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Recording Date – April 14, 2020

Recording Availability – April 21, 2020

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue – Suite 700 Seattle, WA Adobe Connect Live Stream	Tuesday, April 14, 2020	1:00 PM to 4:00 PM	Representing Domestic Violence Survivors: In COVID times

AGENDA

1:00 PM – 1:30 PM	Welcome and Introductions/ Working with Survivors <i>Kim Todaro, Managing Attorney DV LEAD Project</i>
1:30 PM – 2:05 PM	Anatomy of a Domestic Violence Protection Order <i>Kate Francis, Staff Attorney DV LEAD Project</i>
2:05 PM – 2:15 PM	Break
2:15 – 3:00 PM	Arguing a Domestic Violence Protection Order <i>William Braun, Pro Bono Volunteer Attorney, DV LEAD</i>
3:00 PM- 3:30 PM	Tips from the Bench when Representing Survivors in COVID times <i>Commissioner Jennie Laird, King County Superior Court</i>
3:30 PM – 4:00 PM	Question and Answer with Commissioner/ Attorneys

Biographies

Commissioner Jennie Laird

Jennie Laird is a King County Superior Court family law commissioner, currently serving on the domestic violence protection order, family law motions, and state child support calendars at the MRJC in Kent, and has served as the Lead Commissioner since mid-2018. Prior to her family law rotation, she served in juvenile court on the dependency calendars in both Seattle and Kent. Prior to being appointed in December 2013, she practiced family law with a focus on contested custody cases between married or unmarried parents, non-parental custody actions, and cases involving domestic violence and abuse allegations, working as a lawyer first with legal services and then in private practice. Jennie taught family law, domestic violence law, and family law clinical and legal writing courses as an adjunct professor at Seattle University School of Law, and she was awarded the 2010 Outstanding Adjunct Faculty Award for her work there. Jennie is a past President of the Board of Directors of the QLaw Foundation, and she was the volunteer attorney coordinator the King County Bar Association's Domestic Violence Family Law Legal Clinic for 16 years prior to joining the bench.

William Braun

After two decades serving as a trial attorney with the U.S. Department of Justice, William D. Braun ("Bill") began serving pro bono clients who are survivors of domestic violence. In two recent cases that he argued (Smith v. Smith and Braatz v. Braatz), Bill left a lasting impact on family law practitioners and survivors of domestic violence. He provides training to private law firms and legal aid organizations and writes "pocket briefs" on recurring legal issues, which are used by domestic violence advocates and pro bono programs throughout Washington. Bill was the recipient of the 2019 Apex Award for Pro Bono and Public Service Award by an Individual.

Kate Francis

Kate Francis is a staff attorney at the King County Bar Association's (KCBA) Family Law Mentor Program (now DV LEAD) where she provides pro bono representation to survivors of domestic violence in protection order and family law cases where children are at risk. Before joining KCBA, Kate served as the Legal Advocate at the Domestic Abuse Women's Network (DAWN) assisting survivors of domestic violence with their legal needs. Kate is a graduate of Seattle University School of Law and was admitted to practice law in Washington in 2011.

Kim Todaro

Kim Todaro received her juris doctorate from Northwestern University School of Law in Chicago in 1999. Following law school, Ms. Todaro spent a year as a VISTA Ameri-Corps Attorney with the Legal Assistance Foundation of Chicago working on a lockout prevention project. Kim then served as an Equal Justice Works Fellow at the Northwest Justice Project, on a project which focused on improving court outcomes for domestic violence survivors in Island County. Kim has

been the Managing Attorney for the Family Law Mentor Program (now DV LEAD Project) at the King County Bar Association since 2003. Kim focuses on working with low income clients in family law matters involving children at risk and helping pro bono attorneys who volunteer through the Family Law Mentor Program. She is a member of KCBA and WSBA.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at www.mywsba.org/.
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

Adding a Recorded Course

Select Recorded Course from the Add New Activity screen.

You can search by Activity ID (**information is included on the first page of the materials that you receive with the recording**) or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, "The activity has been added to your roster."



REPRESENTING DV SURVIVORS IN COVID TIMES

King County Bar Association DV LEAD Project

WELCOME TO THE TRAINING

- Welcome to the training – tech overview
- Overview of DV LEAD Project: Staff and our project
- What we will cover today: *Objectives of the training:*
 - Dynamics of Domestic Violence and working with survivors keeping trauma in mind – Kim Todaro, Managing Attorney DV LEAD Project
 - Anatomy of a Domestic Violence Protection Order (DVPO) – Kate Francis, DV LEAD Project Staff Attorney
 - Arguing a DVPO – Bill Braun, Pro Bono Attorney, DV LEAD Project
 - Tips and Q and A with King County Commissioner Jennie Laird

WORKING WITH SURVIVORS

- Domestic Violence spans all gender, race, class, education and culture.
- *DV is not only about physical violence - it is about power and control.*
- The most dangerous time for a DV survivor is when they leave the relationship or “legally leave” - file papers in court.
 - In one study, for 40% of the incidents in which a woman was killed, an immediate precipitating factor of the fatal incident was the woman leaving or trying to end the relationship.
 - Block, Carolyn Rebecca. *Chicago Women's Health Risk Study, 1995-1998*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2006-03-30.

