

Tax Advocacy for Survivors of Domestic Violence in the Context of Military Life

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As attorneys for survivors
of domestic violence, we
must *translate* the
context of our clients'
lives.

Competent Representation of Domestic Violence Survivors

- Competent representation of a client “requires the legal knowledge, skills, thoroughness and preparation necessary for representation.” MCPC 1.1
- Lawyers must understand how the context of domestic violence impacts their client’s advocacy needs.
 - Nature of the claims they seek
 - Defenses available
 - Presentation of the case

Competent Representation of Domestic Violence Survivors

- Lawyers must devise strategies that integrate both safety *and* economic considerations
 - Keep client's information confidential, request payments to a third-party
 - Strategies that fail to integrate safety and privacy considerations can lead to huge collateral consequences (e.g., loss of employment, housing, child custody), which may outweigh benefits of seeking relief in the first instance.

Domestic Violence is Coercive Control

- Domestic violence is **coercive control**.
- 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.
- 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.
- Violence is but a *moment* within a **larger context** of coercive control.

Coercive Control in the Military Environment

- *Claiming Military Privilege*: Using dependent status to keep her “in line”
- *Using Isolation*: Controlling access to military ID card, family, friends, information; living off-base to limit contact
- *Using Economic Abuse*: Leaving no allotments during deployment; not sharing pay or financial records
- *Using Emotional Abuse*: Ignoring dependent spouse when returning from deployment; putting her down publicly; accusing her of ruining military career/image

- Adapted from Military Power and Control Wheel, produced by the National Center on Domestic and Sexual Violence,
<http://www.ncdsv.org/images/MilitarycontrolwheelNOSHADING.pdf>



Separation Assault

- Separation increases the risk of retaliatory violence.
- Enormous implications for attorneys working with survivors.
 - Consider strategies in light of survivor's safety risks. Craft strategies that mitigate those risks.

Domestic Abuse Impoverishes Survivors

- The Link: Domestic violence leads to poverty, and poverty leads to increased vulnerability to violence.
 - Welfare recipients experience high rates of domestic violence.
 - Domestic violence is the leading cause of homelessness in this country.
- Economic Abuse
 - “Economic abuse involves behaviors that control a [partner’s] ability to *acquire, use, and maintain* economic resources, thus threatening her economic security and potential for self-sufficiency.”
 - 99% of women were subjected to economic abuse at some point during their relationship.
 - Economic Control
 - Economic Exploitation
 - Adams, Sullivan, Bybee, Greeson, Development of the Scale of Economic Abuse, 14(5) Violence Against Women Journal 563 (2008).

Safety Requires Access to Economic Resources

- Three Ingredients of Long-term safety:
 - Transportation
 - Childcare
 - Independent income
 - Gondolf Shelter Study
- The Costs of Safety:
 - Restoration
 - Relocation
 - Independent Living
 - Safety Planning Strategies

Considerations when working with survivors of domestic violence

- Context of abuse
 - Impact on case strategy and process
- Safety Planning
 - Strategies must fit within the context of a broader safety plan
 - Must meet both economic *and* safety needs
 - Changes in risks and circumstances will require changes in advocacy.

Considerations when working with survivors of domestic violence

- Privacy
 - Before seeking records, filing court pleadings or serving an abuser, consider the information about the survivor included in those documents.
 - Prior to acting, discuss with survivor safety issues related to release of information to the public or the abuser.
 - Identify ways to keep information private or sealed.
 - Safety plan around the privacy issues.
- Interdisciplinary collaboration is critical.
 - Ensures coordination
 - Enhances strategies for long-term physical and economic safety

