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**2.75 Law & Legal CLE Credit – A/V Approval # 1169557**

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue – Suite 700 Seattle, WA Adobe Connect Live Stream	Tuesday, May 18, 2021	2:00 PM to 5:00 PM	Representing Domestic Violence Survivors – In COVID times and Family Law Cases

**AGENDA**

2:00 – 2:45pm	<b>Welcome and Introductions/ Working with Survivors – Trauma Informed Representation</b> <i>Kim Todaro, Managing Attorney DV LEAD Project</i>
2:45 – 3:30pm	<b>Overview of a Family Law Case in King County</b> <i>Kim Todaro, Managing Attorney DV LEAD Project</i>
3:30 – 3:40pm	<b>Break</b>
3:40 – 5:00pm	<b>Procedures in Family Court – COVID focused</b> <i>Kate Francis, Staff Attorney DV LEAD Project</i>

**Biographies**

**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** 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.

For access to the Jack and Jill File mentioned during the training please contact Kristina Nielander - [KristinaN@KCBA.org](mailto:KristinaN@KCBA.org)

## **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/](http://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 FAMILY LAW CASES 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
  - Kim Todaro: Managing Attorney
  - Kate Francis: Staff Attorney
  - Kristina Nielander: Legal Case Manager
- 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
  - Overview of a Dissolution Case – Kim Todaro and Kate Francis
  - Specific Procedures in Motions Practice –Kate Francis
- Conclusion and Questions



# DV LEAD PROJECT

- Formerly the KCBA Family Law Mentor Program – now DV LEAD
- Still provide Mentor in addition to KCBA Staff
- Program is a joint effort between volunteers, mentors and KCBA staff, working towards successful outcome for domestic violence survivor client.
- Balancing client need and volunteer capacity.

# OUR CLIENTS: WHO, HOW AND WHEN?

- Our clients are all domestic violence survivors
- Client initial contact with program can happen in several ways:
  - Referral from community org
  - Self referral
- Intake process: legal and income screening
- Refer to social services as appropriate with support
- Once accepted into program what a client can expect
- Stabilization of case?
- KCBA Client agreement
- Case priorities and wait list

# BEING A VOLUNTEER ATTORNEY:

- Family law cases are complicated.
- Typically the primary issue in the case is the parenting plan
- Most cases settle – but expect a year commitment
- Support is available – use it!
- Use DV LEAD Staff
- We have Mentors
- What do you do if you are having client trouble?
- Be in touch
- If something unexpected comes up and you need to withdraw, be in touch.



# WE ARE HERE TO HELP YOU

- Back up to Mentor and answer any procedural, substantive or administrative questions
- Support you with client challenges or questions about domestic violence
  - KCBA admin support:
  - Mailing and service: you can use KCBA address
  - Phone: set up free voice mail – use google
  - Computers: you can use KCBA computers and “support calc.” (virtually)
  - Conference rooms: you can reserve a KCBA conference room – when we open
  - You can scan and e-file from KCBA – we can help with this
  - You can make copies/ mail and fax from KCBA
  - KCBA CLEs – both “PBS” and CLE Department

The background features several flowing, wavy bands of color. At the top, a thick, vibrant red band curves across the frame. Below it, a thinner, more translucent yellow band follows a similar path. In the lower portion, there are more complex, overlapping waves in shades of red and orange, creating a sense of movement and depth. The overall aesthetic is clean and modern, with a focus on organic, fluid shapes.

