

DOMESTIC VIOLENCE AND CHILD CUSTODY DISPUTES:

A RESOURCE HANDBOOK FOR JUDGES AND COURT MANAGERS



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FOR JUDGES AND COURT MANAGERS**

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Table of Contents

Acknowledgments	vii
Chapter I: Introduction	1
Chapter II: Case Management	9
Chapter III: Mediation	19
Chapter IV: Decision Making	31
Custody Evaluation and Guardians ad Litem	31
Crafting Effective Custody and Visitation Orders	44
 Appendix	
National and State Resource Organizations.....	53
Annotated Resources	57
Bibliography.....	75
Case Management Features in Selected Courts (Tables I-III).....	90
Sample Screening Tools, Reports, and Court Orders	109

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Susan Keilitz
Project Director

Chapter I Introduction

The pervasive impact of domestic violence on our culture is well documented in the popular media and the professional literature. Significant public and private resources now are supporting government and community efforts to stop the violence, empower its victims, hold perpetrators accountable, and foster the development of a violence-free society. Courts play an essential role in these efforts. In the exercise of their criminal and civil jurisdiction, courts increasingly are confronting domestic violence and attempting to stem its negative effects.

Judges and court managers responsible for resolving child custody and visitation disputes are growing acutely aware of the important role they play in helping families work through conflict to promote a healthy environment for their children. Twenty-seven states and the District of Columbia have enacted legislation requiring judges to consider domestic violence in awarding custody and visitation.¹ Twelve states and the District of Columbia have established a rebuttable presumption that granting custody to an abusive parent is not in the best interest of the child.²

Over the past few years, numerous judicial education courses, conferences, and practice materials have targeted family law and domestic violence issues. These resources are designed to assist judges in understanding the detrimental effects of domestic violence on the children who are the subjects of custody and visitation disputes. They also explain the dynamics of domestic violence in the behaviors of and relationships between the parents. Most importantly, they provide guid-

¹ Alaska, Arizona, California, Colorado, District of Columbia, Florida, Hawaii, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wyoming (Baker, 1996).

² Alabama, Delaware, District of Columbia, Florida, Hawaii, Idaho, Iowa, Louisiana, Minnesota, Nevada, North Dakota, Oklahoma, and Wisconsin (Baker, 1997).

ance on crafting orders to reduce the likelihood of future physical or emotional abuse of the abused parent or children.

This handbook draws upon this growing body of resources as well as a recent study by the National Center for State Courts (NCSC) that examined the ways courts identify, process, and resolve custody cases that might involve domestic violence.³

The NCSC study entailed a survey of approximately 150 courts with domestic relations jurisdiction; follow-up surveys on case screening, mediation, guardians ad litem, and expert witnesses; and field study in Baltimore, Maryland; Las Vegas, Nevada; and Louisville, Kentucky.⁴

The purpose of this handbook is to provide judges and court managers a concise guide to resources for:

- Determining when domestic violence is occurring between the parties to a dispute over child custody or visitation;
- Coordinating the management of custody and visitation disputes involving domestic violence to maximize the safety and efficiency of court processes; and
- Using resources to ensure that resolutions to custody and visitation disputes effectively address the best interest of the child and the safety of domestic violence victims.

What is domestic violence in the context of custody and visitation disputes?

In this handbook, domestic violence in the context of custody and visitation disputes is considered to be the occurrence of violence, coercion, or intimidation by a family or household member against another family or household member involved in a dispute over child custody or visitation. Such acts could include attempting to cause or causing physical harm to a family or household member, placing a person in

³ The NCSC study was funded by the State Justice Institute and the National Institute of Justice.

⁴ The three project sites were Jefferson Family Court, Louisville, Kentucky; 8th Judicial Circuit Court, Baltimore, Maryland; and the 8th Judicial District Court, Family Division, Las Vegas, Nevada.

fear of physical harm, causing psychological or emotional distress, and causing economic hardship by blocking access to family funds. In addition to the parents of the child, family or household members could include other persons related to the child (e.g., aunts and uncles), new spouses or intimate partners of one or both of the parents, and new siblings resulting from new relationships of the parents.

What types of custody cases does the handbook address?

The handbook addresses the issues that arise in cases or claims involving the custody or visitation of children whose parents may be divorced or divorcing, separated or separating, or filing a petition for an order for protection from abuse. The parents may be or have been married or may never have been married to each other. The handbook does not necessarily address custody matters related to adoption, dependency, guardianship, or juvenile delinquency cases.

Why is it important to know if domestic violence is occurring or has occurred between the parties in custody or visitation disputes?

The detrimental effects of domestic violence on victims and children are now well known (Field, 1996; Jaffe, 1995; Peled and Edleson, 1993; Jaffe et al., 1990; Pagelow, 1990). It also is well established that the time of separation from an abuser is the most perilous time for victims (Jaffe, 1995; NCJFCJ, 1994; Zorza, 1992a). The filing of a custody or visitation claim by a victim therefore can exacerbate an already dangerous situation. An abuser may file a custody action in an attempt to harass or maintain control over his partner.⁵ An abuser also may engage in delay tactics or file motions to increase costs, wear down his partner's resolve to leave the relationship, and remain in a position of power over her.

By identifying cases in which domestic violence is occurring, the court can assist the victim to protect herself through safety planning and

⁵ The handbook uses the pronoun *she* to refer to victims and *he* to refer to abusers. We acknowledge that some parents who are victims of domestic violence are male and some abusers are female. However, the use of pronouns in the handbook reflects the extensive research demonstrating that in the vast majority of partner abuse cases, men perpetrate violence against women.

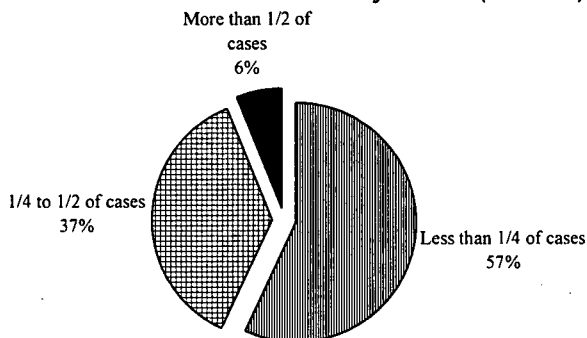
referral to support services. The court also can ensure that the victim is not compelled to participate in court proceedings or mediation sessions that place her in further danger. Abusers who are manipulating both the victim and the judicial process can be discouraged from engaging in this behavior through specific orders issued early in the case. Other needs for identifying domestic violence are to ensure that custody determinations are in the best interest of the children's physical and emotional safety and to ensure that orders specify visitation rights, times, and circumstances, as well as other terms needed to protect victims and children from abuse (Lemon et al., 1995; Goelman et al., 1996; Goelman et al., forthcoming). The resources in this handbook elaborate on these issues and describe others that judges and court managers should consider as they continually assess safety needs of victims and their children.

How often is domestic violence an issue in custody and visitation cases?

It is difficult to determine how often domestic violence is an issue in custody and visitation cases. A basic problem is that custody and visitation disputes are not generally designated and counted separately in court information systems. Courts also are just beginning to systematically identify domestic violence in custody cases and to develop data systems to accurately account for cases involving domestic violence. Although the incidence of domestic violence in domestic relations caseloads has been difficult for courts to document, recent studies demonstrate that domestic violence between parents disputing custody is not rare. One study found that 23 percent of disputed custody claims involved domestic violence (Chandler, 1990).⁶

⁶ A recent study of civil protection orders indicated that 79 percent of 285 women obtaining a protection order had a child in common with the abuser. Most of these women subsequently ended their relationship with the abuser. Although information is not available on the number of these women who filed custody or visitation claims, many of them most likely did take some action to legalize their custody status.

Figure 1: Percentage of Courts Reporting a Given Incidence of Domestic Violence in Custody Cases (n = 124)



In the NCSC's study, 124 courts estimated the proportion of custody and visitation disputes that involve domestic violence (see Figure 1). Fifty-seven percent of these courts estimated the proportion to be less than one-quarter of the caseload. About 37 percent placed the proportion between a quarter and a half, and 6 percent estimated that over half the custody caseload involves domestic violence.

An examination of court records in samples of disputed custody or visitation cases in Baltimore, Las Vegas, and Louisville, the three NCSC study sites, provides another perspective on the incidence of domestic violence in custody cases (see Figure 2). In both Baltimore and Louisville, the proportion of cases having some evidence of domestic violence was about 25 percent, whereas the level of domestic violence was more than twice this rate in Las Vegas.⁷

The differences among the sites in rates of domestic violence in the custody caseload point out one of the problems in measuring domestic violence in court cases: variation in the sources and the quality of the

⁷ Evidence of domestic violence included civil protection orders, documents related to criminal charges in the custody case file, self-reports in questionnaires and interviews, allegations in the pleadings, and other evidence in the case record.

Figure 2: Percent of Dispute Cases in Which Evidence of Domestic Violence Was Found

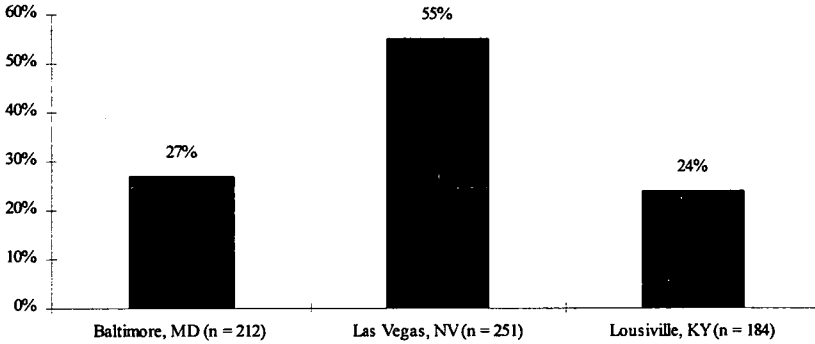
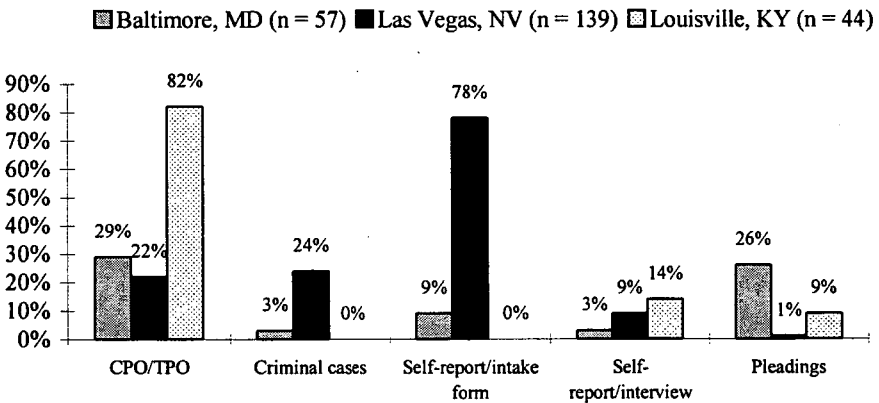


Figure 3: Types of Domestic Violence Evidence Found in Examination of Custody Dispute Case Files



measurement data (see Figure 3).⁸ In addition to the court record, the sources of data in Las Vegas included case files from the Family Mediation and Assessment Center (FMAC), to which judges refer most contested custody disputes. FMAC staff routinely screen for domestic violence using a questionnaire. In just over 75 percent of the cases with evidence of domestic violence, that evidence consisted of self-reports on the questionnaire. The screening process therefore revealed a much higher incidence of domestic violence than a review of court records alone would have indicated. In Baltimore, staff had access only to court case files. About half of the evidence of domestic violence consisted of allegations in the case pleadings and about half consisted of civil protection orders in the case files.

Of the three jurisdictions, Louisville had the least amount of evidence of domestic violence in the case files. To assist NCSC project staff in finding evidence of domestic abuse, court staff ran a cross-check of the data system for civil protection orders with each of the names of the women in the study sample. (The study sample consisted of cases referred to mediation in 1994 and 1995.) This search revealed that 20 percent of these women had obtained a protection order. A significant number of women who had experienced domestic violence therefore had been referred to mediation to resolve their custody claim.⁹ The findings from the cross-check of the protection order database demonstrate the importance of searching every available source of information on domestic violence as early in the case as possible. Although Jefferson Family Court rules allow parties to be exempted from mediation for good cause, litigants experiencing domestic abuse may not know that

⁸ Few court data systems can identify cases in which custody is a disputed issue, and the study sites were no exception. In each of the sites, different methods were used to identify cases likely to have a contested custody or visitation claim for the study samples. In Baltimore, the court identified 212 cases based on the number of hearings set. In Las Vegas, 251 cases were selected from the cases referred to the Family Mediation and Assessment Center in 1994-95. In Louisville, the sample included 184 cases referred to mediation in 1994-95.

⁹ Legislation passed in 1996 (KRS403.036) precludes mediation in dissolution proceedings unless the court finds that (1) the victim's request for mediation is voluntary and not the result of coercion and (2) it is a realistic and viable alternative.

abuse constitutes good cause. They also may be unwilling or unable to reveal the abuse in the procedure the court offers for litigants to show cause for exemption from mediation. (See Chapter III on the use of mediation when domestic violence might be occurring between the parties.)

Taking from these findings the lowest rates of domestic violence in custody cases and using more substantial evidence such as a civil protection order, we can estimate that at least 20 percent of contested custody cases involve domestic violence. This level of domestic violence warrants the commitment of court resources to systematically identify domestic violence occurring between parties to custody and visitation disputes and to address in court procedures and orders the effects of the violence on the victims and their children. Some of the measures courts should implement appear in the brief list below. These and other procedures and practices are discussed in this handbook:

- Consistent, routine screening procedures and practices;
- Special procedures to enhance safety in court proceedings and mediation sessions including lethality assessments;
- Resources for informing the decision making process, such as custody evaluations, expert witnesses, and guardians ad litem; and
- Collaboration with other units of government and community service agencies.

Chapters II through IV of the handbook address three topics: case management of custody disputes, the use of mediation, and decision making in custody and visitation cases. Each of these chapters briefly discusses the issues related to the topic, presents recommendations for practice, and refers the reader to other resources on the topic. The appendix to the handbook contains an annotated bibliography of resource materials of major interest, a bibliography of all sources cited in the handbook, tables on case management features in selected courts, sample screening tools, reports, court orders, and other resources.

Chapter II Case Management

Active management of custody and visitation cases is essential for ensuring the most effective and expeditious resolution of disputes. Three management components vital for custody and visitation cases are case screening for evidence of domestic violence, coordination of case processing, and coordination and collaboration with agencies and services outside the courts. This chapter outlines these basic case management components and presents examples of them from the NCSC custody study sites and other resources.

Screening

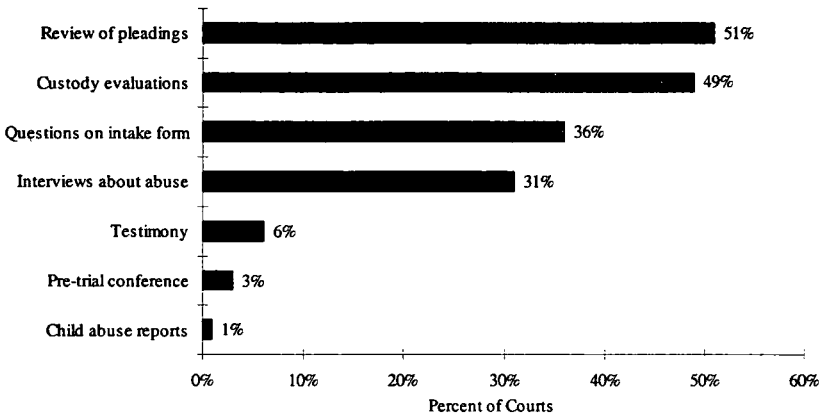
Screening of all contested cases should be accomplished as early in the case as possible. To achieve the greatest effectiveness and efficiency, the court should incorporate screening into its case management system. The court also should develop written protocols for domestic violence screening. The NCSC survey of court practices indicated that courts use a variety of methods to screen for domestic violence (see Figure 4). The most common method of case screening is to review the pleadings in the case. (Table I in the appendix presents various screening methods used in 45 courts.)

A follow-up survey on case screening indicated that courts most commonly rely on judges or other judicial officers to conduct this review (74 percent). Others who review pleadings include court clerk staff, custody evaluators, staff of intake centers, and mediation program staff. The most common time that courts review pleadings is when a hearing is set (65 percent). The next most common time is when the case is filed or the case is referred to mediation (39 percent).

Screening methods reported in the NCSC survey, as well as other suggested methods, include the following:

- Reviewing pleadings upon case filing;
- Reviewing pleadings upon filing a motion for a pretrial hearing or conference on a custody or visitation matter;

Figure 4: Procedures Courts Use to Identify Domestic Violence in Custody Cases (n = 157)



- Requiring attorneys or litigants to complete and attach a screening form to the pleadings;
- Incorporating a screening component into the petition;
- Requiring all litigants who appear for a contested hearing to complete a screening questionnaire;
- Requiring all litigants referred to mediation, a custody evaluation, or other service to complete a screening questionnaire;
- Interviewing all litigants whose questionnaire responses indicate domestic violence between the parties; and
- Searching other information systems for evidence of domestic violence (see “Coordination of Case Processing” below).

