



DOMESTIC VIOLENCE SCREENING TOOL FOR CONSUMER LAWYERS

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Consumer lawyers are uniquely positioned to provide domestic violence survivors with access to critical economic resources. For survivors of domestic violence, there is no safety without economic security, and there is no economic security without safety. To effectively advocate for remedies that balance economic and physical safety considerations, consumer lawyers need to identify whether their client is a survivor of domestic violence and acquire an understanding of the risks and needs arising out of their client's experience. This document is intended to assist consumer lawyers in determining who, among their clients, is a survivor of domestic violence in order to enhance legal representation and advocacy.

Screening for Domestic Violence is Critical to Effective Representation

Asking a client whether or not she/he is a survivor of domestic violence can be a difficult undertaking for many reasons. The client may not identify a relationship as abusive. Or perhaps, as attorneys, we believe it is not our place to ask such personal questions. We might feel that we are ill equipped to respond to the possible answers. However, if an attorney's client is a survivor of domestic violence, such information can change their advocacy and provide access to unique and valuable legal remedies.

Screening clients for domestic violence is necessary to ensure that attorneys are providing the most competent and appropriate legal representation. Under the Model Rules of Professional Conduct, competent representation requires inquiry into and analysis of the factual and legal problem.¹ The experience of domestic violence often impacts the risks that an individual client faces, and therefore, significantly shapes their advocacy needs. Consumer lawyers (indeed, all lawyers) should consider how the context of domestic abuse impacts their legal strategizing—the nature of the legal claims they seek, the defenses available, the presentation of the case (testimony, evidence, arguments), and the types of remedies they pursue. For example, a tax attorney who is unaware of the presence of domestic violence may not avail the client of “innocent spouse relief.” A foreclosure defense attorney who is unaware of the fact that a financially abusive husband has failed to make mortgage payments may not think to coordinate with family lawyers to compel the abuser to make payments or may neglect to mention hardships

¹ The Model Rules of Professional Conduct mandate that attorneys “provide competent representation to a client” which “requires the legal knowledge, skills, thoroughness and preparation necessary for the representation.” Rule 1.1.

posed by the abuse when advocating with lenders or before a foreclosure court. And, an attorney assisting a client with prioritizing debt may not dispute credit card charges that were fraudulently incurred by an abusive partner.

At the same time, a consumer lawyer unaware of the continuing safety risks posed by the threat of retaliatory abuse will not know to move the court to keep a client's information confidential or to request that payments by an abusive spouse be made to a third-party, rather than directly to a survivor in hiding. Such safeguards can mean the difference between security and violence. Legal strategies that fail to integrate safety and privacy considerations can lead to enormous collateral consequences for a survivor (e.g. loss of employment, housing, child custody)-- harms that may outweigh the benefits of seeking consumer remedies in the first instance. Simply put, competent representation of domestic violence survivors requires that attorneys and survivors partner to share information and devise strategies that integrate both safety *and* economic considerations.

While it is an attorney's duty to screen for domestic violence, the attorney also must respect the client's decision to not disclose information about the abuse. The client may determine that sharing the information with her or his attorney poses a safety risk. Or, the trauma may be too difficult for the client to discuss, despite the benefit to her or his legal case. Attorneys and advocates need to respect that choice. Attorneys should ask direct questions about domestic violence; however, if the client does not want to discuss the issue, the attorney should clearly communicate that the door is always open for further discussion and assistance, on that or any other topic.

The Nature of Domestic Violence

In order to screen for domestic violence, practitioners must have a fundamental understanding of its basic nature. Below is a summary; however, it is advisable that attorneys obtain training in the dynamics of domestic violence so that they can identify the common cues.

Domestic violence is coercive control. Social science literature describes intimate partner violence as an array of physical assaults, sexual abuse, economic exploitation, psychological degradation, property destruction, hostage-taking, terroristic threats, stalking, burglary, theft, slander, and homicide. Domestic violence is not a discrete act of violence. Rather, batterers engage in a pattern of abusive conduct designed to achieve and maintain control over their partner and to induce fear of the consequences for failure to comply.

Although violence is common in abusive relationships, there are many additional tactics that abusers use to control and harm survivors. For example, an abuser may control a survivor by threatening to take their children, refusing to follow through on the sponsorship of documented immigration status, or controlling the survivor's finances. The physical violence is but a "moment" within a larger context of coercive control, used to re-enforce the abuser's other controlling non-physical behaviors. Abuse can impact all areas of a survivor's life including work, school, healthcare, housing, standard of living, and relationships with family, friends, and children.

Economic abuse often plays an integral role in a batterer's coercive control tactics. Batterers often sabotage their partners' educational, job training, and employment opportunities; destroy their credit either directly or by engaging in identity theft; and maintain complete control over bank accounts and ATM cards. Batterers employ all of these acts of economic control and sabotage to keep their partners financially dependent and expose them to increased risks of violence.