# TRAUMA BASED REPRESENTATION

# 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.

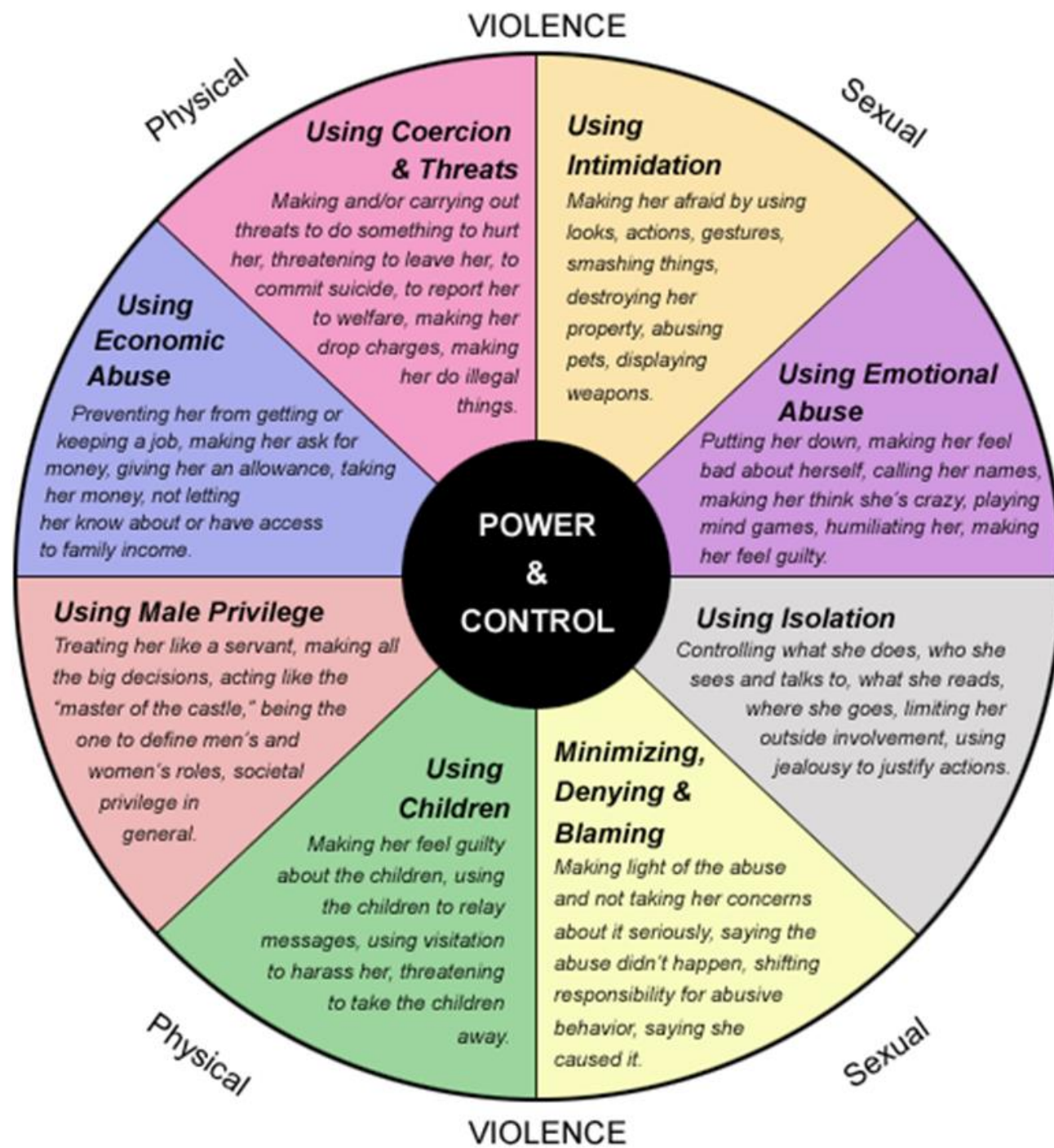
# WHAT IS DOMESTIC VIOLENCE?

## 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
- Remote 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 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.



