

Family Law Education Reform Project

William Mitchell - Student Memo - DV Client Counseling

OVERVIEW

This document is a student memorandum regarding a domestic violence client counseling exercise.

This exercise is designed to help students:

1. understand the interests and needs of a client who is a victim of domestic violence;
2. identify and analyze the client's legal and "non-legal" options in light of the client's interests; and
3. develop an awareness of community services and referrals and consider how attorneys interact with professionals from other disciplines.

EXPLANATION AND COMMENTS

In this exercise students prepare for and conduct a simulated client counseling session with a victim of domestic violence. You should allow at least twenty minutes for each counseling session and ten minutes for debriefing. If you run the exercise twice, each student will have the opportunity to play the role of the attorney and the role of the client. (This will take approximately one hour.)

ABOUT THE AUTHOR

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Dean Ver Steegh's work has focused on seeking justice for powerless and vulnerable members of society. She has a wealth of experience in law reform litigation, legislative advocacy, mediation, and community organization.

She is a national expert in family law and domestic violence, has been a member of William Mitchell's full-time faculty since 2002 and was an adjunct instructor from 1998 to 2002. Ver Steegh was instrumental in launching William Mitchell's Center for Negotiation and Justice in 2007. She earned a Master's in social work and her J.D. at Washington University in St. Louis.

DRAFT 3-24-08 NVS

Memorandum

To: Family Law Students
From: Professor
Re: Counseling a victim of domestic violence

Curricular Objectives

This exercise is designed to help you:

4. understand the interests and needs of a client who is a victim of domestic violence;
5. identify and analyze the client's legal and "non-legal" options in light of the client's interests; and
6. develop an awareness of community services and referrals and consider how attorneys interact with professionals from other disciplines;

Overview of the Exercise

In this exercise you will play the role of an attorney counseling a victim of domestic violence. In order to help you prepare, you are given initial intake notes taken by a paralegal at your office, relevant provisions from a state domestic abuse act, and information on safety planning.

Preparation for the Simulation

You should prepare for the counseling session as follows.

- Read the materials provided for this exercise.
- Analyze whether your client and her situation fall within the parameters of the state domestic abuse statute and consider what potential remedies might be of use to her. If a protective order is sought, identify what evidence would be presented to the court and consider how such an order might be enforced.
- From the client's perspective, list the potential "pros" and "cons" of seeking a protective order.
- Consider the elements of a safety plan.
- Identify services available in your community to which the client might be referred.

Active Listening

Active listening is a critical skill for lawyers. Active listening involves more than just listening for what is said, it involves listening at a deeper level. The active listener focuses his or her attention completely on the client and listens for emotional content and meaning while also watching for nonverbal cues. The listener indicates that he or she is listening through body language, facial expressions, eye contact, verbal acknowledgement, and by summarizing and repeating back what the client communicated. When done well, the client experiences a deep sense of satisfaction at being heard completely and the experience heightens the client's trust level and encourages him or her to be more forthcoming.

What You Must Do

You will prepare for and conduct a simulated client counseling session with a victim of domestic violence. The client counseling session should include discussion of the client's goals; identification of the client's legal options including the pros and cons of each; development of a safety plan; and referral to appropriate community services.

Evaluation Criteria

You should seek feedback from the student playing the role of the client and then reflect upon your performance based on the following criteria.

- Did you listen effectively in order to fully understand the client's goals?
- Did you clearly communicate the client's legal options and facilitate discussion of the pros and cons of each option?
- Did you help the client to formulate a safety plan?
- Did you make appropriate referrals to community resources?
- Did you empower the client to make informed decisions?

Materials

Client Statement

(A paralegal from your office spoke with the client on the phone and obtained the following information from Alice Smith.)

I have been married to my husband, Roger, for five years and we have two children, Anita (age 4) and Jose (age 2).

I married Roger when I was 18 years old. At the time, I worked as a receptionist at a doctor's office but I stopped working when Anita was born because Roger and I believe that mothers should be at home with their children. Roger makes \$40,000 per year managing a sporting goods store. We live in a small house in the country located 30 miles out of town. We have a large garden and we are able to have a dog.

Roger has always taken a lot of pride in being the man of the house. He likes to keep the house in good condition and he manages our money carefully. In order to make sure that we don't overspend, he gives me a weekly allowance for food and household expenses. Each week, I give him an accounting of how the money was spent before he gives me money for the next week.

We've argued about money ever since I quit my job. Roger didn't have much money growing up and he worries a lot about our financial situation. He gets very angry if I spend money on magazines or treats for the kids. The summer before last, I miscounted the household allowance and I couldn't buy enough food for the week. Roger was outraged by my carelessness and told me that he was going to teach me a lesson. He pulled me down the stairs to the basement and locked me in a storage room with no windows. He didn't let me out all night. I could hear the children crying upstairs until he took them away. I found out later that he took them to his sister's house and told his sister that I was sick.

