

The Catholic University of America, Columbus School of Law  
**CUA Law Scholarship Repository**

---

Scholarly Articles and Other Contributions

Faculty Scholarship

---

1995

## Representing a Victim of Domestic Violence

Catherine F. Klein

*The Catholic University of America, Columbus School of Law*

Leslye E. Orloff

Follow this and additional works at: <https://scholarship.law.edu/scholar>



Part of the [Criminal Law Commons](#), [Family Law Commons](#), and the [Law and Gender Commons](#)

---

### Recommended Citation

Catherine F. Klein & Leslye E. Orloff, Representing a Victim of Domestic Violence, *FAM. ADVOC.*, Winter 1995, at 25.

This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact [edinger@law.edu](mailto:edinger@law.edu).

# Representing a Victim of Domestic Violence

BY CATHERINE F. KLEIN AND LESLYE E. ORLOFF

Too often lawyers allow their divorce clients to enter into stipulations that keep violence issues out of custody cases or negotiate property settlement agreements that trade safety for reduced economic relief. This approach minimizes the significance of domestic violence and ultimately jeopardizes your client's safety.

Helping a battered woman end a violent relationship means undertaking litigation as well as finding shelter, social services, and self-help assistance. Early in the representation, family lawyers must identify the violence and develop a case strategy that puts cessation of violence at the core of the representation. Lawyers who represent batterers can best serve their clients' needs by urging them to enroll in treatment programs. Ignoring the violence only validates and encourages the batterer's continued use of violence.

Domestic violence includes spousal abuse, child abuse, and parent abuse. It may be carried out through physical, sexual, and emotional violence, including marital rape, harassment, threats, child snatching, destruction of property, and unlawful and often violent dispossession of one's home. Domestic violence is intergenerational

and grows out of a batterer's drive to exercise and maintain power and control over his victim. Failing to achieve control, the batterer will turn to physical or sexual violence. Once control is established through violence, nonviolent tactics coupled with the fear of violence may be sufficient to control the victim until violence is called upon again.

Abuse often follows an observable and cyclical pattern, which may be separated into three phases: tension building and threats; the violent incident itself; remorse and an effort to convince the victim that he is a changed man. As time passes, the first and third stages may become shorter, whereas the second stage becomes increasingly violent. To obtain effective relief for your client, your presentation of evidence must provide the court with a picture of the dynamics of the parties' relationship and demonstrate how the abuser's power and control tactics work.

At the initial interview, ask your client about the nature of her relationship with the abuser; get the history of family violence, including the specifics of every violent incident she can recall, the identity of witnesses, and the

nature of any physical evidence (including police reports and medical records); inquire about any imminence of danger to your client; and get a complete picture of the power and control tactics used by the batterer. Be sure to take pictures of any visible injuries.

Determine the woman's needs and craft solutions that respond to them. Use the legal system not only to stop the violence but also to preclude the batterer's ability to control her life through violent and nonviolent means. Before listing the various forms of relief for your client, ask what she is concerned about and what will help her most. This approach helps to ensure that you are seeking solutions and safety plans that address your client's specific needs.

## Self-help

As counsel and advocate, your goals should be to protect your client's legal, physical, emotional, and financial interests and to ensure that she gains access to community resources that can help her. Studies show that both the number of injuries and the chance of homicide increase after separation. Your client is the only person in a position to evaluate the efficacy, timing, and safety of any plan. Your role is to make sure that she is well-informed and comfortable with the choices she makes and to be there to support her as circumstances change.

Your client should be prepared to flee at a moment's notice. Encourage her to leave a spare set of house and car keys, clothing for her and her children, and money for travel or sustenance with a friend or relative. She should also safeguard the originals or copies of important documents such as marriage license or certificate; birth certificates; passports; Social Security cards; identification documents; medical insurance identification cards; medical records; other insurance documents; public benefits identification card; residency and immigration papers; spouse's (or child's father's) pay stubs; spouse's (or child's father's) Social Security number; documentation of spouse's (or child's father's) income in addition to that listed on his pay

*Catherine F. Klein is associate professor and director of The Families and the Law Clinic, Columbus School of Law, The Catholic University of America. She has been director of Catholic University's clinical domestic violence program since 1981. Leslye E. Orloff is the founder of Clinica Legal Latina, the domestic violence program at Ayuda, Inc., a community-based legal services program for immigrant battered women since 1983, and is currently responsible for Ayuda's domestic violence policy work. The authors wish to express their gratitude to Leticia Sierra, who assisted in preparing this article.*

stub; documents related to the children's schooling or education; children's immunization records; bank books, checkbooks and checkbook registers, checking account statements, and canceled checks; income tax returns; deeds; titles to any real and personal property; mortgage payment coupons and other papers related to the marital home; leases to rented property; insurance policies; receipts for major purchases, including jewelry, artwork, stereo systems, or expensive appliances; appraisals of any valuable items; credit cards and credit card statements; and other important documents.

