

Pleadings and Practice

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Safety Planning

CAUTION

Things to consider
and always keep in
mind when working
with survivors

Safety Planning

A safety plan is a personalized, practical plan that includes ways to remain safe while in a relationship, planning to leave, or after you leave.

- Immediate safety – the next 2 days
- Short term safety – the next 2 months
- Long term safety – the next 2 plus years

Lethality Factors

- Increase in severity or frequency of physical violence over the past year
- Own or have access to a firearm
- Separation
- Unemployment
- Use or threaten to use a lethal weapon
- Threats to kill
- Survivor believes that batterer is capable of killing
- Having a child that is not his
- Forced or coerced sexual contact
- Strangulation
- Drug and/or alcohol use
- Perpetrator controls most or all of survivor's daily activities?
- Violent and constantly jealously
- Perpetrator threats or attempted suicide
- Property destruction
- Court intervention

Basic Client Contact

- Ask the client if it is safe to:
 - Call them
 - Leave a voicemail
 - Send them an email
 - Send postal mail
- Ask if there is a time of day or day of the week that is best to contact them or time/day to avoid.
- Ask client if she would like you to block your number when you call.
- Be discrete when initially contacting clients

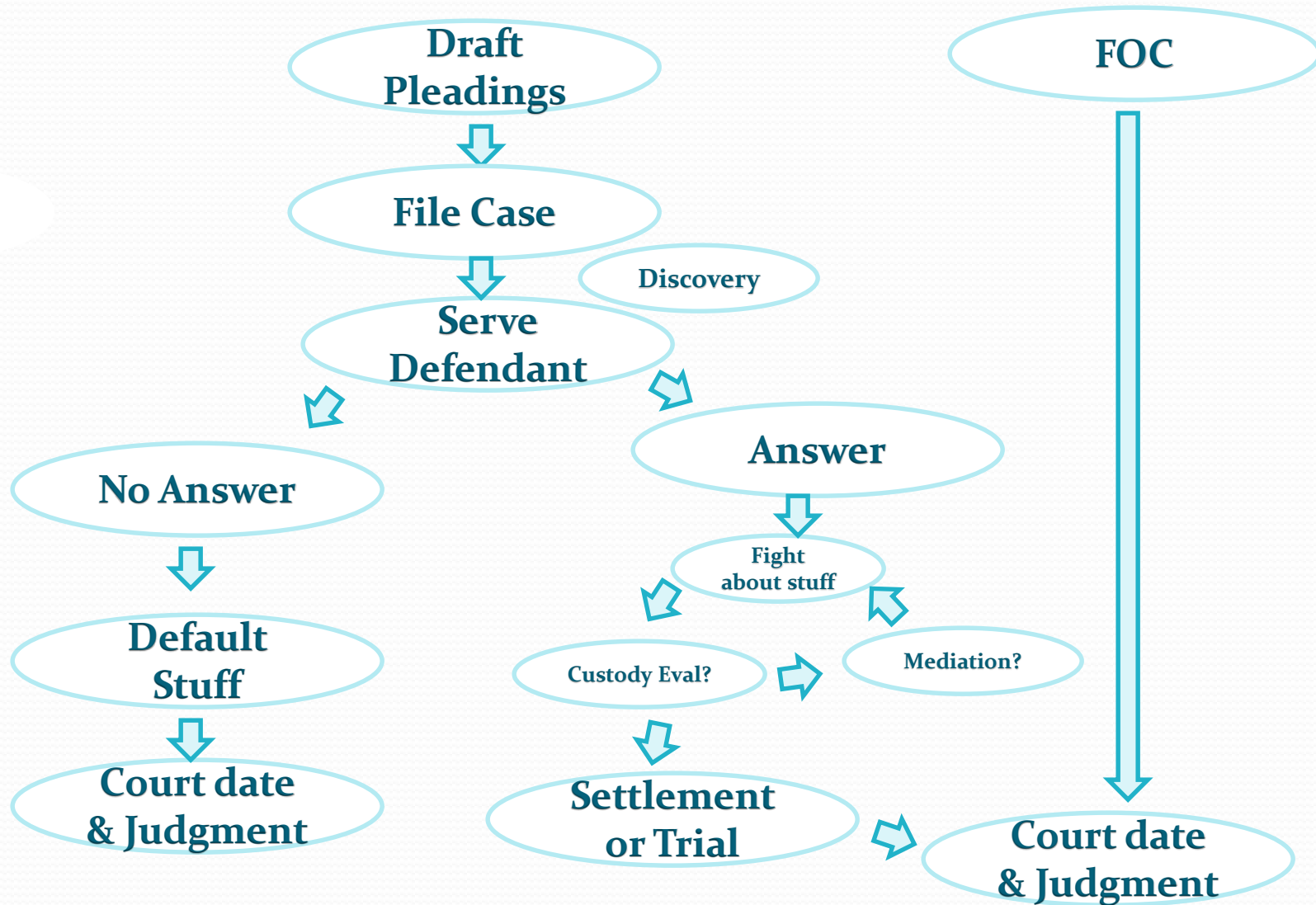
Basic Client Contact

Disclosure of Violence

- Acknowledge that they are in a very difficult and scary situation. Reassure them that there is help and support available.
- BE NON-JUDGMENTAL. Don't criticize them – try to be neutral and supportive.
- Encourage them to talk to people who can provide help and guidance.
- Explain all the possible outcomes of the case.
- **DO NOT PROCEED** with the case until the client is ready.

Divorce with Minor Children – Flow Chart

The Katie Version



Overview of Process

- Divorce with no children
 - *60 day waiting period*
- Divorce with minor children
 - *6 months waiting period*
 - *Waive if compelling necessity*

Draft Initial Pleadings

- SCAO Summons and Complaint Form
 - *Expires in 91 days*
- UCCJEA Affidavit
 - *Required in some counties in lieu of or in addition to information in the Complaint*
 - *Only to establish jurisdiction over custody of the minor children*

Draft Initial Pleadings

- Suspension of Fees – MCR 2.002
 - *In almost every legal aid case*
 - *Court must grant suspension if client receives any form of public assistance*
 - *Court may grant suspension if “indigent”*
 - *Only a suspension of fees, so must incorporate fees into Judgment*
 - Waive if both parties indigent or Defendant in default
 - Assign to Defendant if able to pay

Complaint

- Identify other court actions within the jurisdiction of family court involving the family or family members
