

AGENTS FOR CHANGE

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Agents for Change is a publication of the Battered Women's Legal Advocacy Project, Inc.

1611 Park Ave South
Suite 2
Minneapolis, MN 55404

Phone: 612-343-9842
Toll free: 800-313-2666
Fax: 612-343-0786
Email: staff@bwlap.org
Web: www.bwlap.org

Zabat Awed
Rumna Chowdhury
Maria Gloria Fressia
Sage Van Voorhis

Frequently Asked Questions

Can a minor file an OFP?

Yes, in limited circumstances. If the minor is 16 years of age or older, she may file an OFP against her spouse or former spouse, or against someone with whom she has a child in common. Otherwise, the minor must have a parent, legal guardian or "reputable adult age 25 or older" file the OFP on the minor's behalf, and in that case, the court must find that it is in the minor's best interests to do so.

What if the judge's OFP or HRO decision was not justified by the evidence or was contrary to the law?

For example, was custody awarded to a non-adjudicated father? Was an Order denied because the Respondent's acts were "too remote" or because severe physical injury did not happen?

Minnesota Rules of Civil Procedure allow for new hearings when there is newly discovered material evidence (evidence which would change the outcome of the hearing) or when the decision is not justified by the evidence or is contrary to law. A motion for rehearing must be filed and served within 30 days after the filing of the decision.

In some counties, judges don't see enough domestic abuse cases to be truly familiar with the law. The combination of custody issues with domestic abuse issues can be very complex. Mothers who were never married to the fathers of their children are entitled to sole physical and legal custody of their children unless and until the man is adjudicated as the father. See our TAP on Contested Custody for more details.

Some judges have denied OFPs because although the Petitioner was legitimately in fear of imminent physical assault, actual physical assault hadn't occurred in a couple of years. The Domestic Abuse Act allows for OFPs when a Respondent "*inflicts fear* of imminent physical harm, bodily injury, or assault." OFPs are also warranted when the Respondent makes terroristic threats or interferes with a 911 call.

Upcoming Events at BWLAP

- **August 4-5**—New Laws training in Moorhead.
- **August 11-12**—New Laws training in Grand Rapids.
- **August 14-15**—New Laws training in Little Falls.
- **August 21-22**—New Laws training in the Twin Cities.
- **August 25-26**—New Laws training in Rochester.
- **August 28**—Board of Trustees meeting, 10:30 am @ BWLAP.
- **September 1**—Labor Day, BWLAP closed.
- **September 4-5**—New Laws training Redwood Falls.

New Laws Trainings Have Begun!

This August the BWLAP staff started conducting its ANNUAL NEW LAWS TRAINING. This year BWLAP teamed up with the Minnesota Coalition for Battered Women (MCBW). The first training was in Moorhead, MN August 4 and 5. It was conducted by BWLAP Program Managers Rumna Chowdhury and Gloria Fressia, and guest speaker Lisa Radzak of MCBW. The training covered state criminal and civil law changes, as well as federal law changes. Additionally, this year BWLAP is conducting several focus sessions. Focus sessions were on Immigration, MFIP, Conceal & Carry and Legislative Organizing.

From an advocate who attended: "Thank you, great stuff! I have been an advocate for over 12 years but I still learned a lot!"

The New Laws Training is an annual training held by BWLAP to update advocates and others about laws affecting battered women. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend. The scope of this training ranges from criminal law to family law and government benefits. Each year BWLAP holds the training in 6 locations throughout the state – two in the North, two in the South, one metro and one in central Minnesota.

Change to HRO law

Harassment Petitions

Amends Minn. Stat. § 609.748, subd. 3
Effective August 1, 2003

As amended, this section would mirror the language found in the Order for Protection statute. Hearings will no longer be automatically scheduled upon receipt of a petition; the petitioner must request one. The court must advise the petitioner of the right to request a hearing. Such a request must be made within 45 days of the filing or receipt of the petition. If the petitioner does not request a hearing, the court must advise the petitioner that the respondent may request one and that notice of the hearing date and time will be sent to the petitioner at least five days before the hearing. The court may set a new hearing date if the petitioner does not get adequate notice. The old law required the hearing to be held no later than 14 days from the Order for Hearing; that requirement was stricken.

Summer Clerkship Experience @ BWLAP

by Talia Kolluri

“You don’t learn anything in law school!” bellowed the grizzly bear of a man standing at the front of a classroom. I was sitting in a lecture sponsored by public interest lawyers who were giving first year students advice on nabbing clerkships for the summer. He was right.