# SAFETY PLANNING IN COURT ORDERS

- Clearly draft all provisions in court orders (ambiguity will be taken advantage of by someone who has been abusive)
- Clearly explain the consequences of non-compliance/ unexpected obstacles
- Don't list residential address on any documents
- FYI: there is a free Address Confidentiality Program survivors can apply for if interested, through a DV advocate. Provides a free substitute address.
- Craft Parenting Plan with detail
- No mutual restraints (except financial)
- Watch for post separation violence (see post-separation power and control wheel)



# OVERVIEW OF A DIVORCE

In King County Under COVID Emergency Rules

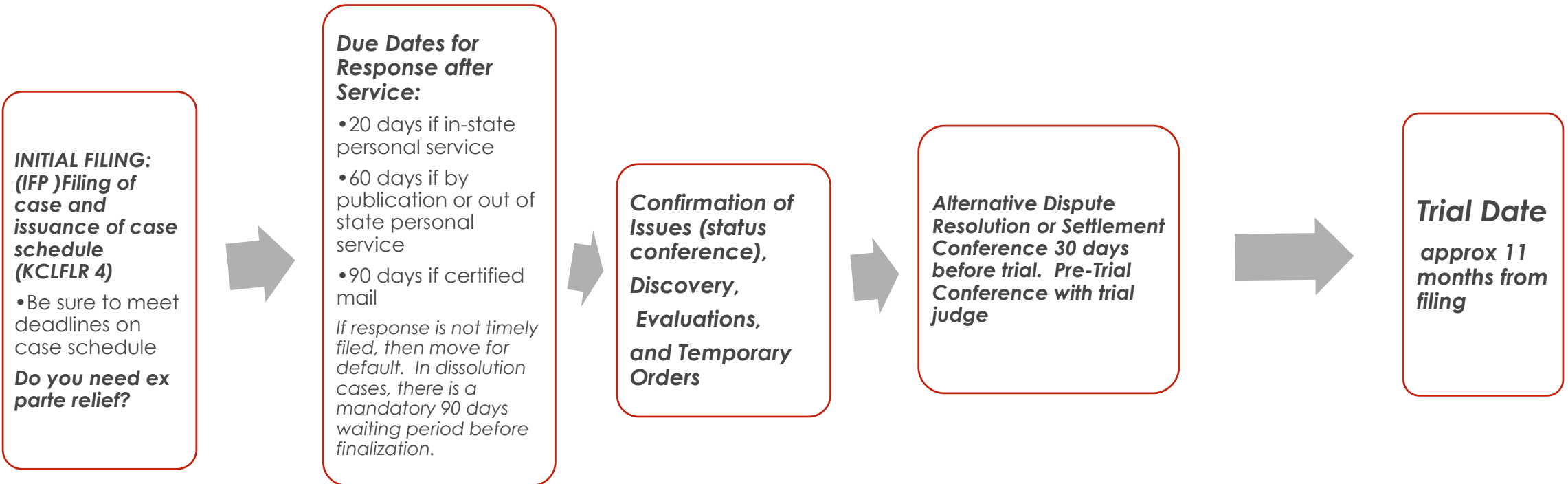
# FAMILY LAW STATUTES AND RULES

- An overview of family law in Washington state
- Statutes
  - Applicable statutes:
    - Dissolution RCW 26.09 (Parenting Act Provisions also apply in Parentage)
    - RCW 26.18 (Child Support) and 26.19 (Child Support Schedule)
    - RCW 26.26 Parentage
    - RCW 26.27 UCCJEA
    - RCW 26.50 Domestic Violence Prevention Act
- Rules
  - State Civil Rules of Procedure
  - King County Local Rules
  - King County Local Family Law Rules
- Mandatory Forms
  - Family law uses mandatory plain language forms – remember to always check the internet: [www.courts.wa.gov](http://www.courts.wa.gov) also county specific forms.
- Emergency Orders for COVID

# LIFE OF A CASE IN KING COUNTY: “BIG CASE AND LITTLE CASE”

- Overview: “Big Case” and “Little Case”
  - “Big Case” is the cause of action (Dissolution, Petition for Parenting Plan) and initiated by Petition.
    - Finalized by final orders (Decree, Final Parenting Plan, Findings of Fact and Conclusions of Law, Order of Child Support, Permanent DVPO or Restraining Order)
  - “Little Case” is motions practice to get immediate or relief during case.
- Will discuss the overview of the case including the law and then specific King County procedure.

