



CENTER FOR SURVIVOR
AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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Twelve



Addressing Barriers for Domestic Violence Survivors in Civil Court

By Jenna Smith & Nida Abbasi

Introduction

Civil Court seems like a logical place for survivors to resolve economic issues. There are legal avenues through which a survivor can seek spousal and/or child support, divide assets equally, and receive compensation for harm. However, while courts offer legal remedies, they also present distinct challenges and costs. Survivors' lack of access to resources, their proximity to the courthouse, and language and cultural barriers can make court a daunting and intimidating place. Abusive partners can take advantage of the court system to continue harassment through litigation and further exacerbate the costs associated with seeking legal remedies.

This chapter will outline the barriers survivors face in accessing and receiving justice through the civil court system in three main sections: Access to Justice, Justice Thwarted, and Exploiting Court Barriers. It will offer concrete and innovative steps that advocates and attorneys can take to alleviate the economic impact on survivors, collaborate with courts, and implement systemic change to enhance survivors' access to justice.

Esther's Story

Read Esther's story and consider the questions you might ask her if she was your client.

Esther is an undocumented Haitian immigrant living in the United States with her boyfriend, a U.S. citizen, and their two young children who were both born in the U.S. Esther works a part-time, minimum wage job. Her boyfriend has a steady higher-paying job and controls the finances. They both reside in a small town with minimal resources.

Esther and her boyfriend have been together for nearly a decade, and during that time he has become increasingly violent towards her. Fearing for her life, she has taken her children and fled to a local shelter. She is seeking protection from the court system, but she is terrified. In addition to fearing for her physical safety and worrying about how she and her kids will make ends meet, Esther feels intimidated by the court system.

Think About It

Why do you think Esther is fearful of the civil court system? What concerns might be on her mind? Think about other survivors you've worked with; what specific challenges have they encountered in the court system? How can this inform Esther's situation? How might her case be different? How might access to justice issues, be they economic, geographic, cultural, or systemic, have an impact on Esther?

Assessing Access to Justice

A full and open assessment of your local court practices, your agency's relationship with court, as well as Esther's needs and priorities will have important implications in her experience with the court. Esther's experience with the court system—positive or negative—will largely depend on the court in her community. The mechanisms courts have to identify and respond to domestic violence will vary from place to place. While it may be difficult to enact change from outside the court system, there are strategies that you can use to engage court staff on economic issues affecting survivors like Esther.

Reflect on the agency where you work and assess your relationship with the court:¹

- What is your agency's relationship like with the local court? Are there judges with whom you have a positive relationship?
- Do you collaborate with the court and its actors to learn what challenges they face and work with them to problem solve?
- Do you participate in stakeholder meetings to discuss policies and procedures and communicate with other agencies in the field, such as batterer intervention programs, culturally-specific organizations, or supervised visitation providers?
- Do you know what kind of training on domestic violence the court has received? Have you asked the court in what areas they need further training? Could you provide it?²

¹ For more on organizational self-assessment and partnership building strategies see CSAJ's Building Partnerships to Enhance Consumer Rights for Domestic Violence Survivors: An Assessment and Resource Tool: <https://csaj.org/library/view/building-partnerships-to-enhance-consumer-rights-for-domestic-violence-surv>

² Check the Center for Court Innovation's website for a forthcoming needs assessment toolkit for courts.

Now, when assessing Esther’s needs and experiences with civil court, lean on the practical, safety, and cultural considerations that she prioritizes. Because many survivors have complicated experiences and feelings surrounding legal systems, advocacy requires an open, honest, and sensitive assessment. For a fuller description of a survivor-centered *approach* to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11). The screening and assessment questions presented here are for issue-spotting and not meant to be prescriptive (often referred to as “intake questions”). Conversations surrounding survivors’ needs and interactions with the court need not be limited to these questions. Rather, intake questions may be integrated into a broader assessment process, with the attorney and/or advocate relying on the survivor’s understanding of their own experience and be driven by the survivor’s priorities.

Safety considerations:

- What safety risks does the abusive partner pose? How might they react to court involvement and legal actions taken by the survivor?

Practical considerations:

- Does the survivor have a car or means to get to court? If not, can they use public transportation? Can they afford to use public transportation?
- Are there children involved? Who will care for them during the survivor’s court appearances? Can the survivor afford child care or is there a friend or family member they trust to watch them?

Cultural considerations:

- Are there cultural differences that may present challenges for the survivor? Might there be communication issues as a result of language barriers? If so, what sorts of interpretation services are available at the courthouse?

