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July 29, 2016

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments: Ad Hoc Committee on Domestic Violence

Dear Judge Grant:

We are grateful for the opportunity to submit comments on the Report of the Supreme Court Ad Hoc Committee on Domestic Violence. First, though, we would like to thank the Chief Justice for convening the Committee and to compliment the Committee members on their thoughtful and thorough recommendations. With one exception (#27), we agree wholeheartedly with the Recommendations.

Partners for Women and Justice is a non-profit, public interest law firm that provides legal assistance to low-income victims and survivors of domestic violence in connection with restraining orders and related matters. We recently expanded our mission to include all victims regardless of sex, sexual orientation, gender identity or gender expression. Our services are free for those who meet our financial guidelines.

Our comments are informed by more than 10 years of experience in the trenches representing victims of domestic violence in FD and FV matters. We assist between 350 – 400 clients each year, venturing into Family Courts in Essex, Union, Hudson, Morris, Passaic and Middlesex Counties. This broad exposure to the Family Court system gives us a perspective that we hope the Supreme Court will find informative.

If implemented, we believe that the Recommendations (except for #27) would significantly improve meaningful access to justice for victims of domestic violence. However, there are several that we will comment on specifically because we think they should be a priority for implementation: 5, 6, 20, 21 and 25. We also comment on #27.

Recommendation 5: The Judiciary should ensure that interpreting and translation services are provided to domestic violence litigants in both the municipal and Superior Courts.

We believe that interpretation and translation services are essential to the fair resolution of domestic violence cases and that statutes and basic fairness require the Judiciary to provide

interpreters for all aspects of each LEP (Limited English Proficiency) litigant's case. N.J.S.A. 2B:8-1; AOC Directive #3-04; New Jersey Courts, Ensuring Equal Access for LEP Persons, http://www/judicairy.state.nj.us/interpreters/background.htm, accessed July 28, 2016. Not to provide meaningful services would prejudice litigants based only on their language spoken.

AOC Directive #3-04 states that "[i]nterpreters should be provided whenever a failure of communication may have significant negative repercussions." In domestic violence matters, it is particularly crucial for the victims to be able to present all of their evidence and testimony to the court. We have repeatedly seen LEP litigants being denied interpretation and translation for their foreign language evidence. In these instances, the evidence is either simply excluded or the litigant is told to obtain a certified translation from a private source at significant cost. In either situation, the LEP litigants suffer a harm that is not suffered by their English-speaking counterparts. Victims who are unable to present their evidence experience "significant negative repercussions" in that their case is hampered and their safety is more difficult to secure. Requiring translation of evidence and third-party witness testimony is critical to maintain the fairness of the hearings and ensure that no victim's opportunity to be heard is hindered by language.

Recommendation 6: The Judiciary should update the current Risk Assessment form and develop training for Judiciary staff on utilization of the form.

We agree with the Committee that the forms used for Risk Assessments are outdated and should be revised. The updates should account for domestic violence high risk/lethality factors, the impact of domestic violence on children, and a trauma-informed approach. We further agree that there should be training developed to utilize the form.

We also recommend that the practice of conducting Risk Assessments be uniform throughout the State. In the counties in which we practice, the expertise and training of the individuals performing the Risk Assessments vary significantly. In some areas, Risk Assessments are performed by probation officers with no particular training. In others, Risk Assessments are done by clinical professionals who can evaluate the demeanor of the parties and the children and use their expertise to inform the assessment. In our view, with updated forms and more thorough training requirements, the Risk Assessments performed will be more accurate, more helpful to the judges who must make difficult custody and visitation determinations, and children will be safer.

Recommendation 20: New Jersey should develop a system-wide, coordinated process for assessing risk and danger in domestic violence cases.

Certain domestic violence cases present enormous risk and danger to victims, children, first responders and innocent bystanders alike. Having the ability to identify which cases rise to that level could reduce the risk of lethality for all. In several high lethality cases that we have handled, we have reached out to our social service agency and law enforcement partners on an ad hoc basis, but we would welcome a more formal structure that institutionalizes the convening of local agencies to share information in real time and help and protect victims of domestic violence and reduce the risk of lethality for all.

Recommendation 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.

We think this is an excellent idea. A Bench Guide could be developed based on the research of Dr. Jacquelyn Campbell and could serve to educate judges about proven indicators of lethality. It could help judges put aside any preconceived ideas they might have on what constitutes danger in domestic violence situations – replacing those views with objective research findings. We believe this recommendation would be relatively inexpensive to implement, although we would recommend that as a corollary to the development of a Bench Guide there be training of the judiciary and other court staff on the reasons why, in the context of domestic violence, certain indicators take on a significance that might not be immediately obvious or that might not be indicators of danger in other situations.

Recommendation 25: Municipal Court administrators should be given access to the Domestic Violence Central Registry (DVCR).

Recommendation 25 is a simple and efficient way to significantly improve service of restraining orders which can be done quickly and with little outlay of resources. Many domestic violence victims pursue both civil and criminal remedies. When the abuser cannot be served with the TRO, but appears in municipal court for the criminal charge, the municipal court should be able to access the DVCR and effectuate service on the abuser so that the restraining order matter can be heard and resolved in a timely manner. Not only should the municipal court have access to the DVCR, but we urge the judiciary to make such checks of the DVCR mandatory, rather than optional.

Recommendation 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.

With all due respect to the Committee, we strongly disagree with this Recommendation because we think it will undermine the protections afforded by the Prevention of Domestic Violence Act ("Act"). In adopting the Act, the legislature intended that victims of domestic violence be assured the *maximum protection* from abuse the law can provide and encouraged the *broad application of remedies* available under the act. N.J.S.A. 2C:25-18. Our concern is that this intent of the legislature will be frustrated if this Recommendation is implemented. Our concerns are several:

1) The judge hearing the FD matter will not have the benefit of the full context in which to make important decisions concerning children. The current procedure to hear child-related matters in the FV docket recognizes the importance of resolving these issues in context – specifically in the context of attempted assertion of power and control by the abuser. To make decisions about custody and visitation without taking into account the ways in which abuse occurs in a particular relationship could put victims and their children at risk. Judges on the FV docket are in the best position to make decisions about custody and visitation because they are familiar with the facts of the situation. We

know that children are often used as pawns by an abusive parent and we fear that a judge unfamiliar with a particular dynamic may underestimate risk.

2) In the FD docket the protections afforded by the Act in 2C:25-29 (b)(3) and (b)(10) and (b)(11) may be ignored or pushed to the side as safety would no longer be the dominant issue in the case.

3) There is a risk of inconsistent orders, particularly when the court hearing the FD matter is not aware that a restraining order is in place. Having two dockets for what is essentially one matter will place a burden on the court staff to make sure the FD judge knows of the FV matter.

4) If the court staff does not bring the fact of a restraining order to the attention of the FD judge, the burden will be on the victim to make the judge aware of it. Pro se litigants are not likely to understand the importance of alerting the FD judge to the FV matter, putting themselves at risk of unsafe visitation and custody arrangements. Moreover, a victim might be ordered to mediation in the FD docket, not knowing that mediation for custody and visitation matters is not permitted when a restraining order is in place.

5) Hearing child-related matters on a separate docket would increase the number of court appearances required and could delay the establishment of safe visitation and custody orders and fair orders for child support, all of which could put victims and their children at risk.

6) It is our understanding that there is only one sheriff's officer assigned to FD cases, while two are assigned to FV cases. Thus, hearing child-related issues on the FD docket could create safety risks for victims and others in the courtroom.

We do not agree with the arguments articulated in support of this recommendation. While a significant percentage of FV cases may be dismissed, it is our understanding that most dismissals occur at the TRO stage, before any hearing on issues of child support, visitation or custody in the FRO hearing. At the point of a TRO dismissal, a FD matter could be opened if necessary; this is available currently. If a final restraining order that includes provisions for custody, visitation and child support is dismissed, there already is a mechanism to convert the order into an FD order that some counties use. (We recommend that this mechanism be automatic and that it be adopted as a state-wide practice.) If the FV docket lacks a mechanism for dealing with complex custody and parenting time issues, the solution should be to allow a complex track – just as is now allowed in the FD docket – not to move the issues to the FD docket and have the children suffer the consequences of a judge not knowing the full context of the case. And finally, the comparison to the dissolution docket is misplaced. Issues of the dissolving of a marriage, equitable distribution and alimony do not share commonalities with reliefs available under the Act. But the issues normally addressed in the FD docket do.

In our view, resolving child-related issues in separate proceedings from an FV matter could be extremely detrimental to the non-abusing parent and his or her children. This approach could well deprive victims of the maximum protection from abuse and the reliefs available under the Act, reliefs that reflect the legislature's understanding that matters involving children cannot be viewed in isolation from the abuse, but rather should be viewed through the prism of domestic violence.

The FV docket – with all the reliefs afforded by it – is better positioned to effectuate the intent of the legislature in adopting the Act.

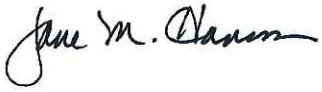
Additional Issues

We note that the Committee identifies several issues that, though important, are not addressed in the Recommendations. We believe that two of these issues warrant addition to the Recommendations of the Committee, specifically 1) separate waiting rooms for victims and defendants and 2) on-site childcare for litigants (Report at 13-14) should be included in the Recommendations.

Separate, secured waiting rooms for victims and defendants are needed to ensure the safety of the victim throughout the process. Ideally, the victims' waiting room would include access to the Domestic Violence Unit staff as well as a restroom so that a victim need not risk an encounter with the defendant in the hallway. The victims' waiting room in Essex County is a wonderful example and should serve as a model for other counties.

Childcare is also a significant issue for litigants in domestic violence cases. Many litigants are forced to bring their children with them to court simply because they have no alternative. On-site childcare would allow the court process to function more efficiently when litigants can focus on the case. More importantly, it would keep children out of the courtroom during the proceedings. Children should not be present in a domestic violence courtroom because it is harmful for them to be exposed to the sensitive content of those hearings or to hear testimony relating to abuse and violence. Providing on-site childcare would greatly benefit both the judiciary and the families that it serves.

Sincerely yours,



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