

## **THE ROLE OF THE LEGAL ADVOCATE IN FAMILY LAW CASES**

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As with other forms of legal advocacy, a woman may come to you at various points during her process of divorce or paternity. It will always be better if advocate involvement can begin early on in the process. The earlier in the case you can become involved, the better it is for everyone. The insight and experience of the advocate can provide a window to the system and also can help the woman avoid choices she will later regret. It is always sad when an advocate hears, “I wish I had come to you sooner!” from a victim of domestic violence who is regretting her choice of an attorney or case strategy.

### **Attorney Selection**

Finding legal counsel for victims of domestic violence is a frustrating dimension of legal advocacy. The resource of attorneys that know the issue, will vigorously represent, and will work without a huge retainer is nearly impossible in some parts of the state. A key to addressing this problem will be that the advocate needs to become familiar with the attorneys that work in his/her community. When spending time in court, advocates need to observe the attorneys that are present: Do they seem attentive to their clients? Do they articulate the elements of their cases clearly? How do the judges and other court personnel seem to respond to them? If you are working with an attorney who is a good *lawyer*, the domestic violence knowledge can be an addition to their skills. Conversely, if an attorney understands domestic violence, but is not skilled as a professional, they still may not help the client.

When an advocate finds an attorney whose work they respect, consider approaching them after a court hearing or when they are passing in the hallway at the courthouse and introduce yourself. Ask whether they would be willing to work on domestic violence cases with you and take referrals. If you explain the role that you can

play in helping the victim gather the information the attorney needs, and other resources, they may become more interested in becoming involved.

Advocates around the state have been able to develop relationships with attorneys that allow them to refer both paying and pro bono clients, or to represent women in restraining order hearings for flat fees. Sometimes attorneys are uncomfortable with the emotion and distress that a battered woman may show, and it is helpful to know that the advocate is there to deal with the woman.

Historically, some domestic violence programs have had policies against referring or recommending an attorney to clients. Although I understand those concerns, this can be alleviated by providing a client with several names of attorneys and then telling about the experiences the advocate has had. Saying, “In my experience, this attorney is better with property issues, this attorney is a good custody lawyer, this attorney is not a ‘hand-holder’ with clients, etc.” is providing information that will guide the decision that the woman will ultimately make for herself. It is also true that an attorney may work well with one client and not another, depending on personalities and other factors. But this information on how attorneys deal with domestic violence victims and cases is a crucial service that programs can offer to battered women and should not be overlooked. She may only have money for one retainer, and changing attorneys in the midst of a case is difficult, expensive and problematic for many reasons.

### **Working with Attorneys**

As in other advocacy situations, an advocate needs to look for the gaps that are occurring in the family law case. Advocates can be a valuable resource to battered women in family law cases, and to the attorney as well if they are open to that type of relationship.

## **ONE KEY TASK FOR YOU IS TO CONTINUALLY REMIND THE SYSTEM PROFESSIONALS ABOUT HER SAFETY**

- **Guard your confidentiality and privilege with the battered woman.** Contact with her attorney needs to occur only with her consent or at her request. She needs to know that what she tells you is confidential. Other parts of the Legal Manual cover that at length.
- **Assist the woman in gathering the papers, financial documents, etc. that the attorney needs or that she needs to represent herself.** Some attorneys don't even want to file for divorce until that is all organized. It may be more difficult to get those records once the divorce begins. Be alert to the attorney asking her to do dangerous things. (Once an attorney asked a woman in shelter to serve her husband with the divorce papers to save money on a process server!)
- **The uncertainty of outcomes can be a difficult thing to cope with as months pass.** Each legal case is a journey unto itself. The woman with whom you are working needs to process her feelings about this, her fears related to her children, and her adjustment to being away from her former partner. In most scenarios, the children are now seeing him alone and that is stressful. Certainly, she may benefit from counseling and a women's support group at these times. A legal advocate, however, will be thinking about how her feelings, behavior and choices could impact on her case. Part of informed decision-making for her is being aware of the risks. In family law cases, very few things are off limits. This means her private life, friends, partying and relatives may all be scrutinized by a judge or guardian ad litem.
- Dr. Phyllis Chesler, in the book Mothers on Trial, describes what she found in her research:  
"Mothers who grew too 'obsessed' with their lawsuits were often shunned by relatives and friends... Non-custodial mothers became 'invisible pariahs,' who were condemned or ostracized by other mothers because of their non-custodial status... Many mothers under custodial siege became anxious, depressed, and insomniac. Some attempted suicide or began drinking. Some had 'nervous breakdowns.' Each mother blamed herself for 'breaking down.' Every mother was terrified that such information would be used against her in court... Her natural motherhood was buried beneath stacks of legal papers, in her children's premature and unnatural withdrawal from her, and in the punitive silence that surrounded her." (pp. 292-93)
- **Attend hearings whenever possible.** Family law hearings can be drawn out and time consuming, but the presence of an advocate has several functions. It communicates support to the woman, it provides an opportunity to support and assist her attorney, and it provides an opportunity to observe and document the operation of the court process in your county. Was the domestic violence raised? Was it taken seriously? What was a successful approach to bring it up to this judge? The woman will be feeling enormous stress and fear, and at these moments, the advocate can remind her of things she wanted

to highlight to her attorney, and even facts she has discussed with the advocates, but has forgotten at this moment.

Participation in family law cases consumes both the time and emotional energy of legal advocates, but battered women benefit from their involvement and appreciate the assistance provided.