep a copy in a safe location. Keep her attorney's card with her at all times.

<u>If your client has decided to leave, she should have a plan to do it in the safest way possible. She can:</u>

- Contact Safe Horizon regarding shelter options at 1 800 621-HOPE. If shelter is not an option, identify other safe places she can go, such as to friends, family, etc.
- Plan when and how she will leave the home. When is it safe (i.e., when he is at work)?
- How will she get to her safe location? Consider contacting the police to escort her out.
- Prepare a bag with essential items and documents ahead of time, but not make it obvious that she is packing. Keep the bag in a safe location.

- Identify what help and support she will need once she has left. Have numbers to important resources she will need.
- Get information about what obtaining an Order of Protection entails, what it means and how to enforce it.

If your client is in emotional crisis or needs emotional support, she can:

- Know that this is a difficult process, but that she does not have to figure things out alone.
- Be aware that different feelings may come up for her. She may feel confused, overwhelmed, scared or alone. This is normal and there is help.
- Identify people in her life whom she trusts and who can be of support to her.
- Contact the Domestic Violence Hotline for crisis counseling, safety planning or referral to ongoing counseling and support groups.
- Get help for herself, if she is feeling depressed or anxious or needs to talk to someone.
- Get help for her children, if she has concerns or notices changes in a child's mood or behavior.
- Contact: Safe Horizon 1-800-621-HOPE (4673) or 1-800-lifenet (24-hour crisis counseling hotline).

ADDITIONAL RESOURCES AND TOOLS REGARDING SAFETY PLANNING:

1. Safe Horizon
   http://www.safehorizon.org
2. New York State Coalition against Domestic Violence.
   http://www.nyscadv.org
3. American Bar Association Tool for Civil Attorneys Representing Domestic Violence Victims
   https://www.americanbar.org/products/ecd/ebk/298569211/
4. New York City Family Justice Centers
   https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page

FIRST PHONE CALL

When you first call your client to schedule an interview, ask her when and where you can safely call her. If she is still living with her abuser and he answers the phone, just pretend you have the wrong number and ask for someone else. Do not just hang up, as many people have caller identification, and the abuser will be suspicious. Do not leave a message on an answering machine or with household members unless the client tells you it is safe and reliable to do so. There is a very good chance the abuser will punish her for seeking

legal help. Ask your client for a friend or relative's name and phone number as an emergency contact, in case you have trouble reaching the client by phone at her home. Often a client will be forced to relocate several times during the course of a case or will have her phone disconnected if she is unable to pay the bills on time or if the abuser cuts the line.

Also, find out from the client where you can safely send her mail. If the abuser still resides with her or has stolen her mail in the past, suggest she obtain a post office box or receive mail at a family member or friend's house.

When you schedule meetings with your client, make sure she understands that it is important she be punctual and call in advance if she will not be able to make it on time or at all. It is important to let her know what your expectations are concerning her responsibilities. At the same time, understand that her life is in transition and often in crisis, especially if she has had to flee the home or if she does not have reliable childcare. If you and your firm feel comfortable allowing her to bring the children with her to appointments, arrange to have someone in your office watch them and provide them with entertainment (coloring books, videos, toys) and food (such as cookies or juice). Do not let the children sit in on the interview if you can help it, since the information they hear might upset them further and because the court (or Attorney for the Child if one is ever appointed) may hold it against your client to have allowed the children to be present for such a meeting. Also, clients often become very emotional while discussing their cases and this can be distressing to children. Be alert to religious holidays and do not schedule meetings at your office or court dates on these days.

Ask your client to bring the following to her first interview: any court papers from prior or pending matters; police reports; hospital records; marriage and birth certificates for the children; her journal, daybook or calendar; any tape recordings of abusive phone calls or conversations; her cell phone (and any old cell phones if she has them) which may have texts or messages from the abuser; and any other evidence that needs safe- keeping. If she does not keep a journal, advise her to start one so that she has a record of dates/times/places of incidents such as harassing phone calls.

FIRST MEETING

At the start of the first meeting with your client, review the statement of client's rights and responsibilities with her and the retainer agreement (*see Section 2, Forms and Samples*). This is a chance to agree upon ground rules for your relationship and to assure her you will keep all your obligations to her. Next, explain the attorney-client privilege in simple terms. Assure her that you will get her permission first before disclosing confidences to others, such as a Lawyer for Child, ACS (Administration for Children s Services) worker, or Probation personnel.

During the meeting, take detailed and accurate notes of what she tells you. Explain to her that you are taking notes so that you will not forget the important details she is relating. Also, make sure your client understands that the abuser will try to make her look bad in court. Thus, it is important that she tells you what she thinks he will say

about her so that you both can strategize about how best to respond to his allegations. Ask her, "what is the worst thing(s) he will say about you?" If there is some truth to the abuser's claims, and they are legally relevant to the case, discuss them with your client before he brings them to the court's attention.

PROBLEMS WHICH MAY ARISE DURING REPRESENTATION

There are certain problems that you may encounter during your representation of your client. Many of them may arise during the first meeting, or even the first phone call. These include:

- Your client minimizes the abuse. This is more likely than your client exaggerating the extent of the abuse. Let her know that it is important for her to tell you all the details of the abuse so that you can best represent her. Suggest that she write down some incidents before coming to see you as a way to remind her of what actually took place.
- Your client has trouble remembering when and where incidents occurred. Ask her to bring calendars, daybooks, diaries, police reports – anything that might help her recall dates/times/places. Have her think about the events in relation to dates she does remember, such as holidays or birthdays. If she has children, asking the ages of the children at the time of the event can be helpful. Ask her during which season the incident took place – whether it was cold or hot outside. Reassure her that it is common to forget dates that are months or years in the past.
- Your client goes off on tangents. Help her focus her story by asking specific questions. Gently explain to her that you are having trouble following her story and ask her to allow you to help her organize it logically.
- Your client asserts herself inappropriately. After years of being pushed around, your client may have decided not to let anyone push her around anymore, including the judge. She may ignore your advice to keep silent in court unless asked a direct question by you or the judge. Explain to her the reasons behind your suggestions – such as the standard protocol in the courtroom and how violating such protocol may hurt her case. Do not take her behavior personally if she is aggressive or hostile. On the other hand, let her know that such behavior makes it difficult for you to work with her as a team.
- Your client calls several times every day. Do not get angry with your client for calling. Remember that she is going through a frightening and confusing process and may need reassurance or repeat explanations. If her calls are excessive, schedule appointments to speak with her and set time limits on calls. Never ignore her calls. Remember that emergencies often arise in domestic violence cases and there may be an urgent reason for a particular call.

MAINTAINING A GOOD RELATIONSHIP WITH YOUR CLIENT

Some other suggestions for how to maintain a positive working relationship with your client include:

- Return calls promptly and be accessible to your client. If new developments on the case occur, notify your client as soon as possible, instead of waiting to tell her news when she calls you. Your client will appreciate the effort you make to contact her, so that she does not feel she is always chasing you for information.
- Discuss with your client ahead of time that the legal process can be long and frustrating. Talk about reasonable expectations for the case – often clients assume that their attorneys can make anything happen. Be honest about the limits of the judicial system and what a lawyer can accomplish within that system. Acknowledge your client's anger and frustration at delays in the court process or when a court appearance doesn't go as well as she had hoped.
- Try not to overload the client in the first interview. There is only so much information a client will be able to absorb at one time. It is best to give a basic overview of the case and the process and then explain developments as they occur. For example, you do not need to explain how a settlement agreement might work until it appears that such an agreement is likely to arise.
- Make sure to send your client copies of all documents, letters, pleadings, etc. that deal with her case. Not only will this demonstrate how much work you are doing, but it allows her to read over things in her own time and ask clarifying questions.
- Involve the client in the case. It is important to keep your client busy, not only because it will reduce her anxiety about what is going on in her case, but also because it will give her a sense of empowerment – namely, that she helped secure herself an order of protection. Also, many things are best done by clients, such as the collection of evidence in their homes or identifying and contacting potential witnesses.
- Always appear loyal to your client. As mentioned above, the abuser will attempt to persuade the court, and even you, that the petitioner is "crazy" or "a liar" or "mistaken." He will accuse her of all kinds of things in pretrial letters as well as in court. When you discuss his accusations in preparation for trial or in order to answer or diffuse them, you need to make sure not to appear to your client that you believe what the abuser is saying.

COURTROOM ETIQUETTE

Judges can be very difficult and even hostile towards attorneys and litigants. In Family Court especially, judges tend to be overworked, underpaid and often burnt-out. Their caseloads are overwhelmingly large and prevent them from devoting significant time to each case. As a result, they often appear rushed and annoyed by your presence in court, especially if you are asking for relief that will slow the time it takes for the case to conclude.

There are several things you can do as an attorney to make the judge more favorably disposed towards yourself, and therefore, your client and her case. Most of them involve

showing respect for the judge and maintaining a certain level of civility, even when you observe other attorneys failing to do so. Some suggestions:

- Always stand when the judge enters or leaves the courtroom. Make sure your client knows to rise as well.
- Always stand when you are speaking to the judge in court, unless he or she specifically tells you it is appropriate to remain seated for discussions.
- Be deferential and courteous; make sure to address the judge at all times as "Your Honor." Use language such as "If I may…."
- Be prepared and on time.
- Always be honest in any legal or factual representation you make to the court.
- If you promise you will do something (e.g., produce some documents at the next appearance), make sure you do it.
- Stand when you are making an objection.

Make your points as succinctly as possible. Avoid unnecessary detail, repetition, and verbiage. If a judge seems impatient or is trying to cut you off, indicate firmly but politely that you want to make sure the record is clear and complete.

- Direct your remarks to the judge, not opposing counsel, even when you are making an objection.
- Never appear visibly angry at or scornful of the judge or their rulings. If you do not agree with a ruling or comment by the judge, state this on the record in a calm, controlled voice. Do not lose your cool at the judge, the other attorney, or the abuser, regardless of how outrageous their statements are.
- Stand when you are questioning witnesses.
- Do not "threaten" the judge with an appeal. (However, it is appropriate to note when the Appellate Division or Court of Appeals has made a ruling on point.)
- Do not continue arguing your point after the judge has made a final ruling. If you have additional proof, you may offer that to the judge instead.
- Always be courteous towards opposing counsel or the *pro se* opposing party in front of the judge.
- Do not take adverse rulings personally.
- Do not take a judge's manner personally. Warn your client of this as well. Judges often yell at attorneys and litigants in the course of proceedings. Forewarn your client and explain to them this often is because the judge is having a bad day or is overworked.

CLIENT QUESTIONNAIRE : ORDER OF PROTECTION

CLIENT INFORMATION

Name of Interviewer:

Date: _____

CLIENT IS: Petitioner Respondent BOTH

NAME:

OTHER NAMES PREVIOUSLY USED:

MARITAL STATUS: Single Married Divorced Separated Widowed

SOCIAL SECURITY#:

Confidential? Yes No

ADDRESS:

Confidential? Yes No

If NOT ok to mail to this address, mail to:

c/o

COUNTY: New York Bronx Kings Queens Staten Island

PHONE NUMBERS (include area code):

_____ (home phone)

_____ (cell phone)

_____ (other safe phone)

EMAIL: _

Does the other party have access to this email? Yes No

Confidential? Yes No

DATE OF BIRTH _____ PLACE OF BIRTH: _

Immigration Status:

U.S. Citizen Lawful Permanent Resident ("green card")

Conditional Permanent Resident Undocumented

Other (specify):_

How did the client obtain immigration status?

If applicable, does the client have work authorization issued by the U.S. Citizenship and Immigration Service (USCIS)?

Is the client in deportation proceedings? Does the client have representation in these proceedings?

If client is undocumented, are there pending immigration applications filed by either party for the other?_

Will the client require an interpreter? Yes No

If so, what language?

Highest Level of Education Completed:

GED High School Degree College Post-College Vocational School

Partial High School: (How many years?)

Partial College: (How many years?)

Is the client currently receiving any mental health services? Has the client received mental health services in the past?

Has the client ever been arrested?

What might the opposing party say about the client's request for an order of protection?

RE: CLIENT'S EMPLOYMENT INFORMATION

Name and address of employer:

Name: _

Address: _

Phone: _

What is/are client's other sources of income? (Check all that apply)

Maintenance: $

Child Support: $

Disability SSD (Social Security Disability): $

Public Assistance: $

Soc Sec (SS): $

Supplemental Security Income (SSI): $

Unemployment: $

Worker's Compensation: $

Other: $ Source:

Number of people living in client's household = self +

Identify name and relationship to client:

INFORMATION RE: CHILDREN

List the names and ages of ALL CHILDREN under the age of 21:

	NAME	AGE	CHILD'S RELATIONSHIP TO OPPOSING PARTY	PLACE OF RESIDENCE	IMMIGRATION STATUS/ COUNTRY OF BIRTH
1.					
2.					
3.					

4.					

If children are involved in the case and opposing party is not the father of the child(ren), state name and address of the father(s) of the child(ren):

Is there an attorney for the child(ren)?

If so, what is the contact information for the attorney for the child(ren)?

Does the client have any other pending cases? If so, in which court(s)? Who represents the client in those case(s)?

OPPOSING PARTY'S INFORMATION

Name of opposing party:

First Last Name Middle

Social Security number:

How is the client related to the opposing party?

Current address/Where the opposing party can be found or served:

_____Street

Apt. #

City State Zip Code

If the client does not know the opposing party's current address, is there any other location where that person can be found? Yes No

_____ If yes, where?

PHONE NUMBERS (include area code):

_____ (home phone)

_____ (cell phone)

EMAIL: _

DATE OF BIRTH: _____ PLACE OF BIRTH:

Immigration Status: U.S. Citizen Lawful Permanent Resident ("green card")

Conditional Permanent Resident Undocumented

Other (specify):

How did the opposing party obtain status?

Highest Level of Education Completed:

GED High School Degree College Post-College Vocational School

Partial High School: (How many years?)

Partial College: (How many years?)

Is the opposing party represented by counsel in the order of protection case? Yes No

If yes, attorney's name, phone, and address:

Are there any other cases pending between the client and the opposing party? If so, in which court(s)? Who represents the opposing party? Who represents the client?

RE: OPPOSING PARTY'S EMPLOYMENT INFORMATION

Name and address of his employer: (if applicable)

Name:

Address:

Phone:

Email:

Does the opposing party have work authorization issued by the U.S. Citizenship and Immigration Service (USCIS)?

GATHERING INFORMATION RELATED TO FAMILY OFFENSE PROCEEDING

Is the client the petitioner? Yes No

Has the client had the family offense petition(s) served on the opposing party? Yes No

If so, date_____ . Who effectuated service? If Sheriff, does the client have a confirmation of service? If somebody else accomplished service, was an affidavit of service properly completed, signed, and notarized?

(Please obtain a Sheriff's Certificate of Service, a process server or individual's Affidavit of Service, or if service failed, then obtain an Affidavit of Attempted Service).

Is the client the respondent? Yes No

If the client is the **respondent**, was the client served? Yes No

If so, what was the client served with?

If so, when and how?

If the client was not properly served, then consider filing a motion to dismiss.

Is there an upcoming court date?

(verify at http://iapps.courts.state.ny.us/fcasfamily/main)? Yes No

If so, what is the court date on for?

Which court?

When was the case filed?

What is the file and docket number?

How many court appearances have already occurred?

What happened at prior court appearances?

Confirm what is alleged in the family offense petition and whether additional incidents were omitted?

If the client is the respondent, what is their response to the petitioner's allegations?

Indicate on chart information regarding all client's present and past family court cases in all courts and in all states:

Ex.

Date of Order	Date Case Filed	Docket Number	Criminal or Family Court	Date Order Expires	Temporary or Final Order and terms?	Next Ct Date?
7/12/08	6/12/08	#O-12345-10	Bronx Family Court	7/12/10	Final Stay-Away Order of Protection	N/A

Summarize any history of previous court involvement and the outcome of proceedings:

EMOTIONAL AND PHYSICAL ABUSE

Have there ever been incidents of domestic violence? Yes No

If so, was the violence directed towards: (check all that apply)

- ❑ Client alone
- ❑ Child(ren) alone
- ❑ Other Family Members
- ❑ Pets
- ❑ Destruction of Furniture, Property, etc.

Did the opposing part verbally abuse the client? No Yes

Did the opposing party mentally abuse the client? No Yes

Ask if the abuser socially isolated the client (e.g., did not let them use the phone, talk to family, have friends), acted obsessive and possessive (e.g., was jealous, accused them of infidelity), threatened to cause harm to the client, their children, property, or animals, economically abused them (e.g., controlled the family's money, prevented the client from getting a job, stole their identity or coerced them into taking out debts in their name), threatened to deport them, threatened to kidnap the children to another country, stole the client's immigration documents, or made third party threats (threats made through the opposing party's family members, friends, etc.)

If parental kidnapping threats have been made:

Do the children have passports? If so, in whose possession are the passports?

Did the opposing party physically abuse the client? No Yes

(Instead of asking whether the client was physically abused, ask if the opposing party has ever: pushed them, pulled their hair, spat at them, destroyed their property, kicked them, scratched them, used weapons against them, thrown things at them, slapped them, punched them, hurt children, or pets).

Describe **any domestic violence incidents** that happened in the last few years or abuse that the opposing party regularly inflicted on client. Describe: date, place time, physical injury, and weapons of any kind involved (including household objects), repeated behaviors (include how often it occurred). Start with the most recent:

- Include date, time, and place of the incident
- Indicate who else was present
- Describe any injuries or consequences or medical treatment received
- Were the police called?
- Was the incident ever included in a prior Petition for an OP?
- Are there any witnesses? (If so, what is their contact info?)
- Is there any documentation? E.g., medical records, police reports, court orders, text messages, emails, credit reports, bank statements, etc. (Ask the client to provide any documents that they possess and sign any authorization/release/HIPAA authorization needed for you to request documents from the source, and prepare subpoenas)

1. On or about _____ , at _____ the opposing party:

   Description of Incident (e.g., witnesses, actions taken, etc.)

2. On or about _____ , at _____ the opposing party:

   Description of Incident (e.g., witnesses, actions taken, etc.)

3. On or about _____ , at _____ the opposing party:

   Description of Incident (e.g., witnesses, actions taken, etc.)

What relief are you seeking from the court / what do you want the court to order (in the client's own words)?

E.g., I want the other person to stay away from me and my children; want them to not be allowed to have a gun, want them to reimburse me for my belongings that they destroyed or medical bills I paid.

SECTION 2:

OVERVIEW OF SUBSTANTIVE & PROCEDURAL LAW AND PRACTICES

HER JUSTICE

SECTION 2: OVERVIEW OF SUBSTANTIVE & PROCEDURAL LAW AND PRACTICES

A. Section 2 TOC
B. Family Court
C. The Law Governing Family Offense Proceedings
D. Orders of Protection
E. Concurrent Cases
F. Petition in a Family Offense Proceeding
G. Summons, Warrant, & Temporary Order of Protection
H. Answer and Cross Petition
I. Amended Petition
J. Motion Practice
K. Violations of Orders of Protection
L. When Your Client is the Respondent

FAMILY COURT

The Family Court is part of New York State's unified court system. The Family Court is not a court of general jurisdiction, but rather has jurisdiction over only specific types of cases, as detailed in Family Court Act §115, and within the parameters described throughout the Family Court Act.

The Family Court has jurisdiction over cases involving family offenses (domestic violence), custody, visitation, paternity, spousal support, child support, abuse and neglect of children, and juvenile delinquency.

The Family Court does not have jurisdiction over divorces, which must be heard in Supreme Court. The Family Court also does not have the jurisdiction to divide and distribute property unless the Supreme Court issues a specific order referring that issue to the Family Court.

In Family Court, cases may be heard either by (1) a judge; (2) a support magistrate; or (3) a court attorney/referee. A support magistrate only hears cases involving support and paternity, within certain parameters as defined by Family Court Act § 439.

Because all Family Court proceedings are considered "special proceedings," the rules of discovery present in Supreme Court or Civil Court do not apply, and attorneys and parties must ask the court for permission to conduct discovery such as subpoenas, interrogatories, and depositions.

THE LAW GOVERNING FAMILY OFFENSE PROCEEDINGS

Pursuant to Family Court Act Article 8, victims of domestic violence may petition the Family Court for an Order of Protection. These proceedings are called "family offense" or "Article 8" proceedings. When you file a family offense petition, the court clerk will give the petition a "docket number" which is an identification number for the court. Family offense proceedings are filed under the "O" docket, which means the identification number assigned by the court will begin with the letter "O."

Although Article 8 of the Family Court Act is the main source of law governing family offense proceedings, the following are additional sources of relevant law:

- Family Court Act[1], generally
- Uniform Rules of the Family Court[2]
- Penal Law
- Criminal Procedure Law
- Domestic Relations Law
- Civil Practice Law and Rules
- Judiciary Law

In addition to family offense proceedings, the Family Court also has jurisdiction over custody, visitation, paternity, spousal support, child support, child protective and juvenile proceedings. Other Family Court proceedings between the parties (such as custody and visitation) will be heard by the same judge, often on the same day as the family offense proceeding.

Standing to File in Family Court

Family Court has the power to grant orders of protection in cases involving only a limited class of persons. Pursuant to Family Court Act §§ 812, 821 and 822, the following persons have standing to file a family offense petition in Family Court:

- persons related by consanguinity (blood) or affinity (marriage, e.g., in-laws);
- persons legally married;
- persons formerly married to one another regardless of whether they still reside in the same household;

[1] The Family Court Act can be found in the Judiciary Law.

[2] The Uniform Rules of the Family Court can be found in the Judiciary Law.

- persons who have a child in common regardless of whether such persons have been married or have lived together at any time, and
- persons in an intimate partner relationship regardless of whether such persons have lived together at any time (an "intimate partner relationship" is generally understood to be between people who are "dating" rather than friends, roommates, etc... But the relationship does not need to be sexual to be "intimate").
- "Melanie's Law" enacted November 25, 2024: persons who are related by consanguinity or affinity to parties who are or have been in an intimate relationship.

The courts implicitly recognize that parents have standing to bring a family offense petition on behalf of their minor children pursuant to FCA Article 8. Courts will not allow a person who is not the parent or legal custodian of a child to bring a family offense petition on that child's behalf. However, a family offense proceeding may be commenced by a duly authorized agency, police officer or person acting on the court's motion pursuant to FCA § 822.

Orders of protection are also available as collateral relief in support, custody, visitation, paternity, Persons in Need of Supervision (PINS), and child protective proceedings (FCA §§ 430, 446, 550, 551, 655, 656, 740, 759, 1029, 1056), and divorce proceedings (Domestic Relations Law §§ 240(3) and 252).

Pursuant to FCA § 216-c, the clerk may not prevent any person who wishes to file a petition for an order of protection from immediately filing the petition. If there is a jurisdictional question the clerk must file the petition and refer the petition to the Court for determination of the jurisdictional issues. In other words, the clerk may not act as a gatekeeper and must allow them to file a petition and refer any issues of standing or jurisdiction to the Court.

Also, any court personnel who assist a pro-se petitioner in preparing a family offense petition must include all allegations presented to them by the petitioner in the petition (FCA § 216-c (a)).

The Family Court does not use the terms "Plaintiff" and "Defendant." The person who files the petition is referred to as "**Petitioner,"** while the opposing party is called **"Respondent."**

Venue

Pursuant to FCA § 818, a survivor of domestic violence may file their petition in either (1) the county in which the acts occurred; (2) the county in which either party resides; or (3) the county in which the family resides. If they reside in a domestic violence shelter, they may file a petition in the county in which the shelter is located. Survivors who wish to keep the county they reside in confidential may choose to file the petition in another county based on one of the other options under FCA § 818, e.g., choose the venue based on the Respondent's residence or the location where the acts occurred.

Family Court Act § 171 provides that an order of protection or temporary order of protection issued by the Family Court in one county may be modified or enforced in the Family Court of any other county in which the party affected by the order resides or is found. However, as a practical matter, a Family Court in one county is unlikely to modify or enforce the order of protection issued by the Family Court of another county in a pending case.

Definition of a Family Offense

A family offense is any one of 14 crimes (and their subdivisions) listed in FCA § 812 committed between "members of the same family or household" (see section on "Standing," above, for definitions of family or household). FCA § 812 lists the crimes which constitute family offenses, but the specific definitions are found in the corresponding sections of the New York Penal Law (NYPL). To find the elements of any of the enumerated family offenses, look up the corresponding NYPL section, and carefully review it to assure that each element of the offense is proven at trial.

Judges are generally familiar with and understand physical abuse crimes (e.g., assault or strangulation), stalking, menacing, and harassment because these offenses have a long history in the Family Court Act. However, "identity theft" and "grand larceny" are Family Offenses that are often overlooked by practitioners and factfinders who may not be aware of their inclusion in the FCA or of economic abuse as a form of family or intimate partner violence. The most recently added Family Offense is "unlawful dissemination of an intimate image." You should be prepared to educate the court and opposing counsel about less frequently litigated or frequently misunderstood Family Offenses. These include the following:

- **Disorderly Conduct** is defined in the NYPL § 240.20, but FCA § 812 distinguishes it from the penal law as a Family Offense by including disorderly conduct that is *not* in a public place.
- **Unlawful Dissemination or Publication of an Intimate Image** (NYPL § 245.15) is defined as publishing a still or video image of an identifiable person that depicts an exposed intimate part or engaging in sexual conduct with the intent of causing harm to the emotional, financial, or physical welfare of that person, and the still or video image was taken under circumstances when the person depicted had a reasonable expectation that the image would remain private and the actor knew or reasonably should have known the person depicted intended for the still or video image to remain private, regardless of whether the actor was present when the still or video image was taken. Such conduct is more commonly known as "revenge porn," and referred to in advocacy communities and academia as "cyber sexual abuse." This Family Offense may include such conduct as sharing, on social media or in direct messages to third parties, intimate pictures, or videos that the survivor originally sent only to the Respondent or kept on their own private devices.

Keep in mind that *threats* of cyber sexual abuse may constitute an element of Coercion in the 2nd Degree, also listed as a Family Offense.

- **Identity Theft, 1st, 2nd, and 3rd degree (PL §190.78 - 190.80)** occurs when the Respondent assumes the identity of, acts as, or uses the personal identifying information of the Petitioner knowingly and with intent to defraud. While Identity Theft in the 1st and 2nd degree require that the Respondent obtained goods, property, money, or services through misuse of personal identifying information, Identity Theft in the 3rd degree may be established if the Respondent misused the identity and committed a class A misdemeanor. If the Respondent knowingly and intentionally misused the personal identifying information of the Petitioner but failed to obtain a benefit, the Petitioner may allege Identity Theft as a family offense and assert that the class A misdemeanor committed was Criminal Impersonation. In other words, a Petitioner need not suffer economic loss to allege identity theft.
- **Grand Larceny, 4th degree (PL §155.30; E felony)** is not limited to the theft of cash or property with a value exceeding $1,000. Common forms of Grand Larceny in the Family Offense context may include stealing a credit or debit card or a cell phone.

The above is only a summary of the relevant penal law provisions. When representing a client in a family offense proceeding, attorneys should carefully review the conduct alleged in the petition or amended petition and reference the penal law sections cited above to determine which family offenses have been committed and how to prove each element at trial.

Definition of a Physical Injury

One element shared by several of the crimes that constitute family offenses is physical injury to the victim. Interview your client about the types of injuries (bruises, scratches, wounds, broken bones, sprains, concussions, etc.), their experience of the pain (the degree and type, i.e., how would you describe it? How would you rate it on a scale of 1-10?), whether the injury(ies) impacted their life in any way (did you miss work? Did you have to stay in bed? Could you get dressed on your own? Did it hurt to move your hand?), and about any medical treatment they received. Check with your client about any photographic evidence of visible injuries, and subpoena medical and police records in advance of trial. At trial, you will need to elicit testimony from your client, and/or your client's doctor if they sought medical treatment, about the physical injury or injuries they sustained from the abuse. It is important that the client testify explicitly about the nature and extent of their pain and whether their daily activities were curtailed in some way by their injuries.[3]

[3] *See* Peoplev.Carney,179A.D.2d818(2dDept.1992) (the prosecution's evidence was insufficient to establish substantial physical injury where the victim testified to using Tylenol and rubbing alcohol on an injury, but did not testify as to nature or extent of pain or to any impairment of activity

Physical injury is defined as either "impairment of physical condition or substantial pain." (NYPL §10.00(9)). The case law which has evolved in the criminal court context suggests that some limitation of the victim's activity or scarring is a required result of an injury constituting **impairment of a physical condition**; for example, a thumb placed in a splint; a sore throat, dizziness and a scratched face; inability to move one's fingers after having one's hand bitten; and a laceration to a forehead resulting in a scar.[4]

Substantial pain may be testified to by both the victim and a treating doctor. Substantial pain is not precisely defined and does not necessarily rise to the level of severe or intense pain but must be "more than slight or trivial pain."[5] If a victim did not seek medical treatment because of the attack, that fact will not disqualify their claims of substantial pain.

[4]*See* Peoplev.Moise,199A.D.2d423(2dDept.1993); Peoplev.Daniels, 159A.D.2d631(2dDept. 1990); People v. Brooks, 215A.D.2d491(2dDept. 1995 (evidence that victim suffered sharp pain in hand from broken bone and missed three weeks of work as result is sufficient); People v. Tejeda, 78N.Y.2d936 (1991); People v. Rivera, 183A.D.2d, 792 (2dDept.1992).

[5] People v. Chiddick, 8 N.Y.3d 445 (2007).

ORDERS OF PROTECTION

FAMILY COURT ORDERS OF PROTECTION

An order of protection issued by the Family Court may include any "reasonable condition" of behavior to be observed by either party (FCA § 842).

Among other things, the order may subject the opposing party to the following conditions, as stated in

FCA § 842:

- to "stay away" from the home, school, business, or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court
- to visit the children only at stated periods of time, such as those designated in a court order or separation agreement
- to refrain from committing a family offense or any criminal offense against petitioner or the children, or any person who has custody of the children
- to enter the residence at a specified time to remove personal belongings (such as clothing and toiletries; and usually accompanied by a police officer) not in issue in any proceeding
- to refrain from acts of commission or omission which create an unreasonable risk to the health, safety, or welfare of a child
- to pay reasonable counsel fees for the petitioner in obtaining or enforcing the order if such order is issued or enforced by the court
- to require the respondent to participate in a batterer's education program, designed to end violent behavior, which may include drug and alcohol counseling or referral to such counseling
- to provide, either directly or by means of medical and health insurance, for expenses incurred by petitioner for medical care and treatment arising from the incidents in the petition
- to refrain from intentionally injuring or killing, without justification, any companion animal
- to promptly return specified identification documents to the protected party
- to observe such other conditions necessary for the petitioner's protection (catch-all clause)
- to refrain from communicating by any means, including, but not limited to, telephone, letter, e-mail, or other electronic means with the person against whom the family offense was committed (Uniform Rules § 205.74(c)).
- to refrain from interfering with petitioner's custody of the children (Uniform Rules § 205.74(c))

- to surrender firearms and to have a firearms license suspended or make respondent ineligible for such a license (FCA § 842-a)
- to pay restitution in an amount not to exceed $10,000;

Note that § 842 allows the court to order the Respondent to stay away from the home, business, school, or place of employment of the protected persons. The petition should specify the places and people the Respondent should stay away from – i.e., separate paragraphs should list such conditions and the names of the protected parties: "stay away from the place of employment of Petitioner X," and "stay away from the school of Petitioner's minor child Y."

Other "reasonable conditions" not explicitly listed in § 842 can also be included in a Family Offense Petition and should be tailored to address your client's specific safety concerns. Most orders of protection include a provision ordering the respondent to refrain from committing any family offenses against the petitioner and lists each offense from § 812. However, if the abuse manifests in specific ways not explicitly recognized in the standard language, the petition should ask the court to specify which behaviors the respondent should refrain from. For example:

- Respondent is not to post, transmit, maintain, or cause a third party to post, transmit, or maintain, any images, pictures, or other media, depicting the Petitioner in a naked state or participating in any sexual act OR threaten to do the same. Respondent is to refrain from using Petitioner's likeness or impersonating Petitioner on any social media or any other internet site.
- Respondent to "refrain from remotely controlling any connected devices affecting the home, vehicle, or property of the person protected by the order." "Connected device" is defined as "any device or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address."
- Respondent is to refrain from using Petitioner's personal identifying information including, but not limited to, their social security number, date of birth, name, maiden name, mother's maiden name, or telephone number, for the purposes of applying for credit, filing taxes, or otherwise using Petitioner's identity and personal identifying information without their consent.