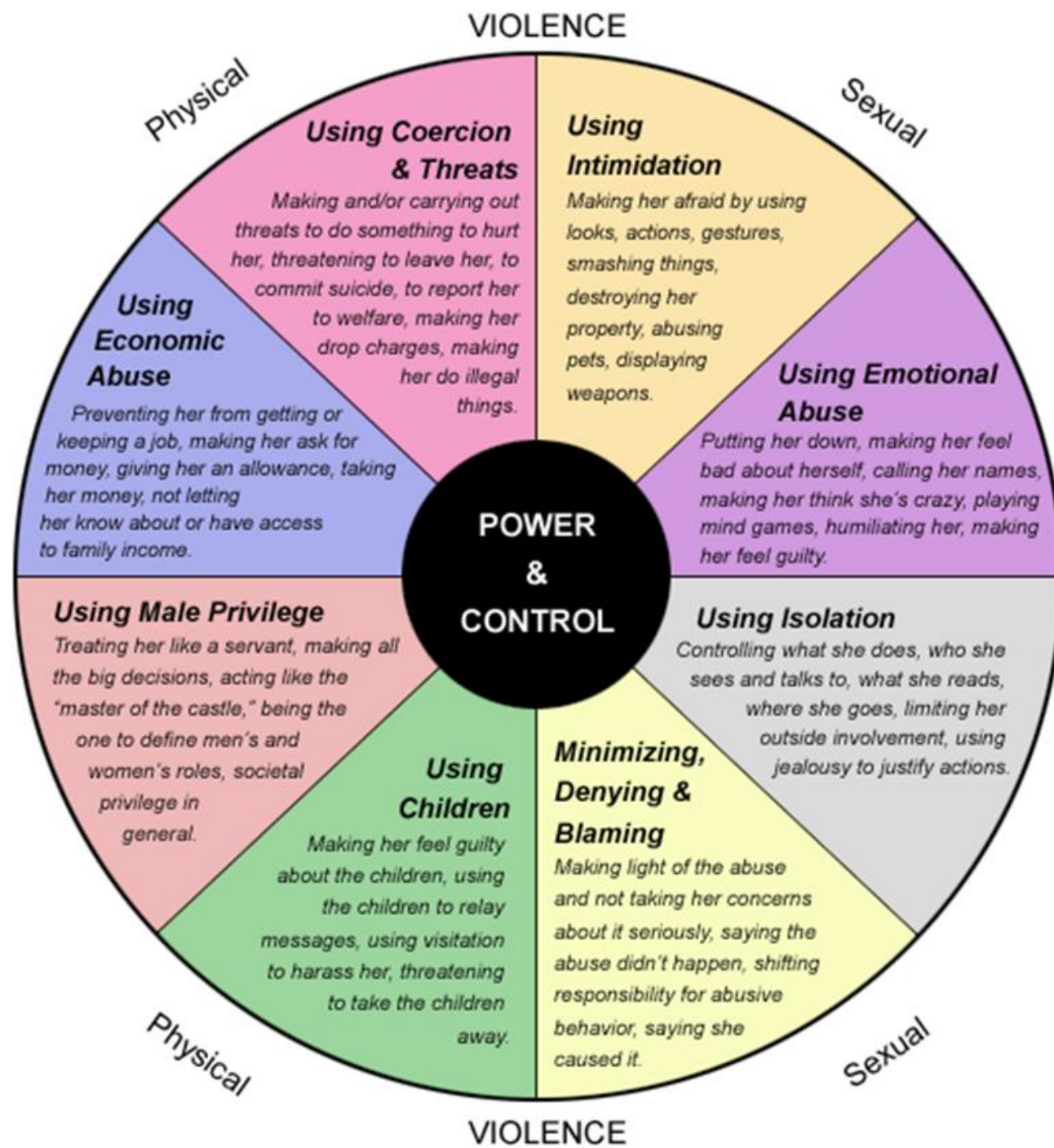
WHAT IS DOMESTIC VIOLENCE?

MULTIPLE DEFINITIONS OF DOMESTIC VIOLENCE: *BEHAVIORAL DEFINITION*

- Domestic violence is a pattern of behavior used by an individual to establish and maintain coercive control over his intimate partner. DV consists of physical, emotional, sexual or psychological abusive behavior used to control another person with whom the abusive person has an intimate or family relationship. Over time the abuse might become more frequent and severe. While all abusive acts are traumatic – not all are illegal.
 - Other types of abuse include: reproductive coercion; commercial sexual exploitation; medical abuse; religious/spiritual abuse; abusive litigation; technology abuse; threats re: survivor's citizenship status, sexual orientation/gender identity, or criminal history; forcing substance abuse or criminal activity, etc.
- Power and Control Wheel and how to use this in family law cases

COERCIVE CONTROL

- “an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.”
- from: <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>
- Adapted from the work of Dr. Evan Stark



Used with permission: Domestic Abuse Intervention Project, Duluth, MN.

LEGAL DEFINITION OF DV

- "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

- RCW 26.50.010



IT IS LIKELY THAT YOUR CLIENT HAS EXPERIENCED TRAUMA

TRAUMA CAN CHANGE THE BRAIN

- Difficulty concentrating
- Dates confusion/ not linear
- No explanation
- Minimizing
- Flat affect
- Fear of disclosing child abuse
- Fear of disclosing chemical dependency
- Lack of documentation
- Fear

AS AN ATTORNEY WHAT CAN YOU DO?

- Make sure survivor feels safe
- Listen, ask and believe
- Use the wheel
- Date navigation
- Risk/benefits
- Troubleshoot together
- Write, repeat and confirm
- Safe communications
- Homework
- Hard to keep appointments
- Courthouse safety
- Engage advocates in safety planning



COMMON ATTORNEY CONCERNS

- Emotionally difficult
- Not a therapist
- Afraid of the abuser
- Will she go back?
- Why does she keep talking about things that are not relevant?

BARRIERS TO LEAVING

- Danger:
 - Many abusers escalate their violence to retaliate against the victim for leaving or in order to coerce the victim into reconciliation.
- Lethality: abusers threats
 - Many victims of domestic violence are killed by their partners during the process of leaving or after they have left the abuser.
- Commitment to the relationship
 - Hope for change
 - Abuser is not abusive ALL the time



LEAVING IS A PROCESS

- Cycle of Violence
- The first time a survivor leaves may be a test to see whether the abuser will obtain help or stop his/her abuse.
- Most survivors of domestic violence leave and return several times.
- Each time, the survivor may gain more information about the resources available to them.



