

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

**GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS**



**RICHARD J. HUGHES JUSTICE COMPLEX
PO Box 037
TRENTON, NEW JERSEY 08625-00037**

[Questions or comments may
be directed to 609-984-4228.]

Directive # 03-09

**TO: Assignment Judges
 Family Presiding Judges
 Trial Court Administrators
 Family Division Managers**

FROM: Glenn A. Grant, J.A.D.

**SUBJ: Co-Occurring Child Abuse and Domestic Violence -- Operational
 Guidance**

DATE: May 29, 2009

Background

The occurrence of family violence directed at children, on the one hand, and adult intimate partners, on the other, is characterized differently by the legal and social service systems. Those systems are designed to respond either to "child abuse" or to "domestic violence," but not to both. When both domestic violence and child abuse occur together, the differences in approaches to the two kinds of behavior may fail to address the needs of the victims effectively. The characterization of the behavior in a reported incident is too often based not on the facts and psychodynamics but rather on which "system" is called upon to respond to the incident first.

The very significant differences in the assumptions, goals and laws applicable to the child welfare system and to the domestic violence system have profound implications in the potential outcome for children and families affected by both kinds of behavior simultaneously. They may not, therefore, effectively address the relationship between behavior labeled either as one or the other. This memorandum prescribes better ways to aid the victims of domestic violence and the victims of child abuse in these tragic situations.

In April 2007, a joint conference was convened by then-Chief Justice James R. Zazzali, and then-Commissioner of the Department of Children and Families Kevin M. Ryan. The purpose of the conference was to consider the recommendations contained in a policy statement entitled "Effective Intervention in Domestic Violence and Child

Maltreatment Cases: Guidelines for Policy and Practice" adopted by the National Council of Juvenile and Family Court Judges, Family Violence Department. As a result of the April 2007 conference, a Joint Task Force was appointed comprised of representatives of the Judiciary, the Department of Children and Families, and domestic violence victim advocates. The goal of the Joint Task Force was to coordinate the interface of policies developed by the Judiciary and by the Department of Children and Families to ensure effective handling of cases of co-occurrence. The resulting recommendations were considered and endorsed by the Conferences of Family Presiding Judges and Family Division Managers.

The deliberations of the Conferences in the development of these recommendations were guided by the New Jersey statutes, Rules of Court, case law, policy established by the Supreme Court and the Judicial Council, and the recommendations of the National Council that reflected the latest research findings and a deliberative process that included national experts in the fields of domestic violence and child welfare.

The purpose of this memorandum is to provide operational guidance to judges and staff on the implementation of these principles. This guidance does not, however intend to impinge on judicial discretion or the judge's ability to make decisions in the best interest of the litigants, consistent with the law. Other recommendations that provide for amendments to the Rules of Court, revision of Judiciary case processing manuals, and the actions of Executive Branch agencies will be addressed in separate documents.

The Legal Framework

The Family Division of the Superior Court brings into one division all case types involving families or those in family-like settings. However, the court's view of violence within the family and how the Judiciary should respond to the co-occurrence of child abuse/neglect and domestic violence has not previously been stated in a single unified policy.

The absence of a unified approach to cases of co-occurrence may result in unintentional harm to victims. In a worst case scenario, for example, a parent who is a victim of domestic violence may be re-victimized by having her child removed from her care by the child protection agency seeking to protect that child from similar violence by the same batterer.

New Jersey has adopted different statutes to protect children from abuse and neglect (N.J.S.A. 9:6-1 et seq.) and to protect victims of domestic violence and their children (The Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.). Judges may be called on to address co-occurrence cases in all case types: child abuse or child protection cases (FN), also called Children in Court or CIC cases, family crisis petitions

(FF), custody and parenting time cases (FM/FD), domestic violence restraining order applications (FV), contempt of domestic violence restraining orders (FO), and even in juvenile cases (FJ).

The New Jersey Judiciary recognizes that co-occurrence affects children in two primary ways:

First, one of the child's caregivers may perpetrate domestic violence on the other caregiver *and* physically abuse the child as well, or

Second, one of the child's caregivers may perpetrate domestic violence on the other caregiver, exposing the child to that domestic violence, *and* the non-abusive caregiver is unable or unwilling to protect the child from the resulting emotional abuse even with the assistance of available social services.

What is required is that the judges and staff who comprise the Judiciary understand and recognize the co-occurrence of domestic violence and child maltreatment, and affirm the importance of protecting both the non-offending caregiver and the child in situations of co-occurrence. Indeed, N.J.S.A. 2C:25-18 mandates that:

it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public.

