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FAMILY LAW NEWS

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**MCLE Article: The Family Lawyer's Guide to Assisted
Reproduction Law in 2016**

By Deborah H. Wald, Esq. and Richard B. Vaughn, Esq.

**Family Violence Appellate Project Finds Many Family
Law Judicial Officers Fail to Respond Appropriately in
Domestic Violence Cases**

By Nancy K. D. Lemon and Jennafer Dorfman Wagner

Understanding Issues Affecting Transgendered Youth

By Avi Levy and Nathan Gabbard



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Family Law News

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**Do you Have an Idea for a New Statute
or a Change to an Existing One?**

Let Us Hear From You!

The Family Law Executive Committee—Affirmative Legislation is *seeking ideas* and proposals *for new legislation*. If you have any suggestions for new legislation or either revisions or amendments to existing statutes, please contact: **B J Fadem at bjfadem@fademlaw.com.**



Family Violence Appellate Project Finds Many Family Law Judicial Officers Fail to Respond Appropriately in Domestic Violence Cases

Nancy K. D. Lemon and Jennafer Dorfman Wagner

Introduction to FVAP

The Family Violence Appellate Project (FVAP) is the only organization in California dedicated to appealing cases on behalf of domestic violence survivors and their children. Founded in 2012, it has so far been responsible for the publication of twenty-four appellate decisions involving domestic violence issues, primarily in family and juvenile courts. In many of these cases FVAP represented one of the parties, and in others the agency identified unpublished appellate decisions and successfully petitioned for their publication.

FVAP has also worked on legislative changes to California's Domestic Violence Prevention Act (DVPA), provided technical assistance to many attorneys and unrepresented litigants around the state, and trained hundreds of attorneys, advocates, mediators, custody evaluators, bench officers, and others regarding domestic violence issues arising in family law cases.

FVAP is the family law-related Support Center funded in part by the State Bar of California to assist legal services programs around the state by providing



Nancy K. D. Lemon has been a leading authority on domestic violence law for over three decades. A practicing attorney, she has also provided expert testimony in many types of cases. She has worked to craft many pieces of California legislation affecting survivors of domestic violence and their children. Since 1988, Professor Lemon has taught Domestic Violence Law and the Domestic Violence Practicum at UC Berkeley's School of Law. She authored the first textbook on domestic violence law in 1996, now in its 5th edition. In 2012, she co-founded the Family Violence Appellate Project, where she is the Legal Director.

Jennafer Dorfman Wagner has been a legal services attorney since 1997, including 12 years in a supervisory or managerial role. She has practiced in diverse geographic regions and in multiple subject areas in previous positions at the Mental Health Advocacy Project, a project of the Law Foundation of Silicon Valley in San Jose, California; Legal Action of Wisconsin; Washington DC Legal Clinic for the Homeless, and Nevada Legal Services. Since February of 2013, her practice has focused exclusively on domestic violence appeals and includes supervising pro bono co-counsel, paid and volunteer FVAP attorneys, and fellows. She has been intimately involved in identifying the legal issues facing domestic violence survivors in other areas of the state and developing the appellate legal strategy to address those issues.

free technical assistance and training. FVAP co-counsels with private attorneys as well as with legal services programs, leveraging its small staff to provide free representation to low- or moderate-income clients who have promising appeals involving domestic violence issues.

Overview of Survey Results

In October of 2016, FVAP released its **2016 Survey of California Domestic Violence Service Providers**, available at www.fvaplaw.org. The survey asked members of the California Partnership to End Domestic Violence and the Legal Aid Association of California about the most pressing challenges for domestic violence survivors in civil courts. FVAP also hosted a meeting of legal service providers in June 2015 to ask similar questions and incorporated comments from that event into the report.

The survey received responses from 102 people from thirty-four counties, representing all regions of the state. Thirty-one percent of responders were attorneys; others were advocates. The results show some regional differences in the legal challenges faced by survivors of domestic violence, as well as many challenges they share. The top three legal challenges statewide are:

1. Courts failing to conduct DVPA actions properly, including failing to hear requests for financial support and custody;
2. Failing to appropriately consider abuse, resulting in improper and unsafe custody and visitation orders; and
3. Abusers using the legal system to continue the abuse.

Restraining Orders

An overwhelming number of advocates (close to 80% statewide) identified problems with obtaining restraining orders after hearings. Multiple continuances, repeated court dates, and reluctance to apply and enforce the DVPA were repeated themes.

Also, judicial officers that refuse to entertain or rule on requests for custody and support in DVPA actions were identified as problematic for domestic violence survivors in all phases of the domestic violence restraining order process. Many bench officers direct survivors to request custody, visitation, and support in paternity or dissolution actions rather than including these orders in DVPA hearings, even though the DVPA provides for a wide variety of relief including custody, visitation and support orders. This refusal to rule on custody and support requests is burdensome and expensive for litigants and creates more work for courts.

