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3 Obtaining Orders of Protection

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I. INTRODUCTION

A. [3.1] Scope of Chapter

This chapter acquaints the attorney with substantive law, procedure, and forms for handling civil orders of protection. The chapter is divided into two parts. The first part (§§3.4 – 3.45 below) discusses the substantive law and procedures of the Illinois Domestic Violence Act of 1986 (IDVA), 750 ILCS 60/101, *et seq.*, and the second part (§§3.46 – 3.100 below) discusses the procedures for filing and litigating a civil order of protection. Sample forms are included in §§3.101 – 3.104 below.

B. [3.2] Background and Policy Considerations

The Illinois Domestic Violence Act was adopted in 1982 as a major reform effort to increase legal sanctions for family violence. In 1986 and again in 1993, the IDVA was extensively revised to include a broader range of prohibited conduct and to expand the covered relationships. See 750 ILCS 60/102(6) (purpose of Act is to "[e]xpand civil and criminal remedies for victims of domestic violence"). See also §§112A-1 through 112A-31 of the Code of Criminal Procedure of 1963, 725 ILCS 5/100-1, *et seq.*, regarding orders of protection issued in criminal proceedings.

In its current form, the IDVA is gender neutral and applies to partners, former partners, and other family or household members. The IDVA also contains a broad range of remedies available in an order of protection that are designed to deter further harm and, when necessary, to reduce the abuser's access to the victim by separating the parties, restricting contact, and providing exclusive possession of a shared residence. The remedies also address related issues of child custody, child abduction, and economic support so that "victims are not trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services." 750 ILCS 60/102(4).

The Act shall be liberally construed and applied to promote its underlying purposes to

> **(1) [**r**]ecognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development [**; and**]**
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> *** * ***
>
> **(3) [**r**]ecognize that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence; that, although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims.** 750 ILCS 60/102.

Effective January 1, 2017, 750 ILCS 60/301.1 was amended to provide that law enforcement agencies must adopt written policies regarding arrest procedures for domestic violence incidents:

> **(a) Every law enforcement agency shall develop, adopt, and implement written policies regarding arrest procedures for domestic violence incidents consistent with the provisions of this Act. In developing these policies, each law enforcement agency shall consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents.**
>
> **(b) In the initial training of new recruits and every 5 years in the continuing education of law enforcement officers, every law enforcement agency shall provide training to aid in understanding the actions of domestic violence victims and abusers and to prevent further victimization of those who have been abused, focusing specifically on looking beyond the physical evidence to the psychology of domestic violence situations, such as the dynamics of the aggressor-victim relationship, separately evaluating claims where both parties claim to be the victim, and long-term effects.**
>
> **The Law Enforcement Training Standards Board shall formulate and administer the training under this subsection (b) as part of the current programs for both new recruits and active law enforcement officers. The Board shall formulate the training by July 1, 2017, and implement the training statewide by July 1, 2018. In formulating the training, the Board shall work with community organizations with expertise in domestic violence to determine which topics to include. The Law Enforcement Training Standards Board shall oversee the implementation and continual administration of the training.**

Also P.A. 99-718 (eff. Jan. 1, 2017) amended 750 ILCS 60/202 so that it now provides:

> **[**T**]he administrative director of the Administrative Office of the Illinois Courts, with the approval of the administrative board of the courts, may adopt rules to establish and implement a pilot program to allow the electronic filing of petitions for temporary orders of protection and the issuance of such orders by audio-visual means to accommodate litigants for whom attendance in court to file for and obtain emergency relief would constitute an undue hardship or would constitute a risk of harm to the litigant.** 750 ILCS 60/202(e).

