

**DOMESTIC VIOLENCE COMMITTEE
THE FLORIDA BAR
AGENDA FOR MEETING
Disney Yacht & Beach Club - Orlando– 10:30 a.m. – 12:00 p.m.
Thursday - January 27, 2011
Co-chair, Amy L. Cosentino, Esq.
Co-chair, Jodi Seitlin, Esq.**

I. WELCOME AND INTRODUCTIONS

II. OLD BUSINESS

- a). Firearms Bill update
- b). approval of last meetings minutes
- c). Senate Judicial Interim Project - Judge McNeal and Gina Beovides
- d). Mediation Requirements in DV cases – Downey and Cosentino
- e). Changes to Appellate Rule 9.110(b) – Downey
- f). Update on GPS monitoring – Judge Del Pino, Gina Beovides

III. NEW BUSINESS

- a). Changes in Form of Final Judgment of Protection of DV – Robin Scher:
 - 1). Nothing about coming within certain parameters of the Petitioner;
 - 2). No shared parental responsibility
 - 3). Law Enforcement to enforce timesharing
- b). Pamphlet for DV – Florida Bar – Sarah Sullivan editor –
March 15, 2011 deadline
- c). Additional Forms Issues- Susan Proctor/Amy Cosentino/Jodi Seitlin
 - 1). Canavan v. State, 38 So. 3rd 885 (Fla. 2nd DCA 2010) – Temporary Injunctions to be updated to notify Respondents what can happen if they fail to appear at final hearing;
 - 2). Adding additional language to all injunction types were temporary injunctions as in Section VII in DV injunctions;
 - 3). Adding ADA language to Notice of Hearing forms.
- d). Co –author on child hearsay evidence in DV cases for Bar Journal
- e). Discussion of OBO cases only where there is physical injury or independent witness
- f). Discussion regarding article regarding false accusations and new Senate Study for report to legislative and EC.

IV. GOOD AND WELFARE

V. ADJOURNMENT



Family Law Section Midyear Meeting

In conjunction with the 2011 Marital & Family Law Review Course

Committee Meetings: January 27, 2011

Executive Council Meeting: January 29, 2011 (following conclusion of Cert Review)

WEDNESDAY, JANUARY 26, 2011

8:00 a.m. – 12:00 p.m. Cert Tips & Nibbles
For registered test-takers only

THURSDAY, JANUARY 27, 2011

8:00 a.m. – 12:00 p.m. Family Law Section Break Room
Coffee & Other Beverages;
Light Continental Breakfast (8a.m. – 9:30 a.m.)

8:00 a.m. – 5:00 p.m. Educational Seminar Series offered by Tim Voit of Voit Economics

8:30 a.m. – 9:30 a.m. Membership Committee

9:00 a.m. – 10:00 a.m. General Magistrates and Hearing Officers Committee

9:00 a.m. – 11:00 a.m. Mediation and Collaborative Law Committee

9:00 a.m. – 10:30 a.m. Litigation Support Committee

9:30 a.m. – 11:00 a.m. Equitable Distribution Committee

9:30 a.m. – 11:30 a.m. Children's Issues/Adoption/Paternity/Dependency Committee

10:00 a.m. – 11:00 a.m. Sponsorship Committee

10:00 a.m. – 12:00 p.m. Continuing Legal Education Committee

10:30 a.m. – 12:00 p.m. Domestic Violence Committee

10:30 a.m. – 12:00 p.m. Publications Committee

10:30 a.m. – 12:00 p.m. Support Issues Committee

12:00 p.m. – 2:00 p.m. Section Luncheon ***All committee members invited***

12:00 p.m. – 1:00 p.m. Ad Hoc Committee Mandatory Parenting Course

12:30 p.m. – 1:30 p.m. Ad Hoc Committee - Alimony
12:30 p.m. – 1:30 p.m. Ad Hoc Committee Court Interpreters – Due Process
1:00 p.m. – 2:00 p.m. Ad Hoc Committee - Finance
1:00 p.m. – 2:00 p.m. Ad Hoc Committee - Implementation of Parenting Coordination
1:00 p.m. – 2:00 p.m. Guardian Ad Litem Ad Hoc Committee
1:30 p.m. – 2:00 p.m. Ad Hoc “Making a Difference” Public Recognition Committee
1:30 p.m. – 3:30 p.m. Rules/Forms Committee
2:00 p.m. – 3:00 p.m. Ad Hoc Public Service/Putting Children First
2:15 p.m. – 3:00 p.m. Ad Hoc Committee - Mentoring
3:30 p.m. – 6:00 p.m. Legislation Committee

SATURDAY, JANUARY 29, 2011

1:30 p.m. – 5:00 p.m. Family Law Section Executive Council Meeting

SUNDAY, JANUARY 30, 2011

8:30 a.m. – 4:00 p.m. Marital & Family Law Certification Committee

Amy Cosentino

From: Robin J Scher [rjs1990esq@bellsouth.net]
Sent: Monday, January 03, 2011 11:46 PM
To: Amy Cosentino; Jodi Seitlin; Gina Beovides Esq.; Judge Victoria Del Pino
Subject: DV form concern
Attachments: 980d1.pdf


Ladies,

Attached is the new Injunction form about which I have a problem with decretal Paragraph 13 and the blanketness with which it allows the Parent with majority timesharing to have the minor children forcibly returned to him/her. In my opinion this needs to be changed to at least include language that provides for the exception of the time sharing allowed by the Injunction or another court order or abuse may abound. Please review and advise with your thoughts and whether this is something we can address as a committee for forwarding to the Section's Rules Committee.

Thanks,

Robin J. Scher, Esq.

PO Box 31403
Palm Beach Gardens, Florida 33420
Telephone (561) 626-5640
Facsimile please call
E-Mail Address: rjs1990esq@bellsouth.net

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IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: _____
Division: _____

Petitioner,

and

Respondent.

**FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE
WITH MINOR CHILD(REN) (AFTER NOTICE)**

The Petition for Injunction for Protection Against Domestic Violence under section 741.30, Florida Statutes, and other papers filed in this Court have been reviewed. The Court has jurisdiction of the parties and the subject matter.

It is intended that this protection order meet the requirements of 18 U.S.C. Section 2265 and therefore intended that it be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or of the Indian tribe.

HEARING

This cause came before the Court for a hearing to determine whether an Injunction for Protection Against Domestic Violence in this case should be:

issued modified extended.

The hearing was attended by Petitioner Respondent
 Petitioner's Counsel Respondent's Counsel

FINDINGS

On {date} _____, a notice of this hearing was served on Respondent together with a copy of Petitioner's petition to this Court and the temporary injunction, if issued. Service was within the time required by Florida law, and Respondent was afforded an opportunity to be heard.

After hearing the testimony of each party present and of any witnesses, or upon consent of Respondent, the Court finds, based on the specific facts of this case, that Petitioner is a victim of domestic violence or has reasonable cause to believe that he/she is in imminent danger of becoming a victim of domestic violence by Respondent.

INJUNCTION AND TERMS

This injunction shall be in full force and effect until [] further order of the Court or [] _____. This injunction is valid and enforceable in all counties of the State of Florida. The terms of this injunction may not be changed by either party alone or by both parties together. Only the Court may modify the terms of this injunction. Either party may ask the Court to change or end this injunction at any time.

Any violation of this injunction, whether or not at the invitation of Petitioner or anyone else, may subject Respondent to civil or indirect criminal contempt proceedings, including the imposition of a fine or imprisonment. Certain willful violations of the terms of this injunction, such as: refusing to vacate the dwelling that the parties share; going to or being within 500 feet of Petitioner's residence, going to Petitioner's place of employment, school, or other place prohibited in this injunction; telephoning, contacting or communicating with Petitioner if prohibited by this injunction; knowingly or intentionally coming within 100 feet of Petitioner's motor vehicle, whether or not it is occupied; defacing or destroying Petitioner's personal property; refusing to surrender firearms or ammunition if ordered to do so by the court; or committing an act of domestic violence against Petitioner constitutes a misdemeanor of the first degree punishable by up to one year in jail, as provided by sections 775.082 and 775.083, Florida Statutes. In addition, it is a federal criminal felony offense, punishable by up to life imprisonment, depending on the nature of the violation, to cross state lines or enter Indian country for the purpose of engaging in conduct that is prohibited in this injunction. 18 U.S.C. SECTION 2262.

ORDERED and ADJUDGED:

1. **Violence Prohibited.** Respondent shall not commit, or cause any other person to commit, any acts of domestic violence against Petitioner. Domestic violence includes: assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death to Petitioner or any of Petitioner's family or household members. Respondent shall not commit any other violation of the injunction through an intentional unlawful threat, word or act to do violence to the Petitioner.

2. **No Contact.** Respondent shall have no contact with the Petitioner unless otherwise provided in this section, or unless paragraphs 13 through 19 below provide for contact connected with the temporary parenting plan and temporary time-sharing with respect to the minor child(ren).
 - a. Unless otherwise provided herein, Respondent shall have no contact with Petitioner. Respondent shall not directly or indirectly contact Petitioner in person, by mail, e-mail, fax, telephone, through another person, or in any other manner. Further, Respondent shall not contact or have any third party contact anyone connected with Petitioner's employment or school to inquire about Petitioner or to send any messages to Petitioner. Unless otherwise provided herein, **Respondent shall not go to, in, or within 500 feet of:** Petitioner's current residence *{list address}* _____

or any residence to which Petitioner may move; Petitioner's current or any subsequent place of employment *{list address of current employment}* _____
_____ or place where Petitioner attends school *{list address of school}* _____;

or the following other places (if requested by Petitioner) where Petitioner or Petitioner's minor child(ren) go often: _____

Respondent may not knowingly come within 100 feet of Petitioner's automobile at any time.

b. ___ Other provisions regarding contact: _____

3. **Firearms. Unless paragraph a. is initialed below, Respondent shall not have in his or her care, custody, possession or control any firearm or ammunition. It is a violation of section 790.233, Florida Statutes, and a first degree misdemeanor, for the respondent to have in his or her care, custody, possession or control any firearm or ammunition.**

[Initial if applies; write N/A if not applicable]

- a. ___ Respondent is a state or local officer as defined in section 943.10(14), Florida Statutes, who holds an active certification, who receives or possesses a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency and is not prohibited by the court from having in his or her care, custody, possession or control a firearm or ammunition. The officer's employing agency may prohibit the officer from having in his or her care, custody, possession or control a firearm or ammunition.
- b. ___ Respondent shall surrender any firearms and ammunition in the Respondent's possession to the _____ County Sheriff's Department.
- c. ___ Other directives relating to firearms and ammunition: _____

NOTE: RESPONDENT IS ADVISED THAT IT IS A FEDERAL CRIMINAL FELONY OFFENSE TO SHIP OR TRANSPORT IN INTERSTATE OR FOREIGN COMMERCE, OR POSSESS IN OR AFFECTING COMMERCE, ANY FIREARM OR AMMUNITION; OR TO RECEIVE ANY FIREARM OR AMMUNITION WHICH HAS BEEN SHIPPED OR TRANSPORTED IN INTERSTATE OR FOREIGN COMMERCE WHILE SUBJECT TO SUCH AN INJUNCTION. 18 U.S.C. SECTION 922(g)(8).

4. Evaluation/Counseling.

[Initial all that apply; write N/A if does not apply]

- a. The Court finds that Respondent has:
- i. ___ willfully violated the ex parte injunction;
 - ii. ___ been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; and/or
 - iii. ___ in this state or any other state, had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

Note: If respondent meets any of the above enumerated criteria, the Court must order the Respondent to attend a batterers' intervention program unless it makes written factual findings stating why such a program would not be appropriate. See Section 741.30(6)(e), Florida Statutes.

- b. Within [] 10 days [] days, (but no more than 10 days) of the date of this injunction, Respondent shall enroll in and thereafter without delay complete the following, and Respondent shall provide proof of such enrollment to the Clerk of Circuit Court within [] 30 days or [] days, (but no more than 30 days) of the date of this injunction:
 - i. ___ A certified batterers' intervention program from a list of programs to be provided by the Court or any entity designated by the Court. Respondent shall also successfully complete any substance abuse or mental health evaluation that the assessing program counselor deems necessary as a predicate to completion of the batterers' intervention program.
 - ii. ___ A substance abuse evaluation at: _____ or a similarly qualified facility and any substance abuse treatment recommended by that evaluation.
 - iii. ___ A mental health evaluation by a licensed mental health professional at: _____ or any other similarly qualified facility and any mental health treatment recommended by that evaluation.
 - iv. ___ Other: _____
- c. ___ Although Respondent meets the statutory mandate of attendance at a batterers' intervention program, the Court makes the following written findings as to why the condition of batterers' intervention program would be inappropriate: _____

- d. ___ Petitioner is referred to a certified domestic violence center and is provided with a list of certified domestic violence centers in this circuit, which Petitioner may contact.

