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EIGHT REASONS WHY ATTORNEYS REPRESENTING PARENTS IN CHILD PROTECTION PROCEEDINGS SHOULD USE AN INTIMATE PARTNER VIOLENCE SCREENING PROTOCOL

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Intimate partner violence often plays an explicit or a hidden role in child protection proceedings. Consequently, attorneys representing parents must be able to identify intimate partner violence and understand the resulting implications for families and for advocacy. This essay urges attorneys representing parents to adopt and follow an intimate partner violence screening protocol in every child protection case.

1. Child Abuse and Intimate Partner Violence Frequently Co-Occur

Children exposed to intimate partner violence are often themselves physically abused. Research indicates that approximately half of children who are exposed to intimate partner violence also suffer physical abuse. Indeed, exposure to intimate partner violence is potentially “one of the best risk indicators available of physical child abuse.” As a result, even when intimate partner violence is not a presenting issue in a child protection case, there is sufficient overlap to warrant inquiry into whether there is or has been intimate partner violence.

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2. *Intimate Partner Violence Encompasses a Range of Dynamics and Contexts That Carry a Variety of Ramifications for Protection of Children*

Intimate partner violence varies significantly in terms of frequency, severity, whether there is a pattern of coercive control, and the extent to which there is a primary perpetrator. Consequently, attorneys representing parents need to be attuned to the larger context of intimate partner violence (including its purpose and meaning) rather than focusing exclusively on isolated acts of physical violence. The following questions should be considered:

- **What are the frequency, severity, dangerousness, and risk of lethality?** Factors associated with higher levels of risk include homicidal or suicidal threats, availability of weapons, past violence, obsession with a victim, mental illness, substance abuse, emotional instability, recent separation, and other stressful events.

- **Is there a pattern of coercive control?** Intimate partner violence does not necessarily involve coercive control—violence may instead stem from poor conflict-resolution skills, mental illness, and other causes. However, when coercive-controlling dynamics are present, there are special concerns. In such cases, a partner may use a variety of tactics to exert power and control including physical and sexual violence, threats and intimidation, isolation, emotional abuse, manipulation of children, and economic control.

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5. Jaffe et al., *supra* note 3, at 505.


7. Ellen Pence & Michael Paymar, *Education Groups for Men Who*
established, control may be maintained without resort to frequent or severe physical violence, although it is likely to recur and escalate at separation. Men primarily perpetrate coercive-controlling violence, although most female survivors of coercive-controlling tactics at some point use violence to resist. Consequently, understanding the context, purpose, and meaning of the violence is critical to assessing its implications.

- **Is there a primary perpetrator?** In cases of coercive-controlling violence, there is generally a male primary perpetrator, but in other patterns of intimate partner violence, there may not be a primary aggressor. Because situations involving intimate partner violence vary so extensively and because intimate partner violence often continues after separation of the partners, the implications for children and parents must be understood on a case-by-case basis.

3. **Children’s Experiences with Intimate Partner Violence Often Affect Their Safety and Well-Being**

Children may experience intimate partner violence in a variety of ways including the following: prenatal exposure, physical or verbal intervention, being physically harmed, participating in violence, observing abuse, hearing abuse, observing the effects and aftermath of violence, subsequently learning of the violence, or lack of awareness of it. In fact, children are likely to have exposure to a combination of such experiences.

Some aspects of a child’s experience may have particular significance for them. Characteristics of importance may include: the pattern of the violence, the specific acts, the extent of injuries, frequency and duration in light of the child’s age, whether the violence escalates, the type of perpetrator, the legal and biological

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**BATTER: THE DULUTH MODEL 3 fig.1.1 (1993).**

8. Johnson, supra note 6, at 46–47 (discussing nonviolent or incipient coercive control).
9. Id. at 48.
10. Id. at 51–53.
11. Id. at 48–59.
12. Id. at 60.
15. Id. at 154.
relationship of the perpetrator and child, whether the adult victim resists, and the extent to which there is resolution.  

The impact of intimate partner violence is different for every child but research indicates that in addition to a heightened risk of physical abuse, these children may be more aggressive and antisocial or more fearful and inhibited than other children. They may exhibit higher anxiety levels, trauma symptoms, depression, and cognitive effects. In addition to achieving safety, children benefit from adult support, a return to a normal daily routine, appropriate interventions, and adult modeling of appropriate conflict resolution.

