

Advocates in Minnesota Challenge Myths regarding Domestic Violence Orders for Protection

In a recent issue in *Bench & Bar*, a monthly publication for Minnesota lawyers, an article was published entitled, “Orders for Protection: When the Shield Becomes a Sword.”¹ The authors claimed that the domestic abuse order for protection was being misused, and posed these important questions: “Is it better to issue an order against an innocent person rather than risk not granting one against an abusive person? Can we prevent misuse of this tool or is that too much of a risk when someone can be seriously hurt, or, worse, killed?”²

Minnesota law allows the court to issue an ex parte order for protection if there is an “immediate and present danger of domestic abuse”³ and to grant such “relief as the court deems proper,”⁴ including restraining the respondent from abusive conduct and excluding him or her from the home and from the petitioner’s workplace.⁵

The petitioner must request a hearing to obtain additional relief, such as temporary child custody or child support.⁶ The hearing must be held within 7 days.⁷ There are detailed procedures in the law requiring notification to the respondent of the upcoming hearing, and provisions for continuance if the judge finds that either party shows good cause.⁸

The authors of the article stated that “...the temptation to misuse the Domestic Abuse Act can be enticing...saying that one party is abusive is a powerful allegation...parents accused of such behavior frequently lose in their other court battles over their children or their property.”⁹ They assert that for truly dangerous individuals, the order for protection “probably does little good.”¹⁰ The authors conclude that there should be better resources at the courthouse for the respondents, and, perhaps, a “less restrictive” order, with “shorter-term consequences.”¹¹

In response to this article, a number of domestic violence experts wrote a letter to the editor of *Bench & Bar*, which is reprinted below:

To the Editors:

It is with great concern that we write to respond to the article entitled “Orders for Protection: When a Shield Becomes a Sword”, LXV *Bench & Bar*, March 2008. This article perpetuates a number of myths about orders for protection and the circumstances under which they are granted.

The authors bemoan the fact that a person can be removed from their home “all on the words of another.” (p. 28) The words of another are evidence in civil and criminal court proceedings and are not unique to orders for protection. They also assert that the ex parte protection order presents unique problems and that “nowhere else are we allowed to say someone is guilty until proven innocent.” (p.28). The availability of this type of relief is not

unique. In both the state and federal courts, temporary restraining orders, without notice to the adverse party are available if there is immediate and irreparable loss or injury. Here the petitioner must show immediate and present danger—no less a standard. Moreover, before an ex parte order is issued, sworn allegations are reviewed by a judge who makes a determination if the requirements of the statute are met. The ex parte orders are not granted without careful judicial review. Respondents are entitled to a hearing in all cases and a continuance, if requested by respondent under the statute, is likely to be granted.

The authors contend, without citing any authority, that “parents accused of such behavior [abuse] frequently lose their court battles over their children.” (p. 29) In fact, studies indicate that domestic violence victims do not gain tactically from raising abuse allegations. Research shows that fathers who batter their intimate partners are more likely to contest custody. (American Psychological Association, *Violence and the Family* 1996). Research further shows that mothers who experienced domestic violence were no more likely than a comparison group to be awarded custody and that fathers were rarely denied visitation. (Mary Kernic, et al. *Children in the Crossfire 11 Violence Against Women* 991, 1013, 1014 2005).

Another assertion in the article is that for the truly dangerous an OFP probably does little good. Leaving aside their erroneous assumptions about who is truly dangerous, while studies show a range of rates of violation of protection orders, research supports the conclusion that obtaining a protection order is associated with reduced subsequent violence. Anchor (Carol Jordan, *Intimate Partner Violence and the Justice System*, 19 *J. Interpersonal Violence* 1412, 1427, 2004).

It is regrettable when myths replace facts. It is no doubt true that any legal process can be misused, however, the legal process for a protective order is similar to many legal processes: judges evaluate evidence, make determinations as to credibility, and then issue findings of fact and orders. Women do not seek protection from the courts lightly. Research shows that when women seek a protection order it is often after serious violence. (Id. at 1423). If the authors believe that judges are not adequately evaluating evidence and are not making appropriate determinations, then they can appeal an erroneous order. To suggest that there is widespread misuse of this process without any evidence beyond asserting it, does the court system and victims of domestic violence a great disservice.

Beverly Balos, Clinical Professor of Law, University of Minnesota
Law School
Liz Richards, Minnesota Coalition for Battered Women
Caroline Palmer, Minnesota Coalition Against Sexual Assault
Jean Lastine, Central Minnesota Legal Services
Denise Gamache, Battered Women's Justice Project

Lolita Ulloa, Hennepin County Attorney's Office, Victim Services
Division- Domestic Abuse, Service Center

The Advocates for Human Rights supports this response to the Bench & Bar article.

¹ Capristant, Theresa A., and Wong, Rebecca, "Orders for Protection: When the Shield Becomes a Sword," Bench & Bar of Minnesota, Vol. 65 No. 3, March 2008, at <http://www2.mnbar.org/benchandbar/2008/mar08/ofp.htm>.

² Ibid.

³ Minn. Stat. 518B 01 Subd. 7.

⁴ Ibid.

⁵ Ibid.

⁶ Minn. Stat. 518B 01 Subd. 7 (e).

⁷ Minn. Stat. 518 B 01 Subd. 5 (c).

⁸ Minn. Stat 518 B 01 Subd. 5(e).

⁹ Ibid.

¹⁰ Ibid.

¹¹ Capristant and Wong, *ibid* no. 1.