Access to Justice: Barriers and Costs of Legal Services

The mere act of separating from an abusive partner or seeking safety is well documented as enormously costly. In fact, domestic violence survivors lose close to 13.6 million days of productivity each year, which includes things like childcare, household work, and employment.³ This has a variety of causes, but court involvement is undoubtedly a contributing factor. For survivors, particularly low-income survivors, where they live matters, and the financial impact of court and attorney fees can be devastating. Courts often fail to meet basic needs or provide culturally appropriate services, resulting in profound economic harm and increasing survivors’ risk of continued violence.

Poverty and legal resources

Case Scenario: *Esther cannot find a pro bono lawyer to take her case. She contacts a private family law attorney in her town, but his rates are far more than she can afford to pay.*

For survivors without financial means who are seeking a divorce and/or child-related relief, litigation can prove particularly expensive and even financially debilitating (see

³ “Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence,” *Institute for Policy Integrity*: July 2015.

Family Law chapter in this Guidebook). Many low-income survivors like Esther struggle to secure low-cost or free representation. Litigants may try to hire a private attorney, but the cost for private family law attorneys are generally high, making firms reluctant to retain low-income clients.⁴ Private attorneys also charge fees for the paperwork associated with litigation, such as subpoenas, depositions, discovery, and filing fees. Some attorneys may even exploit indigent clients by exhausting retainer fees through frivolous filings. The high cost of legal representation means that litigants frequently represent themselves. While self-representation lowers costs, it can also lead to serious financial consequences such as inadequate child support orders, unfair division of property, and the concealment of

Practice Tip

Legal services and advocacy groups can provide on-site support, set up help desks or offices at or close to the courthouse, and provide 24/7 domestic violence hotlines so that survivors can easily access services. In many jurisdictions, family justice centers, often situated right by courthouses, provide a “one-stop shop” for domestic violence survivors to access legal support, housing and financial assistance, social services, and counseling. Courts can also offer and display information on social services, including options for mental health or substance abuse counseling, referrals to advocates and shelters, information on supervised visitation services, and opportunities for job training.

In New York City, Legal Information for Families Today or LIFT provides resources, legal advice, and access to attorneys in the family courthouses of all five boroughs of the city. Access to online multimedia tools can also provide a wealth of information and support. Through kiosk, web-based systems, instructional videos, and culturally-responsive guides that use accessible and **plain language**, courts can offer litigants immediate access to tools to better understand and litigate their case. Simply making wifi internet available to litigants can increase access to needed resources. Some courts also set up programs that offer **self-represented** survivors with comprehensive brief services or consultations with attorneys.

Key Terms

Access to justice: The ability of individuals to obtain fair and swift outcomes regardless of socio-economic status; centers around eliminating barriers that prevent individuals and groups from exercising their rights within justice systems.

Economic coercion: Compelling an individual to behave in an involuntary way by exploiting his/her financial dependence, especially through intimidation, threats, and pressure.

Fee waivers: Litigants living below the poverty threshold and/or on public assistance often qualify to have court filing costs waived by the Clerk’s Office; per the Violence Against Women Act (VAWA), courts are not permitted to charge petitioners fees for filing an order of protection.

Guardian Ad Litem (GAL): Appointed by the judge in cases involving parties who cannot represent their own rights. In custody cases, GALs represent the best interests of the children in order to protect their rights.

LGBTQ: Lesbian, gay, bisexual, transgender, queer or questioning.

Litigation: The process of taking or contesting legal action, either in criminal or civil court.

Plain language: Writing that is clear, simple, and easy to understand. It avoids large words and complex terms so that people with wide-ranging reading and cognition levels can understand it.

Procedural justice: Refers to the fairness of justice and the interpersonal treatment of litigants, survivors, and defendants; the theory that litigants who are treated fairly by the court process will be more likely to accept the outcome and comply with the decision.

Public benefits: Government assistance for low-income individuals, such as Medicaid, Supplemental Nutrition Assistance Program or “SNAP” (also known as food stamps), WIC (a special supplemental nutrition program for women, infants, and children), child care, and housing assistance.

Pro bono: Legal work done for free, often for low-income clients who cannot afford to pay.

Violence Against Women Act (VAWA): U.S. federal law that allows survivors to file civil suits against abusive partners and facilitates compensation to survivors who have suffered financially from violent crimes.

Safe exchange: The transfer of child(ren) between parents by a neutral third party who ensures that there is no contact between the parents.