C. [3.3] Constitutionality

The terms and procedures of the Illinois Domestic Violence Act of 1986 have withstood constitutional challenges. In *People v. Blackwood*, 131 Ill.App.3d 1018, 476 N.E.2d 742, 87 Ill.Dec. 40 (3d Dist. 1985), a defendant challenged the statutory language of the 1982 Domestic Violence Act as being unconstitutionally vague or overbroad. In rejecting this challenge, the appellate court examined the language of the Act as well as the legislative intent and "the evil the statute seeks to remedy." 476 N.E.2d at 745. The appellate court stated the following in its findings:

> **The Domestic Violence Act contemplates the protection of a potential victim from the universe of physical and psychological abuses which only someone as close as a relative can inflict. A statute which has [**as**] its objective a safety net against such interferences cannot be expected to address every conceivable form of abuse. Thus, a certain measure of generality must be tolerated to give effect to the intended scope of the Act.** *Id.*

The constitutionality of the IDVA has also been challenged on both First Amendment and due-process grounds. All challenges have failed. The following is a history of those challenges. In *In re Marriage of Hagaman*, 123 Ill.App.3d 549, 462 N.E.2d 1276, 78 Ill.Dec. 922 (4th Dist. 1984), the respondent argued that the statutory definition of "abuse" under the Domestic Violence Act was so unclear as to violate his due-process rights. The Fourth District Appellate Court, quoting *In re Marriage of Thompson*, 79 Ill.App.3d 310, 398 N.E.2d 17, 21, 34 Ill.Dec. 342 (1st Dist. 1979), rejected this argument: "Due process is not a fixed concept unrelated to time, place and circumstances. . . . Rather, it is a flexible concept and requires a consideration of the legislative objective and purpose in determining whether a statute is unconstitutionally vague." [Citations omitted.] 462 N.E.2d at 1279. *See also Sanders v. Shephard*, 185 Ill.App.3d 719, 541 N.E.2d 1150, 133 Ill.Dec. 712 (1st Dist. 1989) (First District held that it did not violate due-process rights to enter emergency order of protection without first giving notice to respondent); *Blackwood, supra* (Third District found that Act could not reasonably be interpreted to prohibit constitutionally protected speech under First Amendment).

The practitioner should note, however, that *Hagaman* was questioned by the court in *In re Marriage of Healy*, 263 Ill.App.3d 596, 635 N.E.2d 666, 671, 200 Ill.Dec. 327 (1st Dist. 1994), and has been superseded by statute as stated in *Best v. Best*, 358 Ill.App.3d 1046, 832 N.E.2d 457, 462, 295 Ill.Dec. 306 (2d Dist. 2005). The respondent in *Hagaman* asserted that the definition of "abuse" in the version of the Act then in effect (Ill.Rev.Stat. (1983), c. 40, ¶2301-1, *et seq.*) was so unclear as to violate his due-process rights. At the time, the Act's definition of "abuse" was sparse in its detail: " 'Abuse' means the act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excludes any reasonable discipline of a minor child by a parent or person in loco parentis of such minor child." Ill.Rev.Stat. (1983), c. 40, ¶2301-3(1). The *Best* court stated, "We note that the former version of the statute did not further define 'harassing' or any other subcategory of abuse. We also note that, since *Hagaman*, the General Assembly has amended the definition of abuse to make it far more specific. Thus, even if the reasoning in *Hagaman* were unassailable, the amendment would abrogate the result." 832 N.E.2d at 462.

Finally, the Illinois Supreme Court in *Best v. Best*, 223 Ill.2d 342, 860 N.E.2d 240, 242, 307 Ill.Dec. 586 (2006), held that a finding of abuse made under the Domestic Violence Act of 1986 will be reversed only if it is against the manifest weight of the evidence. "In reaching this result, we acknowledge that the appellate court has typically applied an abuse of discretion standard when reviewing abuse findings made under the Domestic Violence Act of 1986." 860 N.E.2d at 245. *See, e.g., In re T.H.*, 354 Ill.App.3d 301, 820 N.E.2d 977, 985, 289 Ill.Dec. 902 (1st Dist. 2004); *Peck v. Otten*, 329 Ill.App.3d 266, 768 N.E.2d 769, 769 – 770, 263 Ill.Dec. 688 (3d Dist. 2002); *Shields v. Fry*, 301 Ill.App.3d 570, 703 N.E.2d 921, 922 – 923, 234 Ill.Dec. 821 (4th Dist. 1998); *In re Marriage of Lichtenstein*, 263 Ill.App.3d 266, 637 N.E.2d 1258, 1261, 202 Ill.Dec.