# OVERVIEW OF BIG CASE



# STARTING YOUR CASE

## ***Client Meeting***

- Gather info
- Client goals & expectations



## ***Draft Documents***

- Review with client
- Review with mentor



## ***Case Filing***

- IFP (*ex parte*)
  - Summons
  - Petition
  - Proposed parenting plan
  - Proposed Child Support Worksheets
  - Confidential info form
  - Case assignment designation
- And any pleadings for temporary or immediate relief  
(if disso vital stats form)



## ***Serve Opposing Party***

- Summons
  - Petition
  - Proposed parenting plan
  - Proposed Child Support Worksheets
  - Case schedule
  - Family law handbook
  - Information sheet on parenting seminar and FLO
- (Have return of service drafted)

# GETTING THE FEE WAIVED

- In Forma Pauperis forms/issues – filing fees
  - In Forma Pauperis/issues: Washington GR 34 provides that any individual, based on indigent status, may seek a waiver of filing fees.
    - Under GR 34, an attorney working in conjunction with a qualified legal services provider (QLSP), such as KCBA Pro Bono Services, can apply for a waiver on behalf of an indigent client.
    - To apply for a waiver on behalf of your client, complete the Motion and Declaration, and Order Re Waiver of Civil Filing Fees and Surcharges, and present to the Ex Parte and Probate Department through the e-filing system.
    - Access the mandatory pattern form on the King County Court Forms Webpage form entitled: “Motion and Declaration for Waiver of Civil Filing Fees and Surcharges – QLSP”

# SERVICE

- Personal Service:
  - 20 Days for Response if personal service in WA
  - Brainstorm to find a free process server if it is safe to do so
- Service by Mail:
  - 90 Days for Response (make sure you have an order allowing service by mail)
  - One set is mailed certified with return receipt, and one set by regular first class mail
  - Wait for return receipt, and attach to the Return of Service form for filing.
- Service by Publication:
  - 60 Days for Response (make sure you have an order allowing service by publication)

COVID – flexibility in service

For any service: Make sure that the Proof of Service form is filled out and filed



# FAMILY LAW MOTIONS – LITTLE CASE

- Family Law as a “motions practice”
- Scheduling motions – timeline and process details –
  - see LFLR 5 and 6 and Emergency Order
- Motion filing (note, motion, supporting declarations, financial declaration and sealed source documents, and proposed orders not to be filed).
- Working papers
- 14-5-3 (additional time for mail)
- Working papers submission list
- Oral argument on limited time, and court limited to evidence submitted ahead in writing
- Note page limits (25 for moving party and 20 for responding party).

# PETITION → FINAL ORDERS

- The substance of the Petition for Divorce lays out the initial relief asked for.
  - Identification of parties
  - jurisdiction over marriage and parties
  - Claim of “marriage is irretrievably broken. I ask the court to dissolve our marriage and any domestic partnerships or civil unions”
  - Jurisdiction over children – UCCJEA
  - Parenting plan
  - Child support
  - Division of Debts
  - Division of Property
  - Maintenance
  - Protection order Restraining Order

# FILING NOTES

- When filling out the Petition consider if the case might be a default.
  - Default: you can not get more than you ask for
- Elements of the petition.
- What does it mean to contest a divorce?
  - Claim of “marriage is irretrievably broken. One party can not keep another hostage in a marriage. To contest is to contest the terms not the fact of the divorce.
  - Joinder ? Do you need to revoke a joinder?
- What if you need to Respond?
- Default timing for Divorce.

# DIVISIBLE JURISDICTION

- Divisibility of Jurisdiction in Family Law Cases
  - Often in family law cases, the court may have jurisdiction over one part of a family law case but not another part
  - **Jurisdiction over marriage:** At least one party must be a resident of this state or in the military and stationed in this state

# MORE JURISDICTION

- **Jurisdiction over parties:** Jurisdictional Prerequisites for Financial Issues, Personal Restraints, Parentage -- In Personam Jurisdiction
  - Personal (in personam) jurisdiction over the respondent is required for imposition of obligations such as maintenance, child support, and debt division. It is also required for determination of parentage, and property division (except for property actually located in Washington that may be divided pursuant to in rem jurisdiction). It is probably also required for the issuance of personal restraints such as restraining and protection orders.
- You must satisfy two components to achieve in personam jurisdiction:
  - Minimum contacts AND
  - Adequate Notice and Opportunity to be Heard