 - *Personal Protection Orders*
 - *Guardianships*
 - *Support cases filed by Prosecutor*
 - *Paternity cases filed by Prosecutor*
 - *Prior Divorce/Custody cases*

Complaint

- Divorce Jurisdiction
 - *10 days in County*
 - *180 days in Michigan*
 - *Can be either party*

This is subject matter jurisdiction and cannot be waived.

Complaint

- Plead for Default
 - *Sole Legal, Sole Physical, Specific Parenting Time, if appropriate*
 - Facts to support allegation that is in the children's best interest
 - *Child Support pursuant to Child Support Formula*
 - *Equitable Property Division*

Complaint

- UCCJEA Allegations
 - *MCL 722.1209*
 - *To establish home state of the child*
 - *To determine whether another court has made an initial custody determination*

Complaint

- Complaint or Motion?
- Allegations to Support Ex Parte Orders
 - *Custody, parenting time, and support*
 - *Status quo for payments*
 - *Confidentiality*
 - *Mutual restraint on property*

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- Successful requests for ex parte orders disclose specific allegations of domestic violence
- Survivors often have mixed feelings about what information to include in a complaint/motion

Ex Parte Orders

- Court may enter if the Court is satisfied that:
 - 1) Irreparable injury, loss, or damage will result from the delay required to effect notice, or
 - 2) Notice itself will precipitate adverse action before an order can be issued.

MCR 3.207(B)

- Local Practice

Ex Parte Orders

- Temporary Custody, Parenting Time, and Support
- Mutual Restraining Order Regarding Property
- Status Quo
 - *The party who was paying the bills should continue to pay the bills*
 - *More likely to get status quo than temporary spousal support*
- Exclusive Use of Marital Home

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- 14 day objection period – move quickly
- Safety plan needs to account for entry or denial of the ex parte orders

Confidentiality

Confidentiality – cases with minor children

If a party alleges in a sworn statement or a pleading under oath that a party's or child's health, safety, or liberty would be put at risk by the disclosure of identifying information, the court shall seal and not disclose that information to the other party or the public unless the court orders the disclosure after a hearing in which the court considers the party's or child's health, safety, and liberty and determines that the disclosure is in the interest of justice.

MCL 722.1209

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- Confidentiality Order not 100% effective
- Have client use P.O. Box or alternative address after representation ends

Filing the Case

- Once the case is filed it is public record.
- It is searchable.
- It is online (unless it is a PPO).

