

CHAPTER 13

DOMESTIC VIOLENCE AND RURAL COURTS

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Early on in this manual, we learned that domestic violence is a widespread societal problem with consequences reaching far beyond the realm of the family. In this chapter, we will explore how those consequences are reflected in rural areas. Are there differences between the abusers and victims of domestic violence in urban settings as compared with rural settings? How do rural courts address domestic violence issues? This chapter will answer those questions for judges and commissioners in rural courts. Although the focus here is on civil domestic violence protection orders, much of the material is applicable to criminal and family law cases, as well.

The definition of a rural court is elusive. Purportedly seventy-nine percent of the state trial courts in the United States are located in rural counties.¹ According to one source, a rural court has fewer than two full-time general jurisdiction judges and is generally located in a county with a population of fewer than 60,000 people.² The Rural Courts Committee of the Superior Court Judges' Association in the state of Washington defines rural courts as those with three or fewer superior court judges. The Washington State Legislature defines "rural counties" as those with 100 people or less per square mile.³ According to the Office of Financial Management, as of April 1, 2006, thirty-one of our thirty-nine counties fall into that category.⁴

The debate on what constitutes a "rural" environment is fairly heated among social researchers and demographers. One scholar rejects black and white definitions of urban and rural and poses, instead, a Rurality Index which would classify American residential practices in various shades of gray.⁵

For the purposes of this chapter, it is more difficult to distinguish a truly "urban" environment from one that is truly "rural." Even our most populated county, King, is composed of people residing in numerous rural areas who must find their way to judges and commissioners in the metropolitan courthouse to resolve their domestic violence problems. So, even the most urban courts in this state will handle rural domestic violence issues. Therefore, this chapter is applicable to all but those few judges and commissioners whose citizens are solely urban and suburban dwellers.

The emphasis in this chapter will be on courts, victims and abusers in rural areas. The unique character of each rural community is reflected in the varied procedures adopted by the courts that serve those communities. In order to assist the reader, a random survey was conducted of judges and commissioners in many of the rural courts in the state of Washington.⁶ Since there is little written about domestic violence and rural courts, except from the sociological perspective, a review of the manner in which different

courts treat similar issues may be helpful in assessing the procedures and practices presently in effect in your judicial district.

As domestic violence occurs at a fairly constant rate across all demographic, economic, social, and regional categories, the incidence of abuse and the need for protection orders should be reasonably constant among most counties. One guideline suggests that a court is probably meeting a minimal access standard for victims if:

1. The Protection Order (PO) [Temporary Restraining Order (TRO)] request rate is consistently five or more per thousand population per year;
2. Requests are made at a fairly regular rate throughout the year, with the exception of those times when women feel freer to attempt separation (such as hunting season and the beginning of school vacations) when requests should increase;
3. The profile of victims requesting orders generally matches the profile of the community;
4. A victim can obtain a PO 24 hours a day;
5. A clearly understood protocol exists outlining the responsibility and relationships of each agency involved in providing protection to victims.⁷

The Administrative Office of the Courts (AOC) annually provides each county with a report of the total number of cases in each category. To determine if your county is within the standard range, look up the total number of cases for each court in your jurisdiction and divide by the population.

I. Overview of Domestic Violence in Rural Settings

We learned in Chapter 2 that abusers and victims of domestic violence can be found in all age, racial, socio-economic, educational, occupational, personality, and religious groups. As such, the prevalence of domestic violence in rural communities mirrors that in other more urbanized settings.⁸ But, many of the attractive factors of rural communities such as open spaces, neighborliness, and close-knit families can become liabilities when the problem is domestic violence.

Some people live in a rural area because they want to be totally isolated from neighbors and do not choose to become part of the local community. So, isolation in a rural community is many times both geographic and social. On the other hand, the neighborliness and close-knit families bring about a sense of togetherness in small communities. Unfortunately sometimes this can result in the repression of the reporting of domestic violence. Because everyone knows each other, the fact of domestic violence becomes more public once it is known. Consequently, victims may be more reluctant to report abuse to anyone due to the fact that it will become widely known in the community. Also, attitudes in small

communities may condemn the victim for upsetting social harmony through reporting the battering. In crafting domestic violence orders, judges face the challenge of stopping the cycle of abuse and community tolerance of abuse, while preserving the parties' acceptance by the community.

Residence in a rural area may be an asset to other domestic violence victims. If the victim is viewed by the community as sympathetic, the rural community is better able to respond to her needs than an urban community. In addition, people who know each other's business may be more aware of and willing to report violations of protective orders. Finally, although law enforcement may be fewer in number, there may be greater cooperation among various agencies. For example, through cross-deputization, officers from the game department, parks department, and tribes may be able to assist in domestic violence cases.