Call a local domestic violence hot line or hospital in advance to find out about local shelters or other resources she may need at the time of her departure, or refer her to a social worker who can assist her in identifying a safe haven for herself and her children.

When your client is in imminent danger, urge her to leave home immediately with her children and seek shelter with a friend, neighbor, relative, or battered women's center. If there is any possibility that the children may be removed from the country during visitation with their father or as a result of child snatching, advise her to take the children's passports with her.

Notify the children's teachers and the school principal in writing that the children should not be released to their father because of domestic violence and the danger of flight. Provide the children's school with a copy of your client's civil protection order. Suggest that your client transfer funds from joint accounts to an individual account, remove her name from jointly held credit cards, and notify creditors that she is not liable for further debt incurred on those cards. Also encourage her to apply for credit in her own name.

Educate yourself about your client's nonlegal options: emergency housing, psychological counseling, or job training; public assistance; and social workers and support groups. By providing self-help options and social service referrals, you will complement your legal services and help your client achieve long-term success.

Keep in mind the nature of domestic

violence and, particularly, that most battered women will leave their abusers and return to them many times before they are able to end the relationship and take legal action to stop the violence. Do not doubt your client's intentions or dismiss her complaints when she repeatedly returns to the batterer. Instead, communicate to her that you will be there to help her when she is ready to leave.

### **Dangers of ADR**

Because of the unequal bargaining power inherent in a battering relationship, mediation has proved disastrous for women seeking relief from domestic violence. Mediation, a consensual decision-making process, is incompatible with a relationship in which there is a disproportionate bargaining power due to fear or intimidation. Mediation negates the batterer's individual responsibility for his criminal conduct and implies mutual responsibility for what is erroneously called a "family problem." Mediation of domestic violence cases belittles the batterer's violence, treats it as noncriminal, and empowers the batterer.

Judicial interjection in a domestic violence situation may at least partially sever the batterer's control over his victim. When a court castigates the batterer, it discourages his use of violence and draws into question his perceived right to maintain power and control over his victim. Court actions that recognize the credibility of the victim's claims can be a powerful tool on behalf of the victim.

### **Litigation**

Advocate zealously for court orders on custody, visitation, and support that are structured to prevent future abuse. Your client may seek civil remedies that include civil protection orders (CPOs) and temporary protection orders (TPO's). A combination of a CPO and these long-term remedies offers a more permanent solution that will provide your client with the freedom and confidence to make important life choices.

Criminal actions for parental kidnapping upon a batterer's violation of a custody order are also encouraged in

domestic violence cases. Avoid any agreement that will preclude the introduction of evidence about the violence in any contested family court proceeding. The best approach to offering consistent protection for battered women is to include CPO-type provisions as a permanent part of divorce and custody orders.

### **Temporary protection orders**

When interviewing a client, assess whether she needs to immediately obtain a TPO, which is issued by the court ex parte, usually within a few hours of filing for relief. Under a TPO, your client may seek immediate emergency relief whenever a violent incident occurs or when she or her child is in imminent danger (i.e., the batterer has threatened to kill them). TPO's are available 24 hours a day and generally last between 14 and 30 days.

To obtain a TPO, your client usually must prove that she or her children are in immediate danger from the abuser. When you file the TPO petition, include a list of essential relief: a vacate order evicting the batterer and allowing the victim and her children to remain in the home; an order that the batterer stay away from your client and her children, their home, persons, school, and workplace; an order that the batterer not molest, assault, harass, or abuse your client or the children; an order for the police to accompany the petitioner to the family home, serve the batterer, obtain his keys, and assure that he takes some belongings (clothing, personal effects) and leaves the residence; and an award of temporary custody to the victim and a temporary suspension of the batterer's visitation rights until the full hearing on the CPO is held. The hearing on the longer-term CPO is held before the expiration of the TPO.

The constitutionality of offering all the above relief as part of a TPO has been thoroughly tested. When the abuser has continued access to his victim, violence is not easily reduced and, indeed, is likely to escalate. The victim and her children remain in present and immediate danger when they continue to reside with the abuser. Thus, experts agree that protection

orders must remove the offender from the home and that the court must provide safety and support for the victim and her children. Balancing the victim's safety against the batterer's property interests, courts have consistently held that batterers can be removed from the home following an ex parte hearing, provided that the batterer has an opportunity to challenge terms of the TPO within a short time, usually 15-30 days.

### **CPO's**

A CPO is issued whenever there is good cause to believe there has been violence between family members. It is a form of injunctive relief that orders the offender to perform or refrain from certain acts for a specified time period and is an effective tool for eliminating or reducing incidents of domestic violence. Many states are moving toward CPO's that remain in effect for at least three years. In virtually all states, CPO's are used for a minimum of one year and are extendable and modifiable.

Protection orders are available in a variety of relationships, which varies from jurisdiction to jurisdiction: current and former spouses; other blood relatives; parties of a child in common; women pregnant with an abuser's child; members of live-in relationships; unmarried intimate partners; parties to dating relationships; persons offering refuge to the victim; or other types of relationships assessed as sufficient by a court or statute.

Although generally an abused party petitions for a CPO pro se or through an attorney, an adult may be authorized to petition the court on behalf of another adult, child, or incapacitated person. Generally, protection orders may be issued for conduct that inflicts actual bodily injury or causes fear of immediate bodily injury.

### **Relief**

A CPO directs a respondent to perform or refrain from certain actions relative to either his victim or other relevant parties. "No further abuse" provisions may prohibit a respondent from assaulting, harassing, stalking, threatening, or physically abusing the petitioner and her children and are

arguably the single most effective remedy available under a CPO.

When parties are separated, "no abuse" provisions should generally be coupled with a "stay away" order, which may direct the respondent to stay away from the petitioner's person, home, workplace, and other sites she frequents, as well as prohibit the respondent from making telephone calls to the petitioner or communicating with her directly, indirectly, or through a third party. Urge the court to include in its stay away provision, safeguards to protect the confidentiality of the victim's address.

Disputes over custody or visitation can trigger further violence. In cases in which the batterer wins custody of the children, the mother often returns to

“  
*Do not make  
counseling part  
of a CPO*  
”

the relationship only to suffer continued abuse and, in some cases, to witness eventual abuse of her children. Specific visitation restrictions, including supervision, are necessary to remove the abuser's opportunity to control, abuse, or harass the petitioner.

Batterers should be compelled to undergo treatment in a certified batterer's treatment program before resuming unsupervised visitation. Child and spousal support are crucial components of a CPO. Lack of financial resources may impede a battered woman's ability to create a safe life apart from her abuser. It is essential that all support orders be enforceable by wage withholding when they are issued as part of a CPO or any other family court case with a history of domestic violence. This reduces the need for continued face-to-face

enforcement proceedings, which may escalate the violence. Post-CPO, it is important to institute a traditional domestic relations case that seeks permanent child and spousal support. In only a few states do the custody and child support awards contained in the CPO continue after the CPO has ended.

Domestic violence counseling can be ordered either as part of a CPO or during contempt or criminal proceedings. Counseling as an alternative or supplement to incarceration, however, should be ordered only when the court determines that the respondent is suitable and amenable to treatment, that an appropriate certified batterer's treatment program exists, and that there is a system in place for monitoring a respondent's progress and seeking enforcement action when the batterer does not comply with treatment or commits new acts of violence.

Judges may attempt to order both batterers and victims to undergo counseling together. Such counseling creates a context in which the abuser can disavow responsibility for his conduct and provide him with an excuse for continuing the violence and placing the victim in greater jeopardy. Family counseling should never be ordered against the petitioner's wishes. Although your client may choose to enter counseling voluntarily, do not encourage her to do so and do not make counseling part of a CPO.

Most jurisdictions statutorily grant courts broad discretion to order any constitutionally defensible relief necessary to prevent continued domestic violence. These statutory catchall provisions allow judges to tailor an order to the circumstances of each case and the needs of individual petitioners. Become familiar with your jurisdiction's statute and seek creative and comprehensive remedies that will make full use of the court's authority to stop the violence against your client.

CPO's containing no abuse provisions may be issued even when the parties plan to continue living together. Such orders serve to deter future violence, particularly when they are coupled with court-ordered batterer's counseling. They also provide an

important shift in the relationship's balance of power, which for many women creates a period of calm within which they can begin to envision a life apart from the batterer.

### **Mutual CPO's**

Judges who have not yet received sufficient domestic violence training will sometimes attempt to issue mutual protection orders. Lawyers should strenuously object to the issuance of these orders. Mutual CPO's are sometimes issued on a respondent's bare assertions, without specific findings that the petitioner has committed an intrafamily offense, without proper notice to the petitioner that a petition has been filed against her, and denying her the opportunity to prepare and present a defense to the charges.

Under the federal Violence Against Women Act, which was passed recently as part of the Omnibus Crime Control Act, these mutual orders have become unenforceable across state lines. Orders will be enforceable only when each party has filed a petition, received notice of the petition, had an opportunity for a hearing on the petition, and had a court make findings against one party.

Mutual CPO's are dangerous and difficult to enforce because police called to a scene may be confused about which party violated which order. This ambiguity rewards batterers, who can wrongly accuse the victim of being the instigator or perpetrator of the violence, and endangers the victim, who may be falsely arrested and left unprotected against future assaults by the abuser.

Mutual CPO's ignore the great power disparities that exist in a battering relationship in favor of a mistaken presumption that both a petitioner and a respondent are equally at fault. As in mediation, this presumption permits an abuser to disclaim responsibility for abusive conduct and heightens the danger to the victim.

Discovery in CPO cases is limited because of the short time between filing papers and the hearing and because of the need to protect the victim's safety. Thoroughly documenting your client's case is particularly impor-

tant in domestic violence matters—whether for CPO, TPO, custody, or divorce—because the danger to your client will increase if she loses in court or if she fails to obtain essential remedies, including monetary relief or cus-

“  
*Mutual CPO's  
are dangerous  
and difficult  
to enforce*  
”

tody and safe visitation.

At the initial interview, in addition to taking pictures of any visible injuries, you should order medical records; obtain police reports; and subpoena police officers, medical personnel, and other witnesses to domestic violence incidents or injuries. Subpoenaing even cooperative witnesses is essential in CPO cases, because often between filing and trial batterers threaten witnesses or otherwise prevent them from testifying.

At trial, your client's testimony can be your strongest evidence. However, her testimony can be affected by her fear of the batterer and the access he has had to her before trial. The batterer may have convinced her that no one will believe her or that he has committed no crime. She may suffer from low self-esteem, or she may employ short-term coping mechanisms that have enabled her to survive violence until now but may be contrary to her long-term interests.

You may want to role-play your client's direct examination, making sure she is specific about incidents of violence. Recommend that she visit the courthouse before trial to observe similar proceedings and see the prospective judge. Reassure her that her detailed testimony is important and is often sufficient to prevail.

Experienced domestic violence liti-

gators have found that bolstering client testimony with other substantive evidence substantially improves a battered woman's ability to obtain a CPO with all needed remedies. Tailor your evidence to the specific requests for relief that you anticipate making.

In support of a claim for child support, prepare a financial statement for your client and obtain the respondent's financial information by subpoena so that a guideline child support order can be entered as part of the CPO. When requesting a vacate order, be prepared to prove your client's interest in the marital home through testimony at trial and documentary evidence.

When litigating a CPO case in which either custody or visitation is at issue, present evidence on how the violence has affected the children and come to court with a detailed visitation proposal that does not call for contact between the parties. You should consider requesting that all visitation be conditional upon the batterer's successful completion of a batterer's treatment program as recommended by the National Council of Juvenile and Family Court Judges.

Make sure the protection order sets forth in detail the relief granted. Batterers cannot be held in contempt of ambiguous orders. They must know what they are responsible for, and courts and police must know what they must enforce.

Counsel should ensure that a CPO allocates or defines rights in all areas ripe for conflict, including issues of custody, visitation, support, batterer's counseling, exchange of personal property, possession of the marital home, and removal of weapons. Custody, divorce, or protection orders that fail to include appropriate and integral relief may serve as catalysts for conflict and further violence.

Request that the trial court issue a full ruling stating its findings of fact and conclusions of law. This clarity will improve enforcement of orders and preserve the record for appeals or contempt proceedings. Ask the judge to specify the incidents on which the ruling is based. Make sure the court makes these statements on the record or that it enters written findings in the

record. Written findings and conclusions are crucial to enforcement and will provide critical information to judges ruling on other cases between the same parties, including divorce actions, child abuse charges, or criminal prosecutions.