Self-represented litigants/Pro Se: Individuals who advocate on their own behalf in court rather than being represented by an attorney; also known as pro se litigants.

Supervised visitation: Visits between a non-custodial parent and their child(ren) in the presence of a third party who observes the visit and ensures the safety of the child(ren). Supervisors are neutral but may intervene to preserve the safety of the child(ren).

⁴ Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence pg. 19

assets.⁵ In domestic violence cases, a lack of legal representation may prevent survivors from obtaining orders of protection and other legal remedies. Not only is this dangerous for the survivor, but it also prevents them from obtaining financial support through the order of protection. These issues are intensified if one party has control over the finances or earns a significantly higher income.

Geographic access

Case Scenario: *Esther's advocate tells her that a free legal clinic is being offered at the local library for domestic violence survivors, but Esther is afraid of what her neighbors will say if they see her there.*

Consider the difference of an urban versus a rural location. Rural communities have fewer lawyers and advocates; courts and resources may also be spread out. In fact, 20 percent of the American population lives in rural areas, yet only two percent of small law practices are located in rural parts of the U.S.⁶ Limited public transportation options in rural communities often means that a survivor of domestic violence needs access to a car and money for gas in order to meet with an attorney. In small communities, social isolation poses another problem to survivors who may not know where and how to access available resources. Rural survivors are more likely to have fewer financial resources, earning only 16 percent of those who live in urban areas.⁷ Survivors may also fear that accessing the services could be discovered by other members of their community, which could threaten social ties or lead to future violence by abusive partners if they find out.

While urban communities generally have a greater availability of resources, they also serve a larger population, resulting in advocates and attorneys with higher caseloads. The higher cost of living in urban areas often forces low-income residents to live far from downtown and from the main lines of public transportation. This lengthens commuting times and costs. Limited public transportation times, reduced service schedules, and ticket prices all have a negative impact. A survivor who has to travel a great distance to meet with a lawyer or who expends considerable time and money trying to secure one is already confronting a serious economic barrier to accessing the court system before ever entering a courtroom.

Practice Tip

Organizations across the country have crafted innovative responses to address these access to justice issues. Some communities have mobile legal services that travel to remote, hard-to-reach communities to provide legal advice and assistance to domestic violence survivors. Service providers can also hold “Know Your Rights” workshops to encourage underserved groups to access the civil and criminal justice system and provide them with resources and support for doing so.

Case Scenario: *After talking with Esther about her concerns, her advocate contacts the director of the legal clinic, explaining that many of the survivors she works with are hesitant to access resources publicly in the small community. Together, they plan a workshop at the shelter for the survivors.*

⁵ Hough, Bonnie. “Self-Represented Litigants in Family Law: the Response of California’s Courts” (2010). *The Circuit*. Paper 52. Engler, Russell. “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed” (2009). *Fordham Urban Law Journal*, 37:1.

⁶ Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D.L. Rev. 466, 467 (2014).

⁷ “In Focus: Sexual Violence,” *Wider Opportunities for Women. Economic Security for Survivors Project*: 2015.

Access to basic resources

Transportation

Case Scenario: *Esther does not own a car and lives far from public transportation. On days she has to appear in court, she wakes up extra early and walks with her small children one mile to the nearest bus stop. It takes a bus transfer and nearly two hours before they reach the courthouse.*

The physical act of reaching the courthouse alone can be challenging for survivors. Public transportation may be costly in terms of time and money, or it may simply be nonexistent. For survivors without access to a car, arranging transportation through a friend or family member can be unreliable if those plans fall through, especially at the last minute. For those who own cars, the cost of gas and parking can compromise a survivor's economic

Practice Tip

In urban communities where the cost of transportation is a hardship for indigent survivors, programs may provide metro or bus fare. Some rural communities have looked into using Uber and other shared-driving services to fill public transportation gaps. What systems advocacy could enhance survivors' access to affordable transportation in your community?

stability, especially in households living paycheck to paycheck. For survivors who relocate post-relationship, for safety reasons, or otherwise, they incur the financial and social costs of moving—potentially sacrificing job and educational options, changing their children's schools, finding new employment, and losing their social support network of family and friends.