II. Rural Victims

There are no personality profiles for rural, urban or suburban victims and the effects of the struggle for power in intimate relationships have a similar impact on victims regardless of the setting. Recall that national crime statistics show 85 percent of abuse victims are women.⁹ Therefore, at times throughout this chapter, abusers/respondents will be referred to in the male gender and victims/petitioners in the female gender. The domestic violence victim who is reluctant to testify, ambivalent about a petition for dissolution or protection, and otherwise appears inconsistent may be acting out of fear of the escalating tactics of her abuser. These behaviors may be puzzling and frustrating for court personnel who should be urged to read Chapter 2 of this manual to gain a better understanding of the victim's plight.¹⁰ Actions on the part of a victim, which may not make sense to the court, may nevertheless be part of a protective strategy that a domestic violence victim views as essential to the safety of herself or her children. Referral of the victim to an appropriate social service agency may go far to increasing the margin of safety for the victim and the children.

Other factors can greatly impact a rural battered woman's isolation and chances of receiving safety and services. Consider that:

- A rural battered woman may not have phone service.
- Usually no public transportation exists, so if she leaves she must take a family vehicle.
- Police and medical response to a call for help may take a long time.
- Rural areas have fewer resources for women—jobs, childcare, housing, and health care, or easy access to them is limited by distance.

- Extreme weather often exaggerates isolation—cold, snow, and mud regularly affect life in rural areas and may extend periods of isolation with an abuser.
- Poor roads thwart transportation.
- Seasonal work may mean months of unemployment on a regular basis and result in women being trapped with an abuser for long periods.
- Hunting weapons are common to rural homes and everyday tools like axes, chains, pitchforks, and mauls are potential weapons.
- Alcohol use, which often increases in winter months when rural people are unemployed and isolated in their homes, while not a cause, often affects the frequency and severity of abuse.
- Traveling to a “big city” (perhaps 20,000 population) can be intimidating to rural battered women and city attitudes may seem strange and unaccepting.
- A woman’s bruises may fade or heal before she sees neighbors, and working with farm tools and equipment can provide an easy explanation for injuries.
- Rural families are often one-income families, and a woman frequently has no money of her own to support herself and her children.
- A farm family’s finances are often tied up in land and equipment, so a woman thinking of ending a relationship faces an agonizing reality that she and her partner may lose the family farm or her partner will be left with no means of income.
- Court orders restraining an abuser from having contact with a woman may be less viable for some rural women because their partners may need to continue operating the farm if it is their only source of income.
- Rural women frequently have strong emotional ties to the land and to farm animals, and if there is an attachment to their animals they may fear they will be neglected or harmed.
- Rural women are usually an integral part of a family farm business, so if they leave the business may fail.¹¹

Religion is not unique to rural areas, but can be both a resource and a barrier. Where the church has a strong influence on family life, cultural traditions may support gender stereotypes. Also, counseling in a church setting may be lacking in an awareness of the impact of domestic violence in the relationship.

What cannot be forgotten is that rural women also have unique skills and heritage derived of strong frontier women. This is often characterized by a deep love of the land and its resources; a persistent commitment to life, to lasting relationships,

to growth and rebirth; uncanny skills in making do; a belief in the power of beauty and humor; and a fierce willingness to struggle and suffer in order to find or create freedom and interdependence.¹²

III. Rural Abusers

The court's greatest impact and control can be exercised in regard to the abuser. Again, from Chapter 2, we know that abusers come in all shapes, sizes, and colors. Yet in rural areas there may be a higher incidence of abusers being employed in the trades or vocations commonly characterized as "outdoor" work. Many abusers reside in rural areas because of their desire to be isolated. Self-sufficiency is highly valued in rural areas and many times attitudes toward community and assistance are resistant, if not hostile.

While all abusers use similar tactics, some rural abusers manage to exert control over their victims without assaulting them. Consider cases where the abuser has killed the sheep, shot the horse or severely beaten the dog. An abuser who cuts off the power and phones to the farm and waits in the barn can be just as frightening to a family as one who stands in front of them with a raised fist. Another abuser would not assault his wife or children, but would pack them in the car and drive out into the back country threatening to leave them without transportation. In cases such as these, the court should take an inclusive view of the definition of "domestic violence" in order to provide a measure of safety to the victims.

IV. Treatment Programs

Domestic violence treatment programs can be valuable to abusers and their families. If the court decides treatment is warranted, [RCW 26.50.060](#) requires the court to order abusers to participate in domestic violence perpetrator programs approved under [RCW 26.50.150](#). Essentially these are state-approved programs, sometimes known as "batterer's programs." Anger management counseling is not appropriate.¹³

The survey of judges and commissioners indicated that few courts, within the context of civil protection orders, order individuals into treatment programs. Although all judges and commissioners acknowledged the importance of such programs, the lack of funding, monitoring, and casework supervision militated against requiring abusers to participate. Presently there are two mechanisms for enforcing an order requiring treatment. The first is for the court to require the abuser to return periodically and report on the progress in treatment. If the abuser fails to report, or is not making progress, then the court may, on its own motion, consider utilizing contempt to enforce the court order. This places the court in the uncomfortable position of being a prosecutor and judge at the same time.

The other alternative is to order the treatment, but not require any monitoring. This places the victim in the uncomfortable role of monitoring the treatment. At least one court makes forms available for petitioners to initiate contempt proceedings to compel the respondent's adherence to the treatment order. It might be advisable to refer petitioners to courthouse facilitators, pro bono lawyer programs, or active domestic violence assistance programs if they want to file a motion for contempt.