5. **Mailing Address.** Respondent shall notify the Clerk of the Court of any change in his or her mailing address within 10 days of the change. All further papers (excluding pleadings requiring personal service) shall be served by mail to Respondent's last known address. Such service by mail shall be complete upon mailing. Rule 12.080, Fla.Fam.L.R.P., section 741.30, Florida Statutes.

6. **Other provisions necessary to protect Petitioner from domestic violence:** _____

TEMPORARY EXCLUSIVE USE AND POSSESSION OF HOME

[Initial if applies; write N/A if not applicable]

7. **Possession of the Home.** [] Petitioner [] Respondent shall have temporary exclusive use and possession of the dwelling located at: _____
_____.
8. **Transfer of Possession of the Home.** A law enforcement officer with jurisdiction over the home shall accompany [] Petitioner [] Respondent to the home, and shall place [] Petitioner [] Respondent in possession of the home.
9. **Personal Items.** [] Petitioner [] Respondent, **in the presence of a law enforcement officer**, may return to the premises described above () on _____, at _____ a.m./p.m., or [] at a time arranged with the law enforcement department with jurisdiction over the home, accompanied by a law enforcement officer only, for the purpose of obtaining his or her clothing and items of personal health and hygiene and tools of the trade. A law enforcement officer with jurisdiction over the premises shall go with [] Petitioner [] Respondent to the home and stand by to insure that he/she vacates the premises with only his/her personal clothing, toiletries, tools of the trade, and any items listed in paragraph 10 below. The law enforcement agency shall not be responsible for storing or transporting any property. **IF THE RESPONDENT IS NOT AWARDED POSSESSION OF THE HOME AND GOES TO THE HOME WITHOUT A LAW ENFORCEMENT OFFICER, IT IS A VIOLATION OF THIS INJUNCTION.**
10. The following other personal possessions may also be removed from the premises at this time: _____

11. Other: _____

TEMPORARY PARENTING PLAN AND TIME- SHARING WITH MINOR CHILD(REN)

12. **Jurisdiction.** [Initial one only.]
_____ Jurisdiction to determine issues relating to parenting plan and time-sharing with respect to any minor child(ren) listed in paragraph 13 below is proper under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).
_____ Jurisdiction is exclusive to the dependency court, and accordingly no order is made herein. (Case Number _____.)
13. **Temporary Parenting Plan for Minor Child(ren).** Except for that time-sharing (if any) specified for the other parent in paragraph 14, below, [] Petitioner [] Respondent shall on a temporary basis have 100% of the time-sharing with the parties' minor child(ren) listed below and shall have sole decision-making responsibility until further court order:

Name

Birth date

When requested by the parent to whom the majority of overnight time-sharing with the child(ren) is awarded on a temporary basis herein, in this case the Petitioner Respondent, law enforcement officers shall use any and all reasonable and necessary force to physically deliver the minor child(ren) listed above to the parent to whom the majority of overnight time-sharing with the child(ren) is awarded on a temporary basis herein. The other parent shall not take the child(ren) from the parent to whom the majority of overnight time-sharing with the child(ren) is awarded on a temporary basis herein or any child care provider or other person entrusted by the parent to whom the majority of overnight time-sharing with the child(ren) is awarded on a temporary basis herein with the care of the child(ren).

14. **Temporary Parenting Plan with Time-Sharing for Minor Child(ren).** The Petitioner and Respondent shall have time-sharing with the minor child(ren) on the following schedule:

[Initial one only]

- a. Petitioner Respondent shall have 100% of time-sharing and Petitioner Respondent shall have 0% of time sharing with the child(ren) until further order of the Court. Until further order of the Court, all parenting decisions shall be made by the parent with 100% of the time-sharing.
- b. Petitioner Respondent shall have time-sharing from _____ a.m./p.m. to _____ a.m./p.m on the following day(s) _____. The other parent will have the remaining time-sharing. _____
- c. Other: _____

15. **Limitations on Time-Sharing** The time-sharing specified in paragraph 14, above, for Petitioner Respondent with the child(ren) shall be:

[Initial all that apply; write N/A if does not apply]

- a. unsupervised.
- b. supervised by the following specified responsible adult: _____.
- c. at a supervised visitation center located at: _____

and shall be subject to the available times and rules of the supervised visitation center. The cost associated with the services of the supervised visitation center shall be paid by parent to whom the majority of overnight time-sharing with the child(ren) is awarded on a temporary basis herein other parent both: _____

If specified, the level of supervision shall be: _____

16. Arrangements for Time-Sharing with Minor Child(ren).

[Initial all that apply; write N/A if does not apply]

a. ___ A responsible person shall coordinate the time-sharing arrangements ~~of~~ with respect to the minor child(ren).

If specified, the responsible person shall be: {name} _____

b. ___ Other conditions for time-sharing arrangements as follows: _____

17. Exchange of Minor Child(ren).

[Initial all that apply; write N/A if does not apply]

a. ___ The parties shall exchange the child(ren) at [] school or daycare, or [] at the following location(s): _____

b. ___ A responsible person shall conduct all exchanges of the child(ren). The [] Petitioner [] Respondent shall not be present during the exchange. If specified, the responsible person shall be: {name} _____

c. Other conditions for exchange as follows: _____

18. Other Additional Provisions Relating to the Minor Child(ren).

TEMPORARY SUPPORT

19. Temporary Alimony.

[Initial all that apply; write N/A if does not apply]

a. ___ The court finds that there is a need for temporary alimony and that [] Petitioner [] Respondent (hereinafter Obligor) has the present ability to pay alimony and shall pay temporary alimony to [] Petitioner [] Respondent (hereinafter Oblige) in the amount of \$ _____ per month, payable [] in accordance with Obligor's employer's payroll cycle, and in any event, at least once a month [] other {explain} _____

beginning {date} _____. This alimony shall continue until modified by court order, until a final judgment of dissolution of marriage is entered, until Obligee dies, until this injunction expires, or until {date} _____, whichever occurs first.

- b. ___ Petitioner Respondent shall be required to maintain health insurance coverage for the other party. Any uncovered medical costs for the party awarded alimony shall be assessed as follows: _____
- c. ___ Other provisions relating to alimony: _____

20. Temporary Child Support.

[Initial all that apply; write N/A if does not apply]

- a. ___ The Court finds that there is a need for temporary child support and that Petitioner Respondent (hereinafter Obligor) has the present ability to pay child support. The amounts in the Child Support Guidelines Worksheet, Florida Family Law Form 12.902(e), filed by Petitioner Respondent are correct **OR** the Court makes the following findings: The Petitioner's net monthly income is \$ _____, (Child Support Guidelines ___%). The Respondent's net monthly income is \$ _____, (Child Support Guidelines ___%). Monthly child care costs are \$ _____. Monthly health/dental insurance costs are \$ _____.
- b. ___ **Amount.** Obligor shall pay temporary child support in the amount of \$ _____, per month payable in accordance with Obligor's employer's payroll cycle, and in any event at least once a month () other {explain}: _____
beginning {date} _____, and continuing until further order of the court, or until {date/event} _____
{explain} _____
If the child support ordered deviates from the guidelines by more than 5%, the factual findings which support that deviation are: _____
- c. ___ Petitioner Respondent shall be required to maintain () health () dental insurance coverage for the parties' minor child(ren) so long as reasonably available. **OR** () Health () dental insurance is not reasonably available at this time.
- d. ___ Any reasonable and necessary **uninsured medical/dental/prescription drug costs** for the minor child(ren) shall be assessed as follows: _____
- e. ___ Florida Supreme Court Approved Family Law Form 12.902(j), **Notice of Social Security Number**, is incorporated herein by reference.
- f. ___ Other provisions relating to child support: _____

21. Method of Payment.

[Initial one only]

- a. _____ Obligor shall pay any temporary child support/alimony ordered through income deduction, and such support shall be paid to the state disbursement unit. Obligor is individually responsible for paying this support obligation in the event that all or any portion of said support is not deducted from Obligor's income. Obligor shall also pay the applicable state disbursement unit service charge. Until child support/alimony payments are deducted from Obligor's paycheck pursuant to the Income Deduction Order, Obligor is responsible for making timely payments directly to the state disbursement unit.
- b. _____ Temporary child support/alimony shall be paid through the state disbursement unit in the office of the {name of county} _____ County Clerk of Circuit Court. Obligor shall also pay the applicable state disbursement unit service charge. Income deduction is **not** in the best interests of the child(ren) because: _____

- c. _____ Other provisions relating to method of payment: _____

OTHER SPECIAL PROVISIONS

(This section to be used for inclusion of local provisions approved by the chief judge as provided in Florida Family Law Rule 12.610.)

DIRECTIONS TO LAW ENFORCEMENT OFFICER IN ENFORCING THIS INJUNCTION

(Provisions in this injunction that do not include a line for the judge to either initial or write N/A are considered mandatory provisions and should be interpreted to be part of this injunction.)

1. **This injunction is valid in all counties of the State of Florida.** Violation of this injunction should be reported to the appropriate law enforcement agency. Law enforcement officers of the jurisdiction in which a violation of this injunction occurs shall enforce the provisions of this injunction and are authorized to arrest without warrant pursuant to section 901.15, Florida Statutes, for any violation of its provisions, except those regarding child support and/or alimony, which constitutes a criminal act under section 741.31, Florida Statutes. **When inconsistent with this order, any subsequent court order issued under Chapter 61 or Chapter 39, Florida Statutes, shall take precedence over this order on all matters relating to property division, alimony, parental responsibility, parenting plan, time-sharing, child custody, or child support.**
2. **THIS INJUNCTION IS ENFORCEABLE IN ALL COUNTIES OF FLORIDA, AND LAW ENFORCEMENT OFFICERS MAY EFFECT ARRESTS PURSUANT TO SECTION 901.15(6), FLORIDA STATUTES.** The arresting agent shall notify the State Attorney's Office immediately after arrest.
3. **Reporting alleged violations.** If Respondent violates the terms of this injunction and there has not been an arrest, Petitioner may contact the Clerk of the Circuit Court of the county in which the violation occurred and complete an affidavit in support of the violation, or Petitioner may contact the State Attorney's office for assistance in filing an action for indirect civil contempt or

indirect criminal contempt. Upon receiving such a report, the State Attorney is hereby appointed to prosecute such violations by indirect criminal contempt proceedings, or the State Attorney may decide to file a criminal charge, if warranted by the evidence.

4. Respondent, upon service of this injunction, shall be deemed to have knowledge of and to be bound by all matters occurring at the hearing and on the face of this injunction.
5. The temporary injunction, if any, entered in this case is extended until such time as service of this injunction is effected upon Respondent.
6. THIS IS A "CUSTODY ORDER" FOR PURPOSES OF THE UCCJEA AND ALL STATUTES MAKING IT A CRIME TO INTERFERE WITH CUSTODY UNDER CHAPTER 787 OF FLORIDA STATUTES AND OTHER SIMILAR STATUTES.

DONE AND ORDERED at _____, Florida on _____.

CIRCUIT JUDGE

COPIES TO:

Sheriff of _____ County

Petitioner (or his or her attorney):

___ by U. S. Mail

___ by hand delivery in open court (Petitioner must acknowledge receipt in writing on the face of the original order - see below.)

Respondent (or his or her attorney):

___ forwarded to sheriff for service

___ by hand delivery in open court (Respondent must acknowledge receipt in writing on the face of the original order - see below.)

___ by certified mail (may only be used when Respondent is present at the hearing and Respondent fails or refuses to acknowledge the receipt of a certified copy of this injunction.)

___ State Attorney's Office

___ Batterer's intervention program (if ordered)

___ Central Governmental Depository (if ordered)

___ Department of Revenue

___ Other _____

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the Clerk of the Circuit Court of _____ County, Florida, and that I have furnished copies of this order as indicated above.

CLERK OF THE CIRCUIT COURT

(SEAL)

By: _____
Deputy Clerk

ACKNOWLEDGMENT

I, *{Name of Petitioner}* _____, acknowledge receipt of a certified copy of this Injunction for Protection.