Court staff should receive training to ensure that all targeted cases are screened and that the screening procedures are applied consistently. Court policy should set clear parameters for the use of information obtained in screening. The policy should be reinforced in training and set out in a written protocol. The NCSC survey on case screening indicated

that in most courts, judicial officers receive screening information (88 percent). In a third of the courts, custody evaluators and mediators receive the information, while a fifth of the courts share the information with other units of the court or with outside agencies. For all uses of screening information, court staff must strictly maintain the confidentiality of the information about the victim and the evidence of violence.

If the court uses an in-person screening process (e.g., interviews or questionnaires when the parties appear for a hearing or mediation session), the parties should be screened separately. (Examples of screening questionnaires are included in the appendix.) If the parties are in the same room or general area, an abuser may prevent the victim from responding fully and accurately in the screening process. The abuser can contaminate the screening process either through direct threats, intimidating gestures, or other coercive behavior, or merely by being present and instilling fear or reticence in the victim. The need to screen the parties separately should be stressed in training and in written protocols.

Judges and court managers should consider the following guidelines in developing and implementing an effective case screening protocol:

- Screen all cases for domestic violence as early in the case as possible;
- Use consistent screening procedures in all cases;
- Train all individuals involved in screening to conduct it according to the protocol;
- Protect the confidentiality of all screening information;
- Do not screen parties together;
- Provide safety planning for victims identified in screening;
- Refer victims identified in screening to appropriate services; and
- Check all available data sources for evidence of domestic violence (e.g., protection order registries, criminal case records).

Coordination of Case Processing

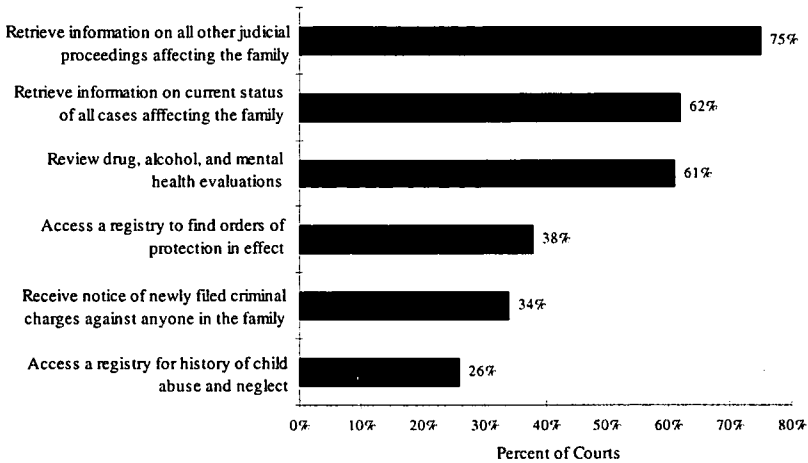
Coordination of case processing with other divisions or units of the court aids in identifying cases involving domestic violence and ensures that appropriate resources, such as victim advocacy, safety planning,

appointment of a guardian ad litem, and custody evaluation, are provided consistently. Coordination also promotes linkages to services available outside the court (see “Coordination with Outside Agencies” below). Coordination can be accomplished through various means, including an intake center, assignment of case managers to individual cases, and assignment of individuals to perform specific functions, such as checking each case against a protection order database. Courts should make every effort to identify cases that are related to the current custody or visitation case, such as divorce filings, protection order petitions, criminal filings, abuse and neglect proceedings, or juvenile delinquency actions.

In Las Vegas, for example, the hearing officer for emergency protection order petitions checks the case information system to identify any pending divorce or custody/visitation matters. If a pending matter is found, the hearing officer directs the protection order case to the assigned judge. The assigned judge determines whether to hear the protection order case. This system ensures that the judge is aware of the protection order petition. Another method to capture information about domestic violence is to include, as Louisville does, a section on protection order petitions to note any pending custody, visitation, or divorce cases. The petition can then be forwarded to the judge assigned to the pending domestic relations case or to the file for that case if it is pending in another jurisdiction in the state.

The NCSC survey of court practices in custody cases indicated that a growing number of courts can access information relevant to their family caseloads (see Figure 5). This information includes the status of pending and past cases related to the current matter, protection order registries, child abuse registries, and substance abuse evaluations. (Table I in the appendix lists the types of information 48 courts report they can access.)

The concept of a case manager is one that holds promise for coordinating cases effectively and efficiently. Custody and visitation cases can involve the interactions of many individuals through a variety of communication means. Assigning managers to individual cases reduces the likelihood that important issues in the case are overlooked in the crush

Figure 5: Court Access to Information (n = 157)

of court workloads.¹⁰

The Jefferson Family Court in Louisville, Kentucky, and the Eleventh Judicial Circuit Court in Miami, Florida, provide examples of two case manager models. In Louisville, the family court currently is a pilot project. One of the features of the project is the use of family court support workers trained in social work. A family court support worker is assigned to each judge in the family court. Family court support workers are responsible for facilitating services for the cases assigned to their division. These duties include arranging for services with various agen-

¹⁰ Courts also should establish mechanisms for judges to discuss issues of concern in managing and deciding custody and visitation cases. Judges often spend the majority of their time working independently and therefore do not have opportunities to share ideas with other judges who may be facing challenges similar to their own. In Las Vegas, judges use e-mail to communicate with each other and with the Family Mediation and Assessment Center about special concerns, services rendered, and recommendations made in pending cases.

cies and coordinating hearings and services for parties to domestic relations cases who have filed a petition for a protection order. They also work together to share information among all the judges in the family court. Although this case manager model works well to coordinate matters within the family court, it lacks a connection to the criminal court. The link to the criminal court is crucial for ensuring that custody and visitation disputes that involve domestic violence are identified and adjudicated appropriately.

The case manager model used in Miami includes this key component. In Miami, staff of the family court and the domestic violence court, which has jurisdiction for civil protection orders and criminal cases, coordinate cases across the two courts. When a petition for a protection order is filed, domestic violence intake staff automatically search for any pending divorce, custody, visitation, or criminal case. Similarly, staff of the family court routinely check the protection order database when a family case is scheduled for a hearing. Staff of both courts receive the same training to ensure that the system functions properly. This integrated case manager model may require organizational, staff, and data system changes, but it will be more effective in addressing domestic violence issues coming before the court through its family, civil, and criminal divisions. The integrated model also may reduce workload pressures on the court because hearings and services can be coordinated more efficiently.

Effective case coordination should include the following elements:

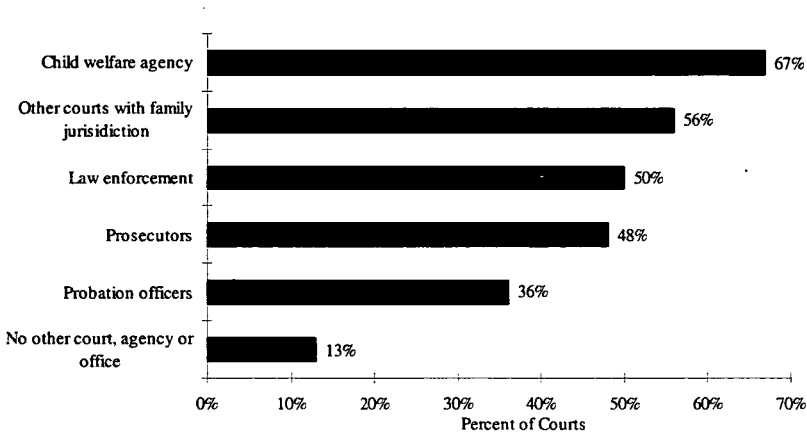
- Assignment of a case manager to each disputed custody and visitation case;
- Automatic checks of all available sources for pending cases related to the custody or visitation case;
- Assignment of all matters related to the custody or visitation case to the same judge; and
- Coordination of cases across family, civil, and criminal divisions of the court.

Coordination with Outside Agencies

Courts should establish and maintain relationships with other units of government and other service providers that might be involved in custody, visitation, and other family cases. Case coordination within the court should be linked to coordination with outside agencies. Courts most commonly share information with child welfare agencies and law enforcement, but a few courts have expanded their network to include service providers, schools, and others (see Figure 6). (Table I in the appendix lists the outside agencies with which 42 courts share information.)

Louisville's court maintains strong relationships with other government and community agencies. The Cabinet for Families and Children (CFC), the state social services department, provides adult protective service workers as liaisons to the family court for the court's protection order calendar and dependency, neglect, and abuse calendar. Additionally, the Center for Women and Families provides court advocates who assist victims at court hearings and provides linkages to community resources. The Jefferson County Child Support Division has court-based staff to establish paternity and child support obligations. Representatives from these agencies work with family court support workers to assess whether visitation should occur, develop safety plans, arrange temporary custody and visitation, and establish paternity and child support. Family court support workers also participate as court liaisons on a variety of community projects (e.g., domestic violence information sessions, Jefferson County Office for Women Domestic Violence Prevention Coordinating Council, Preventing Teen Violence, Emergency Protective Order Subcommittee, Children's Playroom, Coalition for the Homeless, Elder Abuse Committee, Coalition of Middle Schools, and Families in Transition). These activities encourage greater knowledge of the availability of services and facilitate access to services for litigants.

The Circuit Court of Baltimore City provides another example of collaboration between the court and outside agencies to provide services to litigants. Parents in most contested custody and visitation disputes are required to participate in a five-hour parenting seminar. The format and content of the seminar evolved from a model 12-session

Figure 6: Sharing Court Information (n = 157)

program developed collaboratively by the Sheppard and Enoch Pratt Hospital and the court. Professionals from Sheppard Pratt lead the seminars, which take place at the courthouse. A component of the seminar presents information on mediation services available.¹¹ Judges and others from the court also participated on a joint committee of the Baltimore City and Baltimore County bar associations on domestic violence and its impact on children. The committee produced a domestic violence resource directory for judges, lawyers, and other professionals. The directory contains information on a number of issues related to domestic violence and references to services available to address those issues.

Coordination with outside agencies can be improved by implementing the following practices:

¹¹ Parties to cases in which domestic violence has been identified generally are not referred to the seminar. However, in individual cases in which the judge or master hearing the case determines that the seminar would be helpful to the parties, the parents are assigned to attend separate sessions.

- Maintaining current lists of qualified service providers (mediators, custody evaluators, guardians ad litem, victim advocates, other victim services);
- Establishing liaisons with service providers; and
- Establishing communication mechanisms, such as periodic meetings among court staff and service providers.

RESOURCES ON CASE MANAGEMENT

Domestic Abuse and Mediation Project (1992). *Mediation in cases of domestic abuse: Helpful option or unacceptable risk?* Portland: Maine Court Mediation Service.

Domestic Violence Visitation Task Force (1994). *Domestic violence visitation risk assessment*. Boston: Probate and Family Court Department of the Massachusetts Trial Court.

Lemon, Nancy, Jaffe, Peter, and Ganley, Anne (1995). *Domestic violence and children: Resolving custody and visitation disputes*. San Francisco: Family Violence Prevention Fund.

Newmark, Lisa, Harrell, Adele, and Salem, Peter (1994). *Domestic violence and empowerment in custody and visitation cases: An empirical study on the impact of domestic abuse*. Madison, WI: Association of Family and Conciliation Courts.

Chapter III Mediation

In the last 25 years, custody and visitation mediation has become a wide-spread practice. Jurisdictions in 38 states and the District of Columbia currently use mediation to resolve custody disputes (Pearson, 1997). This trend has been fueled by generally favorable experiences of courts and litigants with mediation. In some jurisdictions, mediation has helped to relieve caseload pressures by resolving an estimated 50 to 70 percent of referrals (Thoennes et al., 1995). A 1992 study by the National Center for State Courts found that participants in custody and visitation mediation are significantly more satisfied with the agreements they reached than participants involved in litigation (Keilitz et al., 1992). As the use of mediation has become common-place in custody and visitation disputes, many experts in domestic violence and professional mediators have voiced strong concerns that mediation may be inappropriate in many cases referred to mediation.

These experts warn of the dangers of both the mediation process and the agreements that may be reached in mediation. A primary concern is the safety of the victim and her children. Legally separating from an abusive spouse or partner is a dangerous process and the risk can be exacerbated by continuing contact during mediation sessions. The ability of mediated agreements to adequately protect the victim also has been challenged. Victim advocates stress that violence in the relationships of disputing parents severely constrains the ability of victims to effectively negotiate with their abusive partners (Hart, 1990). The power differential commonly is so skewed in favor of the abuser that even a skilled mediator cannot balance the negotiations. The abuser also can manipulate the mediation process to perpetuate his control over the victim. Another serious objection is the quality of mediation available in court- and community-based mediation programs. Inadequate screening, training, and resources create a mediation process that is inappropriate and potentially dangerous (Pearson, 1997).

Mediation advocates, while recognizing these problems, argue that mediation may be preferable to litigation in many cases. With the rise of pro se divorce litigation, many victims do not have the advantage of strong, assertive advocacy in adversarial litigation (Pearson, 1997). The absolute exclusion of domestic violence victims from mediation may deny them the opportunity to choose a process that, if appropriately conducted, can result in detailed safety planning and workable solutions to ongoing custody and visitation issues (Erickson and McKnight, 1990).

Two seminal works developed by court and domestic violence experts set out parameters for the use of mediation in custody and visitation cases in which domestic violence may be involved. The first report is from the Domestic Abuse and Mediation Project of the Maine Court Mediation Service (1992). The second is the Model Code on Domestic and Family Violence, produced by the National Council of Juvenile and Family Court Judges (1994). Although there are some differences in the recommendations of the two documents, the conclusions that are common to both provide clear direction to courts for using mediation in custody and visitation cases:

- All cases eligible for referral to mediation must be screened for domestic violence.
- All cases referred to mediation must be screened again for domestic violence.
- Participation in mediation must be voluntary with full knowledge of what the process entails and what other options the victim has.
- Mediators must be well-trained and qualified to recognize indications of domestic violence before and during mediation.
- Mediators must be qualified to conduct and terminate mediation safely.
- Victims must have permission to bring an attorney, advocate, or other support person to mediation sessions.

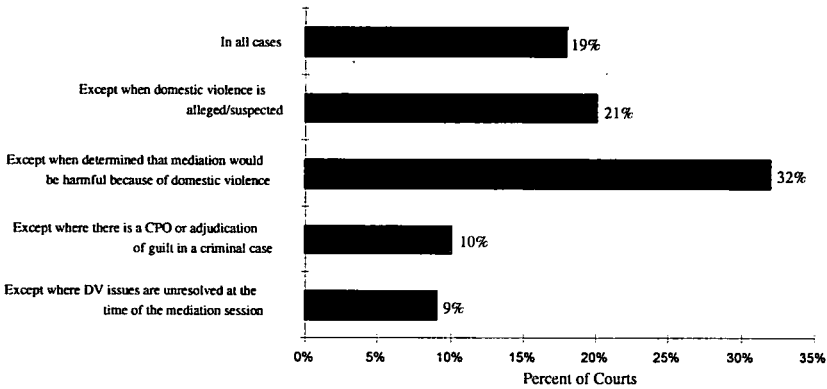
Despite strong and well-grounded advisories on the dangers of mediation for victims of domestic violence and official policies against referral of cases that involve domestic violence, in practice, many of the custody and visitation cases referred to mediation do involve domestic abuse. In some jurisdictions, mediation is mandated in all contested custody cases.¹² Mandatory programs often are implemented to promote efficient case management and to encourage a nonadversarial approach to resolving disputes involving families.

In many jurisdictions law or policy excludes cases involving domestic violence from mediation. However, court staff often are not adequately trained to screen cases for domestic violence. Caseload pressures promote the use of procedures that are efficient for the court but potentially dangerous for the victim, and victims often do not receive clear guidance on how to exercise their right to refuse participation. Consequently, in many cases, mediators are not aware of domestic violence until the mediation process has started. This places excessive responsibility on mediators, many of whom do not have adequate skills to conduct or terminate mediation safely.

In the NCSC survey of court practices in custody cases, approximately 70 percent of the courts reported using mediation in custody cases. Most of these courts place some type of limitation on mediation referrals in cases that might involve domestic violence, but nearly 20 percent make no explicit exception for such cases (see Figure 7).

¹² Jurisdictions in approximately 33 states mandate the use of mediation in contested custody disputes: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, and Wisconsin (Newmark et al., 1994). Many states with custody mediation have special provisions for domestic violence cases: for example, cases are not referred if a protection order has been issued or there is a criminal domestic violence charge (Florida), victims must request mediation (New Hampshire), mediation must be conducted in separate sessions if a restraining order has been filed (California), and cases are referred to mediation only if the process would serve the best interest of the child (Ohio) (Lemon et al., 1995).

Figure 7: Circumstances Under Which Mediation is Used in Custody Disputes (n = 149)



Qualifications of Mediators

Some objections to the use of mediation in domestic abuse cases stem from the poor quality of mediation that results from inadequately trained mediators (Erickson and McKnight, 1990). The NCSC survey of court practices in custody cases supports this concern. At the time of the survey, only 61 percent of the courts with custody mediation required domestic violence training for mediators. Before referring a case to mediation, judges should verify the qualifications of the mediator. These qualifications include the following knowledge and skills:

- Training in domestic violence issues, including how abuse affects victims and children;
- Ability to identify and screen for domestic violence;
- Ability to recognize and assess the potential risk the abuser poses to the victim;
- Understanding of the elements of a safety plan and how to develop one;
- Ability to effectively mediate if there is a power imbalance;

- Ability to terminate mediation safely;
- Knowledge of local resources for victims and abusers; and
- Knowledge of relevant statutes and case law.

