Ethical Considerations in Representing Domestic Violence Victims

Jessica A. Hafemeyer
Jessica A. Hafemeyer Law Office, P.A.
jessica@hafemeyerlaw.com

Rule 1.1

• It is an attorney’s responsibility to provide clients with competent, informed representation
• To effectively represent a victim of domestic violence, an attorney must have an understanding of domestic violence

What is Domestic Violence?

• When an intimate partner uses physical violence, threats, harassment, emotional manipulation, or financial abuse to control, coerce, or intimidate the other partner
  • Physical
  • Emotional
  • Economic
  • Sexual
• Cuts across race, gender, sexual orientation, religion, socio-economic status, nationality, and culture
Power and Control Wheel

Physical and sexual assaults are usually the act that makes domestic violence apparent to others, but regular use of other abusive behaviors allow the batterer to exert power and control over the victim.

Source: National Center on Domestic and Sexual Violence, www.ncdsv.org

Gender

• Generally and statistically speaking, the overwhelming majority of domestic and sexual assault victims are women and the perpetrators are male.
  • BUT, think about how that stigma may play into representing a male victim.

Culture

• In some cultures, it is not considered acceptable to report domestic violence, which may mean that a victim is not as likely to tell you.
Screen Violence at Initial Meetings

- Why? To effectively represent a client, you need to know all of the issues which impact the case.
  - Negotiations
  - Information available to the client.

How Do I Screen?

- Ask questions which may prompt the client to share.
  - Has your partner threatened you or your children?
  - Are you afraid of your partner?
  - Is your partner controlling?
  - Do you have access to financial information, bank accounts, or money?
- Stress client confidentiality
  - Rule 1.6: An attorney cannot knowingly reveal information about the representation without the client’s informed consent

Lethality Factors

- A victim is more likely to be killed by the perpetrator of domestic violence if:
  - Perpetrator has access to firearms
  - Drug/alcohol abuse
  - History of stalking
  - Suicide or homicide threats
  - Victims has previously tried to leave
2015 Femicide Report

- Minnesota Coalition for Battered Women (www.mcbw.org)
  - At least 22 women murdered
  - At least 9 Family members or friends of the victim killed during an act of domestic violence
  - At least 3 men were killed by the victim's current/former partner

Lethality Factors Tracked by MCBW

- Of the 22 victims, 8 of the homicides occurred after she left, while she was attempting to leave, or where she had tried to leave within the year prior to the homicide.
- Of the 22 victims, 3 were known to have received threats of homicide prior to the occurrence of the homicide, but this is the most difficult to measure.
- 11 of the 22 homicides were committed using firearms.
- Of the 22 perpetrators, 13 had a history of violence-related criminal charges for a total of 76 charges.


Make Appropriate Referrals

- Familiarize yourself with the domestic violence programs which serve your area.
- Familiarize yourself with the legal services program that serves your area.
- Keep a stack of cards or brochures in your office to provide.
- MCBW 24-hour Crisis Line: (866) 223-1111
- National Domestic Violence Hotline: (800) 799-SAFE
Domestic Violence Programs

- Support Groups
- Resource Lists
- Safe Housing
- Safety Planning
- Help with drafting Order for Protection
- Court appearances
- Advocacy in criminal cases

Safety Planning

- In order to provide competent representation, you need to know how to contact your client without putting the client in danger.
- Discuss safety at home.
- Safety at the Courthouse throughout the case.
- Think about your own safety while the case is pending.

Order for Protection

- Minn. Stat. §518B
  - Domestic abuse: 1) physical harm, bodily injury, or assault; 2) infliction of fear of imminent physical harm, bodily injury, or assault; or 3) terrorist threats
  - Must be family or household members, have a child in common, have a significant romantic or sexual relationship

- Relief available:
  - Restrain from victim’s home or work
  - Address custody, parenting time, child support
  - Exclude from a common home
  - Surrender of weapons under the Violence Against Women Act
  - Full faith and credit between states
Rules of Professional Conduct, Rule 3.1

An attorney has a duty to not bring or defend a proceeding or to assert a claim unless there is a basis in law that is not frivolous.

DO NOT file an OFP as a tactic in a custody case

Look for mutual orders

Family Law: Other Rule 1.1 considerations

• ADR: not required where domestic violence has occurred
  • A mediator must screen for domestic violence
• Custody cases
  • Domestic violence is part of the Court’s determination of best interests
  • Custody evaluations
• Divorce cases
  • Look for financial issues

Rules 1.7 – 1.10

• Rule 1.7: Conflict of interest among current clients: Cannot represent one client if it will impact your ability to represent another client
• Rule 1.8(f): Fees cannot be paid by third party unless: 1) the client consents, 2) it would not interfere with the attorney-client relationship; and 3) information related to the representation is protected under Rule 1.6
• Rule 1.9: Duties to former clients: Cannot represent a current client in a case adverse to a former client’s position without informed consent
• Rule 1.10: Imputation of conflicts of interest: Conflicts in 1.7 and 1.9 are imputed to other members of a firm
Preamble to the Rules of Professional Conduct

• An attorney has the duty to zealously assert a client’s position
  • May need to be forceful in protecting your client’s position
  • In the statistically normal relationship involving domestic violence, the male is
    the batterer and the victim is a female.
• Think about how your gender as the attorney may impact interactions with
  the batterer.