If the facts warrant, the court should refer the abuser for an evaluation and review the matter within a reasonable period of time to ensure that the evaluation has been completed. At the review hearing, if the evaluation recommends treatment, the court should order treatment and require periodic reports from the treatment agency. In the event the abuser fails to comply with the treatment, then the matter should be referred to the prosecutor's office for filing of criminal contempt. The court may also want to adopt a policy which restricts modification of the order until such time as the treatment has been completed, or reasonable progress has been made.

V. Temporary Protection Order Considerations

Practices vary from court to court on how victims may obtain temporary protection orders. In many counties, temporary orders are issued through ex parte calendars heard on a daily basis. In others, petitioners submit papers to the clerks who then hunt down a judge or commissioner to sign the documents. Generally, when orders are signed in chambers, the petitioners are not even seen in person by the court unless there is an issue regarding the substance of the petition. Many victims of domestic violence may not be adept at expressing themselves in writing due to lack of education or stress, so it is recommended that such victims be seen and heard by the court if their written papers appear lacking.

One of the recommendations of a study done on domestic violence and rural courts was that courts should establish procedures to provide 24-hour access to temporary protection orders.¹⁴ Yet very few rural counties in Washington have any established procedures for obtaining temporary orders when the courthouse is not open for business. One option for issuance of orders on a 24-hour basis is to designate a judge who is available by fax machine. Law enforcement can assist a petitioner in filling out the petition which is then faxed to the judge at home. The judge can review the petition and fax a temporary order back to the law enforcement officer who then can serve the order on the respondent. The judge then files the petition and order on the next business day.

Other counties occasionally allow the issuance of orders by the judge who reviews probable cause on weekends at the jail. Any emergency petitions for domestic violence orders are placed in the probable cause box and the judge

reviews the petition and either grants or denies the temporary order which is then delivered to law enforcement.

NOTE: [RCW 26.50.070\(3\)](#) allows the court to hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

VI. Permanent Protection Order Hearings

A. Security

Provisions for courtroom security during domestic violence hearings range from none to metal detectors outside the courtroom along with deputy sheriffs inside the courtroom. Few rural counties can afford metal detectors and the personnel to staff them. Many retired law enforcement officers have found part-time employment serving as bailiffs/guards during domestic violence hearings in rural counties. Some of them are actual employees of the sheriff's department, but others may be corrections officers or county employees. Most are armed, although some courts have bailiffs equipped only with pepper spray. It is axiomatic that every judge or commissioner surveyed felt that security is necessary for these hearings. It now appears that the standard is to provide security for these hearings and those counties that are lax in providing proper security may run the risk of civil liability in the event persons are injured during a domestic violence proceeding.

The judge or court personnel can create a margin of safety and decrease the opportunity for harassment in the courtroom, by controlling the seating arrangements. For example, petitioners and accompanying people can be directed to sit on one side of the courtroom and the respondents directed to sit on the other side. Also court personnel can accompany the victim after the hearing to ensure that she is not harassed in the courthouse or the parking lot.

B. Conduct of Hearings

Most domestic violence hearings are conducted in summary form. For many judges who have served in a district or municipal court capacity, a domestic violence hearing is similar to a small claims court proceeding. The format is as follows:

1. The court does a roll call of the entire calendar and signs orders on the cases which involve default, agreement or lack of service. Then the contested cases are dealt with individually.
2. The parties are seated at the respective counsel tables.

3. The court advises the parties to address their statements to the court and not to talk to each other.
4. Before swearing in the parties, the judge clarifies that the petitioner is continuing to seek a protection order and, if so, the terms that she is requesting. Then the judge asks the respondent whether or not he objects to the order as requested by the petitioner. Many times the respondent will not object to entry of the order, but wants to ensure that he has visitation or property rights or he wants the court to know that he doesn't agree with the statements set forth in her petition.
5. If the parties disagree about an order being entered, then the petitioner is sworn and asked to recount the basis for the domestic violence petition. Some judges find it is easier to ask them if the statements contained in their petition are true which allows the court to adopt that petition without hearing all of the testimony.
6. After the petitioner has testified, the petitioner is then asked if he or she has any other witnesses they might wish to have testify. If so, then those witnesses are called, sworn and allowed to testify.
7. The respondent is then sworn and given an opportunity to respond. The respondent's witnesses, if any, are then allowed to testify. To save time, the court may choose to hear directly from the respondent immediately after the petitioner rather than hearing from petitioner's witnesses. There may be sufficient evidence to establish petitioner's case thus obviating the need for further evidence. The court may also inquire of the parties to summarize the expected testimony of their witnesses. Based on this summary or "offer of proof," the court can decide if it is needlessly cumulative or relevant.
8. Some courts allow pro se parties to conduct cross-examination. [ER 611](#) and [ER 614](#) vest the judge with considerable discretion and control of the mode, order, and interrogation of witnesses. Rather than allowing traditional cross-examination, the judge may consider asking, "Are there any areas of inquiry you wish the other side to address or explain further?" Thus the examiner poses the question or issue to the judge and the judge may reframe the question.
9. The court then renders an opinion and signs an order. The court should explain the contents of the order to the parties.