Proper Management and Disposition of Cases of Co-Occurrence

The policy of the Judiciary is that in each situation where the court finds co-occurrence, it should consider:

- protecting victims from physical harm;
- providing adequate social and economic support for families; and
- providing access to services that are respectful, culturally relevant and responsive to the unique strengths and concerns of that family.

Additionally, to the extent authorized by law, the Judiciary recognizes its role to hold the perpetrators accountable for their abusive behavior, to consider appropriate legal interventions and, when required, to order that both the victim and the perpetrator be provided with the kind of social services that can help stop the violence.

A. Court Staff Requirements -- Case Processing

To implement these principles, Family Division staff should observe the following:

1. Court staff should ensure that cases involving co-occurrence receive prompt and focused attention, ensuring that safe placements and services are identified immediately and that safety-enhancing orders are entered for children and other family members.
2. All cases filed in the Family Division should be screened by staff at the initial filing to determine case history and identify any other pending cases.
3. When a domestic violence (FV) case is filed and the family has another pending CIC action, the judge who already is handling the CIC matter should, where practical, be assigned to hear the new FV matter, in keeping with the one family/one judge principle.
4. Judiciary staff is often confronted with questions concerning the use of information disclosed by victims. Any requests from the Division of Youth and Family Services (DYFS) for access to FV court files should be referred to the Family Presiding Judge for determination.
5. When courts and agencies exchange information concerning family members, from either the abuse/neglect or the FV case, from the DYFS file or the court's file, the safety and privacy concerns of all parties should be balanced carefully with the need for access to such potentially harmful information.
6. The Family Division should work with DYFS to identify extended family members who may be able to help and other family resources as early as possible in co-occurrence cases.
7. In a CIC case, court staff must ensure that DYFS has assessed any proposed caregivers for the child, including the non-custodial caregiver, any relation or kin or foster parent, for any history of child maltreatment, criminal involvement, domestic violence, and substance abuse. The caregivers also should be assessed for their willingness to work with the court, social service agencies and the non-offending parents to meet the needs of the child.
8. Family Division staff should encourage the utilization of a domestic violence advocate for the abused parent in all family cases involving domestic violence and encourage the input of domestic violence advocates in the development of service plans.
9. Family Division staff should observe the protocol for monitoring and enforcing domestic violence defendants' compliance with orders to attend counseling and batterers' intervention programs (March 10, 2009 memo from Acting Administrative Director Glenn A. Grant to Assignment Judges and Trial Court Administrators).
10. There are circumstances when an adult caretaker is charged with a criminal offense and is the defendant in a Title 9 abuse/neglect action filed by DYFS.

Pursuant to R. 3:26-1(b), the Criminal Division should provide the Family Division with a copy of any bail order imposing a restriction on contact between a criminal defendant and a defendant's minor children. The rule also provides that such conditions shall not affect contact authorized by an order of the Family Part in a child abuse/neglect case entered after any restriction on contact was imposed as part of a bail order. Pursuant to R. 5:12-6(a)(1), on scheduling any hearing at which visitation conditions are to be imposed or modified, court staff shall provide notice to the county prosecutor and to counsel representing the parent or guardian in the criminal prosecution, as well as to all counsel and parties in the Division of Youth and Family Services matter.

B. Judicial Considerations – Co-occurrence Determinations

In all cases where co-occurrence is present, in exercising its judicial discretion, the court should consider the following:

1. Strive to achieve three outcomes:
 - a. to create safety;
 - b. to enhance well being; and
 - c. to provide stability for children and families, recognizing that pursuant to the Adoption and Safe Families Act (ASFA), the court's mandate is to view the "child's safety and well being as paramount."
2. In cases where the only allegation in a child abuse (FN) complaint is that the child has been exposed to domestic violence, consistent with N.J.S.A. 9:6-8.9, the court should consider both whether the child has been placed at substantial risk of harm from that exposure **and** whether the non-abusing caregiver is unable or unwilling to protect the child from emotional abuse even with the assistance of available social services and services of Department of Children and Families. This two-fold consideration seeks to avoid re-victimizing the non-offending parent by unnecessarily removing the child(ren).
3. The court, when entering an order, should consider:
 - a. keeping the child and the non-abusive caregiver victim safe;
 - b. keeping the child and the non-abusive caregiver together whenever possible (N.J.S.A. 2C:25-29b(11) states, "The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent." Also, N.J.S.A. 9:2-4c requires that any history of domestic violence between the parties shall be considered by the court in making an award of custody.);

