

Domestic Violence Newsletter

Committed to Ending Family Violence



What is a Law Guardian?

By Sharon L. Nosenchuck, Esq.

This newsletter is published by Haven House, Neighborhood Legal Services, Inc., and Volunteer Lawyers Project, Inc., to provide information to the community and to agencies regarding the civil legal services available to victims of domestic violence in Erie County. Your feedback and suggestions for future articles are welcome. You can reach us at Neighborhood Legal Services, at the address below, Attn. Domestic Violence Newsletter, or by email at snosenchuck@nls.org.



Many people are confused about the role of the law guardian. A law guardian is an attorney that is appointed to represent the child or children in a Family Court, Supreme Court, or Surrogate Court case. Below are some commonly asked questions, with answers, regarding law guardians.

Is a law guardian a guardian for the child?

A law guardian is not a guardian at all. In some cases, where an adult is found incompetent and cannot make decisions for him or herself, a Guardian Ad Litem (GAL) may be appointed by the court. This is different from a law guardian, as the Guardian Ad Litem "stands in the shoes" of the incompetent adult and can make decisions for that person. However, usually, a GAL will still have an attorney to represent the GAL and the incompetent person. In addition, a GAL usually is not paid for by the court, but is paid for out of the monies of the incompetent person.

Why is a law guardian needed?

Even though in many cases a child is not a named party in a court action, New York State has a policy that court actions that affect children have such a big impact on the children that a legal advocate should be appointed to represent them. The role of the law guardian is to be the attorney for the child. The law guardian tells the court the impact of the outcome of the court action on the children.

If both parents have agreed to settle a matter, does the law guardian have to approve of the agreement?

Often, if the law guardian does not approve of an agreement between the parents on an issue involving the children, the judge will not allow the agreement to take effect.

Is there a confidential relationship between the child and the law guardian?

Yes, unless there is child abuse, the law guardian can-

not tell the child's parents' or their attorneys what the child told the law guardian, unless the law guardian has the child's permission. This is true even in the case of young children.

Is there a confidential relationship between the law guardian and the child's parents?

No, there is no confidential relationship between the law guardian and a parent. Anything that one parent tells the law guardian may be shared with the court, the children, and/or the other parent.

How does a law guardian get paid?

A law guardian may be a "private pay" law guardian, in which the parties, usually the parents of the children, bear the cost of the law guardian. However, most law guardians are "panel" law guardians or are associated with the Children's Legal Center (CLC). Panel and CLC law guardians are paid for by the court system.

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295 Main Street, Room 495
Buffalo, NY 14203
(716) 847-0650
FAX (716) 847-0227
snosenchuck@nls.org
www.nls.org

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Seven Divorce Myths

By Sharon L. Nosenchuck, Esq.



In a previous issue, there was a discussion of divorce myths. These are commonly held beliefs that are not true. The following are seven more myths.

Myth #1

My spouse will not sign the divorce papers.

Truth

In New York State, your spouse does not have to sign any papers to agree to give you a divorce. You may be able to get a divorce even if your spouse does not want to be divorced from you.

Myth #2

If you lived together prior to marriage, you have a right to property accumulated prior to marriage.

Truth

Marital property cannot accumulate until you are married. Therefore, if you lived together for twenty-five years prior to marriage, but were only married two years, you only have an interest in two years of the other parties' pension, not twenty-seven years.

Myth #3

Mothers always get custody of their children.

Truth

Times have changed. There is no longer an assumption by the legal system that mothers should automatically be the custodial parent. Each parent is evaluated by the court to see which should be the custodial parent. However, often, parents will be made joint custodians.

Myth #4

The courts today favor giving fathers custody of their children.

Truth

Neither the male or female parent is favored for custody. The courts look at various factors in determining which parent should have custody of the children.

Myth #5

Since I have young children at home, my spouse will have to pay me alimony until my children graduate high school.

Truth

Alimony (known in New York State as maintenance) is not as common as it once was. In addition, today there are very few awards of life long maintenance. It is more common in a long term marriage for

one spouse to receive maintenance for a period of years, not forever.

Myth #6

Since I have young children at home, I will be allowed to live in the marital residence until our youngest child turns eighteen. My ex-spouse will continue to pay the mortgage until the house is sold.

Truth

It is doubtful that you will be able to remain living in the marital residence without making some contribution to its upkeep, unless the other party agrees. Unless you can support the marital residence on your own, you may not be

allowed to remain there until your children graduate high school.

Myth #7

After I am divorced from my spouse, my children and I will never see him again.