ADDED COMPLICATIONS

- Isolation during COVID Shelter in Place
 - No time away from abusive partner and added stress
 - No place to go
 - Shelters are often full or “unsafe” now
 - Harder to meet with an advocate or attorney
 - Less contact with safe social services

POST SEPARATION VIOLENCE

- The risk of serious violence, including murder, increases dramatically upon separation
 - At least 44% of women killed by an abusive partner were separated at the time of their death
 - Up to 75% of domestic assaults reported to police are made after separation
 - Women leave when they are ready, and when it is safe to do so
- *Washington State Fatality Review, December 2004; US Department of Justice 1983*



DV AND MENTAL HEALTH

- Guilt, shame, or self-blame
- Substance abuse
- Suicidal ideation
- Anxiety
- Depression
- PTSD (Post-traumatic Stress Disorder)
- Trauma

SAFETY PLANNING

- Active process of identifying and mitigating risks.
- **Any legal action can have safety implication.**
- Survivors are the best judge of their own safety, be clear what you can and can't do.
 - However, sometimes survivors underestimate danger due to learning to “manage” the abuse. Maybe conscious or subconscious belief that they can have some kind of control in the situation. Common response to trauma.
- Assess for immediate risk. Make sure survivor has advocate (if appropriate). Keep safety in mind when drafting legal documents.



ANATOMY OF A DVPO

Kate Francis, Staff Attorney, KCBA DV LEAD Project

DISTINGUISHING TYPES OF ORDERS

Today's Training Focus:

Domestic Violence
Protection Orders
(DVPOs)

Civil

- Domestic Violence Protection Order (DVPO)
- Sexual Assault Protection Order (SAPO)
- Vulnerable Adult Protection Order (VAPO)
- Anti-Harassment Order (AHPO)
- Stalking Protection Order
- Extreme Risk Protection Order (ERPO)
- Restraining Order (RO)

Criminal

- Criminal No Contact Order (NCO)
- Criminal Sexual Assault Protection Order

A DV SURVIVOR CAN HAVE MULTIPLE, CONCURRENT ORDERS

- Relief “shall not be denied or delayed on the grounds that the relief is available in another action.” RCW 26.50.025(2)
- “A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action.” RCW 26.50.030
- For example, a survivor may have concurrently a criminal no contact order as part of a DV criminal case, a restraining order as part of a family law case, and a DVPO.

THE DOMESTIC VIOLENCE PREVENTION ACT (RCW 26.50)

- The purpose of the Domestic Violence Prevention Act (DVPA) is:
 - To provide DV survivors with “**easy, quick, and effective access**” to domestic violence protection orders.

WHO IS ELIGIBLE FOR A DVPO?

- A survivor of domestic violence may be eligible for a DVPO if there is a **qualifying relationship** between the parties

AND

- He or she can show that there have been acts that meet the **legal** definition of domestic violence under 26.50.010

LEGAL DEFINITION OF DOMESTIC VIOLENCE

RCW 26.50.010 (3):

- (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or
- (b) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

QUALIFYING RELATIONSHIP

Intimate partner means (RCW 26.50.010(7)):

- (a) Spouses, or domestic partners;
- (b) Former spouses, or former domestic partners;
- (c) Persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (d) Adult persons presently or previously residing together who have or have had a dating relationship;
- (e) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; and
- (f) Persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship

Family or household members means (RCW 26.50.010(6)):

- (a) Adult persons related by blood or marriage;
- (b) Adult persons who are presently residing together or who have resided together in the past; and
- (c) Persons who have a biological or legal parent-child relationship, including stepparents or stepchildren and grandparents and grandchildren

CONSIDERATIONS BEFORE FILING A DVPO

- Safety
- Confronting the respondent may cause escalation and increased aggression
- Trauma of seeing abuser in court
- Accessing the strength of the case
- Respondent may use the DVPO as an opportunity to discredit petitioner (she's crazy, a drug addict, bad mom, etc.)
- Expect continuances
- The court may grant visitation for the respondent
- Implications in family law case (DVPO subject to any family law action)

Special COVID-19 Considerations:

- Additional barriers to safety
- Coordinating with clients without meeting in person
- Potentially more difficult to get a same day emergency order
- Telephonic appearance

THE DVPO PROCESS

Forms needed to file a DVPO:

- Petition
- Temporary Order
- Order to Surrender Weapons without Notice (OTSW w/o Notice)
- Cover Sheet
- Law Enforcement Information Sheet (LEIS)

*These forms can be found on court.wa.gov

COVID-19 Forms for King County:

- Temporary Order for Protection
- OTSW w/o Notice
- OTSW
- Reissuance (if applicable)

COVID-19 FORMS

**Superior Court of Washington
For King County**

Petitioner _____ vs. _____
 Respondent _____

DOB _____
 DOB _____

No. _____ SEA

**Temporary Order for Protection and
Notice of Hearing (TMORPRT)**
 (Clerk's Action Required)
Next Hearing Date/Time: _____
**All Hearings are by telephone pending further
order of the court**
At least 1 day before your hearing, email
FamilyLawStaffSeattle@KingCounty.gov
 or call (206) 477- 1523

Names of minors: No minors Involved

First	Middle	Last	Age

Respondent Identifiers

Sex	Race	Hair
Height	Weight	Eyes

Respondent's Distinguishing Features:

Caution: Access to weapons: yes no unknown

The court finds:
 The court has jurisdiction over the parties, the minors, and the subject matter. The respondent will be served notice of his or her opportunity to be heard at the scheduled hearing. RCW 26.50.070. For good cause shown, the court finds that an emergency exists and that a Temporary Protection Order should be issued without notice to the respondent to avoid irreparable harm or injury.

The court orders:

1. Respondent is **restrained** from causing petitioner physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking
 petitioner the minors named in the table above these minors only:

**Superior Court of Washington
For King County**

Petitioner _____ vs. _____
 Respondent _____

No. _____ SEA
**Order to Surrender Weapons Issued
without Notice
(ORWPN)**
 (Clerk's Action Required)
Next Hearing Date/Time: _____
**All Hearings are by telephone pending further
order of the court.**

At least 1 day before your hearing, email
weapons-surrender@kingcounty.gov or call
 (206) 477- 1367, if you do not have email,
 for instructions on appearing by phone on
 the day of your hearing

This order is based on the findings in the order issued on _____ (date).

Restrained person (name) _____:

You must **immediately surrender** all firearms and other dangerous weapons in your possession or control, and any concealed pistol licenses issued under RCW 9.41.070 to the local law enforcement agency: _____ (fill in if known).

You must **immediately surrender** all firearms and other dangerous weapons subject to this order, including but not limited to the following:

Attach sheet if there are more to list.

This order expires **At the same time as the protection order entered under this cause number.**

TIPS FOR DRAFTING A PETITION

- Write from the petitioner's perspective
- Meet the legal definition of domestic violence
 - Focus on “physical harm, bodily injury, assault, stalking, sexual assault” or “infliction of fear of imminent physical harm, bodily injury or assault”
 - Be specific
 - Make factual statements not legal conclusions (i.e. “the respondent punched me with a closed fist,” “the respondent slapped me with an open hand” not “the respondent assaulted me”)
- Organized and easy to read
- Include dates and times of incidents
- Add details that meet the behavioral definition to corroborate the petitioner's statements about the violence (e.g. verbal abuse, economic coercion and other coercive control)

TIPS FOR DRAFTING PETITION (CONT.)

- Corroboration: Try to corroborate the petitioner's version of events
 - Supporting declarations can be helpful if witnesses saw the acts of violence
- Criminal case: If a criminal case has been brought against the respondent, attempt to obtain police reports, photographs and other relevant documents
- Past court proceedings: look at prior court proceedings involving the respondent and read them
- Be consistent
- Be proactive: try to anticipate facts the respondent may raise to try to discredit the petitioner

TEMPORARY ORDER

- The court may grant the temporary order if the petition alleges and the court finds that **irreparable injury** could result from domestic violence if an order is not issued immediately without notice to the respondent. RCW 26.50.070(1)
- If the court declines to issue the temporary order it shall state the **particular reasons** for the denial. RCW 26.50.070(7)
- **Irreparable injury** includes but is not limited to situations in which the respondent has recently:
 - Threatened the petitioner with bodily injury
 - Has engaged in acts of domestic violence against the petitioner. RCW 26.50.070(3)

TEMPORARY ORDER (CONT.)

- Relief available under a temporary order (RCW 26.50.070(1)):
 - Restraining respondent from committing acts of abuse
 - Stay away and no contact provisions
 - Temporary custody of children
 - Restrain respondent from removing children from the jurisdiction
 - Restrain respondent from harassing, cyberstalking, or electronically surveilling petitioner
 - Temporary surrender of weapons

FILING PROCESS

Pre COVID-19:

- A DVPO is initiated by filing in person a petition for an order for protection and bringing it before an ex parte commissioner/judge to obtain a ex parte temporary order for protection
- The judicial officer will set a time and date for a full hearing not more than 14 days after entering the ex parte order. RCW 26.50.050
- The respondent must be personally served with the temporary order, petition and notice of hearing at least 5 court days prior to the hearing. RCW 26.50.050
- No filing fee for a DVPO
- Free service by law enforcement

COVID-19 Filing Process (King County Specific):

- Email documents for filing to the court
- Note where you are filing (KNT or SEA)
- Clerk's office taking filing to ex parte judicial officers in batches throughout the day
- 2:30 p.m. cutoff for same day orders
- Special considerations—LEIS and confidentiality
- Phone call from ex parte—not always
- Follow-up may be necessary—balancing patience vs. persistence
- Certified copies of the temporary order being mailed



GOVERNOR'S APRIL 10TH ORDER

- Proclamation 20-45: Protective Orders and Personal Service
 - Allows more flexibility for service
 - Removes time limits on temporary and full DVPOs

RELIEF AVAILABLE IN FULL DVPO

- RCW 26.50.060 enumerates the relief available to petitioners, including:
 - Residential and custody provisions
 - No contact and stay way provisions
 - Provisions for pets
 - Surrender of weapons
 - Possession of shared residence
 - Use of shared vehicle
 - Use and possession of essential personal effects
 - Attorneys fees and court costs
 - DV Batterers Treatment, Parenting Classes (DV Dads), substance abuse treatment



ARGUING A DVPO


William Braun, Pro Bono Attorney, KCBA DV LEAD Project

DOMESTIC VIOLENCE PROTECTION ORDERS

- DVPO's are special proceedings
- The civil rules do not apply. *Scheib v. Crosby*, 160 Wn. App. 345, 352-53, 249 P.3d 184 (2011);
- The Rules of Evidence, other than with respect to privileges, “need not be applied” in protection order proceedings. ER 1101(c).
- There is no statutory right to discovery, live testimony, or cross-examination, and the commissioner can decide the case based on documentary evidence alone. *Aiken v. Aiken*, 187 Wn.2d 491, 500, 387 P.3d 680 (2017); *Gourley v. Gourley*, 158 Wn.2d 460, 469-70, 145 P.3d 1185 (2006)

PREPARING FOR HEARING

- Court Rules
 - Know and comply with all applicable court rules.
- Petition
 - Read the petitioner's petition and any attachments to determine the facts presented to the court by the petitioner.
- Talk With Petitioner
 - Interview the petitioner about her representations and for more information.
- Current Court Proceedings
 - Ask the petitioner what other court proceedings exist between the petitioner and the respondent.

- 
- Corroboration
 - Try to corroborate the petitioner's version of events.
 - Criminal Case
 - If a criminal case has been brought against the respondent, attempt to obtain police reports, photographs and other relevant documents
 - Past Court Proceedings
 - Look at prior court proceedings involving the respondent and read them.
 - Violations of Court Orders
 - DV Treatment Providers
 - Victims of domestic violence are entitled to certain information from domestic violence treatment providers.

BACKGROUND INFO

- Court Records
 - General Rule 31 (d) says “the public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.”
- Service
 - Determine if the respondent has been served.
- Supplemental Evidence
 - You may submit supplemental information to the court before the hearing or you may present such information at the hearing.
- Minors
 - Remember that “[d]eclarations by minors are disfavored.”

PREPARING FOR HEARING

- Discovery
 - There is no right to discovery in cases under the Domestic Violence Prevention Act because domestic violence protection order cases are “special proceedings” not governed by the Civil Rules. In *Scheib v. Crosby*, 160 Wn.App. 345, 249 P.3d 184 (2011), the court held that the “trial court retain[s] the inherent authority and discretion to decide the nature and extent of any discovery under the DVPA.”

PREPARING FOR HEARING

- Appearance
 - Prepare and file a Notice of Limited Appearance.
- Proposed Protection Order
 - Obtain and fill out the Order of Protection you want the commissioner to sign.
- LEIS
 - Prepare the Law Enforcement Information Sheet.
- Presentation
 - Prepare your presentation to the court.

NUTS AND BLOTS OF THE HEARING

- Hearing Procedure
 - Each commissioner/ Judge is different. LFLR 12(c) provides that “both parties may testify and the court may consider other relevant evidence.”
 - If possible, submit your client’s declaration ahead
 - This will all be telephonic now
- Cross-examination
 - It is rare for a commissioner to allow cross-examination. In *Gourley v. Gourley*, 158 Wn.2d 460 (2006), the court stated that “Judges and commissioners must exercise discretion to determine whether cross-examination is necessary in a particular case to protect the rights involved; their judgment is crucial in such delicate proceedings.”

HEARING

- Presentation of the Petitioner's case
 - The burden of proof is on the petitioner to establish domestic violence by a preponderance of the evidence.
- Presentation of the Respondent's Case
 - The respondent will likely have his own version of events that is different from that of the petitioner. The respondent may claim that the petitioner has mental health, drug or alcohol problems.
- Rebuttal
 - After both sides have been heard, the court will generally permit very limited rebuttal. Only rebut the most critical issues.
- There might be questions from the court throughout the hearing. Be sure to answer the information that the court asks for with the evidence on the record.

DV AND KIDS

- Children Included in Protection Order
 - Physical violence toward children is not necessary before children can be included in a protection order.
 - The DVPA is designed to prevent domestic violence before injury occurs.
 - Children are deeply affected by domestic violence in their homes.
 - Not including the children on a protection order gives an abuser unfettered access to the children.

FEAR AND DV

- “The definition of domestic violence allows a petitioner to seek relief based on a general fear of harm between family members.” *Rodriguez*, 188 Wn.2d at 594.
- “Even when there is no evidence of a direct assault on a child, fear of violence is a form of domestic violence that will support an order for protection.” *Maldonado*, 197 Wn.App. at 791 , *Stewart*, 133 Wn.App. at 551.
- “imminent psychological harm to children is a proper statutory basis for a protection order.” *Maldonado*, 197 Wn.App. at 791.
- “There is no requirement for corroboration and no requirement that the children testify or to voice their fear to establish that violence has made them fearful.” *Maldonado*, 197 Wn.App. at 792.

RODRIGUEZ CASE

- “A person does not have to be a victim of domestic violence to be included in a protection order.” *Rodriguez*, 188 Wn.2d at 593.
- DV “includes a mother’s fear of harm to her child by that child’s father.” *Rodriguez*, 188 Wn.2d at 592.
- “The definition of domestic violence allows a petitioner to seek relief based on a general fear of harm between family members.” *Rodriguez*, 188 Wn.2d at 594.

KEEP IN MIND: PARALLEL PROCEEDINGS

- Parallel Criminal Prosecution
 - If the respondent is being prosecuted criminally for committing domestic violence against the petitioner, the respondent, citing his Fifth Amendment privilege not to incriminate himself, may ask the commissioner to continue the protection order case until the criminal case has been resolved. **The pendency of a criminal case does not entitle the respondent to a delay of the protection order hearing.**
 - *If this occurs, the court must apply Olympic Pipeline Case test on the record. Test consists of 8 factors that the court must consider.*
- *Smith v. Smith*, 1 Wn.App. 2d 122 (2017) applies Olympic Pipeline factors to DVPO cases.
- *Smith* held that minimal to nonexistent infringement of Fifth Amendment; other factors weigh in favor of petitioner.

BE SURE TO ADDRESS:

- **DV TREATMENT:**
-
- BE PREPARED TO ADDRESS DV TREATMENT
-
- DV BATTERERS TREATMENT
-
- PARENTING CLASSES
-
- DRUG EVAL & TREATMENT
- ALCOHOL EVAL & TREATMENT



VISITATION

- Be prepared to address visitation.
- Court may order limited contact with a restrained parent or no visitation.
- If the court orders visitation be as specific as possible in drafting the section of the DVPO that outlines visitation. (power and control in ambiguity).
- Court can order supervised visitation or professionally supervised visitation. Be sure the designate that the restrained person must pay this cost.
- You can make visitation contingent on participation in interventions ordered

FIREARMS

- Domestic Violence and Firearms are a deadly combination
- A victim is 5 times more likely to be killed when firearm is present
- A survey of contacts by the National Domestic Violence Hotline found, of respondents' whose abusers had access to firearms:
 - 10% said their abusers had fired a gun during an argument;
 - 67% believed their abusers were capable of killing them
 - *(data from National Domestic Violence Hotline)*
- Order to Surrender Weapons is available at temporary (ex parte) as well as in the full DVPO.