4. Intimate Partner Violence Affects Parenting

Intimate partner violence involving coercive control has been linked to particular parenting problems. For example, perpetrators of coercive-controlling violence may physically and emotionally abuse children in many ways, such as: rigidly authoritarian but sometimes overly permissive discipline, disrespect for boundaries, role reversal, encouraging immoral behavior, and threatening to abduct children. Perpetrating fathers may lack the capacity to focus on the child’s needs or take responsibility for the damage that has occurred.

16. Id. at 154–57 (highlighting that children may be terrorized, corrupted, spurned, denied emotional responsiveness, isolated, or suffer neglect of health and educational needs); see also David A. Wolfe et al., The Effects of Children’s Exposure to Domestic Violence: A Meta-Analysis and Critique, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 171, 171 (2003) (“[S]uch exposure is part of a group of harm-producing contextual factors (such as child abuse, harsh parenting practices, and other forms of trauma and violence) that interfere with normal development and lead to unpredictable, but generally negative, outcomes in the short- and long-term.”).


20. Id. at 322; see also Jaffe et al., supra note 3, at 502–03 (discussing ways perpetrators of domestic violence may be deficient, if not abusive, parents).
Parent survivors of coercive-controlling violence may encounter significant parenting challenges as they struggle to simultaneously cope with abuse, protect children, and deal with a perpetrator’s efforts to undermine their parenting. They may also face scrutiny for “failure to protect” their children from harm.

One study documented a range of strategies used by survivors who parent in the face of coercive control, noting the importance of understanding the strategies and their effects within “their specific context.” The protective parenting strategies included the following: monitoring of the perpetrator to predict violence, keeping children away during violent incidents, putting themselves at risk to protect children, challenging perpetrators, working to meet children’s needs, and compensating for hardship. These mothers benefit from practical parenting support, regaining control over parenting, and approaches that support their parenting strengths.

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21. See JOHNSTON ET AL., supra note 19, at 322; Jaffe et al., supra note 3, at 503.
22. See Lesley E. Daigle, Empowering Women to Protect: Improving Intervention with Victims of Domestic Violence in Cases of Child Abuse and Neglect; A Study of Travis County, Texas, 7 TEX. J. WOMEN & L. 287, 310–11 (discussing the possible plight of victims of domestic violence facing child protection proceedings for failure to protect children from harm).

When mothers stay with a batterer, they and their children may be injured, and mothers run the risk of being held accountable for failure to protect. When mothers leave or attempt to leave the batterer, they frequently face a campaign of harassment from the batterer, great financial insecurity, homelessness, and the risk of serious physical harm. More battered women and their children are endangered and murdered in the woman’s attempt to separate from the batterer than at any other time during the relationship. Separation, in particular, dramatically increases the risks of abuse for women. Batterers may hold children hostage or kidnap them to prevent mothers from leaving the relationship. Indeed, mothers who leave batterers, as well as mothers who stay, may not appear to be acting in their child’s best interest.

Id. (footnotes omitted).

24. Id.
5. **Intimate Partner Violence Can Be Hard to Detect**

In some cases, the existence of intimate partner violence will be admitted, obvious, or the basis of a child protection proceeding. But in some situations, even those involving substantial and serious abuse, it is difficult to uncover.\(^{26}\)

Special challenges to identification of intimate partner violence exist in situations involving coercive-controlling dynamics.\(^{27}\) Survivors may be appropriately hesitant to disclose for fear of perpetrator retaliation and threats to harm children. They may be ashamed or afraid that they will not be believed, particularly if they have used violence to resist abuse.\(^{28}\) They may also have concerns about whether disclosure will hasten or extend removal of children.

When there is an identified primary perpetrator of intimate partner violence, that parent may also fail to disclose it, particularly in the context of criminal charges or child protection proceedings.

6. **A Parent’s Attorney Is Uniquely Positioned to Facilitate Safe Disclosure of Intimate Partner Violence**

Because the attorney-client relationship is privileged, it is the safest and most likely place for intimate partner violence to be disclosed.\(^{29}\) Consequently, a parent’s attorney has a special

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29. There are special considerations to take into account in states where attorneys are mandatory reporters. Discussion of these is beyond the scope of this essay.
obligation to carefully explain to any child protection client the nature and extent of the privilege and the possible relevance of intimate partner violence to the proceeding.