NOTE: [RCW 26.50.135](#) requires the court to consult the judicial information system (JABS or SCOMIS) to determine the pendency of any other proceedings involving residential placement of any child of the parties for whom residential placement has been requested.

10. To increase the margin of safety at the hearing, the petitioner is allowed to leave the hearing first. The respondent is required to stay in the courtroom for a few minutes so the petitioner can leave the building.

For most courts, the format is little changed even when an attorney is involved. Most judges prefer to keep the parties and witnesses at the counsel tables rather than have formal testimony in the witness stand.

C. Role of Advocates

In his ethnography, *Rural Women Battering and the Justice System*, author Neil Websdale investigated domestic violence in rural Kentucky. At page 132, he explored the thoughts of the rural battered woman on the court system:

If one thing stands out from my conversations with rural battered women about their relationship with the court system, it is their initial hesitancy and concern about entering it in the first place. It is at this initial stage of deciding whether to proceed against their violent partners that women engage in some of their bravest acts of resistance to the rural patriarchal order. It is hard for those of us not in those situations to appreciate the magnitude of the socio-legal obstacles faced by rural battered women. The decision to go to court in a rural county where you, your abuser's family, or both are perhaps well known is to lay out a lot of personal details. In rural communities more so than urban ones, these details are often deemed best left behind closed doors. We saw in disturbing detail in Chapter 1 how women's decisions to resort to the court can provoke homicidal rage from some abusers.

We must add to these difficulties the fact that rural women may be especially estranged from rural courthouses. Rural women are often not in tune with the cultural capital spoken in courtrooms, where attorneys and judges use obscure legal jargon. Summoning the courage to go to court, reveal intimate details of your life, and at the same time risk your life and perhaps the lives of your children,

requires enormous courage. Having made this decision, many battered women I interviewed drew upon the support of court advocates based in the rural shelters to help them through the arduous process of going to domestic violence court. . . .

Victim advocates are beneficial to the court system as they provide emotional stability and common sense advice to victims who are sometimes unable to focus on the court business at hand. Nonetheless practices vary throughout the rural courts as to the role of the victim advocate. The preferable practice is to allow victim advocates to accompany the victims at the counsel table or the bench. Allowing the advocate to accompany the victim to the counsel table or bench will provide her with a sense of security and comfort; whereas the exclusion of advocates from deliberations at the bench or counsel table leaves battered women in a very precarious position at a critical juncture in their process of trying to break the control of their abusers.

D. Service of Process/Orders

Service of process can be difficult in rural counties. Law enforcement may have to travel great distances and consume large amounts of time in trying to locate a respondent. In those situations where respondents are difficult to find, petitioners should be advised of the option of service by mail as authorized under [RCW 26.50.123](#). If courthouse facilitators are not available, it may be advisable to draft an information form for petitioners on how service by mail can be accomplished.

Some petitioners have friends, family, or private process servers accomplish their service of process. They should be advised that service alone is insufficient to effect enforcement of the order. The law enforcement agency must be advised that service has been accomplished so that fact can be lodged in the computer database. At least one county maintains a list of the local process servers which is handed to petitioners evincing a desire to effect their own service. Those petitioners are also advised that a declaration of service should not only be filed with the clerk but also lodged with the local law enforcement agency.

The stress of appearing in an unfamiliar courtroom setting for a case involving a family member or intimate partner is felt just as strongly by the abusers as by the victims. It is not unusual for a respondent to attend a domestic violence hearing where the court has entered an order against him, yet afterwards be unable to articulate or understand what is required of him under that court order. In the domestic violence setting, entry of the order is not enough. The respondent must be advised of the terms of the order and how it affects his behavior if the order is to provide the level

of security intended by the court. It is suggested that the court read the specific restraints to the abuser. Then the court should ensure that a copy of the order is placed in the abuser's hands so that he can read it. At least one county also serves the abuser with instructions regarding the court order. A copy of those instructions is included as Attachment 1 at the end of this chapter. Most counties utilize a copy machine that is in or around the courtroom to provide copies to the parties of the court's order.

As stated above, the ideal practice is to allow the victim to leave the courtroom first so she may make her way out of the courthouse and parking lot without being followed by the abuser. Some judges want the unhappy abuser removed from the courtroom as soon as possible. They have devised systems whereby the bailiff or other court personnel accompany the abuser to the clerk's office where he obtains a copy of the order. He is then instructed to leave the building and the bailiff returns to the courtroom with the victim's copy of the order. Whatever procedure is adopted should account for the safety and security of the victim so that she need not be placed in the uncomfortable situation of having to accompany or be in the same room as the abuser after the court has made its ruling.

All courts should use the approved Washington State forms as those forms have been drafted to meet all state and federal requirements regarding domestic violence cases. The Order for Protection, WPF DV 3.015, is a mandatory form. *See* Washington State court forms at: <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>. Law enforcement officers, judicial and criminal information gathering agencies, and other courts are familiar with and rely upon those forms.