Child care

Case Scenario: *By the time Esther and her children arrive at the courthouse, they are exhausted. She does not want to bring her children with her, but she cannot afford to pay for child care for the entire day. With the rest of her family in Haiti, Esther has no additional support. Court also interferes with her job, and her boss is losing patience with her frequent absences.*

Child care is a major issue for survivors who have to make court appearances. Professional child care, be it daycare or hiring a babysitter, is expensive. Low-income parents may be forced to rely on family, friends, or even the abusive partner to care for the

Practice Tip

Courts can build relationships with local **supervised visitation and safe exchange centers** to provide free, on-site child care options for domestic violence survivors. This ensures that survivors can attend to their case while children are safely cared for in a child-appropriate environment without exposing them to further emotional trauma in the courtroom.

children. Many courts do not permit children in the courtroom, despite the often lengthy case process with long wait times and multiple hearings. Bringing children into the courtroom can be disruptive or expose them to emotional distress. Children who are old enough to attend school can pose a logistical challenge during school breaks or closure, or if they are sick, necessitating parents to scramble to find child care. Domestic violence survivors report losing 5.6 million days of child care and other domestic work each year, equaling a combined cost of \$204.2 million.⁸

⁸ "Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence," *Institute for Policy Integrity*: July 2015.

Employment and income

Case Scenario: *Esther's boyfriend calls her at work and leaves her threatening messages. He tells her that she will be deported and that she will never get custody of their children. He controls all of their savings and credit cards and refuses to give Esther any money. The frequent phone calls have angered her boss, who is threatening to suspend her from work without pay until they stop.*

Research shows that domestic violence has a direct impact on survivors' employment. In fact, survivors lose a combined total of eight million days of paid work every year, which is equal to roughly 32,000 full-time jobs and \$1.34 billion.⁹ It is estimated that survivors of intimate partner rape, a form of domestic violence, lose an average of 8.1 days of paid work per year.¹⁰ Furthermore, 21 to 60 percent of survivors report losing their job for reasons relating to domestic violence.¹¹

For survivors who are employed, receiving time off to appear in court can be difficult. Low-income survivors are far more likely to have minimum-wage and part-time jobs that don't offer vacation, sick, or personal days. Each time survivors have to appear in court, they are sacrificing their wages for the day. Repeated requests to miss work may also affect the way an employer views survivors as employees, making them appear unmotivated or unreliable. Moreover, part-time jobs often mean infrequent and unreliable hours, in which survivors receive their work schedules with only a couple of days notice. Their job may also require that they be "on-call" in the event that they are needed at work.¹² Because of this, survivors may be confronted with the difficult choice of appearing in court or maintaining their job. Court involvement can also take a massive emotional toll, as survivors are forced to face their abusive partners, which may distract them from their work, lower their productivity, and jeopardize their continued employment. Low-income survivors may work temporary jobs or change jobs frequently. As recent hires, there is even less likelihood that their bosses will be understanding and permit work absences.

Practice Tip

Advocacy organizations can include programming on job skills and financial literacy, linking with groups in the community who already provide workshops. To help with the emotional toll that appearing in court takes on survivors, advocates can work with courts to train their security staff on domestic violence dynamics. Dedicated court officers and separate and secure waiting rooms help to make survivors feel comfortable and safe.

Cultural considerations

Case Scenario: *Esther speaks French fluently and knows enough basic English to get by in day-to-day life. After receiving a letter in the mail about a petition her boyfriend filed with legal words she didn't recognize, Esther goes to the courthouse to find out more information. She tries to ask the clerks about the petition, but she doesn't understand their explanation and is too embarrassed to ask again.*

⁹ "Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence," *Institute for Policy Integrity*: July 2015.

¹⁰ "In Focus: Sexual Violence," *Wider Opportunities for Women. Economic Security for Survivors Project*: 2015.

¹¹ "Exploring the Impact of Domestic Violence on Domestic Relations," *New York Law Journal*: July 27, 2015.

¹² Kantor, Jodi, "Working Anything But 9 to 5," *New York Times*: August 13, 2014.

Poverty on All Sides: Economic Implications for Indigent Abusive Partners

It comes as no surprise that economic challenges in the court system are not unique to survivors alone and are experienced by abusive partners as well. While abusive partners may manipulate the system through failure to appear or over-litigation of survivors, they may also face similar economic hardships, which in turn, can affect the economic security of survivors and their children. Indigent abusive partners who lose wages or employment as a result of court appearances and who accrue debt due to court fees are unable to pay spousal or child support, which can be financially debilitating for survivors.

Studies around procedural justice show that courts that are strict with abusive partners, but treat them fairly and with respect, experience increased rates of compliance. To lessen the financial impact on abusive partners, courts can re-think how they impose fees and look to innovative programs around the country. One example, the Kings County Parent Support Program in Brooklyn, New York, works with noncustodial parents who are struggling with meeting their child support obligations by linking them with employment agencies, job skills development, vocational training, transportation assistance, family life skills, and a whole host of other services. As long as participants meet the court's obligations, which are monitored through routine compliance hearings, they avoid court-imposed legal penalties.