Exclusion from the Home

Although the Family Court cannot make decisions about property ownership, if the parties are living together, a temporary or final order of protection may command that the Respondent be excluded from the parties' home. A court generally will not grant this "extreme" relief unless there is physical violence in the home, the use of a weapon by the Respondent, or some other circumstances that indicate immediate danger to the individual or children in the home.

The terms "full" order of protection and "limited" order of protection are sometimes used by attorneys and court personnel. "Full" describes an order of protection which excludes the Respondent from the parties' home; "limited" describes an order of protection which prohibits the Respondent from harassing, assaulting, or menacing the petitioner but does not order the Respondent to stay away from the Petitioner or the home.

When a court grants a "full" order of protection, the police will serve the order (and summons and petition) on the Respondent and immediately escort them from the home. They will be permitted to gather their personal belongings (clothing and toiletries). If the Respondent needs to return home later for any reason while the exclusionary order is still in effect, they must be accompanied by the police.

Re-entry into Home to Regain Personal Belongings

Many clients flee their homes because of domestic violence. Although the Family Court cannot make decisions about property ownership, a temporary or final order of protection may provide that the Petitioner can re-enter the home at a specified time and date to collect their or their children's personal belongings, such as clothing and documents. Where an order of protection contains such a provision, the police will accompany the Petitioner to the home to keep the peace while the order is carried out. A client who has an order permitting re-entry into the home should be prepared to move very quickly: the police will remain with them for only about 10-15 minutes. They should carefully plan ahead what they want to retrieve, and where it is in the home. They should bring bags or a suitcase in which to carry the belongings (the police are not movers; they cannot assist with packing or carrying the belongings).

If the Petitioner is unable to retrieve all of the clothing or personal belongings in one trip, a judge may permit a second trip. However, the client should not rely upon having another opportunity to enter their former home.

Practice Tip: Often, where a protected party initiates contact with a Respondent or has ancillary contact or an exchange with the Respondent, the Respondent will accuse the protected party of "violating their own order of protection." FCA § 842 does not recognize such a claim and states "[t]he protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in their favor nor may such protected party be arrested for violating such order. However, if the Respondent can show repeated attempts by the Petitioner to initiate contact despite the order of protection, that could undermine the Petitioner's claim that they need an order of protection for their safety. If your client needs to contact the respondent, for example, to discuss issues about their children or property, encourage them to do so only through counsel or only by means explicitly provided for in the order of protection, including references to orders of custody/visitation.

Custody

Within an order of protection or temporary order of protection, the court may include a provision awarding custody to either parent or to an appropriate relative, for the duration of the temporary or final order of protection (FCA § 842). The custody order will expire when the order of protection expires unless there is a separate custody order issued in a custody/visitation case.

(See Her Justice's manual entitled "Litigating Custody and Visitation Matters in Family Court" for more information).

Practice Tip: Temporary custody can be requested and granted during the pendency of the order of protection. However, in most cases, you will be asked to go to the petition room to file a separate petition for custody to be served upon the other parent. Note that if the petitioner and respondent are not married and the biological father's paternity is not legally established, the petitioner does not need to ask for a temporary order of custody. In such cases, there is no legal presumption that the respondent is the biological father and only the biological mother has legal custody. However, they may want to ask that respondent "not interfere with the care and custody of their children." A petitioner may also ask for non-interference instead of temporary custody if they do not want to initiate a custody case (which could drag on for years) by requesting temporary custody in their petition. When temporary custody is requested, the judge might ask the petitioner to also file a separate petition for custody. It is also possible that the respondent might decide to file for custody.

If the respondent already has court-ordered visitation, the order of protection may provide that the respondent shall not interfere with the petitioner's custody of the children and require them to stay away from the children **except** during court-ordered visitation.

Child Support

FCA § 842 permits that the court in a family offense proceeding may award temporary child support "in an amount sufficient to meet the needs of the child" without a showing of emergency or immediate need and even if the information on respondent's income and assets is unavailable. Such temporary order of support is considered a separate order from the temporary or final order of protection. Thus, pursuant to Family Court Act § 842 ("permanent" order of protection) and § 828 (temporary order of protection), upon issuance of a temporary support order in a family offense proceeding, the court is required to set the case down for further child support proceedings under FCA Article 4 and before a Support Magistrate. If the parties are not married and paternity has not yet been established, then the court may direct the petitioner to file a paternity petition pursuant to FCA Article 5 (FCA § 817).

Practice Tip: In the event a court grants temporary support, for a continuance of such order, the party will be expected to file a formal Petition for Support at the Child Support Petition Room of the Family Court. Final determinations of support will be made by a Support Magistrate, not the Judge or Referee who is hearing the family offense matter. If the court determines that the respondent has employer-provided medical insurance, the court also may direct that such insurance be extended to the children as part of this temporary support order, by means of a medical support execution served upon respondent's employer (FCA § 842 and § 828; Civil Practice Law and Rules § 5241). The court also is required to advise the petitioner that services are available through the **Support Collection Unit** (part of the Department of Social Services) to enforce the temporary order of support if the respondent does not comply and to assist petitioner in securing continued child support (FCA § 828 and § 842).

Duration of Family Court Orders of Protection

A temporary order of protection will generally remain in effect for the duration of the court proceedings; the judge will extend it from one court appearance to the next until the matter is finalized.

A final order of protection may be effective for any duration of up to two years. If the final order is issued after a fact-finding, most courts issue final orders of protection that are effective for two years from the date of the conclusion of the proceedings. FCA § 842 specifies that the duration of a temporary order should not, by itself, be a factor in determining the length or issuance of a final order. However, in practice, judges and referees have discretion over the duration of the order and may consider whether extensive or delayed court proceedings have resulted in a lengthy temporary order.

A final order of protection may be effective for any duration up to five years if the court finds "aggravating circumstances" (FCA §§ 842, 827). Aggravating circumstances must be proven specifically and found by the court on the record and stated on the Order of Protection itself.

Aggravating circumstances are listed in FCA § 827 and include:

- physical injury to the petitioner
- the use of a dangerous instrument against the petitioner
- a history of repeated violations of prior orders of protection
- prior convictions for crimes against petitioner
- exposure of any family or household member to physical injury
- like incidents and behavior which constitute an immediate and ongoing danger to the petitioner or household members

In addition, if the court finds that a valid Order of Protection has been violated, the court must state the finding of the violation on the record and can issue an Order of Protection for up to five years.

Extending an Order of Protection in Family Court

Although five years is the maximum duration for a final Order of Protection, Family Court Act §-842 was amended in 2010 to provide that petitioners with "good cause" may move the court to extend the Order once it expires. The legislative intent behind this amendment was to provide greater protection for victims by preventing before it recurs, rather than forcing victims to wait for a new incident of violence before being entitled to a new order of protection. FCA § 842 was amended to state: "The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order."

Motion practice is uncommon in family offense proceedings, so the attorney may need to fully educate the court on the purpose and standard of a Motion to Extend an Order of Protection. The statute does not define "good cause," but the legislature noted that the primary goal of an extension to an Order of Protection is to prevent the recurrence of violence, and listed examples of situations which may be cited in a motion to extend.[1] For instance, a client may need to extend an existing order precisely because it effectively reduced the violence, and/or because they are forced to continue interacting with the Respondent regularly while co-parenting children.[21] Good cause is based upon the full context of the case, including both the present circumstances between the parties, past abuse, threats of violence, and relevant information pertaining to the safety of the survivor and the goal of preventing the recurrence of violence.

In *Molloy v. Molloy,* the Second Department extended an expired order of protection for five years where the parties continued to have acrimonious interactions at the police station while exchanging children for custody and visitation. The court in *Molloy v. Molloy* identified the following factors as considerations in determining whether a petitioner has met the good cause burden:

- The nature of the parties' relationship at the time the initial order was entered
- The nature of the parties' former relationship
- The circumstances leading up state of the relationship at the time of the request for an extension
- The frequency of interaction between the parties
- Any subsequent instances of domestic violence or violations of the existing order of protection

[1] Memo of Assembly Judiciary Committee, Bill Jacket, L 2010, Ch. 325 at 9.

- Whether current circumstances warrant reasonable concern for petitioner's safety.[2]

When drafting a motion to extend under FCA § 842, the attorney should lay out all the relevant circumstances, including those that led up to the original order of protection, anything that has occurred since the entry of the final order, and any current circumstances requiring the parties to have regular contact. Any violations of the original order should be included. However, if no violations and/or additional family offenses have occurred since the final order was entered, the motion should remind the court that FCA § 842 does not require the petitioner to prove that any additional family offenses have occurred. If the statute did require allegations of new family offenses, then the motion to extend would be redundant of a family offense petition. The statute also does not mandate an evidentiary hearing, and a court may grant an extension on the papers alone. However, an evidentiary hearing may be warranted where good cause is not readily apparent from the motion papers.

Orders of Protection Issued by Other Courts

In addition to Family Court, the Criminal Court, and the Supreme Court each have the power to issue an order of protection to a victim of domestic violence under certain circumstances. Depending on where the parties have lived and where the violence has occurred, orders of protection may also be issued by courts in other states. Note: having an order of protection from Criminal Court does *not* make a party ineligible for an order of protection from Family Court, or vice versa. *See* "Concurrent Cases," below.

Supreme Court

Pursuant to Domestic Relations Law (DRL) §240(3), if a client and the opposing party are legally married or divorced, an order of protection can be requested in Supreme Court as part of a divorce. That order may set forth reasonable conditions of behavior like those which may be required by a Family Court order of protection (DRL §240(3)).

Notably, an order of protection issued pursuant to DRL §240(3) may be effective for the duration of the minority of the parties' children. Though this extended order of protection is a benefit of filing in Supreme Court, it is difficult for a litigant to proceed *pro se* in Supreme Court. Many Her Justice clients do not have the resources to pay filing fees or to hire an attorney to proceed in Supreme Court to obtain an order of protection. By contrast, the Family Court is specifically set up to accommodate *pro se* litigants. There

[2] *See* Molloy v. Molloy, 137 A.D.3d47,53 (2dDept.2016); *see also* Matter of Ermini v. Vittori, 163 A.D.3d 560, 562 (2d Dept. 2018).

are no filing fees, and clerks are available to assist litigants in filing *pro se* pleadings. Safe Horizon has an office in the Family Court through which survivors can access advocacy services.

Criminal Court

An order of protection can be requested in Criminal Court by the District Attorney's office.

As with all criminal cases, the victim is not the plaintiff or petitioner. Rather, charges are brought by the People of the State of New York and the case is prosecuted by the District Attorney. One benefit of a criminal court proceeding is that the survivor does not need to hire an attorney to obtain an order of protection. The downside is that the District Attorney, not the person directly impacted, has final decision-making power as to whether the charges are pursued and what type of disposition is acceptable. The burden of proof – beyond a reasonable doubt – is higher than that in a civil proceeding which is a fair preponderance of the evidence standard. See also below section on Concurrent Cases.

A criminal order of protection is typically entered after the person causing harm is arrested after an incident of violence and the District Attorney's office chooses to prosecute them. The temporary order of protection will be issued for the victim of the alleged crime at the arraignment of the defendant in the criminal matter. If an arrest never occurred and the victim does not have standing in Family Court, the victim can also potentially apply for a criminal order of protection by going through the Court Dispute Referral Center (CDRC). The CDRC accepts only cases that may be prosecuted as crimes. If the CDRC accepts the case, it is then forwarded to the District Attorney's office. Before agreeing to pursue the case, the District Attorney's office makes its own determination about whether to prosecute.

When Family Court is not in session, after 5:00 p.m. on weekdays and on weekends, any magistrate (including a city court judge or Criminal Court Judge) may accept Family Court petitions and then issue Family Court temporary orders of protection. *See* CPL §530.12(9); FCA §161c; FCA §155(2).

The Criminal Courts have the power to arraign a defendant on alleged violations of an order of protection, a temporary order of protection, or a warrant issued by the Family Court. If Family Court is not in session, the Criminal Court is also empowered to make any additional order or modify a Family Court temporary order of protection on the complainant's consent, pursuant to Criminal Procedure Law (CPL) § 530.12. The Criminal Court may make the matter returnable in Family Court if the complainant consents. *See* CPL § 530.11(2)(g).

Integrated Domestic Violence Courts

The State's Integrated Domestic Violence Courts (IDV) part of the Supreme Court exists to handle all related cases pertaining to a single family in the same county where the underlying issue is domestic violence. In IDV, a single judge has the authority to handle family, criminal and matrimonial matters.

The goals of the Integrated Domestic Violence Court are as follows:

- Informed judicial decision-making based on comprehensive and current information on all matters involving the family;
- Consistent handling of all matters relating to the same family by a single presiding judge;
- Efficient use of court resources, with reduced numbers of appearances and speedier dispositions;
- Linkage to social services and other resources to address comprehensively the needs of family members;
- Promotion of victim safety through elimination of conflicting orders and decisions;
- Increased confidence in the court system by reducing inefficiency for litigants and by eliminating conflicting orders;
- Coordinated community response and collaboration among criminal justice and child welfare agencies and community-based groups offering social services and assistance to domestic violence victims and their children.

How do cases get to IDV?

Litigants may not choose to go to IDV court or stay out of it. The judge presiding in the IDV court reviews potentially eligible cases (family and/or matrimonial cases that also have an open criminal DV matter) and determines whether the transfer would promote the administration of justice. If the IDV judge transfers the cases, they all become Supreme Court cases; however, the cases do not merge and are handled separately based on the evidence in the case. IDV courts apply to each case the substantive and procedural law that would have applied in the case's court of origin.

Practice Tip*:* Many cases transfer automatically to the IDV part when an overlap of parties in both criminal and family court matters arise. If a case is not automatically transferred to the IDV part, you may request the transfer by calling the clerk of the IDV part and asking whether the case can be transferred out of Family and Criminal Court and into the IDV part. Speak to your Her Justice mentor if this issue arises.

What role do I have if the case I am handling is in the IDV part?

The District Attorney will handle the criminal portion of the case – the matter involving the charges for which the Defendant was arrested. The Defendant may have been

charged with committing either a new offense against your client or the Defendant may have violated a temporary or final order of protection that your client obtained on their own in the Family Court. You will only represent the client in the civil matters. A family offense proceeding will often be heard after the criminal case but be prepared to have it heard in advance if the family offense filed by your client contains offenses that are different from those that the Respondent/Defendant is charged with in the criminal matters. You may attend, but not participate as an attorney in the criminal proceedings. Note, civil matters usually follow criminal matters, but the criminal matter could be held on a different day than your appearance on them.

If you are representing your client in a child or spousal support petition, a Support Magistrate specially assigned to work alongside the IDV Part Judges will hear the matter. A Judge will hear the custody and/or visitation or divorce matters that were filed by or against your client. Please discuss your IDV case with your Her Justice Mentor in advance of your appearance.

Full Faith and Credit for Out of State Orders

The Violence Against Women Act (VAWA)[3], a federal law passed in 1994, requires that state courts give Full Faith and Credit to orders of protection issued by the courts of any other state, only if those orders of protection meet the following criteria:

- the issuing court has jurisdiction over the parties and the subject matter according to its law; and
- the defendant/respondent was given reasonable notice and an opportunity to be heard sufficient to protect due process rights.

Both temporary and final orders issued by civil and criminal courts qualify for full faith and credit under VAWA's provisions. The Domestic Relations Law, the Family Court Act, the Penal Code, and the Criminal Procedure Law were amended to incorporate the full faith and credit provisions of VAWA into state law.[4]

If a mutual order of protection is granted to the respondent based upon an oral request made by the respondent at the hearing, or the court's own motion, the mutual order of protection is not entitled to full faith and credit. According to VAWA, the respondent must file a cross- or counter-petition or a complaint seeking their own order of protection to have such order given full faith and credit.

Moreover, if the court did not specifically find that each party was entitled to an order of protection – for example, the parties merely stipulated that each receive an order of

[3] P.L. § 103-322.18; U.S.C. §§ 2261-2266.
[4] DRL §§ 240(3-c), 252(7); FCA § 154-e; CPL § 530.11.

protection from the court – then the respondent's order of protection is not entitled to full faith and credit, even if the respondent filed a cross- or counter-petition.

Order of Protection Registry

As a result of the Family Protection and Domestic Violence Intervention Act of 1994, every order of protection, violation, and warrant, regardless of which court has issued it, is included in a state-wide Family Protection Registry. Data is automatically submitted from courts throughout the state and is held in the Registry for up to15 years. The police have access to the registry (as do judges, courts, and other agencies such as the probation department) and can immediately assess whether an order of protection is in effect.

Pursuant to FCA §154-e (2), a party can request that a clerk of a state court enter a temporary or final order of protection issued by another state's court into the state's registry of orders of protection and warrants. No fee is charged for this service. Such entry into the registry is not required for enforcement of the order by the state, however.

CONCURRENT CASES

CONCURRENT FAMILY COURT AND CRIMINAL CASES

The Family Court and Criminal Court have concurrent jurisdiction over family offenses (FCA § 812 and 115 (e); Criminal Procedure Law § 100.07). Pursuant to FCA § 828, the Court must advise petitioner of the right to proceed in both Family Court and Criminal Court. Occasionally a client will have cases pending in Family and Criminal court that have not been consolidated into the Integrated Domestic Violence part. Pursuant to FCA § 813, the Family Court may retain jurisdiction for purposes of determining whether an order of protection should be issued based upon the same incident(s) being prosecuted in criminal court.[1]

There are several reasons why a client many decide to proceed in Family Court, even when there is a pending case in Criminal Court or even if they already have a Criminal Court order of protection:

- In Family Court, a client is the petitioner and has control of the case. By contrast, in Criminal Court, the case is brought by the People of the State of New York and the District Attorney makes the final decisions on the case. Although the District Attorney's office tries to include the client in the decision-making process, they may not be consulted prior to each court appearance as to the handling of the case.
- In Family Court, the burden of proof for establishing a family offense is "fair preponderance of the evidence;" Whereas in Criminal Court, the burden is greater – "beyond a reasonable doubt."
- There may be other matters pending before the same judge in Family Court, such as custody or visitation. It may be in the client's interest to proceed with the petition for an order of protection in Family Court in order to familiarize the judge with the details and extent of the domestic violence in the home.
- DRL § 240 provides that wherever domestic violence has been established by a preponderance of the evidence, its effects on the best interest of the children must be considered by the Court in its decisions about custody and visitation. If a client anticipates a custody or visitation battle, and the opposing party has taken or may take a plea in Criminal Court, it may be in the client's interest to proceed in Family Court so they can go ahead and establish domestic violence by a preponderance of the evidence.

[1] Although concurrent cases will likely be moved to the IDV, this may not happen in all cases. If either the criminal or family court case resolves quickly (within one or two court dates) the remaining case will not be moved. If the cases are proceeding in different counties they will not be moved unless there is a basis to change venue of the family court case to the same county as the criminal court case.

- In Family Court, a client may be able to secure a more comprehensive order of protection than that issued by the Criminal Court. For example, the Family Court is empowered under FCA § 842 to order the payment of child support.
- It may be in a client's interest to proceed in Family Court even if they already have a satisfactory Criminal Court order of protection because they may be able to get a second order that is effective beyond the date the Criminal Court order expires.

Having orders of protection from both courts increases enforcement options if the orders are violated. Criminal court orders can only be enforced in criminal court, but family court orders can be enforced in either criminal or family court.

OTHER PENDING CASES BETWEEN THE PARTIES

The parties to a family offense proceeding may have other cases pending between them in the Family Court or in other courts, especially if the parties have children together. The treatment of these cases and the effect upon the handling of a family offense petition will depend on the judge, the borough, and the case. Below is a brief discussion of the most common scenarios.

Child/Spousal Support

A family offense proceeding is unlikely to be affected by a pending child support case. Although an opposing party will frequently use economic control and deprivation as forms of abuse, many economically abusive behaviors do not clearly constitute an actionable family offense. Conversely, the child support case is unlikely to be affected by the pending family offense proceeding. Child support cases are assigned to support magistrates, who are not empowered to determine any other issues between the parties. Since child support is determined by a statutory formula based on the parties' relative income, the issue of domestic violence is not usually relevant unless the children have unusual expenses, such as counseling or medical expenses, related to the domestic violence.

Spousal Support

As both child and spousal support are largely based on statutory formulas using both parties' relative incomes, family offense proceedings and support cases are unlikely to affect each other unless the children or spouse have unusual expenses relating to the domestic violence, such as counseling or medical expenses, or the spouse's ability to work and be self-supporting has been affected by the violence. If the issue of domestic violence is raised in a spousal support case, it is important to remember that spousal support will not be awarded as a *punitive* measure. The connection must be made

between the domestic violence and its effect on the petitioner's financial circumstances or needs. For example:

- the petitioner losing their job because the opposing party stalked or harassed them at work.
- the petitioner has unusual medical expenses related to the abuse.
- An immigrant client is unable to work because their spouse refused to complete their application for a green card and work authorization, as part of the spouse's pattern of control and abuse.
- the petitioner is unable to secure gainful employment because they have fled to a domestic violence shelter and suffered other disruptions.

Custody/Visitation

In 1996, Domestic Relations Law § 240(1) was amended to provide that courts must consider domestic violence, when deciding custody and visitation cases. DRL § 240 (1) provides:

> "Where either party to an action concerning custody of or right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member as defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interest of the child, together with such other facts and circumstances as the court deems relevant ..."

The family offense petition is a "sworn petition" within the meaning of DRL § 240(1), thereby raising the issue of domestic violence for consideration in the custody or visitation matter. However, as shown by a careful reading of the statute, the mandate that a court consider allegations of domestic violence in making custody or visitation decisions does not attach until those allegations have been "proven by a preponderance of the evidence."

Frequently, the parties to a family offense proceeding also have a custody or visitation case pending between them. The family offense proceeding is a separate case, bearing a separate docket number, but it will frequently "travel" with the custody or visitation case: in other words, the cases will be adjourned to the same day before the same judge.

Temporary orders of protection will usually be continued until the resolution of all matters.

The way in which the pending custody or visitation cases are treated vis a vis family offense proceeding between the same parties varies from time to time, from judge to judge, and from borough to borough. Ideally, the family offense and custody or visitation cases will be heard by the same judge, however, some judges have a practice of referring the issues of custody and visitation to a referee. Some judges do not schedule a trial in a family offense proceeding while there is a pending custody or visitation case, instead preferring to conduct one trial encompassing all issues between the parties (this practice deprives the client of an early opportunity to prove their allegations by a preponderance of the evidence), while other judges will move forward on the family offense petition immediately. When there is a pending custody or visitation case, it is important and may be necessary to remind the court that there is also a pending family offense proceeding in which the client seeks a final order of protection or other relief.

Divorce

The pendency of a divorce action *should* have no effect on the family offense proceeding, but it probably will. Article 8 of the Family Court Act which governs family offense proceedings provides no authority for a Family Court to refuse to hear a family offense petition merely because a divorce action is also pending. Further, pursuant to DRL § 252(1), during the pendency of a divorce, the Supreme Court *or* the Family Court **shall** entertain an application for an order of protection or temporary order of protection.

Many Family Court judges will seek to dismiss family offense petitions when there is a pending divorce action. This can be very prejudicial to a client and their children, insofar as it will be difficult for them to proceed *pro se* in Supreme Court. Dismissal of a family offense proceeding because there is a pending divorce action usually should be opposed, with citation to the above provisions of law.

Practice Tip: Where a client is served with a divorce action during the pendency of a Family Offense proceeding, any party to the action may seek to consolidate the two matters into one in the Supreme Court. This is done by filing a Motion to Consolidate with the Supreme Court. Only the Supreme Court judge has the power to consolidate the cases, not the Family Court judge. If permitted, return to family court, and advise them that your motion was granted. Note, either you or the opposing party can oppose the transfer, especially if the matter has a long court history in the Family Court.

THE PETITION IN A FAMILY OFFENSE PROCEEDING

FCA §-821 provides that a petition for an order of protection must allege at least the following: an allegation that one of the enumerated family offenses occurred

- an allegation that at least one of the family offenses enumerated in the FCA has occurred (NOTE: when a petition is filed *pro se*, the petition generally lists all of the family offenses as one or more having been committed)
- the relationship of the respondent to the petitioner to establish standing (e.g., the parties are married or were in an intimate relationship)
- the name of each child in the household and that child's relationship to each party
- a request for an order of protection
- a description of any aggravating circumstances
- a description of any related cases or any other proceedings which involve the same acts described

If an attorney is retained prior to the commencement of the proceeding, the attorney may prepare the petition. The attorney may also prepare the summons or may ask the clerk to issue a summons on the court's form. ***For a discussion of how to draft a petition, see "Amended Petition" section below***.

When an attorney drafts the petition, the attorney must accompany the Petitioner to Family Court to file the petition and make an application for the temporary order of protection. ***See "Temporary Order of Protection" section below***.

It is advisable to arrive at the courthouse as early as possible after 9 a.m. to file the petition. Although it may vary from county to county, petitioners often are kept waiting until the late afternoon to see the on-call judge for an *ex parte* appearance regarding their application for a temporary order of protection. Early arrival at the courthouse increases the likelihood that the application for a temporary order of protection will be heard before the court's 1:00 p.m. lunch recess. Moreover, if the petition is filed after lunch, the petitioner (and their attorney) might be required to return to court the following morning to go before the judge, depending on how busy the court is on a given day.

All courts have night court sessions, to accommodate employed petitioners in family offense matters.

Petitioner's Confidential Address

FCA §154-b specifically authorizes the court to permit the petitioner or respondent to keep their address confidential from an adverse party in any pleadings (petition) where the court

finds that disclosure of such address "substantially increases the risk of violence." See also DRL §75-j.

Where the address is kept confidential, the court may designate the clerk or other disinterested party as the agent for service of process for the party, who shall forward any papers to the confidential address.

Generally, the clerk preparing a petition for a petitioner proceeding *pro se* will note on the petition that their address is confidential. An attorney preparing papers for a petitioner who has a confidential address should note that the address is confidential and provide a mailing address as the Address Confidentiality Program or "c/o" the attorney's office. If your client has not already done so, you may advise them to apply for New York's Address Confidentiality Program through the Department of State's website to be issued a P.O. Box number in Albany which she can provide in court documents and will be used to route mail to her actual address.

Practice Tip: Please ensure that after the case concludes that your firm is not listed for purpose of receiving client mail. The client should provide the Family Court with an alternate mailing address. Where the firm's address is kept with the court at the conclusion of the case, this could result in the firm being required to accept service for client for a future matter unwittingly or necessitate keeping abreast of client's whereabouts well beyond the conclusion of the case in order to notice them of a new action filed against them.

Factual Allegations

The factual allegations in the petition make out the elements of one or more family offenses. Usually, the clerk will include factual details only about the most recent and "worst" incidents but will include a general "catch all" phrase where appropriate that states, "petitioner alleges prior assaults and verbal abuse."

Factual Allegations in the Petition with Regard to Children

Petitioners should take care about how their pleadings describe the presence or involvement of their children during the alleged incidents of domestic violence. If a petitioner emphasizes concerns about their children's safety in the petition, the court may refer the case to the Administration for Children's Services for an investigation to assure that the children are safe. It is essential that if a petitioner decides to include allegations in an order of protection petition about the safety of the children that the allegations be clear and accurate, and that the petitioner understands that the court will take them seriously.

Custody/Visitation

Most judges will not award custody in the context of an order of protection petition. When custody is requested in an order of protection petition, the judge (or the clerk) is likely to require the petitioner to file a separate petition for custody. If the children are already living with the client and there are no pre-existing custody/visitation orders, filing a custody petition is usually contrary to their interests and undermines their safety, because separate consideration of the issue of custody will necessarily result in consideration of the issue of visitation. In other words, a petitioner who files a custody petition is also bringing the issue of visitation to the court, even if the opposing party has not raised it. In families without pre-existing custody/visitation orders, this new custody/visitation petition could result in a court order providing the opposing party with the enforceable right to specific parenting time conditions. In cases where the respondent in the family offense proceeding has never been legally established as the father of the children at issue, it is not advisable to initiate court proceedings that may result in an order of filiation naming that person as the legal father of the children. While an order of protection case may conclude relatively quickly, a separate custody case will increase and prolong the court's involvement with the family and the time that the petitioner and respondent must spend in the same courtroom and litigation together.

Rather than requesting an order of custody in such cases, it is the better practice to ask that an order of protection provide that respondent "shall not interfere with the care and custody of the children."

Immediate Child Support

Because the law is silent as to the procedures to be followed in seeking a temporary order of support in a family offense proceeding, practices vary by judge and county.

In May 2017, domestic violence advocates met with court personnel to attempt to outline a uniform procedure. As a result of this meeting, a memorandum was sent to all support magistrates (formerly known as hearing examiners, and clerks dated May 29, 2017, setting forth the procedure to be followed when a petitioner seeks child support along with an order of protection. These procedures are as follows:

- When a petitioner files a family offense petition and also requests child support, the clerk (or attorney, if one is drafting the petition) shall include the request for child support in the body of the family offense petition. This petition will be assigned an "O" docket number, indicating it is a family offense petition.
- If the facts warrant an award of immediate child support, the intake judge[1] (or presiding judge, if the request is made at a court appearance subsequent to the date of filing) should issue the temporary order of child support at the same time that the temporary order of protection is issued (or extended). The intake judge

[1] The "intake judge" is the judge who is hearing applications for temporary orders of protection on a given day in Family Court.

should prepare a short-order form for a temporary order of support under the "O" docket number.

- A petitioner has the right to ask for a temporary child support order along with their temporary order of protection even if they have not yet filed a child support petition. However, the temporary support order under the "O" docket is just an emergency measure until the child support issue can be assigned to a Support Magistrate.
- As soon as possible, preferable within a few days of filing the family offense petition containing a request for temporary child support, a petitioner must file a separate child support petition. If time permits, a petitioner can file the child support petition at the same time as the family offense petition. The child support petition is assigned an "F" docket number and is likely to have a different return court date from the date assigned for the "O" case, unless the judge orders otherwise.
- When filing their child support petition under the "F" docket, a petitioner should give a copy of any temporary order of support issued by the intake judge to the Clerk and the Support Collection Unit (SCU). SCU should start collection of child support immediately if a petitioner requests that SCU collect support.

SUMMONS/WARRANT AND TEMPORARY ORDER OF PROTECTION

Upon the filing of a petition for an order of protection, the court may do one of the following:

- issue a summons requiring the respondent to appear on the return court date of the petition (FCA §§ 821-a, 825); or
- issue a "bench warrant" for the respondent's arrest, at which time they will be brought before the court (usually *ex parte*, or without the petitioner present) and will be advised of the existence of the temporary order of protection and the return date of the petition (FCA § 821-a).

Under FCA § 827, the court may issue a warrant where it appears that:

- the summons cannot be served
- the respondent has failed to obey a prior summons
- the respondent is likely to leave the jurisdiction
- a summons would be ineffectual
- the safety of the petitioner or a child is endangered
- there are aggravating circumstances, such as:
    - physical injury
    - use of a dangerous instrument
    - a history of repeated violations of prior orders of protection
    - prior convictions for crimes against petitioner by respondent
    - exposure of any household member to physical injury
    - similar incidents and behavior which constitute an immediate and ongoing danger to the petitioner or a household member of petitioner

TEMPORARY ORDER OF PROTECTION

Pursuant to FCA § 828, the Family Court is empowered to issue a temporary order of protection, either *ex parte* or on notice to the respondent, upon the filing of a petition for an order of protection. A temporary order may contain any of the terms or conditions that may be contained in a final order of protection issued pursuant to FCA § 842.

FCA § 153-c directs that the court must permit a person seeking a temporary order of protection to file their petition on the day they make the request in the courthouse and that the court shall hold a hearing on the petition on that day or the following day (within 24 hours). Thus, a client seeking to file a petition for an order of protection cannot be turned away from the court – they must be allowed to go before a judge with their petition.

Usually, a temporary order of protection will be issued *ex parte* on the day the client files their petition for the order of protection. Once the petition is filed, the petitioner (with or without their attorney) will make a brief appearance before a judge and request a temporary order of protection. They must be very clear as to the temporary relief they seek. For example, if they want the opposing party excluded from the home, prohibited from interfering with custody, or prohibited from calling them on the phone, they or their attorney must tell the judge this specifically.