FIREARMS

- Upon filing of the Petition for a DVPO the court may issue an **Order to Surrender without Notice**.
 - Issued pursuant to RCW 9.41.800
 - *The court may order temporary surrender of all firearms and other dangerous weapons, and any concealed pistol license, without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.*
 - *In addition, the court may enter an order requiring a party to surrender if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.*
- Note the COVID modifications to the form

FIREARMS

- A qualifying DVPO requires the court to enter an **Order to Surrender Weapons**
- A “qualifying DVPO”
 - was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
 - Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - Includes a finding that the person represents a **credible threat** to the physical safety of the intimate partner or child;

FIREARMS

- A full Order to Surrender:
 - Require that the party immediately surrender all firearms and other dangerous weapons;
 - Require that the party immediately surrender a concealed pistol license issued under RCW 9.41.070;
 - Prohibit the party from accessing, obtaining, or possessing any firearms or other dangerous weapons; and
 - Prohibit the party from obtaining or possessing a concealed pistol license.
- See RCW 9.41.800

COMPLIANCE WITH ORDER TO SURRENDER

- Weapons surrender must be done immediately. The Respondent has 5 days to file the paperwork.
- Telephonic Review Hearings are held Wednesday mornings to address compliance with the Order to Surrender.
- The King County Regional Firearms Enforcement Unit is helpful with weapons issues.
- The Burden of Proof is on the Respondent to prove compliance. *Braatz v. Braatz*, 2 Wn.App. 2d 889 (2018), review denied, 421 P.3d 445 (2018).
 - “where the record contains conflicting evidence, the court must weigh that evidence and determine whether the restrained party has met their burden of proof.”

ENFORCEMENT OF ORDER TO SURRENDER

- Enforcement of Order to Surrender:
 - Can be through a civil contempt action
- New law: SHB 2622:
 - Prosecutors and City Attorneys have standing to initiate civil contempt
 - Removed any uncertainty about civil contempt remedy available to court
 - Goes into effect on June 11, 2020
- In addition: RCW 26.50.120:
 - “When a party alleging a violation of an order for protection . . . states that the party is unable to afford private counsel and asks the prosecuting attorney for the county . . . in which the order was issued for assistance, the attorney SHALL initiate and prosecute a contempt proceeding IF there is probable cause to believe that the violation occurred. In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including reasonable attorney’s fees.”

FINDINGS AND POST HEARING

- Denial Findings
 - If the petitioner does not prevail, make sure that the commissioner states “in writing on the order the particular reasons for the court’s denial.”
RCW 26.50.060(7).
- Motions for Revision
 - “All commissioner rulings are subject to revision by the Superior court. RCW 2.24.050. * * * On revision, the superior court reviews both the commissioner’s findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner.” Motions for Revision must be filed and served within ten days of the commissioner’s ruling and must be based on the written materials and evidence submitted to the commissioner including the documents and pleadings in the court file.

FINDINGS AND POST HEARING

- Motions for Reconsideration
 - Motions for Reconsideration ask the commissioner to reconsider his or her decision. They are authorized pursuant to CR 59 and LCR 59. There are specified grounds for such motions.
- Violations of Protection Order
 - “A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter * * * if the person restrained knows of the order.”
RCW 26.50.110(2).



RENEWALS

- Petitioner can file to renew a DVPO within three months of the date of expiration.
- The Burden of Proof is on the Respondent to show that he will not resume acts of violence if the order is not renewed.



DVPOS IN KCSC: TIPS FROM THE BENCH

Commissioner Jennie Laird

TOPICS TODAY:

- Highlighting current procedures under KCSC emergency operations
- Tips from the bench (bench mates were consulted)
- Addressing specific questions about process and substance
- Q & (if I can) A

- Disclaimers:
 - My perspective; any opinions offered are only mine
 - Changing landscape: Governor's Proclamations; Orders of Chief Justice of the WA Supreme Court; Emergency Orders of KCSC Presiding and/or Chief UFC

KCSC EMERGENCY OPERATIONS

- Emergency Order 15
 - DVPOs by definition
- Goals:
 - Limiting number of people in person
 - Limiting exposure of staff, security, janitorial crew
 - Limiting exposure of judicial officers
- Judicial officers generally in court 2-3 days per week

KCSC EMERGENCY OPERATIONS

- “All hands on deck”
 - Judges and commissioners interchangeably
 - 8 UFC judges, 6 FL commissioners
 - Striving for logistical consistency, when possible
 - How possible do you think this is, considering?
 - Judicial officer may not be as familiar as you are

KCSC EMERGENCY OPERATIONS

- Telephone hearings, primarily
- Video? Not quite, for a variety of reasons
 - Court technology and tech support limitations
 - Must be “on the record”
 - Recording the sound *in the courtroom*
 - Litigants may not have technology access at all
 - Possibility people will show up at court in person

KCSC EMERGENCY OPERATIONS

- First few weeks: Working around the clock to keep up
 - What is an emergency
 - How to operate
 - Who does what
 - How to limit outward-facing staff's exposure
 - Family law coordinators? Thank them warmly and often.
 - Court clerks are often now remote
 - Commissioner/coordinator, Judge/bailiff pairs are there in person, typically
 - Training judicial officers and staff in new areas
 - Creating new systems and putting them into operation

INITIATING A DVPO MATTER

- If you're advising self-represented petitioner:
- Petitioners may access Protection Order Advocacy Program (POAP):
 - https://www.kingcounty.gov/~media/depts/prosecutor/documents/2020/Protection_Order_Announcement.ashx?la=en.
 - Call Seattle POAP: 206-477-1103
 - Call Kent POAP: 206-477-3758

INITIATING A DVPO MATTER

- If you're representing a Petitioner (and so will not work via POAP):
 - No "walk in" to ex parte; virtual access
 - Instructions online at: <https://www.kingcounty.gov/courts/clerk/PO.aspx>
- Email the completed forms to DJA.DVPO@kingcounty.gov. Include your telephone number and ensure you attach all the documents below:
 - a. Petition for a Protection Order
 - and any Supporting Evidence (declarations, other submissions)
 - b. Law Enforcement Information Sheet
 - c. Proposed Temporary Order for Protection/Notice of Hearing
 - d. Case Information Cover Sheet (CICS)
 - e. Contact information, telephone number OF ATTORNEY; **and**
 - f. Temporary Order to Surrender Weapons if being requested