# JURISDICTION OVER CHILDREN

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RCW 26.27 governs
  - These are **subject matter jurisdiction** provisions and **cannot be waived**.
- Jurisdictional priority given to HOME STATE. Court looks to date of commencement of action to determine jurisdiction.
  - Home State: A state is a child's home state and can assume jurisdiction if
    - the child has lived there with a parent or a person acting as a parent for six months; or
    - the state had been home state within six months of proceeding and the child is absent and a parent continues to reside in state.
- If there is a home state, that state has exclusive jurisdiction unless it declines.

# PARENTING PLANS

- Parenting Plan addresses:
  - Limitations in Parents time with kids – see RCW 26.09.191
  - Residential Schedule
  - Dispute Resolution
  - Decision Making
  - Designation of Custodian (for federal purposes)

# “STRENGTH, NATURE, AND STABILITY OF THE CHILD'S RELATIONSHIP...”

- (a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW [26.09.191](#). Where the limitations of RCW [26.09.191](#) are not dispositive of the child's residential schedule, the court shall consider the following factors:

**(i) The relative strength, nature, and stability of the child's relationship with each parent;**

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in \*RCW [26.09.004\(3\)](#), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.



# WHEN A COURT MUST LIMIT A PARENT'S TIME: RCW 26.09.191(1)(2)

- The court **must** choose to limit a parent's residential time (and order that there will be no joint decision-making or alternative dispute resolution) if the court finds any of the following:
  - Willful abandonment of the children that continues for a long time, or the parent substantially refuses to perform parenting functions (care for the children); OR
  - Physical, sexual or a pattern of emotional abuse of any child (whether it is your child or someone else's); OR
  - A history of acts of domestic violence or an assault or sexual assault that causes serious bodily harm or the fear of such harm; OR
  - The parent has been convicted as an adult of one of a number of sex crimes, including rape of a child, child molestation, sexual misconduct with a minor, incest, or sexual exploitation of children, or the parent has been found to be a sexual predator.
- Found in Section 3(a) of the Parenting Plan form.

# WHEN A COURT MAY LIMIT A PARENT'S TIME: RCW 26.09.191 (3)

- The court **may** choose to limit a parent's residential time (and order that there will be no joint decision-making or alternative dispute resolution) if the court finds any of the following:
  - The parent neglected or substantially failed to provide care for the children; OR
  - The parent has a long-term emotional or physical problem that interferes with his/her ability to parent the children; OR
  - The parent has a long-term drug, alcohol or other substance abuse problem that interferes with the parent's ability to parent the children; OR
  - There is no emotional bond between the parent and the child or that bond is seriously damaged; OR
  - That parent has engaged in the abusive use of conflict which has created a danger of serious damage to the child's psychological development; OR
  - The parent has denied the other parent contact with the child for a long time without a good reason; OR
  - The court finds another reason that unrestricted contact with the parent would be bad for the child.
- Found in Section 3(b) of the Parenting Plan form.

## IF A PARENT HAS LIMITED TIME (SECTION 4 OF THE PARENTING PLAN):

- See the children only when supervised by a professional supervisor or neutral third party;
- Complete domestic violence or substance abuse treatment;
- Submit to random drug or alcohol tests (often urinalysis or UAs);
- Complete a parenting class;
- Participate in mental health counseling or take any physician-prescribed medication for his/her mental health condition;
- Complete a sexual deviancy evaluation;
- Stop interfering with the other parent's contact with the children;
- Stop creating conflict or getting into disputes with the other parent without a good reason.
- Commit no further acts of domestic violence

# MENTAL HEALTH AND DV IN CONTEXT OF 191

- Allegations of mental health concerns against our clients are common. Why?
  - Common “crazy making” behavior
  - Response to trauma can present like mental health concerns
  - Another way to control
- Remember 26.09.191 – not all limitations are treated the same in the PP. If you can prove the DV, then the court must limit. The court has discretion with the mental health – and it must be long term and must impact parenting.