Pursuant to FCA § 154-b, an order of protection must plainly state the date that it expires. **A temporary order of protection will expire on the return date or adjourn date of the petition and will usually be renewed at each successive court date on the same terms until the case is completed. Be sure the order is extended before the close of every court appearance and be sure that your client leaves the courthouse with a copy of the current order of protection.**

FCA § 828 specifies that a temporary order of protection is not a finding of wrongdoing.

SERVICE OF THE SUMMONS, PETITION AND TEMPORARY ORDER OF PROTECTION

A temporary order of protection is not enforceable until it is served on the respondent, so it is imperative that it is served as soon as possible.

After the court determines what temporary relief will be granted, a return court date will be scheduled. The petitioner will be given a copy of the Temporary Order of Protection (TOP) and a copy of the Summons and Petition. If the petitioner does not elect to have the Sheriff serve the TOP and Summons, then they will also receive a blank Affidavit of Service, a blank Statement of Service, and an instruction sheet describing how service must be made.

FCA § 826 provides that unless a warrant has been issued, the summons and petition shall be served by personal delivery to the respondent at least 24 hours before the return court date.

NOTE: Personal delivery to the respondent is required. This is not the same thing as personal service under CPLR § 308, which permits, among other things, "substituted service," i.e., the leaving of court papers with a person of suitable age and discretion at a party's home or business. Note that substituted service is permissible if it is granted by the court after a showing of all efforts made to affect personal service in either a written motion or by an oral application for substituted service and reasons for the request. FCA § 153-b prescribes the procedures to be followed by the court and the police regarding service of a temporary order of protection and the summons and petition for an order of protection. In brief:

Court Arranges Service through Sheriff's Office

Upon the filing of the petition and *ex parte* appearance before the court for a temporary order of protection, the court will ask the petitioner if they want the temporary order of protection, summons and petition forwarded for service of process to the sheriff in the county where the respondent resides. The sheriff will serve the order and forward a statement of service to the court. While this method seems appealing, in practice it is not always ideal because the petitioner is relying on the court to forward the papers for service to the sheriff and relying on the sheriff to return the statement of service to the court. The court will typically provide them with information as to how to find out whether service has been completed by the sheriff, but the contact information for each county's sheriff should also be available online.

The court will ask the petitioner to fill out a form with information about the respondent to accomplish service, e.g., the respondent's name, address, contact information, and a a physical description.

Petitioner Arranges Service

The court will also offer the petitioner the opportunity to arrange for service themself, either by friend or relative or by going to their local precinct to arrange service by a police officer. The petitioner may not serve the papers on the respondent themself. Petitioners may choose to go to the precinct to arrange service by a police officer and accompany the officer as they complete the service (in order to identify the respondent). One benefit of this method of service is that the petitioner receives the statement of service immediately from the officer and can make sure it is filed with the court before the next court date. Petitioners may also arrange for service through a private process server. Although this service tends to be costly for low-income litigants, private process servers may make more frequent, timely, varied attempts at service than law enforcement might. Lastly, petitioners may ask anyone over the age of 18, including family and friends, to serve the respondent, but should only do so if it is safe for that person to attempt service.

Petitioners should provide the process server with the respondent's personal or work address, a physical description and recent photo of the respondent, and a description of any vehicle that the respondent drives. Petitioners should also give the process server the blank Affidavit of Service from the court to fill out and sign in front of a notary (professional process servers, sheriff's deputies, and police have their own Affidavits or Certificates of service that they will fill out, but it is does not hurt to provide them with the form. It is also important to give out-of-state process servers or sheriffs the court's Affidavit of Service form to ensure that the proof of service complies with New York state law.

FCA § 826(b) provides that if after reasonable efforts personal delivery to the respondent cannot be made, the court may order substituted service (see CPLR § 308). Often the respondent will avoid service by hiding from the police or a process server, and an application for substituted service will have to be made to the court by the petitioner or

their attorney. When a petitioner is unable to effect personal delivery of the summons and petition upon the respondent, they should keep a written record of their attempts to establish "reasonable efforts" for the court. The standard of "Reasonable efforts" does not mean one attempt; a petitioner should be advised to have the server make several attempts at service at different times of the day. The petitioner should ask the process server, sheriff, or police for an Affidavit of Attempted Service that can be submitted to the court when requesting additional time to personally serve the respondent or when seeking substituted service. If they are unable to obtain an Affidavit of Attempted Service, most judges will accept the petitioner's record of "reasonable efforts" which they can swear to under oath in court.

Pursuant to FCA § 153-b, service of the temporary order of protection, summons and petition can be made at any hour of the day or night, any day of the week.

Execution of a Warrant

FCA § 827 provides that a petitioner may not serve a warrant unless granted express permission to do so by the court. The court can issue the petitioner a certificate stating that a warrant for the respondent has been issued by the court. A police officer, upon being presented with such a "certificate of warrant," is authorized to arrest the respondent (FCA §§ 827, 168). The certificate of warrant expires 90 days from the date of issue but may be renewed as necessary by the clerk of the court.

If the whereabouts of a respondent who is avoiding arrest or service become known (e.g., because the respondent contacts the petitioner or the petitioner learns about their location through a common acquaintance), then the petitioner may present the certificate of warrant to any police officer, who must then arrest the respondent even though the officer does not have the actual warrant in their possession.

FCA § 153-a provides that the police may execute the warrant at any time of the day or night, and on any day of the week.

FCA § 155 prescribes how the respondent shall be processed if arrested on a Family Court warrant. Generally, the respondent will be brought before either the Family Court or Criminal Court (if the Family Court is closed for the day) without notice to the petitioner. Although a Family Court warrant usually lists a bail amount, the respondent is often released upon their own recognizance.

Sheriff Responsibilities

As set forth above, the police are required to serve an order of protection upon request by the court or petitioner (FCA § 153-b).

Pursuant to FCA § 168(2), the clerk of the court is required to file an order of protection or temporary order of protection with the police department. All orders issued pursuant

to Article 8 of the FCA (and under Criminal Procedure Law § 530.12) are entered into a state-wide computerized registry, accessible by the police and the courts.

FCA § 168(2) also provides that a petitioner may file the order of protection with any police precinct they see fit. A petitioner should ensure their protection order is filed with the precinct in which they live. They can do so by taking a copy of the order to the precinct, but only if they feel safe and comfortable interacting with law enforcement in that manner. The petitioner should also file the order with the police precincts in which they work, go to school, their children go to school or daycare, or in any areas they regularly frequent.

You should advise your client to always keep their current TOP on their person in case they need to show it to the police, and if the TOP includes their children, they should provide a copy of it to the school.

Mandatory Arrest:

Pursuant to Criminal Procedure Law § 140.10, it is ***mandatory*** that a police officer arrest a respondent under the following circumstances:

- a felony has been committed between family or household members
- a "stay away" provision of a duly served order has been violated
- an order has been violated by the commission of a subsequent family offense
- a family offense misdemeanor has been committed, AND the petitioner does not specifically decline to have the respondent arrested. The police are prohibited from asking the petitioner whether an arrest should be made.

Primary Physical Aggressor Law:

As a result of mandatory arrest, incidents of dual arrest increased in New York City, where both parties were arrested and the children turned over to a relative, if one is available, or taken into custody by the Administration for Children's Services (ACS). The threat of mutual arrest has a potentially chilling effect on survivors of abuse and can discourage them from calling the police for help, especially in cases where the parties have children. If a survivor of domestic violence is arrested, even wrongly or unfairly, this may negatively impact a future custody/visitation matter. The person abusing the survivor may then take advantage of the system and use the time while the survivor is wrongfully in custody to pursue temporary custody or flee the state with the children.

As a result, in 1997 the New York State Legislature passed an amendment to clarify that the police only need to arrest the primary physical aggressor when responding to a domestic violence call where a misdemeanor family offense has occurred. The amendment modifies Criminal Procedure Law § 140.1(c) regarding arrests without a warrant. Pursuant to CPLR § 140.10(c), where more than one family member is alleged to have committed a misdemeanor domestic violence offense, it is *not* mandatory that the police arrest both family members. Rather, the police must assess which family member was the primary

physical aggressor and arrest only that person. The criteria the police must use in determining who the primary aggressor is include: the comparative extent and severity of the injuries; any history of domestic violence; the existence of any prior orders of protection; the threat of future harm; and whether one party acted in self-defense.

The amendment also specifically prohibits police officers from threatening to arrest both parties. Notably, the amendment is limited to misdemeanor family offenses and does not apply to situations where a felony offense has been committed. For example, when a survivor uses a weapon in self-defense, they can be arrested along with the primary physical aggressor/opposing party.

While these provisions pertaining to arresting only a primary aggressor should protect survivors from retraumatization by the police, in practice, survivors still frequently experience wrongful arrests and threats of arrest.

ANSWER AND CROSS PETITION

According to FCA § 154-b, the respondent may file an answer to the petition and a counterclaim. The law is silent as to when this answer must be filed. Pursuant to CPLR § 101 and FCA § 165, Family Court proceedings are governed by the CPLR except where a specific inconsistent statute controls. A petition in Family Court is the equivalent of a complaint in Supreme Court (CPLR § 402) and the answer to that petition must comply with CPLR time limits (CPLR §§ 320(a), 322(b) and 3012(a), etc.) unless another statute controls. Therefore, the response to the petition must adequately address the allegations in the petition and must be filed timely. Each and every allegation needs to be admitted, denied, or declined. Lawyers who fail to deny an allegation risk having the court deem it admitted, except in the limited circumstance where "no responsive pleading is permitted." (CPLR § 3018). Additionally, responses should track the petition paragraph by paragraph to help the court to easily determine what the parties agree on and what is at issue.

The petitioner may file and serve a reply to the "Answer and Counterclaim" by the respondent; however, a denial of the allegations in the answer and counterclaim is presumed if the petitioner does not file and serve a reply. Unless the respondent has retained an attorney, they will rarely file an answer and counterclaim.

The respondent may, however, file a family offense petition which will be called a "cross-petition" and given a separate docket number.

Practice Tip: If an attorney is preparing a "cross-petition," it is properly referred to under FCA § 154-b as the "Answer and Counterclaim," but counsel may consider using the more common name, "Answer and Cross-Petition."

Pursuant to FCA § 154-b, where a counterclaim ("cross-petition") is served on a petitioner more than five days prior to the return date of the petition and is filed with the court with proof of service, it may be heard on the same day as the petition.

AMENDED PETITION

Oftentimes, petitioners do not retain an attorney until after the family offense petition is filed and a temporary order of protection and summons are issued by the court. As soon as they are retained, an attorney should assess the *pro se* petition and, if necessary, prepare and file an amended petition for the petitioner.

A *pro se* petition may not contain a full or accurate description of the alleged family offenses, or it may not be legally sufficient (see the section on "Petitions"). These problems can be rectified by the attorney's filing of an amended petition. Furthermore, an amended petition prepared by an attorney can emphasize to the court additional incidents or important details of the domestic violence, including aggravating circumstances if they exist.

The FCA does not specifically provide for leave to file an amended petition. Under CPLR § 3025, a party is entitled to file an amended pleading as of right (that is, without specific permission from the court or opposing side) within 20 days or at any time before the period to respond to the pleading expires. If more than 20 days have expired, leave of the court or consent of the adversary to file the amended petition should be sought. In practice, most courts will accept an amended petition beyond the 20 days without question unless the opposing side specifically objects. Even if the opposing side objects, an attorney may argue that the petitioner did not have the benefits of counsel in drafting their initial petition.

Preparing the Amended Petition

The allegations of a petition or amended petition should be presented in non-conclusory language. In other words, a petition should not read "he assaulted her on October 1, 2013," but should read "on or about October 1, 2016, respondent assaulted petitioner, to wit, they struck the petitioner several times on the head and shoulders with a wooden bat, causing them to suffer physical injury including bruises and abrasions." ***See samples of allegations in petitions and amended petitions at the end of the manual.***

The allegations should be arranged in a logical manner, either chronologically or by severity. Although the law contains no statute of limitations on family offense incidents, attorneys should be aware that some judges are unwilling to issue orders of protection based on older incidents. The facts of the case and the relief sought will determine whether and which "old" incidents should be included in the amended petition. A petitioner is unlikely to receive a fully stay away order of protection based only on allegations of incidents occurring years earlier, but if there is a recent incident alleged, then additional older incidents may be used to show patterns of abuse.

Likewise, the number of allegations included will depend on the circumstances of the case. An amended petition should include as many relevant incidents as the attorney deems necessary to support the relief requested, but not so many that they cannot be effectively proved at a fact-finding hearing.

In general, the amended petition should include all incidents of physical violence, including the breaking of furniture and punching of walls, as well as direct hits to petitioner or the children or pets; all incidents involving injury, to petitioner or other household members; all incidents involving weapons; and all incidents involving explicit threats to a petitioner's life.

As described above, attorneys should consult with their mentors and take care with descriptions of the presence or involvement of children during an incident and remain mindful of any interference with the family such allegations may trigger (e.g., involvement by the Administration for Children's Services).

Practice Tip: The Amended Petition must also specify which family offenses are alleged. You may list all the family offenses and allege that "one or more" of them was committed by the respondent. This will allow you the greatest flexibility in the event your case goes to trial: depending on the testimony and evidence presented, you may be able to successfully argue additional or alternative family offenses to the ones you planned to prove. For example, you may have planned to prove assault but your client's testimony made a better case for attempted assault or harassment. You will be precluded from arguing that a specific family offense was committed if it was not referenced in the petition.

Procedure for Filing

The amended petition must be served upon the opposing party or their attorney if they are represented. Where practicable, the amended petition should be served by regular mail on the respondent or their attorney prior to the court appearance. An affidavit of service should be completed by the person who did the mailing. Attorneys who mail the papers themselves may complete an "Affirmation of Service," rather than an Affidavit of Service. An "affirmation" does not need notarization. The affidavit or affirmation must be annexed to the original amended petition and filed with the court.

NOTE: a pleading may not be filed with the court unless it contains proof that it has been served upon the opposing party or their attorney.

If there is not enough time to serve the amended petition by mail, it may be handed to the opposing party on the day of the court appearance **outside** of the courtroom.

If they received the amended petition shortly before the appearance, a respondent or their attorney may request an adjournment to review it. If the amended petition is served prior to the appearance, the original may be filed with proof of service with the court clerk at any time prior to the court appearance. However, it is extremely unlikely that the amended petition will be reviewed prior to the day of the next court

appearance, and there is the possibility that the amended petition will not find its way into the court file prior to the court appearance. Thus, while an attorney should serve the amended petition as soon as possible, it is generally an acceptable practice to file the amended petition and proof of service on the day of the court appearance. Attorneys should approach the clerk or court officer when they arrive at the courthouse and ask that the amended petition, with proof of service, be added to the court file before the case is called.

If the petition is handed to the respondent on the court date, the clerk or court officer will usually ask if a copy of the amended petition has been provided to the respondent without requiring an affidavit of service. Typically, the judge will ask the respondent, on the record and while in the courtroom, if they received the amended pleading. The court will likely grant a respondent an adjournment if they receive the amended petition on the same day as the hearing.

Motion for Leave to File an Amended Petition

If more than 20 days have passed since service of the petition, then it is necessary to obtain leave of court to file the amended petition (or the consent of the adversary to accept service). Leave to file an amended petition is freely granted, especially on the first return date of the case. A request for leave to file the amended petition may be made orally or by motion – depending on the timing and/or preferences of the judge.

A motion for leave to amend a petition must be served at least eight days before the return date, so an attorney may not have time to make a motion. Many judges will entertain an oral application for leave to file an amended petition, especially if the attorney has been retained shortly before the return date. In such cases, the attorney should make an oral application to the court on the return date for leave to file the amended petition by a date certain and ask if the court prefers a written motion.

If possible, the attorney should bring the amended petition to the return date, and if the court grants leave to serve and file it on an oral application, ask the respondent or their counsel (if retained) if they will consent and accept service of the amended petition on the spot. Again, it is best to respectfully ask the court if they would prefer a motion to this oral request, but inform the court that you have the amended petition ready and in-hand.

If the return date is several weeks away, the attorney should make a written motion for leave to amend the petition. The written motion should include the proposed amended petition as an exhibit and should ask that the amended petition be deemed served and filed if the motion is granted.

MOTION PRACTICE

Other than motions for leave to amend the petition, attorneys are unlikely to engage in motion practice in an Article 8 proceeding, since much of the relief that can be requested through motion practice should be requested in the initial petition or amended petition and at the first court appearance. Violation petitions, however, are commenced by Order to Show Cause (**see below**).

There may be circumstances that warrant motion practice, such as when circumstances change after the petition is filed and immediate relief is required. If a judge already is assigned to the case an attorney should first check with the court clerk or law secretary to find out the judge's rules for making a motion, including whether oral argument is required. As an alternative to a motion, an attorney can request a conference with both parties and the judge. However, if the judge refuses to hold a conference immediately or if a judge has yet to be assigned to the case, an attorney can make a motion.

Some types of relief an attorney might want to request by motion after the Article 8 petition has been filed include: supervised or suspended visitation, exclusive occupancy of the home, expert's fees, the appointment of an Attorney for the Child, temporary child support, temporary custody, permission to amend or modify the petition, and dismissal of a petition or cross-petition for legal insufficiency. An attorney must present a detailed affidavit from the client to the court as part of this motion, outlining why immediate relief is necessary before trial. Supporting depositions or affidavits from witnesses are also very useful in winning such motions, such as child-care providers, child counselors and therapists or teachers familiar with visitation or custody problems.

METHODS FOR BRINGING A MOTION BEFORE THE COURT

In civil litigation, there are two basic methods for bringing a motion before the Court – by Notice of Motion or Order to Show Cause (see CPLR §§ 2211 and 2214). These two procedures are summarized below.

Notice of Motion

A motion is made by "Notice of Motion" where there is already a court date scheduled for the matter, and no immediate relief is necessary prior to the court date. The motion papers include a Notice of Motion, a supporting Affidavit and/or a supporting Attorney's Affirmation, and any supporting exhibits. The attorney chooses the return date (the date the motion will be heard by the court) which is usually the next scheduled court date. Note that even if an attorney picks a different return date than the next scheduled court date, the court clerks will usually adjourn the motion to the date on which the matter is

already scheduled. If you need a court date before the next scheduled court date for the court to consider the motion, you should consider filing the motion by Order to Show Cause instead (see below). A copy of the Notice of Motion with supporting papers is served upon opposing counsel (or the opposing party, if they appear *pro se*), usually by regular mail. An Affidavit of Service is completed by the person who did the mailing. If an attorney mails the papers, then they may complete an "Affirmation of Service" instead of an Affidavit.

The Affidavit or Affirmation of Service is annexed to the original Notice of Motion with supporting papers, which is then filed with the clerk of the court so that it may be placed upon the court's calendar for the date specified in the Notice of Motion. The attorney does not need to appear to file the Notice of Motion and will not see a judge upon the filing of the Notice of Motion.

This type of motion is used when no immediate relief is necessary.

Order to Show Cause ("OSC")

A motion is brought by OSC where a party seeks some form of immediate or temporary relief outside of the regular progress of the case and prior to the return date of the motion. When a motion is brought by OSC, an attorney prepares an Order to Show Cause for the judge's signature to be annexed to the supporting papers. This OSC takes the place of the "Notice of Motion." The supporting client affidavit and attorney affirmation are essentially the same as those prepared for a motion on notice, except that the supporting papers should also address the need for immediate or temporary relief.

On the OSC, the return date of the motion is left blank for the judge to fill in. By signing the OSC, the judge instructs the opposing party to appear and "show cause" why certain relief should not be granted – in other words, to show cause why the movant should not prevail on their motion. The judge will also fill in how and by what date the opposing party needs to be served with the OSC and supporting papers.

An OSC may contain a temporary order that, like a temporary order of protection, provides immediate *ex parte* relief to a party. In Family Court, an OSC is submitted to a judge through the intake process and the attorney must be present when the OSC is filed, in order to appear before the judge and argue as to why the temporary or immediate relief is necessary. An attorney should check with the clerk of the court to find out the procedure for filing an OSC prior to filing it because procedures can vary by borough and by judge.

If temporary relief pending a hearing on the motion is not granted, the judge usually still signs the order and provides a return date for the motion but crosses out the provisions in the order which provide for temporary relief.

UNIFORM RULES OF THE FAMILY COURT

The Uniform Rules of the Family Court §205.8 provide that any papers for signature or consideration of the court shall be presented to the clerk of the court, or directly to the

judge's clerk. Motions shall be made returnable on a date set by the court (Uniform Rules §205.11).

As a practical matter, this means that an attorney may not simply choose a return date for a motion, as may be done in other civil practice. Courts will usually permit the filing of a Notice of Motion if the motion is returnable on the return date of the petition. If any other date is sought, however, the motion should be brought by OSC. An attorney may speak to a judge's court attorney or clerk if they have concerns about how to notice the motion.

FCA § 154-b provides that any motion to vacate or modify an order of protection shall be made on notice to the non-moving party.

VIOLATIONS OF ORDER OF PROTECTION

For purposes of enforcement, there is no distinction between the violation of a temporary order of protection and violation of a "permanent" or final order of protection. The remedies and penalties are basically the same regardless of whether the order is temporary or final.

While a family offense proceeding is pending, and a temporary order of protection is in effect, the respondent will often violate the order by contacting the petitioner or otherwise express anger or retaliate for the filing of a petition. During this period, a client may need to take extra safety precautions such as changing their telephone number, having a friend or relative accompany them home from work or school, or going to a shelter for survivors of domestic violence. ***See "Safety Planning" section above.***

VIOLATIONS RESULTING IN CRIMINAL CHARGES

Pursuant to FCA §§ 168 and 155, an order of protection provides the police with the authority to arrest the respondent upon an allegation that they violated the order.

If a respondent violates an order of protection, including a temporary order of protection, arrest is ***mandatory*** where an officer has probable cause to believe:

- that a "stay away" provision of the order has been violated
- that an order has been violated by the commission of a subsequent family offense
- that a felony has been committed by one family or household member against another

The criminal penalties for violation of an order of protection include, among other things:

- Aggravated Criminal Contempt (a D felony) may be charged when the respondent intentionally or recklessly causes physical injury.
- Criminal Contempt in the 1**st Degree** (an E felony) may be charged where the respondent intentionally places or attempts to place the petitioner in reasonable fear of physical injury by, among other things, displaying a weapon or stalking them; causes more than $250 in damage to the victim's property; or where the respondent was convicted of violating an order of protection against any person within the past five years.
- **Criminal Contempt in the 2d Degree** (an A misdemeanor) may be charged when the violation includes intentional disobedience of a condition in an order of protection

- Menacing in the 2d Degree (an A misdemeanor) may be charged when the violation consists of conduct which would otherwise constitute Menacing in the 3d Degree (a B misdemeanor)
- Upon a violation of an order of protection the court may revoke the respondent's firearms license, order the respondent ineligible for such a license and/or require the surrender of weapons
- In essence, where a respondent commits an act that may be a violation or misdemeanor, they risk a greater charge (perhaps a felony charge) where they commit that same act in violation of an order of protection.

Violation Charges Brought in Family Court

Pursuant to FCA §§ 846 and 847, regardless of whether the respondent was arrested, a petitioner may file a "violation petition" if the respondent fails to obey a temporary or final order of protection. The petitioner may both file a petition alleging a violation of a Family Court order of protection in Family Court and seek the DA's help in filing a complaint in Criminal Court (FCA § 847).

If the violation consists of conduct that would constitute a new family offense, a client may file a new petition rather than filing a violation petition (FCA § 847). The petition must be served personally with a new summons (FCA § 846).

Upon the filing of a violation petition, the Court may compel respondent's presence in court by OSC or by issuance of a summons or a warrant.

An OSC or summons for a violation petition must include a notice containing statutory language pursuant to FCA § 846, in bold type, advising the respondent, among other things, that their failure to appear in court will result in arrest. A warrant issued in conjunction with a violation petition shall direct that the respondent be arrested and brought before the court.

Where a petitioner has filed a violation petition, the court may do any of the following:

- retain jurisdiction over and hear the violation petition (FCA §§ 846 and 847)
- retain jurisdiction to determine whether the violation constitutes contempt of court, and transfer the allegations constituting criminal conduct to the District Attorney's office (FCA §§ 846 and 813)
- transfer the entire proceeding to the Criminal Court (FCA §§ 813, 846)

Pursuant to FCA § 156, the provisions of the Judiciary Law regarding civil and criminal contempt apply to the court's consideration of a violation petition, except as otherwise provided in the Family Court Act. Article 19 of the Judiciary Law addresses civil and criminal contempt in a civil action. A civil contempt for violation of an order of protection or temporary order of protection has a penalty not exceeding three months in jail and a fine not exceeding $1,000. Jud.L. § 751.

Pursuant to FCA §846-a, if, after a hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey a court order and that finding is stated on the record, the court may do any of the following:

- modify the current temporary or final order of protection (for example, extend the order for a longer duration for up to five (5) years (See FCA § 842) or add provisions, such as a stay away provision)
- issue a new order of protection for up to 5 years (See FCA § 842)
- order the forfeiture of bail
- order payment by respondent of reasonable counsel fees of petitioner
- commit respondent to jail for up to six months

  NOTE: the court may order that the jail term be served on specific days or parts

  of days, usually so as not to interfere with respondent's employment

- revoke or suspend a firearms license, require the surrender of weapons, and/or order respondent ineligible for a firearms license

Even if a violation like a telephone call or letter seems "minor," petitioners should be advised that they should enforce the order of protection unless they believe it will make them less safe to do so (I.e., by triggering retaliation by the respondent). An order of protection may be enforced by either filing a complaint with the police or by filing a violation petition in Family Court. A violation of an order shows the court that the respondent is continuing a course of conduct and disregarding the court order. Findings of a violation subject the respondent to increased penalties.

DOUBLE JEOPARDY ISSUES

The double jeopardy clause of the Fifth Amendment of the U.S. Constitution protects defendants from being criminally prosecuted more than once for the same offense. Original proceedings seeking an order of protection under FCA § 821 are civil matters and are not barred by concurrent or subsequent criminal prosecutions.

However, a proceeding which involves allegations of a violation of an order of protection under FCA § 846-a may arguably result in criminal sanctions and, therefore, double jeopardy may preclude the prosecution in both Family Court and Criminal Court for the same violation.

RELIEF NOT REQUESTED IN A PETITION OR COUNTER-CLAIM

Pursuant to FCA §§ 841(e) and 154-b, a court may not grant any relief that was not requested in the petition or counterclaim. Thus, it is important to be thorough and complete when drafting a petition or amended petition for your client.

However, pursuant to FCA § 154-b, the court will permit a settlement that includes terms that were not described in the petition or in a counterclaim, where the party against whom the order is issued has given knowing, intelligent, and voluntary consent to its issuance.

WHEN YOUR CLIENT IS THE RESPONDENT

Often, an opposing party will pursue an order of protection against your client, either in retaliation for an order the client sought or is seeking against them, or to further harass the client through the court system.

The first thing to warn your client about is the new mandatory arrest provisions. (See "Police Responsibilities" section, above). Make sure the client knows to call you immediately if they are arrested so that you may advocate on their behalf immediately with the police and the DA's office and help them find a criminal attorney, if necessary.

If the opposing party has secured a temporary order of protection (TOP) against your client which does not require them to stay away from the marital home or the opposing party, advise the client to move out of the home, if possible, to limit possible allegations that the client violated the TOP. The client should take any children with them if there is no existing custody/visitation order preventing them from doing so.

Practice Tip: If your client does not have an order of protection of their own and the opposing party's actions against them warrant one, you should help them file their own petition immediately, following the practices outlined in this manual. The client can file their own family offense petition, or file a cross-petition or counterclaim, in response to the opposing party's petition. Be aware, however, that filing a counterclaim instead of a family offense petition will not give your client the chance to obtain an immediate temporary order of protection against the opposing party.

MOTION TO DISMISS THE PETITION AND VACATE THE TEMPORARY ORDER OF PROTECTION

As soon as your client has been served with the opposing party's petition for an order of protection, you should scrutinize it for legal sufficiency. If the incidents described do not adequately define a family offense (according to the relevant sections of the Penal Law) and thus fail to give your client proper notice of the allegations, the petition is legally insufficient on its face pursuant to CPLR §§ 3013 and 3020. Insufficiency in stating a family offense renders the petition defective. You should immediately move to dismiss the petition against your client on the grounds of legal insufficiency.

You may also wish to make an immediate application to the Court to vacate the temporary order of protection, especially when the TOP is based upon a defective petition. Any motion to vacate an order of protection must be on notice to the non-moving party.

At the first appearance before the Court with both parties present, the judge (or the judge's law secretary or clerk) is likely to attempt a settlement. The client will be asked, as the respondent, if they admit or deny the allegations, or if they will consent to an order of

protection without admitting or denying the allegations. If the client also has a petition or cross-petition before the court requesting their own order of protection, the court most likely will suggest a settlement of mutual orders of protection.

As discussed earlier in this manual, mutual orders of protection should not be agreed to because the opposing party is likely to use their order to further harass the client by calling the police and alleging violations. For the same reason, a client should not consent to an order of protection against them, even if such a settlement would not require the client to admit to any of the allegations. If you think that the opposing party will likely prevail on their petition, then it is preferable to agree that both parties will withdraw their family offense petitions rather than agreeing to mutual orders of protection.

If you do not reach a settlement and the client enters a denial, the judge will set the matter down for a hearing. If the client is in jail and cannot make bail, a hearing must be held in the Family Court within 120 hours of the arrest, unless a Saturday, Sunday or legal holiday occurs during their custody, and then within 144 hours of arrest. FCA § 821-a(4). The hearing must determine whether sufficient cause exists to keep the client in custody. If sufficient cause is not found, or no hearing is timely held, the client must be released immediately.

More likely, the client will not be in custody and the hearing will be set down for several weeks, even months, in the future. An attorney should use this time to conduct discovery and make any motions to dismiss the petition or vacate the temporary order. One important source of evidence is the transcript of the opposing party's *ex parte* application for a TOP. The attorney should order a copy of this from the court since it is a record of what the opposing party said under examination by the judge when they were granted a TOP, and the statements they made on that date might contradict or conflict with the petition or statements made later in the proceedings, especially if the charges are fabricated.

DEMAND FOR A BILL OF PARTICULARS

As discussed above, a demand for a bill of particulars pursuant to CPLR § 3042 is not a discovery device, it is the amplification of a pleading. Thus, you may serve one on the petitioner as of right. Think strategically about whether to serve a bill of particulars: is the petition vague about dates or about the specifics of the alleged incident(s)? Does the alleged conduct violate any of the family offenses defined in the penal law? In preparation for a potential trial, it may be advantageous to force the petitioner to provide more detail, giving you more material to develop a theory of the case and a cross-examination strategy. On the other hand, this may give the petitioner a push and head start to develop their "story" (likely with an attorney) and prepare for trial. If you have questions about whether or how to demand a bill of particulars, please consult with your Her Justice mentor.

THE HEARING

A client's attorney should make every effort to keep the opposing party/petitioner's testimony within the confines of their petition and not allow them to expand on their allegations in court.

Second, the attorney should listen carefully to the opposing party's case to make sure all elements of the family offense(s) alleged are proven. For example, the opposing party's attorney may not offer proof of physical injury, or the conduct with which your client has been charged may not meet the statutory definition of the relevant family offense. Counsel for the opposing party may not establish that your client acted with the requisite mental state (e.g., intent to harass).

Third, the client's attorney should prepare the client to be called as a witness in the opposing party's case. Unlike in a criminal case, the respondent in an Article 8 proceeding may be called to testify by the other side. In civil proceedings, parties have a constitutional right to remain silent if the answer might incriminate them, but an adverse inference can be drawn when a party invokes the Fifth Amendment. A client's attorney can argue, especially where a parallel criminal proceeding exists or might be initiated in the future, that an adverse inference is not appropriate since it will infringe upon their rights in any criminal proceeding. Alternatively, the client's attorney can argue that family offense proceedings are quasi-criminal in nature since an order of protection is enforced by arrest and can result in criminal charges and imprisonment. After all, family offenses are crimes as defined in the Penal Law. Thus, the client should be entitled to invoke the privilege against self-incrimination.