Two months ago, I had to take Jose to the doctor and I used some of the grocery money to pay the co-payment. I pleaded with Roger for more money for food but he refused to give me any and he wouldn't let me have the keys to the car. The kids ate lunch at school but I didn't eat all day even though Roger had \$50 in his wallet.

Last week Roger bought himself a cell phone and told me that he decided to disconnect our home phone because it was costing too much money and he was tired of hearing me talk to my sister.

Yesterday Roger became angry with me when I asked for a ride into town and he started shouting at the kids for making too much noise. He grabbed the dog and threatened to kill it if I didn't make the kids behave.

I can't take this anymore but I don't have any money or a place to stay. I heard that I might be able to get a court order but I'm afraid that would make Roger really mad and who knows what he might do then?

Excerpts from Minnesota Domestic Abuse Act

Minn. Stat. § 518B.01

Subd. 1 Definitions. As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury, or assault;

Subd. 6. Relief- Order for Protection. (a) Upon notice and hearing, the court may provide relief as follows:

- (1) restrain the abusing party from committing acts of domestic abuse;
- (2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;

(4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. . . . If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan as part of an action for an order for protection;

(5) on the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services, including requiring the abusing party to successfully complete a domestic abuse counseling program or educational program under section 518B.02;

(8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to pay restitution to the petitioner;

(11) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and

(12) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff, constable, or other law enforcement or corrections officer as provided by this section.

Subd. 7. Ex parte Relief – Order for Protection. (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;

(3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and

(4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

Safety Planning

Safety Plan from the National Coalition Against Domestic Violence:

http://www.ncadv.org/protectyourself/SafetyPlan_130.html

Safety Plan

If you are still in the relationship:

- Think of a safe place to go if an argument occurs - avoid rooms with no exits (bathroom), or rooms with weapons (kitchen).
- Think about and make a list of safe people to contact.
- Keep change with you at all times.
- Memorize all important numbers.
- Establish a "code word" or "sign" so that family, friends, teachers or co-workers know when to call for help.
- Think about what you will say to your partner if he\she becomes violent.

Remember, you have the right to live without fear and violence.

If you have left the relationship:

- Change your phone number.
- Screen calls.
- Save and document all contacts, messages, injuries or other incidents involving the batterer.
- Change locks, if the batterer has a key.
- Avoid staying alone.
- Plan how to get away if confronted by an abusive partner.
- If you have to meet your partner, do it in a public place.
- Vary your routine.
- Notify school and work contacts.
- Call a shelter for battered women.

If you leave the relationship or are thinking of leaving, you should take important papers and documents with you to enable you to apply for benefits or take legal action.

Important papers you should take include social security cards and birth certificates for you and your children, your marriage license, leases or deeds in your name or both yours and your partner's names, your checkbook, your charge cards, bank statements and charge account statements, insurance policies, proof of income for you and your spouse (pay stubs or W-2's),

and any documentation of past incidents of abuse (photos, police reports, medical records, etc.)

Personal Safety Plan from the National Coalition Against Domestic Violence:

http://www.ncadv.org/protectyourself/MyPersonalSafetyPlan_131.html

My Personal Safety Plan

The following steps are my plan for increasing my safety and preparing to protect myself in case of further abuse.

Although I can't control my abuser's violence, I do have a choice about how I respond and how I get to safety. I will decide for myself if and when I will tell others that I have been abused, or that I am still at risk. Friends, family and co-workers can help protect me, if they know what is happening, and what they can do to help.

To increase my safety, I can do some or all of the following:

1. When I have to talk to my abuser in person, I can:
2. When I talk to my abuser on the phone, I can:
3. I will make up a "code word" for my family, co-workers, or friends, so they know when to call for help for me. My code word is:
4. When I feel a fight coming on, I will try to move to a place that is lowest risk for getting hurt such as:
 or (at work):
 or:
 (at home) (in public)
5. I can tell my family, co-workers, boss, or a friend about my situation. I feel safe telling:

6. I can use an answering machine or ask my co-workers, friends or other family members to screen my calls and visitors. I have the right to not receive harassing phone calls. I can ask:

to help screen (home) (work) my phone calls.

7. I can keep change for phone calls with me at all times. I can call any of the following people for assistance or support if necessary and can ask them to call the police if they see my abuser bothering me.

friend:

relative:

co-worker:

counselor:

shelter:

other:

8. When leaving work I can:

9. When walking, riding or driving home, if problems occur, I can:

10. I can attend a support group for women who have been abused. Support groups are held:
at:

11. Telephone Numbers I Need to Know:

Police/Sheriffs Department:

Probation Officer:

Domestic Violence/Sexual Assault Program:

Counselor:

Clergy Person:

Attorney:

Other: