

Domestic Abuse Information for Oregon Family Law Practitioners

Why should attorneys screen for domestic abuse?¹

The presence of domestic abuse*² can impact every aspect of a family law case. Most significantly, it has serious adverse effects on children and is therefore highly relevant to custody and parenting time issues. In addition, it may affect the suitability of mediation, relocation concerns, distribution of assets, and spousal support, among other matters. Identifying the existence of domestic abuse and its past, present, and future impact on your clients and their children is critical to achieving safe and appropriate legal outcomes. Knowing criminal exposure can assist in advising clients properly on risks and options. Regardless of whether your client is a perpetrator or victim³, your knowledge of those facts will inform your representation and will allow you to develop a suitable case strategy sooner rather than later. When domestic abuse is identified, be prepared to make appropriate referrals and address any immediate safety concerns and needed support services for all involved, including for the children. At every stage of the case, consider safety issues and domestic abuse related laws in developing your legal strategy. Information about resources and relevant laws is included below.

Oregon Rule of Professional Conduct 1.1 relating to competence supports screening for domestic abuse.

The rule states:

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Effective representation hinges on knowledge of all the facts relevant to the case at hand. Inquiring into the existence of domestic abuse is the first step. Lawyers who have elicited such information are then well-positioned to provide advocacy that is consistent with the requirements set out in Rule 1.1 and addresses the legal needs of a client who is either a victim or perpetrator of domestic abuse.

The odds are great that a family law lawyer has already had or will have a client who is a victim or perpetrator of domestic abuse. People experiencing or perpetrating domestic abuse, however, are often reluctant to share that information with anyone, including their counsel. As noted, effective representation requires a foundational knowledge of the relevant facts. Therefore, screening for domestic abuse with *every* client is crucial to every family law attorney's practice.

Keep in mind that clients are more likely to disclose if they:

- understand the confidential nature of the attorney-client relationship and feel safe sharing information about abuse;
- know that all clients are being screened, not just them;
- know that the information is important to their case; and
- know that the information will be handled responsibly.

¹ Source material: Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association, "Client Screening to Identify Domestic Violence Victimization." 2013

² Domestic Abuse is used throughout this document to include coercive, power and control dynamics, instead of solely criminal, physical violence. When statistics are cited related to intimate partner or domestic violence, they do include all forms of abuse, not just physical.

³ In this document, the terms "victim" and "perpetrator" are used throughout because these are commonly understood terms. Ask your client what language they prefer and use language supportive of your client and what they would use themselves.

Conveying a basic understanding of domestic abuse and communicating support and a lack of judgment are essential. In the course of an interview, it also may be appropriate to share that the attorney has information about resources and is able to make referrals as needed.

Finally, the presence of domestic violence has safety implications, not just for the victim, but for you and your staff. Being aware of the issue will help you identify and address potential safety concerns. Information about safety planning is included below.

What is domestic abuse?⁴

Domestic abuse is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over the other partner. It may or may not be illegal behavior. Domestic abuse can be physical, sexual, emotional, economic, stalking, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Below are some examples.

Physical Abuse: Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, etc. are types of physical abuse. This type of abuse also includes denying a partner medical care (chronic issues, injuries from abuse, reproductive care, hormones or surgery for a transgender partner), or forcing alcohol and/or drug use upon him or her.

Sexual Abuse: Coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in a sexually demeaning manner. Sexual abuse can also include consequences for not having sexual contact, such as not allowing a partner to sleep or not allowing access to family money for food and hygiene items. These may be times victims/survivors says “yes” but only because they did not feel as if they could say no without consequence.

Emotional Abuse: Undermining an individual's sense of self-worth and/or self-esteem is abusive. This may include, but is not limited to constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.

Economic Abuse: Preventing an individual from acquiring, using, or maintaining financial resources by maintaining total control over financial resources, withholding one's access to money, forbidding one's attendance at school or employment, ruining the family's credit/rental history, or not spending family money responsibly.

Psychological Abuse: Elements of psychological abuse include - but are not limited to - causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; causing the individual to feel “crazy” and confused; and forcing isolation from family, friends, or school and/or work.

Domestic abuse can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic abuse affects people of all socioeconomic backgrounds and education levels. Domestic abuse occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.

⁴ Sources: National Domestic Violence Hotline, National Center for Victims of Crime, WomensLaw.org., and Futures Without Violence. Copied from: <http://www.justice.gov/ovw/domestic-violence> with modifications.

Domestic abuse not only affects those who are abused, but also has a substantial effect on family members, friends, co-workers, other witnesses, and the community at large. **Children who grow up witnessing domestic violence are among those seriously affected by this behavior.** Frequent exposure to violence in the home can impact children and youth psychologically, socially, academically, and behaviorally, resulting in trauma, diminished health outcomes, and low academic achievement. By the time children in the U.S. are between 14-17 years of age, 27% have been exposed to intimate partner violence.

Domestic Abuse Screening Questions for Attorneys

Initial screening for domestic abuse:

Below are some questions that you can integrate into your interviews with new clients to screen for domestic abuse. Asking questions about domestic violence is recommended in every case. Ideally, screening should be part of a conversation with your client. The questions below will help initiate that conversation. When discussing incidents and behaviors with your clients, you should consider the context, intent, and effect of what is described. Establishing a level of rapport with your client before exploring these issues is best. Finally, your assessment of your client's level of comfort and your personal practice or style should guide when and precisely how you ask the questions. Seek support from a Domestic Violence advocate or program if you need it.

- Have you and your partner been involved in other legal cases, including protective order matters?
- What happens when you and your partner disagree?
- Have you or your partner ever destroyed your clothing, objects in your home, or something you especially cared about?
- Have you or your partner taken the children without your consent, threatened to never let them see you again, or otherwise harmed them, physically or emotionally?
- Do you feel you have to walk on egg shells around your partner? Does your partner feel like that with you?
- Have you or your partner tried to control your finances, activities outside the home, or your contact with family or friends?
- Have you or your partner threatened to reveal sensitive information about you that may get you in legal trouble, impact your work, relationships, or embarrass you in some way (e.g. "outing," criminal history, legal residency status, mental health or drug/alcohol issues)?
- Do you feel safe at home or when around your partner? Does your partner feel safe with you?
- Does your partner prevent you from eating or sleeping, or endanger your health in other ways (including withholding hormones, medication, or birth control)? Do you prevent your partner?
- Have you or your partner ever hurt or threatened you (including pushing, slapping, or hitting you)?

- Have you or your partner ever forced you to do something that made you uncomfortable or that you did not want to do, including something sexual?
- Have you or your partner threatened to take a pet away, withhold care, or harm your pet?
- Is there anything else about your relationship with your partner that you want to share?
- What would your partner say if asked these questions?

Assessing the level of danger:

If your client reveals the existence of domestic abuse, and is the victim, you can ask other questions to identify the dangerousness of your client’s situation. Alternatively, you may want to refer the client to a domestic violence program for this level of assessment. If you choose to ask additional questions relating to level of danger, here are some common questions that can be used for this purpose. Affirmative answers to these questions indicate heightened danger and are cause for concern.⁵ See the resources link below for appropriate referrals.

- Does your partner have, or can they easily get, a gun?
- Has your partner ever tried to choke you?
- Is your partner constantly jealous?
- Does your partner try to control most of your daily activities?
- Has your partner ever forced you to have sex when you did not wish to do so?
- Have you left your partner or separated after living together or being married?
- Is your partner unemployed?
- Has your partner threatened or attempted suicide?
- Do you have a child that is not a child of your partner’s?
- Does your partner stalk you or leave threatening messages?

When domestic abuse is identified:

- Assist your client in making an interim safety plan, if time is of the essence. For information about safety planning, go to <http://stoprelationshipabuse.org/develop-a-safety-plan/>. This website and the ABA “Tool for Attorneys to Screen for Domestic Violence” in these materials also have safety information for attorneys representing victims.
- Refer you client to a local domestic violence program for safety planning, support, and additional resources. For current information about Multnomah County resources, go to <https://multco.us/dv/resources-0>.

⁵ For a more comprehensive tool, the *Danger Assessment*, developed by Jacquelyn C. Campbell, PhD, RN, is well-respected and available online. For more information, go to <https://www.dangerassessment.org/>.

Remember:

- Violence, coupled with a pattern of control and coercion, may be predictive of escalating physical and potentially lethal violence.
- Research shows that victims' perceptions of high danger are often accurate; their perceptions of low danger are not. In fact, victims frequently minimize the occurrence or severity of abuse.
- Perpetrators may sometimes present as victims as a way to discredit a victim's claim of abuse. It's important to examine the context, intent, and effect of the abusive actions.
- The most dangerous time for a victim is when the abuser becomes aware that the victim has decided to leave the relationship.
- Children exposed to DV are at increased risk of neglect, physical and sexual abuse.
- This screen may help identify patterns to further explore with your client, use your professional judgment.
- If you would like more information on screening see:
 - Battered Women's Justice Project: Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters
<http://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>
 - ABA Commission on Domestic and Sexual Violence, "Tool for Attorneys to Screen for Domestic Violence." 2005
<http://www.americanbar.org/content/dam/aba/migrated/domviol/screeningtoolcdv.athcheckdam.pdf>
 - Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association, "Client Screening to Identify domestic Violence Victimization." 2013
<http://www.mnbar.org/docs/default-source/sections/client-screening-to-identify-domestic-violence-victimization.pdf?sfvrsn=2>