522 (2d Dist. 1994). However, the "[m]ere repetition of a purported rule of law does not establish its validity." *In re D.T.*, 212 Ill.2d 347, 818 N.E.2d 1214, 1223, 289 Ill.Dec. 11 (2004). Uniformly, these cases lack any analytical foundation for use of the abuse of discretion standard in this context. More importantly, as the *Best* court noted, "these cases wholly ignore the statutory language, which expressly mandates the preponderance standard for abuse findings in the trial court. These cases are therefore of little consequence and are hereby overruled." 860 N.E.2d at 245.

In *Tamraz v. Tamraz*, 2016 IL App (1st) 151854, 53 N.E.3d 1090, 403 Ill.Dec. 453, after considering numerous threats, calls, and shouts of harm to be inflicted, the trial court was affirmed in denying a plenary order of protection. The trial court concluded the statements were insults that alone are not enough for an order of protection.

II. ACTIONS UNDER THE ILLINOIS DOMESTIC VIOLENCE ACT OF 1986

A. [3.4] Who May File a Petition for an Order of Protection?

The Illinois Domestic Violence Act of 1986 states that a petition for an order of protection may be filed only

1. "by a person who has been abused by a family or household member";

2. "by any person on behalf of a minor child or an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition" (which permits a parent, teacher, law enforcement officer, or other individual to sign the petition on behalf of a minor); or

3. "by any person on behalf of a high-risk adult with disabilities who has been abused, neglected, or exploited by a family or household member." 750 ILCS 60/201(b).

In *Frank v. Hawkins*, 383 Ill.App.3d 799, 891 N.E.2d 522, 530, 322 Ill.Dec. 507 (4th Dist. 2008), "by any person on behalf of a minor child" was found to include the noncustodial natural father of children who lived with their mother and her boyfriend, the respondent named in the father's petition. The court found the children shared a common dwelling with the respondent.

However, "by any person on behalf of a minor child" does not include a child who turned 18 between the date of the emergency order of protection and the return date for hearing. In *Diane P on Behalf of KP a Minor v. M.R.*, 2016 IL App (3d) 150312, ¶17, 55 N.E.3d 208, 404 Ill.Dec. 112, the court ruled that "at the time the trial court held a hearing on the petition, K.P. was 18 years old, and, therefore, able to bring the petition on her own — *i.e.*, no longer able to rely on her mother's representation."

Any petition properly filed under the IDVA may seek protection for any additional persons protected by the Act. 750 ILCS 60/201(b). See §3.5 below.

The petitioner or the person on whose behalf the petition is filed must be a "family or household member" of the respondent. The term "family or household member" is defined to include

1. "spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage";

2. "persons who share or formerly shared a common dwelling";

3. "persons who have or allegedly have a child in common";

4. "persons who share or allegedly share a blood relationship through a child";

5. "persons who have or have had a dating or engagement relationship"; and

6. "persons with disabilities and their personal assistants, and caregivers." 750 ILCS 60/103(6).

The definition of "caregiver" is the same as found in §5/12-4.4a of the Criminal Code of 2012, 720 ILCS 5/1-1, *et seq.:*

"Caregiver" means a person who has a duty to provide for an elderly person or person with a disability's health and personal care, at such person's place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication and medical care and treatment.

"Caregiver" shall include:

(A) a parent, spouse, adult child or other relative by blood or marriage who resides with or resides in the same building with and regularly visits the elderly person or person with a disability, knows or reasonably should know of such person's physical or mental impairment and knows or reasonably should know that such person is unable to adequately provide for his own health and personal care;

(B) a person who is employed by the elderly person or person with a disability or by another to reside with or regularly visit the elderly person or person with a disability and provide for such person's health and personal care;

(C) a person who has agreed for consideration to reside with or regularly visit the elderly person or person with a disability and provide for such person's health and personal care; and

(D) a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the elderly person or person with a disability's health and personal care.

