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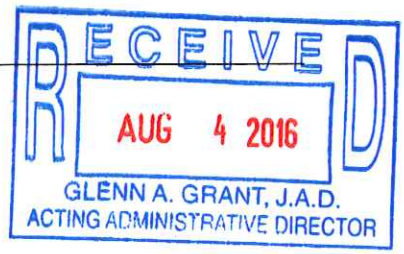

July 29, 2016

Hon. Glenn Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
25 Market Street
Trenton, NJ 08560
Via email and regular mail

Dear Judge Grant:

Thank you for inviting comments as to the June 2016 Report of the Supreme Court Ad Hoc Committee on Domestic Violence.

By way of background, I am a 1996 graduate of Rutgers Law School at Camden. 90% of my practice is family law and related appeals, including domestic violence matters. I served as a law clerk in the Superior Court, Chancery Division, Family Part in 1996 where I had direct contact with domestic violence matters, including trials, pretrial hearings, and motions to modify or dissolve FRO's. I am an active member of the Family Law Section of the New Jersey and Mercer County Bar Associations, the Family Law Inns of Court, the Appellate Practice Section of the New Jersey Bar Association, and serve as an Early Settlement Panelist for matrimonial matters in Mercer County. I have been qualified to serve as an expert witness in a malpractice case arising out of a matrimonial matter. I have been the attorney of record in 53 domestic violence trials and handled many hundreds of cases with domestic violence allegations that did not result in a complaint under PDVA.

Initially, I believe the recommendations made are, with very few exceptions, excellent and much needed. There are some other changes that I believe are warranted but were not discussed in the recommendations, and I have one somewhat sharp criticism of the report.

1. Training for attorneys. There should be a requirement that attorneys handling domestic violence cases receive specific training. This could be handled via the production of a video made available on the judiciary's website, but I believe it is imperative that this occur. While in-person training would be preferable, it is a burden that consumes a lot more time than is involved in watching a video and I believe a video requirement may result in more attorneys being made aware of the unique aspects of representing a DV victim.

Although not specifically referenced in the report, in my experience (both in the many cases I've handled and overall), the victims in the most peril and who have been the most severely abused are often the most likely to drop a domestic violence complaint. Attorneys need to be able to effectively counsel a client as to the dangers of the cycle of domestic violence, especially when the abuse has become physical. A client may need to be persuaded to pursue a FRO (or at least civil restraints) and to participate in therapy before he or she will be able to recognize the cyclical nature of abuse (with an explosion, a period of true remorse, a reconciliation, a honeymoon period, a tension building cycle, and a recurrence of violence). In my experience, attorneys understanding the cycle are more effective in communicating with clients to act in their own best interests.

2. FD civil restraints reform.

Over time, the New Jersey legislature and Congress have added so many ancillary consequences to a domestic violence restraining order that it has become counter-productive. Rather than simply entering an order that requires one party to stay away from the other and mandating police response if there is a violation, the entry of a DV order now carries with it: Preclusion from whole

classes of employment that requires a background search, a lifetime prohibition on weapons possession (which, obviously, precludes only the law-abiding from possessing a weapon) thus resulting in the instant ending of a career in the miliary or law enforcement upon the entry of a FRO, entry into various databases, fingerprinting, being "flagged" and pulled aside when travelling at international airports, etc. While well-intentioned, the ancillary consequences have elevated the effects of a DV order to the point where I have had multiple clients declare "I don't want to destroy their life - I just want them to stay away from me" and refuse to proceed with a DV FRO trial.

As Justice Albin eloquently noted in DN v. KM, 216 N.J. 587 (2014), the secondary consequences of the entry of a FRO have become so onerous that they now clearly implicate the right to counsel for defendants under the New Jersey Constitution.[1]

In great contrast, a simple order that says "stay away from this person or you will be arrested" clearly does not implicate the right to counsel. The piling on of consequences is self-defeating and shows no sign of diminishing (see, for example, a recent bill to require GPS bracelets and monitoring for defendants in DV cases).

For all of the above reasons and more, many plaintiffs will

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[1] Justice Albin's discussion in DN v. KM was in the context of a dissent from the denial of a writ of certification as to whether defendants are entitled to counsel in DV hearings. Earlier this week, the Supreme Court decided In Re Adoption of J.E.V., which has further recognized the right to counsel under New Jersey's fundamental fairness doctrine. It is a only a matter of time before the New Jersey Supreme Court grants certification as to this issue and addressed the merits of a defendant's right to counsel in a DV proceeding. The AOC would be well-advised to consider the implications of such a ruling before it occurs.

elect to pursue civil restraints rather than proceeding with a FRO hearing. Several aspects of the "civil restraints" system therefore should be reviewed.

A. Modify the court rules as to FD Jurisdiction. If a plaintiff seeks to dismiss a DV complaint in favor of civil restraints who has only a dating relationship with the defendant, the court is unable to enter a civil restraints order under an FD docket under existing court rules and case law as it requires either having a child in common or property held in common. Although the possibility exists of filing a separate complaint in the chancery division to effectuate civil restraints, this involves filing a separate complaint outside the Family Part and not many attorneys or judges are aware of this option. This needs to be remedied. **When jurisdiction exists to file an FV complaint, this should be sufficient to enter an FD order for civil restraints should an FV order be withdrawn.**

B. Permit a provision for police response to civil restraint violations. One of the major detractions for a victim in entering into "civil restraints" under an FD docket is that a violation does not prompt the same police response as a violation of an FV order. A provision indicating that, upon finding probable cause to believe that a civil restraints order has been violated, the police shall charge a defendant with a violation of N.J.S.A. 2C:29-9 (violation of a court order) would give added protections. Absent a specific authorization for this provision, some judges will not permit it to be included in a civil restraints order as it implicates the use of public resources.

C. No "res judicata" defense on civil restraints. Although experienced attorneys will include a provision that, should civil restraints be violated, the plaintiff may include the allegation(s) of domestic violence that led to the entry of a TRO in a subsequent DV complaint, not all attorneys do so. The court rules should be amended to specifically include this provision, automatically, in the entry of a civil restraints order. If an order for civil restraints is violated, the predicate acting leading to the TRO should be considered.

D. Amend the PDVA act to specify that a violation of civil restraints is a predicate act of DV. Although there is some case law noting that this *can* support the entry of a DV order, it should be mandatory, whether via rule amendment or an amendment to the statute (e.g., including "the violation of an order for restraints outside the PDVA entered following a previous DV complaint").

E. Give judges greater latitude to enter civil restraint orders. In conjunction with the desperately needed reform below to create a tiering system as to the risk to a plaintiff, judges who are convinced after a trial that there is potentially dangerous pathology involved in a relationship should have the option of converting a DV complaint (that would otherwise be dismissed) to an order to an application for an show cause and entering appropriate orders under an FD or FM docket to address emergent circumstances that may not rise to the level of domestic violence.

3. Evaluation of lethality / seriousness of risk. As indicated, I strongly agree with essentially all the recommendations made, but want to emphasize my support for the need for an evaluation process

for DV complaints. Anecdotally, I have had four matters where, upon the filing of an "appeal" to a judge, a DV complaint was dismissed as the allegations, even if true, did not constitute domestic violence.[2] I have had two trials with the same outcome at the end of a plaintiff's case - that the defense did not need to proceed as the allegations, even if true, did not constitute domestic violence. I have been on both sides of many, many cases where the allegations were "on the brink" or in the grey zone as to whether they constitute domestic violence harassment. While harassment certainly can constitute domestic violence, and the courts have made strides and continue to clarify this issue, cases that do not involving frightening acts of violence are a drain on the system and divert attention from the cases where a plaintiff is at deadly risk of serious assault or being killed.

I strongly support the concept of "the Judiciary [developing] a 'Bench Guide of Risk in Domestic Violence Cases' that can aid judges in their decisions impacting alleged batterers and victims of domestic violence Judges and court staff should be in a position to recognize the red flags of potential high risk domestic violence cases." As a matter of protecting victims and ensuring fairness to all involved, this recommendation should be given the highest

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[2] Although relatively minor, the commission should consider changing the terminology of the "Application for Appeal and Order", section 8 of the Domestic Violence Procedures Manual. It is confusing to the court, clients, and some attorneys to use the phrase "appeal" in this context when it actually involves review by a trial court judge, not an application to the Appellate Division. I would suggest that a phrase such as "Application for Review or Modification of a Temporary Restraining Order" would be more accurate and less confusing.

priority.[3]

4. Male victims. My greatest disappointment in reading the report and recommendations is its treatment of male victims. "Disappointment" is not a strong enough word. The report mis-states statistics from the AOC and New Jersey State Police, ignores the realities of this issue as presented by the Federal CDC, FBI, and Department of Justice. This section needs to be completely reconsidered. The responsibility to appropriately address this issue in a gender-neutral fashion should start with our judiciary and its commitment to providing services without regard to gender.