Contrary to popular wisdom, leaving an abuser does not ensure the safety of a battered partner; rather, separation increases the risk of retaliatory violence. Batterers use violence to prevent their partners from leaving, to retaliate for the separation, and to force them to return. This increased risk of violence is critical for attorneys to keep in mind as they strategize with their clients. All consumer law strategies must be assessed in light of the survivor's broader safety plan.

When trying to discern whether or not a client is a survivor of domestic violence, it is important for attorneys to be careful not to make assumptions based on a client's race, gender, socio-economic class, age, or sexuality. Also attorneys should be aware of any stereotypes we possess about the demeanor of a survivor of domestic violence. Each survivor will present differently. For that reason, context is key. Only by gathering such information can the attorney determine whether a client is a survivor of domestic violence.

Trust is Key to Effective Representation

People share information when they feel that they can trust the person with whom they are talking. Because comprehensive representation requires information sharing by both advocate and client, it is critical for attorneys to devote significant time and care to building trust with their clients. As with all interviews, it will be important to explain to clients that communication with their attorneys are protected by the attorney-client privilege. As attorneys know, explaining privilege in simple terms is always important (i.e., that everything the client tells an attorney is "between the two of you" and that attorneys can disclose only if they have the client's permission ahead of time). Attorneys must be sure to explain any exceptions to confidentiality that apply, such as mandatory reporting laws.² A trusting relationship also requires that attorneys engage in active-listening by paying close attention to what the client is telling them and repeating back what they heard. An attorney who does most of the talking is not hearing the client's story and not establishing trust. While we all have judgments as humans, our clients can pick up on these judgments if we are not careful. To help ensure that attorneys obtain honest answers and important information, they should approach these questions with empathy and tolerance.

² Before conducting a screening, it is critical that attorneys familiarize themselves with any reporting obligations that may exist in their state. While preserving the confidentiality of survivors is paramount, attorneys should know that, in some instances, they may be required by law to report certain information, including suspected child abuse and serious and immediate threats to the safety of the survivor or others. The parameters of these reporting obligations vary widely from state-to-state. The same facts may, depending on the state, trigger a mandatory report, a voluntary report, or no reporting obligation or right whatsoever.

SAMPLE QUESTIONS

These questions are sample questions. *This is not designed to be a checklist of questions for you to recite.* You will need to use your interviewing acumen and judgment to determine how to inject these screening questions into your practice. It will vary case-by-case. Sometimes, during the course of an interview, a client will offer information that naturally lends itself to a follow-up question, which will enable you to explore whether the client is or was in an abusive relationship. In other instances, you might ask questions that apply to the subject matter of the legal issue that your client has brought to your attention. And, in still other instances, you may need to approach the topic more generically. Under all of these circumstances, it makes sense to begin with a few open-ended questions and develop the conversation with the client from there. Allow the client to tell her or his story without too much direction and ask more specific questions when you believe you need more information. Of course, for privilege, privacy and safety reasons, you should only engage in this conversation when your client is alone.

Consumer Case-specific Questions:

Coercive control can manifest in a variety of contexts. You are likely to find that the abuser has exercised some level of control with respect to the economic issues at hand. The following are examples of screening questions that might derive from a particular consumer issue:

- If you file bankruptcy and [Co-Obligor] is left with responsibility for your debts, will that create any problems for you?
- I see that [name] is also listed on your mortgage [or lease]. Is this person still in the home?
- Do you know the person who used your personal information? Has this person done other things to you? Are you afraid of this person?
- Did you want to sign the lease? Did you have mixed feelings about signing it? How did it happen that you ended up signing it?
- Is there any reason why you can't agree to this? Are you worried about what anyone in your family, your friends, or your partner might think or do?
- It can be common for several people to use a car. Do any other people have use of the car? Are there any issues between you and your partner about who gets to use the car?
- Did your eviction have anything to do with your partner's actions?
- Did you tell your partner that he/she could make these charges? When did you first find out about these charges?

Financial Abuse:

You can more generally explore whether domestic violence is present by asking the client about how finances are handled in the household.

- Since this case involves [a debt that you are being asked to pay, or a mortgage that you were induced to enter into, or a series of mistakes on your credit record, etc.], I'd like to get a full picture of your financial circumstances. May I ask you some questions about how your household handles money?
- Who lives in your household? What income does each of you have?
- How do you and your partner handle finances?
- Do you both have access to the money?
- Is one of you in charge of paying the bills?
- Do you have any bank accounts? Are they joint or separate?
- Do you know where important papers, like checkbooks and financial statements, are kept? Does your partner make it hard for you to see or use them if you want to?
- Are you employed? Are you a student? Does your partner ever do anything that affects your school/job? Does your partner ever make it hard for you to keep your job/ to go to school?

General Screening Questions:

Even when a client does not indicate abuse related to her or his consumer case or financial circumstances, attorneys should screen for domestic violence so they can a) make appropriate referrals and b) integrate safety and privacy measures into the consumer-related case strategizing. *To reiterate, the following list of questions is not intended as a script.* We do not suggest that you ask all of these questions. Rather, the following questions are examples of ways to broach the topic of domestic violence. Because these questions touch upon sensitive areas, the questions should only be asked after the attorney has developed some rapport with the client.