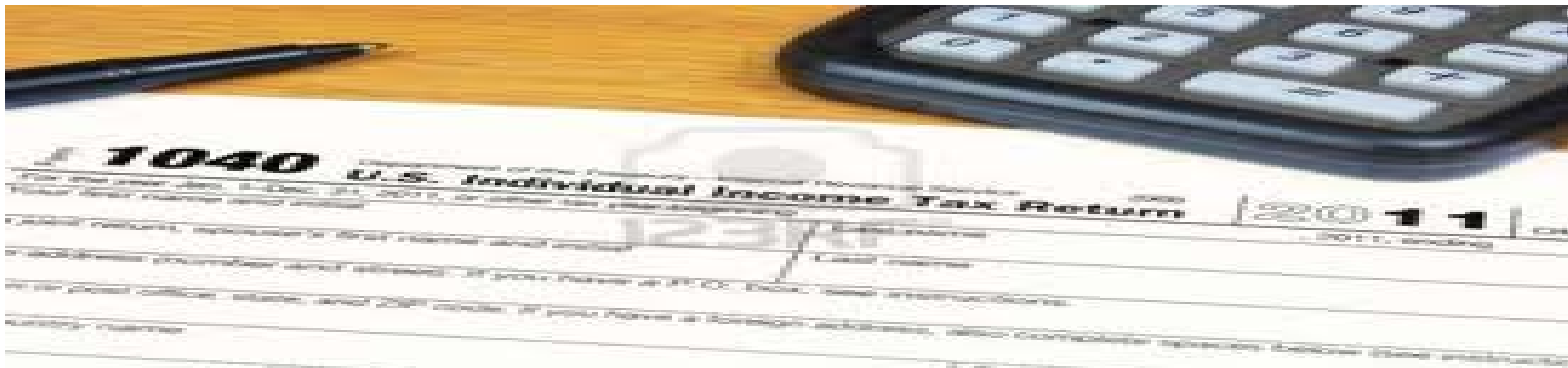
Consumer Rights for Domestic Violence Survivors Initiative

- Domestic Violence Screening Tool for Consumer Lawyers
 - <http://www.csaj.org/library/view/domestic-violence-screening-tool-for-consumer-lawyers>
- Consumer Rights Screening Tool for Domestic Violence Advocates and Lawyers
 - <http://www.csaj.org/library/view/consumer-rights-screening-tool-for-domestic-violence-advocates-and-lawyers>
- Building Partnerships Assessment and Resource Tool
 - <http://www.csaj.org/library/view/building-partnerships-to-enhance-consumer-rights-for-domestic-violence-survey>
- Building Partnerships TA and Pilot Initiative
 - <http://csaj.org/news/view/meet-the-innovative-partnerships-pilot-projects>
- To learn about trainings, resources and technical assistance, contact the Consumer Rights for Domestic Violence Survivors Initiative at info@csaj.org or visit <http://csaj.org>.

Tax Returns Start the Process!

Form 1040	U.S. Individual Income Tax Re
Label (See instructions.)	For the year Jan 1 - Dec 31, 2007, or other tax year beginning
Use the IRS label. Otherwise, please print or type.	Your first name _____ MI _____ Last _____
Presidential Election Campaign	If a joint return, spouse's first name _____ MI _____ Last _____
Filing Status	Home address (number and street). If you have a P.O. box, see 123RF
	City, town or post office. If you have a foreign address, see inst
	<input type="checkbox"/> Check here if you, or your spouse if filing jointly, want \$3
	<input type="checkbox"/> 1 Single
	<input type="checkbox"/> 2 Married filing jointly (even if only one had income)

Is there a valid tax return?



- Tax Court established the test in *Beard v. CIR*, 82 TC 766 (1984), aff'd 793 F2d 139 (6th Cir 1986) by enunciating a four pronged requirement



Is there a valid tax return?

- 1. the document must purport to be a return;
- 2. the document must be executed under penalties of perjury;
- 3. the document must contain sufficient data to allow calculation of tax; and
- 4. the document must represent an honest and reasonable attempt to satisfy the requirements of the tax law.

What about a return signed under duress?

- IRS and US Tax Court have said that return signed under duress is *not* a valid tax return.



- What's duress?
- According to the US Tax Court's decisions in *Stanley v. CIR*, 45 TC 555 (1966) and *Brown v. CIR*, 51 TC 116 (1968) this is the duress test:

What about a return signed under duress?



- 1. The Taxpayer was unable to resist the demands to sign the return; and
- 2. The taxpayer would not have signed the return except for the constraint applied by the other party.



What does the IRS say?

- Treas. Reg. Sec, 1.6013-4(d) states: “If an individual asserts and establishes that he or she signed a return under duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to that return.”

What if the spouse didn't sign the return?

