

Winning in the Family Court Arena

Bernadette E. Valdellon

Legal Aid Services of Oregon – Portland Regional Office

What is abusive litigation?

- Use of court proceedings to:
 - Harass
 - Intimidate
 - Coerce
 - Impoverish
 - Contact
 - Control



**Abusive
litigation**

What are the impacts of abusive litigation?

- Psychological and emotional pain
 - Prolonged contact with the abuser
 - Loss of trust in the legal system
- Loss of control
 - Pressure to make concessions or return



What are the impacts of abusive litigation?

- Financial burden
 - Litigation costs
 - Reduced hours or loss of job
- Exposure of children to trauma





What techniques do abusers use?

DARVO

- Deny;
- Attack;
- Reverse the roles of
- Victim and
- Offender

What are some DARVO techniques?

- Calling the police on the survivor
- Filing for protective orders against the survivor
- Filing suit against the survivor
- Reporting to the survivor's employer or licensing agencies



Hypothetical

- Steven called the police and reported that Maria has been unstable and recently flipped out, that she and hits and stalks him
- Steven filed for a stalking protective order
- Steven sued Maria for defamation



What are some other DARVO techniques?

Alleging the survivor is unfit

- Calling CPS
- Alleging “Parental Alienation Syndrome”
- Alleging the survivor’s new partner is unfit



Hypothetical

- Steven told the police that Maria neglects and brainwashes the children
- Steven also reported these concerns to CPS



What other techniques do abusers use?

Using the children as a weapon

- Threatening to take the children away
- Using the children to monitor the survivor
- Manipulating the children



What other techniques do abusers use?

Dragging out the process

- Excessive and frivolous filings
- Relitigating issues
- Continuances
- Reneging on agreements



What other techniques do abusers use?

- Abusing discovery
- Violating court orders
- Withholding financial support



What other techniques do abusers use?

Threatening a survivor's support network



What techniques do abusers use?

Threatening a survivor's immigration status

- Reporting to ICE
- Threatening a loss of citizenship or visa
- Preventing a survivor from getting children's passports



Hypothetical

Steven texted Maria asking if she is going to like her deportation



How to fight abusers in the courtroom

Sanctions: ORCP 17(C)

1. Certifications are based on reasonable knowledge, information and belief
2. Not presented for improper purpose
3. Warranted by existing law or nonfrivolous argument
4. Allegations supported by evidence
5. Denials supported by evidence

Attorney fees



How to fight abusers in the courtroom

- Protective order
- Motion in limine
- Motion to dismiss
- Motion for future filings to be approved or reviewed by the court first



How to fight abusers in the courtroom

- Limitations on discovery
 - Require relevancy determination
 - Limit scope
 - Prevent of disclosure to third parties
 - Prohibit discovery directly involving children
- Limit or prohibit appeals
- Make requests on the record
 - Instruction for other party to refrain from attacks
 - Ask for record to reflect what the other party stated



How to fight abusers outside the courtroom

Document everything!

- Incident log
- Advise that communication is inappropriate
- Reference the Code of Professional Responsibility



How to fight abusers outside the courtroom

- Communicate only in writing: BIFF
 - Brief
 - Informative
 - Friendly
 - Firm
- Enlist co-counsel



Make sure the survivor has a safety plan

- Not coming to the courthouse alone
- Taking a taxi or rideshare
- Informing the court staff



References

- Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of their Victims Through the Courts*, 9 *Seattle J. Soc. Justice* 1053 (2011).
- David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 *Seattle J. Soc. Justice* 429 (2015).