This model can be replicated to ensure that abusive partners meet their spousal and child support payments to survivors and their children.

Economic factors that impede access to justice may be further complicated when the survivors seeking assistance are immigrants, have limited English proficiency, identify as LGBTQ, or belong to other underserved groups. Survivors who are non-citizens or undocumented immigrants may fear the risk of deportation while accessing the court system. The abusive partner can actively exploit this fear by threatening to expose or compromise the survivor's legal status. Furthermore, immigrant clients may encounter attorneys or other professionals who contract to provide immigration services and subsequently fail to fulfill their duties, leaving the client vulnerable and less financially secure.

For survivors with limited English proficiency, the lack of quality interpreters in the court system poses a serious problem and directly impacts access to justice.¹³ Survivors may also face ignorance among court staff related to their ethnicity, culture, or religion. LGBTQ

Practice Tips

Properly identifying the specific language a survivor speaks will make it easier when securing an interpreter. Strategies to assist survivors with limited English proficiency can occur on multiple levels:

- To aid limited English proficient survivors, advocates, attorneys, and courts can create "I Speak" brochures that list the phrase, "I speak _____," in a multitude of languages.
- Advocates and attorneys can ensure that survivors are linked to qualified interpreters by asking about an interpreter's certification, professional experience, and familiarity with domestic violence dynamics and legal terms.
- Programs can work to improve their own cultural diversity by hiring bilingual staff and translating forms and brochures into other languages.
- Consider partnering with immigration legal services, other immigration organizations, or faith-based services. Similarly, discuss strategies for co-locating immigration legal services at the court, referring survivors to reputable immigration agencies, or creating linkages between pro and low bono immigration, family law, and domestic violence legal assistance.
- Establish protocols for coordinating cases with immigration attorneys, family law attorneys, and advocates. This will ensure that attorneys and professionals working with survivors on family law and domestic violence cases can more holistically represent survivors' needs.

¹³ "Effective Court Communication: Assessing the Need for Language Access Services for Limited English Proficient Litigants in Domestic Violence, Sexual Assault, Dating Violence, and Stalking Cases." National Center for State Courts, Center for Court Innovation, 2015.

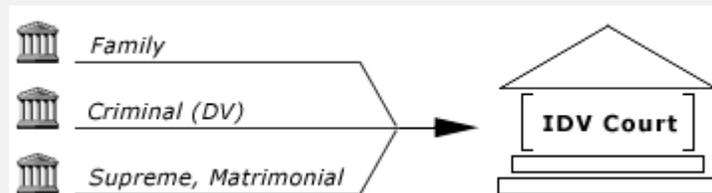
survivors, for instance, may confront a civil court that only recognizes and understands domestic violence as a crime between a man and a woman. Across underserved communities, the experience of an unfair criminal justice system can create a pervasive and deep-seated distrust of the courts. It is important to note that survivors are often members of more than one of these groups and that the obstacles confronting them may be numerous and complex.

Integrated Domestic Violence Court Models¹⁴

While domestic violence survivors face many barriers to safety and independence, a complex court process should not be one of them. Domestic violence cases may involve criminal, family, and matrimonial matters, often forcing litigants to go before multiple judges and causing delays and confusion. For indigent survivors, these complications can create additional financial hardship by causing absences from work, compromising child care, impeding the payment of financial support, and other issues.

The Integrated Domestic Violence Court Model responds to those concerns by applying a “one family—one judge” rule. By having one judge handle all criminal domestic violence cases and family-related issues, such as custody, visitation, civil protection orders, and matrimonial actions, survivors are less likely to face lengthy delays and inconsistencies in their case. Furthermore, the judge is better positioned to rule on financial matters, such as child support, marital support, and division of property.

Integrated Domestic Violence Courts intend to hold abusive partners to a higher level of accountability by concentrating responsibility for defendant oversight in the hands of a single judge who can monitor compliance with court orders and program mandates. Also, victim services are on-site, helping domestic violence survivors navigate job opportunities, public benefits, housing, and providing counseling services. Through the Integrated Domestic Violence (IDV) Courts, victims may be better equipped to achieve safety and economic stability.