Truth

If the parties have children in common, it is likely that the court will grant visitation to the non-custodial party. However, if there is a risk to the children, the court may order visitation supervised by a third party or an institution.



Did You Know...

...that since November 4, 1998, victims of domestic violence may obtain a new social security number? To get a new Social Security number, you must

- (1) Apply in person at your local Social Security office.
- (2) Present original documents establishing your age, identity and U.S. citizenship or lawful alien status, and
- (3) Present evidence that you may have documenting the harassment or abuse.
- (4) Document the abuse by showing some other papers like court restraining orders, letters from shelters, family members, friends, counselors or others who have knowledge of the domestic violence.

Victims who are thinking about applying for new social security numbers should know that this is a very serious step and should be done after careful consideration. Changing your Social Security Number is only one part of a plan to change one's identity.

A name change, new job, address and telephone number is a new beginning. It may be difficult to obtain old documents (licenses, medical, police, court records), travel documents (passports, birth certificates), credit cards, loans, secure public benefits and obtain insurance, inheritances, etc., if you change to a new identity.

You can get more details regarding changing your social security number at your local Social Security office or on the internet at www.socialsecurity.gov.

Females Are More Likely Than Males To Be The Victim Of Murder And Nonfatal Crimes By Intimates*

In 2000, about 33.5% female murder victims were killed by an intimate while 3.7% of male murder victims were killed by an intimate.

In 2001, approximately 1 out of every 1,000 men, and 5 out of every 1,000 women were victims of non-fatal crimes committed by an intimate.

* Source: U.S. Department of Justice— Bureau of Justice Statistics, February 2003 NCJ197838 <http://www.ojp.usdoj.gov/bjs>

Intimates are defined to include spouses, ex-spouses, boyfriends, and girlfriends age 12 or older, including homosexual relationships. Non-fatal victimizations includes rape, sexual assault, robbery, aggravated assault, and simple assault.

Financial Control: Another Form of Domestic Abuse

By Cindy Chandler, Esq.



Whenever you are in the midst of a difficult marital or intimate partner situation that also includes violence and control, many times the abusing partner will make it difficult to leave. A controlling partner will attempt to keep control over you with threats of violence against you, your family and friends. Additionally, the abuser may prevent you from leaving by blocking your access to important documents, cash and over-extending your credit so that you cannot financially afford to leave.

It is a good idea to constantly change passwords for your accounts and to keep a separate bank account or cash in a safe place in case of emergencies. You should also keep telephone numbers, bank account and credit card numbers in a safe and handy location. Be sure not to use your

children's or your own birth date or social security number as PIN numbers whenever possible.

Here is a list of the most common ways an abusive partner will block a victim's attempt to free themselves from a violent situation or person:

1. Empty or block access to joint bank accounts/ATM cards/credit cards
2. Disconnect, steal or intercept cell phone calls, numbers/accounts
3. Hide check books, withdrawal slips or close accounts
4. Hide birth certificates/paternity acknowledgments
5. Hide passports/immigration application/papers/green cards
6. Make false complaints of child abuse/neglect to police and authorities
7. Hide or destroy public benefits cards

8. Hide or destroy Social Security cards
9. Hide or destroy sentimental photos and cards
10. Destroy clothing, especially seasonal items
11. Hide or destroy awards, certificates, and prizes
12. Intercept, destroy and hide personal papers and e-mail
13. Hide or destroy school books, supplies, and notebooks
14. Change car, home, safe deposit keys and locks
15. Add car alarms, and steering column locks
16. Hide or destroy antiques, and family heirlooms
17. Hide or destroy medical equipment
18. Destroy medications or prescriptions
19. Hide or destroy appointment books, diaries, and address books
20. Hide or destroy licenses (Drivers, professional).



Women separated from their husbands were three times more likely to be victimized by spouses than divorced women and 25 times more likely to be victimized by spouses than married women.

Source: ABA Commission on Domestic Violence

Erie County Domestic Violence Project Welcomes Heather Summers

By Cindy Chandler, Esq.

Erie County Family Court is one of many courts throughout the nation that recognizes the importance of having a full time domestic violence advocate on site. Through the Domestic Violence Project (DVP) at Erie County Family Court, an advocate from Haven House is available to formulate safety plans, assist with drafting petitions, attend court and explain the petition process to Petitioners. The advocate also makes appropriate referrals to counseling and social service programs for those in need. Most of all, the advocate offers some comfort for litigants who are frightened and con-

fused about being in Court. DVP is a partnership between Haven House and Neighborhood Legal Services (NLS).

