

**Spring 2017 – Newsletter of the NOW Foundation Family Law Ad Hoc**

**Advisory Committee**

Dear Friends,

The purpose of the NOW Foundation Family Law Ad Hoc Advisory Committee

Newsletter is to provide continuing education on family court issues to the general public and supporters of NOW Foundation. The newsletter contains current news and information regarding the ongoing crisis for mothers and children in family courts. As many of our readers are aware, protective parents – primarily mothers – are losing custody of minor children in court proceedings that often ignore evidence of battering or child abuse and grant custody or unsupervised visitation to the abusive parent.

We hope you find the information we share with you of value as you go about your work advocating for women and their children.

**General Information**

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link, <http://now.org/now-foundation/crisis-in-family-courts/>.  There is also a document about [Organizing a Court Watch Party](http://now.org/leaderdoc/organizing-a-court-watch-party/) on the NOW Leaders page on the NOW, Inc. website.

Family Law Advisory Committee Brochure available at this link:  <http://now.org/wp-content/uploads/2015/02/familylawbrochure7-08final.pdf>

**Ohio Supreme Court Issues Bench Guide Regarding Child Custody and Visitation Issues in Cases Involving Domestic Violence**

The Supreme Court of Ohio recently announced the availability of a guide that seeks to help courts craft child custody and parenting time orders that maximize family safety and appropriately consider potentially dangerous risk factors. It also ties evidence of domestic violence to the traditional statutory “best interest of the child” factors that must be considered in all child custody and visitation determinations.

The Supreme Court’s Domestic Violence Program prepared the guide in collaboration with its Advisory Committee on Domestic Violence, the Center for Court Innovation, and the Battered Women’s Justice Project. Mike Smalz of NOW Family Law Committee served on the Advisory Committee that was primarily responsible for drafting this bench guide.

The guide consists of three parts:

**Evidence-Based Lethality or Risk Factors**: How do dangerousness factors impact the allocation of parental rights and responsibilities?

**Statutory Best Interest Factors**: How do domestic violence acts relate to the statutory best interest factors?

**Parenting Plan Continuum**: How should the presence of domestic violence impact the allocation of parental rights and responsibilities and enforcement of the parenting time arrangements?

This bench guide is not exhaustive and is not designed to be a substitute for the court’s discretion in determining the credibility of allegations and the weight of each best interest factor. However, the guide highlights the need for courts to consider the “nature, frequency, and severity of the violence” in determining custody and visitation issues.

Ohio judges, magistrates, court administrators, and court personnel working in domestic relations and juvenile courts have received copies of the bench guide. Many attorneys have also requested downloaded copies of the guide from the Ohio Supreme Court’s website.

Any interested persons may view, download and/or print out the guide by going to: <https://www.supremecourt.ohio.gov/JCS/domesticViolence/publications/DVAllocationParentalRights.pdf>.

Judges, attorneys and advocates from other states have praised the Ohio guide and expressed interest in pushing their states to provide similar guidance to their local Family Court judges and magistrates. In short, the Ohio bench guide may inspire similar efforts in other states and help to educate judges and magistrates nationwide about the relevance of domestic violence to child custody and visitation determinations.

Additionally, the Advisory Committee has compiled a list of bench guides from various states that can be found on the NOW Foundation webpage, Crisis in Family Courts.

**Oakland County, Michigan, Case Update**

In the Oakland County *Tsimhoni* Case, the Michigan Judicial Tenure Commission (JTC) found that Judge Gorcyca had committed judicial misconduct for the way she treated three minor children during a court hearing. The JTC recommended a 30-day suspension from the bench.

Because only the Supreme Court can punish a judge, it is up to them to accept the JTC recommendations or make a different decision. Judge Gorcyca appealed the JTC finding of misconduct. She had a hearing before the Supreme Court, and it is believed a decision will be made by summer.

The *Tsimhoni* case has been reassigned to Judge Victoria Valentine, a new Judge. Local activists continue to watch this case report.

Links to the story including video of the hearing when the judge sent the children to Children's Village; and to oral argument before the Michigan Supreme Court; and to reporting of Judge Gorcyca Oakland County misconduct case:

<http://courts.mi.gov/Courts/MichiganSupremeCourt/oral-arguments/2016-2017/Pages/152831.aspx> Click on link for oral arguments.