E. Companion Cases

If the court has jurisdiction over another pending family law case, such as a dissolution, paternity or custody action, the court may consider ordering the cases be consolidated. Each trip to the courthouse provides an opportunity for violence, as well as emotional harassment. Consequently, the court should consider entering appropriate orders, especially temporary orders, in the concurrent family law case. This is especially true where either of the parties is proceeding pro se in the family law case.

Orders in the family law case may include restraints and disposition of property, distribution of certain property for temporary possession, and child support. A consolidation order filed in the family law case may also serve to alert the judge or commissioner of the existence of the domestic violence case. Petitioners often neglect to assert domestic violence allegations in family law cases involving children. Remember the court is required to consider the restricting factors under [RCW 26.09.191](#) when children are involved. (*Emphasis added*).

F. Immigration Issues

In 1996, Congress created a new, very broad ground of deportation based on a conviction of a state or federal crime of domestic violence, spousal abuse, stalking, child neglect, abandonment, or abuse.¹⁵ An immigrant also is deportable when a civil or criminal court has found him or her to have violated a domestic violence protection order, even if there is no criminal conviction. A juvenile adjudication does not constitute a conviction, but a juvenile becomes deportable if a civil or criminal court finds the juvenile has violated a domestic violence protection order.¹⁶ For further information, *see* Appendix F - Domestic Violence: The Overlap Between State Law and Immigration Law (2006).

Judges and commissioners in rural counties, with heavy concentrations of immigrants, may want to consider a form of oral or written notice to be provided to immigrants concerning the collateral consequences that can result from violation of a domestic violence protection order.

VII. Content of Orders

A. Stay-Away Provisions

Safety of the rural victim and children may entail insertion of a clause in the protection order requiring the respondent to stay a certain distance away from the petitioner and/or the children. (*See* page 13 of Chapter 8.) Care must be taken in crafting the language of the order so that it is not too broad and unenforceable. In *Jacques v. Sharp*, 83 Wn. App. 532, 922 P.2d 145 (1996), the court rejected a protection order that restrained the respondent from entering the area known as “Magnolia” in Seattle, Washington. Yet in *State v. Chapman*, 140 Wn.2d 436, 998 P.2d 282 (2000), the court upheld a restriction of one mile from a petitioner’s residence, workplace, school or daycare of the children.

The pattern form orders allow the court to exclude the respondent from entering the petitioner’s residence and from coming within a set distance of that residence. The pattern form also allows the court to restrain the respondent from going to the petitioner’s school, place of employment, or the daycare or school of the minors. Yet some petitioners want the court to enter an order which restrains the respondent from coming within a set distance of their person. Such an order is not reasonable as the legislature has rejected the idea of a “bubble of protection” that surrounds the petitioner.

In rural counties, these stay-away provisions become a bone of contention when there is only one video store or one grocery store and the respondent has arrived first. Is the respondent required to remove himself immediately? That would seem to be the common sense interpretation of the order which contains a stay-away provision from the person. Therefore, if the court has some other thought in mind, such as, “whoever is at the bowling alley first gets to stay there,” then those clarifying provisions should be inserted so that law enforcement and the parties can have clearer guidelines for their future behavior.

B. Duration of Orders

Seattle v. Edwards, 87 Wn. App. 305, 941 P.2d 697 (1997) points out that the court should be clear about the duration of any protection order. That case held that an order for protection which had form language stating it was effective for one year from the date of entry, but also had a box checked indicating the order would last until further order of the court, was ambiguous and therefore enforceable only up to one year. Orders should be scrutinized to ensure that the duration of the order is clear and any order exceeding one year in duration should either be deemed “permanent” or have a specific ending date. The court should explain to the parties, the duration of the order and the fact that the parties, themselves, cannot modify this. The court should explain that modification forms are available and any changes in the order must be approved by the court.

C. Exchange Locations

Large amounts of court time can be consumed with issues such as whether or not the children should be exchanged at milepost 243 or, instead, in front of the Omak Police Department. Although these decisions at times seem somewhat nonsensical, the importance of even these minor decisions comes to light when, as occurred in Seattle, a man shot his wife and daughter outside the visitation exchange location. To the extent that the court is persuaded that visitation is in the child’s best interests, the court should keep in mind the safety of the victim and children in the exchange process. Probably the best way this can be accommodated is to have third parties do the transportation, but that is a luxury that is seldom available. Most judges and commissioners resort to public areas such as McDonald’s restaurants, sheriff’s offices or police stations, shopping centers or on the side of busy highways or streets. Although even the most carefully crafted order will not stop a determined murderer, a thoughtfully drafted order will decrease the likelihood of abusive exchanges that further damage victims and their children.