Effective screening for intimate partner violence is an ongoing process rather than a one-time event. Consequently, attorneys representing parents should adopt a screening protocol and use it in every child protection case. Common elements of a screening protocol include the following:

- **Confidential face-to-face interviews with an individual parent client.** A confidential interview provides an attorney with the opportunity to explain why inquiry about intimate partner violence is being made and how it might affect the proceeding, ask open-ended and follow-up questions, observe reactions and demeanor, and establish the trust necessary for disclosure.30 Inquiry should never be made with a partner present and it should involve a planned exploration of the existence and context of intimate partner violence, including its frequency, severity, coercive-controlling dynamics, and whether there is a primary perpetrator.

- **Screening instruments.** Formal instruments have been developed, and in some cases validated, for particular screening purposes. For example, the Danger Assessment was developed by Jacquelyn C. Campbell to assess the risk of homicide in intimate partner violence situations.31 All such tools have limitations, are not universally effective, and if used, should only be seen as one indicator.32

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• **Documentary review.** Asking about and conducting an independent search for documents such as arrest records, protective orders, and medical records may yield valuable information concerning a possible history of intimate partner violence.

• **Ongoing observation and check-in.** Even if intimate partner violence is not disclosed, attorneys should watch for indications and periodically inquire about it. Clients are more inclined to disclose intimate partner violence after a trusting professional relationship has been built.

In addition, an attorney representing a parent should be prepared to undertake safety planning and/or make appropriate referrals to advocates and community services.

7. **The Existence of Intimate Partner Violence May Significantly Alter Advocacy on Behalf of a Parent**

Depending on the nature and context of the intimate partner violence and its relevance to the child protection proceeding, its existence may change the way an attorney for a parent advocates on behalf of the client. Intimate partner violence may have particular relevance at various stages of a proceeding:

- **Appointment of counsel.** Are separate attorneys representing the parents?

- **Information gathering.** Has relevant information been gathered regarding the frequency, severity, dangerousness, pattern of coercive control, and primary perpetration? What are the parenting issues and what is the child’s experience? If necessary, is there a confidential safety plan in place?

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33. *See Comm’n on Domestic Violence & Tort Trial & Ins. Practice Section, Am. Bar Ass’n, Be Safe, Be Sensible, Be Prepared: Steps to Safety* (n.d.), available at http://www.americanbar.org/content/dam/aba/migrated/tips/publicservice/DVENG.authcheckdam.pdf (outlining affirmative steps that a person can take to protect against intimate partner violence).


35. Fitzgerald et al., *supra* note 25, at 102.

36. *Id.* at 102–03.
• **Assessment.** What are the implications of the intimate partner violence and the needs of the children and parents?
• **Alternative or differential response.** Is an alternative response safe and appropriate?
• **Service plan.** What services are responsive to the identified safety and other needs of the children and parents with respect to the intimate partner violence issues? Are separate case plans being offered? Does the plan support the parenting strengths of protective parents in the context of coercive-controlling violence?
• **Treatment.** What treatment, if any, may be appropriate and effective?
• **Placement and visitation.** What level and type of contact by each parent with the child will be safe and appropriate?
• **Judicial supervision.** Are there ongoing safety and compliance concerns?
• **Participation in dispute resolution processes.** Will participation in processes such as mediation be safe and appropriate?

8. **Attorneys Have a Professional Obligation to Use an Intimate Partner Violence Screening Protocol When Representing a Parent in a Child Protection Proceeding**

Attorneys have a professional and legal obligation to adopt and faithfully implement an appropriate screening protocol for intimate partner violence. Not knowing about intimate partner violence may put clients and children at risk and makes an attorney a less effective advocate at every stage of a child protection proceeding. Failing to systematically inquire about intimate partner violence raises questions about attorney competency as well as the specter of malpractice.

In conclusion, as a result of their privileged relationship with clients, attorneys representing parents are uniquely positioned to

37. *Id.* at 102.
detect intimate partner violence, understand its implications, counsel and advocate for parents, and promote positive outcomes for children. Because of the prevalence of intimate partner violence and the profound impact it may have on children, parenting, and legal representation, all attorneys representing parents in child protection proceedings should adopt and universally apply an effective intimate partner violence screening protocol.