

Michigan Judicial Institute
Family Division Referee Webinar:
Domestic Relations Division

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**Crafting Orders in
Domestic Violence Cases**

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Crafting Custody and Parenting Time Orders When there is DV

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- ⊗ DV is not defined in Child Custody Act, but see MCL 400.1501 *et seq.* (Domestic Violence Prevention and Treatment Act)
 - ⊗ Brown v Brown 332 Mich App 1 (2020))
- ⊗ The occurrence of any of the following acts by a person that is not an act of self-defense:
 - ⊗ (i) Causing or attempting to cause physical or mental harm to a family or household member
 - ⊗ Placing a family or household member in fear of physical or mental harm
 - ⊗ Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress
 - ⊗ Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

What is DV?

- ⌘ 37% of custodial parents with formal child support orders reported domestic violence by the time their child was 3 years old
- ⌘ The National Domestic Violence Hotline reported that in the first half of 2020, they documented 2,196 contacts from Michigan. The state ranks 14th in terms of contact volume to the Hotline.
 - ⌘ Of those contacts, 97% reported emotional/verbal abuse
 - ⌘ 68% reported physical abuse
 - ⌘ 29% reported Economic/financial abuse

DV info

- ⌘ Leaving an abusive relationship rarely leads to the reduction or end of the violence
- ⌘ After separation, tactics often change to account for the new situation (kidnapping, threats to family and friends, use of systems including the court to further the abuse)
- ⌘ Leaving is the most dangerous time for victims of abuse

What we know about DV

- ⊗ Safety issues can come up at any point in the child support, custody, and parenting time process
- ⊗ We need to provide safe and confidential opportunities for parties to disclose DV issues
- ⊗ It should be common practice to screen again and again prior to hearings
 - ⊗ Muskegon screens at case initiation, before FIGs, and at prior to referee hearings
- ⊗ Use SCAO protocol
<https://www.courts.michigan.gov/4ae455/siteassets/court-administration/standardsguidelines/dispute-resolution/domestic-violence-screening-protocol-for-mediators.pdf>

Screening

- ⊗ Safety plans are crucial in many cases
- ⊗ Even more important when in person
- ⊗ Safety plans include the following:
 - ⊗ Separate arrival and departure times at the court
 - ⊗ Separate waiting areas for the parties
 - ⊗ If needed, deputy in the court room
 - ⊗ Have parties confirm personal info like address in writing instead of verbally
 - ⊗ Order exchanges in public places or with a third party
 - ⊗ On zoom, have parties turn camera on and off to ensure safety
 - ⊗ Is the alleged victim in the same room with the alleged perpetrator?
 - ⊗ Does camera need to be off in order to ensure location is not disclosed?

Safety Plans

A little of my history as an advocate

MCL 722.23 – (K) Domestic Violence, regardless of whether the
violence was directed against or witnessed by the child.

CUSTODY – Best Interests

- ⌘ Can be found at:
<https://mjieducation.mi.gov/documents/benchbooks/21-dvbb/file>

Domestic Violence Benchbook

- ⌘ MCL 722.26a(10) – whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child
- ⌘ In domestic violence cases, think strongly about awarding the survivor sole legal custody
- ⌘ The balance of power in the relationship, will make it difficult to make decisions together.
- ⌘ Abusers often use the court system to re-victimize.

Joint Legal Custody

- ⌘ Refusing to allow a change in school, when the abuser is not involved in the school, refuses to assist in transportation or costs of the school
- ⌘ Refusing to allow medical care – calling the doctor office and demanding to be present at every appointment, involved in every decision (including the time/date of appointments, and then not willing to take the child), until the doctor's office discharges the child from her care.

A Few Examples . . .

- ⌘ MCL 722.27a – Parenting Time
- ⌘ MCL 722.27a(7)(d) – the reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- ⌘ MCL 722.27a(9)(f) Requiring parenting time to occur in the presence of a third person or agency.
- ⌘ MCL 722.27a(7)h) A custodial parent's temporary residence with the child in a dv shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.

Parenting Time Laws

Be clear and concise with
Recommendations. Leave no room
for debate

- ⊗ Mediation is not appropriate (cannot do w/o hearing under MCR 3.216)
 - ⊗ Balance of power
 - ⊗ Fear interferes with ability to participate fully
 - ⊗ Communicates to abuser that the dv is not serious

Don't send the case to Mediation

- ⌘ Specific drop off and pick up times.
- ⌘ Don't leave times blank (such as every other weekend)
- ⌘ Neutral locations
- ⌘ Others to assist with the exchange

Exchanges – Make them safe

- ⌘ Don't use as agreed
- ⌘ Don't just say alternate holidays
- ⌘ Don't just list holidays for the non custodial parent – list them all out for both parties
- ⌘ Set specific dates and times.

Holidays

- ⌘ Use communication tool as only means of communication – Our Family Wizard, Talking Parents App
- ⌘ Apply for fee waiver with them

Communication

- ⌘ Build in review dates, to come back to court to see how the parenting time is working
- ⌘ Batterer's Intervention Counseling – not anger management (minimum 26 week program)
- ⌘ No counseling for the victim!
- ⌘ No co-parenting counseling

Other Issues

- ⌘ Crafting recommendations and parenting schedules in these cases is more time and work – but it helps ensure that the victim and children are safe.

Keep everyone Safe.

- ⌘ ACE Study – Adverse Childhood Experiences,
<https://www.cdc.gov/violenceprevention/aces/about.html>
- ⌘ Saunder’s Study(DOJ): <https://www.theduluthmodel.org/wp-content/uploads/2017/05/Saunders-child-custody-disputes.pdf>
- ⌘ Santa Clara Law Study– Confronting the Challenge of High-Conflict Personality in Family Court:
<https://www.mtsalawgroup.com/wp-content/uploads/2020/05/RosenfeldObermanBernardLee.pdf>
- ⌘ National Domestic Violence Hotline – 1-800-799-7233
- ⌘ <https://www.futureswithoutviolence.org/>

Resources

Questions?