As part of their own defense, the respondent/client should rebut each allegation in the petitioner's testimony. The respondent/client should corroborate their rebuttal with evidence, such as witnesses to the incident, recordings of the incident, or the opposing party's medical records which explain a different cause of the injuries than the conduct alleged. The respondent/client can put forth several defenses:

- the petitioner/opposing party is fabricating the abuse
- the respondent/client's actions were in self-defense
- the petitioner was not injured (only a partial defense, since many family offenses do not require physical injury as one of their elements)
- the children were not present (if the opposing party claims they were upset or in danger); this is a defense to a claim of aggravating circumstances

In sum, the client's attorney should stress the weakness of the petitioner/opposing party's case – the absence of corroborating evidence, the insignificant nature of the allegations, and the client's clear, detailed denials and corroboration of such denials.

If the petitioner/opposing party's petition is not dismissed after fact-finding, counsel for the petitioner/client should request a separate dispositional hearing. The attorney may then introduce additional evidence that might have been inadmissible at the fact-finding stage, such as letters and affidavits from clergy, family, and friends, as well as other character references.

SECTION 3:

COURT APPEARANCE

HER JUSTICE

SECTION 3: COURT APPEARANCE

A. Timeline of a Family Offense Proceeding
B. Court Appearances

HER JUSTICE

TIMELINE OF A FAMILY OFFENSE PROCEEDING

FILING THE PETITION & EX-PARTE APPEARANCE

- Client goes to Family court, tells their story to a clerk or their counsel who drafts a Family Offense Petition setting forth the allegations which support their request for an Order of Protection.
- Client waits to see an Intake Judge who will review the petition. The Judge will ask questions of the client and determine whether to grant a Temporary Order of Protection. If granted, this is called an Ex-Parte Temporary Order of Protection and will be in effect until the next scheduled court date. The ex-parte order will either be a "stay away" order or a "refrain from" order (discussed below).
- Client is sent to a clerk at the CAP (Court Action Processing) Unit to receive copies of their documents and a summons with a return date.
- Client or the Court arranges service of process upon the Respondent. Typically, the Court will send the summons and petition to the sheriff for service of process in the county where the Respondent lives, based on the address included in the petition by the client. If the client does not know where to serve the Respondent, the sheriff cannot attempt service.
- Client obtains completed affidavit of service from process server if other than Sheriff or NYPD. If Sheriff or NYPD have effectuated service, proof of service will be sent to the court. The court has been defaulting to service by the Sheriff's office, but there still may be occasions when the police effectuate service. Client should be advised that the ex parte order is not in effect until the Respondent is served.

RETURN OF PROCESS/FIRST APPEARANCE

- If Respondent appears in court, parties are asked if they wish to represent themselves or want counsel. Both parties in a family offense proceeding are entitled to assigned counsel if they cannot afford to hire private attorneys. They may be required to provide proof of income to the Court if they request assigned counsel.
- If the parties are already represented or waive their right to counsel, the matter can be resolved at this first appearance if the petitioner withdraws the petition or the parties' consent to an order of protection.

- If either party either requests counsel or waives counsel but is unable to resolve the matter through withdrawal or consent, then the matter is adjourned. If service was not accomplished, the matter is adjourned for new service on Respondent.

SUBSEQUENT APPEARANCES AND CONFERENCES

- The court decides whether to assign counsel ("18B attorneys") to unrepresented parties.
- Parties appear either with counsel or on their own (pro se).
- Court inquires whether the parties have spoken, and what their current positions on the matter are.
- Court may hear some brief facts from the parties and determine whether to set it down for a conference or for further Fact-Finding.
- Negotiations are held between counsel or parties with the facilitation of a court attorney~~,~~ (if one is available.)

POTENTIAL OUTCOMES

- Withdrawal – Petitioner no longer wishes to pursue case (there are many potential reasons why a petitioner may choose to withdraw).
- Consent – Respondent agrees to an order of protection without findings of fact and accepts all terms of the order of protection with potential consequences (i.e., resulting from alleged and proven violations).
- Inquest – If the Respondent fails to appear, then an Inquest is held where the Court questions the Petitioner on the allegations. If the allegations are proven, a Default Order of Protection is entered against the Respondent.

TRIAL/FACT-FINDING PHASE

- If the parties do not consent, then the matter is set down for Fact-Finding. Parties agree to a pre-trial schedule of deadlines for such things as exchanging witness lists, motions, and issuance of subpoenas.
- Client and all witnesses are prepped for Fact-Finding, including direct and cross examination.

TRIAL/DISPOSITIONAL PHASE

- Immediately after Fact-Finding, court moves to dispositional phase to determine length and terms of the final Order of Protection. Prepare reasoning for requesting terms and a duration for the order of protection.

APPEAL

- If the order of protection is denied or insufficient and you (and your mentor) assess that there is a legal basis for appealing this decision, then advise the client that the notice of appeal must be filed within 30 days of the decision. You must advise your client of this deadline regardless of whether you are representing them in the appeal.

Practice Tip: This is a general timeline for how a case develops, however some cases require additional steps including motion practice to deal with issues such as jurisdiction, improper service, motions to keep address confidential and dismissals.

COURT APPEARANCES

The petitioner's first appearance in a case occurs when they file the family offense petition and appear before the intake judge for an *ex parte* appearance seeking a temporary order of protection. If the intake judge grants a temporary order of protection, they will then calendar the case for a "first appearance" or "return date." This is the date that will appear on the summons which is served with the petition to notify the respondent of the return date.

If an attorney is retained after the petition was filed, they should check with the client and the court how many appearances have occurred, when the next appearance is, and what the purpose of the appearance is.

At the return date, or the first appearance that the respondent is summoned to, the judge typically asks whether the petitioner wishes to continue with or withdraw their petition, whether the respondent was served properly, and whether the parties wish to obtain council. The court is unlikely to hold a fact-finding hearing (a trial) on this first appearance, but keep in mind that family court can be unpredictable and accelerated.

If the client already has been to court for one appearance before an attorney was retained, it is still unlikely that the case is set for a fact-finding hearing. Judges must set aside a block of time for a hearing, so if they schedule a trial, they will typically inform the parties to be ready for trial at the next appearance in court. An attorney may also determine the procedural status of the case by checking the court's "E-Courts" website or going to the courthouse and reviewing the file – the file notes usually will indicate whether the matter is set down for a hearing.

ATTORNEY'S NOTICE OF APPEARANCE

The Uniform Rules of the Family Court §205.10 provides that attorneys shall file a notice of appearance at or upon the attorney's first appearance in court or no later than ten days after appointment or retainer, whichever is sooner.

As a practical matter, filing a Notice of Appearance in advance of the court date may result in the Notice of Appearance being lost or misfiled by the clerk. Most attorneys file their Notices of Appearance at the time of their first court appearance. Upon arrival, an attorney should go to the courtroom and provide the court officer or court clerk with their Notice of Appearance. An attorney may prepare a Notice of Appearance in advance; however, the clerk or court officer will provide a blank Notice of Appearance to any attorney appearing for the first time on a case.

ADJOURNMENTS

FCA § 826(a) provides that if the summons and petition were served less than three days before the return date of their petition, the respondent is entitled to an adjournment upon request. Likewise, if a client is the respondent in a cross-petition, under FCA § 826(a) they are also arguably entitled to an adjournment if served less than three days before the return date.

In addition, FCA § 836 provides that the court may adjourn the hearing of the petition for good cause, upon its own motion or upon the motion of either party.

Under FCA § 836(b), after the fact-finding phase of the hearing, the court may adjourn the dispositional phase of the hearing for "inquiry into the surroundings, conditions and capacities of the persons involved in the proceedings."

At disposition, the court will announce its determination as to whether and which family offenses were committed and then direct the parties to meet with Probation or the Administration for Children's Services (ACS) for a report on the "surroundings, conditions and capacities" of the parties. Such report often entails visits by Probation or ACS personnel to the homes of each party and even observations of each party interacting with children of the relationship.

Adjournments should only be requested when absolutely necessary because New York court calendars could result in an adjournment date months away. Unnecessary delays could result in witnesses becoming unavailable, memories fade, or losing the opportunity to timely address issues which arose since the last court appearance (i.e., violations). Remember, that each court appearance is an opportunity to learn the position of the opposing party and to move the case along further.

If you must adjourn a case, you will need to get consent from all parties and attorneys and fax, email, or mail (if time allows) the letter to the court. The court may not respond to your letter, so unless you receive notice that your request was granted, you or your client are expected to appear, if only to advise the court that you are seeking an adjournment. Failure to appear when the court has not expressly granted an adjournment could result in a dismissal of your client's case or a default order if the family offense petition is against your client. Ensure that your client gets a temporary order of protection from the court with the same terms extended through the return date. Your client should have an order of protection on their person at all times. Although the court should be mailing the extended order of protection to all parties, you may want to send out a courtesy copy to them as well, if you requested the adjournment.

Please speak to your mentor prior to seeking an adjournment.

CAUTION: We have had a few occurrences where a specific judge required counsel for the petitioner to immediately start trial at the first appearance with both parties present, by placing the petitioner on the stand. These were cases where the respondent also appeared with counsel on the first date and demanded an immediate trial, and the judge was moved to start the trial immediately. If this happens, an attorney should immediately object on the record and explain that they were just retained and have not had the chance to fully interview the client about all the details of the case or gather evidence and witnesses. If forced to put the client on the stand anyway, the attorney should preserve the right to recall the client as a witness at the next adjournment date. Usually, the judge will only require the petitioner to testify in part at this first appearance, before adjourning the case for a month or two. Still, this can be an unpleasant surprise for a client – so it is best to prepare your client for this possibility. Since a non-appearance by the respondent could necessitate an inquest at this appearance anyway, an attorney should have the client ready to at least give partial testimony to the allegations in their petition on this first return date.

APPEARING UNDER HER JUSTICE'S STUDENT PRACTICE ORDER

Ask your mentor about Her Justice's Student Practice Order from the Appellate Division which allows law students and law graduates to appear on Family Court cases under the supervision of an admitted attorney. If you are a law student or law graduate, it is important that you appear in court with an admitted attorney. The admitted attorney can introduce you to the court and seek permission for you to speak for the client under their supervision pursuant to the Her Justice Student Practice Order. If you are a student or law graduate, then you will state your appearance on the record as appearing under supervision pursuant to the Her Justice Practice Order.The admitted attorney supervisor has the obligation to supervise your in-court and out-of-court work as well.

If you have any questions about the Practice Order, please call the legal staff at Her Justice.

ESTABLISHING SERVICE

The threshold issue to be addressed on the first court appearance is whether the respondent was served. If a client retains an attorney after they have appeared in court for the first time, and the respondent also appeared in court, the issue of service already will have been dealt with.

At the first court appearance, a petitioner should be certain to have an affidavit or statement of service, or if they were unable to serve the pleadings, be prepared to describe to the court their reasonable efforts to make service.

If a petitioner presents a duly executed affidavit, or statement of service, and the respondent does not appear, the court may either:

- conduct an inquest (fact-finding hearing without the other side present) and issue a final order of protection granting the relief sought by petitioner (basically the judge will question the petitioner on the record, or have the petitioner's attorney do so; the petitioner will testify under oath to the events described in the petition); or
- order a default judgment against the respondent and grant a final order of protection to the petitioner without any testimony. In this situation, however, there are no findings of fact or wrongdoing against the respondent because no testimony is taken. It is better to have such findings on the record (especially if there is a custody or visitation case pending or likely to follow). Thus, the attorney should request that the judge hold an inquest instead of issue a default judgment.
- issue a warrant for respondent's arrest

Pursuant to § 167, if the respondent appears in court, it is presumed that they were served unless they make an immediate objection to the manner of service.

Pursuant to FCA § 821-a, if the respondent appears the court is required to advise the parties of their right to have legal representation, or, if they are indigent, of their right to have counsel appointed. FCA § 262 provides that both the petitioner and the respondent, if indigent, are entitled to have counsel appointed in an Article 8 proceeding.

The standard for indigence is "financially unable to obtain" counsel. Courts generally assume that employed persons are financially able to hire counsel but may appoint counsel if a party provides proof of income and continues to appear without counsel under circumstances where counsel is clearly advisable.

FCA §838 provides that unless the court specifically decides to the contrary, the petitioner is entitled to be accompanied in the courtroom by a non-witness friend, relative, counselor, or social worker. This person is not authorized to take part in the proceedings (that is, to speak on behalf of petitioner) but may be present for moral support.

The respondent is likewise entitled to have a person accompany them into the courtroom unless they are represented by an attorney (FCA § 838).

INQUEST/DEFAULT JUDGMENT

Once service has been established, a respondent may be declared to be in default if they have not appeared, and the judge may conduct an inquest in their absence or may issue a default judgment. If the respondent does not appear, the attorney should request an immediate inquest. At inquest, the attorney (or the judge) will question the petitioner briefly about the allegations in the petition. The petitioner's testimony will not be as detailed as it would be at a trial; they need only to establish standing, the elements of the family offenses which they allege and, if applicable, any aggravating circumstances. After

their testimony, the attorney moves for a finding that family offenses have been committed and the issuance of a final order of protection and any other relief sought. An attorney should always be prepared for inquest.

A default judgment is issued without any testimony being taken; thus, a default does not result in any findings of fact or wrongdoing against the respondent. An attorney should always request that the judge hold an inquest instead of issuing a default judgment.

HEARING/TRIAL

An attorney who is retained after a petition has been filed must ascertain whether the case has been "set down" for a hearing or trial (these terms are used interchangeably) on the next court date. If it is the first court appearance for the petitioner where the respondent is also appearing (i.e., the first court appearance that is not *ex parte*) it is extremely unlikely that a hearing will be held.

If a petitioner already has been to court for one appearance before an attorney was retained, it is still very possible that the case is not yet set down for a hearing. Since the judge must set aside a block of time for a hearing, usually a judge specifically will tell a petitioner that they should be ready for a hearing on the next appearance in court. An attorney also may determine the procedural status of the case by going to the courthouse and reviewing the file – the file notes usually will indicate whether the matter is set down for a hearing.

CAUTION: Certain judges have been known to require an attorney to immediately start a trial at the first court appearance with both parties present even if the case was not specifically "set down" for trial. An attorney should try to consult with a family law mentor, supervising agency or practitioner experienced with a particular judge to determine whether a particular judge has been known to start trials immediately. If a judge requires an attorney to proceed to trial on the first court date, the attorney should immediately object on the record and explain that they were just retained and have not had the chance to fully prepare or gather evidence and witnesses. The possibility of a "surprise" trial makes it important for an attorney to begin trial preparation from the moment that the attorney is retained. (*See "Preparing for the Hearing," below.*) By contrast, certain judges are known for evading trials at all costs and will adjourn cases indefinitely to deliberately frustrate litigants in an effort to force a settlement or withdrawal. In these instances, if it is in your client's interest to proceed to trial, the attorney should be prepared to firmly but politely make the record by requesting a trial date and reminding the court each time trial does not go forward that you are prepared to start trial and wish to proceed.

SETTLEMENT DISCUSSIONS

Pursuant to the Uniform Rules of the Family Court § 205.12, in any proceeding a conference will be held as soon as practicable (usually on the first return date) to consider the issues. The Uniform Rules provide that a written order shall be issued or that the matters discussed at the conference shall be formally placed on the record.

Family Court Act § 824 explicitly provides that no statements made during a preliminary conference may be admitted into evidence at a fact-finding hearing.

Most judges will not conduct a formal conference or issue an order pursuant to the Uniform Rules. Rather, the parties will conference the case before the court between themselves or with the judge's court attorney to narrow the issues and discuss settlement. The outcome of the conference will then be summarized on the record.

Parties are often pressured to settle the case. Attorneys should not allow themselves or their clients to be rushed into considering settlements, however, if a settlement offer is made in good faith, a recess to discuss the situation privately with the client or to contact a mentor attorney for input should not jeopardize the offer. No settlement offer should be accepted by the attorney without first discussing the offer with the client. As with any litigated matter, whether to settle and what to settle for is based upon a case-by-case assessment as to the petitioner's likelihood of success at trial in obtaining the relief sought.

In cases of domestic violence, an attorney should be particularly attentive to a client's concerns in determining how to proceed with settlement discussions, and the attorney should respect their decisions. Victims of domestic violence are acutely familiar with the opposing party's methods and propensities, and the case should be settled on terms that they believe provide the most safety under the circumstances. For example, if a client is adamant that the order of protection includes a provision requiring the respondent to stay away from their place of employment, it is because they know that this is where they are most vulnerable. An attorney should focus on inclusion of this provision in any negotiated settlement. If a client requests a general "stay away" provision in their order of protection, their primary concern may be that the respondent is coming to their home. Therefore, in attempting to settle the case, an attorney could suggest that the final order of protection contain a specific prohibition against respondent coming to the home, rather than the broader "stay away" provision.

It is especially important for an attorney to respect a client's wish to resolve the case by withdrawal of their petition, which results in an immediate end to their order of protection. This is often difficult to accept, especially when you fear your client is at high risk of danger from the opposing party. A client who wants to withdraw their case may have complex reasons for doing so; they may be dealing with conflicting priorities or have determined that the court process is actually jeopardizing them and their children's safety even more. In these circumstances, you can refer clients to the safety planning resources discussed

above and, whenever possible, insist on a dismissal of their petition "without prejudice" so that they may refile with the same allegations if they decide in the future that they need the order of protection again.

Pursuant to FCA §§ 841(e) and 154-b, a court may not grant any relief that was not requested in the petition or counterclaim. Pursuant to FCA § 154-b, the court will permit a settlement that includes terms that were not described in the petition or in a counterclaim, where the party against whom the order is issued has given knowing, intelligent, and voluntary consent to its issuance.

THE DANGERS OF MUTUAL ORDERS OF PROTECTION

If the respondent has filed a petition or cross-petition for an order of protection against the petitioner, it may be suggested that the parties settle for "mutual" orders of protection – that is, each party is issued an order of protection against the other. Remember that if the respondent has not filed a petition for such an order, they cannot be granted their own protective order by the court, even if the client consents as part of a settlement.

Unless there are special circumstances, a client should NOT agree to mutual orders of protection.

Because the police are mandated to arrest a person who is alleged to have violated an order of protection, if a client agrees to have an order issued against them, they create the opportunity for the opposing party to have them arrested simply by alleging that they violated the order. The opposing party can use orders of protection they have secured against their victims to further harass them – namely, by making up false charges and calling the police to have their victims arrested.

If a client believes that they <u>will not</u> prevail on their petition or that the opposing party <u>will</u> prevail on theirs, under most circumstances a preferable settlement to mutual orders of protection is mutual withdrawal of both parties' petitions.

CONSENT ORDER OF PROTECTION, WITHOUT AN ADMISSION

A common settlement suggestion made by the court, where a cross-petition has not been filed by the respondent, is for the opposing party to consent to the issuance of a final order of protection for the client without any admission of wrongdoing on their part. Although it may be upsetting for the client and their attorney to permit the opposing party to continue to deny their acts of domestic violence, under many circumstances this in an acceptable settlement because it guarantees a client a final order without the uncertainty or stress of a

hearing in court. While respondent may feel reassured that they have not made an admission of wrongdoing, the client is assured that the relief obtained is the same as if the court had made a finding that a family offense occurred.

Pursuant to Domestic Relations Law § 240, which refers to Article 8 of the FCA, where there is a finding of domestic violence made by a preponderance of the evidence, a judge is required must consider the domestic violence in determining custody or visitation issues. A consent order that does not include an admission will not trigger the mandatory consideration of domestic violence by the judge hearing any related custody or visitation issues, although a client may still raise those issues in the custody or visitation case and seek to prove them in the context of those cases.

CONSENT ORDER OF PROTECTION, WITH AN ADMISSION

A respondent may agree to admit to one or more of the lesser family offenses in the petition, rather than go to trial, to avoid the possibility of a finding of a more serious charge against them or to avoid the expense of hiring an attorney to appear at a hearing.

DURATION OF CONSENT ORDER OF PROTECTION

Pursuant to FCA §§ 842 and 827, a client may be entitled to a five-year final order of protection upon a finding of aggravating circumstances stated on the record. Some judges will permit the entry of a five-year order of protection upon consent, rather than upon a judicial finding of aggravating circumstances. Other judges interpret the law as permitting the entry of five-year orders of protection *only* upon a judicial finding and not upon consent. Insofar as the interpretation of the law is unsettled, an attorney should always argue vigorously for the entry of a five-year order if the respondent consents and, if the court refuses to make an order of such duration upon consent and there are clear aggravating circumstances, the attorney should consider whether a trial may be more appropriate than settlement to secure the maximum relief for the petitioner.

RELIEF WHICH WAS NOT REQUESTED IN A PETITION OR COUNTER-CLAIM

Pursuant to FCA §§ 841(e) and 154-b, a court may not grant any relief that was not requested in the petition or counterclaim. Thus, it is important to be thorough and complete when drafting a petition or amended petition for your client.

However, pursuant to FCA § 154-b, the court will permit a settlement that includes terms that were not described in the petition or in a counterclaim, where the party against whom the order is issued has given knowing, intelligent, and voluntary consent to its issuance.

SECTION 4:

HEARING PREPARATION & HEARING

HER JUSTICE

SECTION 4: HEARING PREPARATION & HEARING

A. Section 4 TOC
B. Preparing for the Hearing
C. Court's Own Investigation or Motions
D. The Hearing
E. Order of Disposition
F. Final Order of Protection

HER JUSTICE

PREPARING FOR THE HEARING

As soon as possible after being retained, an attorney should consider what steps need to be taken to prepare for the hearing in order to allow sufficient time to collect evidence and prepare witnesses. In addition, it is often true that the more prepared an attorney is for a hearing, the more likely it is that the case will settle favorably.

DEVELOP A THEORY OF THE CASE

It is important in any litigation to develop a "story" or "theory" of what happened from the client's perspective. The theory must be logical and consistent with the evidence – both the undisputed facts and your client's explanation of the disputed facts. It also must be persuasive to the judge.

The theory will evolve as you familiarize yourself with the facts of the case and collect evidence for trial. As you prepare for trial, focus on proving your theory of the case and discrediting the opposing side's theory.

In order to develop your case theory, you should do the following:

- review the elements of each family offense to be proven
- determine how each element will be proven through testimony or exhibits
- assess evidence and witnesses the respondent is likely to present at trial and what the primary disputed issues will be
- research possible evidentiary issues and rules that may enable or prevent the introduction of evidence into the record at trial
- strategize about how to strengthen your case, diffuse your case's weaknesses, and attack your opponent's case

IDENTIFYING THE ELEMENTS OF THE CASE

In preparing for a hearing, an attorney should constantly return their focus to the basic elements of the case. It may be useful to prepare a one-page overview of the elements, which succinctly lists:

- The factual allegations made in the petition or amended petition
- The competent proof for each of the allegations
- The family offenses which are supported by each of the factual allegations
- The exact disposition sought by the petitioner
- Any additional evidence which, while not competent, may be offered during disposition to support the relief sought

REVIEWING THE COURT FILE

Pursuant to Uniform Rules of the Family Court § 205.5, only a party or a party's attorney may review the court file. Although an employee of a party's attorney, such as a paralegal, should be permitted to review and copy the court file, a clerk is very likely to challenge their authority to do so. An attorney must provide any such person with a written authorization stating that they are employed by the attorney as well as proof that the attorney represents one of the parties. Production of a photo identification is required to receive the file for review.

In an Article 8 proceeding, the court file generally contains only a copy of the summons, the petition, the temporary order of protection and any warrant. There also is a sheet annexed to the file which contains a record of court appearances and the judge's notes on what has occurred at each appearance (aka endorsement sheet or F-99, a yellow jacket file). The clerks usually will not permit anyone to photocopy the judge's notes, though they may be reviewed.

If a client is missing any of their court papers, an attorney may ask them to go to the Family Court and obtain copies of the missing papers from the court file. This is generally much simpler than attempting to have a third party, such as an employee of the attorney, obtain the papers. The client should be advised to bring photo identification and proceed to the court clerk's office.

Review of the court file by the attorney is usually only necessary if proceedings have been protracted prior to the attorney's retainer, or if a report has been issued by Probation or the Administration for Children's Services (ACS).

If an attorney is retained after a report was issued by Probation or ACS, that report should be in the court file. However, neither the party nor the attorney is permitted to photocopy the report, although the clerks will allow an attorney to read it and take notes from it. Because of the sensitive nature of such reports, the clerks usually take the position that a copy of such a report may only be provided by a judge.

If the respondent has filed a "cross-petition," it may be given a different docket number. It should be cross-referenced with petitioner's file.

GATHERING EVIDENCE

Gathering evidence can be a difficult task, since domestic violence often occurs in the home when no one else is present. Clients often do not seek medical attention for their injuries because they are embarrassed, or the opposing party refused to let them leave the home to see a doctor or visit a hospital.

Under FCA §§ 164 and 165, the provisions of the New York Civil Practice Law and Rules (CPLR) apply "to the extent that they are appropriate to proceedings involved." Because domestic violence so often occurs behind closed doors, without witnesses or documentation, the need for pre-trial investigation, disclosure and discovery is usually limited.

As early in the proceedings as possible, an attorney should identify with the client all possible sources of evidence and ask the details of every violent incident:

- What were the dates, times, and locations (address, room of house, etc.) of the incidents? Use birthdays, holidays, seasonal weather to help the client recall.
- Was a weapon used? Did the opposing party use a closed fist or open hand or their feet? Did they choke the client? Did they threaten to harm the client or their family members? Did the opposing party coerce the client into having sex? How long did the attack last? Did the client lose consciousness?
- Did the client ever seek medical treatment for injuries related to the abuse?
    - When? Where? What is the name of the hospital and treating doctor/nurse? What did the treatment consist of (rest, medications, cast, sling, etc.)? What type of injuries did they sustain? How long did they last? What is the prognosis? The client should immediately request copies of their medical records – certified, if possible, so they may be offered directly into evidence at the hearing.
- Are there any photographs of the injuries, bruises, etc.? If a client was attacked recently and still has marks, or if they have scars from prior attacks, photograph them. Bruises and welts fade quickly.
- What was the client's reaction after the attack? Fear? Mental and emotional trauma? Loss of appetite, insomnia, nausea, headaches?
- Are there any items that were damaged by the opposing party during the incident, such as dishes or telephones? Have the client secure these in a safe place, such as the attorney's office. Also, any weapons or items used as weapons during the attack.
- Has the opposing party left threatening or harassing messages on their voicemail? Did they save those voicemails?
- Has the opposing party sent them any threatening texts, emails, cards, or letters?
- Are there any witnesses to any of the acts of domestic violence? Are there witnesses who saw the injuries that they sustained from the domestic violence? What are their names and phone numbers?
- What is the nature of the opposing party's conversations with the client? How frequently do they call or text? At what time of day or night? Did the client ever ask them to stop calling or texting? Did they ever block them? Did they ever receive calls from different numbers after blocking them? What is the client's phone provider (in case of need to subpoena phone records)?
- Were the police called? Are there any police reports related to the incidents? Was the respondent abusive in the presence of an officer? What is the name of the officer who responded?
- Has the client ever sought court intervention before? Were orders of protection secured in the past against the opposing party?
- Were the children present during the attack? Were they in danger? What is their relationship to the opposing party? How old are they?
- Did the opposing party ever use their personal identifying information (such as their name, date of birth, or social security number) without the client's permission?

What did they do with that information? Did it result in fraudulent transfers of the client's money (e.g., through a debit card or cashapp)? Did it result in debts (e.g., credit cards, auto loans, student loans)? Has the client filed a police report, Federal Trade Commission Report, reported the theft to the impacted bank, sent written disputes to the credit reporting agencies?

- Has the opposing party ever shared photos or videos of the client of a sexual nature without the client's permission? Where or how did they share them? Does the client have screenshots? Are the images still online? Were they ever reported to the social media site, the police?

In asking whether clients have obtained police reports, keep in mind that many clients may choose not to involve the police in their case for many legitimate reasons, including fears of or experiences with racist and/or sexist discrimination, revictimization, and immigration status. Reassure your clients that you hold no judgments about whether they went to the police, but that you want to know about any documentation of the family offense which might exist.

Documents must be certified in order to be admitted in the fact-finding phase of the hearing, unless they are original records that the client or another witness can authenticate. To obtain certified records, you will need to subpoena certain records (see section on subpoenas below).

An attorney also may consider what may be used as evidence not only of the domestic violence, but also of collateral matters. For example, if a client was forced to miss work due to injury, although they did not seek medical attention, an attorney may consider attempting to use their pay stub or other employment records to establish the collateral fact – that they missed work. Common sense and consideration of whether the evidence is cumulative should dictate whether an attorney offers proof of collateral matters.

DISCOVERY

The Family Court Act does not specifically provide for discovery in Article 8 proceedings, but neither does it limit discovery. FCA § 165(a) provides that the CPLR provisions apply to Family Court proceedings unless the FCA provides otherwise and to the extent they are appropriate to the proceedings at hand. However, some Family Court proceedings are also "special proceedings" subject to the limitations of CPLR Article 4. CPLR § 408 requires leave of court for most types of discovery in special proceedings.[1] Thus, disclosure may be demanded pursuant to CPLR Article 31 only with permission from the court. NYC Family Court judges are typically restrictive in what types of disclosure they will permit. Generally, depositions and interrogatories are not allowed, and subpoenas are expected

[1] Matter of K.Z. v. P.M., 29 Misc.3d 572, 906 N.Y.S.2d 724 (Orange C'ty Fam.Ct 2010)("It is clear that a proceeding under article 8 of the Family Court Act is a special proceeding as defined in article 4 of the Civil Practice Law and Rules and therefore governed by the discovery procedures set forth in that article.") Note, however, that a demand for a Bill of Particulars (discussed below) is not a disclosure device and thus may be served upon the petitioner without leave of court.Carlos L. v. Sandy C., 51 Mic.3d 506 (Queens C'ty Fam.Ct. 2016).

to be very narrow in scope. The courts, however, do often direct, if not already requested by the parties, an exchange of witness lists and documents intended to be used at trial.

In most cases, pre-trial discovery will not be necessary or feasible. Moreover, the breadth of permissible discovery will be dictated on a case-by-case basis by the court's own practice, the nature of the proceeding, and the need for discovery (FCA § 165(a)).

Documents belonging to the other side can be inspected and duplicated by an attorney by means of a notice for discovery and inspection pursuant to CPLR § 3120. The opposing party will be required to produce such documents before trial, either by sending them directly to the attorney's office, or, if the documents are too numerous, by allowing the attorney to view them at their current location.

An attorney can also request a physical or mental examination of the opposing party pursuant to CPLR § 3121. For example, if the opposing party is claiming that the client physically injured them, the client's attorney may want to demonstrate the fallacy of the opposing party's allegations by requiring them to submit to an examination by a doctor.

If the opposing party does not respond within the time prescribed to a request for discovery, the attorney can make a motion to compel pursuant to CPLR § 3124. The court may sanction noncompliance in several ways, as delineated in CPLR § 3126. For example, the court can resolve disputed issues in favor of the party seeking compliance; prohibit the disobedient party from putting forth certain claims or defenses, or from introducing certain evidence or witnesses; or issue a default judgment against the party refusing to comply.

Do not forget, however, that all discovery techniques can equally be used by the opposing party against the client. Thus, an attorney should not engage in extensive discovery where the client or the attorney feels that this will encourage the opposing party to harass the client by conducting their own discovery. Attorneys should not hesitate to make a motion pursuant to CPLR § 3103 for a protective order to quash any improper request for discovery made by an abuser. Improper requests include those in which the client is put in physical or mental danger by the request; in which compliance would incur great expense for the client; in which the material requested is irrelevant to the case or too broad; or in which the requested material is confidential, and disclosure would harm the client.

SUBPOENAS

Practice Tip: Speak to your Her Justice Mentor prior to issuing subpoenas. Judges and Referees are often reluctant to sign off on judicial subpoenas without a good cause reason being shown for its purpose and nexus to the family offense proceeding.

When should you issue a subpoena in a family offense matter?

From the moment they take a case, attorneys should assess how they will prove the elements of each family offense, and how to enter that proof into evidence at trial. If the

client went to the hospital or called the police because of the abuse, then there is likely documentation of the incidents and/or injuries. However, these records cannot be entered into evidence unless they are certified, or their foundation is established by a qualified witness. Therefore, subpoenas may be essential to obtaining important evidence. Because many agencies and businesses often take a long time to respond to subpoenas and require extensive follow up, it is important to issue subpoenas early on in the case.

A subpoena may be used under any of the following circumstances:

- to obtain certified copies of a client's medical records evidencing injuries suffered as a result of domestic violence;
- to compel attendance in court by a reluctant witness, or to provide a cooperating witness, such as a police officer, social worker, or hospital personnel, with documentation to justify an absence from work or school;
- to obtain certified copies of telephone records;
- to obtain certified copies of police reports;
- to attempt to obtain records of the opposing party's treatment for drug, alcohol, or psychological problems;
- to obtain certified copies of criminal court documents.

Who is authorized to issue a subpoena?

CPLR § 2302 authorizes attorneys of record to a party in a case to issue non-judicial subpoenas, and both attorneys and *pro se* parties to move the court for a judicial subpoena. The FCA § 153 authorizes the Family Court to issue a subpoena to compel the testimony of a witness or the production of documents pursuant to the provisions of CPLR Article 23.

What type of Subpoena do I need?

Article 23 of the CPLR provides for different procedures depending on what you are subpoenaing, and who you are subpoenaing. For instance, a telephone service provider will likely accept service of a non-judicial subpoena by mail, and you will need to mail the subpoena to the company, a copy and notice to your adversary, and then follow up with the company to ensure compliance with the subpoena. But if you need to subpoena police records, you have to notify your adversary 24 hours before submitting a judicial subpoena to the court, and then serve the signed judicial subpoena on the police department. Ask yourself the following questions to determine what type of subpoena you need:

1. What type of evidence are you subpoenaing (see CPLR §§ 2301, CPLR 5224)?
    a. Testimony from a person = Subpoena *Ad Testificandum*
    b. Documents/Records = Subpoena *Duces Tecum*
    c. Information/ statements in answer to questions = Information subpoena
2. Who are you subpoenaing?
    a. Government agency = Judicial subpoena (CPLR § 2307)

b. Business, corporation, individual = Non-judicial subpoena (CPLR § 3120)
c. Hospital or other department holding medical records = Either a non-judicial subpoena accompanied by a written HIPAA (Health Insurance Portability and Accountability) release from the patient, or a Judicial Subpoena (CPLR § 3122).

JUDICIAL V. NON-JUDICIAL SUBPOENAS DUCES TECUM

Judicial subpoenas duces tecum are distinguishable from non-judicial subpoenas by the entities they are served on,[2] the procedure for issuing them,[3] where they are returnable,[4] and how they are enforced.[5] Subpoenas demanding records from state or municipal governments must be issued by a court (see CPLR § 2307). For example, to obtain records from the New York Police Department, a litigant must move the court for a judicial subpoena, and if it is granted, serve it upon the department. Records produced pursuant to a judicial subpoena should be made returnable to the court which issued it and directed to the proper records room. If the subpoenaed entity fails to comply with the judicial subpoena, then such failure is punishable as contempt of court pursuant to CPLR § 2308.

Non-judicial subpoenas duces tecum, by contrast, may be issued directly by an attorney to a non-government entity, such as a business, corporation, or individual. For example, to obtain telephone records, an attorney may serve a subpoena upon the telephone service company pursuant to the rules of CPLR §§ 308 and 2303. Records produced pursuant to a non-judicial subpoena may be returnable for inspection to the office of the attorney who issued it. If the subpoenaed entity fails to comply with the subpoena, the issuing attorney may move the court to compel compliance. If the subpoenaed entity is a party to the case, failure to comply may be considered the basis for a motion to compel.

What is the procedure for issuing a subpoena?

As mentioned above, the procedure for issuing a subpoena depends upon the type of subpoena.

Subpoena *Ad Testificandum*: Pursuant to CPLR § 2303, a party is required to pay one day's witness fee upon service of the subpoena, as well as traveling expenses for the witness to the place of attendance (usually the courthouse). The witness fee currently is $15.00 (CPLR § 8001). Travel expenses are 23 cents per mile for each mile traveled round-trip to the courthouse. Note, however, that there is no mileage fee required for travel wholly within a city. Thus, if your witness is traveling from the Bronx to the Manhattan Family Court, you do not have to provide travel expenses, just the witness fee. A check for the relevant amount should be served along with the subpoena.

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[2] CPLR§ 2307.
[3] CPLR§§2307.3120.
[4] Lyon Fin. Servs. v. Pinto Trading Co., 24 Misc. 3d 1237(A)(Kings Cnty Sup. Ct. 2009).
[5] CPLR § 2308.

All subpoenas duces tecum, whether judicial or non-judicial, should be served with a Business Records Certification with blank lines for the subpoenaed party to fill out to certify that they were produced by a qualified person able to identify and testify respecting their origin, purpose, and custody in satisfaction of CPLR § 2305 (and so that they are admissible as evidence).

All subpoenas duces tecum should describe each item and category requested with reasonable particularity in order to survive a motion to quash (see CPLR §§ 2304, 3120).

Judicial Subpoena (see sample in Appendix): To subpoena records from a city or state entity, a party or their attorney must submit a Judicial Subpoena Duces Tecum to the court where the action is pending by following a strict timeline:

1. Because a motion to request a judicial subpoena requires an *ex parte* appearance, New York requires that such a motion may only be made upon a full 24 hours' notice to all parties to the action. Notice by telephone call or email is sufficient but must be made at least 24 hours in advance (CPLR § 2307). It is best practice to provide notice in writing in order to have a record, preferably with a copy of the subpoena to be submitted to the court.
2. An attorney should call the court ahead of time to ask when the court will have time to review a Judicial Subpoena, and then appear in person with an affirmation of 24 hours' notice to the other party(ies), and the unsigned subpoena. The attorney should be prepared to explain why the subpoena is necessary and the requested documents are relevant to the action.
3. If the judge or referee signs the subpoena, it should be served along with a Business Records Certification upon the government agency pursuant to CPLR §§ 2303 and 308. However, the attorney should call the agency ahead of time to determine how they will accept service, and whether they will charge any processing fees.
4. The subpoena should be made returnable to the court which issued it. While subpoenaed records should be returned within 20 days pursuant to CPLR § 3120, the court may write in a different return date.
5. Frequent follow-up with the subpoenaed agency and the court's subpoenaed records room is usually necessary to ensure the records are actually produced. Once the records are sent to the records room, the other parties should promptly be informed of where and when the records are available for inspection.

Non-judicial subpoena (see sample in Appendix): To subpoena records from a non-government entity, an attorney must serve it upon the party with records in the same manner that a summons is served, pursuant to CPLR §§ 2303 and 308. The attorney should simultaneously mail notice of the subpoena along with a copy of the subpoena upon all parties to the action (CPLR § 2303). The subpoena may be made returnable to the attorney and must give the subpoenaed party at least 20 days to respond (CPLR § 3120). A copy of the records should be sent to all of the other parties within five days of receiving a response from the subpoenaed entity.

How should I serve a subpoena?

In general, CPLR § 2303 requires that subpoenas be served in the same manner as a summons pursuant to CPLR § 308. The exception to this rule is information subpoenas which may be served via registered or certified mail (CPLR § 5224(a)(3)).

Special attention should be paid to the service of judicial subpoenas upon out-of-state third parties. If the judicial subpoena is addressed to a party outside the state of New York, then assess whether that state has adopted the Uniform Interstate Depositions and Discovery Act or has non-uniform laws governing the service of out-of-state subpoenas. If the UIDDA is adopted in that state, then the judicial subpoena should first be submitted to the clerk of the court in that state which will then issue that subpoena in the form of that state's courts. Service must comply with the laws and rules of that state. Likewise, if an out-of-state party or third-party attempts to subpoena your client, then they must comply with New York's UIDDA under CPLR § 3119 and service requirements of CPLR § 308.

Practice Tip: Although CPLR § 2303 requires that subpoenas be served in the same manner as a summons pursuant to § 308, in practice, many entities will respond to subpoenas via mail or even fax. Before attempting to serve a subpoena, contact the legal department of whatever agency or corporation you will subpoena to ask how they prefer to receive subpoenas. If possible, obtain an individual's name so that you can address the subpoena to their attention. However, be aware that enforcing compliance or surviving a motion to quash may depend upon proper service under the laws of whichever state you are attempting to obtain documents from.

MOTION TO QUASH, FIX CONDITIONS, OR MODIFY A SUBPOENA

If a subpoena is judicial and therefore returnable to the issuing court, then CPLR § 2304 provides that a motion to quash, fix conditions or modify a subpoena may be made to that court. If the subpoena was non-judicial and therefore not returnable directly to the court, then a request to quash, modify, or fix conditions in a subpoena must be made directly to the issuing party. If that request is denied, then the requesting party can then make a motion in the Supreme Court (not the family court where the matter is held, see CPLR § 2304).

If your client is served with a subpoena by the respondent, you may move the Family Court for an order quashing or modifying the subpoena under CPLR § 2304. You will need to explain the specific harm your client will suffer if she is compelled to comply.

How is compliance with a subpoena enforced?

CPLR §2308 provides for sanctions if a subpoena is ignored and the time limit for compliance is exceeded. Failure to comply with a judicial subpoena is punishable as contempt of court, and the court may impose costs not to exceed one hundred and fifty dollars.

Pursuant to CPLR § 2308(b) non-judicial subpoenas may be enforced by filing a motion to compel in Supreme Court. Under CPLR § 2308(b), the court may order compliance and impose costs not to exceed one hundred and fifty dollars. Additional sanctions, including the striking of pleadings and preclusion of the production of evidence, may be sought under CPLR § 3126.

The court is also empowered to issue a warrant directing the sheriff to bring a witness before the court. If the party served with the subpoena continues to ignore the subpoena and motions to compel, they may be committed to jail.

DEMAND FOR VERIFIED BILL OF PARTICULARS

A demand for a verified bill of particulars may be used when the opposing party has filed a petition or cross-petition against your client and the allegations are not specific enough for your client to understand and defend against. You can file a motion to dismiss the entire petition for lack of specificity.[6] As a practical matter, a demand generally will be served only where the opposing party is represented by counsel as the court may relax practice rules for a *pro se* litigant. On the other hand, if the opposing party is *pro se*, and you serve them with such a demand, it often will lead to the opposing party's withdrawal of their petition when they see how aggressive and serious you are about protecting your client's rights.

Governed by CPLR §§ 3041 and 3042, the demand is, essentially, a demand for amplification or clarification of the pleadings. It is not a tool for obtaining evidence; rather, it requires a party to spell out their allegations in greater detail. For example, the opposing party might have alleged your client "hit them repeatedly" without indicating on or about what date/time/place this occurred and what part of their body the client struck.

If a party does not comply with a demand for a bill of particulars within 30 days, an attorney may make a motion for an order compelling compliance or seeking an order of preclusion prohibiting the party from offering evidence at trial as to the matters for which they failed to provide particulars.

[6] Abusers often file false or inaccurate petitions for orders of protection, or cross-petitions, against women to harass them further or because they think they will gain an advantage or level the playing field in court. Often, these petitions do not sufficiently make out a family offense as defined by the applicable penal law and thus do not give a woman proper notice of the allegations against her. Pursuant to CPLR §§ 3013 and 3020, these petitions or cross-petitions are legally insufficient on their face and can be dismissed by motion.

NOTICE TO ADMIT

Pursuant to CPLR § 3123, an attorney may serve a Notice to Admit establishing the genuineness of any document or the truth of any fact, where the attorney "reasonably believes there can be no substantial dispute at trial …" If an adversary does not respond to the Notice to Admit within 20 days, such items will be deemed admitted, subject to pertinent objections to admissibility into evidence at trial.

PREPARING DIRECT EXAMINATION

In a domestic violence case, the victim's testimony is often the only evidence the attorney must present, so the attorney should thoroughly prepare the client for the hearing. It may be very difficult and painful for a client to recall and describe incidents of domestic violence, and in preparing for the hearing, the attorney must assist the client in becoming as comfortable as possible with telling their story in court.

Before "rehearsing" direct examination, give your client a basic overview of what will happen in court – what the judge is likely to do, when they will be expected to speak, what you will say to the judge. You should not assume that your client knows how the proceeding will be conducted; chances are, the family offense proceeding is their first experience with the court system.

Direct examination must be conducted by use of open-ended, non-leading questions. A good rule for conducting direct examination is to begin all questions to witnesses with one of the following words: "who," "what," "when," "where," "how," "why," "describe," or "explain." Avoid the word "did" unless you use one of the above words before it to make it non-leading. For example, "Did you call the police" is leading; whereas, "what did you do then," is not.

Another rule of thumb: any question that can be answered by your witness with a simple "yes" or "no" is leading. Some judges will allow you to lead your witness on background information, but you run the risk of creating skepticism in the judge's mind about your witness and whether they are telling the truth.

You should attempt to keep your witness focused on the critical facts that must be proven in the case, avoiding too many extraneous details. For example:

- Your client may describe in detail the argument that led to the domestic violence, but describe the assault with one conclusory statement: "and then they hit me." Instead, they should be encouraged to make the brief statement that there was an argument and then describe in great detail the abuse, stating where they were standing, where the opposing party was standing, how or with what they hit the client, where the client's children were at the time, what injuries they sustained, how they felt, etc.
- Where the petition alleges stalking, your client may state only: "they follow me all the time." Instead, use open-ended questions to elicit how many times and when

the opposing party has followed them, the distance the opposing party follows them, whether the opposing party threatens them verbally when the opposing party follows them, etc.

The sequence of events should be organized logically -- either chronologically, by type of incidents, or by increasing/decreasing severity. Have your client describe in detail each incident in their petition, including the date, time, place, what the respondent did and said, who else was present, how the children reacted. Ask about injuries, pain, incapacity, medical treatment, and property damage. Establish the extent and nature of their physical and emotional suffering and their fear for themself and their children. Have your client describe the subsequent emotional impact of the incident on the children – such as changes in behavior, acting-out in school, loss of appetite, insomnia, difficulty concentrating on homework, and nightmares. If your client's address is not known to the respondent, argue that it must be kept confidential for their safety and that of the children (FCA § 154-b).

You should assure your client that you will be speaking to the judge on their behalf, and that for the most part the judge will not speak directly to them. Similarly, advise your client not to speak out directly to the judge, unless the judge asks them to do so or asks them a direct question. Tell them ahead of time that they should whisper or write down in a note to you any concerns or questions that are raised in their mind during the trial and of which they think the judge should be made aware. The judge may ask your client some questions directly during the hearing, usually as a follow-up to their testimony.

You should anticipate the objections that opposing counsel may make to your client's testimony or evidence, as well as possible responses to those objections. This is particularly true where you anticipate that your client will include hearsay in their testimony – which may or may not be admissible under a hearsay exception.

Finally, prepare your client to be cross-examined by the respondent if they are *pro se*, or by their attorney. Rehearse potential cross-examination with your client, focusing on areas of their testimony or case that are weak.

IDENTIFYING AND PREPARING WITNESSES

Children

Psychological and sociological studies of children who witness domestic violence demonstrate that these children suffer serious psychological harm. In recognition of this, FCA § 821(1) requires that the name of "each and every child in the family or household" be listed in the petition, including the relationship of the child, if any, to the petitioner and respondent.

Often children are the only witnesses to domestic violence. Thus, an attorney must consider the children as a primary source of information and possibly as witnesses at trial. However, an attorney also should be aware that especially if the children live with the opposing party/respondent or have visitation on a regular basis with them, their testimony could place them in danger of further physical, emotional or psychological

abuse. Even if the children do not reside with the opposing party, testifying against a parent may cause them emotional or psychological trauma.

Moreover, courts do not look favorably upon calling children as witnesses, especially against a parent. While there is no rule, children under the age of 12 usually should not be called as witnesses except in extreme cases. Often these children will not be adjudged as competent to give testimony (see below). Even if the child is determined to be competent to testify, a judge still may not allow a child to testify in a family offense hearing, either because the judge thinks the child will suffer harm by testifying or because the judge wrongly sees the case as not involving the child. An attorney should argue that domestic violence affects the children of a violent relationship as well as their parent, even if they are only observers; and, that an order of protection will also provide necessary protections to the children.

Unlike in custody and visitation cases, children are usually not appointed an Attorney for the Child, or Guardian Ad Litem to represent their interests in a family offense case. If the children are not represented by an attorney, you may interview each child to determine whether the benefits of the child's testimony warrant involving them in the proceeding. If the children have an attorney, even if only for a pending custody/visitation case, you should not speak with them directly about the family offense case without the permission of their attorney.

Before deciding whether to call the children as witnesses, discuss the issue with your client. They must have the final word on assessing the possible trauma to their child. If a child has a therapist or counselor, this person also can be brought into a discussion of possible negative effects of testifying. If the child's testimony is not crucial or is cumulative, it is probably not worth subjecting the child to the trauma of testifying in the courtroom before the parties or even privately in the judge's chambers ("in camera").

If you feel that a child's testimony is crucial to the case, advise the judge in advance that you intend to call the child as a witness and suggest that the judge appoint an Attorney for the Child to protect the child from inappropriate cross-examination at trial. However, keep in mind that the Attorney for the Child may argue persuasively against having the child testify. While some protections, such as *in camera* testimony, are available to child witnesses in other types of family court proceedings, they are not necessarily permitted in family offense cases, so there may be intense opposition to having a child testify.

If a child under the age of twelve is called as a witness at trial, an attorney must first *voir dire* the child to demonstrate that the child understands the oath and can testify truthfully. Basically, the attorney must question the child in the presence of the judge, who also might ask the child questions to determine their competency to be sworn in and testify. Only then is the child's testimony admissible.

Other Witnesses

If there are other witnesses to the domestic violence who are able and willing to testify, they also should be prepared prior to the hearing. The witnesses' testimony usually will

be brief, limited to what they themselves saw, heard, or did. Family members or neighbors may have heard or witnessed abuse, or may have observed petitioner's injuries, appearance, or property damage after an attack.

If the witness is unable to meet with you prior to the hearing, one or more telephone interviews with the witness may suffice. You should arrange to meet the witness prior to court on the day of the hearing to finalize the direct examination. An assessment of whether this type of preparation is adequate will be based upon the nature of the testimony and the ability of the witness to present the testimony coherently and credibly without extended preparation.

You should prepare your witnesses for cross-examination by respondent's attorney as well.

PREPARATION OF EXHIBITS AND REAL EVIDENCE

As soon as possible, an attorney should begin to identify potential exhibits and real evidence, and to research any evidentiary issues. It is good practice for an attorney to bring copies of any exhibits to which the attorney intends to refer or to introduce into evidence, to be provided to the adversary at the trial.

PREPARING CROSS EXAMINATION OF THE RESPONDENT

You should prepare cross-examination for the respondent and any likely witnesses that they will call. Ask your client what the respondent probably will say on the witness stand. They are likely to have an accurate sense of what the respondent's story will be and how they will conduct themself.

In defending a family offense petition, an opposing party usually takes one of the following positions:

- It didn't happen
- It happened but it wasn't that bad
- It happened but it was an accident
- The client hit them, and they were defending themselves
- The client made them mad (or the client deserved it)

Unless there is physical evidence of a client's allegations, the relative credibility of the parties and their testimony will determine the outcome of the case.

Since a client is not likely to make their case by relying upon the opposing party's testimony, you should not feel compelled to engage in protracted cross-examination. An opposing party, or other adverse witness, is unlikely to break down on the witness stand and confess their violent acts.

In preparing for and conducting cross-examination, identify and direct the focus on inconsistent or incredible portions of the opposing party's story which undermine theory of the case.

The scope of cross-examination is limited to issues raised on direct examination and the credibility of the witness.

For each question you contemplate asking on cross, consider what the likely answer will be and how that answer helps your client's case. If the opposing party denies the allegations on direct examination, protracted cross-examination will simply give them the opportunity to repeat their denials. You should balance the benefit of emphasizing the allegation against the cost of soliciting a further denial.

In preparing cross, identify which facts it will be impossible for the opposing party to deny.

Confirmation of peripheral facts by the opposing party without asking the "ultimate" question can bolster your client's credibility and undermine the opposing party's theory of the case. For example:

- If petitioner alleges that the dining room table was broken by the respondent, and they adamantly deny breaking it, you can ask on cross:
    - Q: In your home, there is a mahogany dining room table, correct?
    - Q: And, currently, there is a leg broken off that table, correct?
- If petitioner has telephone records showing that a harassing telephone call came from the opposing party's home, rather than asking them if it's true that they threatened to kill petitioner (which they are unlikely to admit), instead consider on cross-examination:
    - Q: You currently live at Apartment 2, ABC Street, correct?
    - Q: And your telephone number is (718)-555-5555, correct?
- If the opposing party is claiming self-defense, you may have an opportunity on cross to point out the physical differences between the parties, implying that their story is ridiculous:
    - Q: How much do you weigh?
    - Q: And you are about 170 lbs., correct?
    - Q: You belong to the World Gym, don't you?
    - Q: And you've been going there consistently ever since you met petitioner, correct?

Remember, it is a rule of cross-examination that an attorney never should ask an adverse party open-ended questions, questions to which the attorney does not know the answer, and most importantly, should never ask the question "why?" Always use leading questions in order to solicit yes/no answers. Also, bear in mind that because of the general restrictions on discovery, you will have limited material to develop cross examination questions.

PREPARING A CLOSING STATEMENT

You should request – and will usually be granted – the opportunity to make a closing statement. It should be brief and succinct. Identify the family offenses that were proven to have been committed and specify the credible testimony that establishes those

offenses. Point out inconsistencies in the respondent's testimony and any inherently incredible allegations made by respondent.

If there are aggravating circumstances, detail them specifically in the Closing Statement, as the court is required to make a specific finding as to their existence.

You should point out that petitioner needs to prove the case only by a fair preponderance of the evidence.

If the respondent did not testify, point out that their failure to do so in a civil proceeding should be regarded as an admission of petitioner's allegations. The privilege against self-incrimination is not available in this civil proceeding. Civil Procedure Law § 50.20.

Where trials are relatively short and with few witnesses, the courts often expect only oral summation. The courts will typically honor requests for written summation, especially when there have been long adjournments between trial dates, but you should clarify this long before the end of your trial so that opposing counsel cannot use a last-minute request for written summation as an opportunity to cause further delay by requesting extended time to prepare it.

COURT-ORDERED INVESTIGATION OR MOTIONS

ADMINISTRATION FOR CHILDREN'S SERVICES AND FORENSIC REPORTS

The court may use the Administration for Children's Services (ACS) to interview the parties and prepare a report for the judge to assist in determining the most appropriate provisions for the final order of protection. Alternatively, the court may order forensics to be conducted (examination and report by a court-appointed expert, usually a psychologist or psychiatrist). In theory, the reports should be used to assess the dispositional needs of the opposing party, e.g., whether they need drug or alcohol abuse treatment or other counseling. However, courts will typically order a forensic evaluation for all of the parties, not just the party alleged to have caused harm. Therefore, a request for forensic evaluations should only be made with great care. **Please talk to your mentor at Her Justice if the subject of court-ordered investigations and forensic reports comes up in the case, and before agreeing to any evaluations.**

Oftentimes, court-ordered forensic experts are not properly trained on issues around domestic violence and can cause more harm rather than shedding light on the case. It is safer to offer your own evidence regarding a disposition. The dispositional phase of the hearing has less strict evidence rules – for example, hearsay is permitted. FCA § 834.

FCA § 835 specifically provides that court-ordered reports are for use in the dispositional phase of the proceeding only – and that the reports may not be furnished to the court prior to the completion of fact-finding. The reports are confidential, and the court is not required to disclose them to any party or to counsel (FCA § 835). However, most judges will disclose the report to counsel.

Pursuant to FCA § 817, in a proceeding under Article 8, the court may at any point in the proceedings direct the commencement of a child protective proceeding (i.e., abuse or neglect case), or the filing of a petition for child support or paternity.

ARTICLE 10 PROCEEDINGS

Child protective proceedings under Article 10 of the Family Court Act can be very precarious for a client, as they may result in involvement with a system that places strict conditions on a client. In serious cases, the removal of the children from the home for abuse or maltreatment can occur. Presenting alternatives to the court and advocating with the Administration of Children's Services (ACS) prior to the filing of an Article 8 proceeding can often prevent an Article 10 proceeding from taking place.

If a petition is filed against your client by ACS, it is likely the child is about to be removed (if the child already has not been removed) from the custody of your client. ACS will make an application for immediate removal or for parole (release) of the child to a legally responsible person at the first court appearance for the Article 10 proceeding. A parent who is not charged in an Article 10 petition has a right to custody of the child. This non-respondent parent may also move to intervene in the proceeding at the initial appearance in court. However, sometimes ACS will then amend their pleadings to include that parent in the petition and charge them with neglect if ACS feels the parent should have known the children were in danger or continued to maintain a relationship with the respondent parent. An Attorney for the Child will be appointed for the child at the earliest court appearance (FCA § 1016).

ACS creates its petitions for such proceedings after receiving an oral report or transmittal (an "ORT" or "2221 Form"). Usually, this is a phone call by a mandated child abuse/neglect reporter (such as a teacher, doctor, or police officer) or a "concerned party." An opposing party may make such a phone call in order to harass a client or scare them into dropping their family offense proceeding against them. Even if the call is anonymous, ACS will accept it and investigate.

If the child has already been removed, your client can ask for a § 1028 hearing. Pursuant to FCA § 1028, a parent can apply to have a child returned to their custody at any time during an Article 10 proceeding, up to the final disposition. A court must hold a hearing within three (3) court days of such a request. The parent's application must be granted unless the court finds an "imminent risk" to the life or health of the child if the child is returned. Unfortunately, the court sees this as a significant burden for a parent to meet, and § 1028 proceedings often are not decided in the petitioning parent's favor. Alternatively, a parent can campaign for the child to be placed with a relative during the course of the Article 10 proceeding, instead of having the child placed in foster care for up to a year before the case is re-evaluated. Placing a child with a relative instead of in foster care is a good idea since the parent can ask for unlimited daily supervised visitation, instead of the one-visit-per-week maximum a parent is likely to be allowed if the child is in foster care.

Article 10 cases are difficult for a parent to win by having the child released to the parent's custody pursuant to FCA § 1054. It is difficult to get a petition dismissed once it is filed, so you should make every effort to advocate on your client's behalf at the investigative stage and before ACS files a petition against them. If the case moves forward, and the child is placed in foster care for a period of months, it is likely that a parental rights termination proceeding is down the road. *See* FCA § 1052.

Practice Tip: In any case in which your client is given notice that a proceeding with be commenced against them, immediately contact your Her Justice mentor for advice on how to proceed. In such instances, the custody case that you are handling will come to a halt until the Article 10 proceeding is resolved. The client would be assigned an attorney to represent them in that proceeding by the Court.

THE HEARING

Pursuant to FCA § 164, the rules of evidence, found throughout the CPLR and elsewhere, apply to Article 8 proceedings "to the extent that they are appropriate to the proceedings involved." Attorneys should assume that the judge will apply the rules of evidence and prepare accordingly, but the court might allow some although there may be leeway given to either party if there is not strict compliance.

A hearing in a family offense proceeding consists of two phases: "fact-finding" and "dispositional." These phases generally continue one after the other, without interruption (FCA §835). At the conclusion of fact-finding, and after the court has made its determination, the court may adjourn the dispositional hearing to enable it to make inquiry into the "surroundings, conditions and capacities" of the persons involved (FCA §836-b).

The court is required pursuant to FCA §835 to proceed to the dispositional hearing only after the required findings have been made, i.e., that a family offense has been committed. It is important to know when the court is moving from one phase of the hearing to the next because of their different purposes and different evidentiary standards.

FACT-FINDING

- evidence must be competent, material, and relevant (FCA §834)
- the court determines whether the allegations in the petition are supported by a "fair preponderance of the evidence" (FCA §832) which is commonly interpreted to mean "more likely than not" or "a greater than 50% likelihood."
- the court makes a finding as to which, if any, family offenses are found to have been committed (FCA §835)

DISPOSITIONAL

- the court hears evidence as to the type of relief sought by petitioner
- evidence must be material and relevant, but does not have to be competent (FCA §834) which means that the court may consider, among other things, hearsay, photocopies, and records which are not certified
- the court determines what order of disposition shall be made under FCA §842 (*see below*)

At the hearing, the burden is on the petitioner to prove their case so they will proceed first. After petitioner testifies, the respondent or their attorney will be given the opportunity to cross-examine the petitioner. Cross-examination is limited to those matters

that were raised on direct examination. After cross-examination, petitioner's attorney has the opportunity to conduct re-direct examination on matters addressed on cross-examination. This sequence is followed for each of petitioner's witnesses.

After petitioner has completed their case, their attorney should state that the petitioner rests, although they reserve the right to call rebuttal witnesses. It probably is not necessary to reserve this right, but many practitioners do so in an abundance of caution. The respondent may then move to have the petition dismissed, claiming the petitioner has failed to make a prima facie case that a family offense has been committed. This motion is likely to be denied, at which time the respondent calls their witnesses, and the above sequence is repeated.

After respondent rests their case, petitioner is entitled to call rebuttal witnesses. Petitioner's attorney may recall petitioner to the stand, for the purpose of clarifying or amplifying something that was raised by respondent. Again, respondent is entitled to cross-examine the petitioner on those matters to which they testified on rebuttal and petitioner may conduct re-direct examination. After rebuttal is completed, the petitioner rests.

At the conclusion of fact-finding, an attorney should request the opportunity to make a closing statement. However, the judge may defer the making of such statement until the conclusion of the dispositional phase of the hearing.

ENTERING EVIDENCE

Only competent[50], material[51]and relevant[52] evidence is admissible in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing. FCA §834. Petitioner has the burden of proof to establish the elements of the family offenses alleged by a "fair preponderance of the evidence." FCA §832.

Summarized below are some common evidentiary issues that may arise in family offense proceedings. For further guidance on evidentiary matters, as well as general trial practice, two helpful books are: Thomas A. Mauet, Fundamentals of Trial Techniques (Little, Brown, and Company) and James W. McElhaney's Trial Notebook (American Bar Association).

INTRODUCING EXHIBITS

Every exhibit must meet three basic requirements before it can be admitted into evidence: (1) the qualifying witness must be competent to testify; (2) the exhibit must be relevant; and (3) the exhibit must be authenticated. Usually, authentication is the main stumbling block to introducing an exhibit at trial. A proper foundation must be laid, whether you are introducing real evidence (tangible objects), demonstrative evidence (such as a photo or map), documents, or records.

There are several procedural steps for introducing exhibits into evidence:

First: Ask the court to mark the exhibit for identification. You can state, "I request that this document/photo be marked as plaintiff's exhibit for identification." Do not identify the object in more specific terms (e.g., "this picture of the plaintiff's house taken after the respondent destroyed it") or else you will violate the rule against unsworn testimony. The clerk or officer will then assign an appropriate exhibit number or letter.

Second: Show the exhibit to opposing counsel and allow them to examine it. As you hand it to opposing counsel, you can state for the record, "I am showing counsel for the respondent what has been marked as petitioner's exhibit 1."

Third: Show the exhibit to the witness and lay the proper foundation. This is the most complicated step and several bases need to be covered, such as witness qualification, authentication, relevance, and hearsay exceptions.

Witness Qualification: A witness must be shown to have firsthand or personal knowledge about what they are testifying. For example, if your client's sister is testifying to hearing the respondent tell petitioner the respondent was going to kill petitioner, qualification might proceed as follows:

Attorney: Were you able to hear whether the Opposing party said anything to petitioner?

Sister Witness: Yes, I heard them.

Attorney: What did they say?

Authentication: A witness must testify that the item is what it is purported to be in order to authenticate it. For example, you might ask the witness whether it is "a fair and accurate representation" of petitioner's arm as the witness saw it after the attack.

Relevance: The witness must demonstrate the evidence is relevant to the case. Evidence is relevant if it has any tendency to determine the existence of any material fact in the case. For example, a loan application signed with the petitioner's name may not conclusively prove identity theft occurred, but its existence is relevant to an allegation that the respondent stole the petitioner's identity to submit the loan application. Do not go too far with testimony about relevancy to the case at this point (before the exhibit is moved into evidence). For example, if the exhibit is a picture of the petitioner's bruised arm, taken after respondent hit them, show that it is a picture of their arm, taken after respondent's attack, but do not have testimony on how the picture shows the size of the bruise or how it illustrates their limited movement as a result of the injury.

