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NEW JERSEY STATE BAR ASSOCIATION

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Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: Ad Hoc Committee on Domestic Violence
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Report of the Supreme Court Ad Hoc Committee on Domestic Violence

Dear Judge Grant:

Thank you for the opportunity to review and comment on the report and recommendations of the Supreme Court Ad Hoc Committee on Domestic Violence. The New Jersey State Bar Association applauds the work performed by the Committee in thoroughly examining the current domestic violence system and making recommendations for productive change.

The NJSBA generally supports the concepts and recommendations the Committee outlined. As noted in the report, the recommendations begin a dialogue that will require further discussion to fine-tune implementation details to come to fruition. The NJSBA welcomes the opportunity to participate in and review the details of how the concepts will be put into practice.

An overriding area of concern to the NJSBA is what funding mechanism will be invoked to pay for many of the recommendations. While there is agreement that increased training, education and availability of services would greatly improve the handling of domestic violence cases in New Jersey, the NJSBA is not in favor of increasing filing fees to fund them. As such initiatives would benefit society as a whole, the NJSBA urges that any additional funding be derived from the general treasury or other outside sources and not borne by the judicial system itself.

The NJSBA's comments on each specific recommendation are as follows:

Recommendation No. 1

Bar Associations should develop referral procedures to provide low or no cost legal assistance to parties litigating civil domestic violence cases.

As noted in the Court's report, the NJSBA's Blue Ribbon Commission on Unmet Legal Needs has recently provided the Association's Board of Trustees with a number of recommendations concerning the provision of low cost legal services to individuals who otherwise cannot afford such services. The Board of Trustees is in the process of examining the recommendations in light of available resources. While attorneys can and do provide low-cost or pro bono assistance to individuals in a number of settings, the NJSBA believes the ultimate responsibility for legal assistance for low income or indigent individuals rests with our state government. Therefore, the NJSBA believes the legislative and executive

individuals rests with our state government. Therefore, the NJSBA believes the legislative and executive branches should be encouraged to create and fund a domestic violence attorney advocate for domestic violence victims in each vicinage.

Recommendation No. 2

Law schools should explore the use of law students to provide legal assistance to self or unrepresented parties litigating civil domestic violence cases.

As noted above in connection with the provision of legal assistance through the bar association, while law schools should be encouraged to explore a program as described, the NJSBA recognizes their resources are limited like those of the bar association. Again, the NJSBA believes that the ultimate responsibility for the provision of legal assistance for low income or indigent individuals rests with our state government and, therefore, the NJSBA believes the legislative and executive branches should be encouraged to provide funding for such representation.

Recommendation No. 3

The Judiciary should explore the development of court rules and procedures to allow domestic violence victims, in exceptional cases, to testify without being physically present in the courtroom for Final Restraining Order Hearings.

The NJSBA believes this presents due process issues. If the victim is receiving the benefit and protection of the court, the defendant should receive the full benefit of due process rights and have a fair opportunity to cross-examine the victim.

Recommendation No. 4

The Judiciary should expand the Hospital to Court Safety Assistance Project and the Safe House to Court Safety Assistance Project statewide to facilitate victims obtaining restraining orders.

The NJSBA is concerned the recommended expansion would be cost prohibitive. If the project is expanded, though, the NJSBA urges the Court to seek additional input on the details of implementation, including the establishment of uniform training for all involved.

Recommendation No. 5

The Judiciary should ensure that interpreting and translation services are provided to domestic violence litigants in both the municipal and Superior Courts.

The NJSBA agrees with this recommendation, but has concerns about funding and implementation. Some counties already have successful programs in place, and the NJSBA recommends that the services available in those counties be studied and utilized elsewhere if possible. The NJSBA also recommends exploring the expanded use of telephonic interpreters, which may be a viable, more economical option.

Recommendation No. 6

The Judiciary should update the current Risk Assessment form and develop training for Judiciary staff on the utilization of the form.