For more information on the IDV Court model:

http://www.courtinnovation.org/sites/default/files/documents/IDV_FACT_SHEET.pdf

Justice Thwarted: Barriers in Court Structure and Administration

One-size-fits-all approaches to court fees, court schedules, and other administrative issues are detrimental to the outcomes of justice for survivors' experiences in court. These structural barriers often increase costs incurred by survivors, lengthen cases, and create more opportunities for continued harassment from abusive partners.

¹⁴ "Domestic Violence Court," Center for Court Innovation. <www.courtinnovation.org/project/domestic-violence-courts>.

Court fees and costs

Case Scenario: *Throughout their relationship, Esther's boyfriend decided how their money was spent without consulting her. He did not put her name on their bank accounts so she cannot access them. He also confiscated her paycheck so that she was dependent on him for money.*

The court system imposes fees and incidental costs that can exacerbate a survivor's financial situation. Under VAWA, domestic violence survivors in all 50 states can file for an order of protection without paying any filing fees.¹⁵ However, a case may require that parties participate in mandatory programs like parenting classes or supervised visitation that cost money. If survivors are unable to pay, the court may drop the case or use their

non-compliance as a deciding factor in determining a custody arrangement that awards joint or sole custody to the abusive parent. In custody cases, the court often appoints a Guardian ad Litem ("GAL") to represent the interests of the children. GALs typically charge a separate fee, which can confuse parties and contribute to a lack of adequate understanding of court fees. Furthermore, during the trial, litigants may need to elicit testimony from expert witnesses or participate in psychological and mental evaluations, which often delay the case and increase expenses. To complicate matters, expert witnesses may not be fully qualified or trained to testify on domestic violence matters, which can lead to dangerous outcomes for survivors and their families.

These economic issues are not only limited to indigent survivors. When the indigent party is the

Practice Tip

Courts can consider implementing fee waivers and payment plans to make costs more manageable for indigent survivors. Court staff should offer information on VAWA compensation and other state-specific compensation programs targeting victims of crime. Judges may consider the litigants' current income as well as their past financial circumstances when deciding how to split attorney fees and additional costs among parties. They can also consider imposing attorney fees on the higher earner or splitting fees more equitably.

Harnessing the Power of Workforce Development: One Court's Innovative Collaboration

In DeKalb County, Georgia, the domestic violence court identified an all-too-common problem: the court was mandating that abusive partners attend batterer intervention programs to help prevent further abuse of victims. However, the programs charged a fee that many indigent abusive partners could not afford. Rather than set up a system in which abusive partners were certain to fail because of their inability to pay and intent on making sure that abusive partners were receiving the services designed to improve compliance and increase victim safety, the court came up with a solution. It worked with the local workforce development program and began mandating that individuals who couldn't pay for services, link up with workforce development. It instituted compliance reviews and assigned compliance officers to ensure that abusive partners were sending out their resumes, attending workshops and trainings, and satisfying the workforce development program requirements. The program communicated abusive partners' attendance through a form it regularly submitted to the court. By connecting abusive partners to workforce development and ensuring that they gained access to meaningful employment, the court ultimately solved a recurring problem and improved the rates at which abusive partners received batterer intervention services. This, in turn, increased victim safety and improved economic stability for the children in these families.

This model can be easily replicated in communities across the country. Federal workforce development programs exist in nearly every region of the country, and it is simply a matter of courts seeking out their assistance and working together.

¹⁵ The Violence Against Women Act of 1994, 42 U.S.C. § 3796gg-5(a)(1); 42 U.S.C. § 3796hh-5(1)(D).

abusive partner, the court may decide that the survivor has to pay spousal or child support and cover the legal fees, seriously affecting a survivor's financial security. Beyond the economic consequences, this can take a devastating emotional toll on survivors who are forced to pay the person who abused them.

Court schedules and administration barriers

Case Scenario: *Esther and her children arrive at court on her scheduled date promptly at 8 am, but they wait for hours before her case is called. Before she can even speak to the judge, her case is postponed due to a clerical error.*

If a survivor decides to seek an order of protection, divorce, or child-related relief, the legal process is often lengthy and inflexible. Even a simple legal matter can lead to multiple court dates. Clients may not be informed that their presence is not always needed for status dates. Like Esther, clients who have an early morning court appearance may not have their case called until later in the day. Further, judges and attorneys will often change court dates at the last minute without consulting or informing clients, who may have already set their work and child care schedules.¹⁶ Errors on behalf of the court or judicial system (such as not having the right files, not listing the case on the docket, or lack of service) can force a case to be rescheduled.