Screening

Most victims do not volunteer information about the abuse they have experienced. Frequently, abuse is kept secret from court personnel, mediators, and even the victim's attorney (Pagelow, 1990). The importance of identifying domestic violence in mediation is twofold. First, the existence of domestic violence can compromise the safety of the victim or the children and, in some cases, the mediator and other court personnel. Second, the efficacy of the mediation process depends on the ability of both parties to negotiate equally and craft a workable resolution to their conflict. Mediators and court personnel may use a variety of techniques to identify domestic violence. Mediators should continue to screen for abuse throughout the mediation process.

- Before referring a case to mediation, courts should routinely check for protection orders and past criminal charges.
- A written questionnaire that includes specific questions designed to reveal domestic violence can be administered before referral (see the appendix for examples of screening questionnaires). Questionnaires should be completed separately and each party should be assured that his or her responses will remain private.
- After completing, or in lieu of, a questionnaire, mediators or court intake staff can interview each party separately. Interviewers may ask questions that can help identify violent relationships without referring directly to abuse (e.g., Has the couple moved frequently? Who makes financial decisions? Is the family isolated? How does the couple handle conflict and anger?) (Pagelow, 1990). Mediators also should ask direct and specific questions about abusive behaviors, such as shoving, hitting, and other physical abuse.

- Experienced mediators report that most victims and abusers exhibit signs indicating that abuse may be a factor: body language, the use of “permission” words, signs of jealousy, one spouse dominating the conversation, demeanor of the parties (e.g., confident and poised abusers, nervous or unsure victims) (Pagelow, 1990).

Proceeding After Domestic Violence Is Identified

If domestic violence has been identified, it is important for the mediator to give the parties a full explanation of the mediation process and what to expect.

- The mediator should make it clear that proceeding with mediation is voluntary. The mediator should discuss the pros and cons of mediation and other options, taking care not to pressure the victim into mediation.
- The mediator should advise the victim that the abuser may put pressure on her to participate in mediation because he thinks mediation will be advantageous for him.
- The victim should be aware that successful mediation depends on her ability to express her wishes and needs during negotiations.
- If the victim chooses to mediate, the mediator may decide that mediation should not take place if he or she believes that mediation cannot be conducted safely, fairly, and in good faith.
- The mediator may suggest that the victim retain an attorney experienced in cases involving domestic violence and mediation. The attorney or a battered women’s advocate may accompany the victim to future mediation sessions to help with negotiations.
- During a separate meeting, the mediator may attempt to help the abuser acknowledge the abuse. The mediator should make clear that abuse is not acceptable behavior and that mediation will terminate if any further abuse occurs.

- The mediator may suggest that the abuser retain an attorney as well. If the abuser acknowledges that the relationship has been violent, the mediator may refer him to a batterer treatment program. The mediator also may make participation in a batterer treatment program a requirement for continuing mediation.

Conducting a Risk Assessment

Mediators should assess the risk the abuser poses (a lethality assessment tool is in the appendix). The assessment should include the following factors:

- The couple's history of violence, including death threats or child abduction;
- The pattern of violence (e.g., times, places, circumstances of abuse);
- Victim injuries;
- The impact of the abuse on the victim and the children; and
- The potential for continuing abuse.

Developing a Safety Plan

If mediation is agreed to by both parties, the mediator should assist the victim to develop a safety plan. The mediator should clarify to the victim, however, that neither the mediator nor the safety plan has the power to stop the abuser from being violent. The safety plan should create a secure environment for mediation and establish ground rules for day-to-day interaction. This can help the parents define boundaries and establish a foundation for handling future contact. It may be helpful for the mediator to emphasize that the rules are in place to protect them both—the victim from potential abuse and the alleged abuser from future accusations of violence.

- The mediator can begin by providing the victim with information about what a protection order is, where and how to file for one, and what to do if the protection order is violated.

This information may be given in the presence of the abuser; it can help underline the seriousness of domestic violence and help the abuser to understand the ramifications of violating a protection order.

- The mediator should encourage the victim to contact a local victim advocacy organization to obtain the assistance of an advocate who is more experienced in safety planning and can assist the victim with other service needs.
- The mediator should ask the victim what arrangements she thinks will make her safe.
- The safety plan should create rules for the current custody arrangement (e.g., no-contact provisions or an agreement to meet in a public place to exchange children).
- Ground rules concerning communication should be established. The parents may arrange to communicate through attorneys if they have counsel. The parents may establish a plan for communicating about their children.
- If the victim and the mediator feel that the victim can participate in conjoint mediation sessions, the safety plan should ensure that the mediation sessions are conducted in a secure environment. Some precautions that may be used are separate waiting rooms, metal detectors, silent alarm systems, and uniformed guards or bailiffs to provide security.
- The mediator should stress to each party that mediation will not continue if either of the parties violates a protection order or the ground rules they have established together.
- The mediator should inform the victim about community services available to victims of domestic violence.

Conducting the Mediation

In addition to taking precautions to protect the victim from physical abuse during mediation, mediators should take steps to promote an equal balance of power between the victim and the abuser. For example, fear of losing custody or experiencing further intimidation may cause victims to understate their financial needs during mediation. The fol-

lowing techniques are some ways mediators can help increase victim safety and level the negotiating field.

- Mediators may consider caucus or shuttle mediation where parties meet separately and proposals are communicated through the mediator. In these cases, sessions should be scheduled to avoid victim/abuser confrontations before or after sessions.
- In some cases mediation sessions can be conducted by teleconference.
- If the victim and the abuser do meet, the victim should be allowed to bring a support person to the session. The support person may be the victim's attorney, but could also be a battered women's advocate or a friend.
- If mediation sessions are joint, the mediator may prearrange signals so the victim can nonverbally communicate feelings of pressure or fear to the mediator.
- Co-mediation using a male/female team of mediators can provide a more secure environment. Some mediators have found that each parent relates better or feels supported by a same-sex mediator (Magaña and Taylor, 1993; Pearson, 1997). This approach also gives mediators an opportunity to share impressions and plan strategies.

Safe Termination

Each party and the mediator should have the right to terminate mediation at any point. In situations where safety of the victim is in jeopardy, mediation should be terminated. Some indicators of danger might be non-conformance of the abuser with the safety plan, evidence that the abuse is continuing, or signs that the abuser is capable of seriously injuring or killing the victim (e.g., threatens suicide, buys a weapon, threatens murder). If the mediator feels that the abuser continues to control the victim psychologically and cannot compromise and negotiate during mediation, mediation should cease.

The Toronto Forum on Woman Abuse and Mediation recommended guidelines for safety and the termination of mediation. These recommendations include:

- Never attributing the reasons for terminating mediation to the victim;
- Encouraging the abuser to decide that mediation is not working; and
- Forming a safety plan with the victim to ensure a safe termination (Charbonneau, 1993).

Implementing the Agreement

If the parties are able to form an agreement several steps can be taken to ensure that it is fair and can be implemented safely.

- The mediator should review the agreement to make sure the victim and children will be adequately protected and that both parties fully understand the terms.
- The agreement should be reviewed by attorneys for both parties before signing.
- The agreement should be submitted to the court for careful judicial review and become a court order. The agreement then will be enforceable in the event that the abuser does not comply with the terms. The order also could be relevant in other matters, such as petitions for protection orders and probation orders stemming from any criminal proceedings.

RESOURCES ON USING MEDIATION IN CUSTODY AND VISITATION DISPUTES

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WWW Site

- Academy of Family Mediators
<http://www.igc.apc.org/afm>

Chapter IV Decision Making

This chapter discusses two critical functions of the court related to decision making in custody and visitation cases involving domestic violence. The first of these functions is to ensure that the judge has the information needed to render fair and effective decisions in custody and visitation cases. The responsibility for developing and implementing systems for obtaining the information lies primarily with the court manager. The second function concerns the ultimate purpose of the court, which is for the judge to consider the information presented to him or her in order to craft custody and visitation orders that ensure the safety of the domestic violence victim and the children, reduce the potential for continued abuser control over the victim, and promote the enforceability of the court's orders.

Gathering Information for Custody and Visitation Decision Making: Custody Evaluation and Guardians ad Litem

Custody and visitation disputes differ from other matters presented to judges for resolution. The need to consider the best interest of the child who is the subject of the dispute often requires the judge to consider evidence other than the evidence presented by the parties. In addition, increased awareness of domestic violence, the influence of substance abuse, and the growing trend toward pro se divorce litigation have impaired the ability of parties disputing custody and visitation to negotiate fair agreements on these issues. These societal problems present difficult issues for the court to resolve absent evidence beyond the assertions of the parties. To improve their ability to reach fair and appropriate decisions in custody and visitation cases, courts have turned with greater frequency to independent sources of information for guidance.

Courts most commonly have ordered custody evaluations to help them resolve custody and visitation cases. Some courts also use custody

evaluations to identify the presence of domestic violence in a family,¹³ as well as to explore its severity and past and potential effects on the children. Another method becoming more prevalent for assisting courts in custody and visitation decision making is the appointment of a guardian ad litem (GAL). Courts traditionally have relied upon GALs to represent the interest of the child in abuse and neglect actions, but courts now are expanding their use of GALs to custody and visitation matters.

Both custody evaluations and the services of GALs provide tools for uncovering information the parties are not disposed to reveal. They also can help the parties and the court use the information to better understand what arrangements for custody and visitation will best serve the interests of the children within the context of the family's circumstances. Custody evaluators and guardians ad litem often are called upon to provide expert testimony in cases for which they have prepared a report for the parties or for the court.¹⁴ The special position that custody evaluators and GALs hold in custody and visitation proceedings, the reliance that courts place upon their reports, and their potential to be called as witnesses in the cases to which they are assigned raise significant implications for court utilization of these resources.

¹³ In the NCSC survey of courts with jurisdiction for child custody matters, 70 of 141 courts reported using custody evaluation as a means to identify domestic violence in a family.

¹⁴ A third information source judges draw upon to resolve custody cases are expert witnesses. Less is known about the use of other experts, either by the parties or by the court, to introduce evidence on domestic violence in custody and visitation disputes. The handbook does not address the use of expert witnesses in custody cases, primarily because this is a developing field and courts appear to have limited experience to date in using experts on domestic violence in custody cases. An NCSC survey on the use of experts indicated that the frequency of using expert testimony is low. The majority of these courts (76 percent) estimated that they appoint expert witnesses in less than one-quarter of their custody and visitation cases. Only 25 percent of these courts require expertise in the dynamics of domestic violence. Judges can expect to hear more from expert witnesses as domestic violence advocates continue to urge victims and their attorneys to present their own evidence to the court on the presence of domestic violence and its effects on the parties, their children, and custodial and visitation arrangements (Dutton, 1996; Hart and Hofford, 1996; Crites and Coker, 1988).

The particular purposes of custody evaluations and services of GALs differ, as do the specific responsibilities of and qualifications for evaluators and GALs. The issues relevant to these various goals and duties are addressed below in separate sections on custody evaluations and GALs. However, on several dimensions related to performance, selection, and training, courts should have similar expectations for both custody evaluators and GALs, particularly when issues of domestic violence are raised or may exist.

As judges and court managers know well, the resolution of custody and visitation disputes can become protracted and costly for both the court and the parties. A battle of experts usually exacerbates an already emotionally and financially draining situation for the parties. It also can produce confusing and contradictory testimony, require extensive cross-examination, and lead to appeals of court decisions.

The services and information that custody evaluators and GALs provide can reduce the potential for extended and expensive proceedings. However, the cost of obtaining these services can be high in terms of administrative burdens, costs to the court and parties, and elapsed time without the stability that final court orders afford. Courts therefore should resist the temptation to use custody evaluations and GAL services as a matter of course in contested custody and visitation cases. Instead, they should identify the cases that appear to require these resources and consider carefully which services are the most appropriate.

In addition to conducting triage on custody cases, courts should establish procedures to ensure that the persons serving as evaluators and GALs are neutral, qualified to provide the information judges need to make custody and visitation determinations, and knowledgeable about the numerous ways in which domestic violence can affect the parties, their children, and the effectiveness of custody and visitation orders. Qualifications criteria are particularly important to establish because of the weight that many courts place on the reports and recommendations made by custody evaluators and GALs.

To obtain the greatest benefits of custody evaluations and GAL services, courts should consider standardizing the selection, qualifications, and performance of evaluators and GALs in the following ways:

- By establishing criteria for deciding which cases would benefit from a custody evaluation or the appointment of a GAL;
- By maintaining a roster of court-approved evaluators and GALs from which the court manager can select a service provider; because some cases require evaluators and GALs to consider cultural norms to accurately assess behaviors, the roster should reflect the community served by the court;
- By developing a system for qualifying custody evaluators and GALs to be on the roster;
- By requiring all custody evaluators and GALs to have training and experience in identifying domestic violence and knowledge about its potential effects on the parties and on the children (e.g., the victim's demeanor, the abuser's behavior);
- By requiring all custody evaluators and GALs to have knowledge of domestic violence treatment issues (e.g., counseling for victims and children, batterer treatment);
- By assessing whether potential evaluators and GALs have misconceptions or biases about domestic violence that would preclude an impartial report to the court;
- By requiring all custody evaluators and GALs to have knowledge of services and resources for victims and families available in the community or from other government sources;
- By establishing clear expectations for the form and content of reports and processes and methods to be employed to conduct an evaluation or represent a child;
- By linking report requirements to the issues or factors that the judge must consider in making a custody or visitation determination;
- By providing resources for training, including coordinating an effort to educate evaluators and GALs in domestic violence issues when necessary (the district attorney's office may be a good source of domestic violence trainers; see other potential resource organizations in the appendix); and
- By requiring pro bono and reduced rate services for lower-income parties in exchange for training.

In considering the discussion below on custody evaluators and GALs, judges and court managers should keep in mind these issues that apply to the use of both resources.

Using Custody Evaluations

Courts should set and regularly employ criteria for deciding when a custody evaluation would be helpful and appropriate. A primary consideration regarding the use of custody evaluation is the type of evaluation to employ in particular circumstances. This consideration is important because the type of evaluation ordered can affect costs and other burdens on the parties and the court.¹⁵

In the majority of cases in which a custody or visitation determination would benefit from a custody evaluation, an evaluation that addresses the actual physical and behavioral environment of the family may be sufficient to provide the information a judge needs. This type of evaluation examines the children's relationships with each of their parents, the parties' parenting experience and skills, and the children's performance in school. In some cases, the judge may require information about the mental health or psychological needs of the children or parents. In these more limited circumstances, the court may order a more extensive evaluation that entails psychological testing.¹⁶ Courts may use an environmentally oriented evaluation to determine whether a psychological evaluation is warranted.

A number of models, standards, and guidelines for custody evaluations have been developed or proposed (Ackerman and Ackerman, 1996). Many of these guidelines are addressed specifically to psychologists, who comprise a significant proportion of professionals in private

¹⁵ In the last ten years, the average fee for a custody evaluation involving psychological assessment has tripled; in 1996, the average cost was \$2,646 (Ackerman and Ackerman, 1996).

¹⁶ All evaluators should have specific training to recognize and deal with domestic violence issues. Victims of domestic violence can appear to have a serious mental disorder (schizophrenia, borderline personality disorder, depression). To make an effective assessment, evaluators must have the skills to separate symptoms of post-traumatic stress disorder experienced by victims of domestic violence from these other disorders (Hysjulien et al., 1994).

practice who conduct custody evaluations. However, courts generally accept the educational credential from other professions in qualifications to perform custody evaluations. To accommodate the professional diversity of custody evaluators appointed or used by the courts, this handbook provides suggestions derived primarily from the Association of Family and Conciliation Courts Model Standards of Practice for Child Custody Evaluation. The AFCC Standards are broader than standards for psychologists and therefore are more generally applicable to the court environment.

Custody evaluation goals

Courts should expect a custody evaluation to accomplish the following goals:

- Provide to the court, parents, and attorneys a written report that presents the evaluator's findings and the data supporting them; these findings should be linked to the factors the judge must consider in making a custody or visitation determination;¹⁷
- Identify the existence, nature, and potential consequences of domestic violence within the family and document the evidence of domestic violence;
- Identify the strengths, vulnerabilities, and needs of all other members of the family (e.g., the developmental needs of the children, the quality of the relationships between each parent or caretaker and the children, the ability of each parent or caretaker to care for the child, which in some cases will include the psychological health of the child and/or the parent or potential caretaker);
- Develop a plan for custody and visitation that builds on the strengths of each individual that will serve the best interests of the children; and

¹⁷ The 11th Judicial Circuit Court in Miami, Florida has developed a standard custody evaluation report form that tracks the factors that judges use to make custody determinations. A summary of the form is in the appendix.

- If domestic violence is a factor in the dispute, develop a plan that addresses the potential dangers of continuing contact between the victim and the batterer, and any need to restrict visitation.¹⁸

Qualifications of custody evaluators

The court should ensure that custody evaluators have the qualifications listed in the introduction to this chapter. These qualifications include the ability to identify domestic violence, knowledge of its effects on the parties and children, and knowledge about available services, treatment, and other resources for victims and families. The AFCC Standards on qualifications for custody evaluators provide guidance on establishing requirements for selection by the court to perform custody evaluations. These standards include the following:

- Evaluators should have a minimum of a master's degree in a mental health field that includes formal education and training in child development, child and adult psychopathology, interviewing techniques, and family systems.
- Psychological testing and interpretation should be conducted by a licensed/certified psychologist who has training and experience to understand the issues in custody evaluations.
- Evaluators should have current knowledge of the impact of divorce on children and adults and research on the success of various custody and visitation arrangements.
- Evaluators should understand the legal criteria concerning the original determination of custody and the criteria for change of custody, the use of custody evaluation, qualifications for custody evaluators, and the legal requirements of the custody evaluation process of the jurisdiction in which the evaluation is conducted.