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- Solicitation for services
- Defendants are contacted almost immediately
- Before the documentation is served
- Before ex parte orders are approved or denied

Service of Process

- Who May Serve
 - *Any legally competent **ADULT***
 - *Who is **NOT A PARTY***
- Manner of Service
 - *Personal*
 - *Registered or certified mail, restricted delivery to defendant, return receipt requested*
 - *Alternative service (publication or posting) if service cannot reasonably be made*
 - *Acknowledgment*

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- Be sure that your client has a safety plan and is prepared for all possible reactions that the Defendant may have
- Does client have children and important property? Within Defendant's control?
- Consider personal service by a professional; not a friend or family member
- Consider a PPO
- Be sure that your client has access to domestic violence services and organizations
- Have a safety plan

Motion Practice

- If Ex Parte Order is not entered, motion may be filed for same relief and set for hearing to occur after Defendant is served
- Why file a motion?
- Need Temporary
 - Parenting time or custody order
 - Child support order
 - Spousal support
 - Division of property that cannot wait

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- Any hearing may be the first time your client sees the Defendant since separation
- Do not under estimate the emotional implications
- Prepare your client for settlement discussions

Friend of the Court & Hearings

- Practice varies from county to county, so check local rules
- Automatic Conciliation Scheduled
- Conciliation/Mediation/Early Intervention Conference Scheduled on party's request
- Mandatory Early Intervention Conference
- Attorney attendance may be required, prohibited or allowed.

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- Request attorney attendance at all meetings
- Request individual meetings for both parties
- Advise client about possibility of mediation/negotiation, prepare to object to mediation as appropriate
- No requirement to agree at any time
- Ask to appear by phone if physical presence in building with batterer is a problem
- Safety planning for arrival, waiting and entering building
- Safety plan for Defendant and Defendant's family and friends
- FOC may invite both parties to joint meeting with goal to mediate issue
- Advise client s/he does NOT have to agree to any order at FOC
- Clear, detailed orders to avoid manipulation

Discovery

- Consider regardless of Default Entry
- Generally, MCR 2.301
- Individual judges and courts may have their own timelines
 - See Local Rules
 - Domestic relations Scheduling Order
 - Settlement Conference Findings and Orders

Types of Discovery

- Court-Ordered Affidavits
 - Parties' Asset/Debt Exchange Affidavit
- Interrogatories to Parties, MCR 2.309
- Request to Produce Documents to parties, MCR 2.310
- Request to Admit to parties, MCR 2.312
- Subpoena non-parties, MCR 2.305
- Depositions, MCR 2.306

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- Can be an easily abused process, either by refusing to cooperate and comply with discovery (more court dates = more interactions with batterer) or by sending unnecessary discovery requests to be controlling

Alternative Dispute Resolution

- Attorney Negotiation
 - Informal or mediated discussions
- Attorney Mediation
 - Mediator meets with parties and mediator
 - May use shuttle mediation
- Facilitative Mediation
 - Mediator meets with parties

Mediation

- Defined as a “nonbinding process in which a neutral third party facilitates communication between parties to promote settlement.” MCR 3.216(A)(2).
- All domestic cases involving custody, parenting time, child support, or spousal support are subject to Mediation under MCR 3.216.

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- Mediation presumes parties with equal bargaining power, but domestic violence changes bargaining positions
- Consider objecting.
- Parties subject to a PPO may not be referred to mediation without a hearing to determine whether mediation is appropriate. MCR 3.216(C).
- Reasons for exemption from mediation include:
 - Child abuse or neglect
 - Domestic abuse, unless attorneys for both parties will be present
 - Reason to believe that one or both parties' health or safety would be endangered by mediation
 - MCR 3.216(D)(3)

Judgment of Divorce

- Be sure that the Judgment of Divorce is complete and non-ambiguous
- Execution of Documents Provision
 - Non compliance results in legal fees
 - Certified Judgment used to effectuate title transfer
- Account Transfers
 - Include account descriptions and last 4 digits
- Vehicle transfers
 - Include VIN #
- Real Property transfers
 - Include Legal Descriptions
- Income tax filing - dependent claims
- Pension division – QDRO language
- Restoration of Name
- Bar of Claims/Resolves last pending claim
- Retention of Jurisdiction
- Effective Date
- Terminate Attorney Obligation

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- Specific Orders Re Parenting Time
 - Driving responsibilities
 - Pick up/drop off locations
 - Who can/cannot be present
 - How long do parties have to wait
- Property Provisions
 - Specific enforceable timelines
 - Link Asset to Debt
 - Be realistic, not aspirational
 - Automatic enforcement provisions



*Thank you for your
participation!*