<http://www.detroitnews.com/story/news/local/oakland-county/2017/03/08/gorcyca-case-michigan-supreme-court/98912300/>

<http://www.freep.com/story/news/local/michigan/oakland/2017/03/08/judge-lisa-gorcyca-meltdown/98893450/>

<http://www.freep.com/story/news/local/michigan/oakland/2016/10/10/judge-lisa-gorcyca/91793056/> Reporting on her hearing before the Michigan Tenure Commission. Video of hearing where children were sent to children's village.

<http://detroit.cbslocal.com/video/category/spoken-word-wwjam/3425042-judge-violated-rules-of-conduct-in-child-custody-case-commission-says-audio-excerpt/>

<http://www.freep.com/story/news/local/michigan/oakland/2016/07/01/judge-lisa-gorcyca-guilty-misconduct-child-custody-case/86606918/>

**Important Resources**

**Child custody evaluators’ beliefs about domestic violence abuse allegations: their relationship to evaluator demographics, background, domestic violence knowledge and custody visitation recommendations**

In their study completed on a grant from the National Institute of Justice,\* Saunders, Faller, and Tollman (2012) found of female domestic violence victims engaged in custody disputes that custody evaluators were not likely to believe the women’s allegations of abuse. While Saunders, et al. found that female custody evaluators were more likely than male custody evaluators to believe allegations of abuse by domestic violence victims, overall findings indicated the majority of evaluators had a lack of adequate knowledge base about domestic violence and its impact on children and the victim’s mental health.

Additionally, patriarchal norms influenced the following evaluation outcomes: 1. Recommendation for sole or joint custody to the perpetrator, 2. Recommendations for unsupervised visits. 3. Belief that sole or joint custody to the perpetrator would be in the child’s best interest. 4. Recommendation of unsupervised visitation for the father. 5. Belief that mediation would be helpful (p.11). Saunders, et al. (2012) caution against the use of the junk science term Parent Alienation Syndrome (PAS) to label mothers who are domestic violence victims, and they note that there is a societal mistrust of women. Some of the implications of the findings of this study include intensive training in recognizing and understanding domestic violence, refraining from a tendency of custody evaluators to rely on and misinterpret symptoms of mental health problems, which may in fact be due to the experience of domestic violence, and understanding the importance providing safe visitation for the children.

Reference Saunders, D.G., Faller, K.C., & Tolman, R.M. (2012). U.S. Department of Justice. Child custody evaluators’ beliefs about domestic violence abuse allegations: their relationship to evaluator demographics, background, domestic violence knowledge and custody visitation recommendations.

\*The National Institute of Justice is part of the U.S. Department of Justice (DOJ), but the DOJ states that it is not the publisher the report, nor does the content of the report reflect the positions or policies of the department.

The link to this study, <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>

**Barry Goldstein’s Summary Discussion of the Saunders report:**

Domestic violence author Barry Goldstein J.D. discusses important observations and conclusions of the Saunders’ study in a thoughtful two-part series, The Game Changer, Part I and Using Sanders Report to Protect Children, Part II, which can be found at,

<http://barrygoldstein.net/index.php/important-articles/sanders1>

http://barrygoldstein.net/index.php/important-articles/using-the-saunder-s-report-part-two

Additionally, an excellent resource is *Domestic Violence, Abuse, and Child Custody – Legal Strategies and Policy Issues*, by Mo Therese Hannah, Ph.D. and Barry Goldstein, J.D., available in hardback and paperback from The Civic Research Institute, with a summation of the book at <http://domesticviolenceabuseandchildcustody.com/>

A link to information about the book on The Civic Research Institute’s website is [www.civicresearchinstitute,com/dvac.html](http://www.civicresearchinstitute,com/dvac.html)

**A Call to Action**

Check to see if your state requires that court professionals (guardians ad litem, custody evaluators, etc.) are required to have training in domestic violence. If no such training is required, advocate for such legislation. Oklahoma recently passed such a statute, which you can see at this link: <http://www.oscn.net/applications/oscn/deliverdocument.asp?id=459727&hits=861+860+859+728+727+726+371+370+369+265+264+263>+