¹⁸ Making overall custody recommendations is a controversial issue among professional evaluators; inclusion of a final recommendation often depends on the preferences of the individual evaluator. See Gindes (1995); Stahl (1994); and Melton et al. (1987).

- For evaluators with less than two years of experience, ongoing supervision and consultation should be available.

Custody evaluation methods and reports

Custody evaluators use various assessment methods and techniques depending on the type of evaluation they are conducting. The court's reporting requirements should call for evaluators to collect similar types of information from each parent and to spend approximately equal amounts of time with each parent. Because much of the evaluation process is subjective, effective evaluation requires the evaluator to be as objective as possible. It is equally important to maintain the appearance of neutrality, which can be undermined when an evaluator is hired and paid by only one party.

The most common evaluation methods are:

- Interviewing the parents, the children, and others who have knowledge about the children's environment;
- Observing the parents in interactions with their children;
- Conducting home visits;
- Testing the parties and children as needed; and
- Using information from other sources, such as teachers, daycare professionals, health care providers, therapists, family members, friends, and neighbors.

When there are allegations or indications of domestic violence or the evaluator has determined that domestic violence is an issue, precautions should be taken to ensure the safety of the victim, the children, and the evaluator. Parties should meet with the evaluator separately, and meeting places should be secure. Furthermore, in some jurisdictions, child custody evaluation reports may be public record and open to the parties involved. Sensitive information is often vital to support the recommendations of the evaluator, however, and must be included in the report. In cases involving domestic violence, the safety of the children and the victim may be compromised if the information in the evaluation is made available or accessible to the batterer. The court should take

special measures to share pertinent information and recommendations with the parties without sharing the full details of the report.

Using Guardians ad Litem

The right of children to be represented by counsel has evolved over the past 30 years. The Federal Child Abuse and Treatment Act of 1974 mandated a guardian ad litem for every child in a child abuse or neglect proceeding. In 1967, the U.S. Supreme Court ruled that children in juvenile delinquency proceedings have a right to counsel at the state's expense.¹⁹ Most recently, courts are appointing GALs in some custody and divorce cases.

Most states have vague laws to guide child advocates in understanding their rights, roles, functions, and responsibilities. Even when specific legislation exists, the terms used (e.g., attorney, child advocate, guardian ad litem, or friend of the court) are undefined and intertwined, which leads to both role confusion and role diffusion in child representation. Only a few states mandate the appointment of GALs in custody cases, and most trial courts appoint counsel only when they deem it necessary.²⁰

The NCSC survey on court practices in custody cases indicated that 72 percent of the surveyed courts appoint a guardian ad litem or special advocate on a case-by-case basis, while another 10 percent appoint a GAL in all custody cases in which domestic violence has been identified. However, the general use of GALs is low. A follow-up survey of courts that appoint GALs in custody cases revealed that the majority of

¹⁹ *In re Gault*, 387 U.S. 1, 4 (1967).

²⁰ The following states require the appointment of a guardian ad litem or an attorney in custody cases if allegations of abuse or neglect are involved: Florida, Louisiana, Minnesota, Missouri, Oklahoma, and Tennessee. Oregon requires the appointment of counsel "if one or more of the children so request." Vermont requires the appointment of counsel whenever a child is called as a witness in a domestic proceeding. In Mississippi, the court must appoint a guardian ad litem if it investigates allegations of abuse. Wisconsin requires counsel for children in all contested custody proceedings. In Connecticut, case law mandates the appointment of a guardian ad litem when there are allegations of abuse.

Figure 8: Percentage of Courts Reporting a Given Incidence of GAL Appointments in Custody/Visitation Cases (n = 67)

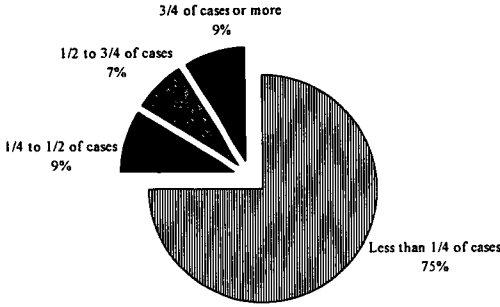
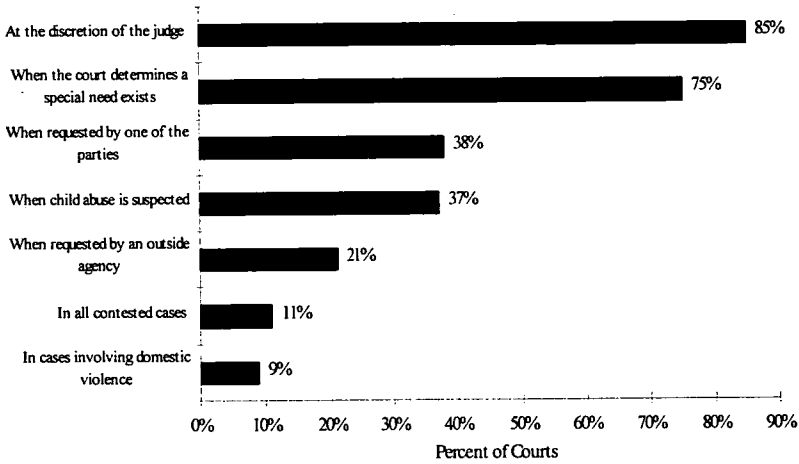


Figure 9: Circumstances in Which Courts Appoint a GAL in Custody/Visitation Cases (n = 71)



these courts (75 percent) appoint a GAL in less than a quarter of their custody cases (see Figure 8).

When to appoint a guardian ad litem in custody and visitation cases

The NCSC survey on the appointment of GALs in custody and visitation cases indicated that GAL appointments occur most often at the discretion of the judge in the case. Several courts automatically appoint a GAL under specific circumstances, such as when child abuse is suspected, domestic violence is alleged or suspected, or custody is contested (see Figure 9).

In promulgating its standards for attorneys and guardians ad litem in custody proceedings, the American Academy of Matrimonial Lawyers (1995) has taken the position that GAL appointments should not be made routinely, but only when the court determines there is some special need. Custody and visitation cases that may involve domestic violence often present the types of special circumstances that warrant the appointment of a GAL. Judges also may be alerted to the need for a GAL when other "red flag" issues exist.²¹ Courts should consider some of the following circumstances to be these red flags:

- There are serious allegations of domestic violence, child abuse, mental illness, substance abuse, or other concerns that may impair the capacity of the parents in the litigation and/or present particular risks for the children.
- The child is being pulled by allegiance by one or both of the parents or is being placed in the middle of the dispute.
- The parents are interpreting events to the child in a conscious or unconscious effort to influence or distort the child's perceptions and attitudes.
- There is a serious imbalance of power between the parents so that one parent is apt to be pressured into concessions that are not in the child's best interests.

²¹ An example of a court order for the appointment of a GAL used in Denver, Colorado is in the appendix.

- Attorneys are not developing issues adequately to address the protection needs of children (e.g., the custody agreement does not call for anger control counseling or substance abuse treatment when the facts of the case indicate these services are needed).

Qualifications of guardians ad litem

Guardians ad litem provide the court with important information about the actions the judge should take to promote the best interest of the child in custody and visitation matters. This responsibility may result in the GAL having significant influence in the judge's decision-making process. Yet, in many courts the work of GALs has lower status than other practice areas. Counsel for children typically are expected to work at far lower hourly rates than other lawyers or on a pro bono basis. Those who accept GAL appointments often are less experienced attorneys or recent law school graduates with no specialized training. The combination of low experience level and high potential to affect the outcome of custody and visitation decisions makes it imperative that the court set qualification standards that ensure that GALs possess the training and experience required to carry out their responsibilities.²²

As a basic matter, the court should require that GALs in custody cases have the knowledge and skills required of GALs appointed in child abuse and neglect cases. These include mediation and negotiation skills as well as knowledge of factors to consider in determining the best interest of the child; federal, state, and local legislation and case law affecting children; cultural and ethnic diversity issues as well as gender-specific issues; child development issues; and dynamics of child abuse and neglect cases.²³

In custody and visitation cases, it is particularly important that GALs have knowledge of domestic violence issues. In addition to the

²² The Rocky Mountain Children's Law Center evaluates the qualifications of potential pro bono attorneys. The questions on the pro bono attorney application are provided in the appendix.

²³ Several of these requirements are adapted from the Missouri Supreme Court Standards for Guardians ad Litem.

qualifications criteria for custody evaluators and GALs set out in the introduction to this chapter (e.g., the ability to identify domestic violence and its effects on victims and children), these issues include:

- The role of victim advocates and the resources they can bring to the case (e.g., connections to shelters, child care, legal services);
- The role of child protective services and ways to protect both the victims and the children; and
- The effects of substance abuse on the occurrence of domestic violence and the victim's response to the violence.

Duties of guardians ad litem

Many states have adopted standards of practice for attorneys representing children in child abuse and neglect proceedings. (Many of these standards are available through the American Bar Association's Web page cited at the end of this chapter.) Courts may apply these standards to establish the responsibilities of GALs appointed in custody and visitation cases. The 1996 American Bar Association standards for attorneys representing children enumerate the basic responsibilities courts might expect of GALs appointed in custody and visitation cases. Some of these standards are:

- To talk with and observe the child in every case;
- To obtain copies of all pleadings and relevant notices;
- To participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- To inform other parties and their representatives that the GAL represents the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- To counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process; and
- To identify appropriate family and professional resources for the child.

In most instances, individuals will need training to acquire the skills and knowledge needed to perform their duties as a GAL effectively. The NCSC survey on the use of GALs suggests that many courts will need to revise their training requirements to include many of these skills and areas of knowledge. For example, only 45 percent of the courts reported that training includes the dynamics of domestic violence (see Figure 10).

Crafting Effective Custody and Visitation Orders When Domestic Violence Is an Issue

The judge has the ultimate responsibility to consider the information presented to him or her. This information may include findings of screening procedures; searches by court staff of protection order databases and other relevant data systems; written agreements reached in mediation; reports from custody evaluators, GALs, or other professionals; documents submitted by the parties; and testimony presented in court hearings. Generally, the judge analyzes the information and applies the analysis to the factors he or she is required to consider in making custody and visitation determinations.

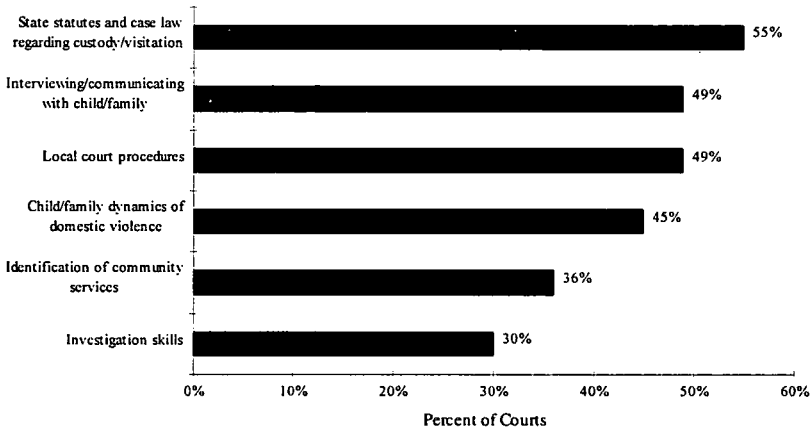
Statutes in 27 states and the District of Columbia²⁴ include domestic violence in the set of factors judges must consider, and 12 states and the District of Columbia²⁵ have established a rebuttable presumption that granting sole or joint custody to an abusive parent is not in the best interest of the child. Furthermore, the Model Code on Domestic and Family Violence states that “it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence” (National Council of Juvenile and Family Court Judges, 1994, p. 33).

Even in the absence of legislative authority, however, any evidence of domestic violence should be carefully evaluated before the judge makes a custody determination or decides visitation terms. Judges are encouraged to consult the resources described in the annotated bibli-

²⁴ *Supra* note 1.

²⁵ *Supra* note 2.

Figure 10: Topic Areas Addressed in GAL Training for Custody/ Visitation Cases (n = 69)



ography, of which several provide detailed and practical guidance on these and other important issues to consider.

When the judge finds that domestic abuse is occurring between the parties, he or she must apply all the information properly before the court to resolve the custody and visitation issues. In this process, the judge should take into account some issues that may be critical to his or her decisions. For example, some factors for determining custody such as the “friendly parent” and the victim’s relocation may work to an unfair disadvantage for a parent who is a victim of domestic violence. In an examination of which parent is more likely to promote contact between the children and the other parent, the victim of domestic violence may appear to be uncooperative in allowing the abuser access to the children because the abuser uses visitation as an opportunity to abuse the victim further (Hofford et al., 1995). Similarly, a parent who has relocated, perhaps several times, may appear to be unstable or unreasonably placing barriers between the children and the other parent.

However, it may have been necessary for the victim to relocate to escape physical harm from the abusive parent.

Once the judge has made a custody determination and decided whether to allow visitation if one parent has sole custody, he or she should craft an order that ensures the safety of the domestic violence victim and the children, reduces the opportunity for the abuser to continue controlling the victim, and promotes the enforceability of the order. Orders also should take into account the requirements of the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, and the Violence Against Women Act. Although the requirements and impact of these federal statutes may appear to be overwhelming, several resources are now available to assist the judge in sorting out the interstate and domestic violence issues involved in crafting effective and enforceable custody and visitation orders. Many of these resources are described in the Annotated Resources of this handbook.

Form of Custody and Visitation Orders

The form in which the terms of the custody or visitation order is expressed is important to ensure the enforceability of the order. The parties first must be able understand the terms of the order in order to conform their behavior to them. Furthermore, judges who are called upon to enforce the order, either in the state where the order was issued or in another state, must be able to interpret the terms. To the extent possible under state law or court rule, custody and visitation orders therefore should follow these conventions:

- The jurisdiction of the court is clearly expressed.
- The names of the parties and the children subject to the order are fully stated.
- The address of the abused parent's home or place of employment is not provided.
- The determination of custody is clearly stated.
- Any findings of domestic abuse are specified.

- The provisions for visitation are clearly specified, including location, days, and times of visitation and the methods of exchanging the children.
- Any sanctions for violations of the order are explicitly stated.

Content of Custody and Visitation Orders

Custody and visitation orders should include specific provisions to protect the children and the abused parent from further danger and to create a stable environment for the children. Abusive and controlling behaviors do not end with the separation of the parents, but often escalate, which places the victim and children in greater danger. Visitation gives the abusive parent prime opportunity to further victimize the other parent. The judge therefore must carefully consider whether to allow visitation with the abusive parent and, if so, how visitation can take place safely (Jaffe, 1995).

The Model Code on Domestic and Family Violence recommends that judges include several provisions relating to visitation in their orders. To maximize the safety that the court can promote for victims and children, judges should consider incorporating these and other provisions in custody and visitation orders. (Examples of specific custody and visitation terms are provided in the appendix; see also the discussion of safety plans in Chapter III.)

- The exchange of children in a protected setting;
- Supervised visitation with an identified person, agency, or visitation center;
- Specific conditions for supervised visitation by a family or household member;
- Payment of any fees for supervised visitation by the abusive parent;
- Prohibitions against the use of alcohol or controlled substances during visitation and for the 24-hour period before visitation;
- Completion of batterer treatment by the abusive parent as a condition for visitation; and

- Completion of substance abuse treatment by the abusive parent as a condition of visitation.

RESOURCES ON DECISION MAKING

Custody Evaluation

Ackerman, M., and Ackerman, M. (1996). Child custody evaluation practices: A 1996 survey of psychologists. *Family Law Quarterly*, 30, 565.

Association of Family and Conciliation Courts (AFCC) Custody Evaluation Committee (1995). AFCC model standards of practice for child custody evaluation. *Family and Conciliation Courts Review*, 32 (4), 504-13.

Clark, Beth K. (1995). Acting in the best interest of the child: Essential components of a child custody evaluation. *Family Law Quarterly*, 29 (1), 19-38.

Gindes, Marion (1995). Guidelines for child custody evaluations for psychologists: An overview and commentary. *Family Law Quarterly*, 29 (1), 39-50.

Hysjulien, C., Wood, B., and Benjamin, G. A. H. (1994). Child custody evaluations: A review of methods used in litigation and alternative dispute resolution. *Family and Conciliation Courts Review*, 32, 466.

Stahl, Philip (1994). *Conducting child custody evaluations: A comprehensive guidebook*. Newbury Park, CA: Sage.

WWW Sites

- Child Custody and Dependency Web
<http://www.alabanza.com/kabacoff/forensic/plain.html>
- Village Publishing: Custody Evaluation Tests and Materials
<http://www.custody-vp.com>

Guardians ad Litem

ABA Center on Children and the Law (forthcoming). *Improving court use of lawyers for children and attorney-guardians ad litem: A resource manual for the judiciary*. Washington, DC: American Bar Association.

Elrod, Linda D. (1992). Counsel for children in custody disputes: The time is now. *Family Law Quarterly*, 26 (1), 53-69.