Petitioner _____

ACKNOWLEDGMENT

I, *{Name of Respondent}* _____, acknowledge receipt of a certified copy of this Injunction for Protection.

Respondent _____

Public Information

Consumer Information

Divorce In Florida

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CAN YOUR MARRIAGE BE SAVED?

Before you take any legal steps to end your marriage, you should make sure that you have tried all possible ways to save it. Do you want professional help in working out ways to save your marriage? Many communities and social and religious organizations offer counseling services either free or on a sliding fee scale. Or you may wish to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi or other qualified person. Your attorney may also refer you to someone who can counsel you and your spouse.

GENERAL

The official term for divorce in Florida is "dissolution of marriage."

Florida is one of the many states that has abolished fault as a ground for divorce. This law lessens the potential harm to the husband, wife, and their children caused by the process of divorce. All that is required is that the marriage be "irretrievably broken." Either spouse can file for the dissolution of marriage. All that has to be proved is that a marriage exists, one party has been a Florida resident for six months immediately preceding the filing of the petition, and the marriage is irretrievably broken. (There is another, little-used ground: the adjudication of one spouse as incompetent for at least three years preceding the petition for dissolution). Fault, however, may be considered under certain circumstances in the award of alimony, equitable distribution of marital assets and liabilities, and determination of parental responsibility.

Each divorce case is unique and therefore results vary. Even though

fault is not an issue in granting the dissolution, the division of property and possessions, responsibility for support, and parental responsibility and time-sharing with children may become contested matters.

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The divorce process is highly emotional and traumatic for everyone it touches. Marriage partners often do not know their legal rights and obligations. Court clerks and judges can answer some of your basic questions but are prohibited from giving legal advice. Only your lawyer is allowed to do that. Statutory requirements and court rules must be strictly followed or you may lose certain rights forever. It is recommended that you obtain the services of an attorney concerning legal questions, your rights in a divorce, your children's rights, your property rights, your responsibilities resulting from the marriage or tax consequences. A knowledgeable lawyer can analyze your unique situation and can help you to make decisions in the best interest of you and your family.

There are two ways of getting a divorce, or dissolution, in Florida. The usual way is called a "Regular Dissolution of Marriage." The second method is the "Simplified Dissolution of Marriage."

REGULAR DISSOLUTION OF MARRIAGE

The regular dissolution process begins with a petition for dissolution of marriage, filed with the circuit court by the husband or wife, which states that the marriage is irretrievably broken and sets out what the person wants from the court. The other partner must file an answer within 20 days, addressing the matters in the initial petition and raising any additional issues the answering party wants the court to address.

Court rules governing divorces require that each party provide certain financial documents and a completed financial affidavit to the other party within 45 days of the service of the petition or before any temporary relief hearing. Failure to provide this information can result in the court dismissing the case or not considering that party's requests. The parties or the court can modify these requirements except for the filing of a financial affidavit, which is mandatory in all cases in which financial relief is sought. A child support guidelines worksheet must also be filed with the court at or before any hearing on child support. This requirement may not be waived by the parties or the court.

Some couples agree on property settlements, parental responsibility, and other post-divorce arrangements before or soon after the original petition is filed. They then enter into a written agreement signed by both parties that is presented to the court. Other couples disagree on some issues, work out their differences, and also appear for a final hearing with a suggested settlement which is accepted by the judge. In such uncontested cases, a divorce can become final in a matter of a few weeks.

Mediation is a procedure to assist you and your spouse in working out an arrangement for reaching agreement without a protracted process or a trial. Its purpose is not to save a marriage, but to help divorcing couples reach a solution and arrive at agreeable terms for handling their dissolution. Many counties have mediation services available. Some counties require couples to attempt mediation before a trial can be set.

Finally, some couples cannot agree on much of anything and a trial with each side presenting its case is required. The judge makes the final decision on contested issues.

Reaching a settlement, whether by direct negotiations or mediation, usually requires compromise by both parties. Attorneys have learned it is unrealistic to expect both partners to be "happy" with their divorce. The experience can be emotionally devastating. The financial upheaval of supporting two households instead of one causes hardship for the entire family. The parties, however, can take steps to make the process easier for themselves and their children.

SIMPLIFIED DISSOLUTION OF MARRIAGE

Certain Florida couples are eligible to dissolve their marriage by way of a simplified procedure. These dissolutions are "do-it-yourself" and were designed so the services of an attorney may not be necessary. Couples are responsible, however, for filing all necessary documents correctly, and both parties are required to appear before a judge together when the final dissolution is granted. If you desire the services of an attorney for this dissolution process, usually it can be completed relatively inexpensively.

Not everyone can use this procedure. A husband and wife can use the simplified dissolution of marriage only if: (a) they both agree to the use of this form of dissolution proceeding; (b) they have no minor (under 18) or dependent children; (c) they have no adopted children under the age of 18; (d) the wife is not pregnant; (e) at least one of the parties has lived in Florida for the past six months; (f) the parties have agreed on the division of all of their property (assets) and obligations (debts); (g) neither party is seeking alimony; and (h) both parties agree that the marriage is irretrievably broken and want to end their marriage because of serious permanent differences. Couples wanting to use the simplified process must meet all these conditions. If not, they must use the regular dissolution of marriage process.

There are substantial differences between a simplified and a regular dissolution of marriage. In a regular dissolution, each spouse has the right to examine and cross-examine the other as a witness, and to obtain documents concerning the other's income, expenses, assets and liabilities before having a trial or settlement of the case. With a simplified dissolution, financial information may be requested but it is

not required to be given.

If the husband and wife agree on a dissolution, and prefer to use the simplified form of dissolution, they should both contact the clerk of the circuit court in their area and obtain a copy of the booklet titled "Simplified Dissolution Information" for more detailed information and forms.

DOMESTIC VIOLENCE

You may go to court yourself (without an attorney) to petition for an injunction to protect yourself against domestic violence (assault or battery by your spouse whether you are separated or not, or your former spouse), repeat violence, or sexual violence. If you feel you are the victim of such domestic violence, repeat violence, or sexual violence, you should contact the office of the clerk of the circuit court in your county or the local domestic violence shelter for information and assistance.

PROPERTY DIVISION

One of the most difficult and complex areas of divorce is the division of marital assets and liabilities (debts). Marital property may include cars, houses, retirement benefits (pensions), business interests, cash, stocks, bonds, bank accounts, personal property, and other things of value. Liabilities include mortgages, car loans, credit card accounts, and other debts. Generally, any asset or liability acquired during the marriage is considered marital and subject to distribution. The parties may also have assets or liabilities that are considered nonmarital and should be awarded to only one party.

Florida statutes and case law provides for an "equitable distribution" of marital assets and liabilities. In essence, the marital property should be divided fairly or equitably (not necessarily equally) between the parties regardless of how the title is held. This is based on a long list of statutory factors.

Equitable distribution is done first before alimony is considered.

There is no fixed way to determine how you or the court should divide the property, or debts. Factors to be considered by the court include the contribution of each spouse to the marriage; the duration of the marriage; and the economic circumstances of each spouse. If you and your spouse can agree, and if your agreement is reasonable, it will be approved by the court. If you cannot agree, the court will divide the assets and liabilities after a trial.

ALIMONY

After equitable distribution has been made, the court may consider an award of alimony. The court may grant alimony to either the husband

or the wife. Rehabilitative alimony may be for a limited period of time to assist in redeveloping skills and financial independence. Permanent alimony continues until the receiving spouse's remarriage or the death of either party. Rehabilitative and permanent alimony generally are paid periodically (i.e., monthly or semi-monthly). The court may grant some combination of the two. The court may also order lump-sum alimony where one party pays to the other party a lump-sum payment of money or property. Although adultery does not mandate or bar an award of alimony, the court may consider the circumstances of that adultery in determining an award of alimony.

In awarding alimony, the court considers factors such as the parties' prior standard of living; length of the marriage; age and physical and emotional condition of both spouses; each spouse's financial resources and income-producing capacity of the assets they receive; the time necessary to acquire sufficient education or training to find appropriate employment; and the services rendered in homemaking, child rearing, and education and career building of the other spouse. The court may consider any other factor necessary to do equity and justice between the husband and wife.

You have the right to find out about all your spouse's income and assets through the use of discovery procedures which your attorney will explain to you.

TAXES

There are very important tax considerations to be aware of in any divorce, including the dependency deduction for children, taxability and deductibility of child support and alimony in their various forms, and effects of property transfers. It is important to find out how these laws affect you before you get divorced. Afterwards, it may be too late to correct mistakes that have been made. This may require the services of an accountant in conjunction with your attorney.

SHARED PARENTAL RESPONSIBILITY FOR CHILDREN

It is the public policy of Florida to ensure each minor child has frequent and continuing contact with both parents after the parents have separated or divorced, and to encourage parents to share the rights and responsibilities of child rearing. The father is given the same consideration as the mother in determining parental responsibility and time-sharing regardless of their child's age or sex.

In most cases, parental responsibility for a minor child will be shared by both parents so that each retains full parental rights and responsibilities with respect to their child. This requires both parents to confer so that major decisions affecting the welfare of the child will be determined jointly. You and your spouse may agree, or the court may order, that one parent have the ultimate responsibility over specific

aspects of the child's welfare, such as education, religion, or and medical and dental needs. If the parents have a substantial conflict over any of these areas the court will decide on responsibility for them.

In rare cases, the court can order sole parental responsibility and custody to one parent. To do so, the court must determine that shared parental responsibility would be detrimental to the child.

In determining parental responsibility, the court will approve or grant a parenting plan that includes how the parents will share the daily tasks of child rearing, the time-sharing schedule, and a designation of which parent will be responsible for health care, school, and related activities. The plan will also specify any technology that will be used for parent-child communication. The parents may agree on a parenting plan and submit it to the court for approval or the court will determine these issues. The statute includes a list of factors for the court to consider in making these decisions.

In considering issues between parents and their children, the best interest of the child is the primary consideration by the courts.

The Florida Bar has developed a consumer pamphlet entitled "Shared Parenting After Divorce," which discusses the subject. For instructions on ordering, see the back cover of this pamphlet.

Florida law requires both parties to attend a parenting course prior to entering a final divorce. Consult your county clerk's office for information on courses offered.

CHILD SUPPORT

You and your spouse each have a responsibility to support your children in accordance with their needs and your financial abilities. Child support may be by direct payment or by indirect benefits, such as mortgage payments, insurance, or payment of medical and dental expenses. Ordinarily, the obligation to support your child ends when that child reaches age 18, marries, is emancipated, joins the armed forces, or dies.

Some of the issues concerning child support which must be considered include: (a) the amount of support; (b) the method of payment; (c) ways to assure payments are made; (d) when child support may be increased or decreased; and (e) who claims the dependency deduction for tax purposes. Other questions may need to be answered, depending on the circumstances of your case. Guidelines for the amount of support apply to all cases and are based on the income of the parents and the number of children with adjustments for substantial overnight contact.

If you have a problem getting support payments from your spouse or former spouse, or the time-sharing plan is not being followed, you

should bring this matter to the attention of the court. It is not legal to withhold visitation or child support payments because either parent fails to pay court ordered child support or violates the time-sharing schedule in the parenting plan.

APPEALS

If you feel the judge's decision was incorrect, you may appeal that decision, provided that certain procedural steps are taken. An appellate court does not, however, often reverse a trial judge's decision because the judge has broad discretion in divorce cases. Just because you do not like the judge's decision is not a reason for an appeal. If the trial judge makes an error of law, or has abused his discretion, the decision may be reversed. Because an appeal must be filed within 30 days of rendition of the final judgment, you need to address this issue quickly with your attorney.

WHERE TO GET LEGAL HELP?

A good place to begin is with your own lawyer who can give you a quick review of your legal rights and advise you how to proceed. If your lawyer does not handle divorce cases, you will be referred to an attorney who does.

If, however, your family lawyer has been retained by your spouse, then the lawyer cannot represent you too. In fact, if the lawyer has been your family lawyer there may be a conflict of interest and the lawyer cannot represent either of you. Do not attempt to consult with your spouse's attorney to receive legal advice. It is unethical for an attorney to represent both sides in a divorce and to give legal advice to both husband and wife.

HOW TO SELECT A LAWYER

If you do not have a lawyer, a lawyer referral service, usually operated by a local bar association, can put you in touch with a lawyer who handles such cases. The lawyers associated with the lawyer referral service have an agreement to charge a very small fee for the first conference. For just a few dollars, you can discuss your rights and obligations and determine if you are proceeding in the right direction.

Many areas in Florida have lawyer referral services listed under "Attorney" or "Information and Referral Services" in the yellow pages of the telephone book. If you do not have a lawyer referral service in your city, The Florida Bar's Statewide Lawyer Referral Service can locate a lawyer for you. You can call the statewide service, toll-free, at 1-800-342-8011 or you can view the Attorney Search section on The Florida Bar Family Law Section's homepage at www.familylawfla.org.

In Florida, lawyers who specialize in family law can become board certified if they meet certain criteria and pass a comprehensive test in

the area. To maintain certification a lawyer must take certain continuing legal education courses on a regular basis.

If you are looking for an attorney to represent you in a divorce-or any other legal matter-The Florida Bar has developed another consumer pamphlet, "How To Find A Lawyer in Florida," which may be helpful. See the back of this booklet for instructions on ordering it and other consumer pamphlets.

ATTORNEYS' FEES AND COSTS

Divorce does not have to be expensive. The more complex your affairs and the more contested the issues, the more the dissolution will cost. At an initial meeting, your attorney should be able to provide an estimate of the total cost of a dissolution based on the information you provide. To a large extent the cost will depend on how contested the matter becomes.

One lawyer cannot represent both parties. Your lawyer will expect you to pay a fee and the costs of litigation in accordance with the agreement you make. Sometimes the court will order your spouse to pay part or all of your fee and costs, but such awards are unpredictable and cannot be relied upon. You are primarily responsible for the payment of your legal fees.

In a divorce, it is illegal for an attorney to work on a contingency fee basis; that is, where the lawyer's fee is based upon a percentage of the amount awarded to the client.

ADDITIONAL RESOURCES

Created by The Family Law Section of The Florida Bar, the Family Law Handbook may provide additional information about divorce. You may obtain a copy of the handbook from your local clerk of court.

The material in this pamphlet represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

[Revised: 3/09]

Amy Cosentino

From: Jodi Seitlin [lawlady1990@clearwire.net]
Sent: Tuesday, January 11, 2011 12:34 PM
To: Amy Cosentino
Subject: FW: reminder for 12/6 conference call

Jodi Seitlin, Esq.
The Seitlin Law Firm, P.A.
233 East Bay Street, Suite 901
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Phone 904-359-5550
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From: Susan Proctor [mailto:proctors@flcourts.org]
Sent: Friday, December 03, 2010 1:16 PM
To: 'Kristin Adamson'; 'Judge John Alexander'; 'Angel Bello-Billini'; 'Keith, Susan'; 'Karen Nicolai'; 'Thomas J. Sasser'; 'Robyn L. Vines'; 'Jeffrey P Wasserman'; 'Judge Clyde E Wolfe'
Cc: 'njohnson@sjcfl.us'; 'Terry Muskett'; 'Nina Zollo'; acosentino@cosentinolaw1.com; 'Jodi Seitlin'
Subject: reminder for 12/6 conference call

Hello all

Here is your reminder for the conference call scheduled for this coming Monday, December 6th, at 5 p.m. Since we will be focusing on issues regarding domestic violence, we will be joined on the call by Nina Zollo of the Florida Coalition against Domestic Violence, and Amy Cosentino and Jodi Seitlin from the Florida Bar's committee on domestic violence. The following issues will be addressed:

1. A letter from Chief Judge McGrady of the Sixth Judicial Circuit letter to Chief Justice Canaday requesting that the forms for temporary injunctions be amended to advise respondents of the consequences of their failure to appear at the final hearing, including entry of a permanent injunction. Judge McGrady cites the opinion issued by the 2nd DCA in Canavan v. State, 38 So.3rd 885, (Fla. 2nd DCA, 6/30/2010), as the basis for his proposed amendment. The temporary injunctions are found in forms 12.980(c)(1), 12.980(c)(2), 12.980(k), 12.980(o), 12.980 and (r); the proposed language would be added to the last sentence of the first paragraph under **NOTICE OF HEARING**. I believe the instructions to the petitions (forms 12.980(a), 12.980(f), 12.980(n), and 12.980(q)) need to be revised as well; the proposed language would be added to the next to the last sentence under "What should I do if the judge grants my petition?" in the instructions to each petition. I also believe the second paragraph under **NOTICE OF HEARING** in the Order (form 12.980((b)(1)) should be amended. Due to the number of the forms we are dealing with, I will be sending them to you in separate emails. Judge McGrady proposes the following amendment:

If Petitioner and/or Respondent do not appear, this temporary injunction may be continued in force, extended, dismissed, and/or additional orders may be granted, including entry of a permanent injunction and the imposition of court cost. (His proposed language is underlined).

2. A letter from Judge Herr of the Eighteenth Judicial Circuit, suggesting that a specific prayer for a temporary injunction be added to the first paragraph of Section IV in the petitions for injunction for protection against repeat, dating, and sexual violence (forms 980(f), (n), and (q), respectively). The language he wishes to add to those forms is currently found in paragraph one in Section VII in the Petition for Injunction for Protection Against Domestic Violence (form 12.980(a)). Section 784.046(6)(a), F.S., authorizes a court to grant a temporary injunction, where appropriate, for protection against repeat, dating, or sexual violence.
3. In its opinion adopting amendments to Florida Rule of Judicial Administration 2.540, the Supreme Court approved a language change which needs to be made in all forms containing a notice of hearing including those imbedded in forms pertaining to domestic, repeat, dating and sexual violence. (In Re: Amendments to Florida Rule of Judicial Administration 2.540, SC09-1487, issued 5/20/2010). For purposes of this meeting, we are focusing only on the forms within chapter 12.980; however, all notices of hearing within the family law forms will need to be changed. Here is how the new language will look; it is found in the **NOTICE OF HEARING** section in forms 12.980(b)(1), 12.980(c)(1), 12.980(c)(2), 12.980(k), 12.980(o), and 12.980(r). Because forms 12.980(m) and (u) are shorter, there is not a separate notice of hearing section:

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact {name} _____, {address} _____, {telephone} _____, within 2 days of your receipt of this notice at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call ~~TDD 1-800-955-8771~~ 711.”

I will send another reminder out Monday morning. Please let me know if you have any questions regarding this and have a good weekend. Susan

Conference Call in Information:

**Number: (888) 808-6959,
Code: 4141507#,
Pin: 3124**

Leader - Dial-in; when prompted enter conference code followed by # key.
Press the * key to identify yourself and then enter the Leader Pin.
Press 1 to begin or 2 to access your default conference options.

Participants: Dial-in the "dial-in-number"
When prompted they enter the Conference Code followed by the # key.

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 9.0.872 / Virus Database: 271.1.1/3292 - Release Date: 12/01/10 14:34:00



LEXSEE 38 SO 3D 885

MICKEY M. CANAVAN, Appellant, v. STATE OF FLORIDA, Appellee.

Case No. 2D08-5182

COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

38 So. 3d 885; 2010 Fla. App. LEXIS 9565; 35 Fla. L. Weekly D 1443

June 30, 2010, Opinion Filed

SUBSEQUENT HISTORY: Released for Publication July 24, 2010.

PRIOR HISTORY: [**1]

Appeal from the Circuit Court for Pinellas County; Philip J. Federico, Judge.
Canavan v. State, 2010 Fla. App. LEXIS 6146 (Fla. Dist. Ct. App. 2d Dist., May 5, 2010)

COUNSEL: James Marion Moorman, Public Defender, and Carol J.Y. Wilson, Assistant Public Defender, Bartow, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Marilyn Muir Beccue, Assistant Attorney General, Tampa, for Appellee.

JUDGES: VILLANTI, Judge. ALTENBERND and WALLACE, JJ., Concur.

OPINION BY: VILLANTI**OPINION**

[**886] VILLANTI, Judge.

Mickey M. Canavan appeals his conviction for aggravated stalking, claiming that the court should have granted his motion for judgment of acquittal because the State failed to prove that he knew of the entry of the final injunction when he continued to harass the victim. We agree, reverse his conviction for aggravated stalking, and remand for entry of a judgment of conviction for simple stalking.

The State charged Canavan with aggravated stalking in violation of *section 784.048(4), Florida Statutes*

(2007), based on allegations that he harassed his former wife after entry of a final injunction against domestic violence. To convict Canavan of this offense, the State had to prove beyond a reasonable doubt that Canavan continued to harass the victim despite knowledge of the injunction upon which the charge was [**2] premised. *See State v. Johnson*, 676 So. 2d 408, 411 (Fla. 1996) (stating that "[t]he statutory elements of aggravated stalking under *section 784.048(4)* are knowledge of an injunction and knowingly, willfully, maliciously, and repeatedly following or harassing the beneficiary of the injunction").

Canavan's former wife obtained a temporary injunction against him in December 2006 because he was following her, she was [**887] afraid of him, and she was afraid that he would try to take their son. A permanent injunction was entered a year later at a hearing that Canavan did not attend. It is undisputed that the permanent injunction was not served on Canavan until he was arrested for the stalking charge at issue in this case.

If the defendant is served with the permanent injunction, we agree that proof of service is sufficient to prove that he had knowledge of the injunction. *See Robinson v. State*, 840 So. 2d 1138, 1139 (Fla. 1st DCA 2003) (suggesting that one method of establishing defendant's knowledge of the existence of a permanent injunction is proof of service of the permanent injunction). The statute, however, does not expressly make service of the injunction an element of the offense. Given [**3] that defendants in these cases sometimes go to great lengths to avoid service of process, it is reasonable to permit the State to prove that the defendant has actual knowledge of the permanent injunction as a result of actions other than service of process. *See, e.g., Livingston v. State*, 847 So. 2d 1131, 1134 (Fla. 4th DCA 2003)

(concluding that the State produced sufficient evidence to deny motion for judgment of acquittal on aggravated stalking charge where the temporary injunction served on the defendant notified him of the date of the final hearing and made him aware that he would be bound by any injunction issued at the final hearing); *Robinson*, 840 So. 2d at 1139 (reversing conviction for violation of domestic violence injunction because the State failed to establish, through proof of service of the permanent injunction or through proof that the defendant had some other notice, that the defendant knew the permanent injunction had been entered against him).¹

¹ To the extent *Livingston* contains dicta suggesting that the State does not need to prove the defendant's knowledge of the injunction, but merely needs to establish that the injunction "was in place," we disagree with that [**4] statement and follow the elements of the offense as described in *Johnson*.

Here, the State presented no proof of service of the final injunction prior to Canavan's arrest on the stalking charge. The temporary injunction, a copy of which was provided to Canavan by the former wife's new husband, did not contain any language advising him that he would be bound by the terms of any injunction issued at the scheduled final hearing. The State simply failed to provide any evidence that Canavan knew of the entry of the permanent injunction. Because the State failed to prove this element of the charge of aggravated stalking, Canavan's motion for judgment of acquittal should have been granted. We do not need in this case to decide what evidence would be sufficient to establish that a defendant knew of the existence of a permanent injunction. Based

on the foregoing, we must reverse the conviction for aggravated stalking.

Nevertheless, we remand for entry of a judgment of conviction for simple stalking. Simple stalking is a category one, lesser-included offense of aggravated stalking. See Fla. Std. Jury Instr. (Crim.) 8.7(b). To prove simple stalking, the State must prove that the defendant willfully, [**5] maliciously, and repeatedly followed, harassed, or cyberstalked the victim. § 784.048(2); Fla. Std. Jury Instr. (Crim.) 8.6. To prove aggravated stalking, the State must prove the same conduct, plus the existence of an injunction and the defendant's knowledge that the injunction had been entered against him. See § 784.048(4); Fla. Std. Jury Instr. (Crim.) 8.7(b). By finding Canavan guilty of aggravated stalking, the jury also made a necessary finding on the elements constituting [**888] the lesser-included offense of simple stalking. The jury was given both of these instructions. We are reversing Canavan's aggravated stalking conviction because the State did not, as a matter of law, establish the third element of aggravated stalking--that factually Canavan knew the final injunction had been entered against him. However, we do not take issue with the remaining elements of the offense. Section 924.34, Florida Statutes (2007), requires an appellate court to remand for entry of a judgment of conviction for the lesser-included offense of simple stalking where the jury has specifically found the existence of the elements comprising this lesser-included offense. Therefore, we remand for entry of [**6] a judgment of conviction for the lesser-included offense of simple stalking.

Reversed and remanded for further proceedings consistent with this opinion.