Hearsay: Hearsay is an out-of-court-statement offered to prove the truth of the matter asserted. Any offer of a written or oral statement made outside the court requires a showing of one of three things: (1) that it is relevant for some purpose other than proving the truth of the out-of-court statement (i.e. that it is not

hearsay); (2) that it is a verbal act (such as words of defamation in a libel suit); or (3) that the foundation requirements for one of the exceptions to the hearsay rule have been established.

Practice Tip: Attorneys (and even judges) in Family Court often misstate or misunderstand the hearsay rule and its exceptions/exclusions. You may hear, for example, that a witness is "not allowed to repeat anything someone else said" which is inaccurate. Be prepared to state clearly the definition of hearsay and explain either why this particular testimony/document does not meet that definition or why an exception applies. If you are still overruled, note your objection for the record.

Real Evidence: Note that with real evidence that is not distinctive – such as a hammer used by the opposing party against the petitioner – laying a foundation is complicated by the requirement to show a chain of custody for the object. Namely, you will need testimony establishing the continuous line of people who had custody of the object from the time the object was used to the present (e.g., the petitioner gave it to the police or to their attorney). You also must establish that the object is in the same condition as it was at the time of the incident. If you cannot establish a chain of custody the court still has the discretion to admit the exhibit as demonstrative evidence (a model of the weapon used by respondent against petitioner). Just make sure you establish that you are no longer offering the evidence as the actual item used.

Fourth: Offer the exhibit into evidence – "Your Honor, I offer petitioner's exhibit 1 into evidence." As you do this, show the exhibit to the judge.

Fifth: Opposing counsel will make any objections. Opposing counsel may ask questions of the witness ("voir dire") in support of any objection. Questions can only relate to the foundation being tested; this is not an opportunity for cross-examination by opposing counsel.

Sixth: The judge will make a ruling either admitting or excluding the exhibit. If the judge forgets to do so, ask for a ruling in order to have it on the record.

Seventh: Now you may elicit testimony about the exhibit from your witness. Until the exhibit is admitted into evidence, it is improper to have any testimony about the exhibit, except what is needed to lay a foundation for its admission.

PHOTOGRAPHS

Pictures of a client's injuries that are not permanent, such as bruises, scrapes, and cuts, can be used as evidence at trial. Likewise, evidence may include pictures of broken furniture, cracked walls, shattered windows, or other damage to the home or property. The court is likely to admit your photograph if you establish through a knowledgeable witness that the

photo: (1) is a fair and accurate representation of the item or scene at the time of the incident; and (2) it is probative and not misleading or prejudicial.

Any person who can identify the subject of the photo and verify that it accurately represents the matter depicted can lay the foundation for admissibility. The witness does not have to be the person who actually took the photo or know when or how the photograph was taken. However, if the integrity of the photograph is attacked or seriously questioned by the opposing side, you should call the photographer themself. If the other side argues that the photo is too "fuzzy," it can be argued that fuzziness affects weight, not admissibility.

Introducing a photograph might proceed as follows:

Attorney: Do you know the petitioner?

Witness: Yes, I have been a friend of theirs for two years.

Attorney: Do you see the petitioner often?

Witness: Yes, I see them almost every day because we live next door to each other.

Attorney: Did you see the petitioner on December 29th?

Witness: Yes.

Attorney: I ask the clerk/officer to mark this as plaintiff's exhibit for identification (*hand the photo to the clerk/officer*).

Clerk/Officer: This will be plaintiff's exhibit 1 for identification.

Attorney: Thank you. Counsel (*show photo to respondent's attorney or* pro se *respondent*). Mx. Witness, I show you now what has been marked as plaintiff's exhibit 1 for identification and ask you to examine it (*hand them the photo*). Can you tell us what it is please?

Witness: Yes, it is a photograph of petitioner, and it shows their right arm.

Attorney: Mx. Witness, turning your attention to petitioner when you saw them on December 29th, are you able to tell us whether petitioner's exhibit 1 for identification is a fair and accurate picture of petitioner and their arm as they appeared at that time

Witness: Yes, it is.

Attorney: Thank you, Mx. Witness. Your Honor (*handing exhibit to judge*) I offer what has been marked as petitioner's exhibit 1 for identification into evidence.

Practice Tip: Family Court Judges generally allow screenshots of text messages to be introduced as photographs. Be sure that the screenshots put texts in proper context, if they are part of a larger conversation/exchange and be sure that the screenshots overlap

so that you can clearly see no portions of the texts at issue are missing. Witnesses should be prepared to testify how they know who the person was on the other end (e.g., "the text came from the phone number I recognized as the one they gave me," or "I have their number stored in my phone under their name").

BUSINESS RECORDS

Documents such as hospital records and police reports are good evidence to use in order of protection proceedings. These documents are hearsay but are admissible into evidence through the business records exception to the hearsay rule or because they are self-authenticating (certified).

In New York State, four basic requirements must be met to admit such records (CPLR §4518):

- the record must have been made in the regular course of business;
- the regular course of the business must include the making of such records;
- the record must have been made at the time of the incident or within a reasonable time thereafter;
- each participant in the chain producing the record must be acting under a business duty to report and/or record the event.

To enter a business record into evidence, an attorney first must lay a foundation for its introduction. A witness with knowledge of the record has to describe how the hospital or other business usually compiles such records. Then the witness needs to identify the particular record at issue and testify that the record meets each of the four requirements of the exception.

Alternatively, certified copies of records are self-authenticating and may be admitted into evidence without a witness to lay the foundation. A record is certified when there is a statement attached stating that the record is in fact a record from the given public agency, hospital, etc. Often the certified record bears a seal of the agency. The agency must certify in writing that the record satisfies the requirements of CPLR §4518.

Even if the record is admitted into evidence pursuant to the business records exception, any testimony contained in the record, such as a statement by a witness, is subject to all the rules of evidence regarding the admissibility of testimony and hearsay. Since a witness or bystander is under no business duty to make a statement, their statements are not covered by the exception. Witness statements may be admissible through some other exception to the hearsay rule, such as excited utterances, present sense impressions, or party admissions.

HOSPITAL RECORDS

In general, hospital records are admissible upon proper certification. In addition, all records referred to in CPLR §2306 (records relating to condition or treatment of patient) are admissible in evidence under CPLR §4518. No witness is needed to lay a foundation

if the records bear a certification by the head of the hospital or qualified physician. CPLR §4518(c). An attorney should obtain medical releases from the client as soon as possible in order to obtain certified hospital records that illustrate injuries caused by the opposing party.

The medical records are admissible in lieu of a doctor's testimony. Anything contained in the records that a doctor could testify to is admissible. This includes observations of the client's physical condition as well as medical opinions/conclusions of the doctor that are relevant to diagnosis and treatment.

The more difficult issue arises when statements by the patient such as "my spouse hit me" are contained within the records. To enter these into evidence an attorney must demonstrate that they are relevant to diagnosis or treatment of an injury.[53] In cases of domestic violence, an attorney should argue that the information is relevant to the treatment of the patient's injuries, both physical and emotional. Attorneys also can point out that doctors are routinely required to determine whether a patient's injuries are consistent with the explanation given.

If opposing counsel argues that the client was not required to convey the information in order to receive effective treatment, an attorney can argue another hearsay exception, such as present sense impression or excited utterance. Opposing counsel can ask to have those portions of the record not within the exception redacted.

The same principles apply to a doctor's office records. Such records also are admissible in evidence as business records if they meet the statutory foundations of CPLR §4518. However, doctor's reports, prepared at the request of counsel, are generally inadmissible under this exception since they are prepared for litigation and are not prepared in the normal course of business.

POLICE REPORTS

If the opposing party was arrested and the District Attorney's (DA) office has decided to prosecute, a client also might be involved as a witness in a criminal case against the opposing party. Assistant District Attorney (ADA) handling the case should have several documents helpful to the Family Court case. An attorney should contact the DA's office and ask for any police reports, including the Domestic Violence Incident Report (which the client should have been given by the responding officers at the time of the incident and which the police department usually keeps for about seven years), the arrest report and the complaint report (the "61"). The attorney also should request a copy of the complaint the ADA filed in Criminal Court.

Remember that police records can only be entered into evidence if they are either introduced by a qualified witness from the police department or are accompanied by a business records certification (refer the previous section on subpoenas and the sample in the Appendix for a subpoena to the NY to serve the NYPD). All NYPD records needed for the trial should be requested at the same time in the subpoena, including police reports, Domestic Incident Reports, and 911 calls (both the recordings and transcripts). The NYPD's

legal department can only be reached through the NYPD's main number (646-610-5541), if you need to check up on the status of a subpoena; make sure to note the names of any officers working on your subpoena request so that you can follow up directly with them.

The court will only admit the entire contents of a police report under the business records exception if the witness making the statements was an officer or the information was obtained from another person under a business duty to report. Statements by bystanders who are under no business duty to report their observations to an officer will have to be redacted, unless another hearsay exception applies to these statements (such as excited utterances, present sense impressions, and admissions by a party).

The report also can be used for non-hearsay purposes, such as to show simply that the client called the police for help or to demonstrate the client's state of mind at the time of the report.

CERTIFICATES OF DISPOSITION

If there is already a conviction in a criminal case against the respondent for acts which are alleged in the Family Court petition, an attorney can obtain the Certificate of Disposition from the clerk's office of the Criminal Court in which the respondent was convicted. It is easiest to send the client to pick up a copy themself for a charge of $5.00. This document is a certified public record and as such can be moved into evidence very simply pursuant to CPLR §4540. Since criminal cases require a higher standard of proof, the family offense charge is proved res judicata. Additional testimony from the client as to this allegation may not be necessary unless the Family Court judge wants further evidence.

When you choose an adjourn date for Family Court, it is a good idea, if a criminal prosecution is pending, to request a date after the criminal case will be completed. A Family Court judge might take the family offense more seriously if they are aware that a criminal case is pending against respondent for the same or similar incidents. If the criminal charge against respondent is dismissed before the family offense goes to trial, this does not necessarily harm petitioner's case, since the burden of proof is lower in Family Court.

RECORDED PHONE CALLS

911 Calls:

If the petitioner or other witness (such as a child) calls 911 for help during or immediately after a domestic violence incident, there should not be any problem admitting the tape recording made by 911 as evidence, using either the present sense impression or excited utterance hearsay exception.

However, often-times a victim of domestic violence will not call 911 until some time has passed after the incident and the opposing party has left the scene. In such situations, an attorney will need to argue that the petitioner's statements are still

contemporaneous and qualify as either excited utterances or present sense impressions. Unlike crimes committed by strangers, that take place quickly and have definitive endings, domestic violence incidents are part of an ongoing cycle of abuse. Thus, the petitioner might be reacting under the excitement of the moment for a long time after the particular incident ends. Even after the opposing party leaves the scene, the petitioner might be fearfully awaiting their return and the resumption and/or escalation of the violence.

Remember to seek a judicial subpoena for the NYPD early on in your case, not only because it may take a while for the agency to produce the records, but also because the NYPD deletes 911 calls within one year after they were made.

Respondent's Calls:

A petitioner may have a recording of an opposing party's phone call, or an in-person conversation between themself and the opposing party they were able to tape record.

Generally, such tapes are admissible when demonstrated to be authentic and audible. Authenticity may be established by testimony from the petitioner or another witness to the conversation, establishing that the tape is unaltered and that it completely and accurately reproduces the conversation. A chain of custody does not need to be established if the above occurs.

If the tape recording is difficult to hear, you might consider hiring a legal stenographer to prepare a transcript of the recording. The judge and opposing counsel can then follow along while the tape is being played. If you offer the transcript into evidence, the witness who prepared it must testify that it is a true, accurate and verbatim transcript of the recording.

If portions of the tape are so inaudible that the stenographer cannot make a transcript of them, argue that the audible portions are sufficient to demonstrate what the opposing party said. Ultimately, the credibility (accuracy and completeness) of the recording is for the judge to decide.

Under New York law, the petitioner/victim's consent to the tape recording of their conversation with the opposing party is sufficient to withstand any challenge based upon violation of the opposing party's right to privacy.[54] However, if the recording took place in a state with a two-party consent law, then the conversation may not be admissible.

WRITINGS/LETTERS

In order to enter into evidence a threatening letter the respondent/opposing party sent to your client, you must establish the following: (1) the letter is relevant; (2) the petitioner received the letter; (3) the petitioner recognizes the signature as the respondent's; and (4)

the letter is in the same condition today as when the petitioner first received it. Hearsay objections can be overcome since the respondent's letter is a party opponent admission.

Your client, the petitioner, can testify that they received respondent's letter in the mail and that they are familiar with respondent's signature, and therefore can identify it as the signature on the letter. For example, after you have the letter marked as an exhibit, show it to opposing counsel, and hand it to your client on the stand, you can establish the foundation for the letter as follows:

Attorney: Mx. Petitioner, I hand you Petitioner's Exhibit 1. Do you recognize it?

Petitioner: Yes, I do.

Attorney: Have you seen it before?

Petitioner: Yes, I received this letter in the mail on approximately September 10, 1999.

Attorney: Do you recognize the signature on the bottom of the letter?

Petitioner: Yes, I do.

Attorney: Have you seen this signature before?

Petitioner: Yes, many times.

Attorney: Under what circumstances?

Petitioner: Well, the respondent and I lived together for 3 years and during that time I often watched them sign letters, bills, and other documents. They have written me notes and letters in the past and signed their name.

Attorney: Whose signature is on the bottom of the letter?

Petitioner: Mx. Respondent's.

Attorney: Is the letter in the same condition today as when you received it on approximately September 10, 1999?

Petitioner: Yes, it looks exactly the same.

WITNESS DEMONSTRATIONS

If your client has an injury or scar resulting from an assault by respondent, which is still visible at the time of trial, you may want to have them display the injury to the judge as part of their testimony, if they are comfortable with such action. Courts generally allow a physical demonstration of an injured body part as long as the injury is relevant to an issue

at trial. Argue that a physical demonstration is important to show the nature and extent of the injuries claimed.

As your client displays their injury, you will need to give an accurate verbal account of the demonstration so that it is on the record. For example:

> Attorney: Mx. Petitioner, would you please point out to the court the scars you have described?
>
> Petitioner: The scar on my right cheek is here (*points*) and the scar on my elbow is right here (*points*).
>
> A: Your Honor, may the record show that Mx. Petitioner has pointed to a white scar approximately three inches long running vertically down their cheek, on the left side of their face, about one inch to the left of their nose, and a white scar approximately two inches long and one inch wide on their right elbow?
>
> Court: That sounds accurate to me. Any objection to the description counsel?
>
> Opposing Counsel: No, Your Honor.

OTHER TANGIBLE OBJECTS

Common examples of tangible objects you might wish to introduce at trial include weapons the opposing party used against your client (ice pick, boot), clothing your client was wearing when they were attacked (torn and bloody shirt), or smaller broken items that can be brought easily into the court (china, glass animal collections, picture frames). Often these objects can be positively identified by the petitioner as witness either because the articles are inherently unique in appearance or because a serial number, marking or some other identifying symbol makes them unique.

In order to enter the object into evidence, you must show the following:

- object is relevant
- object can be identified visually or through other senses
    - petitioner/witness recognizes the object (e.g., broken tip on ice pick)
    - petitioner/witness knows what the object looked like on the relevant date
    - object is in the same condition or substantially same condition now as when the petitioner/witness saw it on the relevant date

If the object cannot be uniquely identified (for example, a piece of wire used to strangle petitioner) then you must establish a chain of custody or use it as demonstrative evidence only.

REFRESH RECOLLECTION

Testifying can be a very frightening experience for a petitioner, and they may forget the details of incidents described in their petition or even "go blank" on the stand and forget an incident altogether. If this happens, you can refresh the petitioner's recollection. The easiest way to do this is by using their petition to refresh their memory. Just make sure they have been prepared ahead of trial to be prompted for having their recollection refreshed. A particular litany must be followed to establish the foundation for refreshing recollection.

Note that if the petitioner (or other witness) uses a writing to refresh their recollection, then the adverse party has the right to: have the writing produced (opposing counsel gets a copy); inspect it; cross-examine the witness; and introduce into evidence portions of the writing relating to the witness' testimony. Thus, do not use writings to refresh recollection that you do not want the other side to see. Your client's petition is a safe document to use since the other side and the court already have seen it.

Make sure that your client knows that they have the option of refreshing their recollection with a writing. If they have forgotten to mention an important detail in their anticipated testimony, you can cue them by saying: "Do you recall or remember anything else?" Alternatively, if your client cannot remember what to say in answer to your direct examination question and needs to see the writing, they can state:

"I cannot remember."

Once they say they cannot recall what happened, you may then ask them if there is anything that would refresh their recollection. If your client answers, "I do not know," you will not be permitted to refresh their recollection, since their answer suggests they do not have any recollection at all.

For example:

Attorney: Please describe what happened on the night of April 15,2017.

Petitioner: I can't remember.

Attorney: Would anything refresh your recollection

Petitioner: Yes, my petition would.

Attorney: I ask that the court mark this petition as an exhibit (*hand it to court officer or clerk*). I am now showing Exhibit 1 to opposing counsel (*show it to respondent's attorney*). Mx. Petitioner, I am handing you what has been marked Petitioner's Exhibit #1. Do you recognize it?

Petitioner: Yes, it's my petition.

Attorney: Please read it to yourself. (*Petitioner does so*). Do you now remember what happened on the night of April 15th?

Petitioner: Yes, I do.

Attorney: May I have the report back? (*Client returns Report to officer who hands it to attorney*). Please tell us what happened that night.

Client: (*Resumes testimony*).

Do not forget to have the document marked as an exhibit and show it to opposing counsel, even though you will not offer it into evidence. Also, make sure you retrieve the document from the petitioner after they have read it to themself and before they continue their testimony. Otherwise opposing counsel can object that your client does not have a present recollection but is merely reading from the report.

ORDER OF DISPOSITION

Although most judges do not make a distinction between an order of disposition and a final order of protection, FCA § 841 contemplates that at the conclusion of the hearing an order of disposition will be made which may provide for, among other things, a final order of protection pursuant to FCA § 842. If the court makes a finding that one or more family offenses have occurred, the petitioner is entitled to a dispositional hearing, including on the issue of whether a petitioner who fled the residence should be restored to the home and the respondent be removed.

Thus, after the dispositional hearing, the court may issue an order of disposition containing any of the following relief:

- dismissing the petition if the allegations were not established
- suspending judgment for up to six months
    - Uniform Rules of the Family Court § 205.74(a) provides that an order suspending judgment shall contain at least one of the following terms and conditions: stay away; abstain from communication by telephone or letter; abstain from repeating the conduct adjudicated to be a family offense at fact-finding; cooperate in obtaining counseling and other services; cooperate with the petitioner in maintaining the household; pay restitution; comply with other reasonable terms and conditions.
- placing respondent on probation for up to one year and requiring them to participate in an abuser's education program (designed to help end violent behavior) and/or drug or alcohol counseling; and requiring the respondent to pay the costs of such program if able (petitioner is not required to pay the costs of such program)
    - Uniform Rules of the Family Court § 205.74(b) provides that an order placing the respondent on probation shall include at least one of the following: any of the terms or conditions described in (a); meeting with a probation officer; cooperating with a probation officer in arranging visitation; cooperating in seeking/obtaining treatment
- ordering restitution in an amount up to $10,000, if restitution has not been paid pursuant to settlement of another proceeding involving the same acts; restitution can cover medical expenses, missed wages due to injury-related absence from work, petitioner's personal property destroyed by respondent, etc.
- issuing a final order of protection pursuant to FCA § 842
- issuing an order of probation AND an order of protection

Remember that pursuant to FCA §§ 841(e) and 154-b, a court may not grant any relief that was not requested in the petition or counterclaim.

Practice Tip: Remember that evidence in a dispositional hearing need not be "competent," thus hearsay is permitted. This is an opportunity to present, for example, a letter from a therapist about how the abuse has affected your client. You also have the opportunity to bring in documents and testimony that were excluded during the factfinding because of hearsay rules or lack of foundation.

FINAL ORDER OF PROTECTION

A final order of protection may set forth "reasonable conditions of behavior" to be observed by the respondent, as described in FCA § 842 (see "Family Court Orders of Protection" section in this manual, above). The final order of protection may be effective for any duration of up to two years. Most courts issue final orders of protection which are effective for two years from the date of issuance.

A final order of protection may be effective for any duration up to five years if the court finds "aggravating circumstances" (FCA §§ 842 and 827). Aggravating circumstances must be proven specifically and found by the Court on the record as a basis for the issuance of an order of protection for a duration in excess of two years. Aggravating circumstances include:

- physical injury to the petitioner
- the use of a dangerous instrument against the petitioner
- a history of repeated violations of prior orders of protection
- prior convictions for crimes against petitioner
- exposure of any family or household member to physical injury
- like incidents and behavior which constitute an immediate and ongoing danger to the petitioner or household members

In addition, if the court finds that a valid Order of Protection has been violated, the court must state the finding of the violation on the record and can issue an Order of Protection for up to five years (See FCA § 842).

MOTION FOR RECONSIDERATION AND MODIFICATION

FCA § 844 provides that, for good cause, the court may, after a hearing, reconsider and modify any order of disposition or protection.

Such a motion should be made consistent with the procedures outlined in FCA § 154-c and Uniform Rules of the Family Court § 205.11.

APPEALS

Article 11 of the Family Court Act provides that any order of disposition may be appealed as of right. Appeals from other orders may be taken at the discretion of the appropriate appellate division. Pursuant to FCA § 1113, an appeal must be taken no later than 30 days after the service upon the appellant of any order from which the appeal is taken (or 35

days if the order is mailed to the appellant by the court clerk). The filing of an appeal does not automatically stay the order from which the appeal is taken (FCA § 1114). Thus, if you are appealing the dismissal of the petition or the denial of an order of protection despite prevailing at a factfinding, you may need to request a reinstatement of the petition and/or temporary order of protection pending the appeal.

Pursuant to FCA § 1115, an appeal shall be taken by filing the original notice and a copy of the appeal with the clerk of the Family Court in which the order was made and from which the appeal is taken, and by serving such notice upon the corporation counsel of the city of New York and upon the appellee. Such notice shall be served upon any adverse party pursuant to CPLR § 5515(1).

SECTION 5:

IMMIGRATION CONSIDERATIONS

HER JUSTICE

SECTION 5: IMMIGRATION CONSEQUENCES

A. Section 5 TOC
B. Immigration Considerations in Family Offense Proceedings

HER JUSTICE

IMMIGRATION CONSIDRATIONS IN FAMILY OFFENSE PROCEEDINGS

The Violence Against Women Act was signed into law in 1994 as Title IV of the Violent Crime and Law Enforcement Act, pursuant to Congress' Commerce Clause powers. VAWA's goal is to improve the prevention and prosecution of violent crimes against women and children. VAWA is the first federal law recognizing and attempting to stop crimes of violence motivated by gender. In pursuit of this goal, VAWA includes provisions such as:

- a requirement that states, territories, and tribal courts give full faith and credit to protective orders issued by all other states, territories, and tribal courts
- establishment of a federal civil rights cause of action for victims of gender-motivated crimes of violence
- federal criminal penalties for persons who travel to another state with intent to injure their spouse or partner, or who cause the victim to cross state lines for this purpose, and cause injury to their victims
- federal criminal penalties for persons who travel to another state with intent to violate a protective order and do violate such order
- self-petitioning for legal resident status by battered immigrant women (on behalf of themselves and their children) who are married or related by blood to an abuser with legal resident status, even if the marriage is legally terminated after the petition is filed
- suspension of deportation for battered immigrant women and children who have resided in the U.S.A. for at least three years, if such would result in extreme hardship to the victim or her parent or child

Another important aspect of VAWA for victims of domestic violence is the Civil Rights Remedy. This provision permits victims of violent crimes to sue in federal or state court and to seek money damages, compensatory and punitive damages, an injunction, a declaratory judgment, and attorneys' fees for injuries suffered because of gender-based crimes that could be felonies under state or federal law. These crimes include family offenses, sexual assault and rape, physical abuse during one's employment, and felonies against property (if they involve injury or serious risk of injury to a person as well). Money damages may include costs associated with injuries to a victim's person (such as medical bills or counseling) or property, loss of employment or lost time from work because of harassment at work, financial compensation for pain and suffering, and punitive damages to punish the attacker.

To prevail on a civil lawsuit pursuant to the Civil Rights Remedy, a woman must prove two things by a preponderance of the evidence: (1) that she suffered a "crime of violence" that rises to the level of a felony under federal or state law; and (2) that the

violent crime committed against her was motivated, at least in part, by her gender. The crime need not have resulted in charges, prosecution, or conviction for a VAWA civil rights lawsuit to proceed.

VAWA does not include any express statute of limitations period in which actions must be brought. It is likely that the federal "catch-all" statute of limitations will be applied to VAWA Civil Rights Claims commenced in state as well as federal courts. The "catch-all" provides a four-year limitations period for civil actions arising under federal laws that do not specify otherwise.

IMMIGRATION CONSIDERATIONS WHEN REPRESENTING UNDOCUMENTED CLIENTS IN FAMILY OFFENSE PROCEEDINGS

As part of your representation of a Her Justice-referred client in a family offense proceeding, you should be familiar with their immigration status and their potential eligibility for certain types of immigration relief. You should discuss with your Her Justice mentor about how the resolution of the legal matter could potentially impact a client's ability to request immigration relief, such as U Nonimmigrant Status.

The U Nonimmigrant Status was created under VAWA to allow victims of crime who meet certain requirements stay in the United States lawfully. With a U Nonimmigrant Status, an undocumented victim of crime can:

- Live legally in the United States for four years. After three years of having a U Nonimmigrant Status, the individual can apply for adjustment of status for permanent residence;
- Obtain work authorization to work lawfully in the U.S.;
- Include qualifying family members on their U Nonimmigrant Status applications so that the qualifying family members can derive the same benefits as the primary applicant and potentially enter the U.S. lawfully to reunite with the individual; and
- Be eligible for certain public benefits.

To be eligible for U Nonimmigrant Status relief, the victim must show that they: 1) were the direct, or indirect, victim of a crime; 2) were helpful to an investigation into the crime by a government agency; and 3) suffered substantial harm because of the commission of the criminal activity.

Domestic violence is considered a crime for U Nonimmigrant Status purposes. A U Nonimmigrant Status application requires certification by a government agency that the victim was cooperative or helpful in the investigation of the crime. Government agencies which can issue U Nonimmigrant Status certifications include:

- Federal, State, or local law enforcement officials (e.g., the NYPD)
- The District Attorney's Office
- The NYC Administration for Children's Services
- A Family Court Judge

Since an undocumented client with a pending family offense proceeding in the Family Court could ask a Family Court Judge for U Nonimmigrant Status certification, the resolution of a family offense proceeding can impact the client's eligibility for a U Nonimmigrant Status. Each Family Court Judge has the discretion to issue a U Nonimmigrant Status certificate on a case-by-case basis.

WITHDRAWN OR DISMISSED FAMILY OFFENSE PETITIONS

Generally, a Family Court Judge will not issue a U Nonimmigrant Status certificate where the client has withdrawn their request for an Order of Protection, or where they have not made out a prima facie case and the case is dismissed.

ORDERS OF PROTECTION BY DEFAULT

In instances where the opposing party defaults and the client obtains a final order of protection, some Family Court Judges refuse to issue a U Nonimmigrant Status certificate because the client did not testify about the allegations contained in their family offense petition. In cases where the opposing party defaults, it is important to request that the court conduct a thorough inquest allowing the client to testify to the commission of a family offense and establish a record of the family offenses/crimes committed against them.

ORDERS OF PROTECTION ON CONSENT

Many family offenses are resolved with an Order of Protection on Consent whereby the opposing party consents to the issuance of an order of protection but neither admits nor denies the allegations raised in the family offense petition. Although a final order of protection is granted, many Family Court Judges will not issue a U Nonimmigrant Status certificate despite the fact that the client has essentially cooperated with the court because there is no record of admission of wrongdoing.

During the course of a family offense proceeding, a client and/or their attorney may be pressured by the court and opposing counsel to accept an Order of Protection on Consent. However, many clients – documented or undocumented – desire to have their "day in court" and testify at trial to the family offenses committed against them. Whether a client chooses to accept an order on consent or to proceed to trial is within their discretion. When representing undocumented clients, it is essential to discuss whether they wish to proceed to trial or accept the order on consent. Factors to discuss with the client include the strength

of the family offense petition; their desire to be heard in court; their ability to undergo a hearing and confront the opposing party; issues of credibility if their immigration status is made an issue during the family offense proceeding; and other immigration remedies that may be available to them.

Her Justice mentors are available to discuss with you any immigration considerations regarding immigrant clients. If you wish to further represent your client in a VAWA or U Nonimmigrant Status application, speak to your Her Justice mentor for case assessment, training materials, and guidance.

Additional resources and referrals for immigrant clients include:

- Catholic Charities Community Services: (212) 419-3700
    - Catholic Migration Office: (718) 651-5490 (Queens) and (718) 236-3000 (Brooklyn)
- City Bar Justice Center- Immigration Women and Children's Project: (212) 382-4711
- CUNY School of Law Immigrant and Non-Citizen Rights Clinic: (718) 575-4300
- Legal Aid Society: (718) 286-2450
- New York Association for New Americans, Inc. (NYANA): (212) 425-2948
- New York Immigration Hotline Referral Number: (800) 566-7636
- New York Legal Assistance Group (NYLAG): (212) 613-5000
- Sanctuary for Families: (212) 349-6009
- Safe Horizon Immigration Law Project: (718) 943-8632 (Immigration Law Project); (866) 604-5350 (TDD phone number for all hotlines); and (800) 621-HOPE (4673) (domestic violence hotline)

SECTION 6:

SAMPLES

SECTION 6: SAMPLES

A. Section 6 TOC
B. Sample Documents Introduction
C. Notice of Appearance
D. Affirmation of Service
E. Domestic Incident Report (DIR)
F. Family Offense Petition
G. Temporary Order of Protection
H. Notice of Motion for Leave to Amend
I. Affirmation in Support of Motion for Leave to Amend Family Offense Petition
J. Motion to Dismiss
K. Affirmation in Support of Motion to Dismiss
L. Violation Petition
M. Demand for Witness and Exhibit Lists
N. Subpoena Duces Tecum Mobile Phone Company
O. Judicial Subpoena Duces Tecum New York Police Department
P. Subpoena Ad Testificandum Social Work Unit
Q. Business Record Certification
R. Notice of Judicial Subpoena Duces Tecum
S. HIPPA Release Form
T. Direct of Petitioner
U. Cross of Adverse Party
V. Direct of Petitioner's Witness
W. Direct Police Officer
X. Closing Statement

SAMPLE DOCUMENTS

Her Justice is providing you with sample documents in this manual for general informational purposes only.

You must tailor any samples in this manual or that your Her Justice mentor provides to you to the specific facts in your client's case. Please refrain from cutting and pasting documents with information that is unnecessary and irrelevant to your case.

As there are varying degrees of styles and formats for preparing documents, these sample documents serve only as one model. If your firm requires you to follow a particular format, then follow your firm's protocol.

- Please also refer to the New York State Unified Court System website for additional samples used by the Family Court.
- Please shepardize all case law and check legal citations that are used in your papers.
- Allow sufficient time for the Her Justice Mentor to review and provide you with feedback on your pleadings and for service upon all parties.
- Finally, prior to filing any pleading, discuss with your client for their final approval.

NOTICE OF APPEARANCE

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/20
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **NOTICE OF APPEARANCE**

JO SAMPLE,
Respondent.

----------X

PLEASE TAKE NOTICE that the Petitioner, SAMMIE SAMPLE, hereby appears in the above-captioned proceeding by the undersigned Attorney for the Petitioner and demands that all papers in this action be served upon the undersigned at the office and post office address stated below.

Dated: October 15, 2020

LAW FIRM, LLP
Amy Attorney, Esq.
123 Broadway
New York, NY 11011
Tel: (212) 555-1414
Fax. (212) 555-1415

TO: JO SAMPLE Defendant, *Pro se*
123 XYZ Avenue, New York, NY 10001

AFFIRMATION OF SERVICE

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/16
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **AFFIRMATION OF SERVICE**

JO SAMPLE,
Respondent.

----------X

Amy Attorney, Esq. an attorney duly admitted to practice law before the Courts of the State of New York, affirms under penalty of perjury:

I am not a party to this action and am over 18 years of age, and am employed at Law Firm, LLP, 123 Broadway, New York, NY 10005.