Domestic Abuse Resources

Oregon

- Multnomah County Domestic and Sexual Violence Coordination Office (local resources and information) <https://multco.us/dv>
- Oregon State Bar Family Law BarBook, Chapter 4 - "Domestic Violence; Family Abuse Prevention Act; Stalking Protective Orders."
- Oregon Judicial Department Family Law Home
<http://courts.oregon.gov/sites/OJD/OSCA/cpsd/courtimprovement/familylaw/index.page>
(family law and protective order forms and domestic violence web page)
<http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Parenting-Plans.aspx>
(safety-focused parenting plans)
- Oregon Department of Justice Address Confidentiality Program
<http://www.doj.state.or.us/crimev/confidentiality.shtml>
- Oregon Department of Justice Crime Victims' Rights Information
www.oregoncrimevictimsrights.org
- Oregon Department of Human Services Domestic Violence Web Page (includes information about benefits for domestic violence victims – Temporary Assistance to Domestic Violence Survivors (TA-DVS)
<http://www.oregon.gov/dhs/abuse/domestic/pages/index.aspx>

- Legal Aid Web Site <http://www.oregonlawhelp.org>
- Oregon Coalition Against Sexual and Domestic Violence <http://ocadsv.org/>
- Defending Childhood Initiative www.defendingchildhoregon.org

National

- ABA Commission on Domestic and Sexual Violence
http://www.americanbar.org/groups/domestic_violence.html (main page)
http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/20110419_aba_cdv_issue_spotting.authcheckdam.pdf (comprehensive screening tool for attorneys)
http://www.americanbar.org/content/dam/aba/migrated/domviol/publications/187815_ABA_Checklist_FINAL.authcheckdam.pdf (Judicial Checklist)
- WomensLaw.org (General Information on Domestic Violence, State Laws + List of National Resources) <http://www.womenslaw.org/>
http://www.womenslaw.org/gethelp_national.php
- Legal Resource Center on Violence Against Women (information and technical assistance re interstate custody disputes involving domestic violence victims)
<http://www.lrcvaw.org/techassist.html>
- Battered Women's Justice Project www.bwjp.org
- National Council of Juvenile and Family Court Judges
<http://www.ncjfcj.org/our-work/domestic-violence> (domestic violence information)
<http://www.ncjfcj.org/resource-library/publications/judicial-guide-child-safety-custody-cases>
 (A Judicial Guide to Child Safety in Custody Cases)
- Resource Center on Domestic Violence: Child Protection and Custody
<https://www.rcdvcpc.org/>
- Futures Without Violence www.promisingfutureswithoutviolence.org

Information on Batterers

- Understanding the Batterer in Custody and Parenting Time Disputes, Lundy Bancroft
<http://www.lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes>
- Oregon DOJ Batter Intervention Program (BIP) Advisory Committee
http://www.doj.state.or.us/victims/bip_advisory_committee.shtml

Domestic Violence Related Laws

Protective Orders:

Family Abuse Prevention Act	ORS 107.700 - 107.735
Elderly Persons and Persons with Disabilities Abuse Prevention Act	ORS 124.005 – 124.040
Stalking Protective Orders	ORS 30.866; ORS 163.730 – 163.750
Sexual Abuse Protective Order	ORS 163.760 - 163.777
Emergency Protective Order (24 hour -Peace Officer Initiated)	ORS 133.035

Custody and Parenting Time:

Domestic Violence Custody Factor and Presumption	ORS 107.137(1)(2)
Parenting Plan Content (Safety of Parties is Consideration)	ORS 107.102(4)(b)
Parenting Plan Shall Ensure “Safety of Parties”	ORS 107.105((1)(b)
Child Support Enforcement: Good Cause to Exempt Division of Child Support from Providing Services if Safety Concerns	ORS 25.080(10) OAR 137-055-1090

Arrest and Firearms:

Mandatory Arrest – Scene of Domestic Disturbance	ORS 133.055(2)
Mandatory Arrest – Violation of Protective Order	ORS 133.310(3)(4)(5)
No Contact Orders in Criminal Cases Involving Domestic Violence and Sexual Assault:	
When in Custody:	ORS 135.247
In Release Agreements:	ORS 135.250(1)(2)
Firearms Crimes	
State:	ORS 166.255
Federal:	18 USC §922(g)(8); 18 USC §922(g)(9)
Issuance and Revocation of Concealed Handgun Licenses When Subject To a Stalking Protective Order or FAPA Restraining Order	ORS 166.290; ORS 166.293

Protections:

Employment Protections for Victims	ORS 659A.270 - 659A.290
Housing Protections for Victims	ORS 90.325; ORS 90.445 - 90.459
Sick Leave Law Includes “Safe Leave”	ORS 653.616
Unemployment Compensation	ORS 657.176(12)
Oregon Address Confidentiality Program	ORS 192.820 - 192.868
Advocate-Victim Privilege	ORS 40.264

Immigration:

Federal Immigration Remedies	www.asistahelp.org (“Access the Clearinghouse” tab)
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