ALTENBERND and WALLACE, JJ., Concur.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: _____

Division: _____

Petitioner,

and

Respondent.

**TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE
WITH MINOR CHILD(REN)**

The Petition for Injunction for Protection Against Domestic Violence under section 741.30, Florida Statutes, and other papers filed in this Court have been reviewed. Under the laws of Florida, the Court has jurisdiction of the petitioner and the subject matter and has jurisdiction of the respondent upon service of the temporary injunction.

It is intended that this protection order meet the requirements of 18 U.S.C. Section 2265 and therefore intended that it be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or of the Indian tribe.

NOTICE OF HEARING

Because this Temporary Injunction for Protection Against Domestic Violence has been issued without prior notice to Respondent, Petitioner and Respondent are instructed that they are scheduled to appear and testify at a hearing regarding this matter on {date} _____, at _____ a.m./p.m., when the Court will consider whether the Court should issue a Final Judgment of Injunction for Protection Against Domestic Violence, which would remain in effect until modified or dissolved by the Court, and whether other things should be ordered, including, for example, such matters as time-sharing and support. The hearing will be before The Honorable {name} _____ at {room name/number, location, address, city} _____

_____, Florida. If Petitioner and/or Respondent do not appear, this temporary injunction may be continued in force, extended, dismissed, and/or additional orders may be granted, including the imposition of court costs * change here

All witnesses and evidence, if any, must be presented at this time. In cases where temporary support issues have been alleged in the pleadings, each party is ordered to bring his or her financial affidavit Florida Family Law Rules of Procedure Form 12.902(b) or (c)), tax return, pay stubs, and other evidence of financial income to the hearing.

NOTICE: Because this is a civil case, there is no requirement that these proceedings be transcribed at public expense.

or household members must be currently residing together or have in the past resided together in the same single dwelling unit. If the respondent is not one of the above, you should look at **Petition for Injunction for Protection Against Repeat Violence**, Florida Supreme Court Approved Family Law Form 12.980(f), to determine if your situation will qualify for an injunction for protection against repeat violence, or **Petition for Injunction for Protection Against Dating Violence**, Florida Supreme Court Approved Family Law Form 12.980(n), to determine if your situation will qualify for an injunction for protection against dating violence, or **Petition for Injunction for Protection Against Sexual Violence**, Florida Supreme Court Approved Family Law Form 12.980(q), to determine if your situation will qualify for an injunction for protection against sexual violence.

If you are under the age of eighteen and you have never been married or had the disabilities of nonage removed by a court, then one of your parents, custodians, or your legal guardian must sign this petition with you.

This form should be typed or printed in black ink. You should complete this form (giving as much detail as possible) and sign it in front of a **notary public** or the **clerk of the circuit court** in the county where you live. The clerk will take your completed **petition** to a **judge**. You should keep a copy for your records. If you have any questions or need assistance completing this form, the clerk or **family law intake staff** will help you.

What should I do if the judge grants my petition?

If the facts contained in your petition convince the judge that you are a victim of domestic violence or that an **imminent danger of domestic violence** exists, the judge will sign an immediate **Temporary Injunction for Protection Against Domestic Violence with Minor Child(ren)**, Florida Supreme Court Approved Family Law Form 12.980(c)(1). A temporary injunction is issued without notice to the respondent. The clerk will give your petition, the temporary injunction, and any other papers filed with your petition to the sheriff or other law enforcement officer for **personal service** on the respondent. The temporary injunction will take effect immediately after the respondent is served with a copy of it. It lasts until a full **hearing** can be held or for a period of 15 days, whichever comes first. The court may extend the temporary injunction beyond 15 days for a good reason, which may include failure to obtain **service** on the respondent.

The temporary injunction is issued **ex parte**. This means that the judge has considered only the information presented by one side-- YOU. The temporary injunction gives a date that you must appear in court for a hearing. At that hearing, you will be expected to testify about the facts in your petition. The respondent will be given the opportunity to testify at this hearing, also. At the hearing, the judge will decide whether to issue a **Final Judgment of Injunction for Protection Against Domestic Violence with Minor Child(ren)(After Notice)**, Florida Supreme Court Approved Family Law Form 12.980(d)(1), which will remain in effect for a specific time period or until modified or dissolved by the court. **If you and/or the respondent do not appear, the temporary injunction may be continued in force, extended,**

I add language here

or dismissed, and/or additional orders may be granted, including the imposition of court costs.

If the judge signs a temporary or final injunction, the clerk will provide you with the necessary copies. **Make sure that you keep one certified copy of the injunction with you at all times!**

What can I do if the judge denies my petition?

If your petition is denied solely on the grounds that it appears to the court that no imminent danger of domestic violence exists, the court will set a full hearing, at the earliest possible time, on your petition, unless you request that no hearing be set. The respondent will be notified by **personal service** of your petition and the hearing. If your petition is denied, you may: amend your petition by filing a **Supplemental Affidavit in Support of Petition for Injunction for Protection Against Domestic Violence, Repeat or Dating Violence**, Florida Family Law Form 12.980 (g); attend the hearing and present facts that support your petition; and/or dismiss your petition.

Where can I look for more information?

Before proceeding, you should read General Information for Self-Represented Litigants found at the beginning of these forms. The words that are in **bold underline** are defined in that section. The clerk of the circuit court or family law intake staff will help you complete any necessary domestic violence forms and can give you information about local domestic violence victim assistance programs, shelters, and other related services. You may also call the Domestic Violence Hotline at 1-800-500-1119. For further information, see chapter 741, Florida Statutes, and rule 12.610, Florida Family Law Rules of Procedure.

Special notes...

With this form you may also need to file the following:

- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit**, Florida Supreme Court Approved Family Law Form 12.902(d), must be completed and filed if you are asking the court to determine issues with regard to your **parenting plan** or **time-sharing** for a minor child(ren).
- **Parenting plan** means a document created to govern the relationship between the parents relating to the decisions that must be made regarding the minor child(ren) and must contain a time-sharing schedule for the parents and child(ren). The issues concerning the minor child(ren) may include, but are not limited to, the child(ren)'s education, health care, and physical, social, and emotional well-being. In creating the plan, all circumstances between the parents, including the their historic relationship, domestic violence, and other factors must be taken into consideration. The Parenting Plan shall be developed and agreed to by the parents and approved by a court, or, established by the court, with or without the use of a court-ordered parenting plan recommendation. If the parents cannot agree, or if the parents agreed to a plan that is not approved by the court, a Parenting Plan shall be established by the court. **"Time-**

d. ___ Petitioner requests that the Court prohibit time-sharing by Respondent with the minor child(ren) because Petitioner genuinely fears that Respondent imminently will abuse, remove, or hide the minor child(ren) from Petitioner. Explain: _____

e. ___ Petitioner requests that the Court allow only supervised time-sharing by Respondent with the minor child(ren). Explain: _____

Supervision should be provided by a Family Visitation Center, or other (specify): _____

SECTION VI. TEMPORARY SUPPORT (Complete this section **only** if you are seeking financial support from the Respondent. You must also complete and file a **Family Law Financial Affidavit**, Florida Family Law Rules of Procedure Form 12.902(b) or (c), and **Notice of Social Security Number**, Florida Supreme Court Approved Family Law Form 12.902(j), if you are seeking child support. A **Child Support Guidelines Worksheet**, Florida Family Law Rules of Procedure Form 12.902(e), must be filed with the court at or prior to a hearing to establish or modify child support.)

[Choose **all** that apply]

1. ___ Petitioner claims a need for the money he or she is asking the Court to make Respondent pay, and that Respondent has the ability to pay that money.
2. ___ Petitioner requests that the Court order Respondent to pay the following temporary alimony to Petitioner. (Petitioner must be married to Respondent to ask for temporary alimony.)
Temporary Alimony Requested \$ _____ every () week () other week () month.
3. ___ Petitioner requests that the Court order Respondent to pay the following temporary child support to Petitioner. (The respondent must be the natural parent, adoptive parent, or guardian by court order of the minor child(ren) for the court to order the respondent to pay child support.) Temporary child support is requested in the amount of \$ _____ every () week () other week () month.

SECTION VII. INJUNCTION (This section summarizes what you are asking the Court to include in the injunction. This section must be completed.)

1. Petitioner asks the Court to enter a TEMPORARY INJUNCTION for protection against domestic violence that will be in place from now until the scheduled hearing in this matter.
2. Petitioner asks the Court to enter, after a hearing has been held on this petition, a final

judgment on injunction prohibiting Respondent from committing any acts of domestic violence against Petitioner **and**:

- a. prohibiting Respondent from going to or within 500 feet of any place the Petitioner lives;
- b. prohibiting Respondent from going to or within 500 feet of the Petitioner's place(s) of employment or school; the address of Petitioner's place(s) of employment or school is:

- c. prohibiting Respondent from contacting Petitioner by mail, by telephone, through another person, or in any other manner;
- d. prohibiting Respondent from knowingly and intentionally going to or within 100 feet of Petitioner's motor vehicle.
- e. prohibiting Respondent from defacing or destroying Petitioner's personal property.

[Choose all that apply]

- f. ___prohibiting Respondent from going to or within 500 feet of the following place(s) Petitioner or Petitioner's minor child(ren) must go often *{include address}*: _____

- g. ___granting Petitioner temporary exclusive use and possession of the home Petitioner and Respondent share;
- h. ___granting Petitioner on a temporary basis 100% of the time sharing with the parties' minor child(ren);
- i. ___establishing a temporary parenting plan including a temporary time-sharing schedule for the parties' minor child(ren);
- j. ___granting temporary alimony for Petitioner;
- k. ___granting temporary child support for the minor child(ren);
- l. ___ordering Respondent to participate in treatment, intervention, and/or counseling services;
- m. ___referring Petitioner to a certified domestic violence center; and
any other terms the Court deems necessary for the protection of Petitioner and/or Petitioner's child(ren), including injunctions or directives to law enforcement agencies, as provided in section 741.30, Florida Statutes.

I UNDERSTAND THAT BY FILING THIS PETITION, I AM ASKING THE COURT TO HOLD A HEARING ON THIS PETITION, THAT BOTH RESPONDENT AND I WILL BE NOTIFIED OF THE HEARING, AND THAT I MUST APPEAR AT THE HEARING.

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Florida dads asking for help against false accusations

By PHIL ATTINGER
News Chief correspondent

Published: Saturday, January 8, 2011 at 6:29 a.m.
Last Modified: Saturday, January 8, 2011 at 6:29 a.m.

BARTOW -- Florida legislators have been asked to look into reforms to help husbands who claim they have been victims of false domestic violence injunctions.

In what one citizen referred to as a pendulum shift in the justice system, men who claim to have had their lives destroyed by false accusations of domestic violence or child abuse are hoping locally-elected legislators can help solve the problem.

On Thursday, locally-elected Florida state representatives and senators who represent all or part of Polk County got to hear about the problem.

William Dunn of Lakeland, part of the Florida chapter of Fathers Supporting Fathers, said he ran into a problem in 2006: The Department of Children and Families believed accusations that he had abused his daughter and took her away from him for 11 months.

In June 2007, DCF held a hearing to revoke Dunn's parental rights, but the girl changed her story on the first day on the hearing, saying she hadn't been abused.

She was returned to Dunn, but since then, he said his life has been a shambles and both he and his daughter have suffered medically from the stress.

He said DCF has not wanted to help him clear his name despite now knowing that the accusations were false.

Although legislators did not want to debate what should be done to solve the problem, they heard quite a bit from other petitioners.

James Petruska of Hernando Country said he lost his daughter, his \$300,000 home, and his \$150,000 business as a result of a false domestic violation injunction made by his ex-wife. Although it has since been found to be false, he said he has been unable to regain what he lost, especially his daughter.

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He has approached Senator Ronda Storms (R-Valrico) with the issue. Her district -- District 10 -- covers Hernando County and part of Polk County.

Erik Romerhaus, with the SAVE (Stop Abuse of Violent Environments) Coalition in Washington, D.C., told the delegation that when the Violence Against Women Act passed in 1994, it was to protect women and men who were victims of domestic violence. Each state interprets it differently.

"Now the pendulum has swung a bit too far," he said.

Tom Lemons of Spring Hill, who runs falsedvireports.com, said 80 percent of those injunctions are thrown out and used as a tactic in child custody cases.

He also alleged that the attorneys are the ones pushing the tactic, because it gives such a strong advantage.

If a woman makes a false claim of domestic violence, it can speed up the divorce process, Romerhaus said, so there is incentive to use it as a legal tactic, but it can drive the children out of the target parent's life permanently.