- [*Preface*] I ask these questions of all of my clients because abuse and violence are common in relationships and because the information can greatly influence your legal and non-legal options. Some of these questions may feel uncomfortable. If you'd rather not continue, please feel free to stop me at any time.
- Do you have a spouse or partner?
- Would you feel comfortable telling me about your partner? How would your partner describe you?
- Typically, what happens when you and your partner disagree?

- Has your partner ever acted in ways that scare you? If yes, can you tell me some more about that?
- Are you able to speak your mind or express your point of view to your partner?
- When you speak your mind or express your point of view to your partner, does your partner become angry, threatening, or intimidating?
- How are decisions made in your relationship? Who makes what decisions?
- Has your partner ever insulted you, put you down, or called you demeaning names?
- Has your partner ever hurt or threatened to hurt you or members of your family?
- Has your partner ever slapped, hit, pushed, or shoved you?
- Has your partner ever threatened to hurt him or herself?
- Has your partner ever hurt or threatened to hurt your pets?
- Has your partner ever made you do something that you did not want to do?
- Has your partner ever prevented you from taking your medication, seeing a doctor, or going to the hospital?
- Do you have children? Would you feel comfortable telling me about the relationship between your children and your partner?
- Who makes decisions about your children? How does your partner respond to the decisions you make about the children?
- Does your partner ever criticize you or your children in a way that intimidates you or bothers you?
- Has your partner ever threatened to take your children from you or threatened to never let you see them again?
- Does your partner act jealously (for example, frequently calling to check up on you)?
- Has your partner tried to stop you from seeing your family or friends?
- Do you have any concerns about a court case against your partner? What concerns you?
- Do you feel safe at home?
- What is your worst fear about going forward with X case/remedy?

Safety Planning for Consumer Rights

If you determine that your client is a survivor of domestic violence, safety and privacy considerations should guide your representation. Keep in mind that a consumer law remedy is just one among numerous potential strategies that a survivor may employ within the context of a much broader safety plan. A survivor's decision to pursue a consumer legal remedy must make sense in light of all that she/he knows about the risks posed by the batterer and the survivor's own economic and life circumstances. The survivor has expert knowledge of the batterer's conduct and must play an active role in the advocacy process. Therefore, you will serve your client well if you take the time in subsequent interviews to understand the context of the abuse, consider how that abuse might impact your representation strategies, and partner with your client to explore how potential strategies and remedies impact her or his safety and privacy needs. Of course, as the risks change, the client's priorities and advocacy needs will change too. Attorneys must continually re-visit the client's safety assessment and the implications that assessment has for legal strategizing.

Accessing Domestic Violence Resources

If your client is a survivor of domestic violence, you will want to offer community resources so that she/he can learn more about her or his options. A consumer lawyer cannot and should not attempt to handle all of the issues that a survivor faces. Depending upon your office's resources and your clients' needs, you may direct your client to a local domestic violence program to assist with advocacy (non-legal and legal), safety planning, counseling, housing, and access to other community resources. If the client wishes and grants consent, consider contacting the local domestic violence program to coordinate your representation with their safety planning and advocacy efforts.

Domestic violence laws and resources vary from state-to-state and community-to-community. You may wish to learn more about domestic violence resources in your own community and begin developing partnerships with those organizations.

- Each state has a Domestic Violence Coalition, which serves as the policy arm of each state as well as the support center for its local domestic violence programs. To find contact information for your state coalition, go to www.nnedv.org or www.ncadv.org. Your state coalition can connect you and/or your client with local member programs.
- The Center for Survivor Agency and Justice, (202) 552.8304 and www.csaj.org, can connect you with legal services organizations throughout the country that offer representation and advocacy to domestic violence survivors. CSAJ also provides training on a variety of issues related to domestic violence advocacy, as well as case-specific strategy assistance to attorneys and advocates who work with survivors of domestic violence.

ADDITIONAL RESOURCES

Lundy Bancroft and Jay Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002).

Jill Davies, *An Approach to Legal Advocacy with Individual Battered Women*, Greater Hartford Legal Aid (2003).

Julie Kunce Field, *Screening for Domestic Violence: Meeting the Challenges of Identifying Domestic Relations Cases Involving Domestic Violence and Developing Strategies for Those Cases*, 39 CT. REV. 4 (2002).

Barbara J. Hart, *Rulemaking and Enforcement, the Violent and Controlling Tactics of Men who Batter and Rule Compliance and Resistance - The Response of Battered Women*, in *I Am Not Your Victim: Anatomy of Domestic Violence* 258-263 (1996).

National Consumer Law Center, *Guide to Consumer Rights for Domestic Violence Survivors* (2006).

Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).

Roberta L. Valente, *Screening Guidelines*, in *The Impact of Domestic Violence on Your Legal Practice*, The American Bar Association Commission on Domestic Violence (2nd ed., 2004).

Neil Websdale. *Lethality Assessment Tools: A critical analysis* (2000). Available at www.vawnet.org.

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