



The Domestic **VIOLENCE** *Project*



Josh Ross

By Josh Ross

A grandmother who sought to renew a restraining order against her son was my first client for the Legal Aid Domestic Violence Project (DVP). The son had a history of severe addiction and anger management issues. At the time, he was serving the last months of a prison sentence for arson. Faced with his pending release, my client was terrified and wanted every protection she could get. The son had a violent history, was known to carry weapons and had tried to set fire to my client's house. On his previous parole, the son violated the restraining order by contacting my client unexpectedly. The legal system confused my client and she was afraid of appearing in court. Of course, she was also dis-

traught at the prospect of renewing a restraining order against her son.

Meaningful representation

About three weeks later, at the conclusion of my successful representation, I had a newfound appreciation for the importance of volunteer work with DVP. I have been volunteering with the Project since 2006. It pairs volunteer lawyers with low-income clients seeking representation at contested restraining order hearings.

DVP cases provide the perfect opportunity for litigators — the chance to meaningfully help someone in need of guidance and an unmatched chance to develop trial skills without a long-term commitment. In a typical case, the petitioner has been the victim of domestic violence — often severe abuse — at the hands of a spouse, partner or relative. The petitioner appears at a Family Abuse Prevention Act (FAPA) *ex parte* hearing to request a restraining order. If granted, that order remains in effect for a year. The respondent, once served, is entitled to demand an evidentiary hearing to challenge the order. If that happens, the petitioner must appear for trial to present a case to a judge who will either uphold or vacate the order. I typically take two to three new FAPA matters per year. I have always represented petitioners, vir-

tually all of them abused women and always at the contested hearing stage.

In some ways, these cases are straight forward. The Act itself is not particularly complicated and, regrettably, the abuse can be so appalling and the proof so strong that the case requires relatively little investigation. In Multnomah County, where my cases have been litigated, the docket typically allows for a bench trial lasting no more than 30 minutes. (In many instances the cases are set for longer hearings. My hearings have lasted as little as 30 minutes and as long as six hours.) Because of the practical nature of the cases and the requirements of the Act, FAPAs move quickly. Case assignment through the end of the hearing can take as little as a few days and typically not more than a few weeks. And, Legal Aid makes it pretty simple for volunteers by providing a wealth of resources, such as CLE materials and mentors, to help lawyers get up to speed and figure out those inevitable odd issues that pop up from time to time.

The cases can also be terribly complex. There is frequently a long history of abuse between the parties, and addiction regularly plays a significant role. Witnesses can be difficult to work with and not trustworthy. To complicate matters, children are often involved (and sometimes have been witnesses to the

violence or victims themselves), and the outcome of the FAPA hearing bears on their safety and future, too. Although courts try to carefully steer FAPA proceedings toward the temporary relief contemplated by the law, other issues, such as custody, visitations, property division and pending (or needed) family law actions, often come up.

Working through complexities

For a lawyer who does not otherwise practice family law, trying to understand what implications the FAPA process may have on those parallel or future family law cases is a challenge, as is learning to navigate through a court process that is somewhat different from commercial litigation.

Then there are the emotional aspects of these cases. To put it frankly, these are weighty cases that involve very serious issues that can fundamentally alter the course of a person's life. Win or lose, it is difficult to leave these cases at the office.

No matter how clear cut the case, it cannot be overstated that representing victims of abuse in court provides an immeasurable benefit to those clients. By the time of the contested hearing, the petitioner has already suffered abuse, has bravely decided to seek protection and has taken the steps to appear in court to request the restraining order — typically with little to no assistance. The person is then faced with the task of presenting a full case to a judge, in a completely foreign setting, while the accused abuser stands just feet away prepared to contradict everything that is said. In some circumstances, the abuser requests the hearing simply to further the abuse. Putting the victim through the torment of having to prepare for a face off in court is often just the respondent's attempt at payback. In about half of the cases I've taken, the respondent — although he has demanded the hearing — fails to appear. For the petitioners, having a lawyer guide

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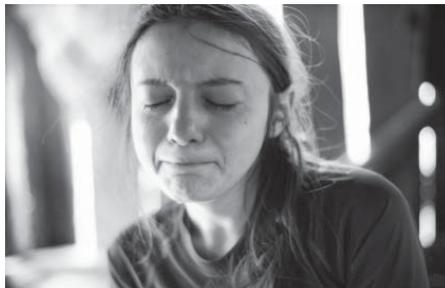
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them through the process and work with them to investigate and prepare is critical. Having someone speak for them in court is vital.

Still, my reasons for volunteering with DVP were not purely altruistic — there are other benefits to volunteering. I initially investigated the opportunity because I wanted more regular court appearances than I was experiencing in my regular practice. I also wanted to learn how to work up a case on my own. The DVP is perfect. Although there are no juries in FAPA hearings, judges tend to run the cases as mini trials with opening statements, examination of witnesses, adherence to rules of evidence and closing arguments. In that sense, each case provides me an opportunity for one more solo venture into court. Even if the case does not go to hearing, which is the default result when the Respondent does not appear, the experience of preparing

cases for trial has been invaluable.