When written findings are not made, particularly after a contested hearing, order a transcript of the court's full ruling and add it to the court jacket. This will ensure that any judge charged with enforcing the order will know its terms and conditions.

### Enforcement

Unfortunately, in many jurisdictions neither the police nor the courts assume full responsibility for enforcing CPO's. Therefore, this responsibility typically falls to the person least able to enforce the order and most subject to the batterer's control—the victim. As counsel for the petitioner, stand ready to utilize all legal avenues to enforce violations of CPO's.

In all but two jurisdictions, violation of a CPO is a misdemeanor. Advise your client to carry the CPO or a copy with her at all times. If the respondent violates any of its provisions, she should call the police, show them the court order, and ask them to make a report of the incident and arrest the respondent. She should record the names and addresses of witnesses and the names, telephone numbers, and badge numbers of the police officers. Advise her to contact you immediately after she has called the police so that you may take appropriate action, including interceding with the police or preparing contempt pleadings.

Orders contained in a CPO are fully enforceable through the contempt powers of the court. Respondents will make increasingly bold violations of a stay away provision to test the strength of a CPO. When mild violations go unchecked, more direct threats and physical violence may follow. To prevent such an outcome, file a contempt motion as soon as you learn of the violation.

Historically, police have been hesitant to arrest perpetrators due in part to their reluctance to intervene in what they consider to be a family matter.

Responding to research that suggested the effectiveness of arrest as a deterrent in domestic violence cases, many jurisdictions have enacted mandatory arrest statutes that require police to arrest an individual when they have probable cause to believe he has committed a criminal act against a family member. Arrest and subsequent prosecution break the cycle of violence and reduce the likelihood of future attacks. For some battered women, arrest of the abuser may provide her first opportunity to seek help. Family court actions and criminal court proceedings are intended to be pursued simultaneously in all jurisdictions.

In civil protection proceedings, courts can order local police departments to take specific actions to implement or enforce protection orders, including assisting the domestic violence victims with exchange of property, eviction of the batterer, service, or placing your client's home on the special attention list. When there is no computerized or administrative notification system under which police learn of court orders, give police written notice on issuance of a CPO or TPO, and request their assistance in its enforcement. Research indicates that battered women who register their protection orders with the police are better able and more willing to enforce them.

Work closely with the police and let them know that their efforts to make arrests and enforce CPO's are important. Advise police supervisors of both the positive and the negative behavior of officers. This type of feedback encourages police to remain responsive to domestic violence victims and to comply with mandatory arrest statutes and pro-arrest policies. It also helps secure a timely disciplinary or instructive response to inappropriate conduct by police.

Aggressive detection of domestic violence issues and thorough preparation of the cases in the context of a family law practice will enable you to secure from the legal system the relief your client needs. Your representation will be most successful if you work closely with your client to develop a strategy with which she feels comfortable and that achieves both her short-

term and long-term objectives. Contact domestic violence programs in your community, which also can provide you with valuable information on court procedures, the handling of domestic violence issues by particular judges, and the availability of relief to your client outside the legal system. Family lawyers must play a more aggressive role in actively identifying domestic violence victims among their clients and undertaking representation that places safety first. ■

## ARE YOUR CLIENTS KILLING EACH OTHER?

### LEARN STATE-OF-THE-ART COMMUNICATION AND CONFLICT RESOLUTION TECHNIQUES TO:

- Strengthen relationships with clients and business associates
- and
- Dissolve barriers in your personal relationships

Dynamic 2-day workshop from PAIRS, a professional training organization offering intensive experiential skills that have helped to generate insights and transform deeply-rooted attitudes, beliefs and behaviors.

Led by:

**LORI AND MORRIS GORDON**  
FOUNDERS/DIRECTORS OF PAIRS  
(Practical Application of Intimate  
Relationship Skills)

Assisted by:

**HAL BRAFF, JD AND ELAINE BRAFF**  
PAIRS LEADERS

Immediately following April '95  
Section Meeting in Washington, DC

Sun., April 9 - 2-5 and 7-10pm

Mon., April 10 - 10-12 and 2-5pm

**\$375** individual registration incl.  
Sunday dinner, Monday lunch,  
all texts and materials

**\$650** for two

5% early bird registration by March 1  
VISA / MasterCard accepted

Call PAIRS to register  
1-800-477-2471