Ethical issues in the legal representation of children (special conference report that addresses questions about representing children in a way that is accessible and useful) (1996). *Fordham Law Review*, 64, 1278-2132.

Representing children: Standards for attorneys and guardians ad litem in custody or visitation proceedings (1995, Summer). *American Academy of Matrimonial Lawyers Journal*, 13 (1), 1-34.

Shear, Leslie Ellen (1996). Children's lawyers in California family law courts: Balancing competing policies and values regarding questions of ethics. *Family and Conciliation Courts Review*, 34 (2), 256-302.

Guidelines and Standards Available On-line

- ABA Guidelines for Representation of Children in Abuse/Neglect Cases
<http://www.abanet.org/child>
- Michigan Guidelines for Advocates for Children
<http://www.rollanet.org/~childlaw/miscdocs/galeff.htm>
- Missouri Supreme Court Standards for Guardians ad Litem
<http://www.rollanet.org/~childlaw/galstd/mogalstd.htm>

(All of the sites listed above can be accessed at <http://www.rollanet.org/~childlaw/galstd/galstd.htm>.)

Crafting Effective Custody and Visitation Orders

Carter, J., Davies, J., Ganley, A., Heisler, C., Klein, C., Lemon, N., and Orloff, L. (1992). *Domestic violence in civil court cases: A national model for judicial education*. San Francisco: Family Violence Prevention Fund.

Goelman, Deborah, Hoff, Patricia, Horowitz, Robert, Inada, Sally Small, and Mickens, June Melvin (forthcoming). *The interstate family practice guide*. Washington, DC: ABA Center on Children and the Law.

Lemon, Nancy, Jaffe, Peter, and Ganley, Anne (1995). *Domestic violence and children: Resolving custody and visitation disputes*. San Francisco: Family Violence Prevention Fund.

National Council of Juvenile and Family Court Judges (1994). *The Model Code on Domestic and Family Violence*. Reno: Author.

Zorza, Joan (1992b). "Friendly parent" provisions in custody determinations. *Clearinghouse Review*, 26, 921-25.

Appendix

NATIONAL AND STATE RESOURCE ORGANIZATIONS

ABA Center on Children and the Law

<http://www.abanet.org>

ABA Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases are available online at this site. The site provides information on ABA projects for lawyers, judges, and other child advocates on issues related to children in the courts.

ABA Child Support Project

ABA Center on Children and the Law

740 15th Street, NW

Washington, DC 20005

(202) 662-1742 Robert Horowitz

(301) 871-0691 June Melvin Mickens

ABA Commission on Domestic Violence

740 15th Street, NW

Washington, DC 20005

(202) 662-1737 Roberta Valente

(202) 662-1682 Deborah Goelman

<http://www.abanet.org/domviol/home.html>

Battered Women's Justice Project

c/o National Clearinghouse for the Defense of Battered Women

125 South 9th Street, Suite 302

Philadelphia, PA 19107

(800) 903-0111 (215) 351-0010

(215) 351-0779 Fax

Battered Women's Justice Project

c/o PCADV Legal Office

524 McKnight Street

Reading, PA 19601

(800) 903-0111 (610) 373-5697

(610) 373-6403 Fax

Battered Women's Justice Project

Minnesota Program

Development, Inc.

4032 Chicago Avenue South

Minneapolis, MN 55407

(800) 903-0111 (612) 824-8768

(612) 824-8965 Fax

CASAnet

<http://www.casanet.org>

National CASA Association runs

CASAnet, a resource for court-

appointed special advocate and

guardian ad litem programs in their

work with abused and neglected

children. A resource library page

contains journal articles, books, and

other materials relating to child wel-

fare and advocacy as well as general

information on juvenile justice and

child abuse and neglect.

Center for the Prevention of Sexual and Domestic Violence

936 North 34th Street, Suite 200

Seattle, WA 98103

(206) 634-1903

(206) 634-0115 Fax

<http://www.cpsdv.org>

E-mail: cpsdv@cpsdv.seanet.com

Central Missouri Child Advocacy Law Center

<http://www.rollanet.org/~bennett/galstuff/gallnk.htm>

This site provides a collection of various state guidelines and standards for guardians ad litem and attorneys representing children or parents in child abuse/neglect cases

Family Violence Prevention Fund

383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133

<http://www.igc.apc.org/fund/>;
<http://www.fvpf.org>

Full Faith and Credit Project

Battered Women's Justice Project
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112

Georgia Commission on Family Violence

<http://www.athens.net/~rblum/fvcindex.htm>

This site compiles model protocols for dealing with domestic violence for use by judges, prosecutors, and law

Health Resource Center on Domestic Violence

c/o Family Violence Prevention Fund

383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133

(800) 313-1310
(415) 252-8991 Fax

Minnesota Higher Education Center Against Violence and Abuse

<http://www.umn.edu/~mincava/center.htm>

The Minnesota Higher Education Center Against Violence and Abuse

operates an electronic clearinghouse to provide access to violence and abuse resources on the Internet.

National Battered Women's Law Project

799 Broadway, Room 402
New York, NY 10003
(212) 741-9480
(212) 741-6438 Fax

National Center for Missing and Exploited Children

2101 Wilson Boulevard, Suite 550
Arlington, VA 22201-3052
(800) THE-LOST
(800) 843-5678
<http://www.missingkids.com>

National Child Support Enforcement Association

444 North Capitol Street, Suite 414
Washington, DC 20001
(202) 624-8180 (202) 624-8828
<http://www.ncsea.org>
E-mail: ncsea@sso.org

National Coalition Against Domestic Violence

Public Policy Office
119 Constitution Avenue, NE
Washington, DC 20002
(202) 544-7358
<http://www.webmerchants.com/ncadv>

National Coalition Against Domestic Violence

Administrative Office
P.O. Box 18749
Denver, CO 80218
(303) 839-1852
(303) 831-9251 Fax
<http://www.webmerchants.com/ncadv>

National Conference of Commissioners on Uniform State Laws
676 North St. Claire Street, Suite 1700
Chicago, IL 60611
(312) 915-0195
<http://www.law.upenn.edu/library/ulc/ulc.htm>
E-mail: ellyce@ix.netcom.com

National Council of Juvenile and Family Court Judges
<http://www.ncjfcj.unr.edu>
Current information on the activities of NCJFCJ, including the Family Violence Project. The site includes publications available on-line and a comprehensive list of links to related WWW resources.

National Domestic Violence Hotline
3616 Far West Boulevard
Suite 101-297
Austin, TX 78731-3074
(800) 779-7233
(800) 787-3224 (TTY)
(512) 453-8541 Fax
<http://www.inetport.com/~ndvh>
E-mail: ndvh@inetport.com

National Network to End Domestic Violence
Administrative Office
c/o TX Council on Family Violence
8701 North Mopac Expressway
Suite 450
Austin, TX 78759

National Network to End Domestic Violence
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
(202) 347-9520
(202) 434-7400 Fax

National Resource Center on Child Custody and Child Protection
The Family Violence Project
National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, NV 98507
(800) 527-3223
(702) 784-6160 Fax

National Resource Center on Domestic Violence
Pennsylvania Coalition Against Domestic Violence
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112-2778
(800) 537-2238
(717) 545-9456 Fax

Office of Child Support Enforcement
U.S. Department of Health and Human Services
370 L'Enfant Promenade, SW
Mail Stop: OCSE/DPO
Washington, DC 20447
(202) 401-5061
(202) 401-9267 (Federal Parent Locator Service)

Office of Children's Issues
U.S. Department of State
(202) 647-2688
(202) 647-3000 (automated fax)
<http://travel.state.gov>

Professor John J. Sampson
(UIFSA official reporter)
University of Texas
School of Law
727 East 26th Street
Austin, TX 78705

Rocky Mountain Children's Law**Clinic****821 17th Street, Suite 820****Denver, CO 80202****(303) 292-1818****(303) 292-6209 Fax**

ANNOTATED RESOURCES

Resource Manuals

Davidson, Howard, Grasso, Kathi, and Finley, Brian (forthcoming 1998). *A judge's guide to enhancing the quality of legal representation for children*. Washington, DC: ABA Center on Children and the Law.

Draft Outline (September 16, 1997)

Forward

Introduction: Why Did the ABA Produce this Manual?

- I. Benefits to Courts and Children of Effective Child Legal Representation
 - A. Judges' Views - Why Should Lawyers be Appointed for Children?
 - B. Importance of Competent Legal Representation

- II. Proceedings in Which Lawyers Can Help Children
 - A. Child Protection Cases (Abuse/Neglect, TPR)
 - B. Contested Custody, Visitation, and Domestic Violence Cases
 - C. Contested Adoption Cases
 - D. Appeals of These Cases
 - E. Collateral Criminal Cases
 - F. Utilizing Lawyers with Special Competencies and Knowledge
 1. Juvenile Delinquency, Status Offense, Mental Commitment, Medical Case Decision-Making, and Child Support Cases
 2. Children with Chronic and Significant Disabilities, School Discipline and Assets and Causes of Action
 3. Representation Under the Indian Welfare Act

- III. Legal Representation Models
 - A. Private Attorney Lists and Panels
 - B. Programs Handling Large Caseloads

- C. Small Contract Programs/Nonprofit Children's Law Offices
 - D. Law School Clinical Program Resources
 - E. Pro Bono Volunteer Lawyer Programs
 - F. Working as a Team: Children's Attorneys and CASA/Lay GAL
 - G. When Children Retain Their Own Lawyers
- IV. Identifying and Retaining Effective Attorneys
- A. Adequate Training and Mentorship
 - B. Supervision and Sanctioning
 - C. Adequate and Prompt Compensation
 - 1. Examples of Compensation Structures and Formulae
 - 2. Communicating Judicial Expectations About Compensated Time
 - D. Addressing Excessive Lawyer Caseloads
 - 1. Steps Court Can Take
 - 2. Examples of Contract Provisions
- V. Judges' Roles in Advocacy for Improved Child Representation

Goelman, Deborah M., Lehrman, Fredrica L., and Valente, Roberta L. (Eds.) (1996). *The impact of domestic violence on your legal practice: A lawyer's handbook*. Washington, DC: American Bar Association.

The intent of this book is to advise the legal practitioner on how to recognize and address domestic violence in a wide variety of practice areas. Although this book is aimed toward legal practice, the issues and recommended actions are instructive for judges as well. Chapters 2, 3, 4, 5, and 8 are particularly relevant for the resolution of custody and visitation cases involving domestic violence.

Chapter 2 presents out screening guidelines to identify victims and batterers, a screening checklist, interviewing techniques, and detailed advice on safety planning. Chapter 3 briefly advises on case coordination from the lawyer's perspective, including investigation to determine which issues should be dealt with first, how to decide the appropriate

court for each of the client's cases, the case settlement issues, and relationships between claims. Chapter 4 covers civil protection orders, including important provisions that should be incorporated to ensure understanding and enforceability, and how to ensure that domestic violence victims are not required to participate in mediation without fully informed consent and fully adequate safety precautions. Chapter 5 focuses on the best interest of the child, including issues lawyers should address in child custody cases.

Goelman, Deborah, Hoff, Patricia, Horowitz, Robert, Inada, Sally Small, and Mickens, June Melvin (forthcoming). *The interstate family practice guide*. Washington, DC: ABA Center on Children and the Law.

Contact:

American Bar Association
Center on Children and the Law
740 15th Street, NW, 9th Floor
Washington, DC 20005-1009
(202) 662-1720
(202) 662-1755 fax
<http://www.abanet.org/child>

This guide is being produced under a grant from the State Justice Institute and addresses interstate issues that judges may encounter in establishing or enforcing child custody, visitation, and support orders. The three major subject areas are parental kidnapping, domestic violence, and child support.

Child Custody and Parental Kidnapping

This chapter consists of ten sections covering the following topics: parental kidnapping risk factors and ways to reduce the likelihood of abduction; custody jurisdiction following the out-of-state abduction of a child; locating an abducted child or an abducting parent; international child abduction; jurisdiction in initial custody determinations; modify-

ing sister state custody orders; enforcing sister state custody orders; drafting custody orders to aid interstate enforcement and deter child abduction; and the proposed Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Domestic Violence and Interstate Family Cases

This chapter consists of 15 sections covering the following topics: the impact of domestic violence on interstate custody matters; determining jurisdiction in cases of interstate flight with children by abused parties; taking action when a domestic violence victim flees the state in violation of a custody order; parental abduction by abusers; enforcing out-of-state civil protection orders in refuge states; enforcing custody provisions in civil protection orders; enforcing child support provisions in civil protection orders; facilitating enforcement of protection orders; information disclosure in domestic/custody cases; special domestic violence concerns in child support cases; mutual protection orders; conflicting ex parte protection orders; interstate relocation of abused custodial parents; and visitation safeguards in custody cases involving domestic violence. Also, the appendix to this section includes the following documents: Certification of Protection/Restraining Order, Model Full Faith and Credit Statute, Rationale for Certification Form in Civil Protection/Restraining Orders, Emergency Protection from Abuse Order/Notice to the Defendant, Temporary Order of the Court, Notice of Hearing and Order, and Final Order of the Court/Notice to the Defendant.

Child Support and Interstate Cases

This chapter consists of 15 sections covering the following child support topics: differences between the Uniform Interstate Family Support Act (UIFSA) and the Uniform Reciprocal Enforcement of Support Act (URESAs)/RURESAs (URESAs's revised version); determining which of these laws applies in pending cases after the enactment of UIFSA; application of long-arm jurisdiction under UIFSA; handling suspected simultaneous proceedings; handling paternity challenges; cases that involve tribal interests; cases presenting safety concerns; establishment

authority when another order exists; determining the controlling order; registration of foreign orders; direct enforcement methods; using UIFSA to determine child custody matters; interstate practice and legal; and criminal enforcement remedies. This section advises courts about how to identify cases in which privacy safeguards are appropriate and how to draft orders that clearly state a finding of unreasonable risk in disclosing information in these cases. The appendix includes the following documents: Standard Interstate Child Support Enforcement Forms, UIFSA Forms Matrix and Glossary of Terms.

Curriculum Guides

Carter, J., Davies, J., Ganley, A., Heisler, C., Klein, C., Lemon, N., and Orloff, L. (1992). *Domestic violence in civil court cases: A national model for judicial education.* San Francisco: Family Violence Prevention Fund.

Contact:

The Family Violence Prevention Fund
383 Rhode Island St., Suite 304
San Francisco, CA 94103-5133
(415) 252-8900
(415) 252-8991 fax

This curriculum guide for developing a program and a benchbook on domestic violence for judges in the civil courts is designed to assist judges and judicial educators in developing the program, assist faculty in preparing their teaching outlines, and provide materials that can be adapted to include state statutes and case law to serve as a practical resource for judges. One section is dedicated to issues in custody and visitation cases, providing an overview of related statutes and case law. Recommendations for custody and visitation orders, evidentiary issues, pro per parties, safety issues, mediation, interstate and international

issues, paternity cases, gay and lesbian issues, guardians ad litem, and relatives seeking custody also are discussed.

Girdner, Linda K., et al. (1997). *Domestic abuse and custody mediation curriculum*. Washington, DC: ABA Center on Children and the Law.

Contact:

American Bar Association
Center on Children and the Law
740 15th Street, NW, 9th Floor
Washington, DC 20005-1009
(202) 662-1720
(202) 662-1755 fax
<http://www.abanet.org/child>

This project is developing and testing curricula on domestic violence and custody mediation for mediators, judges and court administrators. The project's policy premise is based on Chapter 4, Sections 407 and 408 of the National Council of Juvenile and Family Court judges (NCJFCJ) *Model Code on Domestic and Family Violence*. The code requires that mediators screen for abuse and prohibits mediation in custody and visitation cases where domestic violence or fear of domestic violence is suspected, unless the victim wants mediation. Then mediation may proceed under certain circumstances, including a specialized process with a mediator knowledgeable about domestic violence and with the option of a support person present.

Two curricula are in process, each with a participant's and an instructor's manual. A brief two-hour curriculum will focus on the dynamics, of domestic violence, particularly in the context of marital separation, the importance of screening for domestic violence, types of screening tools, and ways of determining appropriate and inappropriate cases. This curriculum will be designed for mediators, judges and court administrators, so court systems can apply a coordinated approach to the problem.

A 16-hour skill-based curriculum is designed for mediators with considerable experience. Specific topics include how to screen for domestic violence, how to determine whether a case is appropriate for mediation, how to adapt the mediation process and use special skills to enhance safety when a victim chooses mediation, how to connect with court and community resources that assist victims, and how to build safety into custody and visitation agreements. The curriculum can be divided into separate components, which can be offered as multiple in service training or as a two-day training.

Training using the curriculum were offered and evaluated at the annual conference of the Academy of Family Mediators in July 1997 and at a statewide training conference in Oregon in October 1997. Dissemination of the final products will occur in collaboration with the organizations from the projects' Advisory Board.

Larson, Dotty (Ed.) (1996). *Certified domestic violence training for mediators*. Prince William County, VA: Prince William County Office of Dispute Resolution.

This guidebook contains a variety of resources (original training materials, fact sheets, activities, definitions, and resource articles) for training mediators of disputes involving domestic violence. The training agenda covers the dynamics of domestic violence, domestic violence issues in the mediation setting, networking with other services available to families, and pertinent legal issues in Virginia. Materials on mediation include lists of characteristics of clients who may benefit from mediation and of dynamics in domestic violence relationships that make mediation risky. Sample screening instruments and procedures are provided from Prince William County, Va.; Orange County, Calif.; and the Waikiki Community Center in Honolulu, Hawaii. Special precautions for domestic violence mediations, including safety measures and termination of mediation, also are covered.