D. Property Provisions

[RCW 26.50.060](#) states in part as follows:

- (1) Upon notice and after a hearing, the court may provide relief as follows:
 - ... (j) Order possession and use of essential personal use effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and
 - ... (k) Order use of a vehicle

In rural areas, some creativity may be required in order for the victim and children to continue to meet their basic needs. It may be necessary to order the respondent to supply firewood, animal feed or any other basic essentials which will allow the status quo to continue. Arguments over use and possession of property may, in some cases, be the primary reason why the parties are before the court. In those cases, a temporary or permanent order which establishes use and possession of the disputed items may go much further toward keeping the peace than simply entering no contact orders.

It is common for rural judges and commissioners to act as mediators to see if the parties can come to agreement on how their necessary property can be divided. As one judge said, “I try to mediate the property, but if they will not agree, then I send them off to small claims or to file a dissolution or legal separation.” Certainly it is not recommended that rural courts convert domestic violence proceedings into property trials, but the reality is that the domestic violence proceeding may be the only legal forum for some parties. Small claims courts only provide money judgments and may not be available to them for many months. They also may not have the benefit of marriage which would allow them to file for dissolution or legal separation. Therefore fulfillment of the court’s peace-keeping function should involve a sincere exploration of the needs of the parties as opposed to a strict interpretation of the statute.

Finally, law enforcement appreciates direction in regard to the concept of “limited standby.” It may be advisable to specify a length of time for the limited standby. It may also be advisable to insert a clause such as: “In the event the parties cannot agree as to who shall retain possession of an item of personal property then _____ shall be awarded temporary possession until further court order.”

VIII. Dismissal Requests

There are differing views on how courts should handle requests by petitioners to dismiss their petitions, whether the request is after the temporary order has been entered or after a permanent order is in effect. Some believe the victim is a better judge than the court as to how much danger she is in due to the existence of the order. Therefore those persons believe the court should automatically dismiss any existing order upon request of the petitioner. The analogy would be to a non-suit motion brought by a plaintiff in a civil suit.

Others believe the court should attempt to ascertain whether or not the victim is being pressured into dismissing the petition and, if so, deter the victim from such a course of action. In *State v. Dejarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998), the Supreme Court found that the public has an interest in the enforcement of domestic violence protection orders. The court adopted the language of the Court of Appeals in that same case:

The Legislature has clearly indicated that there is a public interest in domestic violence protection orders. In its statement of intent for [RCW 26.50](#), the Legislature stated that domestic violence, including violations of protective orders, is expressly a public, as well as private, problem, stating that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more . . .¹⁷

This language lends support to the proposition that once a protection order is entered, the court retains authority to determine whether or not it is in the best interests of the parties and the public to modify or dismiss that order.

Some of the approaches taken by the courts in response to a petitioner's request to dismiss are as follows:

1. Advise petitioner of other options such as modifying portions of the order, but if she persists then dismiss. The court may inquire of the petitioner, "Do you want him to be able to come home, but still be restrained from threatening or harming you?"
2. Allow modification of the order eliminating the no contact and stay-away provisions, but maintain the basic domestic violence

restraining order. In these cases, the court informs the petitioner that existence of the order will not impair her ability to communicate or reside with the other party, but will keep the protection order in place which can make it easier to modify in the future, if necessary. Sometimes the court will reduce the duration of the order at the same time.

3. Not allow dismissal until there is a crisis plan filed with the court. Usually that plan is done with the collaboration of the domestic violence advocate. Then the matter is set for a hearing before the court. At the hearing, the court will talk to the petitioner about domestic violence and the damage that it does to children, but dismiss the case if the petitioner persists.

Number 3 above is the subject of much debate among judges and domestic violence advocates. Although all of us might agree that education about the causes and effects of domestic violence is a good thing for victims, there is much disagreement about how that may be accomplished. Most advocates and counselors believe the court should have information available to give the petitioner on domestic violence, safety plans and the locations of agencies to help them, but should not “order” them to go there. This concept of the court revictimizing the victim is discussed below.

Regardless of whether the court dismisses the case, the court should be careful not to dismiss the petitioner. Websdale, in his *Ethnography on Rural Woman Battering and the Justice System*, cites judicial dismissiveness was reported by nearly all of the women who expressed dissatisfaction with judges. The common complaints were that the judges were rude, inattentive, authoritarian or lacking in compassion or sympathy. The majority of victims before the court are women. The majority of judges in the state of Washington are men. A rural judge who rudely dismisses a battered woman from the pulpit of the courtroom bench may precisely reproduce the very ceremonies of degradation those women report experiencing in their homes.¹⁸ Therefore the court should always remind the petitioners that the court is available in the future for a new protection order if the need arises. Petitioners should not be discouraged, even subtly, from returning to the court for additional relief.