Other problems plaguing courts that can negatively affect survivors are large caseloads that overwhelm domestic violence dockets; a lack of resources and funds; insufficient, overburdened, and undertrained staff; and courts that have been consolidated in response to the economic recession. While these factors are common to all courts, they can manifest in a

particularly negative experience for survivors in which they feel that the system is unsympathetic and unresponsive to their needs. In fact, these specific barriers may undermine procedural justice and discourage survivors from pursuing their case and seeking court remedies in the future.

Practice Tip

To help survivors, attorneys can appear on their behalf, reducing the number of times survivors need to come to court. Advocates and attorneys can continue to build their relationship with the court system, encouraging conversation and discussion of more systemic overhauls. Some court systems, like those in Montana and Nevada, have established tribal courts and local tribunals to reduce the need for survivors to travel to them. Other courts offer remote access options that allow survivors to appear via video in the courtroom. In order to reduce bureaucratic errors, courts can carefully schedule the docket to flag domestic violence cases and ensure that they are heard first. Depending on feasibility, a court can also structure its calendar outside of the standard 9-5 work hours.

Exploiting Court Barriers: Litigation Abuse

Case Scenario: *Esther's boyfriend works full-time as a restaurant manager. With his steady income and control of the finances, he is able to hire a lawyer. The lawyer files various motions and petitions against Esther every week and reschedules court dates at the last minute, making it difficult for her to keep track of the case.*

¹⁶ Inefficient scheduling is a challenge that persists in many courthouses, as evidenced by numerous process evaluations and site visits performed by the Center for Court Innovation. See: <http://www.courtinnovation.org/research/new-york-state%E2%80%99s-integrated-domestic-violence-court-model-results-four-recent-studies>

After survivors leave an abusive relationship, their former partners often escalate the abuse and will even use the legal process to continue to threaten and intimidate survivors.¹⁷ Through litigation abuse, abusive partners manipulate the survivor's ability to obtain legal, social, and economic remedies. Abusive partners often seek court adjournments as a tactic to continue harassment, knowingly wasting the survivor's time, increasing their transportation and child care costs, and placing their employment status at risk. They attempt to frustrate and inconvenience survivors to the extent to which they drop the case.

Like Esther's ex-boyfriend, the abusive partner and/or his attorney may file frivolous motions to overwhelm the survivor and force her to appear in court repeatedly. Compared to life at home, the abusive partner may behave much differently in court and during court-mandated services, such as batterer intervention programs and supervised visitation. The abusive partner may also downplay the abuse or fabricate lies about the survivor in order to undermine his or her credibility. Finally, the survivor must also combat bias in the legal system. Without training on domestic violence and trauma, court staff may be suspicious towards a survivor's nervous mannerisms or spotty memory.

Practice Tip

Attorneys and advocates can work with court administration and judicial staff to take steps to prevent or mitigate litigation abuse towards domestic violence survivors. Courts can mandate training for all staff on domestic violence dynamics, risk assessment, and recognizing the strategies abusive partners use to manipulate the judicial system to inflict additional damage on survivors. Collaboration with local domestic violence programs can offer vital training to courts. In New York, for cases in which there is suspected litigation abuse, judges can mandate that litigants secure court permission before being able to re-file a case. Other courts demand that litigants demonstrate a material change in circumstances to reopen and change custody orders.

Conclusion: Working Together to Make a Difference

All of the strategies outlined throughout this chapter are meant to aid attorneys and advocates in meeting the economic needs of their clients. Some of these strategies can be implemented without court involvement, but the most effective solutions involve active court participation. Collaboration is key to achieving this kind of systemic change.

Strategies for Court and Stakeholder Collaboration

1. Identify a "key champion" in the court system who can lead the charge to enact change on economic issues.
Having the support of a judge can be especially helpful in gaining the buy-in of other stakeholders.
2. Schedule regular stakeholder meetings during which obstacles and potential solutions are discussed. Include a diverse group of stakeholders in these meetings. Invite judges, court administrators, court clerks, domestic violence advocates (including those that serve elder, disabled, deaf, and culturally-specific communities),

¹⁷ Zeoli, A.M., Rivera, E.A., Sullivan, C.M., and Kubiak, S. "Post-Separation Abuse of Women and their Children: Boundary-setting and Family Court Utilization among Victimized Mothers." J Fam Violence, 2013 Aug 1, 28(6), 547-560.

defense attorneys, prosecutors, civil legal service providers, supervised visitation staff, and workforce development staff.