By “trying” FAPA cases, I have learned to work with difficult clients and witnesses and learned how to quickly investigate issues and collect admissible evidence under tight deadlines. For exam-



ple, in a number of my cases, clients have called 9-1-1 or filed police reports regarding the underlying abuse, earlier abuse or both. Figuring out how to obtain copies of those reports, interviewing officers (assuming we can identify them) and evaluating whether to offer the evidence and potential admissibility issues always presents an interesting challenge.

FAPA cases have also helped me learn

how to prepare witnesses and identify and develop themes. For instance, I had one client who, although she had not recently suffered actual physical abuse, drew my attention to a particular threat that the respondent regularly used against her. That threat, and her very real fear of him because of that threat, became a critical theme that was repeated throughout the hearing. When the time came to explain why the respondent’s single recent incident of contact (an unsuccessful attempt to break into her home while yelling threats through her front door) caused her fear for her physical safety, there was little question that the fear was genuine and justified.

Valuable lessons

At a time when fewer and fewer cases go to trial, trying these cases has provided me the invaluable opportunity to learn some of the fundamental lessons that you just can’t learn outside of the courtroom.

S K W C

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*“I must be strong
And carry on
'Cause I know I don't belong
Here in heaven.”*

~ Eric Clapton

My life was spared when we hit the earth. My three coworkers and many others perished. I will never forget them.

Mike Hemmer, survivor of Flight #TK1951, represented by SKWC & Tracey Rockwell.



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Apparently clients do not always tell you everything you need to know, no matter how many times you ask. After a client was caught in a terribly discrediting lie on the stand during cross examination (regarding a critical fact she failed to tell me about), it was of little consolation that the judge later confirmed the feeling I had, at that very moment, that I'd just lost the case. In that situation, I learned how to put on a poker face and make a passionate plea in closing argument that the issue was of no consequence and, really, shouldn't even be considered. I then learned to live with the defeat.

It also turns out that, just because one judge insists that an issue proceeds a particular way, a different judge will not necessarily do the same thing. That lesson came during a hearing that was quickly shut down by a judge who precluded my opponent, a *pro se* respondent, from testifying about certain issues because he had come unprepared to prove a predicate fact that the judge insisted he address. When I suggested to a different judge at a different hearing several months later that the respondent should be precluded from that same type of testimony for the same reason, the judge interrupted me to tell me that was a silly suggestion. I learned to be prepared for whatever is thrown at me.

Trying FAPA cases also has helped me learn how to lose. Remarkably, all it takes to deflate a lawyer's ego is to lose a contentious case against a *pro se* litigant. Sometimes the facts are the facts, and there's only so much you can do with them.

Finally, being a DVP volunteer has presented me with great marketing opportunities. Through the program, I have met many lawyers on whom I can rely for advice in a pinch. In fact, it was through a FAPA hearing that I met two OTLA lawyers (who represented an opposing party) with whom I have developed a great relationship and who remain trusted colleagues.

As an advocate

Even as I have become a more experienced lawyer, I continue to learn new things with each new case. I always appreciate the opportunity to try new strategies, to develop a new case and, I hope, to bring a good result to a deserving client. I am never bored, and I never regret having taken the time to work the case. I am convinced that for both new and experienced lawyers, this type of work brings a tremendous upside.

Of course, helping genuinely needy clients face overwhelmingly difficult challenges is the primary reason for volunteering with the DVP. I am not a family counselor or a family law practitioner. But what I have learned through these cases is how to be an advocate in the true sense of the word. Preparing to present a compelling case — and I hope win — is part of that advocacy. But listening, empathizing, guiding, caring about a client's problems and finding someone to help when I don't know what

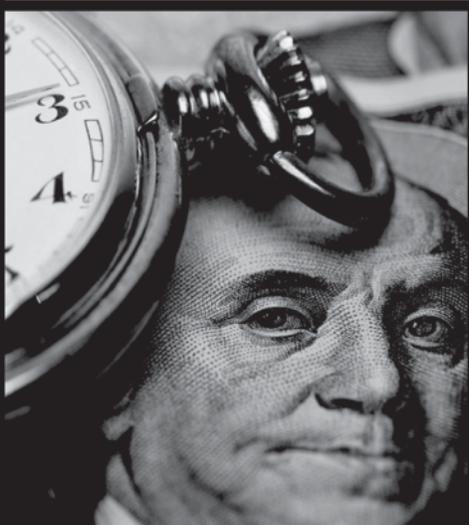
to do is equally important to filling that role.

I volunteer because it helps people, it's rewarding and I feel a sense of duty. Tackling an entirely new practice area and representing clients with problems I would not otherwise encounter has been educational and beneficial to my regular practice. Taking these cases *pro bono* is an important public service. Volunteering with DVP is truly a win-win.

Josh Ross is a litigation associate at Stoll Berne, a Portland-based firm known best for its expertise in complex business litigation, intellectual property litigation, plaintiff class actions and real estate transactions. Josh has represented individuals and businesses in a broad range of commercial disputes, including unlawful trade practices, fraud, securities issues, class actions and contract disputes. Stoll Berne is located at 209 SW Oak Ste 500, Portland OR 97204. You can reach Josh at jross@stollberne.com or 503.227.1600.

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