After nine months of studying and thirty highlighters, I felt like I knew absolutely nothing. Of course, my head was swimming with facts and I could recite a hundred different “black letter law” rules. But whenever anyone asked me a question about the law in the real world, I was like a deer in headlights; stunned and immobile before an oncoming Mack truck of confusion. Furthermore, what I felt I *did* know left me feeling as though the law is rarely fair.

That being said, I had a few specific criteria in mind when I set out to choose a clerkship for my first summer. First of all, I wanted to learn something. I didn’t aim to be an expert on any aspect of the law, but I wanted to be able to understand and explain at least one small area with confidence. I also wanted to work in a place where my questions were welcome. In addition, it was important to me that I make a legitimate contribution to the place where I worked. I did not want to write and rewrite the same insignificant memo for the entire summer. Finally, I wanted to work with people who were trying to use the law to help others. I wanted to see that even if the law isn’t always fair, there are people who try to make it fair.

With these criteria in mind, I chose to spend my summer as a volunteer with BWLAP. During the course of my clerkship, I was able to actively contribute to an organization that strives to aid battered women and their advocates in using the law to change their situations. Furthermore, I was able to learn a great deal about the laws governing personal possession of firearms.

I spent the first couple of weeks of my clerkship updating the technical assistance packets that address federal and state firearms provisions. I spent the rest of my clerkship researching questions from individuals and advocacy groups and drafting an original technical assistance packet on Minnesota’s new Conceal and Carry Law. I was extremely excited to do this last project because it allowed me to interpret and explain a new piece of legislation. Finally, I had the opportunity to interact directly with individuals and advocates who called with questions.

My clerkship at BWLAP was an extraordinarily valuable experience because I had a level of responsibility and hands-on activity that would not usually be available to a first-year clerk. Furthermore, I dealt with new and interesting material and had the opportunity to learn about laws as they applied in real life. Another priceless aspect to my clerkship was that despite the fact that I was only here for the summer, I felt like a full-fledged member of the staff. As I write this at the close of my clerkship I believe that I have learned quite a bit about interpreting and applying the law and about navigating the legal system.

Meet Talia at New Laws!

Our summer law clerk will be speaking at the metro-area New Laws training on August 22. She will present the focus session on Minnesota’s new conceal and carry law. Talia developed BWLAP’s Technical Assistance Packet for conceal and carry. We are very excited to give her an opportunity to speak to community members directly about her summer research project.



Punto de Vista Latino

por María Gloria Fressia

En los últimos tiempos se ha hecho una práctica judicial común en nuestra comunidad que una mujer pida una Orden de Protección y el Juez, **sin que la contraparte lo haya solicitado, ordene una Orden de Protección Mutua**. Esto es ilegal. Esta práctica va contra las reglas del debido proceso. Toda la doctrina y la jurisprudencia está de acuerdo en eso. La violencia, en algún momento, puede engendrar respuestas violentas por parte de la víctima. Algunos Jueces, **en lugar de investigar en profundidad quien es el principal responsable de la violencia doméstica** y despachar una Orden de Protección en su contra, emiten una Orden de Protección Mutua, **sin que el demandado en dicho proceso la haya solicitado**.

Esto puede perjudicar a la mujer víctima de violencia de muchas maneras:

- * La puede perjudicar en un futuro proceso de divorcio y/o para la determinación de la custodia de sus hijos.
- * Pero, lo que es más importante, en el caso de la mujer inmigrante (aún siendo una residente legal permanente), la puede llevar a una posible deportación, si ella viola la Orden de Protección Mutua.

Pongamos un ejemplo: María es residente legal permanente y es víctima de violencia doméstica. Cansada de permanentes ataques de su marido, y como autodefensa un día María tratando de huir de los golpes de su marido, le arroja un objeto. Tres meses más tarde María se decide a solicitar una orden de protección contra el esposo abusador. En la respectiva audiencia, el esposo relata en su defensa, que él fue golpeado por un objeto lanzado por María en una oportunidad pero no solicita una orden de protección en su favor. El Juez resuelve el caso emitiendo una Orden de Protección Mutua. María la acepta y un mes más tarde un hijo la llama desde la casa de su marido diciéndole que se siente mal y que necesita que ella lo venga a buscar. María va..., está violando la orden de protección emitida en su contra, se expone a ser denunciada por el marido y luego deportada.