Lemon, Nancy, Jaffe, Peter, and Ganley, Anne (1995). *Domestic violence and children: Resolving custody and visitation disputes*. San Francisco: Family Violence Prevention Fund.

Contact:

The Family Violence Prevention Fund
383 Rhode Island St., Suite 304
San Francisco, CA 94103-5133
(415) 252-8900

This is a guide for developing a judicial education seminar and benchbook on resolving custody and visitation disputes when there are allegations of domestic violence and was very favorably rated by judges attending pilot-test programs.

The program consists of an eight-hour judicial education seminar and a benchbook on child custody and visitation cases involving domestic violence. The guide assists in designing a program by providing a sample seminar agenda, learning objectives for each program segment, teaching materials for program faculty, handouts, content for the benchbook, citations to statutory authority and case law, and an eight-step plan to develop the program. A 12-minute video that illustrates how domestic violence can influence parties' demeanor and appearance in court is also available from the Family Violence Prevention Fund. The major topics covered in the program are list below.

Impact of domestic violence on children: identify the impact of domestic violence both on children and on effective parenting, consider how age and gender of the child will affect custody and visitation arrangements, critical periods for children of battered women, suggestions for custody and visitation solutions

Current law regarding custody and visitation decisions: joint and separate custody, friendly parent and frequent continuing contact, parental alienation syndrome, and cases in which neither parent appears suitable, one parent kills the other, or other relatives seek custody or visitation; visitation decisions; escalated violence after separation, risk assessment, imposition of visitation conditions, and supervised visitation

Evidentiary issues: evaluate the abused party's testimony, questions of demeanor, the role of victim support persons, and problems with corroboration evidence, perpetrator's testimony (including behavior in court, allegations of mutual violence and the effect of concurrent criminal charges), value of expert testimony, privileged communications between victims and domestic violence counselors, factors in deciding how and whether to allow children witnesses

Court practices and procedures: protect the confidentiality of battered parties' and domestic violence shelters' phone numbers and addressees, disadvantages pro se litigants face in court, suggestions for mitigating the problems, judicial and court staff demeanor, effects of biases or misconceptions about domestic violence, improving court procedures to deter perpetrators from violating orders, appointment, qualifications, and duties of guardian ad litem, importance of judge's leadership role in domestic task forces and education/training

Enforcement of orders: batterer's established pattern of conduct, the impact of violations on the abused spouse and children, increased risks to the children, a list of common violations and recommended remedies, including criminal penalties and contempt

Mediation, evaluation, and special masters: issues and procedures in working with other professionals, including attitudes about domestic violence, background, training, and qualifications; identification of domestic violence; variety of screening methods; guide recommends risk assessment content, safety plans, secure facilities, and separate sessions to ensure safety of the victim and to encourage open communication; guidance to judges in assessing the quality of custody evaluations; special concerns about mediation procedures are outlined; advantages and disadvantages of using special masters; brief section on parent education programs

Interstate and international custody issues: issues that trigger the Uniform Child Custody Jurisdiction Act, international disputes that invoke federal statutes or treaties, legal and practical concerns when one party wants to relocate with the child or conceal the child from the other parent

Other Literature

Center on Crime, Communities & Culture (1997). *Pathfinder on domestic violence in the United States.* New York: Center on Crime, Communities & Culture.

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This pathfinder is intended to provide assistance in locating information on domestic violence. Definitions of domestic violence terms and key findings of the literature review conducted by the Center on Crime, Communities & Culture are provided. Types of sources listed include dictionaries, abstracts and indexes, resource directories, bibliographies, research texts, popular readings, multimedia sources, Internet resources, congressional hearings, dissertations, updaters services, and recommended journals.

Domestic Abuse and Mediation Project (1992). *Mediation in cases of domestic abuse: Helpful option or unacceptable risk?* Portland: Maine Court Mediation Service.

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The third part of this report is dedicated to the issues surrounding mediation in domestic relations cases, including custody and visitation decisions. The recommendations emphasize the need for careful

screening, well-trained screeners, reliable screening procedures, and risk assessments. Participation in mediation should be voluntary and safe, and the mediation process must address the special circumstances of domestic abuse. The appendix includes several screening models and a protocol for dangerousness assessment.

Domestic Violence Visitation Task Force (1994). *Domestic violence visitation risk assessment*. Boston: Probate and Family Court Department of the Massachusetts Trial Court.

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This publication is a guide for evaluating risk of harm to adults and children in cases involving domestic violence. It outlines issues to consider in evaluating violence and helps identify the levels of physical violence and psychological and economic coercion. Descriptions of broad categories of domestic violence include discussion of the prognosis for cessation of violence and for the safety of the child(ren) involved. Sample questions for evaluating violence are provided and typical symptoms of domestic violence are listed to assist judges in determining the potential impact of domestic violence on children, identifying cases for further evaluation, and addressing visitation issues in court orders. The document also contains a list of supervised visitation programs operating in Massachusetts as of October 1994.

Erickson, Stephen K., and McKnight, Marilyn S. (1990). *Mediating spousal abuse divorces. Mediation Quarterly, 7 (4), 377-88.*

The authors draw on their experience mediating 1400 divorce cases to outline special procedures for mediation in cases involving spousal abuse. The article focuses on the advantages of a nonadversarial process to effect real, constructive change—especially in cases in which contact

must continue because of custody provisions. The importance of a neutral and well-trained mediator and suggestions for screening techniques to identify abuse are discussed. Mediators are encouraged to provide information about protection orders, battered women's shelters, treatment programs, counseling, and advocates for either party to assist them in the mediation process. The authors also provide criteria for cases in which mediation is inappropriate.

Garrity, C., and Baris, M. A. (1995). Custody and visitation: Is it safe? *Family Advocate*, 17 (3), 40-45.

This article provides a model for visitation decision making based on a conflict assessment scale, the age of the child, and the prognosis for recovery of the abusive spouse. The importance of the safety of the child and the child's perception of safety are emphasized.

Geffner, R., and Pagelow, M. (1990). Mediation and child custody issues in abusive relationships. *Behavioral Sciences and the Law*, 8 (2), 151-59.

The effects of domestic violence on children and adults and the critical need for professionals in the mental health, social service, criminal justice, and legal fields to understand the ramifications of joint custody and mediation in abusive relationships are discussed. The article includes practical recommendations for dealing with power and other issues in abusive relationships.

Girdner, Linda K. (1990). Mediation triage: Screening for spouse abuse in divorce mediation. *Mediation Quarterly*, 7 (4), 365-76.

This article describes the Conflict Assessment Protocol (CAP), a screening tool used in individual mediation sessions to identify spouse abuse in divorce-related cases and to examine the dynamics of power and control in the relationship. The protocol has four parts: introduction; questions about patterns of decision making, conflict management,

and anger expression; questions about specific abusive behaviors; and closure to the separate screening session. Based on the assessment of responses, the mediator may decide whether the parties are likely to benefit from usual mediation techniques; are likely to benefit if specific ground rules, resources, and skills are applied; or are likely to experience harm from participation in mediation.

Guidelines for family court services intervention when there are allegations of domestic violence (1992). Unpublished.

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Developed by family court mediators and counselors from 11 California counties, these guidelines provide a process for identification and assessment of domestic violence and suggestions for service/intervention plans.

Hofford, M., Bailey, C., Davis, J., and Hart, B. (1995). Family violence in child custody statutes: An analysis of state codes and legal practice. *Family Law Quarterly*, 29 (2), 197-228.

After providing a statutory overview/comparison of custody provisions (joint custody, parent rights and responsibilities, and safety issues), this article turns to an analysis of practice under presumption statutes. The results suggest a lack of understanding of domestic violence issues on the part of judges and attorneys and the need for improved pro se services and court services related to domestic violence custody cases. Mediation, guardian ad litem training, supervised visitation facilities, and the overall success of domestic violence presumptions

also are evaluated. An appendix covers provisions concerning domestic violence in state custody statutes.

Johnston, J. R. (1993). *High conflict and violent parents in family court: Findings on children's adjustment and proposed guidelines for the resolution of custody and visitation disputes*. Corte Madera, CA: Center for the Family in Transition.

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Center for the Family in Transition
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This project report consists of three sections investigating the following topics: (1) evaluation of high-conflict and violent divorcing families to determine the emotional and behavioral adjustments of their children, (2) studies of high-conflict divorcing parents, and (3) plans for custody and visitation, with the goal of protecting the victim and children from exposure to high conflict and violence while preserving the positive aspects of the relationship between each child and parent.

Johnston, J. R., and Campbell, L. E. G. (1993). Parent-child relationships in domestic violence families disputing custody. *Family and Conciliation Courts Review*, 31 (3), 282-98.

This article provides a summary of "Profiles of Violence with Parents Disputing Custody and Patterns in Parent-Child Relationships: A Qualitative Study". Five types or "profiles" of interparental violence are identified. Findings suggest that depending on the violence profile, parent-child relationships have distinctively different patterns and child adjustment differs.

Lehrman, Fredrica (1996, February). Factoring domestic violence into custody cases. *Trial*, 32 (1), 32-39.

Using statutes and case law, this article underlines the important factors judges must consider in resolving custody and visitation disputes involving domestic violence. Inherent problems concerning joint custody and visitation, friendly parent provisions, the danger of abduction by violent parents, the abused parent's testimony, and children's statements are discussed.

Masliansky, Nechama (1996a). Child custody and visitation determinations when domestic violence has occurred. *Clearinghouse Review*, 30 (3), 273-94.

The article discusses the effects of domestic violence on children and legislative responses to domestic violence custody issues, including presumption statutes. A brief discussion of the interaction of custody and visitation proceedings with emergency and protective orders also is included.

National Council of Juvenile and Family Court Judges (1995). *Custody and visitation decision-making when there are allegations of domestic violence*. Reno: Author.

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This seminar notebook covers issues ranging from the impact of domestic violence on children and courtroom issues to on-site workshops. The authors address such issues as provisions with domestic violence in state custody statutes, the role of the judge, improving court practice, guardians ad litem, the child's attorney, jurisdiction and fed-

eral legislation, pro se litigants, evidence, custody and visitation decision making, and crafting of orders. The notebook also includes detailed coverage of the Model Code on Domestic and Family Violence.

Newmark, Lisa, Harrell, Adele, and Salem, Peter (1994). *Domestic violence and empowerment in custody and visitation cases: An empirical study on the impact of domestic abuse.* Madison, WI: Association of Family and Conciliation Courts.

Contact:

Association of Family and Conciliation Courts
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Madison, WI 53703
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This study reports on research conducted in the family court service agencies of the Multnomah County, Oreg., and Hennepin County, Minn., family courts to evaluate court services provided to domestic violence cases. Information was gathered through questionnaires completed by individuals involved in custody and/or visitation disputes and who were court-ordered for mediation or evaluation services. Findings confirm the need for court and court-connected services for domestic violence custody and visitation cases and provide a basis for recommendations for court practice in these cases.

Norton, Edwina, Weiss, Warren, Ricci, Isolina, and Fielding, Robin (1992). Development of uniform standards of practice for court-connected child custody mediation in California. *Family and Conciliation Courts Review*, 30 (2), 217-28.

This article describes the two-year process used to develop the Uniform Standards of Court-Connected Child Custody Mediation in California adopted by the Judicial Council of California. The text of the adopted Uniform Standards is included in the article.

Pearson, Jessica (1997). *Divorce mediation & domestic violence*. Denver: Center for Policy Research.

Contact:
Center for Policy Research
1720 Emerson Street
Denver, CO 80218
(303) 837-1555

A combination of surveys, interviews, and the in-depth study of five court mediation programs document trends in management of domestic violence mediation by court administrators and mediators. The report examines domestic violence screening techniques designed to gauge the level of domestic abuse and capacity of the parties to mediate and outlines common adjustments to the mediation process that enhance safety. Findings regarding the reactions of domestic violence advocates, attorneys, judges, and victims to domestic violence mediation also are discussed. Suggestions for improving court programs include more training for mediators, improved screening techniques, and safety assessments for current court procedures.

Whiteside, Mary F. (1996). *An integrative review of the literature pertinent to custody for children five years of age and younger*. San Francisco: Judicial Council of California, Administrative Office of the Courts.

Contact:
Administrative Office of the Courts
303 Second Street
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San Francisco, CA 94107
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<http://www.courtinfo.ca.gov>

A useful resource for judges, this report provides a comprehensive analysis of research on the developmental consequences of custody arrangements for young children. Demographic, social, and economic factors affecting divorcing families, parent-child and extended family relationships, and maternal and paternal postdivorce functioning are examined. Research on parental conflict in custody cases is reviewed in terms of the level of conflict and the impact it has on the child's adjustment. The report concludes with a review of factors that may promote or hinder the adjustment of young children to a divorce. The project also produced a brief report to parents.

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CASE MANAGEMENT FEATURES IN SELECTED COURTS

Domestic Violence Screening Method:

- 1 = questions on intake form for mediation or other court services about present or prior use
- 2 = routine interviews with parties about present or prior abuse
- 3 = professional custody evaluations
- 4 = routine reviews of pleadings for allegations of domestic violence
- 5 = pretrial conference
- 6 = child abuse reports
- 7 = testimony

Court's Access to Information:

- 1 = retrieve information on all other judicial proceedings affecting the family
- 2 = retrieve information on the current status of all cases affecting one family
- 3 = receive notice of newly filed criminal charges against anyone in the family
- 4 = access a registry/automated system to find orders of protection in effect
- 5 = access registry/automated system for history of child abuse and neglect
- 6 = review drug, alcohol, and mental health evaluations

Courts that Share Information With:

- 1 = other courts exercising jurisdiction over families
- 2 = child welfare agencies
- 3 = law enforcement
- 4 = prosecutors
- 5 = probation officers

Table I: Screening and Information Access

COURT	DOMESTIC VIOLENCE SCREENING	INFORMATION ACCESS	INFORMATION SHARING
Superior Court Kingman, AZ (520) 753-0790	2	1, 2	--
Coconimo County Superior Court Flagstaff, AZ (520) 779-6805	3, 4	6	1, 2, 3, 4, 5
Santa Clara County Superior Court San Jose, CA (408) 299-2689	1, 2, 3	1, 2	1, 2, 3
District Court Englewood, CO (303) 649-6282	3, 7	1, 2, 6	1, 2
Superior Court Litchfield, CT (203) 567-5438	1, 2, 3	1, 3, 4, 6	1, 2, 3, 4, 5
Family Court of the State of DE Wilmington, DE (302) 577-2964	3	1, 2, 3, 4, 5, 6	2, 3, 4, 5
17th Judicial Circuit Court Fort Lauderdale, FL (954) 831-7779	2, 3	1, 4, 5, 6	1, 3, 4
20th Circuit Court Fort Myers, FL (941) 335-2299	1, 3	1, 2, 5, 6	1, 2, 3, 4
Fourth Judicial Circuit Court Jacksonville, FL (904) 630-2564	2, 4	1, 2, 4, 5, 6	1, 2, 3, 4, 5
Family Court Honolulu, HI (808) 539-4074	--	1, 2, 3, 4, 5	2, 3, 4, 5
19th Judicial Circuit Court Waukegan, IL (708) 360-6480	3, 4	1, 2, 4, 6	1, 2, 3
Circuit Court of Cook County Chicago, IL (312) 443-6558	1, 2, 3	1, 4, 6	1, 2
Marion Superior Court Indianapolis, IN (317) 924-7501	3	2, 4, 6	1, 2, 3, 4, 5
Shawnee County District Court Topeka, KS (913) 233-8200	4, 7	1, 2, 3, 4, 5, 6	1, 2, 3, 4, 5
Sedgwick County District Court Wichita, KS (316) 383-8128	1, 2, 3	1, 2, 6	1, 2, 3, 4, 5

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COURT	DOMESTIC VIOLENCE SCREENING	INFORMATION ACCESS	INFORMATION SHARING
Jefferson Family Court Louisville, KY (502) 595-4392	3, 4	1, 4, 6	1, 2, 3, 4
Circuit Court for Anne Arundel County Annapolis, MD (410) 222-1440	1, 3, 4	1, 2	1, 2, 3, 5
Circuit Court for Baltimore City Baltimore, MD (410) 396-5060	2, 3, 4	1, 2	1, 2, 3, 4, 5
8th District Court Lewiston, ME (207) 783-5420	5	1, 2	1, 5
Middlesex Probate & Family Court E. Cambridge, MA (617) 494-4550	--	3, 4	1, 3, 4, 5
Hampden Probate & Family Court Springfield, MA (413) 748-7772	4, 6	4	2
Probate and Family Court Worcester, MA (508) 756-2441	3, 4	4, 6	1, 2, 4, 5
Probate and Family Court Boston, MA (617) 725-8343	1, 2, 3, 4	1, 2, 3, 4, 5, 6	1, 3, 4, 5
Ramsey District Court St. Paul, MN (612) 266-2809	1, 2, 3, 5	1, 2, 4	1, 2, 3, 4, 5
Circuit Court of Jackson County Kansas City, MO (816) 435-4850	1, 3, 4	1, 4, 5	2, 3, 4
Family Court Springfield, MO (417) 868-4050	4	1, 2, 3, 4, 5, 6	1
Family Court of St. Louis County Clayton, MO (314) 889-3400	1, 2, 3	1, 2, 3, 5	1, 2, 3, 4, 5
Superior Court Toms River, NJ (908) 929-4706	1, 2, 3, 4	1, 2, 3, 4, 5, 6	1, 2, 3, 4, 5
Family Court of Monmouth County Freehold, NJ (908) 431-7498	1, 2, 3, 4	1, 2, 3, 4, 5, 6	--