She [Ms. Summers] was drawn to the area of domestic violence through personal experiences and understands how difficult it may be for Petitioners to navigate through the legal system.

The advocate may also be able to refer the petitioner to NLS for immediate legal services if certain criteria are met. The advocate in Erie County Family Court is Heather Summers.

Ms. Summers joined the staff at Haven House in August 2003. Previously, she was an advocate at Buffalo City Court,

Domestic Violence Part. Ms. Summers has a Bachelor's degree in social work and has always enjoyed helping make people feel better. She was drawn to the area of domestic violence through personal experiences and understands how difficult it may be for Petitioners to navigate through the legal system.

Ms. Summers is impressed with the Erie County Family Court's structured system for petition processing. "The new courthouse is a very comfortable place for clients to speak in private about such difficult



issues," she stated. When she is not in her office at the Courthouse, Ms. Summers is at the Haven House shelter.



What Can You Say?

Here are a few things to say to a friend or family member in the midst of a violent situation to convey your concern:

- I'm afraid for your safety.
- I'm afraid for the safety of your children.
- It will only get worse.
- We're here for you when you are ready or when you are able to leave.
- You deserve better than this.
- Let's figure out a safety plan for you.

Adapted from: Sarah Buel, Esq., in "Courts and Communities: Confronting Violence in the Family," Conference Highlights, National Council of Juvenile and Family Court Judges, 1994.

Found in www.usda.gov/da/shmd/aware.htm

Purple Ribbons

The purple ribbon is a symbol used to honor victims and survivors of domestic and sexual violence. Nationally, October has been designated as Domestic Violence Awareness month and the month to display purple ribbons. On October 8, 2003, President Bush signed a proclamation naming October *National Domestic Violence Awareness Month*. The purple ribbon is a unifying symbol advocates use to sig-



nify their battle to end domestic violence. Shelters and local battered women's programs use the purple ribbon to raise awareness about the crime of domestic violence in their communities. In addition to demonstrating support for victims and advocates, the display of purple ribbons throughout a community conveys the message that domestic violence is unacceptable and is not a private affair but a crime.

What Is A Law Guardian? *continued from pg. 1*

Does the law guardian make a written recommendation to the court?

The law guardian does not make a written recommendation to the court. However, in past years some law guardians did submit written reports to the court. Today, it is generally accepted that while a law guardian may tell the court their position, the court may not necessarily follow the law guardian's suggestion. Moreover, the law guardian, as an attorney, takes positions on their client's behalf.

At what age does the court follow the wishes of the child?

There is no exact age at which a court will follow the child's wishes. The older the child, the more likely the court is to take into account the child's desires. In the later teenage years, a law guardian is more likely to advocate the child's position than that of an elementary school age child.

Will the law guardian automatically recommend to the court that the child should live with the parent who has more money and/or a nicer home?

No, the law guardian will not make a recommendation regarding custody and visitation based upon the financial circumstances of the parties. The law guardian will take a position based upon the best interests of the child.

What does "the best interests of the child" mean?

Looking at the totality of the circumstances, the court will decide the issues of custody and visitation based upon all of the factors that affect a child, including such things as which parent spent the most time with the child, which parent took the child to doctor's appointments, which parent provides the safest home environment for the

child, etc. A judge will make the decision based upon many things, including but not limited to, the position of the law guardian.

Does the court automatically adopt the law guardian's position?

The court looks at a variety of factors to determine the best interests of the child, including, but not limited to, the position of the law guardian.

Will the law guardian always tell the court what is in the best interests of the child?

As a child get older, the law guardian is more likely to tell the court the "stated interest" of the child, rather than what the law guardian thinks is in the "best interests" of the child. However, the child must be able to demonstrate to the law guardian that the child has a reasonable, mature and intelligent opinion. Should a child convey to the law guardian an opinion that would put the child in danger, the law guardian may decide to let the court know that the stated interest of the child is not in the best interests of the child. For example, if a child tells his or her law guardian that he wishes to reside with a crack-addicted parent, the law guardian might take a position that is not the same as the stated interest of the child. However, if a child tells a law guardian that he wishes to reside with a parent who is a poor housekeeper, the law guardian will express the child's wishes to the court,

even though the law guardian believes that the child would be better off residing with the parent who lives in the cleaner and neater household.

What does "in camera" mean?