Para estos casos, existe una herramienta legal, y es que **sin necesidad de llegar a una apelación** podemos solicitar ante el mismo Juez una **nueva audiencia** explicando detalladamente las razones jurídicas por las cuales la solicitamos. El Código que regula los procedimientos civiles ante las Cortes de Minnesota, en sus artículos 59.01 y siguientes, otorga la posibilidad de solicitar una nueva audiencia en casos en que exista una irregularidad en los procedimientos, o que la decisión judicial no esté justificada por la evidencia, o sea contraria a la ley. En esa solicitud debemos ser muy precisas e invocar las disposiciones legales que la resolución del Juez está violando.

BWLAP puede ayudar a nuestras Advocates a identificar dichas razones jurídicas para ser invocadas en esa solicitud de nueva audiencia. Llámenos a nuestros teléfonos. Seguramente nuestros Jueces, que no desean ver sus sentencias apeladas, en una segunda audiencia se van a apegar estrictamente a lo que manda la ley. La nueva audiencia debe ser solicitada y comunicada a la otra parte dentro del término de 30 días a partir de la Orden de Protección Mutua emitida por el Juez.

Global Efforts to Eradicate Female Genital Mutilation

Equality Now

Meeting of the Fund for Grassroots Activism to End Female Genital Mutilation (FGM Fund)

July 18-21, 2003 in Atlanta, Georgia

by Zabat Awed

As you are reading this article, there are between eight and ten million women and girls in the Middle East and in Africa who are at risk of undergoing one form or another of genital mutilation. In the United States it is estimated that about ten thousand girls are at risk of this practice. FGM in a variety of forms is practiced in Middle Eastern countries (the two Yemens, Saudi Arabia, Iraq, Jordan, Syria and southern Algeria). In Africa it is practiced on the majority of the continent including Kenya, Nigeria, Mali, Upper Volta, Ivory Coast, Egypt, Mozambique and Sudan.

Even though FGM is practiced in mostly Islamic countries, it is not an Islamic practice. FGM is a cross-cultural and cross-religious ritual. It is also important to note that even though FGM is currently illegal in many countries in Africa and the Middle East, this has not reduced the number of the girls that are mutilated every year. The governments of these countries have no way of monitoring the spread and practice of FGM

I was very fortunate to have been chosen by a poll of grassroots advocates who are involved to end oppression against women and children. I represented the state of Minnesota at this very important conference. The conference was very successful. We had the privilege of having the presence of elders from Somalia and Ethiopia to discuss the dangers and inform the audience that it is illegal (indeed, a felony) to perform FGM in the United States. The conference came about after there were reported cases of FGM occurring in Atlanta, Georgia. It was very challenging to try and convince an audience that this barbaric act should stop. Many of them firmly believe that this ritual is not meant to harm, but to purify and cleanse girls from impurities.

At the conference others who attended have undertaken the task of trying to end FGM in their respective countries. They came and shared their successes and failures in the struggle to educate, outreach and campaign to end FGM. Some of the participants included:

Mr. Wanjala John Kennedy WAFULA (Ken Wafula)

Executive Director, Center for Human Rights and Democracy (CHRD), Kenya

CHRD began working to end FGM by spearheading a groundbreaking case that prevented the father of two girls, Edna and Beatrice Kandie, from having them circumcised. Since then the organization has been working to protect young girls from FGM in the Rift Valley region of Kenya by conducting peer training with young girls going from village to village to teach about the harms of FGM. CHRD has also continued petitioning the courts on Edna and Beatrice's behalf to prohibit their parents from subjecting them to FGM. CHRD has won similar court cases for 17 additional girls.

Ms. Flora MASSOY

Program Officer, Legal and Human Rights Centre (LHRC), Tanzania

The anti-FGM grant to the LHRC was related to the case in Morogoro of three sisters who unsuccessfully

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Immigrant DV 101 for Law Enforcement

In conjunction with Home Free, BWLAP held a half day training on June 27, 2003 for some west metro law enforcement officers. We discussed how domestic violence affects the Latino, Somali and Russian immigrant communities. Many of the participants were wonderful and took away a new appreciation for the difficulties immigrants face.

CHECK OUT OUR WEBSITE!
WWW.BWLAP.ORG

Sadly to say, some of the attendees still need much more intensive training. From some of the behavior exhibited, it was easy to see why many in the immigrant community have a serious mistrust and fear of law enforcement. There is still a lot of racism and xenophobia to overcome in Minnesota.

How is law enforcement doing in your community? Let us know—staff@bwlap.org.