The NJSBA agrees with the recommendation, but has concerns about funding and implementation. The NJSBA urges the Court to seek additional input and provide more details for comment before finalizing an updated form.

Recommendation No. 7

The Judiciary should review and support the expansion of the current existing court ordered supervised visitation and safe exchange programs with a view toward standardized statewide availability and protocols.

The NJSBA agrees with the recommendation, but has concerns about funding and implementation. The NJSBA urges the Court to seek more input and provide more details for comment before finalizing the expansion of these programs.

Recommendation No. 8

Statewide expansion of therapeutic programs for children exposed to domestic violence.

The NJSBA agrees with the recommendation, but has concerns about funding and implementation. The NJSBA urges the Court to seek more input and provide more details for comment before finalizing the expansion of these programs.

Recommendation No. 9

The Office of Attorney General and the County Prosecutors should review policies for Domestic Violence Response Teams (DVRT) pursuant to N.J.S.A. 2C:25-20(b)(3)(1) and consider the following: 1) mandate automatic call out policies for accessing DVRT advocates; 2) provide more oversight to police departments with respect to their utilization of DVRTs.

The NJSBA agrees with the recommendation, and urges its adoption.

Recommendation No. 10

County Domestic Violence Working Groups should be required to maintain up-to-date information regarding available domestic violence programs and services. Additionally, County Domestic Violence Working Groups should revisit their initial charge and compositions.

The NJSBA agrees with the recommendation, and urges its adoption.

Recommendation No. 11

Create a Technology Task Force through the Supreme Court State Domestic Violence Working Group to explore all issues of technology related to domestic violence. This task force or Committee should include all stakeholders including law enforcement.

The NJSBA strongly supports this recommendation, and further recommends that the Court strive to establish standard statewide technology procedures. If such a Task Force is created, the NJSBA requests that it be permitted to have at least one representative on the Task Force.

Recommendation No. 12

Municipal and applicable Superior Court judges and staff are required by statute N.J.S.A. 2C:25-20(b)(2) to attend annual domestic violence training. The Judiciary should broaden the content of training provided to judges and staff.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 13

Pursuant to N.J.S.A. 2C:25-20(a)(2) law enforcement officers are required to attend four hours of domestic violence training annually. It is recommended that at least once every three years this training requirement be satisfied through in-person training, as opposed to on-line training. Furthermore, Domestic Violence Liaison Officers (DVLO), a sworn member of the department assigned by the municipal chief/public safety director, shall be required to attend additional annual domestic violence training and be a member of their County Domestic Violence Working Group

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 14

All Assistant Prosecutors shall receive domestic violence training upon hiring as part of new employee training with refresher training as directed by the County Prosecutor.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 15

Consideration be given by the Board on Continuing Legal Education (CLE) to adjust mandatory CLE requirements to provide incentive to private attorneys to obtain domestic violence training.

The NJSBA has concerns that adoption of this recommendation would result in an over-emphasis on domestic violence education to the detriment of education in other substantive areas of the law.

Recommendation No. 16

Certified matrimonial attorneys should be required to complete a minimum of three hours of domestic violence training as part of their periodic CLE requirement for re- certification.

The NJSBA has similar concerns as noted in Recommendation No. 15. Not all certified matrimonial attorneys encounter domestic violence issues as part of their practice. They would be better served taking courses they believe are beneficial to their practice.

Recommendation No. 17

N.J.S.A. 2B:25-10 should be modified to allow the Attorney General and respective County Prosecutor to require that municipal prosecutors attend needed training. This training should include, but not be limited to, domestic violence.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 18

New Jersey should adopt formal standards to govern the operations of Batterers Intervention Programs (BIP).

The NJSBA agrees with this recommendation, but urges the Court to seek more input and provide more details for comment before final formal standards are adopted.