In many cases, Romerhaus said, there is no due process for that accusation. Even if someone is innocent of the accusation, "you can kiss your kids goodbye."

"I don't blame the local judges as much as the federal law," Clemons said. "Prosecutors are not filing cases on clear false allegations."

When asked if she would be in favor of refining the statutes to provide some relief, Storms, a member of the Florida Bar, said that if someone is innocent, he deserves to have his name cleared and be with his children.

She would also like Romerhaus and others to work with domestic violence victims' advocates to find out where they can agree on legal language that would help move the process forward.

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Senator JD Alexander (R-Lake Wales) expressed empathy for the men who spoke, and encouraged them to continue to seek a solution within the legal system.

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The Florida Senate

Interim Report 2011-127

January 2011

Committee on Judiciary

REVIEW THE PROCEDURES AND STANDARDS FOR SECURING PROTECTIVE INJUNCTIONS

Issue Description

The Florida Statutes authorize distinct types of orders of protection against violence, including injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence. An injunction is secured through a civil proceeding governed by the Florida Family Law Rules of Procedure. For example, some of the elements in the process for securing a domestic violence injunction include: filing a sworn petition that alleges the existence of domestic violence and includes specific facts upon which relief is sought; an ex parte review by a judge; potential awarding of a temporary injunction; the scheduling of a return hearing; personal service on the respondent with a copy of the petition; and issuance or denial of a final injunction.

Although in general the orders play an important role in helping to protect individuals from harm, legal scholarship notes that misuse of orders of protection against violence does occur through the filing of false petitions. For example, an abuser may file a false petition against his or her victim, perhaps to intimidate the victim or exclude the victim from a shared residence. In other cases, a person who is not truly a victim of violence, or who does not have reasonable cause to believe that he or she is in imminent danger of becoming a victim of violence, may file a petition in order to harass the respondent or to gain an advantage over the respondent in a related family law matter, such as a divorce or child custody proceeding. Misuse of the process can thwart the public-safety purposes underlying the injunctions and can result in inefficiencies and costs for the state courts system.

This report reviews the current procedures and standards governing the award of injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence, in an effort to identify the extent to which misuse of the process is occurring, or may occur, and to identify enhancements to the statutory and court-rule framework.

Background

An injunction for protection is a civil order that provides protection from abuse by certain people. An injunction can order the abuser to do certain things (such as moving out of the house) or not do certain things (such as contacting someone), or it can give the victim certain rights (such as temporary custody of any children).¹ In the 1970s, states began creating laws to help stop domestic violence and provide relief to victims. Today all 50 states have laws providing for domestic violence injunctions,² and many states also protect against dating violence, sexual violence, repeat violence, and stalking. In 1979, the Florida Legislature created a cause of action for an injunction for protection against domestic violence, and starting in 1988 it also created separate causes of action for an injunction for protection against repeat violence, sexual violence, or dating violence.³

¹ WomensLaw.org, *Know the Laws (Florida): Injunctions for Protection Against Domestic Violence* (Feb. 3, 2010), http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL (last visited Dec. 14, 2010).

² David H. Taylor et al., *Ex Parte Domestic Violence Orders of Protection: How Easing Access to Judicial Process Has Eased the Possibility for Abuse of the Process*, 18 KAN. J.L. & PUB. POL'Y 83, 84 (Fall 2008) (citing Catherine F. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (Summer 1993)).

³ See chs. 79-402, s. 1, and 88-344, s. 1, Laws of Fla.

Injunction for Protection against Domestic Violence

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.⁴ In Florida, 113,123 incidents of domestic violence were reported in 2008, 1.8 percent fewer than reported in 2007.⁵

Under Florida's legal framework, a victim of domestic violence,⁶ or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, may seek injunctive relief.⁷ In seeking a protective injunction, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.⁸ The court must set a hearing at the earliest possible time after a petition is filed.⁹ The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.¹⁰

The court may grant a temporary ex parte injunction if it finds that there is an immediate and present danger of domestic violence. When issuing a temporary injunction, the court must rely solely on the four corners of the petition and may not consider other evidence, unless the respondent has been given reasonable notice of the hearing. If the court denies a temporary injunction because there was no finding of immediate danger, the court must schedule a follow-up hearing at the earliest possible time. There are statutory criteria that a court must consider when determining whether a petitioner is in "imminent danger" of becoming a victim of domestic violence.¹¹ If a temporary injunction is granted, it is effective for a period of 15 days, in which time a full hearing must be held. Either party may move the court to modify or dissolve an injunction at any time.¹²

Section 741.31, F.S., provides that it is a first-degree misdemeanor¹³ for a person willfully to violate an injunction for protection against domestic violence. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation.¹⁴ Any person who suffers as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages, including costs and attorney's fees, for the injury or loss suffered.¹⁵

⁴ Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), available at http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Dec. 14, 2010) (citing statistics from Legal Momentum, an advocacy and research organization based in New York, N.Y.); see also Nat'l Coalition Against Domestic Violence, *Domestic Violence Facts*, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Dec. 14, 2010).

⁵ Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Dec. 14, 2010).

⁶ Domestic violence is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28(2), F.S.

⁷ Section 741.30(1), F.S.

⁸ Section 741.30(3), F.S.

⁹ Section 741.30(4), F.S.

¹⁰ *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

¹¹ Section 741.30(6)(b), F.S.

¹² Section 741.30(10), F.S.

¹³ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding \$1,000, or both. See ss. 775.082(4) and 775.083(1), F.S.

¹⁴ Section 741.30(9), F.S.

¹⁵ Section 741.31(6), F.S.

Injunctions for Protection against Repeat Violence, Sexual Violence, or Dating Violence

Data from the National Women's Study and the National Violence Against Women Survey indicate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.¹⁶ Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that the estimated number of adult women in Florida who have ever been raped is nearly 713,000.¹⁷

Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.¹⁸

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,¹⁹ dating violence,²⁰ and sexual violence.²¹ The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.²²
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.²³
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction, which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.²⁴
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.²⁵
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.²⁶

¹⁶ Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State, One in Nine*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), available at http://www.doh.state.fl.us/Family/svpp/planning/Rape_in_Florida.pdf (last visited Dec. 14, 2010).

¹⁷ *Id.* at 2.

¹⁸ American Bar Association, *Teen Dating Violence Facts* (2006), <http://www.abanet.org/unmet/teendating/facts.pdf> (last visited Dec. 14, 2010).

¹⁹ Section 784.046(1)(b), F.S., defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member."

²⁰ Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

²¹ Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

²² Section 784.046(4), F.S.

²³ Section 784.046(5), F.S.

²⁴ Section 784.046(6), F.S.

²⁵ Section 784.046(9), F.S.

²⁶ Section 784.046(10), F.S.

There are statutory provisions governing enforcement and what constitutes a violation of these injunctions, similar to those governing a domestic violence injunction.²⁷

Statistics on Protective Injunctions and Filings

One report found that approximately 600,000 to 700,000 permanent protection orders are entered each year into the registry of restraining orders within the National Crime Information Center (NCIC) of the Federal Bureau of Investigation.²⁸ However, the actual number of permanent protection orders entered each year may be higher due to the fact that many jurisdictions do not contribute to the NCIC protection order file.²⁹

According to statistics from the Florida Office of the State Courts Administrator, in recent years the annual number of domestic violence case filings, which includes domestic violence, repeat violence, sexual violence, and dating violence, has ranged from 88,259 to 96,113, with no consistent pattern of increase or decrease. (See the table below.) There were 92,924 domestic violence case filings during the 2008-2009 fiscal year, which was more filings than any other circuit family court category that same year.³⁰ Of that number, 31,201 of the filings were specifically related to repeat violence petitions.³¹

Case Type	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Simplified Dissolution	5,185	5,092	5,264	5,542	n/a
Dissolution	92,015	91,860	88,297	82,597	n/a
Child Support	34,790	34,100	35,966	37,111	n/a
Other Domestic Relations	45,500	40,035	40,509	40,611	n/a
Domestic Violence	95,785	96,113	95,936	92,924	88,259
Juvenile Delinquency	74,187	72,462	70,284	64,585	n/a
Juvenile Dependency	18,006	16,823	14,221	12,484	n/a

Potential Misuse of the Protective Injunction Process

Although data shows the need for and benefit of protective injunctions, legal scholarship notes that misuse of orders of protection against violence does occur through the filing of false petitions. For example, an abuser may precede a victim to the courthouse and obtain an ex parte protective injunction, which leads to the actual victim being removed from the home and unable to see his or her children. This scenario is illustrated in a Missouri case in which, after a year of a tumultuous marriage, the battering husband obtained an ex parte order for protection that prohibited his wife from entering or staying in their apartment. Additionally, the husband signed a power of attorney authorizing his parents to make decisions on behalf of the couple's child. After a routine visit, the wife tried to keep the child, and the paternal grandparents called the police. Although the order of protection did not

²⁷ See s. 784.047, F.S.

²⁸ Respecting Accuracy in Domestic Abuse Reporting, *Without Restraint: The Use and Abuse of Domestic Restraining Orders*, 8 (2008), available at <http://www.mediaradar.org/docs/RADARreport-VAWA-Restraining-Orders.pdf> (last visited Dec. 14, 2010).

²⁹ *Id.*; see also Sexual Violence Justice Inst., *Enforcement of Protection Orders Across State Lines*, available at http://www.mncasa.org/documents/svji_fact_sheets/Full%20Faith%20and%20Credit%20for%20Protection%20Orders.pdf (last visited Dec. 14, 2010).

³⁰ Office of the State Courts Adm'r, *Florida's Trial Court Statistical Reference Guide, FY 2008-09*, 6-2 (Jan. 2010), available at http://www.flcourts.org/gen_public/stats/reference_guide08_09.shtml (last visited Sept. 4, 2010).

³¹ *Id.*

address custody, the police ordered the wife to return the child to the grandparents. Having no job, no car, and no house, the wife moved to Florida to live with her mother. After the husband was incarcerated for unrelated issues, the wife attempted to obtain custody of the child. However, the court awarded custody to the paternal grandparents since the child had been living with them as primary caregivers. Essentially, by being the first person to the courthouse for an injunction, the abuser in this situation managed to exclude his wife from the home and make it difficult for her to visit their child.³²

Additionally, misuse of the process can occur when a person files a petition to accomplish something outside the scope of the protective injunction statutes. For example, potential areas of misuse could involve a party filing a petition to gain an advantage in a related family law matter, neighbors filing a petition for repeat violence to harass each other, or landlords filing a petition as a means to evict a tenant. When misuse occurs, it not only damages the credibility the protective injunction process, to the detriment of true victims of abuse, but it also wastes judicial resources, as well as the time of law enforcement, prosecutors, and advocates for victims of domestic violence.³³

Findings and/or Conclusions

Securing Injunctions in Practice

The Legislature has created separate causes of action for an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence.³⁴ The Florida Supreme Court has promulgated forms under the Florida Family Law Rules of Procedure for use in petitioning for an injunction. The petition for securing an injunction for protection against domestic violence, for example, is nine pages and has seven sections. The petition requires certain personal information about the petitioner and the respondent, along with any case history and the reason for the injunction. The petitioner is asked to describe any other court case that is pending currently or that happened in the past between the petitioner and respondent. The petition provides a list of reasons for the petitioner to check for why he or she is a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. The petition also provides a narrative section for the petitioner to describe the latest act or threat of violence. Finally, the petition includes sections regarding use and possession of the home, temporary time-sharing, and temporary financial support. The petitioner must sign the petition under penalty of perjury in front of a notary public or the clerk of the court.

Attached to the petition for an injunction for protection are instructions related to filling out the petition. The instructions explain when the form should be used, what happens if the judge grants or denies the petition, and where the petitioner can go for more information. The instructions also provide additional information on whether a Uniform Child Custody Jurisdiction and Enforcement Act affidavit, family law financial affidavit, or child support guidelines worksheet is needed.

During the 2002 Regular Session, the Legislature amended s. 741.30, F.S., to eliminate the requirement of a filing fee for a petition for protection against domestic violence.³⁵ A year later, the Legislature also prohibited the clerk of the court from charging a filing fee for a petition for protection against repeat violence, sexual violence, or dating violence.³⁶

After a petition is filed, the clerk of court provides it to the judge for a determination of whether an ex parte temporary injunction should be granted. In some cases, the petition is accompanied by additional information, such as criminal reports or information related to other cases involving the petitioner and respondent, which may be gathered by a case manager. Even if additional information is presented to the judge, the judge must rely solely on the four corners of the petition to determine whether or not to grant a temporary injunction, unless the

³² Nina W. Tarr, *The Cost to Children When Batterers Misuse Order for Protection Statutes in Child Custody Cases*, 13 S. CAL. REV. L. & WOMEN'S STUD. 35, 48-50 (Fall 2003).