Domestic Violence Screening Method:

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Table I: Screening and Information Access

COURT	DOMESTIC VIOLENCE SCREENING	INFORMATION ACCESS	INFORMATION SHARING
Superior Court of New Jersey Jersey City, NJ (201) 795-6779	1, 2, 4	1, 2, 4, 5, 6	2, 3, 4, 5
2nd Judicial District Court Albuquerque, NM (505) 841-7531	1	1, 6	1, 2
First Judicial District Court Santa Fe, NM (505) 827-5058	1, 2, 3, 4	1, 2, 4, 5, 6	2, 3, 4, 5
2nd Judicial District Court Reno, NV (702) 328-3179	1, 4, 5	1, 2	1, 2,
Eighth Judicial District Court Las Vegas, NV (702) 455-4186	1, 3, 4	1, 4, 5	1, 2, 3, 4
26th Judicial District Court Charlotte, NC (704) 347-7801	4	1, 2, 3, 4, 5, 6	1, 2, 3, 4
14th Judicial District Court Durham, NC (919) 560-6807	4	1, 2, 6	1, 2, 3, 4, 5
Summit County District Court Akron, OH (330) 643-2082	1, 2, 3	1, 6	2, 4
Court of Common Pleas Pittsburgh, PA (412) 350-4441	3, 4	1, 2, 3, 4, 5, 6	1, 2, 3, 4, 5
Rhode Island Family Court Providence, RI (401) 277-3308	3	4, 5	2, 3
Sixteenth Judicial Circuit Court Rock Hill, SC (803) 684-8510	5	2, 5	2, 3, 4
Greenville Family Court Greenville, SC (864) 467-5839	4	1, 2, 6	--
Greenville County Family Court Greenville, SC (864) 467-5839	3, 4	1, 2, 6	--
Family District Court Fort Worth, TX (817) 884-1587	3, 4	2, 6	--

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Table I: Screening and Information Access

COURT	DOMESTIC VIOLENCE SCREENING	INFORMATION ACCESS	INFORMATION SHARING
Third District Court Salt Lake City, UT (801) 535-5581	2	4	1, 3, 4
Kitsap County Superior Court Port Orchard, WA (360) 895-3946	--	1, 2	3
Snohomish County Superior Court Everett, WA (206) 388-3798	4	1, 2	1, 2, 3, 4, 5
King Superior Court Seattle, WA (206) 296-9335	1, 2, 3	6	--
7th Judicial District Court LaCrosse, WI (608) 785-9546	1, 2, 3, 4	1, 2, 6	2, 3, 4

Table II: Resources for Case Management

Court	Ways to Avoid Direct Contact Between Parties	Day Care Ctr/Waiting Room for Children	Multilingual Interpreters	Family Violence Unit	Family Violence Coord.
Superior Court Kingman, AZ 520-753-0790	X				
Coconino County Superior Court Fred Newton Flagstaff, AZ 507-779-6805					
Santa Clara County Superior Court San Jose, CA 408-299-2689	X		X	X	
District Court Judge Kenneth K. Stuart Englewood, CO 303-649-6282			X		
Superior Court Judge Anne C. Dranginis Litchfield, CT 203-567-5438		X		X	
Family Court of the State of DE Michael W. Arrington Wilmington, DE 302-577-2964	X		X	X	X
Seventeenth Judicial Circuit Court Judge Linda L. Vitale Fort Lauderdale, FL 954-831-7779			X	X	X
20th Circuit Court Judge Hugh E. Starnes Fort Myers, FL 941-335-2299		X	X	X	X
Fourth Judicial Circuit Court Judge David C. Wiggins Jacksonville, FL 904-630-2564	X	X	X	X	X

Table II: Resources for Case Management

Court	Ways to Avoid Direct Contact Between Parties	Day Care Ctr/Waiting Room for Children	Multilingual Interpreters	Family Violence Unit	Family Violence Coord.
Family Court Judge Michael A. Town Honolulu, HI 808-539-4074	X		X	X	X
5 th District Court Charles Brumbach Twin Falls, ID 208-736-4021			X		X
19th Judicial Circuit Court James Brix Waukegan, IL 708-360-6480	X	X	X		
Circuit Court of Cook County Chicago, IL 312-443-6558	X	X	X		
Marion Superior Court Indianapolis, IN 317-924-7501	X		X	X	X
Shawnee County District Court Topeka, KS 913-233-8200	X		X	X	X
Sedgwick County District Court Wichita, KS 316-383-8128	X	X	X	X	
Jefferson Family Court Louisville, KY 502-595-4392	X	X	X	X	
Circuit Court for Anne Arundel County Annapolis, MD 410-222-1440	X		X		
Circuit Court for Baltimore City Baltimore, MD 410-396-5060	X		X	X	

Table II: Resources for Case Management

Court	Ways to Avoid Direct Contact Between Parties	Day Care Ctr/Waiting Room for Children	Multilingual Interpreters	Family Violence Unit	Family Violence Coord.
8th District Court Lewiston, ME 207-783-5420			X		
Middlesex Probate & Family Court E. Cambridge, MA 617-494-4550	X		X		
Hampden Probate & Family Court Springfield, MA 413-748-7772	X	X	X		
Probate and Family Court Worcester, MA 508-756-2441	X		X	X	
Probate and Family Court Boston, MA 617-725-8343	X		X		X
Ramsey District Court St. Paul, MN 612-266-2809	X	X	X	X	
Circuit Court of Jackson County Kansas City, MO 816-435-4850	X		X	X	X
Family Court Springfield, MO 417-868-4050	X		X	X	
Family Court of St. Louis County Clayton, MO 314-889-3400	X		X		
Superior Court Toms River, NJ 908-929-4706	X		X	X	X
Family Court of Monmouth County Freehold, NJ 908-431-7498					

Table II: Resources for Case Management

Court	Ways to Avoid Direct Contact Between Parties	Day Care Ctr/Waiting Room for Children	Multilingual Interpreters	Family Violence Unit	Family Violence Coord.
Superior Court of New Jersey Jersey City, NJ 201-795-6779	X	X	X	X	X
2nd Judicial District Court Albuquerque, NM 505-841-7531	X		X	X	X
First Judicial District Court Santa Fe, NM 505-827-5058	X		X	X	
2nd Judicial District Court Reno, NV 702-328-3179	X				
Eighth Judicial District Court Las Vegas, NV 702-455-4186	(X)	(X)	X	(X)	(X)
26th Judicial District Court Charlotte, NC 704-347-7801		X	X	X	
14th Judicial District Court Durham, NC 919-560-6807					X
Summit County District Court Akron, OH 330-643-2082					
Court of Common Pleas Pittsburgh, PA 412-350-4441	X	X			X
Rhode Island Family Court Providence, RI 401-277-3308		X	X		X

Table II: Resources for Case Management

Court	Ways to Avoid Direct Contact Between Parties	Day Care Ctr/Waiting Room for Children	Multilingual Interpreters	Family Violence Unit	Family Violence Coord.
Sixteenth Judicial Circuit Court Rock Hill, SC 803-327-1134	X	X			
Greenville Family Court Greenville, SC 864-467-5839				X	X
Greenville County Family Court Greenville, SC 864-467-5839					X
Family District Court Fort Worth, TX 817-884-1587			X		
Third District Court Salt Lake City, UT 801-535-5114	X			X	
Kitsap County Superior Court Port Orchard, WA 360-895-3946	X		X	X	
Snohomish County Superior Court Everett, WA 206-388-3798	X		X	X	X
King Superior Court Seattle, WA 206-296-9335	X		X	X	
7th Judicial District Court LaCrosse, WI 608-785-9546	X	X	X		

Table III: Services for Victims and Families

Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
Superior Court Kingman, AZ 520-753-0790				X		
Coconino County Superior Court Fred Newton Flagstaff, AZ 507-779-6805				X	X	X
Santa Clara County Superior Court San Jose, CA 408-299-2689	X	X	X	X	X	X
District Court Judge Kenneth K. Stuart Englewood, CO 303-649-6282	X	X	X	X		X
Superior Court Judge Anne C. Dranginis Litchfield, CT 203-567-5438	X	X	X	X	X	X
Family Court of the State of DE Michael W. Arrington Wilmington, DE 302-577-2964	X	X		X		X
Seventeenth Judicial Circuit Court Judge Linda L. Vitale Fort Lauderdale, FL 954-831-7779	X	X		X	X	X
20th Circuit Court Judge Hugh E. Starnes Fort Myers, FL 941-335-2299	X	X	X	X	X	X

Table III: Services for Victims and Families

Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
Fourth Judicial Circuit Court Judge David C. Wiggins Jacksonville, FL 904-630-2564	X	X	X	X	X	X
Family Court Judge Michael A. Town Honolulu, HI 808-539-4074	X	X	X	X	X	X
5th District Court Charles Brumbach Twin Falls, ID 208-736-4021	X	X		X		X
19th Judicial Circuit Court James Brix Waukegan, IL 708-360-6480		X	X	X	X	X
Circuit Court of Cook County Chicago, IL 312-443-6558	X	X		X	X	X
Marion Superior Court Indianapolis, IN 317-924-7501	X	X	X			X
Shawnee County District Court Topeka, KS 913-233-8200	X	X	X	X	X	X
Sedgwick County District Court Wichita, KS 316-383-8128	X	X	X	X	X	X
Jefferson Family Court Louisville, KY 502-595-4392		X	X	X	X	X

Table III: Services for Victims and Families

Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
Circuit Court for Anne Arundel County Annapolis, MD 410-222-1440		X				X
Circuit Court for Baltimore City Baltimore, MD 410-396-5060	X	X		X		
8th District Court Lewiston, ME 207-783-5420		X	X	X	X	X
Middlesex Probate & Family Court E. Cambridge, MA 617-494-4550	X			X	X	X
Hampden Probate & Family Court Springfield, MA 413-748-7772	X	X	X			
Probate and Family Court Worcester, MA 508-756-2441		X		X		X
Probate and Family Court Boston, MA 617-725-8343	X			X		
Ramsey District Court St. Paul, MN 612-266-2809	X	X	X			
Circuit Court of Jackson County Kansas City, MO 816-435-4850	X	X	X	X	X	X
Family Court Springfield, MO 417-868-4050					X	X

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Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/ Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
Family Court of St. Louis County Clayton, MO 314-889-3400	X			X		
Superior Court Toms River, NJ 908-929-4706	X	X	X	X	X	X
Family Court of Monmouth County Freehold, NJ 908-431-7498	X	X		X		
Superior Court of New Jersey Jersey City, NJ 201-795-6779	X	X	X	X		X
2nd Judicial District Court Albuquerque, NM 505-841-7531					X	X
First Judicial District Court Santa Fe, NM 505-827-5058					X	X
2nd Judicial District Court Reno, NV 702-328-3179		X	X	X	X	X
Eighth Judicial District Court Las Vegas, NV 702-455-4186	(X)	X		(X)		(X)
26th Judicial District Court Charlotte, NC 704-347-7801	X	X	X	X	X	X
14th Judicial District Court Durham, NC 919-560-6807	X			X		X

Table III: Services for Victims and Families

Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
Summit County District Court Akron, OH 330-643-2082	X	X		X		
Court of Common Pleas Pittsburgh, PA 412-350-4441		X		X		
Rhode Island Family Court Providence, RI 401-277-3308	X	X		X	X	X
Sixteenth Judicial Circuit Court Rock Hill, SC 803-327-1134		X	X	X	X	X
Greenville Family Court Greenville, SC 864-467-5839				X	X	X
Greenville County Family Court Greenville, SC 864-467-5839		X		X	X	X
Family District Court Fort Worth, TX 817-884-1587	X	X			X	X
Third District Court Salt Lake City, UT 801-535-5114		X	X	X		
Kitsap County Superior Court Port Orchard, WA 360-895-3946		X		X		
Snohomish County Superior Court Everett, WA 206-388-3798	X	X		X		

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Court	Supervised Visitation Center	Pro Bono/ Reduced Fee/Legal Services	Relocation Services for Victims	Victim Advocate	Educational Programs for Victims/ Children	Batterer Treatment
King Superior Court Seattle, WA 206-296-9335					X	X
7th Judicial District Court LaCrosse, WI 608-785-9546				X	X	X

SAMPLE SCREENING TOOLS, REPORTS, AND COURT ORDERS

CUSTODY MEDIATION AND DOMESTIC VIOLENCE

Assumptions about Mediation

Incorrect assumption when:

Parties have self-determination.

Abuser does not believe victim is entitled to own interests separate from his.

Victim gives abuser what he wants (against her interests and children's needs) with aim toward avoiding violence and other abuse due to:

1. Strategic compliance and/or
2. Stockholm hostage syndrome.

Parties can make decisions jointly.

Abuser has history of using coercive and abusive tactics to ensure that "joint" decisions are his way. These tactics can be exercised outside of the mediation sessions, but impact on decisions reached in mediation.

Mediators can balance power.

Power imbalances are too great when abuser uses violence, fear of violence, or other abusive tactics to control victim. Mediators do not have the power to stop these dynamics from impacting on the victim in mediation. Mediators cannot stop violence.

Appearances of power balancing may be abuser's efforts to manipulate process with own agenda in mind (e.g. seem charming and reasonable in session while abusive and controlling outside of session).

Mediation is efficient case

Mediation in cases involving domestic violence management involves greater effort and more time than other cases with much less likelihood of reaching an agreement. When agreements are reached they are less likely to be durable or appropriate and safe compared to other mediated outcomes.

Source: Domestic Abuse and Custody Mediation Curriculum

Sample Checklist for Screening by Mediators

PREPARED BY ALAMEDA COUNTY FAMILY COURT SERVICES

No matter how well a couple gets along, there are times when they disagree, get annoyed with the other person, or just have spats or flights because they are in a bad mood or tired or for some other reason. They also use many different ways of trying to settle their differences. Below is a list of things people do at times like this. For each item, please answer about how many times the other parent or party has used this approach with you in the past year.

1. Once
2. Twice
3. 3 to 5 times
4. 6 to 10 times
5. 11 to 20 times
6. More than 20 times
0. Never

1.	Discussed an issue calmly	1	2	3	4	5	6	0
2.	Got information to back up his/her side of things	1	2	3	4	5	6	0
3.	Brought in, or tried to bring in, someone to help settle things	1	2	3	4	5	6	0
4.	Insulted or swore at you	1	2	3	4	5	6	0
5.	Sulked or refused to talk about an issue	1	2	3	4	5	6	0
6.	Stomped out of the room or house or yard	1	2	3	4	5	6	0
7.	Cried (when upset with you)	1	2	3	4	5	6	0
8.	Did or said something to spite you	1	2	3	4	5	6	0
9.	Threatened to hit or throw something at you	1	2	3	4	5	6	0
10.	Threw or smashed or hit or kicked something	1	2	3	4	5	6	0
11.	Threw something at you	1	2	3	4	5	6	0
12.	Pushed, grabbed, or shoved you	1	2	3	4	5	6	0
13.	Slapped you	1	2	3	4	5	6	0
14.	Kicked, bit, or hit you with a fist	1	2	3	4	5	6	0
15.	Hit or tried to hit you with something	1	2	3	4	5	6	0
16.	Beat you up	1	2	3	4	5	6	0

- | | | | | | | | | |
|-----|--|---|---|---|---|---|---|---|
| 17. | Choked, strangled, or smothered you | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 18. | Threatened you with a knife or gun or automobile | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 19. | Used a knife or fired a gun | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 20. | Threatened your life in some other manner | 1 | 2 | 3 | 4 | 5 | 6 | 0 |

Describe

- | | | | | | | | | |
|-----|---|---|---|---|---|---|---|---|
| 21. | Forced sex on you, or forced you to do a sexual thing you didn't want to do | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
|-----|---|---|---|---|---|---|---|---|

In the past year, have any of the following happened and, if so, how often?