- The role of tacit or implicit consent to a joint return: *Heim v CIR*, 27 TC 270 (1956) aff'd 251 F2d 44(8th Cir 1958):
 - lack of reason for a refusal to sign a joint return
 - absence of objections of non-requesting spouse
 - giving tax information to spouse to prepare the return
 - apparent advantage of joint return
- other indicia of consent may include history of joint filings, history of spouse signing other spouse's name to documents without objection

Establish the facts to build your case

- Long continued course of mental intimidation
- Threat of violence, actual violence
- Breach of parental bond: “The special bond between a mother and her children can be even more important to a mother than her physical safety. We believe petitioner’s testimony that the threat of separation from her children induced her, against her will, to do what [her spouse] told her to do and we find on these facts this constituted duress.” *Stanley v. CIR*, 81 TC 634 (1983)

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- Tacit or implicit consent
 - Indicia of coercive control
 - Partner engages in an ongoing pattern of abuse, intimidation, isolation to maintain control over client
 - physical, sexual, emotional abuse
 - controls/exploits finances, employment, economic security
 - harms and/or take away children
 - threats to immigration status
 - isolation from family/friends
 - surveillance, degradation, shaming
 - controlling access to money, food, sleep, housing, transportation

What about identity theft?



- This arises where one spouse appropriates the other spouse's social security number and files a tax return
- Sometimes the return is filed “jointly”
- Sometimes the return is filed separately
- Sometimes the thief gets refunds
- Sometimes the thief creates tax debts for the victim

Can anything be done?



- Yes!
- The victim can file her own tax return, even if her income was \$0 for that tax year.
- The victim should securely staple the IRS Identity Theft Affidavit, form 14039, to the return.
<http://www.irs.gov/pub/irs-pdf/f14039.pdf>
- The victim should write “identity theft” across the top of each page of the return



What happens next?

- It's a long wait. Identity theft cases may take months to resolve
- The victim may be audited on the identity theft return
- IRS will inquire about the “second” return.
- Be prepared to explain why the victim would not have filed the “first” return.

Attorneys should work with survivors of ID theft regarding:

- Retaliatory violence
- Stalking
- Privacy protection





What about spousal tax debts?

- IRS just released new rules regarding equitable relief from spousal tax debts in Rev. Proc. 2013-34
- These allow the spouse (or ex-spouse) to request relief from a joint liability
- This occurs where there is a valid joint return
- IRS extended its analysis to include abuse in its analysis of the factors it considers.

Equitable Relief from Spousal Debts


- What are the factors? They include:
 - 1. marital status and living arrangement
 - 2. economic hardship if relief is not granted
 - 3. whether the requesting spouse had reason to know about the balance or deficiency
 - 4. whether the requesting spouse had a legal obligation to pay the tax debt
 - 5. whether the requesting spouse benefited from the unpaid income tax or income understatement
 - 6. whether the requesting spouse is in compliance with the tax laws
 - 7. whether the requesting spouse was in ill health (mental or physical) either at the time the return was filed or when she requests relief





What about abuse?

- The new revenue procedure states:
- “Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse’s ability to reason independently and be able to do what is required under the tax laws....The impact of a non-requesting spouse’s alcohol or drug abuse is also considered determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse’s child or other family member living in the household may constitute abuse of the requesting spouse.”

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- The new revenue procedure also states that abuse is to be considered in IRS's analysis of each of the innocent spouse evaluation factors
 - How to get started?
 - A request for innocent spouse relief starts with the completion of IRS form 8857:
<http://www.irs.gov/pub/irs-pdf/f8857.pdf> (note that IRS may revise this form soon)

What to think about

- Supporting documents for the innocent spouse request may help IRS reach a favorable determination
- BUT ...
 - They may reveal where the requesting spouse lives
 - Concerns about sharing medical or psychological reports
 - Reliving the domestic abuse



What to think about



- Wilson v. CIR, 705 F3d 980 (9th Cir 2013), which allows for a de novo review when IRS issues an unfavorable determination in an innocent spouse case
- What does this mean?
- Petitioning Tax Court means an opportunity for live testimony and also for a protective order shielding information the requesting spouse may present under Tax Court rule 27.

Trial?



- What are some concerns with live testimony?
- Safety planning around court appearances
 - Batterer in the courtroom
 - Trauma in the courtroom
 - Economic consequences



VODV Indicator

- IRS this year created a “VODV” – victim of domestic violence – indicator, found in the IRM at 25.15.16.4.3
- This provides heightened disclosure protection to requestor, and also lets IRS know it should treat this individual with sensitivity
- Request it by calling the Innocent Spouse Unit: 855-851-2009. No need to have a request for innocent spouse relief pending.

For support with tax advocacy for domestic violence survivors:



Consumer Rights for Domestic Violence Survivors Initiative

Enhancing economic justice for survivors of domestic violence by building the capacity of and building partnerships between domestic violence and anti-poverty lawyers and advocates.

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www.csaj.org