On October 17, 2021, I served the within Notice of Appearance, Docket # O-XXXXXX/2021 by depositing a true copy of same in an official United States Post Office depository, in postage paid envelopes addressed to Respondent and to Attorney for Respondent, as follows:

Jo Sample	Jo's Attorney
123 Ninth Avenue	123 Madison Avenue
New York, NY 10001	New York, NY 10003

AFFIRMED
:

Amy Attorney, Esq.
Law Firm, LLP
123 Broadway
New York, NY 11011

DOMESTIC INCIDENT REPORT

Agency	ORI	NYPD DOMESTIC INCIDENT REPORT			Incident #		Pct of Report
N.Y. POLICE DEPT	NY030300[redacted]				2009-026-000[redacted]		26
Date of Report 06/27/2009	**Time of Report** 1349	**Date of Occur** 06/27/20[redacted]	**Time of Occur** 1300	**Response Type** RADIO RUN	**SPRINT #** [redacted]	**Reason Sprint # Not Required**	**Sprint Reason - Other:**
Aided #	**IAB #**	**Address of Occurrence** [redacted] WEST 125 STREET 22 MANHATTAN NY 10027		**Pct** 26	**PSA**	**Sector** E	**Beat**
Complaint Filed YES	**Complaint #** 2009-026-002[redacted]	**Det Clearance**		**SAFE# or way to contact**			
Arrest Made NO	**Arrest No.**	**Non Arrest Reason** SUSPECT OFF-SCENE	**Body Worn Camera**				

Offense				
Offense Description ASSAULT 3 & RELATED OFFENSES	**Law** 101	**Section** 12000	**Charged**	**Offenses Involved** MISDEMEANOR

Victim: SANCHEZ, MARCELINA

Victim's Last Name, First M.I.	Alias Last Name, First	Address	Pct	PSA
[redacted]		[redacted] WEST 125 STREET 22 MANHATTAN NY 10027	26	
Sex: FEMALE **Race:** WHITE **Ethnic Origin:** HISPANIC **Language:** ENGLISH	**Date of Birth:** 02/06/1982 **Age:** 27	**Home Phone:** 347 [redacted] **Other Phone:**		**Member of Service:** NO
Injury YES - CUT TO CHEST		**Removed to Hospital** NO		
Notes				

Suspect: PERALTA, LORENZO

Suspect's Last Name, First M.I..	Alias Last Name, First	Address	Pct	PSA	Risk Factor
[redacted]					**Prior DV History:** YES **Prior DV police report:** YES **Victim fearful:** NO **Access to weapon:** NO
Sex: MALE **Race:** WHITE	**Date of Birth:** 12/13/1975	**Home Phone:** 646 [redacted]	**Member of Service:** NO		

Ethnic Origin: HISPANIC Language: ENGLISH	Age: 33	Other Phone:		Suspect:Drug/Alc History: YES Suspect:Hx suicide threat: YES Suspect:Probation/Parole: NO
Suspect Present: NO	Relationship to Victim: UNKNOWN/NONE	Living Situation: CHILD IN COMMON	NYSID Number:	
Injury YES - CUT ON CHEST		Removed to Hospital NO		

Suspect Action	Threats	Weapons Used
Biting	Injure Persons Injure/Kill Self	

Associated Persons

Assoc Person's Last Name,First M.I.	Address	Relationship	Date of Birth	Phone
[redacted]			05/03/2007	347 [redacted]

Order of Protection

Registry checked	Order of Protection	Stay Away Order	Order Violated	Any Prior Orders	OP Court Name	OP Court Type	Expiration Date
NO	NO						

Investigation Info

Photo Taken	Photo: Victim Injuries	Photo: Suspect Injuries	Photo: Scene	Photo: Property Damage	Photo: Other
YES					

Child victim of abuse	Other Evidence Collected	If Yes, describe	Excited utterances/ spontaneous admissions
NO	NO		NA

Results of investigation and basis of action taken
COMPL STATES THAT AT TPO ABOVE PERP THREW HER IN HER BEDROOM & BIT HER ON THE CHEST. NO GUNS IN HOUSE

Statement of Allegations/Supporting Desposition
EL ME FORZO Y ME MORDIO EL PECHO A LAS 1.00

Other Agencies involved with the parties or incident (e.g. advocates, hospital, probation)

Guns

Guns in House	Guns seized	Has Permit	Permit Seized	Issuing County	Permit # (s)	Name on Permit (s)
NO						

DIR given to victim at scene	If No, Reason	Victim's Rights Notice given to victim	If No, Reason	Entered By TaxID	Entered By Date
YES		YES		329608	06/27/20[redacted]

Reporting Officer:	Jurisdiction	Name	Rank	Tax ID	Date
		ISAAC , VALLISON	POF	940828	06/27/20[redacted]
Detective Assigned:	**Name**		**Rank**	**Tax ID**	**Date**
Supervisor Sign-off:	**Name** CONWAY , ARLENE		**Rank** SGT	**Tax ID** 922150	**Date** 12/22/20[redacted]

Search Results

DIR NAME SEARCH RESULTS

INCIDENT ID: 2005-045-001492 FIRST NAME: MARK LAST NAME: SANCHEZ OFFENDER/VICTIM: VICTIM DATE OF BIRTH: 04/09/1982 SEX: MALE RACE: OTHER ADDRESS: 140 DEBS PLACE 26E, BRONX, NY

FAMILY OFFENSE PETITION

F.C.A. §§ 812, 818, 821

Form 8-2 (12/2013)

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

File No.:
Docket No.: O- -16

Petitioner,

– against –

FAMILY OFFENSE PETITION

Respondent.

TO THE FAMILY COURT:

The undersigned Petitioner respectfully states that:

1. (a) My home address is New York, NY 10031.

(b) The Respondent's home address is NEw York, NY 10031.

2. The Respondent and I are related as follows: **we have a child in common.**

3. The Respondent committed the following family offenses(s) against me and/or my children, which constitute(s):

- ☑ **Disorderly conduct**
- ☑ **Harassment in the 1st or 2nd degree**
- ☑ **Aggravated harassment in the 2nd degree**
- ☐ Assault in the 2nd or 3rd degree
- ☑ **Criminal mischief**
- ☐ Sexual abuse in the 2nd or 3rd degree
- ☐ Strangulation
- ☐ Identity theft in the 1st, 2nd or 3rd degree
- ☐ Coercion in the 2nd degree [Penal Law § 135.60 (1), (2), or (3)]
- ☑ **Menacing in the 2nd or 3rd degree**
- ☐ Reckless endangerment
- ☐ Stalking
- ☑ **Attempted assault**
- ☑ **Sexual misconduct**
- ☑ **Forcible touching**
- ☐ Criminal obstruction of breathing or circulation
- ☐ Grand larceny in the 3rd or 4th degree

[Describe incident, state date, time and place of most recent incident, specify if anyone was injured (how seriously) and if any weapons were used. If there were earlier incidents as well, describe them in additional paragraphs.]

Petitioner states that respondent has emotionally, verbally, physically and sexually abused her. Petitioner states that respondent is always

threatening her that he is going to kill her. Petitioner states that everyday respondent gets to the house drunk around 2am or 5am and he comes home with beers and starts playing really loud music and does not let anyone sleep not even the children. Petitioner states that when he comes home drunk he starts physically hurting her.
Petitioner states that they have been separated it and that she sleeps with the children. Petitioner states that sometimes respondent comes to the bedroom where she is sleeping with the children and because the door is lock, respondent forces his way in, using a knife to open the door.
Petitioner states that she is fearful for her safety and the children safety as well and is fearful for her life. Petitioner states that respondent is always drinking.

05/10/2016- petitioner states that in the night she packed her belonging and left with the children to a safer place. Petitioner state that when they were packing respondent didn't allow the children to take any of their belongings because he had bought everything and they didn't deserve to take anything. Petitioner states that children had to leave most of their belongings behind.
05/10/2016-Petitioner states that respondent came to her job and started to verbally abuse her. Petitioner states that respondent is accusing her of been with someone else. Petitioner states that respondent threatened to kill her and

Petitioner states that last week May 04, 2016-she was taking a shower and respondent was drinking in his room and when he heard that petitioner was taking a shower, he came into the bathroom and slapped her and threw her in the tub. Petitioner states that respondent picked her up and then sexually force himself on her. Petitioner states that is not the first time that he sexually assaults her, Petitioner states that respondent told her that because she refuses to be with him, he has to do it this way. Petitioner states that this is the fourth time that respondent comes to her job and starts calling her names and using foul language.

Petitioner states that respondent comes home yelling at her and calling her names in front of the children, making them fearful of him.

4. I have filed a criminal complaint concerning these incident(s): **Police report .**

5. The following children live with me, including children who are not mine or are mine but do not live with me.

Name	Date of Birth	Lives with	Relationship to Petitioner	Relationship to Respondent
	03/09/2002	**Both parties**	**Child**	**Child**
	05/29/2005	**Petitioner**	**Child**	**Child**

6. The Respondent has acted in a way I consider dangerous or threatening to me, my children or any member of my family, in addition to the incident described above, as follows: **Petitioner states that about a month ago respondent was really drunk and he raped her and hurt her really bad. Petitioner states that when he was trying to sexually assault her again, respondent realized how bad he hurt her and gave her money so she could go to the doctor.**
Petitioner states that in the past respondent threw her outside naked without clothes and threw her in the bed, and while holding her, he took pictures of her naked and sends them to her, making threats that he is going to put them on Facebook.

WHEREFORE, Petitioner respectfully requests this Court to:

- Adjudge the Respondent to have committed the family offense(s) alleged;
- Enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act;
    - Stay away from Petitioner
    - Stay away from Petitioner's children
    - Stay away from Petitioner's home
    - Stay away from Petitioner's workplace
    - Stay away from Petitioner's and/or Petitioner's children's school or daycare
    - Do not menace, harass, assault or commit any family offenses against Petitioner or Petitioner's children
    - Do not interfere with the care or custody of the children
    - No communication and no contact through social media including, but not limited to, Facebook, twitter, etc.

- Exclude Respondent from Petitioner's home
- No third party contact
- If respondent is not excluded petitioner would like the children to be able to pick up their belongings including their computer for school purposes.

- Enter a finding of aggravated circumstances; if applicable,
- Order such other and further relief as to the Court seems just and proper

Dated: 05-11-16

_____
, Petitioner

TEMPORARY ORDER OF PROTECTION SAMPLE

F.C.A §§ 430, 550, 655, 828, 1029 GF5 05/2014

NOTICE: The English language text constitutes the actual Order of Protection; the Spanish translation is provided to assist parties with limited English proficiency. *(La versión en inglés es la Orden de Protección actual; la traducción al español se ha proporcionado para ayudar a las partes que tengan limitaciones en su dominio del inglés.)*

ORI No (Núm de ORI): NY
Order No (Núm de la Orden): 2016-
NYSID No (Núm de NYSID): _____

At a term of the (En una Sala del Tribunal de) Family Court of the State of New York, held in and for the County of New York, at 60 Lafayette Street, New York, NY 10013, on May 26, 2016

PRESENT (Presente): **Monica Shulman, Court Attorney Referee**

In the Matter of a FAMILY OFFENSE Proceeding
(En Materia de un Procedimiento de OFENSA CONTRA LA FAMILIA / OFENSA FAMILIAR)

(DOB: 08/25/1981),
Petitioner (Demandante)

- against - (- contra -)

(DOB: 09/25/1976),
Respondent(Demandado/a)

File # (Núm de Unidad de Familia)
Docket # (Núm de Expediente) O- 16
Temporary Order of Protection
(ORDEN DE PROTECCIÓN PROVISIONAL)

Both Parties Present in Court
(Ambas Partes Presentes ante el Tribunal)

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

(**AVISO**: SI NO OBEDECE ESTA ORDEN, USTED PUEDE ESTAR SUJETO A ARRESTO OBLIGATORIO Y ENCAUSAMIENTO PENAL,LO CUAL PUEDE RESULTAR EN SU ENCARCELAMIENTO POR HASTA SIETE AÑOS POR DESACATO PENAL, Y/O PUEDE RESULTAR EN SU ENCAUSAMIENTO EN EL TRIBUNAL DE FAMILIA Y ENCARCELAMIENTO POR HASTA SEIS MESES POR DESACATO JUDICIAL. SI USTED NO COMPARECE CUANDO ES DEBIDO, ESTA ORDEN SE PUEDE EXTENDER EN SU AUSENCIA Y LUEGO CONTINUARÁ VIGENTE HASTA UNA NUEVA FECHA FIJADA POR EL TRIBUNAL.
ESTA ORDEN DE PROTECCIÓN PERMANECERÁ VIGENTE AÚN SI LA PARTE PROTEGIDA TIENE O CONSIENTE A TENER CONTACTO O COMUNICACIÓN CON LA PARTE EN CONTRA DE QUIEN SE EMITE LA ORDEN. ESTA ORDEN DE PROTECCIÓN SÓLO PUEDE SER MODIFICADA O SUSPENDIDA POR EL TRIBUNAL. LA PARTE PROTEGIDA NO PUEDE SER DECLARADA EN VIOLACIÓN DE ESTA ORDEN NI ARRESTADA POR QUEBRANTAR ESTA ORDEN.)

A petition under Article 8 of the Family Court Act, having been filed on May 11, 2016 (Una petición de conformidad con Article 8 of the Family Court Act, habiendo sido presentada el May 11, 2016) in this Court and good cause having been shown, and having been (ante este Tribunal y habiéndose demostrado causa suficiente y, habiendo estado) present in Court and advised of the issuance and contents of this Order (presente ante el Tribunal e informada/o de la emisión y el contenido de esta Orden).

NOW, THEREFORE, IT IS HEREBY ORDERED that (Ahora, por lo tanto, por la presente se ordena que) (DOB:09/25/1976) observe the following conditions of behavior(deberá cumplir con las siguientes condiciones de conducta:)

[01] Stay away from:

Manténgase alejado(a) de:

[A] (DOB: 08/25/1981);

(DOB: 08/25/1981);

[A] (DOB: 05/29/2005) and (DOB: 03/09/2002) SUBJECT TO COURT ORDERS OF VISITATION;

(DOB: 05/29/2005) y (DOB: 03/09/2002) SUBJECT TO COURT ORDERS OF

[B] the home of (DOB: 05/29/2005), (DOB: 03/09/2002) and (DOB: 08/25/1981) SUBJECT TO COURT ORDERS OF VISITATION;

el hogar de (DOB: 05/29/2005), (DOB: 03/09/2002) y (DOB: 08/25/1981) SUBJECT TO COURT ORDERS OF VISITATION;

[C] the school of (DOB: 05/29/2005) and (DOB: 03/09/2002) SUBJECT TO COURT ORDERS OF VISITATION;

la escuela de (DOB: 05/29/2005) y (DOB: 03/09/2002) SUBJECT TO COURT ORDERS OF VISITATION;

[E] the place of employment of (DOB: 08/25/1981);

el lugar de empleo de (DOB: 08/25/1981);

[14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with (DOB: 08/25/1981) INCLUDING NO THIRD PARTY CONTACT;

Absténgase de comunicarse o tener cualquier otro contacto ya sea por correo, por teléfono, correo electrónico, correo de voz u otros medios electrónicos o por cualesquiera otros medios con (DOB: 08/25/1981) INCLUDING NO THIRD PARTY CONTACT;

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against (DOB: 08/25/1981);

Absténgase de agresión, acecho, acoso, acoso agravado, actos de amenaza, imprudencia temeraria, estrangulación, obstrucción criminal de la respiración o circulación, desorden público, daños dolosos contra la propiedad ajena, abuso sexual, conducta sexual ilícita, tocamiento forzoso, intimidación, amenazas, robo de identidad, hurto mayor, coacción o cualquier delito penal contra (DOB: 08/25/1981);

[11] Permit (DOB: 09/25/1976) to enter the residence at New York, NY 10031 during Saturday May 28, 2016 between 10AM and 2PM with NYPD to remove personal belongings not in issue in litigation personal belongings that are undisputed;

Permita que (DOB: 09/25/1976) entre en la residencia ubicada en Apt. 5I, New York, NY 10031 durante Saturday May 28, 2016 between 10AM and 2PM con NYPD para sacar los efectos personales que no forman parte del litigio personal belongings that are undisputed;

[99] Observe such other conditions as are necessary to further the purposes of protection: (DOB: 09/25/1976) IS EXCLUDED FROM THE HOME WHERE (P) (DOB: 08/25/1981) RESIDES;

Cumpla con cualquier otra(s) condición(es) que sea(n) necesaria(s) para promover los propósitos de la protección: (DOB: 09/25/1976) IS EXCLUDED FROM THE HOME WHERE (P) (DOB: 08/25/1981)

It is further ordered that this temporary order of protection shall remain in force until and including (ADEMÁS SE ORDENA que esta orden de protección permanecerá vigente hasta e incluyendo)July 11, 2016, but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by the Court.(pero si usted no comparece ante el tribunal en esta fecha, la orden se puede extender y continuar vigente hasta una nueva fecha fijada por el tribunal.)

Dated (Con fecha de): May 26, 2016

ENTER

Monica Shulman, Court Attorney Referee

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

CONFORME A LA SECCIÓN 1113 DE LA LEY DEL TRIBUNAL DE FAMILIA, UNA APELACIÓN DE ESTA ORDEN DEBERÁ HACERSE EN UN PLAZO DE 30 DÍAS A PARTIR DE LA FECHA EN QUE EL APELANTE HAYA RECIBIDO LA ORDEN EN EL TRIBUNAL, 35 DÍAS A PARTIR DE LA FECHA DEL ENVÍO POR CORREO DE LA ORDEN POR EL SECRETARIO JUDICIAL DEL TRIBUNAL AL APELANTE, O 30 DÍAS A PARTIR DE LA NOTIFICACIÓN AL APELANTE POR UNA DE LAS PARTES O POR EL ABOGADO DEL NIÑO, LO QUE OCURRA PRIMERO.

The Family Court Act provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties authorizes, and sometimes requires such officer to arrest a person who is alleged to have violated its terms and to bring him or her before the court to face penalties authorized by law.

LA LEY DEL TRIBUNAL DE FAMILIA establece que la presentación de una copia de esta orden de protección a cualquier agente de policía o del orden público en ejercicio de sus deberes especiales, autoriza y a veces requiere, que el agente arreste a la persona que se alega haber quebrantado sus términos, y lo conduzca a él o a ella ante el Tribunal para afrontar penas autorizadas por ley.

Federal law requires that this order is effective outside, as well as inside, New York State. It must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person restrained by the order is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect due process rights (18 U.S.C §§ 2265, 2266).

LA LEY FEDERAL REQUIERE que esta orden sea vigente fuera y dentro del Estado de Nueva York. Se debe acatar y hacer cumplir por tribunales estatales y tribales, incluyendo tribunales de un estado, el Distrito de Columbia, un estado libre asociado, un territorio o una posesión estadounidense, si la persona restringida por la orden es una pareja íntima de la parte protegida y se le ha dado o se le dará aviso razonable y la oportunidad de ser escuchada conforme a la ley estatal, suficiente para proteger los derechos al debido proceso.) (18 U.S.C. §§ 2265, 2266)

It is a federal crime to:

• cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;

• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and

• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C.

ES UN DELITO FEDERAL

• cruzar fronteras estatales para quebrantar esta orden o acechar, acosar o cometer violencia doméstica contra una pareja íntima o un miembro de la familia;

• comprar, poseer o transferir una pistola o un revólver, rifle, escopeta u otra arma de fuego o munición mientras esta Orden esté vigente. (Atención: existe una excepción limitada para militares o autoridades del orden público pero solamente cuando están desempeñando sus deberes oficiales; y

• comprar, poseer o transferir una pistola o un revólver, rifle, escopeta u otra arma de fuego o munición después de una condena por un delito relacionado con violencia doméstica que implique el uso o la tentativa de uso de fuerza física o de un arma mortífera

§§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

contra una pareja íntima o un miembro de la familia, aún después de que esta Orden se haya vencido. (18 U.S.C. §§922(g)(8),922(g)(9), 2261, 2261A, 2262).

Check Applicable Box(es) [MARQUE LA(S) CASILLA(S) QUE CORRESPONDA(N)]:

[x] Party against whom order was issued was advised in Court of issuance and contents of Order
(La parte contra quien la orden fue expedida estuvo presente ante el Tribunal y se le informó en el Tribunal de la emisión y el contenido de la Orden)

[x] Order personally served in Court upon party against whom order was issued
(La orden fue entregada personalmente en el Tribunal a la parte contra quien se expidió.)

[ ] Service directed by other means (Notificación autorizada por otros medios)[specify/ESPECIFÍQUE]:
_____

[ ] [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]:[Modificaciones o extensiones solamente]: La orden fue enviada por correo [especifique la fecha y enviada a]_____

[ ] Warrant issued for party against whom order was issued (Orden judicial de captura expedida para la parte contra quien la orden fue expedida)[specify date/ESPECIFÍQUE LA FECHA]: _____

[ ] ADDITIONAL SERVICE INFORMATION (Información adicional sobre la notificación)[specify/ESPECIFÍQUE]:
_____

NOTICE OF MOTION FOR LEAVE TO AMEND

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **NOTICE OF MOTION FOR LEAVE TO AMEND**

JO SAMPLE,
Respondent.

----------X

PLEASE TAKE NOTICE that upon the annexed affirmation of Amy Attorney, Esq., dated the 19th day of October, 2021 and upon all the prior pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Hon. Judge Smith at Part 14 to be held at the Family Court, New York County, located at 60 Lafayette Street, New York, New York 10013, on the 11th day of December 2021, at 11:00 A.M. or as soon thereafter as counsel may be heard for an order: (1) granting the Petitioner Sammie Sample leave to amend and serve the Amended Family Offense Petition filed with said Court on October 17, 2021; and, (2) granting the Petitioner such other and further relief as the Court may deem just and proper.

Dated:

New York, New York

Amy Attorney, Esq.
123 Broadway
New York, NY 10005
Tel: (212) 555-1414
Fax: (212) 555-1415
Attorney for Petitioner

AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO AMMEND FAMILY OFFENSE PETITION

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,

Petitioner,

OF

-against-

JO SAMPLE,

Respondent.

----------X

AFFIRMATION IN SUPPORT MOTION FOR LEAVE TO AMEND FAMILY OFFENSE PETITOIN

Amy Attorney, Esq., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under penalty of perjury:

1. I am employed at Law Firm, LLP, Attorneys for Petitioner, and as such am fully familiar with the facts and circumstances herein.

2. I submit this affirmation in support of Petitioner's motion for leave to amend, pursuant to CPLR, Rule 3025, the Verified Petition for an Order of Protection dated October 17, 2021 ("Petition").

3. On October 17, 2021, the Petitioner filed a Family Offense Petition with this court and appeared before your honor to obtain a Temporary Order of Protection, which was granted. On October 18, 2021, I met with Petitioner and, based on that interview, I determined that the Petitioner's October 17 Family Offense Petition did not provide the Court with all of the facts necessary to properly adjudicate this matter. Specifically, the October 17th Petition fails to include the aggravating circumstances of the most recent battering incident which took place on September 6, 2021 when Respondent slammed Ms. Sample against a wall and pressed a knife to her throat while threatening to kill her in front of Petitioner's and Respondent's four-year-old child.

4. Moreover, the October 17th Petition spells Ms. Sample's name incorrectly and erroneously characterizes Petitioner as Respondent's spouse when in fact the parties in this action are not married.

5. In addition, the October 17th Petition fails to provide the Court with the relevant dates or sufficient detail surrounding prior incidents of abuse including the fact that the Respondent absconded with their child on or around the night of October 10th, 2021 and kept the child for three full days without contacting Petitioner. Moreover, Respondent, upon returning the child, slapped Ms. Sample in the presence of their daughter, knocking her on to the sofa, constituting further aggravating circumstances.

6. Furthermore, Petitioner prepared the October 17th Petition without benefit of my legal advice and, consequently, was not aware of all of her rights with respect to the relief she may request as a part of an Order of Protection. For example, Petitioner was not aware that the omitted aggravating circumstances, including the use of a knife and their child's exposure to the violent episode, would support a request of a three-year Order of Protection.

7. Pursuant to CPLR § 3025 "[a] party may amend his pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court. *Leave shall be freely given upon such terms as may be just…*" (emphasis added).

8. Thus, after having met with Petitioner, it became clear that the October 17th Petition (i) failed to set forth additional facts necessary to adjudicate this case, (ii) contains erroneous information, and that (iii) Petitioner failed to request certain relief which she is entitled to request as part of a Permanent Order of Protection.

9. Furthermore, should the Court grant leave to amend the October 17th Petition, Mr. Sample will not be prejudiced since no aspect of the case (order of protection, custody, or visitation) has been addressed by the Court. Opposing Counsel will have significant notice of the contents of the Amended Verified Petition and an opportunity to respond to the Amended Petition at the conference to be held October 26, 2021.

WHEREFORE, Petitioner respectfully requests that the court grant the Petitioner leave to file and serve an Amended Verified Petition for an Order of Protection, and for and such other and further relief as this Court deems proper.

Dated: October 19, 2021

Amy Attorney, Esq.
456 Lafayette Street
New York, NY 11011
Tel: (212) 555-1414
Fax. (212) 555-1415

SAMPLE MOTIONS: Motion to Dismiss

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

JO SAMPLE,
Petitioner,

-against- **MOTION TO DISMISS**

SAMMIE SAMPLE,
Respondent.

----------X

PLEASE TAKE NOTICE, that upon the annexed affirmation of Other Attorney, Esq. dated November 19, 2021, and upon all the papers and proceedings heretofore had herein, a motion will be made to this Court, at the courthouse located at 60 Lafayette Street, NY 10013, on November 21, 2021 in the forenoon, or as soon thereafter as counsel can be heard for an order:

Dismissing the petition for facial insufficiency and/or failing to state a family offense pursuant to CPLR §§ 3211(7) and 3014;

And for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR § 2214(b), answering affidavits, if any, are required to be served on the undersigned at least two days prior to the return date of this motion.

DATED: November 19, 2021

By: ADAM ATTORNEY, Esq.
BEDROCK, SLATE & WOOD LLP
123 Stone Place, Ste. 101
New York, NY 10018
(646) 444-1111
Attorneys for Respondent

AFFIRMATION IN SUPPORT OF MOTION TO DISMISS

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

JO SAMPLE,
Petitioner,

-against- **AFFIRMATION IN SUPPORT OF**

MOTION TO DISMISS

SAMMIE SAMPLE,
Respondent.

----------X

Adam Attorney Esq., an attorney duly admitted to practice before the courts of this State affirms under penalty of perjury pursuant to CPLR § 2106, that the following statements are true:

1. I am the attorney for the Respondent in the above-captioned matter and as such am fully familiar with the facts and circumstances of this case. This affirmation is in support of the annexed motion to dismiss the petition.
2. The petition is facially insufficient pursuant to CPLR §§ 3013 and 3020 in that it fails to state allegations with sufficient specificity to give Respondent notice of the allegations and lacks sufficient facts to satisfy the elements of any family offense under Article 8 of the Family Court Act.
3. On September 24, 2021, M. Sample made a police report citing a violation of his Order of Protection dated July 10, 2021. The basis for the report was that, on September 23, 2021, Ms. Sammie Sample approached Mr. Jo Sample's car and yelled at Mr. Jo Sample and their daughter and pounded on the car with their fist. The Petitioner was arrested and incarcerated for the night. On October 10, 2021, Mr. Jo Sample filed a violation of the Order of Protection in Family Court.
4. The Petitioner filed the present family offense petition for an Order of Protection on October 17, 2021, approximately one week after Mr. Jo Sample filed the violation. Given the circumstances surrounding the filing of the present petition, this court has reason to question the validity of Petitioner's claim.
5. Furthermore, the Petitioner previously filed a family offense petition which was dismissed on July 25, 2021 for failure to prosecute, further demonstrating a lack of urgency or need of relief.

PLEASE TAKE NOTICE, that upon the annexed Affirmation in Support of Motion to Dismiss, dated November 19, 2021,and upon all the papers and proceedings heretofore had herein, a motion will be made to this Court, the Family Court of the State of New York, thereof

at the courthouse located 60 Lafayette Street, NY 10013 November 22, 2021 in the afternoon, or as soon thereafter as counsel can be heard for an order:

Dismissing the petition for facial insufficiency and/or failing to state a family offense.

And for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR § 2214(b), answering affidavits, if any, are required to be served on the undersigned at least two days prior to the return date of this motion.

DATED: November 19, 2021

Adam Attorney, Esq.
BEDROCK, SLATE & WOOD LLP
123 Stone Place, Ste. 101
New York, NY 10018
(646) 444-1111
Attorneys for Respondent

SAMPLE VIOLATION PETITION

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X File No. XXXXXX
In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **VIOLATION PETITION**

JO SAMPLE,
Respondent.
----------X

TO THE FAMILY COURT:

The undersigned Petitioner, by her attorneys Amy Attorney, respectfully shows that:

1. Petitioner SAMMIE SAMPLE is the mother of a child in common with JO SAMPLE.

2. By Order of this Court dated December 10, 2021, effective until December 10, 2024, the Respondent was directed to observe the following conditions of behavior:

Refrain from assault, stalking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats, or any criminal offense against SAMMIE SAMPLE.

3. Respondent has willfully failed to obey the Order of this Court in that he has engaged in conduct directed against SAMMIE SAMPLE which constitutes family offenses including but not limited to disorderly conduct, harassment, and stalking, to wit:

~~A.~~ On or about February 1, 2022, Petitioner arrived at the home of the paternal grandmother with the parties' child to drop her off for visitation. Petitioner remained in the small entranceway of the building with the children at the bottom of the stairs, and the paternal grandmother came downstairs to greet them as was their practice. Respondent appeared at the top of the stairs, screaming at Petitioner, accusing her of calling the paternal grandmother that morning and hanging up. The Respondent then came down the stairs and approached the Petitioner, still screaming at her. The Respondent was cursing, saying things like, "What the fuck are you doing calling this house, I fucking pay the bills around here." Petitioner ignored Respondent and continued speaking to the paternal grandmother to let her know that the child seemed to be coming down with a cold. The paternal grandmother asked Respondent to return upstairs, but he did not comply. Finally, Petitioner said words to the effect of, "There is an order of protection in effect, step away from me." Respondent refused to step away from Petitioner and taunted her with words to the effect of, "Oh yeah, what are you going to do about it?" Petitioner left the building and called 911. Respondent's

actions caused Petitioner annoyance, alarm, and fear for the safety and well-being of herself and her child.

B. On or about February 12, 2022, Petitioner arrived at the paternal grandmother's home at about 7 p.m. to retrieve the child from her visitation. After Petitioner left the home with the child, Petitioner went to a nearby donut shop. When Petitioner and the child turned to leave the donut shop, Respondent was standing at the doorway staring at petitioner and the child. Respondent began knocking on the glass of the door to get the child's attention. He then opened the door for them to exit. Petitioner remained in the donut shop, and Petitioner's friend took the child out of the donut shop. Respondent began speaking to the child, but then left when Petitioner did not exit the donut shop. Respondent then walked away. After Respondent walked away, Petitioner left the donut shop and walked to her car with her child. When Petitioner and the child got to the car, the Respondent was just a few feet behind them.

C. At the trial for this family offense matter, the petitioner testified about approximately 17 incidents of domestic violence, including the respondent's stalking behavior. The Court made findings that numerous acts of violence occurred constituting the family offenses of assault in the third degree, harassment in the first degree, menacing and disorderly conduct. Petitioner's alarm and fear about Respondent's recent behavior is contextualized and increased by the history of domestic violence perpetrated by the Respondent.

4. The following child is the subject of the proceeding resulting in the issuance of the Order alleged to have been violated:

Name	Date of Birth	Social Security #
JANIE SAMPLE	July 4, 2016	123-45-6789

5. No previous application has been made to any court or judge for the relief herein requested. Concurrent with this application, Petitioner files for modification of the visitation order dated December 10, 2021.

WHEREFORE, Petitioner requests that the Respondent be dealt with, in accordance with the Family Court Act and other applicable law, and that she be granted relief including but not limited to:

Ordering that the Respondent shall not be present in the entranceway of the home of the paternal grandparents when the children are dropped off for, and picked up from, visitation; and,

Modifying the Order of Protection dated December 10, 2021, to provide that the Respondent shall stay away from the Petitioner and the children, except for court-ordered visitation; or,

Issuing a new Order of Protection to provide that the Respondent shall stay away from the Petitioner and the children, except for court-ordered visitation; and

Granting such other and further relief as to the Court may seem just and proper.