- | | | | | | | | | |
|-----|---|---|---|---|--------------------------|-----|--------------------------|----|
| 22. | Did a partner ever physically fight with you in any other way not mentioned above? | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 23. | Did you ever have injuries that showed, like bruises or scrapes, from something your partner did to you? | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 24. | Did you ever have other injuries, like broken bones or permanent injuries from something your partner did to you? | 1 | 2 | 3 | 4 | 5 | 6 | 0 |
| 25. | Were the police called? | | | | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 26. | Is there a police report? | | | | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 27. | Was there an arrest? If yes, who? | | | | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |

-
- | | | | | | | | | |
|-----|---|--|--|--|--------------------------|-----|--------------------------|----|
| 28. | Is there a restraining order? If yes, restraining whom? | | | | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
|-----|---|--|--|--|--------------------------|-----|--------------------------|----|
-

Source: Alameda County Family Court Services in Domestic Violence and Children: Resolving Custody and Visitation Disputes

MARRIAGE AND FAMILY COUNSELING SERVICE

28 North Clark Street - Suite 600, Chicago, IL 60602

Office: (312)345-8800 Fax: (312)345-8801 TDD: (312)345-8802

CONFIDENTIAL INTERVIEW SUMMARY

JUDGE _____ INTERVIEW: Date _____ Time _____

CASE NO. _____ FIRST _____

DATE REFERRED _____ SECOND _____

MEDIATOR _____ THIRD _____

FAMILY NAME _____ NAMES/AGES of CHILDREN _____

(live with whom)

Marriage Date _____ (Doesn't Apply) _____

LENGTH OF RELATIONSHIP: _____

Date Separated _____ Divorced _____

PARENT/CLIENT

NAME _____ AGE _____

RELATIONSHIP TO CHILD _____

ADDRESS _____

street city state zip

DISTANCE (time or miles) BETWEEN PARENTS' HOMES _____

OCCUPATION _____ EDUCATION _____

OTHERS IN HOME (name, relationship, age) _____

HOME PHONE NO. () _____ WORK PHONE NO. () _____

If Re/Married, Spouse _____ and Date of Marriage _____

name

MARRIAGE(S) before this one (if any) ended in _____ Doesn't Apply _____

Annulment _____ Yrs Married _____ No. Children _____

Death _____ Yrs Married _____ No. Children _____

Divorce _____ Yrs Married _____ No. Children _____

Have you been involved in Mediation or Intervention previously? _____

If so, when? _____ Where? _____ With whom? _____

Are you fluent in oral and written communication, in English? _____

If not, what is your primary language? _____

Is a neutral interpreter available? _____

CONFIDENTIAL QUESTIONNAIRE

EACH PARENT MUST ANSWER HIS/HER OWN QUESTIONNAIRE SEPARATELY

	Yes	No
1. Do you have any concerns about the child(ren)'s emotional and/or physical safety with the other parent?	___	___
2. Has the Ill. Dept. of Children & Family Services been involved with the family regarding allegations of abuse and/or neglect to the child(ren)?	___	___
3. Has an attorney/Guardian ad Litem been appointed to represent the children?	___	___
4. Have you ever feared that you would not have access to your child(ren)?	___	___
5. Do you have any questions or concerns about your child(ren) speaking with the mediator?	___	___
6. Has there ever been medical treatment or hospitalization for psychiatric disorders in the immediate family?	___	___
7. Do you have any concerns regarding the use of alcohol and/or drugs in the immediate family?	___	___
8. Has there ever been <u>any</u> physical confrontation between you and the other parent?	___	___
9. Do you have any other concerns about your own emotional and/or physical safety with the other parent?	___	___
10. Are there now, or have there previously been, Orders of Protection? If yes, expiration date: _____	___	___
11. Are you in any way afraid to meet with the other parent and the mediator?	___	___
12. Do you feel you were an equal partner in your relationship?	___	___
13. Do you feel you are ready to begin working with the other parent to develop a parenting plan? If no, briefly state why not: _____	___	___
14. Do you have any fear about answering these questions? _____ If yes, briefly state why: _____		

Completed by: _____
Signature of Parent/Client

Assisted by: _____
Signature/Relationship to Client to Client

Screened by: Intake Mediator ___ Resource Person ___ Assigned Mediator ___
Source: Divorce Mediation & Domestic Violence

LETHALITY ASSESSMENT TOOL

To assist the court in predicting the risk of future harm to a victim or child, consider the following questions regarding the domestic violence perpetrator and his or her behavior:

- Has the respondent threatened or attempted to commit homicide or suicide?
- What was the most severe act or threat of violence the respondent committed against the petitioner or child?
- Has the petitioner or child required medical attention as a result of the violence?
- Has the frequency or severity of the violence increased?
- Have the parties recently separated?
- Has the petitioner recently initiated legal proceedings, such as filing for child support or custody?
- Does the respondent have access to weapons?
- Has the respondent hurt or killed a family pet?
- Has the respondent abducted or threatened to abduct the children?
- Does the respondent have a criminal record?
- Does the respondent have a substance abuse problem?
- Does the respondent have a history of mental illness?

Source: *The Interstate Family Practice Guide*

Eleventh Judicial Circuit of Florida
Standard Custody Evaluation Report Form

**CUSTODY INVESTIGATION UNIT
SOCIAL INVESTIGATION**

TO: Judge's/General Master's Name

Case Name:

Case No.

Identifying Information:

Father

D.O.B.

SS No.

Education

Employment

Income

Date of home visit(s)

Actual time spent at party's residence

Mother

D.O.B.

SS No.

Education

Employment

Income

Date of home visit(s)

Actual time spent at party's residence

Children: List names, date of birth

CASE STATUS:

What are the present agreements and/or previous orders?

What is each party seeking?

What is present living and visitation arrangement?

Recommendation:

This Consultant respectfully makes the following recommendations and reasons thereof:

- | | Yes | No |
|-----------------------------------|--------------|--------------|
| 1. Shared Parental Responsibility | _____ | _____ |
| Sole parental Responsibility | _____ | _____ |
| 2. Residential Parent | Mother _____ | Father _____ |
| Non-residential parent | Mother _____ | Father _____ |

Do you feel that both parents are fit to be primary residential parent Yes _____ No _____

Reason:

3. Visitation
- _____ Unsupervised _____ Supervised
- Schedule
- _____ To include overnight as deemed normal by the court.
- _____ Other; describe.

Reason:

4. Counseling
- Mother Yes _____ No _____
- Father Yes _____ No _____
- Child(ren) Yes _____ No _____

Reason:

The form contains an additional five sections to report information obtained in interviews and observations with each relevant party involved, i.e., both parents, children, school officials, day care providers, police, and others.

Each Parent:

- Present living situation: household and structural makeup and employment;
- Background Information: childhood, educational and employment history of the parent;
- Marital Relationship: previous marriages, any children, problems in marriage and separation, injunctions for protection and investigations;
- Relationship with children: parental child care responsibilities, problems relationships, present living arrangements.
- Custody and Visitation Plan: the parent's reasons for the custodial plan, plan for care ,and feelings toward other parent's involvement

Child(ren):

- Out of home activity, such as basic school activity and attitude, extra-curricula activities and friendship involvements
- Family issues, such as parent-child and sibling relationships and any allegations of abuse toward child(ren).

Collateral(s):

- School (Day care) Official, issues involving absenteeism and tardiness, school performance and problems.
- Other people living in the home, issues involving their relationship and living arrangements, basic background information,

Police Record.

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO
1437 Bannock Street, Denver, Colorado 80253 640-3924

ORDER APPOINTING GUARDIAN AD LITEM,

	Plaintiff,
vs.	
	Defendant,

1. Pursuant to Rule 317(c), C.R.C.C.P., the Court appoints

as guardian ad litem for the child(ren) named in the complaint in this action, and for the protection of the child(ren) because: (**Check any that apply.**)

- There are allegations of a significant history of verbal or physical abuse of the child. The child may be the only eyewitness to the domestic abuse (and thus a likely witness in the case).
- It appears that the child has been caught in the cross-fire, has called the police, tried to protect the victim, etc.
- The testimony to date reveals evidence of present "red flag" symptoms, such as running away, starting fires, reduced school performance, assaultive behavior, nonattendance at school.
- There are allegations of sexual abuse of the child.
- There are signs of child neglect which may or may not be related to parental substance abuse, mental illness, untreated physical or mental illness.
- Significant information about the child is out of state or out of town and the parties are pro se and unlikely to be able to bring this information to the court. Here the judge needs an accurate investigative reporter.
- The Department of Social Services may be already investigating, but no case has been filed in Juvenile Court.
- Because of unilateral action on the part of one parent, there has been a recent sudden change in the child's normal pattern of care.
- It is unclear whether or not the nonviolent parent can protect the child from violence.

2. The attorneys for the parties and their phone numbers are:

3. GAL services will be *pro bono publico*.

ISSUED AND SIGNED THIS ____ DAY OF _____, 19__

BY THE COURT:

Printed Name of Judge

Judge

CHILDREN'S LEGAL CLINIC
PRO BONO ATTORNEY APPLICATION

Name: _____ Date: _____

Address: _____

Home Phone: Work Phone: _____ Fax: _____

Date of Birth: Social Security Number: _____

Colorado Driver's License number: _____

Do you have automobile liability insurance? _____

Name of Employer: _____

Number of years of legal experience: _____

Languages spoken: _____

Please describe your availability (specific weeks or parts of months available for emergency matters)

Are you currently providing other pro bono or volunteer legal services? If so, please describe:

How did you hear about the Children's Legal Clinic & the Pro Bono Project?

Why are you interested in working with the Children's Legal Clinic?

What support systems do you have currently?

Have you ever been arrested for or convicted for any criminal charge? If yes, please explain:

Have you ever witnessed or been involved in an incident of child abuse and neglect? If yes, please explain and discuss your feelings and reaction:

Have you ever worked with: (please circle) abused or neglected children? Abusive families? Victims or perpetrators of domestic violence? If so, please discuss:

Have you had experience with Social Services or other community service agencies? If so, please explain:

Have you ever been a victim of physical, sexual or emotional abuse? If yes, explain and discuss how you have addressed those issues:

I certify that all of the foregoing information is true and correct without consequential omissions of any kind. I understand that any misleading or incorrect statements may render this application void and would be cause for termination of my volunteer status. I hereby authorize the Children's Legal Clinic to investigate my background to determine my fitness as a potential volunteer.

Conditions of Visitation to Consider in**Domestic Violence Cases**

The National Council of Juvenile and Family Court Judges recommends the following conditions of visitation in cases involving domestic and family violence (NCJFCJ. Model Code on Domestic and Family Violence, 1994 p. 34.)

- Do not require or encourage contact between the parties.
- Order visitation in a location physically separate from the abused party (whether supervised or unsupervised).
- Require transfer of children between the parents in the presence of a third party and in a protected setting (e.g., police station or visitation center).
- Start with short, daytime visits in a public place, and increase length only if things are going well.
- Include no alcohol or drug provisions for the visiting parent, and direction as to the immediate consequences of violation (e.g. other parent should call police).
- Place limits on overnight visitation.
- Require the perpetrator to successfully complete a batterer's intervention program, drug/alcohol program, or parenting education program before being allowed visitation.
- Require a bond from the batterer to ensure the child's safe return.
- Build in automatic return dates for court to review how order is working.
- Do not order the victim into counseling with the perpetrator as a precondition of custody or visitation.

Source: Domestic Violence and Children: Resolving Custody and Visitation Disputes

EXAMPLES OF SPECIFICALLY WORDED VISITATION ORDERS

Specific language describing conditions of an order and how future disputes between the parties will be resolved prevents either party from taking advantage of any loopholes or ambiguities that may otherwise result. Law enforcement officers report that they have difficulty enforcing orders with ambiguous conditions.

Vague clauses such as "reasonable visitation" are not effective. Similarly, the court should not order that visitation be "as agreed upon by the parties," or "to be determined later." A subsequent negotiation process between the parties could lead to further violence, often in front of the children who may wrongfully see themselves as the cause of the turmoil.

Examples of specifically worded conditions include:

- Visitation shall take place every first and third Saturday from 10 a.m. to 3 p.m., at the home of and in the presence of Mary Smith, plaintiff's aunt, at 123 Main St., City. The plaintiff is responsible for dropping off the child by 9:45 a.m. and picking up the child at 3:15 p.m. In the event that visitation cannot take place, the party must telephone Mary Smith at (000)123-4567 by 8:30 a.m., and visitation shall then take place the following Saturday with the same provisions.
- If respondent wishes to exercise visitation rights, he must call Mary Smith at (000) 123-4567 by 10 a.m. the day before a scheduled visitation. Mary Smith shall then call the plaintiff.
- Respondent shall consume no alcohol or illegal drugs during the 12 hours prior to and during visitation. If he appears to have violated this provision, Mary Smith is authorized to deny him visitation that week.
- Visitation is conditioned upon respondent receiving weekly batterer's counseling from X organization, for a certain period of time, e.g., 1 year.
- Visitation may be denied if the respondent is more than 30 minutes late and does not call by 8:30 a.m. to alert Mary Smith to this (to prevent custodial parent and child from waiting for the other parent).
- (If there is a third party available for pick-up and drop-off, or supervised visitation): Plaintiff must arrive at the drop-off location 20 minutes before respondent, and then leave before respondent arrives. At the end of visitation, respondent must remain at the location for 20 minutes while plaintiff leaves with the children. (This prevents respondent following plaintiff to harass her or ascertain the location of plaintiff's new residence.)
- (If there is no third party available, even for exchanging the children): Drop-off and pick-up of the children shall occur at the local police department, in the lobby. Respondent shall leave with the children immediately; plaintiff may request a police escort to her car or to public transportation. At the end of visitation, respondent shall wait in the lobby at least 20 minutes while plaintiff leaves with the children. (See above comment.)

TRANSMITTAL FOR FINAL REPORTS AND OTHER GRANT PRODUCTS

National Criminal Justice Reference Service
National Institute of Justice

TO: Manager, NCJRS Acquisition Department

DATE: 1-6-98

FROM: Bernie Auchter

TELEPHONE: 307 0154

ADDRESS: National Institute of Justice
633 Indiana Avenue
Washington, DC 20531

GRANT #: jointly supported
with SJI!
SJI 95 12KB 076

FINAL REPORT TITLE: Domestic Violence and
Child Custody Disputes.

OTHER DOCUMENTS PRODUCED FROM GRANT:

GRANTEE NAME: NCSC

TELEPHONE:

ADDRESS: 300 Newport Av
Williamsburg Va.

Attached please find the final report for this grant.

TRANSMITTAL FOR FINAL REPORTS AND OTHER GRANT PRODUCTS

National Criminal Justice Reference Service
National Institute of Justice

TO: _____
Grant Monitor

DATE: _____

FROM: NCJRS Acquisition Department

GRANT #: _____

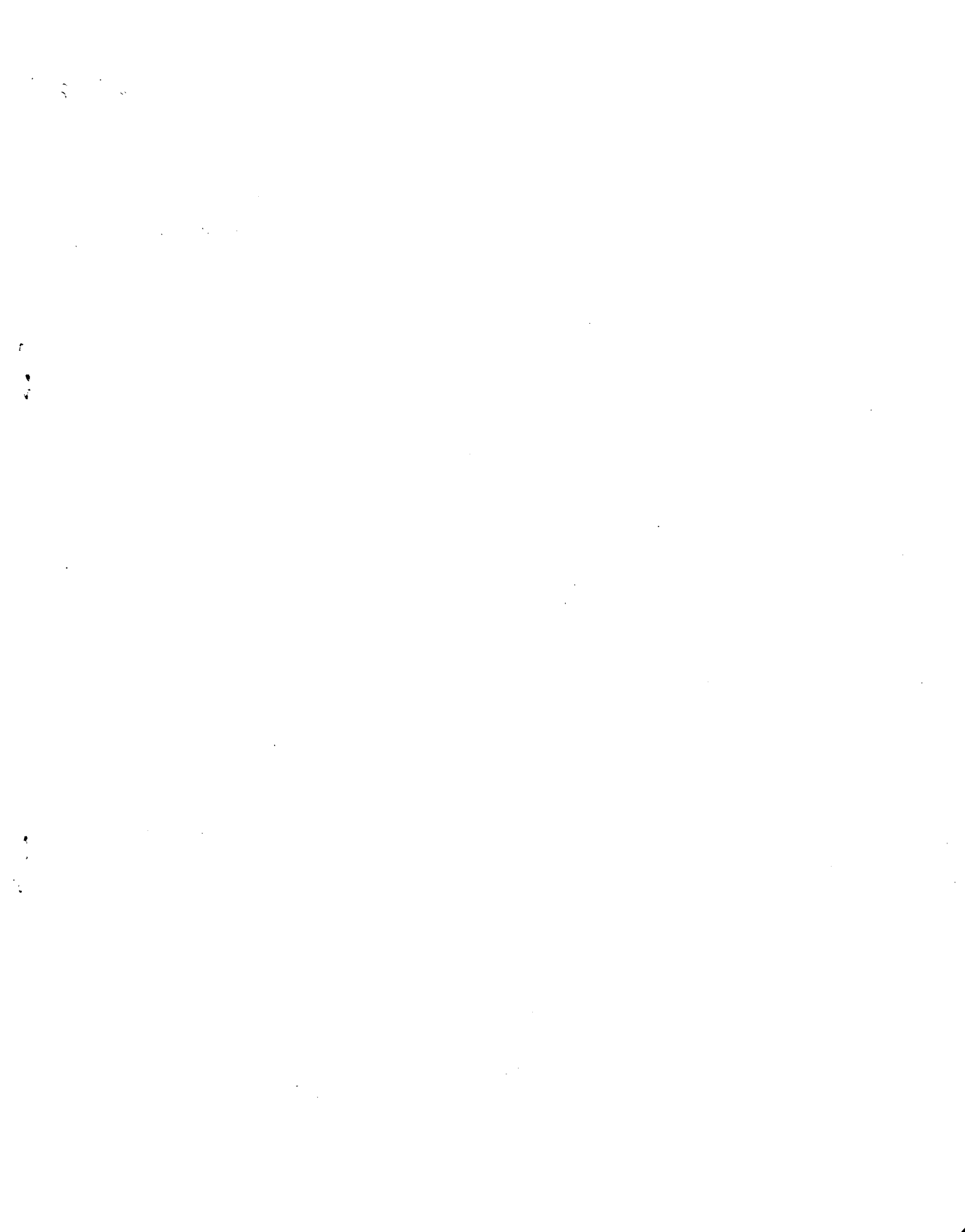
This material has been entered into the NCJRS data base, with the NCJ accession number(s) listed below.

FINAL REPORT: _____

OTHER DOCUMENTS: _____

Letter sent by NCJRS to grantee.

DATE: _____





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