³³ See *id.* at 38.

³⁴ See ss. 741.30(1) and 784.046(2), F.S.

³⁵ Chapter 2002-55, s. 12, Laws of Fla.

³⁶ Chapter 2003-117, s. 2, Laws of Fla.

respondent appears at the hearing or has received reasonable notice of it.³⁷ If the court issues a temporary injunction, pending a full hearing within 15 days, it may enter relief as it deems proper, including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner; or
- Providing the petitioner a temporary parenting plan, including a time-sharing schedule.³⁸

Within 15 days, unless an extension has been obtained, the court must hold a full hearing on the injunction. For example, in Leon county full hearings are held two days a week on Mondays and Thursdays. Each case is heard separately in front of the judge, and the petitioners and respondents wait outside the courtroom with a bailiff until their case is called. If the petition is granted, the respondent must wait in the courtroom while the petitioner leaves and, regardless of the outcome, both parties are given the final order prior to leaving.

Concerns with the Injunction Process

A recent national study that examined different perspectives on civil protection orders in domestic violence cases found that protective orders do work and make victims feel safer for the time the orders are in place. Specifically, 50 percent of victims experienced no violations of the protection order during a six-month follow-up period, and, for those victims who experienced violations, the violence was significantly reduced.³⁹ Also according to the study, Kentucky saved approximately \$85 million over a one-year period because of declines in violence.⁴⁰

Despite the benefits of protective injunctions, legal scholarship and anecdotal information indicate that misuse of the system may be occurring, which may affect persons falsely accused of violence, victims of violence when abusers use the process against them, and victims of violence generally if the credibility of the injunction process is harmed. In 1995, the Massachusetts Trial Court reviewed domestic violence injunctions issued in the state and found that less than half of the orders involved an allegation of violence.⁴¹ More recently, Campbell County, West Virginia, completed an analysis of domestic violence injunctions issued in 2006 and concluded that 81 percent were unnecessary or false.⁴²

Research for this interim report did not find a comparable analysis of protective injunctions in Florida. However, Senate professional staff sent a questionnaire to all 20 judicial circuits, as well as the circuit and county conferences, to solicit input from judges who work with the domestic violence docket to gauge their experiences with the standards and procedures for obtaining an injunction for protection. The majority of responses indicated that judges believe that misuse of the system occurs frequently, primarily in the area of repeat violence or in domestic violence in order to gain an advantage in a family law matter. In particular, 14 out of 33 survey respondents suggested that the greatest misuse of the system is in repeat violence cases. One judge estimated that, at least in his circuit, 30 to 40 percent of repeat violence petitions have no merit. Some examples cited by judges of situations in which repeat violence is alleged are:

- Feuding neighbors filing petitions against each other;
- Issues of possible trespass;
- Residents of condominium associations filing against each other;
- Filings by former boyfriends and girlfriends against one another, or filings by a person's current boyfriend or girlfriend against the person's former boyfriend or girlfriend; and
- Landlords filing against tenants to avoid the lawful eviction process.

³⁷ Section 741.30(5)(b), F.S.

³⁸ Section 741.30(5)(a), F.S.

³⁹ Nikki Hawkins, Nat'l Institute of Justice, *Perspectives on Civil Protective Orders in Domestic Violence Cases: The Rural and Urban Divide*, NIJ Journal No. 266 (June 2010), available at <http://www.ojp.usdoj.gov/nij/journals/266/perspectives.htm> (last visited Sept. 15, 2010).

⁴⁰ *Id.*

⁴¹ Respecting Accuracy in Domestic Abuse Reporting, *supra* note 28, at 9.

⁴² *Id.*

Additionally, many judges cited examples of domestic violence injunctions being used to address issues that should be addressed in family court. For example, one judge commented that:

The domestic violence injunctive process is also being used as a means of dealing with acrimony caused by the inability of parties to resolve issues concerning time sharing, support and other issues which should be addressed in Family Court. Many of the litigants I see in Domestic Violence Court indicate that they cannot or have not been able to file a dissolution action because they cannot afford the filing fee. Failure to file the action and thus settle their affairs often leaves these issues, which are generally highly emotional to begin with, unresolved. In other situations, the parties have filed a dissolution action but cannot get a hearing quickly enough to resolve the issues. The volatility caused by the inability to resolve these issues expeditiously often escalates to violence. Domestic Violence Court then becomes a viable avenue for these litigants to address issues that should really have been addressed in Family Court.

One judge noted that petitioners often use the injunction process to enforce child support or time-sharing issues. For example, one judge stated: “I have also seen, not infrequently, where ex parte injunctions are obtained on the eve of, or commensurate with, the filing of a petition to dissolve a marriage with the intent [to] get a ‘jump’ on issues involving children or exclusive use of a marital residence. It is also unfortunately not uncommon where the ex parte injunction process is used to circumvent or vary existing court orders in dissolution or paternity cases pertaining to minor children.”

The extent to which the court should address collateral issues and for what period of time is a potential challenge for judges in the case of legitimate petition filings as well. In awarding a domestic violence injunction, a judge may feel it is necessary also to address support or time-sharing issues related to any minor children of the petitioner and respondent, at least in a preliminary fashion. However, because these issues have been addressed as part of the protective injunction process, the parties may not have an incentive to pursue proceedings through the traditional family court docket, which is the more appropriate forum for addressing these matters in a long-term and comprehensive fashion.

Although the majority of respondents to the questionnaire stated that there is significant misuse of the current system, some felt that the misuse was not necessarily intentional, but rather reflected a lack of understanding by petitioners – most of them pro se⁴³ – as to what is legally required for an order for protection. Suggestions for addressing this issue included: rewriting the petitions using simple, understandable wording; providing additional explanations and definitions on the petitions; having the instructions and petitions available in multiple languages; and using intake officers to help petitioners fill out the petition accurately. A few of the respondents suggested providing education to the public as well as to law enforcement and other agencies, such as the Department of Children and Families, on when an order for protection is the correct course of conduct. Comparably, advocates on behalf of victims of domestic violence interviewed for this report stressed additional education for judges hearing protective injunction cases.

Some other recommendations from the judicial community to help curb misuse of the system are to put time limits on certain provisions in an injunction, such as the time-sharing or child support issues, in order to motivate litigants to raise those issues in family court; to follow through with swift prosecution of petitioners found to have lied in a petition; to amend the statute to authorize the judge to consider evidence beyond the pleadings when determining whether to grant a temporary ex parte injunction; to revise the injunction process in ch. 39, F.S., so that petitions alleging child abuse are brought in family court, where the Department of Children and Families can investigate and a guardian ad litem can be appointed, rather than in domestic violence court; and to create a separate injunction for stalking and impose a filing fee for repeat violence petitions. Of all the recommendations provided by judges throughout the state, the overwhelming suggestion was to institute a filing fee or sanctions in all protective injunction cases.

⁴³ A pro se petitioner is one without representation by an attorney. See BLACK'S LAW DICTIONARY (9th ed. 2009).

Violence Against Women Act; Filing Fee Limitations

The policy recommendation of imposing a filing fee or sanctions for misuse of the system may have fiscal consequences for the state because of funding conditions under the federal Violence Against Women Act (VAWA). The U.S. Department of Justice describes VAWA as a comprehensive policy “designed to improve criminal justice responses to domestic violence, sexual assault, and stalking to increase the availability of services for victims of these crimes.”⁴⁴

In addition to creating an approach to help end violence against women, VAWA authorizes grant programs. In order for a state to receive funding under VAWA, the state must certify that it does not require a victim of domestic violence, stalking, or sexual assault to bear “the costs associated with the filing, issuance, registration, or service of a . . . protection order [or] petition for a protection order.”⁴⁵ States applying for VAWA funding had to be in compliance with the new law by the end of 2003. According to the federal Office on Violence Against Women, charging victims (the petitioner) a filing fee and then offering a fee waiver based on indigent status or providing reimbursement for legitimate petitions is not allowed.⁴⁶ However, a state may charge the petitioner a fee if the court finds that the person was not a victim of domestic violence, sexual assault, or stalking.⁴⁷

During fiscal year 2009, 22 programs in Florida received funding from the Office on Violence Against Women, totaling more than \$18 million in grant funding.⁴⁸ Although a common suggestion for curbing misuse of the protective order process has been to institute a filing fee, if the Legislature chooses to do so Florida may be at risk for losing millions of dollars in federal funding from VAWA. However, it appears based on a review of VAWA guidelines that the Legislature may authorize court-imposed sanctions for frivolous petitions or institute a filing fee for repeat violence petitions, as long as petitioners do not have to pay a fee to file a petition for stalking.

Repeat Violence as an Area of Concern

As mentioned previously in this report, many judges reported that the most misused injunction is the repeat violence injunction. According to the Office of the State Courts Administrator, approximately 58 percent of petitions for repeat violence are dismissed.⁴⁹

The Legislature in 1988 created the cause of action for an injunction for protection for repeat violence, which is codified in s. 784.046, F.S.⁵⁰ The Legislature has amended the statute multiple times, including in 1995, when it included stalking in the definition of repeat violence, and in 2002 and 2003, when it added causes of action for an injunction for protection in cases of dating and sexual violence to s. 784.046, F.S.⁵¹ Repeat violence is defined in statute as “two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.”⁵²

Many of the respondents to the questionnaire from Senate professional staff opined that instituting a filing fee – especially in repeat violence situations – may cut down on the misuse of the protective order process. However, as discussed previously, instituting a filing fee for all protective orders may jeopardize federal funding under VAWA. In response to federal funding concerns, several judges, as well as other professionals interviewed for

⁴⁴ Office on Violence Against Women Act, Dep’t of Justice, *The Facts about the Violence Against Women Act*, available at <http://www.ovw.usdoj.gov/docs/vawa.pdf> (last visited Sept. 21, 2010).

⁴⁵ 42 U.S.C. s. 3796gg-5(a).

⁴⁶ Office on Violence Against Women Act, Dep’t of Justice, *Frequently Asked Questions on the VAWA 2000 Requirement Regarding Costs for Criminal Charges and Protection Orders*, <http://www.ovw.usdoj.gov/faqvawa2000.htm> (last visited Sept. 22, 2010).

⁴⁷ *Id.*

⁴⁸ Office on Violence Against Women Act, Dep’t of Justice, *FY 2009 Office on Violence Against Women Grant Awards by State*, <http://www.ovw.usdoj.gov/grant2009.htm> (last visited Sept. 22, 2010).

⁴⁹ Conversation with staff from the Office of the State Courts Adm’r (Aug. 3, 2010).

⁵⁰ Ch. 88-344, s. 1, Laws of Fla.

⁵¹ See chs. 95-195, s. 13; 2002-55, s. 21; and 2003-117, s. 2, Laws of Fla.

⁵² Section 784.046(1), F.S.

this report, suggested removing stalking from repeat violence and creating new statutory criteria for stalking and then charging a filing fee for repeat violence petitions. Under VAWA, a state may not charge a fee in connection with the filing of a protection order, or a petition for a protection order, for domestic violence, stalking, or sexual assault.⁵³ Accordingly, a critical step in charging a filing fee for a repeat violence protection order would be to separate stalking from the definition of repeat violence in order to be in compliance with federal law.

During the 2009 Regular Session, HB 5117 attempted to institute a filing fee for repeat violence. The bill amended s. 28.241, F.S., relating to filing fees for trial and appellate proceedings, and provided that the person instituting an action for an injunction against repeat violence shall pay a \$200 filing fee to the clerk of the court.⁵⁴ The Office of the State Courts Administrator estimated that, for fiscal year 2009-10, a \$200 filing fee for petitions for repeat violence injunctions would have generated approximately \$1.6 million to \$2.7 million.⁵⁵ However, this provision was removed from HB 5117 before it passed the House of Representatives.