> **"Caregiver" shall not include a long-term care facility licensed or certified under the Nursing Home Care Act or a facility licensed or certified under the MR/DD Community Care Act, or any administrative, medical or other personnel of such a facility, or a health care provider who is licensed under the Medical Practice Act of 1987 and renders care in the ordinary course of his profession.**

In determining whether a dating or engagement relationship has occurred, the following factors should be considered: (1) how the parties met, (2) the number of times the parties went out together, (3) whether either member of the party would have considered the outing a date, and (4) whether either member of the party held the relationship out to the general public as a dating relationship. Neither a casual acquaintanceship nor ordinary fraternization in business or social contexts shall be deemed a dating relationship.

NOTE: The Civil No Contact Order Act, 740 ILCS 22/101, *et seq.,* allows those individuals who do not qualify to proceed under the IDVA because they lack the requisite relationship to seek comparable protection. Effective January 1, 2006, P.A. 94-360 amended §214(a) of the Act to include protection from a perpetrator of "nonconsensual sexual conduct" or "nonconsensual sexual penetration by the respondent."

In *Alison C. v. Westcott*, 343 Ill.App.3d 648, 798 N.E.2d 813, 278 Ill.Dec. 429 (2d Dist. 2003), the petitioner and the respondent were high school students who went on one lunch date. The trial court interpreted the phrase "dating relationship" in §103(6) of the IDVA as including the parties' situation, which was limited to a single date. The appellate court stated that "[b]ecause one of the purposes of the Act is to prevent abuse between persons involved in *intimate* relationships, we cannot agree with the trial court's conclusion that the parties' one date established a 'dating relationship' under the Act." [Emphasis in original.] 798 N.E.2d at 816. The court specifically held that "the Illinois legislature intended for a 'dating relationship' under section 103(6) of the Act to refer to a serious courtship. . . . Applying a strict construction to this section, we believe that the obvious meaning and general understanding of 'dating relationship' is a serious courtship. Furthermore, as stated in the Act, the ordinary social fraternization between two persons is excluded from the meaning of the phrase 'dating relationship.' " 798 N.E.2d at 817. The court concluded by stating that "the legislature intended that a 'dating relationship' be a relationship that was more serious and intimate than casual." *Id.* In *People v. Matthew Gray,* 2016 IL App (1st) 134012, 53 N.E.3d 1131, 403 Ill.Dec. 494, the court concluded that, despite dating each other for 2 years over 15 years ago, the dating or engagement relationship no longer existed.

A relative by collateral affinity may file a petition for order of protection. In *Benjamin v. McKinnon,* 379 Ill.App.3d 1013, 887 N.E.2d 14, 21, 320 Ill.Dec. 234 (4th Dist. 2008), the court held that because an ex-wife had been married to the applicant's son, the ex-wife's father and brother were the applicant's relatives by collateral affinity. Thus, the ex-wife's father and brother were "family members" of the applicant within meaning of the IDVA. The court reasoned:

> **Because the Domestic Violence Act provides for a liberal construction of the term "family member," courts should recognize brothers and parents of two formerly married people as included in the term "family member" or "persons related by . . .**

prior marriage." Moreover, as applied in this case, inclusion of siblings and parents of formerly married spouses as "family members" promotes the Domestic Violence Act's stated purpose of eliminating intrafamily violence. 887 N.E.2d at 22.

B. [3.5] Who May Be Included on the Order of Protection?

In addition to the petitioner, the Illinois Domestic Violence Act of 1986 provides that other "protected persons" may be covered by an order of protection. The IDVA specifically extends coverage to

(i) any person abused by a family or household member;

(ii) any high-risk adult with disabilities who is abused, neglected, or exploited by a family or household member;

(iii) any minor child or dependent adult in the care of such person; and

(iv) any person residing or employed at a private home or public shelter which is housing an abused family or household member. 750 ILCS 60/201(a).

Therefore, any person living in the petitioner's residence may be listed as a protected person on the order of protection, regardless of that person's relationship to the petitioner or the respondent. For example, a woman who files an order of protection against her boyfriend can include as protected parties on the order her children (regardless of whether the respondent is the father), her mother, and her siblings, provided they all live together. *See In re Marriage of McCoy*, 253 Ill.App.3d 958, 625 N.E.2d 883, 192 Ill.Dec. 728 (4th Dist. 1993) (minors properly included as protected parties on order of protection). Likewise, if the petitioner is living at a domestic violence shelter, he or she can include the names of the shelter workers on the order of protection even though these workers would not otherwise be able to file petitions of their own against the respondent.