While the recommendations the report does make are laudable in recognizing that males are also victims of domestic violence, the recommendations are deficient in failing to take additional needed measures on this issue. Gender bias remains prevalent throughout the system and, most disappointingly, the report repeats incorrect information that conflicts with both AOC and federal statistics and contains only minimal suggestions to address this important issue.

The recommendations do not accurately state the prevalence of male victims, claiming "the statewide domestic violence statistics

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[3] Related to this issue, the report throughout speaks in binary terms of "batterers" and "victims." Many cases do not fit neatly into this paradigm but involve relationships with mutual violence. Complicating this is that many defendants will respond to a complaint by claiming self-defense, sometimes accurately and sometimes not. A tiering system for measuring lethality should be sensitive to this issue. A party seeking help may legitimately require protection, but a victim may also need services designed to address anger management and other pathologies demonstrated in a mutually violent relationship.

for the 2014 calendar year demonstrate that approximately 80% of domestic violence victims are female while approximately 20% of domestic violence victims are male." This is simply not true. The New Jersey State Police 2014 report as to domestic violence shows that 15,656 of 62,055 incidents[4] involved male victims, which is closer to 25%, not 20%. The AOC's 2014 report on Domestic Violence shows that 23.1% of complaints have a male victim.[5] While all of these numbers reflect an under-reporting of domestic violence by male victims, that a commission dedicated to improving our system would "round down" numbers on this issue so as to minimize the number of male victims may reflect internal biases. It is respectfully suggested that the committee examine whether it has any such biases on this issue. Again, no disrespect is intended by this suggestion, but domestic violence is too serious and results in too much death and injury to withhold a legitimate suggestion that insight may be required out of a concern that asking this may be offensive. No offense is intended.

There are several reasons that male victims account for roughly a quarter of reported domestic violence. Men are shamed from stepping forward, disbelieved, and stigmatized.[6] Anecdotally,

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[4] http://www.njsp.org/ucr/PDF/domesticviolence/2014_domestic_violence.pdf

[5] http://www.judiciary.state.nj.us/family/2015_dv_annual_report.pdf at page 2

[6] See, for instance, YouTube video uploaded March 26, 2008 by ABC News of its hidden camera interview show "What Would You Do? - Reaction To Women Abusing Men In Public." Whereas nearly 100% of passerbys intervened or called 911 when a male actor was abusing a female actor, only 1 person of 163 took any action when a female actor was openly physically assaulting a male actor and several

I have heard more than one client say that the greatly-reinforced mandate that "you are never to hit a woman" led to men failing to defend themselves and permitting escalating levels of violence. I represented one client for nearly four months before he revealed that he had been the victim of violence including a broken eye orbit after being hit with a pan (which he reported to the ER as "a fall"). I have heard numerous times that, when a man calls the police, even with visible signs of injury, he is treated with disrespect and, even though he reached for help, if a battering woman makes a claim at the scene that she is the victim, he will be arrested. Police agencies need to have it reinforced that domestic violence is a pathology issue, not a gender issue.

The Federal CDC notes that domestic violence is approximately symmetrical between genders.[7] Perhaps the ultimate evidence of the under-reporting of domestic violence by men that results in only 25% of FRO's being issued to them is that, nationally, 44.5% of spousal homicides are husbands killed by their wives[8] and in less

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cheered on the abuse. https://www.youtube.com/watch?v=L1FAd4YdQks

See also, Saturday Night Live, Season 3, Episode 13, skit wherein Tom Snyder (played by Dan Aykroyd) interviews a battered husband and mocks and teases the man, to the laughter of the audience, eventually removing the privacy screen put in place to protect his anonymity during "the interview." The concept of rejecting males as victims of domestic violence is deeply ingrained in anyone growing up in our culture. While overcoming internal prejudices is never easy, it is respectfully suggested that it must be done in this context.

[7] http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf

[8] http://www.bjs.gov/content/pub/pdf/mf.pdf

than 10% of those cases do murderous wives even claim the killing was in self-defense.