IX. Coordination of Conflicting Orders

Even in small counties it is possible for the courts to enter conflicting orders regarding domestic violence. For example, the district court judge in a criminal proceeding might order the defendant not to have any contact with his children and wife. A superior court judge or commissioner may sign a civil protection order on behalf of the wife which allows for some visitation because she wants to ensure that he sees the children in spite of their difficulties. If the wife did not

attend the district court hearing, she may not even be aware of the district court order. Then, a week or two later the superior court judge or commissioner may enter a temporary parenting plan in a dissolution proceeding which is even more liberal than the other orders. Therefore three court orders affect the father's time with the children and each is different. This is a mild example. It would not be unheard of for the father to have sought a temporary protection order against the mother and be awarded temporary custody of the children such that a police officer is then faced with the prospect of two directly conflicting orders and wondering which to enforce. **These problems provide the reason why courts are now required to check the computer databases to see whether other orders involving the parties exist.**

[RCW Chapters 26.50](#), [10.99](#), [26.09](#), and [10.14](#) allow the court to enter orders which can severely impact a family if those orders are not coordinated. One way to coordinate conflicting orders is to adopt the unified family court goal of "one judge for one family." A unified family court model is far easier to implement in a small county than a large one. Our present statutory framework allows the creation of a family court merely by organizing and scheduling the various hearings in such a way that the same judicial officer or team can take an "umbrella" approach to the various cases involving the same family. Even if a unified family court model is not adopted, systems can be implemented to avoid multiple hearings and inconsistent orders. Policies and procedures to provide consistency may include:

- Requests for modifications or dismissals should consistently be referred to the same judge who entered the order.
- Commissioners who regularly hear superior court domestic violence matters can be pro tem in the district court so they can alter [RCW 10.99](#) no contact orders in conformity with the temporary orders being entered in superior court. Generally, the prosecutor's office will waive its presence at hearings regarding those orders.
- Training clerical and court staff on the importance of looking for related cases. Larger counties are developing Family Connector Codes to discover and track related cases. In some counties, the judge or commissioner hearing the domestic violence case is also given any related files regarding pending dissolutions, paternity actions or the like. The same is true in reverse so that when the judge is hearing the dissolution case, the domestic violence file is also available.
- The court could create a case management structure which causes multiple concurrent causes of action to be assigned to a single judge or judicial team that retains jurisdiction.

X. JUDICIAL LEADERSHIP

Rural judges and commissioners are visible community leaders. As such, they are able to take a leadership role through education of the community regarding domestic violence. Yet can the judge assume such a leadership role and still be looked upon as objective when domestic violence cases are brought before him or her? One of the recommendations of a research project concerning rural courts and domestic violence was that each community should establish a domestic violence task force to develop court policies and responses that protect victims and comport with state statutes and practice. The recommendation included the membership of judges, court managers, prosecution, the bar, law enforcement, social services, mental health and battered women's advocacy representatives.¹⁹

The state of Washington Ethics Advisory Committee has issued several opinions regarding judicial participation in activities or organizations centered on domestic violence. Every judge should periodically read the Code of Judicial Conduct (CJC) which is contained in the Washington Court Rules published each year. [CJC Canon 4](#) permits judges to participate in quasi-judicial activities that do not cast doubt on their capacity to decide impartially any issue that may come before them. Therefore a judicial officer can be part of a task force that does not act in an advocacy role such as the Domestic Relations Commission. But any task force on domestic violence that strongly advocates for victims of domestic violence or for specific policies on domestic violence would not be appropriate for membership by a judicial officer. A judicial officer could still meet with an advocacy task force, but may not join and participate in such a task force.²⁰

Even without a task force, all judges should provide leadership in their jurisdictions. Judges should take steps to see their orders and orders of other courts within their geographic area are enforced. Judges can speak with local law enforcement agencies and other courts, including tribal courts, about enforcement of orders, service of process and full faith and credit. *See* Chapter 14 for particular issues affecting Native Americans and tribal police, enforcement of orders and tribal court orders.

A judicial officer may attend "A Day of Remembrance" ceremony to honor individuals who have been, or are currently victims of domestic violence. In so attending, the judicial officer should not act as an advocate or, in any manner, indicate a predisposition as to how he or she might rule in a domestic violence case.²¹

A judicial officer may participate on an advisory board for a domestic violence court order study. The object of the study is to evaluate the effectiveness of court orders in preventing subsequent violence and injury to domestic violence victims. The research project is entitled "Protection of Women: Criminal Justice and Health Outcomes." Although the judicial officer can participate on the board,

again the judicial officer should always act impartially and resign if the board becomes an advocacy group.²²

It is not appropriate for a judicial officer to participate in the organization of a domestic violence symposium which is sponsored by two civic organizations one of which is a provider of services for victims of domestic violence. Since that organization acts as an advocate for domestic violence victims, the judicial officer should not be a member of the planning team or serve in an advisory capacity. Nevertheless, the judicial officer may address the symposium and/or act as a moderator and give a judicial perspective on the way domestic violence cases impact the courts.²³

Since 1995, the Washington State Gender and Justice Commission has supported efforts to conduct state and local domestic violence summits. Under the direction of former Chief Justice Richard P. Guy and Justice Barbara A. Madsen, the Commission has implemented state-level and local domestic violence summits. In addition, it produced a manual and a videotape on how to conduct a local summit. For a copy of the manual and videotape, contact the Gender and Justice Commission at (360) 705-5290 or gender.justice@courts.wa.gov.