# IF NONE OF THE RCW 26.09.191 LIMITING FACTORS APPLIES, HOW WILL THE COURT DECIDE WHO THE CHILDREN WILL LIVE WITH?

- RCW 26.09.187 requires the court to consider a number of specific factors to decide on the residential schedule. The court's goal is to “encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances.”



# RESIDENTIAL SCHEDULE

- Specifics to consider when drafting the Residential Schedule for survivor:
  - Consider
    - a phased in plan
    - very specific language regarding exchanges
    - consequences for non-compliance
    - parameters for modification
    - motion for advancing phases

# DECISION MAKING

- The court must order that only one parent can make non-emergency decisions if there is a limiting factor under RCW 26.09.191 (found in 3(a)) against the other parent that requires that no joint decision-making can be ordered, or if both parents say that they do not want joint decision-making.
- The court may order sole decision-making to one parent if that parent disagrees with joint decision-making because
  - (1) one of the limiting factors under RCW 26.09.191 (found in 3(b)) applies to the other parent;
  - (2) the other parent does not have a history of participating in the decision-making about the children;
  - (3) the parents do not have a demonstrated ability and desire to cooperate with each other in decision-making; or
  - (4) the parents do not live close enough to each other to make joint decisions in a timely way.



# DISPUTE RESOLUTION

- The parenting plan includes provisions concerning how the parents will resolve disputes in the future. Options include counseling, mediation and arbitration (and allocate how the costs of these services will be paid.)
- In cases where there are limiting factors under section 3, no dispute process except for court action is appropriate



# PARENTING EVALUATIONS

- If the parties can not agree on a parenting plan then the court needs a mechanism to determine the parenting plan in the child's best interests. Usually this is accomplished with a Parenting Evaluation or DV Risk Assessment.
  - Family Court Services (DV Risk and PP)
  - CASA (PP)
  - Private Evaluator (PP)
- Remember this is just a recommendation and the evaluation is not a court order.
- Avoid Mental Health Assessment.

# CHILD SUPPORT

- Court must address this.
- Setting Child Support = RCW 26.19
- Washington State Child Support Schedule
- Information needed for the worksheets
  - Income of both parents
  - Age of children
  - Health insurance premium paid for kids? Day Care? Long distance transportation?
  - Which parent is “obligor” for support?

# ADMINISTRATIVE SUPPORT V. COURT

- Two routes to setting child support:
  - Department of Child Support or Superior Court.
- Administrative Support
  - Easier without attorney but can be slower to start
  - Less relief available
- Court Ordered Support
  - Post-Secondary Support and Taxes are addressed in the court order but not administrative order.



# RELEVANT RCWS

- RCW 26.19.020 Child support economic table
- RCW 26.19.071 Determination of income
- RCW 26.19.065 Limitations on child support amount
- RCW 26.19.080 Allocation of daycare and special child rearing expenses
- RCW 26.19.075 Standards for deviation from the standard calculation

# STEP 1: INCOME

- Determination of income - RCW 26.19.071
  - Actual Income is preferred.
    - Proof of income from the parent
    - Employment Security Dept. information
    - **Income includes:**
      - Earned income - salary, wages, overtime, second job (sometimes), bonuses, contract payments
      - Income replacement Benefits - VA, L&I, Social Security Disability and Retirement Benefits, unemployment
      - Unearned Income - deferred compensation, interest, trust income, rent, capital gains
    - **Income does not include:**
      - Means based public assistance (ABD, SSI, TANF, Food Stamps, etc)
      - Child support from other relationships
      - Income of new spouse or other adults in household
      - Gifts and prizes

# DETERMINING INCOME WHEN YOU HAVE TO IMPUTE

- **How to determine income?**

- “**Imputing income**” when someone is un/under-employed

- (a) **Full-time** earnings at the **current rate** of pay;
- (b) **Full-time** earnings at the **historical rate of pay based on reliable information**, such as employment security department data;
- (c) **Full-time** earnings at a **past rate of pay where information is incomplete or sporadic**;
- (d) **Full-time earnings at minimum wage** in the jurisdiction where the parent resides **if the parent has** a recent history of minimum wage earnings, is recently coming off public assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) **Median net monthly income** of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