Throughout the state, advocates identified similar barriers to obtaining temporary restraining orders. The most significant barrier was courts that require notice of the request to the abuser before issuing such *ex parte* orders. This notice requirement, which varies from county to county, can endanger survivors and their children and have a chilling effect on their willingness to seek help from the courts.

Custody and Visitation

Responders in all areas of the state overwhelmingly identified improper custody and visitation orders as problems, with approximately 90% of responders statewide identifying such problems. This included

judicial officers' failure to hear the requests for such orders in DVPA proceedings, refusal to apply the correct standards as mandated by the legislature and case law, and a general misunderstanding of the dynamics of domestic violence and its ramifications for parenting. This often results in orders that further endanger survivors and their children.

Responders also reported problems with custody evaluators and mediators, especially the failure to either properly consider domestic violence or account for it in the mediation process, which state law mandates be considered whenever parents are disputing custody or visitation. Given that many counties allow mediators to make custody and visitation recommendations to family court judges and that judges give great weight to the recommendations of child custody evaluators, this failure to properly consider domestic violence can lead to further abuse of survivors and their children.

Financial Orders

Eighty percent of responders throughout the state reported the inability or difficulty in obtaining attorneys' fees orders. Many report that this leads to a power imbalance in the courtroom and runs contrary to the statutory consideration that judges issue attorneys' fees near the beginning of litigation to help even the playing field. Also, a continuing theme in the survey results was the inability of parties to obtain financial orders such as spousal and child support in a timely fashion or to enforce such orders once obtained. Because abuse survivors often have limited access to financial resources that would help them to leave abusive relationships, this challenge can have devastating consequences.

Litigation Abuse

Another significant problem reported throughout the state by close to 90% of responders was the use of the legal process to continue the abuse, commonly known as litigation abuse or "paper" abuse. Reporters stated that the problem takes many forms, including the granting of repeated continuances and hearings in DVPA actions, frequently and/or improperly allowing litigation of changed circumstances in dependency and custody actions, and allowing the filing of multiple meritless motions in family court or DVPA actions. Litigation abuse in civil courts is increasingly being recognized as another tool that abusers employ to continue to control, harass, and wear down their former partners, who may

eventually just give in, often because the abuse survivor has exhausted the financial resources he or she may have available.

Interstate and Jurisdictional Issues

Interstate and jurisdictional issues were also frequently reported as problematic, with more than 80% of responders highlighting such issues. Many narratives relaying the problem focused on courts' disbelief or reluctance to give fleeing victims relief. Survivors of abuse often cross state and national borders to try to achieve safety, typically fleeing to a jurisdiction in which they have family or other support. Courts' reluctance to provide the relief available under California's statutes and the appropriate international Conventions can lead to further abuse of survivors and their children if they are forced to return to and litigate in the abuser's jurisdiction. If they are not granted relief in the refuge state, some survivors will feel that they have no choice but to go underground with their children, risking losing custody to the abuser and a criminal conviction if they are located.

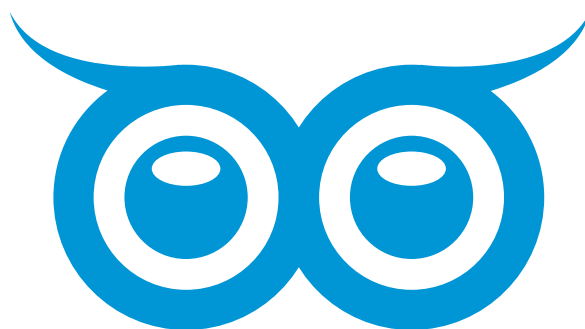
Conclusion

The findings from this survey are very concerning. They implicate large numbers of survivors of intimate partner abuse throughout our state. While California has a large body of statutes as well as many relevant appellate decisions designed to protect survivors of domestic violence and their children, our courts still have a long way to go in applying that law and keeping such survivors safe.

FVAP hopes that the survey report will help attorneys and other service providers in each region of the state understand shared challenges in their region and provide a tool to enable them to work together to try to solve local problems. FVAP also hopes the survey will provide the field with information about common challenges across the state so that FVAP and other service providers can work together to find statewide solutions that will help survivors and their children in all regions. Through meetings with domestic violence advocates, attorneys, bench officers, and other court-related personnel, FVAP hopes to raise awareness and a spark dialogue about how to improve local court practices and outcomes to best protect domestic violence survivors and their children.

FVAP is also interested in hearing about potential appeals that raise issues highlighted in the survey. You can contact us at info@fvaplaw.org.

See also www.fvaplaw.org, which includes summaries of many published family and juvenile dependency court decisions and links to the decisions. Soon the website will include online trainings that qualify for MCLE credit.



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