In addition to removing stalking from repeat violence, the Legislature may also need to consider amending the definition of “violence” under s. 784.046, F.S., in order not to jeopardize federal funding under VAWA. Section 784.046(1), F.S., defines “violence” as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.” This definition of violence is incorporated into the definition of “repeat violence.”⁵⁶ According to the Office on Violence Against Women, jurisdictions may charge a fee for a repeat violence protection order as long as the applicant is not a victim of domestic violence, sexual assault, or stalking.⁵⁷ Although Florida has a separate cause of action for a protective order for sexual violence, it is unclear whether the current definition of repeat violence would jeopardize Florida’s federal funding from VAWA. However, according to one judge, the definition of repeat violence may not need to be changed because Florida has a separate cause of action for a protective injunction for sexual assault.⁵⁸ Accordingly, because victims of sexual assault by family or household members can file for a domestic violence or sexual assault injunction, and victims of sexual assault by a stranger can file for a sexual assault injunction, the fact that sexual assault is encompassed in the definition of repeat violence may not be of significance.

Education, Training, and Intake Assistance

Judges and advocates on behalf of domestic violence victims also recommended training for all parties involved in cases related to protective injunctions. Representatives of the legal community that serve victims of domestic violence stress the importance of judicial education. For example, many domestic violence advocates mentioned that it would be beneficial for judges to understand the characteristics and perspective of a domestic violence victim. Having that knowledge may help judges understand why victims respond in certain ways, such as voluntarily dismissing his or her case.

Almost all of the judges responding to the questionnaire sent by professional staff of the Judiciary Committee stated that aside from Florida Judicial College, which provides a total of 3.5 hours of education on the topic of protective injunctions, there is no required training for judges related to protective injunctions. All judges do receive Florida’s Domestic Violence Benchbook, which was developed by the Office of the State Courts Administrator (OSCA) “to address the highly litigated legal issues in domestic violence cases.”⁵⁹

⁵³ 42 U.S.C. s. 3796gg-5(a).

⁵⁴ See HB 5117 (2009 Reg. Session), available at http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h5117_.xml&DocumentType=Bill&BillNumber=5117&Session=2009 (last visited Sept. 27, 1010).

⁵⁵ Office of the State Courts Adm’r, *Repeat Violence Filing Fee/Court Cost* (on file with the Senate Committee on Judiciary).

⁵⁶ See s. 784.046(1)(b), F.S. (repeat violence means two incidents of violence or stalking).

⁵⁷ *Frequently Asked Questions on the VAWA 2000 Requirement Regarding Costs for Criminal Charges and Protection Orders*, *supra* note 46.

⁵⁸ E-mail from Judge Carroll Kelly, Administrative Judge, Domestic Violence Division, to Professional Staff of the Senate Committee on Judiciary (Sept. 24, 2010) (on file with the Senate Committee on Judiciary).

⁵⁹ Office of the State Courts Adm’r, *Florida’s Domestic Violence Benchbook*, 3 (Sept. 2008), available at [http://www.flcourts.org/gen_public/family/bin/DV%20bench%20book%202008\(try%20\).pdf](http://www.flcourts.org/gen_public/family/bin/DV%20bench%20book%202008(try%20).pdf) (last visited Sept. 17).

The Office of Court Improvement (OCI) within OSCA develops programs to improve Florida's courts. One of the newest programs created by OCI is the domestic violence online training site. The program "is designed to introduce judges and court staff to issues and challenges that typically arise in civil domestic violence cases. . . . This training program presents video scenarios and pertinent documents related to pro se parties engaged in a civil domestic violence injunction case."⁶⁰ According to OCI, more than 160 judges have used this free interactive program since it was introduced a year and a half ago.⁶¹ The OCI also intends to implement a test at the end of the training program to assess how much information the person using the program is absorbing.⁶² However, all training offered to judges through OCI is discretionary.

In addition to judicial education, it may be beneficial to have education available for state agency personnel as well as the public in general. For example, providing additional instructions and definitions on the petitions for a protective injunction may help petitioners complete the petition more accurately. Additionally, having separate intake counselors or advocates who can assist petitioners in filling out the forms and advise them of the requirements under the law may help ensure that judges receive specific and legible petitions. One judge suggested that the petition should direct the parties to be more specific about the elements that need to be alleged under the law because often petitioners write too much information, much of which is not pertinent to the injunction. Another judge stated that "[a]ny additional failure in the process when filing the petition is generally due to the lack of detail contained in the recitation of the facts supporting the petition. This issue can be addressed through appropriate training of those charged with processing the petitions before review." Other suggestions included providing the petitions in multiple languages, offering an informational video to petitioners before they apply for an injunction, and promoting continued education of law enforcement⁶³ and the Department of Children and Families on the proper legal basis for obtaining an injunction.

Operational Factors Affecting Injunction Workload

A procedural element to the protective injunction process that may be increasing judicial workload relates to the initial denial of an injunction at the ex-parte stage. The statute provides that, if the only ground for denial of a domestic violence injunction is no appearance of an immediate and present danger of domestic violence, the court *shall* set a hearing on the petition at the earliest possible time.⁶⁴ The statute does not explicitly authorize the petitioner to decline the return hearing. In cases of legitimate danger, the petitioner may prefer to decline the return hearing rather than risk having the respondent be served with notice of the hearing when there is no protective injunction in place. Additionally, there may be instances in which a person who files a petition that is not meritorious would, upon reflection, accept the decision and voluntarily decline the hearing. Explicitly providing for a decline of the return hearing may help petitioners avoid risk of physical harm or may save resources expended in scheduling and planning hearings that arguably are not necessary.

Frustrations with the injunction process may arise from challenges in contacting a person who secures a protective injunction when further court proceedings are necessary. When a petition is granted, it is important that the clerk of court be able to contact the petitioner if the respondent moves at a future date to have the injunction dissolved or its terms modified. Some practitioners noted that the process is complicated when the petitioner has relocated following the award of the original injunction but has not notified the clerk of his or her new address.

⁶⁰ Florida State Courts, *Domestic Violence – Online Training*, <http://virtualcourt.flcourts.org/> (last visited Oct. 18, 2010).

⁶¹ Conversation with Rose Patterson, Chief of Court Improvement, Office of Court Improvement (Sept. 2, 2010).

⁶² *Id.*

⁶³ Some practitioners who provided information for this report raised concerns that in some cases law enforcement officers may be inappropriately directing individuals to the protective injunction process. Representatives of law enforcement noted that officers currently receive training under a statute that requires "uniform statewide policies and procedures to be incorporated into required courses of basic law enforcement training and continuing education." Section 943.1701, F.S. Among the required elements are techniques for handling domestic violence disputes and legal rights and remedies available to victims. See *id.* Law enforcement officers are required by statute to provide victims of domestic violence and dating violence immediate notice of the legal rights and remedies available on a standard form developed and distributed by the Department of Law Enforcement. Sections 741.29(1) and 784.046(11), F.S.

⁶⁴ Section 741.30(5)(b), F.S.

Child Abuse Injunctions

The Florida Statutes prescribe a specific process for obtaining an injunction against child abuse. Under s. 39.504, F.S., the court may issue an injunction to prevent child abuse upon the request of certain entities at any time after a protective investigation has been initiated. The parties must be provided notice unless the child is found to be in imminent danger. If that is the case, a judge may issue an emergency injunction; however the court must hold a hearing on the next business day to dissolve the emergency injunction or to continue or modify it.⁶⁵ When issuing an injunction, the court can order the alleged offender to:

- Refrain from further abuse;
- Participate in a specialized treatment program;
- Limit contact or communication with the child;
- Refrain from contacting the child;
- Have limited or supervised visitation with the child;
- Pay temporary support or the costs of medical, psychiatric, and psychological treatment for the child or other family members; or
- Vacate the home in which the child resides.⁶⁶

The petitioner, respondent, or caregiver may move to modify or dissolve the injunction at any time. The injunction remains in effect until dissolved or modified by the court.

Several practitioners with whom Senate professional staff spoke suggested that a possible area for improvement – which may help with the judicial workload on the domestic violence docket – is the ch. 39, F.S., injunction process. According to some practitioners, often in child abuse situations the Department of Children and Families (DCF) may suggest to the non-abusing parent that he or she needs to file a domestic violence injunction against the abuser on behalf of the child. However, a ch. 39, F.S., injunction is usually more appropriate because DCF can provide services to the family, a guardian ad litem (GAL) is appointed, and reunification is often the goal. In contrast, with a traditional domestic violence injunction, no contact is allowed at all by the abuser, a GAL is not appointed to speak on behalf of the child, and DCF does not have to stay involved in the case. Additionally, according to one judge, the parent filing for the domestic violence injunction will often tell the court that he or she does not actually want the injunction but filed for it out of fear that DCF would take away the children otherwise. In situations like this, the petitioner will most likely not enforce the injunction, and the children may still be at risk.

Practitioners with whom Senate professional staff spoke offered two areas of concern that may explain why the injunction process in ch. 39, F.S., is not utilized more often. The first concern is the turnaround time for a hearing. Section 39.504(2), F.S., requires the court to hold a hearing the next business day after an emergency injunction is issued. One judge mentioned that it is often impossible to hold a hearing so soon after the emergency injunction is issued. One suggestion for fixing this problem is to increase the time period for holding a full hearing to 15 days from the date of the emergency injunction – similar to a domestic violence injunction.

Another concern that was raised regarding the ch. 39, F.S., injunction is when a court actually has jurisdiction. Section 39.013, F.S., provides that the circuit court has original jurisdiction over all proceedings in ch. 39, F.S. Jurisdiction attaches with the filing of a shelter petition, dependency petition, or termination of parental rights petition. Based on the statutory language, some professionals believe that the court's jurisdiction to issue an injunction does not attach until either a dependency, child abuse, or some other equivalent petition has been filed.

During the 2009 Regular Session, Senate Bill 2288 addressed both of these concerns with the ch. 39, F.S., injunction process. First, the bill amended s. 39.013, F.S., to provide that jurisdiction also attaches when a petition for an injunction issued pursuant to s. 39.504, F.S., is filed. Additionally, the bill amended s. 39.504, F.S., to provide that upon the filing of a petition for injunction, the court must set a hearing at the earliest possible time,

⁶⁵ Section 39.504(2), F.S.

⁶⁶ Section 39.504(3)(a), F.S.

but no later than 15 days after the temporary ex parte injunction is issued. Senate Bill 2288 died in the Senate Committee on Children, Families, and Elder Affairs.

Options and/or Recommendations

Research for this interim report reveals that protective injunctions play an important role in helping to promote the safety of individuals exposed to or at risk of violence. However, the research also reveals potential for the protective injunction process to be misused by some individuals, either through the assertion of false allegations of violence or the seeking of injunctions, particularly injunctions against protection from repeat violence, for civil disputes beyond the scope of the governing statutes. Aside from intentional misuse of the process, the research also reveals judicial frustration with presentation of incomplete or irrelevant information in the filing of potentially legitimate petitions for protection. Based on that research, this review identifies changes that the Legislature and the state courts system could consider making to the protective injunction process in Florida.

In particular, this report recommends the following changes to the current framework to deter misuse of the process and protect true victims of violence:

- Remove stalking from the current repeat violence definition and create a separate cause of action for an injunction for protection against stalking. Additionally, institute a filing fee for the filing of a petition for repeat violence. The Legislature may wish to effectuate this recommendation carefully to ensure that the policy change does not jeopardize grant funding under the Violence Against Women Act, which requires state grant recipients to certify that the state does not require a victim of domestic violence, stalking, or sexual assault to bear the costs associated with the filing of a protection order.
- Amend Florida's child abuse injunction statute to allow jurisdiction to attach without requiring a dependency petition (or other equivalent petition) to be pending and provide that a hearing must be held within 15 days – rather than 24 hours – of a judge issuing an emergency child abuse injunction.

Additionally, to the extent judges are frustrated with the current injunction process, the following are some reforms that may help ensure that legitimate petitions are processed efficiently and that petitions that are not meritorious are discouraged:

- Redesign the petitions to provide additional instructions to petitioners on the proper legal requirements for an injunction and, if resources allow, provide intake counselors or advocates who can assist petitioners in filling out the petitions.
- To the extent resources are available, promote additional opportunities for judicial education.
- Prescribe a time limit for the portions of a domestic violence injunction that should be brought as part of the traditional family court docket. For example, when a judge issues a domestic violence injunction that also orders time-sharing or child support, those portions of the injunction would expire in 90 days in order to direct people into the proper court for those issues.
- Allow a petitioner to decline the return hearing if the court denies his or her ex parte petition solely on the ground that there is no appearance of an immediate and present danger of domestic violence.
- Require a petitioner who is granted a permanent injunction to notify the clerk of court if her or his address changes.