# CALCULATION OF SUPPORT

- Calculated based on both parents incomes.
  - There are specific reasons to deviate from standard calculation: RCW 26.19.075
  - Must make written findings if entering a deviation
- Child Support is not dependent on residential time. There is a deviation (not usually in DV LEAD cases). The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving TANF.
- Child Support schedule to the worksheet

# IF YOUR CLIENT HAS RECEIVED BENEFITS

- State is a party to the case.
- Notify the Prosecutor in the Family Support Unit
- State will need to sign off on child support orders



# DIVISION OF PROPERTY AND DEBTS

- Washington is a community property state.
  - Generally, all property (house, other real estate, car) a spouse gets during the marriage is community property. It belongs to both spouses, even if only one is on the title.
  - Both spouse's earnings during the marriage are community property.

# JUST AND EQUITABLE

- The court can make any division of property and debts that is ***just and equitable***, after considering
  - (1) The nature and extent of the community property;
  - (2) The nature and extent of the separate property;
  - (3) The duration of the marriage or domestic partnership; and
  - (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.



# MAINTENANCE

- In dissolution cases (parties must have been married)
- Need and the ability to pay
- Often rehabilitative

# GENERAL CASE FLOW – FEW TIPS

- Status conferences – are a paper review in COVID.
  - Confirmation of Issues is each side filing their own.
- Settlement Conference:
  - Required under local rules
  - Why they are a good idea; strategies
  - Position letter
  - When you have DV survivor?
- Pre-Trial Conference: Zoom and deadlines, Sharefile.
- Informal v. Formal Trial

# FINAL ORDERS AVAILABLE

- Findings and Conclusions About a Marriage – Form FL Divorce 231
- Final Divorce Order (Dissolution Decree) – Form FL Divorce 241
- Restraining Order – All Family 150
- Parenting Plan – All Family 140
- Order of Child Support – All Family 130 (with Schedule)
- Domestic Violence Protection Order WPF DV 3.015
- Order to Surrender and Prohibit WPF All Cases 02-050 (special King County version)

# 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.



# SPECIFIC KING COUNTY PROCEDURE IN FAMILY LAW CASES

# LFLR AND EMERGENCY ORDERS

- KC Local Family Law Rules 5 and 6 govern Motions Practice BUT Emergency Order 24 currently govern. Check: <https://kingcounty.gov/courts/superior-court/family.aspx>
- Currently:
  - Timing: Family Law Motions: 14-5-3. What does this mean?
  - Confirmations: Not necessary – the Working Papers Submission list confirms
  - Working Papers: not necessary – submission list
  - Notice of Court Date – Family Law Commissioners (SEA or KNT)
- Hearings Calendar: <https://superiorcourt.kingcounty.gov/famlaw/scheduling/>
- King County Forms:
- [www.kingcounty.gov/courts/scforms](http://www.kingcounty.gov/courts/scforms)