As can be seen from the above, there is a fine line between advocacy and education. Judicial leadership activities focused on education are acceptable and, within the context of judicial leadership, are encouraged. Those activities which would be labeled as advocacy are not appropriate and could result in sanctions by the Judicial Conduct Commission. The majority of the judges surveyed recognized their leadership role in the community and felt an obligation to respond to requests to speak to local groups about domestic violence and the courts.

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American Bar Association Commission on Domestic Violence
<http://www.abanet.org/domviol/home.html>

Battered Women and Their Children
<http://www.columbia.edu>

Communities Against Violence Network (CAVNET)
<http://www.cavnet.org>

Family Violence Prevention Fund
<http://endabuse.org>

Minnesota Higher Education Center Against Violence and Abuse
<http://www.mincava.umn.edu>

National Coalition Against Domestic Violence
<http://www.webmerchants.com/ncadv/default.htm>

National Domestic Violence Organizations
<http://www.usdoj.gov/ovw>

ATTACHMENT 1

**INSTRUCTIONS TO RESPONDENT
RE: ORDER FOR PROTECTION**

Read Carefully

1. The Court has issued an order for protection which is legally binding on you.

2. The order for protection is a court order. If you violate the order, you will be subject to:
 - A. Criminal penalties;

 - B. Penalties for contempt of court. The Court expects and requires full compliance with the order, including all treatment and counseling requirements.

3. If you have been ordered to participate in treatment or counseling, or ordered to be assessed to determine whether you need treatment or counseling:
 - A. It is your responsibility to seek out the appropriate professional person or agency to conduct the assessment, treatment or counseling;

 - B. You are personally responsible for all payment for such assessment, treatment or counseling; and

 - C. Compliance with any assessment, treatment and counseling requirements of the order for protection may require a waiver of any physician/patient, psychologist/client, or other privilege otherwise provided by law.

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- ¹ D. Cullen, "Rural Courts: What Makes Them Unique," (Williamsburg: National Center for State Courts, Institute for Court Management, 2003), <http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=RuraCt>;
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- ² K. Fahnestock, M. Geiger and J. Daffron, Jr., *supra* note 1, at IV.
- ³ [RCW 43.160.020\(12\)](#); [RCW 43.168.010\(7\)](#); for population density determinations, see www.ofm.wa.gov/popden/rural.asp.
- ⁴ Office of Financial Management, "Population Density of Washington Counties" (State of Washington, 2006), www.ofm.wa.gov/popden/rural.asp.
- ⁵ Charles L. Clelan, Ph.D., "Measuring Reality," *Human Services in the Rural Environment* 18, no. 4/19, no. 1 (Spring-Summer, 1995).
- ⁶ In February 1999, thirteen district and superior court judges and commissioners were asked a series of questions regarding practices and procedures in their respective counties.
- ⁷ Kathryn Fahnestock, *Not In My County: Rural Courts and Victims of Domestic Violence* (Rural Justice Center, December 1991).
- ⁸ R. Bachman, *Violence Against Women: A National Crime Victimization Survey Report* (Washington, D.C.: Bureau of Justice Statistics, 1994); R. Bachman and L. Saltzman, *Violence Against Women: Estimates From the Redesigned Survey* (Washington, D.C.: Bureau of Justice Statistics, June 1995).
- ⁹ C. Rennison, "Intimate Partner Violence, 1993-2001," *Family Violence* (Bureau of Justice Statistics, U.S. Department of Justice, 2003).
- ¹⁰ An excellent resource regarding rural victims is: N. Websdale, *Rural Woman Battering and the Justice System, an Ethnography* (Sage Publications, Inc., 1998).
- ¹¹ *Women's Rural Advocacy Programs* (Minnesota Coalition for Battered Women), www.mincava.umn.edu.
- ¹² WVCADV (West Virginia Coalition Against Domestic Violence), 1991-1994.
- ¹³ Anger management programs do not have any certification requirements and can vary widely depending upon the service provider. The program set forth in [RCW 26.50.150](#) is state certified and far more comprehensive in terms of goals, treatment requirements, and length of treatment. Refer to Appendix A at the end of the manual regarding the components of an abuser treatment program which has been certified by the state of Washington.
- ¹⁴ Kathryn Fahnestock, *supra* note 7, at 41.
- ¹⁵ See INA § 237(a)(2)(E); 8 USC § 1227(a)(2)(E).
- ¹⁶ Norman Tooby, "Immigration Information for Criminal Cases," in *Immigrants in Courts*, ed. Joanne I. Moore (Seattle: University of Washington Press, 1999).
- ¹⁷ *State v. Dejarlais*, *supra* at 944.
- ¹⁸ Websdale, *supra* note 10, at 140.
- ¹⁹ Kathryn Fahnestock, *supra* note 7.
- ²⁰ State of Washington Ethics Advisory Committee, Amended Opinion 96-2 (5/31/96).
- ²¹ State of Washington Ethics Advisory Committee, Opinion 96-16 (10/10/96).
- ²² State of Washington Ethics Advisory Committee, Opinion 97-4 (3/21/97).
- ²³ State of Washington Ethics Advisory Committee, Opinion 97-10 (6/26/97).