Recommendation No. 19

Once BIP standards are established, the New Jersey Judiciary should only make court referrals to BIPs that are in compliance with State standards.

The NJSBA cannot provide meaningful commentary on this recommendation without first reviewing any proposed standards and a plan for monitoring and enforcing compliance.

Recommendation No. 20

New Jersey should develop a system wide, coordinated process for assessing risk and danger in domestic cases.

The NJSBA agrees with this recommendation, but urges the Court to provide an opportunity to comment on the proposed details about how the "coordinated process" will be formulated and implemented before a final process is adopted.

Recommendation No. 21

The Judiciary should consider the development of a "Bench Guide of Risk in Domestic Violence Cases" that can aid judges in their decisions impacting alleged batterers and victims of domestic violence.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 22

Domestic Violence cases should be scheduled separately (staggered scheduling), when appropriate, from other municipal offenses.

The NJSBA agrees with this recommendation, yet believes that the implementation of staggered scheduling will be difficult to coordinate.

Recommendation No. 23

Municipal Courts should expand the use of domestic violence advocates in court proceedings.

The NJSBA agrees with this recommendation, but is concerned about how it will be funded. In addition, the NJSBA stresses the importance of the availability of training for domestic violence advocates in order for the program to be successful.

Recommendation No. 24

Police should acquire additional and complete contact information on the confidential Victim Notification Form, such as cell phone numbers, for victims, since non- appearance by a victim in Municipal Court is often due to communication difficulties, especially where the victim has relocated to avoid further acts of domestic violence.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 25

Municipal Court administrators should be given access to the Domestic Violence Central Registry (DVCR).

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 26

Consideration should be given to include the acts of cyber-harassment and invasion of privacy as predicate acts under N.J.S.A. 2C:25-19.

The NJSBA agrees with this recommendation, and notes that it supports S-1257/A-1946, which is currently pending in the Legislature and would add cyber-harassment to the domestic violence statutes.

Recommendation No. 27

Consideration should be given by the court to allow the filing of a Non-dissolution (FD) complaint for child support, custody, paternity or parenting time (Part II relief section of FRO) when there is an active restraining order. This issue should be referred to the Conference of Family Presiding Judges.

The NJSBA agrees with this recommendation, and urges the Court to refer further consideration of the issue to the Conference of Family Presiding Judges, as noted.

Recommendation No. 28

The Court should be encouraged, in appropriate cases as permitted by law, to enter an order for ongoing child support in a Temporary Restraining Order (TRO) or Amended Temporary Restraining Order. The filing date of the TRO should be preserved for purposes of establishing child support.

As noted in the report, New Jersey law currently permits an award of emergent financial relief in cases where a Temporary Restraining Order is entered. The NJSBA is concerned that this recommendation could lead to the entering of an *ex parte* Order for child support, which could result in an unfair and significant financial hardship being placed on the defendant.

Recommendation No. 29

New Jersey Court Rule 1:38-3(d)(9) should be modified to enable attorneys representing a defendant in a related criminal matter to obtain a copy of the recording or the transcript of the related FRO hearing.

The NJSBA agrees with this recommendation, and urges its adoption.

Recommendation No. 30

Quasi-criminal matters within the jurisdiction of the Municipal Court, arising out of the same incident, should not be joined with the domestic violence civil restraining order for adjudication in Superior Court. Each court should maintain its current jurisdictional authority over domestic violence matters.

The NJSBA agrees with this recommendation, and urges its adoption.

Thank you for your courtesies in considering these comments. Again, the NJSBA commends the Committee for undertaking a critical analysis of the handling of domestic violence issues in New Jersey, and for making thoughtful recommendations for improvement. The NJSBA looks forward to continuing to work with the Court and other interested parties to develop many of the recommendations further and bring their implementation to fruition.

Please do not hesitate to contact me if any additional information is necessary.

Sincerely,

Thomas H. Prol, Esq.
President

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cc: Robert B. Hille, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director