Usually, a child does not come to court to express his or her position. Rather, the law guardian conveys to the court the child's feelings. However, in rare cases, it is necessary for the judge to meet with the child. In such cases, the judge meets with the child *in camera*. There are no cameras present at the interview. Rather, the child and the law guardian meet

The role of the law guardian is to be the attorney for the child. The law guardian tells the court the impact of the outcome of the court action on the children.

with the judge behind closed doors. The child's parents and their attorneys are not present, although they may have submitted questions for the judge to ask the child. However, the judge may not choose to ask the child the submitted questions.

How can a law guardian be changed?

A motion must be brought telling the court the reasons why the law guardian should be removed. Usually, unless there is a conflict of interest, a judge will not remove a law guardian. Even if both parents dislike the law guardian, the court will not, in most cases, remove the law guardian.

Is a law guardian appointed in every case where there are children?

Usually, but not always. For example, in a divorce, if the parties are in agreement regarding custody and visitation, there may be no need for a law guardian.

Does every law guardian meet with the parents of the children?

Not every law guardian will choose to meet with the parents or custodian of the child. Remember, the law guardian represents the child, not the interests of the parents.

Will the law guardian meet with every child that is being represented?

The law guardian may choose not to meet with young children who cannot talk.

Should the parent's attorney be present when the parent meets with the law guardian?

It is the decision of the parent and their attorney as to whether or not the parent's attorney should be present while the parent is meeting with the law guardian. However, if the party is represented by an attorney, the law guardian should receive the permission of the parent's attorney prior to speaking with the party without the attorney present. While some law guardians do not like to have attorneys present when they meet with the parents, the parents have the right to have their attorney present when meeting with the law guardian.

Can a law guardian force a parent to pay for private school for a child?

Although a law guardian can express an opinion that it would be in the best interest of the child for that child to attend private school, the law guardian cannot force a parent to pay for private school for a child. Law guardians usually do not get involved in financial matters between the parents. In most cases, a law guardian will have no say regarding financial arrangements with respect to the children.

Domestic Violence Websites

These web sites should be used for informational purposes only and not as a substitute for legal or professional advice. The information may not be the most recent or relevant to you in your locality. These sites may be useful as a starting point for advocates and victims who have general questions on the subject matter.

www.womensenews.org

This non-profit website is an independent news service that covers issues of particular interest to women.

www.freeadvice.com

This website has helpful information for people seeking simple definitions of legal terms and about orders of protection. It is not state-specific but is a good starting point.

www.about.com

This website offers information on a variety of topics, including the correlation between alcohol use and domestic violence.

www.fvsai.org

The Family Violence and Sexual Assault Institute website contains information for Family Violence professionals, including training and resources.

www.endabuse.org

This website links to Founding Fathers Campaign 2003, a campaign that encourages men to take a public stand against violence and abuse against women and children and challenges men to be part of the solution to end violence.

www.lawhelp.org/ny

This website helps moderate and low income New Yorkers to find legal help and information.

NOTE: This newsletter does not make any guarantees regarding the legitimacy or timeliness of the information offered by these websites.

Domestic Violence Awareness Stamp

On October 11, 2003 the United States Postal Service issued their *Stop Family Violence* stamp. The design of this first class stamp was made by a young girl who expressed her sadness about domestic vio-



lence. Profits from the sale of the stamp will be transferred to the US Department of Health and Human Services to assist domestic violence programs. The stamp sells for 45¢ and will be available until December 31, 2006. This is only the third series of stamps issued by the US Postal Service that dedicates the net proceeds to a specific social cause. To obtain your stamps, check with your local post office or call 1-800-STAMP-24 or shop online at www.usps.com.

New Listserve For Attorneys Representing Domestic Violence Victims

The Commission on Domestic Violence of the American Bar Association has launched a new monitored listserve to provide a forum for attorneys representing domestic violence victims to discuss issues that arise in the process of litigating civil and criminal cases involving domestic violence. The listserve is open to all attorneys representing domestic violence victims, including

those practicing in the areas of family law, tort law, immigration law, tribal law, public benefits law, housing law, employment law, and health law. Discussants are encouraged to post questions regarding case law, strategies, and requests for issue-specific expertise. The purpose of the list serve is to enable attorneys to share experiences and to use each other as a resource. Examples of topics for discus-

sion include interpreting and applying state and federal law, proving specific allegations, new case law or articles regarding aspects of representing domestic violence victims, and upcoming conferences or trainings. To join the listserve, go to www.abanet.org/domviol/listserve.html.