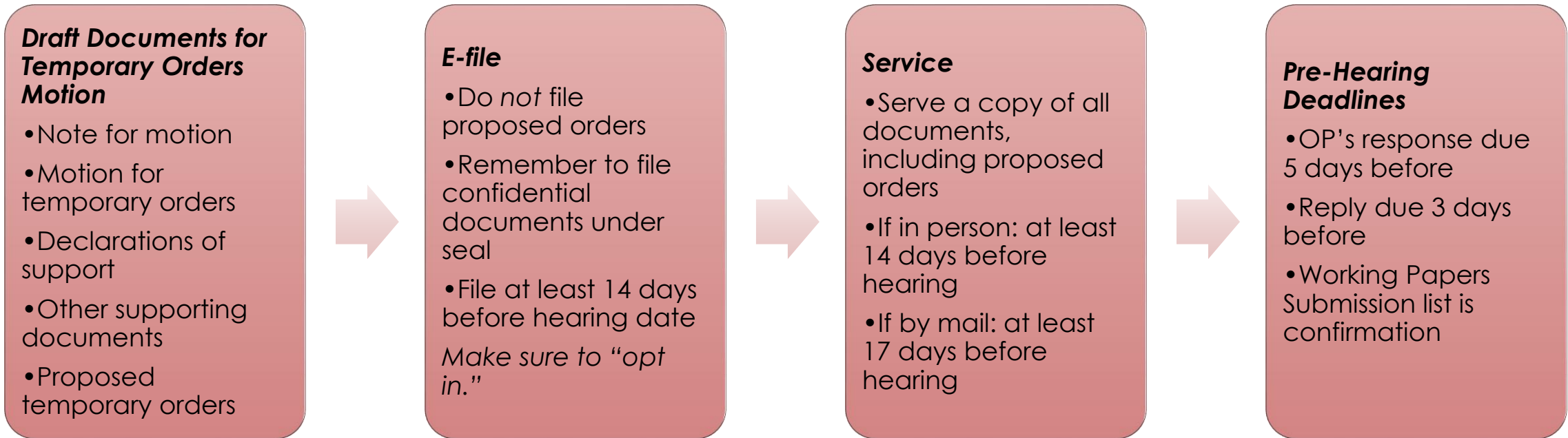
# HOW TO FILE A FAMILY LAW CASE

- Filing is all done through e-filing.
  - There are specific rules for getting fee waived – we have instructions
  - Issuance of case schedule
  - mutual financial Restraining Order
- Consideration of Temporary Relief v. Ex Parte Relief

# EX PARTE V. TEMPORARY ORDERS

- Ex Parte Relief available when filing the case
  - Generally to prevent irreparable harm and maintain status quo.
    - Relief available: restraining order personal safety and property, surrender weapons, immediate custody or other urgent relief
- Temporary Orders relief available:
  - Care of children
  - Provide support
  - Use of property
  - Protect property
  - Household expenses
  - Divide debts
  - Do not change insurance
  - Pay fees and costs
  - Restraining Order
  - Other temporary orders

# CHART ILLUSTRATING MOTIONS PRACTICE



# HOW TO FILE FOR TEMPORARY RELIEF

- When would you want temporary relief:
  - Considerations:
    - Do you have a DVPO in place?
    - Do you have administrative support?
    - Are there monthly financial obligations?
  - Remember you can ask for specific relief
- Procedure for motions practice
- Filing v. responding to motion

# MOTION → HEARING

- Note for hearing – “capped”
- Motion – what are you asking for in the motion
- Supporting Materials - Rules of Evidence apply
  - Client declaration, witness statements
  - Confidential reports need to be filed under seal
  - Page limits – 25 for moving party and 20 for response
- Transiting to Zoom
- Working Papers Submission List confirms the hearing – with response or reply
- Proposed orders – e-filed.
- Contact info
- Page numbers on exhibits and index

# HEARINGS – ARRANGE YOUR “APPEARANCE”

- EMAIL is recommended.
- You DO NOT have to copy the other side on this one!
  - 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 1:30-4:00 p.m. 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

# 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

# AT THE 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



# HEARING

- 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, though 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

# TIPS FOR ARGUMENT

- Best practice: Be ready with a concise argument
  - Do highlight key facts from the record, as to
    - *what you are asking for in relief,*
    - *what evidence supports entry of your purposed orders;*
  - 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: motions in family law are no testimony – only argument
  - Moving Party presentation
  - Non-Moving Party presentation
  - Moving Party reply (*be brief; strict reply, not new allegations*)
  - Judicial officer rules

# 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

# THE RULING

- Judicial officer:
  - Denies, or Grants relief
  - Should explain basis for denial or grant
  - Specific Orders granted or denied
  - 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?
  - 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.



# THANK YOU FOR PARTICIPATING TODAY!

- Self care in representing survivors.
- Questions?
- Next Steps: DV LEAD staff will be in touch
- THANK YOU for participating today