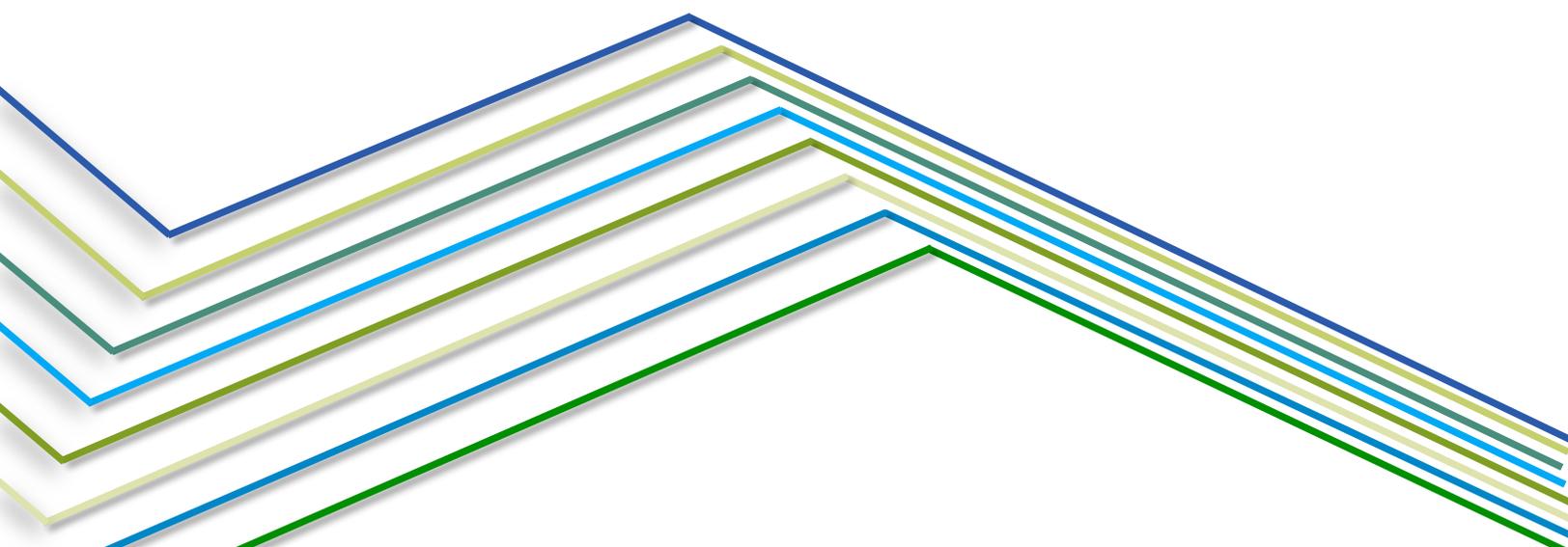
Understanding each other's roles and responsibilities will help to identify barriers and possible solutions. Having each agency host a planning meeting and having stakeholders give a brief description of their roles, responsibilities, and resources, will foster team-building and information-sharing.

3. Conduct a needs assessment by soliciting feedback from litigants to learn about the economic challenges they have confronted.
Create a written survey for litigants or convene a group of litigant survivors to share their experiences. Write a report documenting the feedback to be shared internally.
4. Convene ongoing training to educate lawyers, advocates, and court professionals alike on domestic violence dynamics and underlying economic stressors.
Identify learning objectives by talking to stakeholders about what training they would find useful.
5. Encourage victim service organizations to include economic empowerment programming for survivors, such as job skills and financial literacy training.
Suggest that they contact the federal workforce development program in their area for resources and referrals.
6. Consider a holistic approach to the domestic violence court docket, including models that consolidate and streamline civil and criminal cases in order to reduce confusion and time spent in court. **See: Integrated Domestic Violence Courts.**
7. Talk to other jurisdictions who have made similar changes and/or visit their courts. These issues are complex, and many parts of the country are grappling with them.
Linking with your peers will help you discover strategies and programs that have been tried and tested, helping you to avoid reinventing the wheel.

For more information and free assistance on any of these strategies:
<http://www.courtinnovation.org/domestic-violence-technical-assistance>

Additional Resources

- [“Effective Court Communication: Assessing the Need for Language Access Services for Limited English Proficient Litigants in Domestic Violence, Sexual Assault, Dating Violence, and Stalking Cases.”](#) National Center for State Courts, Center for Court Innovation, 2015.
- ["Integrated Domestic Violence Courts: Key Principles."](#) Center for Court Innovation.



GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR
AGENCY & JUSTICE**

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