A Look At Batterers Intervention Programs



Part of an ongoing series of articles discussing Batterers Intervention Programs (BIPs)

Perpetrators of domestic violence are often mandated by a court to attend individual counseling, anger management, or a batterers intervention program (BIP). There is a great deal of confusion and controversy surrounding the purpose and effectiveness of BIPs, and some fear that they do more harm than good within the framework of a community's response to domestic violence.

Guidelines for Batterers Intervention Programs in New York State

At present, there are no uniform requirements in New York State for BIPs, leaving each program free to structure the length, content, format and goals. There are, however, some recommendations for BIPs from the New York State Office for the Prevention of Domestic Violence (OPDV). The goals of these guidelines are to make victim safety paramount and to hold batterers accountable for their abusive behavior. The guidelines include the following:

Does the batterer program:

- Provide a service to the courts that is used to hold batterers accountable, in addition to, not in lieu of, all of the appropriate legal sanctions such as incarceration, probation, restitution, fine, or some combination of these?
- Define domestic violence as a pattern of socially learned and culturally condoned behaviors that include physical, emotional, sexual and economic abuse that are used

by offenders to control the life of and maintain power over an intimate partner and not as a pathology or mental disorder?

- Defer to domestic violence service providers/advocates to provide safety related services to victims, including but not limited to safety planning, information about batterers intervention, etc.?
- Hold the offender accountable for his behavior as a program participant, toward instructors, other program staff and other participants? Are offenders held accountable in complying with the program participation contract? Does the BIP acknowledge that this is the only way in which, realistically, participants can be held accountable?
- Support community efforts aimed at holding offenders accountable for their violence, without colluding with the offender in blaming other external factors such as the victim's behavior or the batterer's use of alcohol/drugs, childhood

There is a great deal of confusion and controversy surrounding the purpose and effectiveness of BIPs, and some fear that they do more harm than good within the framework of a community's response to domestic violence.

victimization, social, racial or class oppression, emotional or economic problems, as the cause of his violence?

- Focus on educating offenders on the unacceptability of all forms of domestic abuse, and on reinforcing the community's ethic of zero tolerance of domestic abuse, not on other issues such as solving the offenders' emotional problems, keeping the couple together or resolving relationship problems?
- Actively participate in local

coordination efforts to improve its community's response to domestic violence?

- Make no claims regarding the progress or success of its participants or the impact of its services on their behavior?
- Have a policy of not competing for funds with battered women's services?
- Have a policy of not engaging in any research activity that could compromise the safety of battered women by, for example, eliciting individual battered women to report on their partner's abuse?

This article is based upon information obtained from the NYS Office of Prevention of Domestic Violence. (Website is www.opdv.state.ny.us)

Our next issue will focus on other important factors regarding Batterers Intervention Programs.

Did You Know...

...that the length of time that the Family Court can issue an order of protection has increased? The law was passed by both the Assembly and the Senate on June 18 and signed by the Governor on September 22, 2003. This amendment to Section 842 of Family Court Act extends the length of a civil Order of Protection from the maximum of one year to two years, and increases the length of an Order of Protection with aggravating circumstances from three years to five years. It also provides that a violation of a valid Order of Protection is an aggravating circumstance, which allows the court to issue a five-year Order of Protection. (Chapter 579: Laws of 2003)

Neighborhood Legal Services, Inc., Volunteer Lawyers Project, and Haven House have received a grant from the U.S. Department of Justice to provide holistic legal services to victims of domestic violence. This program, funded under the Violence Against Women Act (VAWA), is intended to provide civil legal services to women who are transitioning out of violent relationships and who need assistance with multiple civil legal problems. Income restrictions apply. Eligible clients not only can receive legal assistance with family and matrimonial problems, but with other civil legal problems as well, such as public assistance, SSI, housing, etc. To refer clients to our program, write or call Neighborhood Legal Services, Inc., and ask for the Domestic Violence voice mail box.

FEEDBACK

Want more information? Complete this form and **MAIL** to
Domestic Violence Newsletter
Neighborhood Legal Services, Inc.
295 Main St., Room 495, Buffalo, NY 14203 or **FAX** to: 716-847-0227

- Yes! Include me on your mailing list for the Domestic Violence newsletter.
- Please send me a copy of your brochure on the services that Neighborhood Legal Services, Inc. offers to victims of domestic violence.
- I would like to have a speaker come to my agency and discuss domestic violence and the civil legal system. Please contact me at the address below.
- Please send me information on other services provided by Neighborhood Legal Services, Inc.
- Please send me more information on Volunteer Lawyers Project (VLP).
- Please send me more information on Haven House.

Name

Agency

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