(Continued from page 5)

tried to escape FGM and were returned by the police to their father who had them forcibly circumcised and married. LHRC documented the case and assisted a local pastor to sue the father of the girls for violating their rights and breaking the law. FGM has been illegal in Tanzania since 1998. LHRC also trains local police to be more informed about the law and inspire them to take action to save girls from this harmful practice. The work of Equality Now's Women's Action complemented this project by continuing to mobilize international public pressure for more effective enforcement of the Tanzanian law against FGM.

Dr. Morissanda KOUYATE

Secretary-General, Cellule de Coordination sur les Pratiques Traditionnelles Affectant la Santé des Femmes et des Enfants (CPTAFE), Guinea-Conakry

CPTAFE works to change public opinion through mass media. Through Rural Radio, a local radio station, CPTAFE reaches out to all communities in Guinea informing them of the negative effects of FGM. Subsequent sessions with the communities complement the radio programs, giving CPTAFE an opportunity to dialog with members of the communities, reinforce messages sent through the radio and seek feedback. CPTAFE also mobilizes religious authorities to speak out publicly against FGM and motivates circumcisers to stop performing FGM through skills training and funding to start income generating activities using their newly acquired skills. Converted circumcisers become activists against the practice participating in CPTAFE's activities.

From the Equality Now 6 staff members were present at the conference.

Ms. Lakshmi **ANANTNARANYA**, Media Campaign Director

Ms. Taina **BIEN-AIME**, Executive Director

Ms. Jacqui **HUNT**, Vice President, Board of Directors; Program and Research Director

Ms. Faiza Jama **MOHAMED**, Africa Regional Director

Ms. Jessica **NEUWIRTH**, President, *ex-officio*

Ms. Tsinu **TESFAYE**, Africa Office Liaison

**Battered Women's Legal Advocacy Project's
TECHNICAL ASSISTANCE PACKETS
---ORDER FORM---**

- Federal Firearms Prohibitions*
- State Firearm Prohibitions*
- Harassment Restraining Order Law
- Conceal & Carry Law**
- Criminal Court Sentencing Options
- Custody Determinations: Best Interest Factors
- Data Practices and Confidentiality
- Expungement of Court Records
- Expunging your Eviction *
- Extraordinary Writs
- Filing Complaints Against Attorneys
- Filing Complaints Against Judges
- Filing a Motion/Preparing for a Hearing
- How to Become A Notary Public
- How to Hire An Attorney/ Fee Arbitration
- Juvenile Court: A Basic Introduction
- MN Court of Appeals Practice / Pro Se Appeals
- Mexico Travel for Moms with minor children**
- Mutual OFP information
- Mutual OFPs**
- Name and Social Security Number Change Information *
- OFP Hearings: Contested Custody**
- OFP Without Hearings
- OFP: Finding Personal Jurisdiction over Nonresident Batterers*
- OFP: Methods of Service of Process
- Alternatives to OFP: Harassment Restraining Orders
- Qualifying for *In Forma Pauperis* Status in Legal Proceedings
- Starting a Support Group**
- T-Visas**
- Using an Interpreter In Court
- Violence Against Women Act (VAWA): Full Faith and Credit Provision

*Updated **New

Technical Assistance Packets are available at no cost. They can also be downloaded from our website—www.bwlap.org

Send your request/order form to:

**BWLAP
1611 Park Ave S – Suite 2
Minneapolis, MN 55404**

**612-343-9842
staff@bwlap.org**

Mail packets to:

Name _____
Organization _____
Address _____

E-mail _____



Battered Women's Legal Advocacy Project, Inc.
1611 Park Ave South, Suite 2
Minneapolis, MN 55404

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BWLAP is a Minnesota-based, statewide, non-profit organization that provides legal information, consultation, training, litigation and legal resource support, and policy development assistance to battered women and to criminal justice, legal and social service systems.

Questions or Comments? E-mail us: staff@bwlap.org

MARK YOUR CALENDARS!

August 28, 2003

Board of Trustees Meeting
10:30-12:30
Free brunch provided!

Cell Phone Donations

BWLAP is now collecting old cell phones for re-use as emergency phones for battered women. Many of you have old cell phones gathering dust at the bottom of a desk drawer. These phones can be put to good use and may be a life line for a battered woman. You may also be able to get a tax deduction based on the value of the phone you donate. Please consider donating cell phones that you no longer use. Drop off used phones at our office or you can mail them to us.

VOLUNTEERS

Needed for a variety of tasks.
If you are interested in helping,
please e-mail:
staff@bwlap.org