- c. holding the perpetrator accountable;
 - d. identifying the service needs of all family members, including all forms of assistance and help for the child; safety, support, and economic stability for the victim; and rehabilitation and accountability for the perpetrator;
 - e. creating clear, detailed custody/parenting time orders that focus on safe exchanges and safe environments for parenting time; and
 - f. when appropriate, using an order of protection pursuant to N.J.S.A. 9:6-8.55 to ensure the safety of the non-abusive caregiver and the child.
4. Judges are often confronted with questions concerning the use of information disclosed by victims. When making decisions about information disclosure, judges should, consistent with laws and policies, balance (a) the need for information required to prove the occurrence of child maltreatment and to keep children safe, with (b) the need of victims of domestic violence to keep information confidential in order to maintain and plan effectively for their safety. (See also Rule 1:38(d), Rule 5:17-4(b) (Family Crisis), N.J.S.A. 2C:25-33 (domestic violence), N.J.S.A. 9:6-8.10(a) (child abuse/neglect), and N.J.R.E. 517.) These questions may arise when DYFS requests DV records, in DYFS interviews with non-offending parents in cases of co-occurrence, or in evaluations.
5. When the Family judge determines that the non-abusing caregiver has the ability to protect the child with or without services, the judge should first consider removing the abuser before separating the child from the non-abusive caregiver.
6. Before entering an order placing a child out of the home in cases of co-occurrence, the court should ensure that any proposed caregivers for the child, including the non-custodial caregiver, any relation or kin or foster parent, have been assessed for any history of child maltreatment, criminal involvement, domestic violence, and substance abuse as well as their willingness to work with the court, social service agencies and the caregiver who has been the victim of domestic violence to meet the needs of the child.
7. Judges should encourage the utilization of a domestic violence advocate for the abused caregiver in all family cases involving domestic violence and encourage the input of domestic violence advocates in development of service plans.
8. In child abuse cases, services ordered through DYFS should focus on the dynamics of domestic violence, the creation of safety plans, and the effects of domestic violence upon children.
9. In child abuse cases, it is important that separate services for the perpetrator and the victim of domestic violence are in the court's orders to address each party's needs.

10. Judges should generally not order couples counseling when domestic violence has occurred. The only exception is that judges may order couples counseling if there is no Temporary Restraining Order or Final Restraining Order under the Prevention of Domestic Violence Act **and** the judge finds it to be in the best interests of the children to do so.
11. Safe parenting time and visitation exchange locations should be utilized so that supervised parenting time and exchanges will be safe for the child and for the battered parent.
12. Victimization of the non-abusive parent should be a factor in determining whether exceptional circumstances exist to allow extension of the reunification time limits. No such extension of time should be permitted, however, if it is contrary to the best interests of the child to do so.
13. DYFS and available service providers should make adequate efforts to ensure the safety of child and adult victims of domestic violence by providing supportive services to the non-abusive parent, or intervention programs to the abusing parent. The judge may use the requirements of state and federal law that DYFS make "reasonable efforts" to reunify the family.

Establishment of a Joint Committee on Children and Domestic Violence in Each County

In addition to the implementation of these specific steps, I ask that the Family Presiding Judge in each vicinage extend the concept of the Chief Justice/DCF Commissioner Joint Task Force on Children and Domestic Violence to each county. To do so, the vicinage should reach out to the DYFS Local Office Managers to develop a joint group to implement the requirements of this memorandum as well as the protocols and policies of DCF. Such county Joint Committees will ensure more productive relationships and facilitate communications among DCF, the Judiciary, and victim advocacy groups. In the establishment of the group, the county may call upon the membership of the CIC Advisory Committee and the county domestic violence working group.

Training

The Family Practice Division in the Administrative Office of the Courts should coordinate training for judges and court staff in addition to the development of a joint training program with DCF.

Implementation Plan

I appreciate your dedication and commitment to provide the highest possible attention to these cases and to implement these principles despite our current economic climate. **Please submit to me a written plan for your implementation of the requirements of this memorandum by Monday, September 14, 2009.** Questions concerning this memorandum may be addressed to Harry T. Cassidy, Assistant Director, at (609) 984-4228.

G.A.G.

cc: Chief Justice Stuart Rabner
Commissioner Kimberly S. Ricketts, DCF
Criminal Presiding Judges
Family Division Judges
AOC Directors and Assistant Directors
Criminal Division Managers
CIC Team Leaders
FV Team Leaders
Francis W. Hoeber, Special Assistant
Steven D. Bonville, Special Assistant