I suggest the following steps be taken on this issue:

A. Recognizing special needs of male victims. Men need to be told that there is no shame in reporting domestic violence and seeking protection, that domestic violence is a matter of pathology, not gender, and that stepping forward (perhaps instead of physically defending oneself) is the right thing to do as far as obtaining protection and getting a batterer help. There needs to be special sensitivity to this issue at all stages of the process.[9]

B. Resources for DV victims must be gender-neutral. Thankfully, there have been improvements on this issue. The DV Procedures manual now uses "he or she" rather than a specific gender term.

Many service providers have already changed their names and revised their mission statement to clarify that services are provided without regard to gender.

In October of last year, The New Jersey Coalition for Battered Women, one of the state's leading domestic violence agencies, changed its name to the New Jersey Coalition to End Domestic

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[9] A sub-set problem on this issue is gay men or women who are abused and wish to keep their sexual orientation private. People who have been living with the defendant should be informed that jurisdiction can be established based on co-residence alone without exploring whether there is a "dating relationship."

Violence. A statement on the organization's website explains that this more inclusive name clarifies that the group's work is for the benefit of all domestic violence victims.

The Resource Center of Somerset was formerly called "The Resource Center for Women and Their Children" until four years ago. They note that men now make up better than 25% of their clientele seeking help as domestic violence victims.

There is still a long way to go and much that the system can directly accomplish on this issue. A Google search seeking help with an immediate domestic violence issue refers users to The New Jersey State Police website.[10] That website lists out the primary contact for help as the "NJ Division on Women" and provides referrals to local agencies. Of the 25 organizations listed, 12 of them contain overt gender references in their names (Atlantic County Women's Center, Shelter our Sisters, The Rachel Coalition of Jewish Family Service, Linda & Rudy Slucker National Council of Jewish Women (NCJW), Womenrising, Inc., Womanspace, Inc., Women Aware, Inc., Jersey Battered Women's Services, Inc. (JBWS), Strengthen Our Sisters, Salem County Women's Services, Passaic County Women's Center and Camden County Women's Center). Thirteen are gender-neutral (Bergen County Alternatives To Domestic Violence, Providence House/Willingboro Shelter, CARA, Inc. (Coalition Against Rape & Abuse, Inc.), Center for Family Services, The Safe House, Center for Family Services, 180 Turning Lives Around, Providence House - Ocean, Project: Protect, Domestic Abuse & Sexual Assault Crisis Center, Resource Center of Somerset,

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[10] http://www.njsp.org/division/operations/domestic-violence-info.shtml

SAFE in Hunterdon).

About two years ago, I was speaking with a Family Part judge[11] in Middlesex County about this issue. She related a case where a man had obtained and dropped two restraining orders, showing signs of physical injury. Before he dropped the second one, she (properly and laudably) encouraged him to seek counselling from a domestic violence group. He asked on the record who the group was and the judge indicated "Women Aware." She said that it was obvious from the look on his face that, as a man, he was not going to reach out to "Women Aware" for help. He dropped his second FRO. There is no chance that he will be seeking a third one, as he was killed by his wife shortly thereafter.

The gender biases of our system is killing people and depriving many of help. While there are limits as to how many lives our system can save, this is one instance where we can do more. The system needs to strongly encourage groups to remove gender references from their names and be to clear that they offer support to anyone, regardless of gender. Our State (including the AOC, courts, and State Police) would not in any way associate itself with a group with an open reference to the race of those it would help in its name or mission

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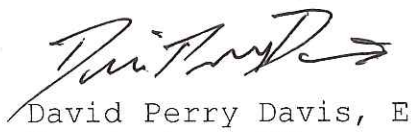
[11] Because this letter is public record and I do not have the judge's permission to use her name in relating an "off the record" story, I am not providing it here, but would do so in further communication regarding this issue after speaking with her. I believe there is a concern about a sitting judge being involved in what may be perceived as a political issue.

statement. The same should hold true on this issue.[12]

Again, thank you for accepting comments from the public as to this important issue. I hope the above input is considered valuable and would welcome the opportunity for further involvement.

Respectfully,



David Perry Davis, Esq.
Pennington, NJ

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[12] To the extent the State can make recommendations to the Federal Government, there have been many attempts to change the name of the Violence Against Women Act to a gender-neutral one closer to the naming of our Prevention of Domestic Violence Act or the statute in place with the Department of Health and Human Services: The Family Violence Prevention and Services Act (FVPSA). Words matter and they contribute to societal attitudes. New Jersey should take the lead in recommending changes as to the name of the Federal statute.