(VIRTUAL) EX PARTE APPEARANCE

- After email submission; a clerk's office customer service representative will contact you within one business hour
- The judicial officer *should* call you within an hour or so, for an ex parte appearance on the record
- Or, a staff member will contact you with an *ex parte* open phone line number and time you need to call in
 - Commissioner or Judge is in the courtroom
 - Everything is on the record
 - Have your client available by phone for you to loop in, or ask court to call
 - *Note: some orders are entering without lawyer/party being called*

(VIRTUAL) EX PARTE APPEARANCE

- Next hearing set:
 - Non-COVID-19 times: 14 days later
 - COVID-19 times: 14-day requirement eliminated by KCSC Emergency Order, Gov. Proclamation 20-45, (expected to be addressed in new Justice Stephens order, as of 4/13/2020)
 - General setting (discretion of court) 28 days later
- Copies of orders:
 - You should receive from the clerk's office via email
 - If you don't within a couple of hours, check with them
- Clerk sends order with LEIS to law enforcement for data entry and service

SERVICE ISSUES DURING A PANDEMIC

- LE unable to personally serve for a variety of reasons
- Statutory mandates re: service ***Temporarily suspended 4/10 – 5/10 by Governor Inslee***
 - Can only be *enforceably* overcome by Governor's Proclamation / Order of State Supreme Court Chief Justice / legislative change
 - Proclamation "to allow service of process by law enforcement through means such as text, email, or other social media" (page 2)

SERVICE ISSUES DURING A PANDEMIC

- Personal service requirement temporarily suspended
 - *but still encouraged where feasible, especially where OTSW issued, Respondent is being removed from residence, and/or children at issue*
- “Service” not necessarily defined in Proclamation
 - Reference to service by electronic means “by LE” on page 2
 - References to “personal” service eliminated as required
 - Reference to permission to serve by mail retained in statute, but process requiring one first-class copy and one copy requiring return receipt eliminated
- Stay tuned / subject to change (Order from Chief Justice Stephens still expected as of AM 4/13/2020)

SERVICE/NOTICE ISSUES

- Supplemental materials: get to Respondent ASAP, however you can
- Proposed Order: same, if possible; if not
 - Ensure you let the court know no proposed order was transmitted
 - Be *very clear* about the relief you are asking for at the outset
- Proposed Order to the Court:
 - Word preferred
 - Email in advance to relevant FamilyLawStaff email box
 - At hearing, inquire if court received; be ready to send again (and, ask re address)

DVPO HEARINGS – ARRANGE YOUR “APPEARANCE”

- Arrange to appear by phone in advance – at least three (3) court hours before the hearing is scheduled to start
 - This means early afternoon the day before
- For Kent cases, email FamilyLawStaffMRJC@KingCounty.gov
 - or call (206) 477-2750;
- For Seattle cases, email FamilyLawStaffSeattle@KingCounty.gov
 - or call (206) 477-1523.

DVPO HEARINGS – ARRANGE YOUR “APPEARANCE”

- EMAIL is recommended.
- You DO NOT have to copy the other side on this one!
 - This is a DVPO – you aren't required to give the Respondent your/your client's personal contact information
 - Limit your communication *only to the following information so it is acceptable not to cc the other party*
- EMAIL THE FOLLOWING INFO:
 - Your name and your client's name, Petitioner or Respondent?
 - Case number and hearing date
 - Number you can be reached to appear by phone anytime between 8:30-12 day of hearing
 - Number your client can be reached to appear by phone...unless you are taking responsibility at conferencing your client in on your phone
 - Any reminder re: Interpreter needs for parties
 - Word version of your proposed orders; LEIS (pdf ok)

DVPO HEARINGS – ARRANGE YOUR “APPEARANCE”

- Additional information online at:
<https://www.kingcounty.gov/courts/superior-court/family/confirmations.aspx>
- Give a *direct line* if possible (no voicemail trees, etc.)
- Be in a quiet place, not driving, etc.
- Be prepared to “mute” phone when not speaking
- The morning of your hearing: You may get a call between 8:30-9 from court staff, attempting to “line up” your hearing, *answer it*

DVPO HEARINGS – GENERAL TIPS

- Commissioner or judge (UFC judges, primarily)
- Still on a “docket” with multiple other cases set for 8:30AM
- Currently trying to limit to 6 per judicial officer per morning
- Phone hearings take longer
 - People feel more free to interrupt (don't do this)
 - People don't answer their phones (answer yours)
 - People are multi-tasking during court hearings
 - Interpreters must do their work consecutively; so, sentence by sentence
- If all parties don't answer, court will generally try each number twice

DVPO HEARINGS – GENERAL TIPS

- Incarcerated parties:
 - From county jail? Still being transported (this may change)
 - Party in custody appears in person; others, still appear by phone
 - In other facilities? Unlikely to be transported
 - If proof of service, no request to appear telephonically, hearing proceeds without that person
 - If proof of service, request to appear telephonically, court will attempt to get incarcerated party on the phone and if this fails, continuance may result

DVPO HEARINGS – GENERAL TIPS

- Working Papers
 - For now, ER 15 *cancels working paper submissions*
 - Judicial officers are reading from ECR; whatever is filed (generally by 2 days prior, though this varies) is read
- Remember:
 - No “alert” when new items are filed
 - Judicial officers have multiple responsibilities and most prepare a couple of days in advance to balance their workloads
 - Last minute submissions / may not be read
 - Unsure? *Inquire at the hearing*
 - The earlier, the better

DVPO HEARINGS – GENERAL TIPS

- Do due diligence re updated information about service and notice
- Be prepared to let the judicial officer know what you know
- No service? Likely reissuance
- Under emergency operations, may set out up to 28 days
- Service but no appearance?
 - Did Respondent request to appear by phone but not answer? Likely after 2 tries and no answer, court will proceed without Respondent
 - No Respondent request to appear by phone *and* no in-person appearance? Likely, provided petition/materials support entry of order, order will be entered
 - TIP – advocate for *findings based on the evidence provided by your client, rather than just obtaining an order “by default.”* Arguably, such orders potentially carry a *different standard/burden for being vacated later*