Dated: February 14, 2022

Amy Attorney, Esq.
123 Broadway
New York, NY 10005
Tel: (212) 555-1414
Fax. (212) 555-1415

VERIFICATION

STATE OF NEW YORK)

)

ss.: COUNTY OF NEW YORK)

SAMMIE SAMPLE, being duly sworn, says that they are the Petitioner in the above-named proceeding and that the foregoing petition is true to her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

_____

Sammie Sample

Petitioner

Sworn to before me this

14th day of February 2022

_____

Notary Public

DEMAND FOR WITNESS AND EXHIBIT LISTS

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/19
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,

Petitioner,

DEMAND FOR WITNESS AND EXHIBIT LISTS TO BE USED AT TRIAL

-against-

JO SAMPLE,

Respondent.

----------X

PLEASE TAKE NOTICE that pursuant to CPLR § 3101(d), Petitioner Sammie Sample, by her attorney, Amy Attorney, Esq., demands that the Respondent produce and provide the names of the witnesses which he may or will call at the trial of the above-captioned matters, along with their addresses, telephone numbers and affiliations; and produce copies of all evidence, exhibits, and documents to be used at trial, including but not limited to police records, medical records, letters, case records, and recordings.

PLEASE TAKE FURTHER NOTICE that Petitioner demands that said witness list be produced and provided no later than October 30, 2021, at the offices of the undersigned.

DATED: October 24, 2021

Amy Attorney, Esq.
123 Broadway
New York, NY 10005
(212) 555-141414

TO: Jacob B. Ford, Esq.
76 West 12th Street, Suite12
New York, New York 10056
(212) 555-2837

SAMPLE: Subpoena Duces Tecum

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X File No. XXXXXX
In the Matter of a Family Offense Proceeding Docket No. O-XXXX/18
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **SUBPOENA DUCES TECUM**

JO SAMPLE,
Respondent.
----------X

TO: Metro by TMobile
P.O. Box 60119
Dallas, TX 75360

WE COMMAND YOU, that all business and excuses being laid aside, in connection with and in reference to the above-mentioned docket number, to produce and permit inspection and copying of the documents described below, to the attention of Petitioner's attorney, Amy Attorney, Esq., Her Justice, Inc., 100 Broadway, 10th Floor, New York, NY 10005, on or before September 23, 2021.

1. Any and all records in your possession, custody, or control pertaining to the call history and/or log of incoming and outgoing phone calls and text messages to the phone line of Sammie Sample, phone # (1) 111-222-3333, under Metro by T-Mobile Account # XXXXXX.
2. Such records should include the period of time between January 2019 and May 2021.

Pursuant to New York Civil Practice Law and Rules (CPLR) § 3122-a, any business records produced pursuant to this subpoena must be accompanied by a certification, sworn to in

the form of an affidavit, subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records, as specified in CPLR § 3122-a.

Please take notice that these documents are necessary because they are relevant to this Family Offense matter and the issues therein, including Harassment which is a Criminal Offense and a Family Offense in the State of New York.

Failure to comply with this subpoena is punishable as a contempt of court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars ($50.00) and all damages sustained by reason of your failure to comply.

Dated: August 29, 2021
New York, New York

_____

Amy Attorney, Esq.
Her Justice, Inc.
Attorneys for Petitioner
100 Broadway, 10th Floor
New York, New York 10005
Tel. No.:
Fax No.:

JUDICIAL SUBPOENA DUCES TECUM NEW YORK POLICE DEPARTMENT

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/18
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against-

JO SAMPLE,
Respondent.

JUDICIAL SUBPOENA DUCES TECUM

----------X

TO: New York Police Department
Document Production Unit, Room 110C
One Police Plaza
New York, New York 10038

ATTN: Police Commissioner James P. O'Neill

WE COMMAND YOU, that all business and excuses being laid aside, in connection with and in reference to the above mentioned docket number, you produce to Kings County Family Court, Attn. Clerk of Court, 330 Jay St, Brooklyn, NY 11201, on or before the 24th day of September, 2019, certified copies of any and all documents and other information bearing devices including any and all oral documentation pertinent to the subject matter set forth herein which you have in your custody or power, including but not limited to:

(1) Certified recordings and copies of all 911 Call Audio Recordings and Sprint Reports (Transcripts), including but not limited to, incidents occurring on or around XXXXX, 2018, and XXXX, 2018.
(2) Certified copies of all documents, including all police reports, arrests, Domestic Incident Reports, and/or investigation reports related to incidents involving Jo Sample, including but not limited to, incidents occurring on or around XXXXX, 2018 and XXXXX, 2018.

Jo Sample's social security number is XXX-XX-XXXX. He is a White male born on XXXX in XXX, Location. He presently lives at ADDRESS.

Our client, Sammie Sample, is a White female born on XXXX in LOCATION and is presently living at Address Confidential, ACP Program XXXX.

Pursuant to New York Civil Practice Law and Rules (CPLR) § 3122-a, any business records produced pursuant to this subpoena must be accompanied by a certification, sworn to in the form of an affidavit, subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records, as specified in CPLR § 3122-a.

Please take notice that these documents are necessary because they are not available to the Petitioner through other means and are relevant to this Family Offense matter and the issues therein, including Harassment which is a Criminal Offense and a Family Offense in the State of New York.

Failure to comply with this subpoena is punishable as a contempt of Court and shall render you subject to all penalties available under the CPLR.

WITNESS, Honorable Erica Smith, one of the Court Referees of said Court, at 330 Jay St, Brooklyn, NY 11201, this ____ day of September, 2019.

SO ORDERED:

_____ _____

Erica Smith, Court Attorney Referee By: Amy Attorney, Esq.

ADDRESS

CC:

Adam Opposing Counsel
Attorneys for Respondent
ADDRESS

Subpoena Ad Testificandum Social Work Unit

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----------X File No. XXXXXX
In the Matter of a Family Offense Proceeding Docket No. O-XXXX/18
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against-

JO SAMPLE,
Respondent.
----------X

JUDICIAL SUBPOENA AD TESTIFICANDUM

TO: John James
Social Workers Unit
765 Broadway Ave.
New York, NY

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the Hon. Eric Smith, at the Family Court of the State of New York, on December 1, 2021, at 12:00 p.m. in the afternoon, and at any recessed or adjourned date to give testimony in the above action on the part of the above-named *petitioner,*

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred and fifty dollars ($150.00) and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Erica Smith, one of the judges of said Court, at the Family Court of the State of New York, on October 24, 2021.

SO ORDERED:

Amy Attorney
456 Lafayette St.
New York, NY 10005
Attorneys for Petitioner

Hon. Erica Smith

NOTE: THIS SUBPOENA REQURIES THE ACTUAL ATTENDANCE OF THE WITNESS AT THE TIME AND PLACE SPECIFIED ABOVE

BUSINESS RECORDS CERTIFICATION

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X File No. XXXXXX

In the Matter of a Family Offense Proceeding Docket No. O-XXXX/18
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against- **BUSINESS RECORDS**
JO SAMPLE, **CERTIFICATION**
Respondent.

----------X

STATE OF _____)

COUNTY OF _____) s.s.

_____ being duly sworn, deposes and says:

1. My position at Metro by T-Mobile is _____. I have been employed in this capacity since _____;

2. I am the duly authorized custodian or other qualified witness of the business records and have the authority to make this certification;

3. To the best of my knowledge, after reasonable inquiry, the records or copies thereof are accurate versions of the documents described in the subpoena duces tecum that are in the possession, custody, or control of the person receiving the subpoena;

4. To the best of my knowledge, after reasonable inquiry, the records or copies produced represent all the documents described in the subpoena duces tecum, or if they do not represent a complete set of the documents subpoenaed, an explanation of which documents are missing and a reason for their absence is provided; and

5. The records or copies produced were made by the personnel or staff of the business, or persons acting under their control, in the regular course of business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and that it was the regular course of business to make such records.

Signature:

Print Name:

Subscribed and sworn to before me

on _____

_____

Notary Public

Notice of Judicial Subpoenas Duces Tecum

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----------X File No. XXXXXX
In the Matter of a Family Offense Proceeding Docket No. O-XXXX/18
Under Article 8 of the Family Court Act

SAMMIE SAMPLE,
Petitioner,

-against-

JO SAMPLE,
Respondent.
----------X

NOTICE OF JUDICIAL SUBPOENA DUCES TECUM

PLEASE TAKE NOTICE THAT, pursuant to Article 23 of the Civil Practice Law and Rules, Petitioner, Sammie Sample, by her attorneys, has served a SUBPOENA DUCES TECUM on non-party New York Police Department, a copy of which is attached for your reference.

Dated: New York, New York

April 1, 2019

HER JUSTICE

By: Amy Attorney, Esq.
123 Broadway
New York, New York 10005
Tel:
Fax:
Attorneys for Petitioner

To: Adam Attorney, Esq
456 Park Ave,
New York, New York 10000
Tel:
Fax:
Attorney for Respondent

HIPPA RELEASE FORM

Insert updated HIPAA Release form https://www1.nyc.gov/assets/hra/downloads/pdf/services/health/OPA-7-E.pdf

OCA Official Form No.: 960

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name	Date of Birth	Social Security Number
Patient Address		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form:

In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:

8. Name and address of person(s) or category of person to whom this information will be sent:

9(a). Specific information to be released:

- ❑ Medical Record from (insert date) _____ to (insert date) _____
- ❑ Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.
- ❑ Other: _____

Include: (*Indicate by Initialing*)

_____ **Alcohol/Drug Treatment**

_____ **Mental Health Information**

_____ **HIV-Related Information**

Authorization to Discuss Health Information

(b) ❑ By initialing here _____ I authorize _____

Initials — Name of individual health care provider

to discuss my health information with my attorney, or a governmental agency, listed here:

_____

(Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: ❑ At request of individual ❑ Other:	11. Date or event on which this authorization will expire:
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

_____ Date: _____

Signature of patient or representative authorized by law.

* **Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.**

DIRECT EXAMINATION OF PETITIONER

PRELIMINARY

What is your relationship to the Respondent?

They are my spouse

How long have you been married?

Three years

Does the respondent currently reside with you?

No

When did they stop residing with you?

September , 2016

Do you have any children with the respondent?

Yes

Who? How old?

Janie
Sample. Age
4

Do you have any other children?

No

And where does Janie live?

With me.

What level of education is Janie at?

Pre-school.

And does she go to school?

Yes.

What do you do for a living? Where?

Administrative assistant at the Department of Education.

JULY 24, 2016

I direct your attention to the month of July 2016. Where was respondent living at that time?

Respondent lived with me in July 2016,

I direct your attention further to July 24. What happened on that day?

My spouse came home. They began yelling at me. They were saying that I was cheating on them and I told them that I was not. But they kept saying it. They got really mad. They started screaming and swearing at me. They were throwing things. Then they picked up the dining room table and banged it down onto the floor. Two of the legs broke off. They picked up one of the legs and hit me on the face. They broke my nose.

What happened next?

The neighbors called 911 and the police came. They arrested the respondent.

When the respondent was screaming at you, what *types* of things were they saying? [Possible Objection: Hearsay]

Things like, "Nobody cheats on me and lives," They were cursing.

What types of curse words did they use? How loud were they?

"You fucking whore." Very loud, screaming.

What was their body language like when they were screaming curse words at you?

Standing over, acting like they were going to hit me. Then they did start throwing things.

Anything else?

And what things were they throwing?

Ashtrays. The phone. Dishes.

About how much time passed between the time that your spouse came home and started arguing with you until the time that they were arrested?

The whole thing went on for about two hours.

Where was the child, Janie?

Hiding in the bedroom.

What, if anything, did you do during those two hours? [try and elicit that they got medical attention – watch for leading questions]

How did you feel at the end of those two hours? Mentally? Physically?

What, if anything, did you do following the arrest? How did you learn that your nose was broken?

The hospital x-rayed it.

[enter Certified medical records into evidence.]

You testified that you called the police. I'm handing you a document. **(DIR)**

Do you recognize this?

Mark for i.d. What is this

Whose signature

Where

Offer into evidence.

What was the outcome of the criminal case?

The charges were dismissed.

Why were they dismissed?

I didn't want to go forward with the case.

Why not?

The respondent said that they would move out if I dropped the charges.
(prepare client to be crossed on this)

And did they move out of the marital residence?

Yes.

OCTOBER 10, 2016 INCIDENT - VISIT PICK UP

I direct your attention to October 10, 2016. Where, if anywhere, did you see respondent on that day?

They came to my house.

Why were they at your house?

They came to pick up my daughter for a visit.

What happened?

They wanted me and our daughter to go out like a family. When I said no, they got really mad. They started screaming at me. They pushed their way into the hallway.

What types of things were they saying? [party opponent admission]

"The kid's gonna be an orphan; I swear I'll kill you, bitch."

Where was your child during all of this?

In the hallway with me, crying uncontrollably, hanging onto my leg.

How did you react to your spouse?

I told them to leave or I'll call the police.

What did they do next?

They left.

What, if anything, did they say? [party opponent admission]

This isn't over.

CALLS AND LETTER

When was the next time that respondent contacted you?

They kept calling me.

How often?

They were calling pretty much every day or every other day.

About how many times per day?

Sometimes only once or twice, sometimes a dozen

During the period from mid-October, 2016 to mid-November, 2016, about how many times would you say they called you per day?

Sometimes not at all, sometimes six or seven times a night.

What happened on those phone calls?

Sometimes they were nice at first and would just ask to speak to Janie. But it always turned into them screaming and cursing at me. Sometimes I just let it go to voicemail, but that seemed to make them angrier.

What did you hear if you answered the phone or listened to a voicemail?

Pick up the phone or I'm coming over. Things like that.

What threats, if any, did they make?

That they were going to kill me before they let me go.

What correspondence, if any, did you receive from your spouse?

I got two anonymous letters, which I think were from them.

What made you think that they were from Respondent?

They mentioned the child, they are in the respondent's handwriting.

[Watch for objections, e.g. conjecture, and colloquy here]

I am handing you a document. [LETTER] Do you recognize this? What is it?

Letter I got.

Mark for I.d.

Where did you get these

Who opened the envelope

Was sealed when you opened it

Same condition as when you opened them

Move into evidence. [Argument here? Lack of signature goes to weight, not admissibility]

Are you familiar with your spouse's handwriting?

Of course

Where have you seen it before?

Tax returns, bills, cards, things like that.

Whose handwriting is this on Exhibit ____.

My spouse's.

How did you feel when you read this letter?

Threatened, scared.

Why did you feel threatened?

Even though it does not say anything specifically to threaten me, I know that it is my

spouse's way of telling me that they are not going to leave me alone.

NOVEMBER 22, 2016 INCIDENT - WANTS TO MOVE BACK IN

I direct your attention to November 22, 2016. What happened on that day between you and respondent?

They showed up at the house and said that they were going to move back in. They got really mad when I wouldn't let them in. They were banging on the door, screaming at me, threatening me.

What types of things were they screaming

You fucking bitch, let me in. They said that we would put two bullets in my head.

What happened next?

They left.

What are you asking this court for today?

An order of protection ordering the respondent to stay away from me for five years.

LET CLIENT TELL THEIR STORY THROUGHOUT QUESTIONING.

CROSS EXAMINATION OF ADVERSE PARTY

JUNE 25TH AND 27TH

Q. Your spouse has not lived at the marital residence since June 21st, correct?

Q: After your spouse left the marital residence, you had the lock changed on the door, correct?

> (if no): Are you saying the locks have not been changed? You heard your spouse testify that they made attempts to get into the marital residence in the company of police, didn't you? And you heard them say they were unable to get in, correct?

Q. The TOP states that your spouse may remove their own and their child's belongings and personal effects in the company of a police officer, correct?

Q. Your spouse's belongings are still at the marital residence, correct?

(if no): They aren't there because you got rid of or destroyed their belongings, isn't that right?

Q. You've never made arrangements with your spouse so that they could retrieve their belongings, correct?

Q. In fact, didn't you tell your spouse not to return to the marital residence or you would beat them up?

ABUSE OF WIFE

Q. Isn't it a fact that you once injured your wife so badly that they had to be hospitalized?

> (Not beyond the scope of the direct b/c whether the respondent abused the petitioner is directly at issue here; corroborates their present fear).

Q. Offer into evidence Petitioner's exhibit A, which is a medical report from a hospital where Respondent admitted the petitioner to the ER. The original certification for the document is attached.

Q. On June 21st, you got in an argument with your spouse, correct?

Q. Your spouse's friend called, didn't she? Q. You don't like her, do you?

Q. In fact, you refer to her as a "conniving bitch?"

Q. You argued with your spouse after your spouse's friend called you, correct?

Q. During the course of this argument, did a shelf in the bedroom get knocked over?

(IF THEY DENY, SKIP TO LAST QUESTION LABELED XXX)

Q. You threw a shelf during that argument, correct?

Q. The shelf hit your child in the back, correct?

Q. You told your spouse to leave, didn't you?

Q. You told your spouse to leave the apartment, or you would beat them up, correct?

XXX Q. Your spouse has not lived at the marital residence since June 21st, isn't that true?

DIRECT OF PETITIONER'S WITNESS

What is your age?

What, if anything, do you do for work? By whom are you employed? For how long?

What is your relationship to the Petitioner?

How long have you known them?

Where do they live? Do you spend time there? How much time?

FIRST INCIDENT

Can you describe the nature of the relationship between the Petitioner and the Respondent?

What interactions between the parties stand out in your memory as [words used by witness in prior response, e.g. scary/tense/violent/toxic]? [if you are trying to elicit answers about a specific incient, you may need to risk some leading questions, e.g. "do you recall an incident involving a chair?"].

I'm bringing your attention to the date of _____, 20_____. Describe what happened that day.

Was it common for you to spend the night around that time? Why did you spend the night?

What did the Petitioner say to you? What happened that night? (watch for objections to hearsay)

SECOND INCIDENT

During the winter of x, did you ever visit the Petitioner's home? How often? Did you visit in November?

Are you aware of any incident that happened between my client and their spouse in November? What happened? [Alternatively, bring their attention to a specific date, time, and place – you can name two out of three of these things, e.g. "Let me bring your

attention to November 21, 2017 at 4pm. Do you remember where you were that day?" Then "What happened?"]

Where were you?

What, if anything, do you recall about interacting with the Respondent that day?

What, if anything, do you recall about the interactions between the Respondent and Petitioner on that day? What were you feeling at the time?

Why are you here today?

DIRECT OF POLICE OFFICER

Please state your name.

How long have you been a police officer?

How long have you worked for the New York Police Department? What are your duties as a police officer? What precinct do you work at? Is this the same precinct you worked at in April 2008?

Were you working on April 11, 2008, as a police officer? What shift were you working that day?

Who, if anybody, were you working with on that day?

Let me draw your attention to 11:30am of that day. Where were you? What happened?

Who did you come into contact with during that day? Sammie Sample? What happened?

About what time was it?

Who did you encounter when you arrived? Was anyone else on the street? When you first met Sammie Sample, what did they look like?

What if any observations did you make? What was the first thing they said to you? What was Ms. Sample's appearance at the time?

Officer, is it part of your job to prepare domestic incident reports? Under what circumstances do you make domestic incident reports?

And are these reports regularly kept in the course of the Mt. Pleasant Police Department business?

And is it part of police business to keep these records?

Please mark this Petitioner's Ex. 1 for identification.

Show adversary.

May I approach the witness?

Officer. I am showing you what has been marked as petitioners. Ex.1 do you recognize it? Please tell us what it is?

Was this domestic incident report made at or near the time of the events or acts contained within it?

Is this the report you made regarding the incident in the course of your regular police business activity on that day?

I move to admit Petitioner's Ex. 1 into evidence.

Officer, what type of information do you record in a domestic incident report?

Do you record your observations? What observations of the Petitioner did you record on April 11, 2008?

I call your attention to the 9th line, second box from the left. What information is recorded there? And in this case, what information did you record on this Domestic Incident report? Is this based upon your observation of the injury? Please describe.

Officer, I call your attention to the section entitled "circumstances of this case" on the Domestic Incident Report. Would you please explain what type of information in general is recorded in this section?

Would you please read to us what you wrote in this section of the report completed on April 11 regarding the parties?

After completing the report, what did you do? Did you offer the petitioner any advice? What was the advice?

Did there come a time where you saw the Petitioner again? When? What were the circumstances?

CLOSING STATEMENT

Petitioner Sammie Sample has survived years of ongoing verbal and physical abuse at the hands of the Respondent. The credible testimony of ____ witnesses shows that respondent has hit them, destroyed furniture and thrown furniture at them, stalked them at work, threatened to kill them on multiple occasions and in front of their young child.

STANDARD

Sammie Sample has proven the facts alleged in their petition by a fair preponderance of the evidence.

Sammie Sample's credible testimony establishes that the respondent has committed several family offense, including:

- disorderly conduct
- harassment, aggravated, 1st degree, 2nd degree
- menacing: 2nd degree, 3d degree

(Apply elements of each offense to the facts of case)

Sammie Sample seeks an order of protection which provides that

1. respondent shall not assault, menace, or harass the petitioner and their children.
2. that respondent shall stay away from home, children, the children's schools, and Petitioner's place of employment

AGGRAVATING CIRCUMSTANCES

We request that the term of the order be for five years. Sammie Sample has shown aggravating circumstances [describe and incorporate evidence]

We also ask that pursuant to FCA § 842, the final order include an order of custody so that Sammie Sample, the parent with whom the children reside full-time, has proof of legal custody.

We also ask pursuant to FCA § 842 that the final order include a temporary order of child support in the amount previously paid by the respondent of $x per week, with the matter set down for further proceedings consistent with Article 4. the testimony in the present matter shows an immediate need for the support of the parties' child, and, under the circumstances, the law directs temporary child support.

APPENDIX

HER JUSTICE

APPENDIX

A. Section 7 TOC
B. Resource for Survivors of Domestic Violence
C. Notary Public Law, Family Court Forms, and E-Filing

HER JUSTICE

APPENDIX: RESOURCES FOR SURVIVORS OF DOMESTIC VIOLENCE

SHELTERS

Survivors of domestic violence can access the emergency domestic violence shelter system by contacting the 24-hour, all language, toll-free New York City Domestic Violence Hotline at 1(800) 621-HOPE (4673). Hotline workers screen all callers who request emergency domestic violence shelter. If the caller is found eligible, hotline staff will link the survivor to available shelter services. The following agencies run Domestic Violence shelters and provide additional supportive services.

Safe Horizon

1-800-621-4673

24-hour hotline

Information and referrals to city shelters; crisis, long and short-term counseling; support groups; legal assistance; lock replacement; financial assistance

http://www.safehorizon.org

Sanctuary for Families

(212) 349-6009

M-F 9am to 5pm, *dial ext 246* for 24-hour hotline

Community education, court/police accompaniment, crisis counseling, emergency assistance/transportation, legal services, public assistance, referrals, shelter/housing assistance for survivors of domestic violence, sexual assault, stalking, and teen dating violence

http://www.sanctuaryforfamilies.org

Center Against Domestic Violence

(718) 439-1000

24 hour hotline

Community education, crisis counseling, ;long-term counseling, referrals, shelter/housing assistance for survivors of domestic violence and teen dating violence

http://www.centeragainstdv.org

Womankind

(888) 888-7702

24-hour, multi-lingual hotline

Focus on immigrant Asian women; multi-lingual hotline (English, Chinese, Hindi, Japanese, Korean, Tagalog; Vietnamese); shelter assistance; counseling and crisis intervention; advocacy and translation; support groups; information referrals

https://www.iamwomankind.org/

Henry Street Settlement, Shelter for Battered Women

(212) 475-6400 for information

**Prefers to have women call the NYC hotline: 1-800-621-4673

Must live outside Henry Street Settlement catchment area and have an open public assistance case, or be willing to apply for assistance. Shelter; family case management; individual and group counseling; housing search assistance; legal advocacy

http://www.henrystreet.org

Battered Women Park Slope Safe Home Project

(718) 499-2151

Brooklyn

**Can call directly or call NYC hotline: 1-800-621-4673

Shelters; individual and group counseling; advocacy; assistance with entitlements; referrals

HOTLINES

IF IN IMMEDIATE DANGER, CALL 911

24-hour Hotlines

Crime Victims: (212) 577-7777

Mayor's Office to Combat Domestic Violence: (800) 621-4672 (621-HOPE)

National Domestic Violence Hotline

1-800-799-SAFE (7233)

1800-787-3244 (TTY)

Rape and Sexual Assault Hotline

(212) 227-3000

State Run Toll Free Domestic Violence Hotlines

New York.. 1-800-942-6906 (English)

New York .. 1-800-942-6908 (Spanish)

New Jersey ..1-800-572-7233

LIFENET

(800) LIFE NET (1 800 543-3638)

(877) AYUDESE (1 877 298-3373) Spanish

(877) 990-8585 (Asian Lifenet: Mandarin and Cantonese)

(212) 982-5284 (TTY)

1-800-LIFENET is a confidential, toll-free help line from New York City residents. Operates 24 hours/7 days per week; assists persons experiencing a psychiatric crisis; provides callers with referrals for counseling in their area

http://www.mhaofnyc.org/2lifenet.html

Sanctuary for Families

(212) 349-6009

Individual and group counseling for women; counseling for children; referrals; housing and benefits assistance

http://www.sanctuaryforfamilies.org

Safe Horizon Community Programs

1-800-621- HOPE (1 800 621-4673)

** Offices are located in all five boroughs.

Crisis counseling, long and short-term counseling and support groups available to victims and their children

http://www.safehorizon.org

Jewish Board of Family and Children's Services

(212) 582-9100

Toll-free: 1-888-532-2769

**Community Counseling Centers located in Manhattan, Brooklyn, Queens, Staten Island, and the Bronx

Individual, couple, family and group therapy; psychiatric evaluations and assessments; crisis intervention

http://www.jbfcs.org

Puerto Rican Family Institute

(212) 924-6320

145 West 15th Street New York, NY 10011

**Mental health clinics located in Bronx, Brooklyn, Manhattan, Queens, and Jersey City

Long-term counseling for children, adolescents, and adults http://www.prfi.org

Children's Aid Society, Family Wellness Program

(212) 949-4800

Services for families affected by domestic violence: individual counseling for women and children; groups for women, children, teens; case management; advocacy; services offered in Spanish and English at free or at a low fee; several locations in the Bronx and Manhattan

http://www.childrensaidsociety.org/locations_services/healthservices/familywellness

Violence Intervention Program, Inc. (VIP Mujeres)

(800) 664-5880

24-hour, bilingual hotline

For all women; specializing in Latinas. Crisis counseling; safety planning; assistance securing a shelter space; referrals

http://www.violenceinterventionproject.com/

Sakhi

(212) 868-6741

Weekdays between 10am and 6pm

Works with immigrant and second-generation South Asian women from Bangladesh, India, Nepal, Pakistan, Sri Lanka, and South Asian Diaspora; provides legal information and referrals, mental health referrals, shelter resources and translation assistance

http://www.sakhi.org

Womankind

Toll-free hotline: (888) 888-7702

Focus on immigrant Asian women; multilingual hotline (English, Chinese, Hindi, Japanese, Korean, Tagalog; Vietnamese); shelter assistance; counseling and crisis intervention; advocacy and translation; support groups; information referrals

http://www.iamwomankind.org

AVP: Anti-Violence Project

(212) 714-1141 24-hour Hotline

Serves lesbian, gay, bisexual, transgender, queer and HIV-affected communities and allies to end all forms of violence through organizing and education, supports survivors through counseling and advocacy

http://www.avp.org

Nuevo Amanecer (Dominican Women's Development Center)

212-568-6616 (24 hotline)

212-928-5194

Risk assessment; safety planning; counseling (individual and group); crisis intervention; shelter assistance; children's programming; advocacy; case management; concrete resources; adult education courses. All services are free and bilingual (Spanish/English)

http://www.dwdc.org/

DOVE (Domestic Violence and Other Emergencies) New York Presbyterian Hospital

Columbia University Medical Center

212-305-9060

Short and long-term counseling, support groups

http://nyp.org/dove/

Northern Manhattan Improvement Corp

(212) 822-8311

(212) 822-8300

45 Wadsworth Avenue New York NY 10033

**Must reside north of 155th Street

Risk assessment; safety planning; counseling (individual and group); crisis intervention; shelter assistance; legal services; advocacy; case management; concrete resources (lock changes, clothing, voicemail, health coverage), adult education courses (GED, ESL, Citizenship); financial counseling; tax preparation; job training; resume writing. All services are free and bilingual (Spanish)

FEGS Center for Women and Families Children's Services

1 888 242-5838 (English/Spanish)

Offers a comprehensive array of free services to children ages 6-17 iving in the five boroughs of New York City. Assessment; individual, family and group counseling; case management and advocacy.

OTHER DOMESTIC VIOLENCE SERVICES

Lock Replacement

Safe Horizon, Project SAFE

1 80021--HOPE1

Installs new locks and/or cylinders in doors, if police report filed

Note: a DV victim can legally change the lock only if (a) the abuser does not live in her home; (b) the abuser voluntarily moved out; or (c) the abuser lives in her home but she has a court order excluding him from the home.

HRA Domestic Violence Support Services: Alternatives to Shelter Program

(212) 331-4538

Enables victims to remain in their homes by providing them with security devices and mobile phone. Social workers give emotional and practical support.

Note: Woman must have a full stay-away or exclusionary order of protection against the abuser.

Victims with Disabilities

Barrier Free Living, Non-Residential Domestic Violence Program

(212) 400-6470; (212) 677-6668

DV Hotline; M-F 9am to 5pm

Short and long-term domestic violence counseling; case management services; advocacy within the medical, mental health, child welfare, law enforcement and criminal justice systems; occupational therapy

Bronx Independent Living Services

(718) 515-2800

Advocacy, peer counseling, housing information, independent living training/counseling for people with disabilities

PHONE SERVICES

Verizon Hopeline

(212) 890-1150

Provides refurbished phones to survivors of domestic violence with prepaid minutes. Distributed by various social services organizations. Available at Her Justice, Inc.

Coalition for the Homeless—Community Voice Mail

(212) 776-2102

129 Fulton Street, New York, NY 10038

M-F 9am to 5pm

Free, private voicemail to homeless New Yorkers without telephone services. Distributed by various social services organizations

ELDER ABUSE

Elderly Crime Victims Resource Center (NYC Department of Aging)

(212) 442-3103 or (212) 442-1000

Primarily bilingual caseworkers provide telephone consultation to professionals who assist abused elders and counseling services to victims of abuse.

NOTARY PUBLIC LAW, FAMILY COURT FORMS, AND E-FILING

Notary Public Law and Family Court Forms

Governor Hochul signed legislation to amend NY CPLR sec. 2106 to expand the use of an "Affirmation of Truth of Statement" in lieu of a notarized sworn statement in civil court actions in New York. This law became effective Jan. 1, 2024 to all actions pending on or commenced after that date.

From that date forward, in place of notarization on any affidavit in a civil action, the client (and any third-party affiants) may instead sign the following statement at the end of the document:

I affirm this ___ day of _____, ____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law. [signature of affiant]

While affirmations instead of affidavits are now an option for many court documents, **we do consider it best practice to continue to notarize documents except where it creates hardship to the client or in an urgent situation** (such as filing an emergency application to the court). As always, please reach out to your Her Justice mentor for guidance in a particular case.

The updated forms with the affirmation language can be found on the New York Unified Court System Website. https://ww2.nycourts.gov/forms/familycourt/index.shtml

E-Filing

As of December 18, 2024 the New York State Electronic Filing System (NYSCEF) is now available for all 5 boros in the NYC Family Courts. NYSCEF is located at: https://iapps.courts.state.ny.us/nyscef/HomePage. Your supervising attorney or managing clerk/attorney at your firm may have a policy or preference as to who in your firm is responsible for e-filing, however you should be familiar with the process as there are certain requirements to e-filing when the other party is unrepresented, and rules covering when a case was commenced "on paper" vs. e-filing.

The NYC Family Courts also make use of the Electronic Document Delivery System (EDDS), located at: https://iapps.courts.state.ny.us/nyscef/SpecialDocumentTransferHome?id=1. This is a system designed for electronic delivery of documents such as letters or evidence to family court clerks' offices as well as individual judges, referees, and magistrates. EDDS is

not a filing system, and should not be relied upon for pleadings, motions, or other documents which requiring processing in the clerk's office.