DVPO HEARINGS: COMMUNICATING WITH YOUR OWN CLIENT

- By phone – *everything you say is on the record* unless you are muted
- Best practice: If you have the ability to be connected to multiple calls, and to mute *one* at a time, have your client looped in on the call *by you, through your phone*
 - Practice this in advance with someone else acting like the court
 - Only way you will have ANY privacy/confidentiality with your client verbally
- Best practice: Create some other backchannel way you and your client can communicate during the hearing non-verbally, but in the moment
 - Text or Instant Message

AT THE DVPO HEARING

- Your judicial officer should set the stage re: when to speak, present your argument, solicit testimony from your client
 - Setting expectations helps, especially by phone
- If not, be prepared to *ask* how the court would prefer you proceed
- Raise preliminary issues early:
 - Let the court know you have preliminary issues to be addressed; please let you know when it's appropriate to raise them
 - Re: service/notice, problems regarding pleadings, requesting reissuance/continuance for any reason
- If requesting reissuance: *TO stay the same, or modify?*

AT THE DVPO HEARING

- DVPO hearings are *testimonial in nature*
 - Best practice: be ready to succinctly outline *the relief requested*
 - Best practice: have your client ready to testify as to the contents of the petition / other evidence of domestic violence
 - Best practice: have your client ready for the prospect of being cross-examined in case this is requested and, after consideration by judicial officer, permitted
 - Best practice: have your client ready to answer questions from the court
 - Best practice: inform your client about 5th Amendment issues beforehand
 - If declarations are voluminous, can also ask your client: Do you confirm the details you submitted in writing, but have not testified out loud today, are also true and correct? Or similar.

AT THE DVPO HEARING

- Best practice: Be ready with a concise argument
 - Do highlight key facts from the record, as to
 - *what* occurred which meets DV definition,
 - *when* it occurred, and
 - *what evidence* supports entry of a DVPO;
 - Do highlight relief requested
 - and be prepared to address what legal authority court has to grant it
 - Don't unduly repeat what the court has already heard
- Typical scenario:
 - Petitioner presentation (testimony/argument mix)
 - Respondent presentation (testimony/argument mix)
 - Petitioner reply (be brief; *strict* reply, not *new allegations*)
 - Judicial officer rules

AT THE DVPO HEARING

- Tips for telephonic hearings, for you and your client:
 - Listen carefully
 - Be succinct
 - Take a breath / pause every few sentences
 - Don't talk over the judicial officer or other party
 - Attorneys: If unsure, assert "I have a question;" "I have a comment, when appropriate," or similar (your client should IM YOU, not speak up, if they have a question)
 - If anyone can't hear the court or other party, speak up immediately
 - Attorneys: Ask the judicial officer for instruction, if you are unsure what is happening
 - Everyone: Be your best self (polite; respectful; civil; professional)
 - Even if you feel no one else is

AT THE DVPO HEARING

- Your paper submissions: having numbered your pages, titled or lettered your exhibits, makes it possible to ensure all are “on the same page”
- Petitioner has the burden of proof
- Court weighs the evidence (testimony, documentary or illustrative evidence)
 - Credibility: Consistency of testimony; testimony comports with other submitted relevant evidence; what was said and how it was said; how parties address inconsistencies
 - Can't see the witness: Relying on all the other factors
- “More likely than not”

THE RULING

- Judicial officer:
 - Denies, or Grants
 - Should explain basis for denial or grant
 - If deny, specify when temporary order is terminated and whether weapons will be ordered returned
 - *If denying, court has no authority to do anything else*
 - If grant, specify what provisions re: restraints, services/treatment, use of necessary property, contact / residential time with and temporary custody of children, order to surrender weapons
 - Questions? *Ask.*
 - Dissatisfied with the ruling? *Revise or Appeal.*

AFTER THE RULING

- Judicial officer should make clear expectations re:
 - Additional proposed order comporting with ruling, to be drafted by petitioner's lawyer and emailed to all by X time?
 - Court will draft orders from proposal previously emailed?
 - Ensure DVPO *and* Order to Surrender / Prohibit Weapons
 - Set review hearing; get the date
 - And, what happens after order signed by judicial officer
 - Clerk's office runner will collect paper orders in courtroom *at end of calendar*
 - Will coordinator or bailiff email out orders? Or expect to receive from clerk?
 - Has varied. Not sure? Ask.
- Judicial officer should make clear when *hearing is concluded* so that parties may hang up and court moves to next hearing
 - Not sure? Ask.

AFTER THE HEARING

- No receipt of order
 - Follow up with family law coordinator (commissioner) or bailiff (judge) or clerk's office (either)
- Error in order
 - Motion for Reconsideration re: scrivener's or other error, directed to that judicial officer
 - There is no informal / not *ex parte* alternative
- Order to Surrender / Prohibit Weapons order compliance hearing:

ORDER TO SURRENDER / PROHIBIT WEAPONS: COMPLIANCE HEARING

- OTSW compliance hearings in KCSC are set for Wednesday mornings before UFC Chief Judge Helson
- OTSW compliance hearings are taking place *by telephone*
- If you/the petitioner wish to appear, arrange for a phone appearance by emailing your name, case number, and date of compliance hearing to: court.helson@kingcounty.gov, at least 2 days in advance
- More information is available online on the last half of the following document:
https://www.kingcounty.gov/~media/depts/prosecutor/documents/2020/Protection_Order_Announcement.ashx?la=en.

THANK YOU!

- Bear with us as emergency operations change
- Rely on the KCBA FL section as a source of transmittal of updates
- When court returns to “normal” operations:
 - Be patient
 - We presume prior practices will be reinstated,
 - but stay tuned