However, there is a difference when the parties reside in a general shelter not specific to sheltering domestic violence victims. *See People v. Young*, 362 Ill.App.3d 843, 840 N.E.2d 825, 298 Ill.Dec. 712 (2d Dist. 2005), in which a domestic battery conviction was reversed because the state failed to establish that the litigants were family or household members. The complainant and the defendant shared the hospitality of a Public Action to Deliver Shelter, Inc., (PADS) facility for one night. The court rejected the implication that persons who have shared lodgings necessarily have shared a common dwelling. The court found that the evidence failed to establish that the PADS shelter was ever their dwelling. The court further recognized that *Glater v. Fabianich*, 252 Ill.App.3d 372, 625 N.E.2d 96, 98 – 99, 192 Ill.Dec. 136 (1st Dist. 1993),

provides some support for the proposition that two people can "share a common dwelling" if one stays briefly with the other, at least if they share household expenses. The portions of *Glater* that support this proposition are *dicta* and without supporting reasoning. To the extent [that**] *Glater* suggests that a transitory visit can be the basis for finding that two people share a common dwelling, we do not follow it.** 840 N.E.2d at 830 n.4.

C. [3.6] Who May Be Named as a Respondent on the Order of Protection?

Any "family or household member" can be named as a respondent on the order of protection, regardless of whether the respondent is an adult or a minor. "Petitioner shall not be denied an order of protection because petitioner or respondent is a minor." 750 ILCS 60/214(a). *See also Wright v. Wright,* 221 Ill.App.3d 659, 583 N.E.2d 97, 164 Ill.Dec. 543 (4th Dist. 1991) (order of protection, pursuant to Illinois Domestic Violence Act of 1986, may be entered against minors as well as adults).

D. [3.7] What Types of Conduct May Be Prohibited Through an Order of Protection?

The Illinois Domestic Violence Act of 1986 provides for a broad range of prohibited conduct. "Abuse" is defined as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation" but not "reasonable direction of a minor child by a parent or person in loco parentis." 750 ILCS 60/103(1).

1. [3.8] Physical Abuse

"Physical abuse" is defined to include sexual abuse and means any of the following:

(i) knowing or reckless use of physical force, confinement or restraint;

(ii) knowing, repeated and unnecessary sleep deprivation; or

(iii) knowing or reckless conduct which creates an immediate risk of physical harm. 750 ILCS 60/103(14).

This section of the Illinois Domestic Violence Act of 1986 is further defined by *In re Marriage of Holtorf,* 397 Ill.App.3d 805, 922 N.E.2d 1173, 337 Ill.Dec. 596 (2d Dist. 2010), to include the potential for immediate physical harm. The court held the potential for immediate physical harm, in either bringing the children into the store or leaving them in a running car while committing a theft, was abuse.

Physical abuse includes but is not limited to such behavior as slapping, pushing, poking, kicking, twisting limbs, pulling hair, biting, choking, shaking, throwing someone around a room, or forcing someone to have unwanted sexual relations. Physical abuse also includes the use of guns, knives, blunt instruments, or any other weapon. A petitioner does not have to be stabbed or shot to be the victim of physical abuse; it is sufficient if the respondent uses such a weapon in a threatening manner. *Whitten v. Whitten,* 292 Ill.App.3d 780, 686 N.E.2d 19, 226 Ill.Dec. 670 (3d Dist. 1997) (striking with belt four to six times leaving bruises); *People v. Jones,* 297 Ill.App.3d 688, 697 N.E.2d 457, 460, 231 Ill.Dec. 903 (5th Dist. 1998) (court affirmed conviction over defendant's argument that Koran empowered him to beat his three wives, stating, "If a religion sanctions conduct that can form the basis for murder, and a practitioner engages in such conduct and kills someone, that practitioner need be prepared to speak to God from prison").

2. [3.9] Harassment

"Harassment" is defined as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances." 750 ILCS 60/103(7). Further, it must be conduct that "would cause a reasonable person emotional distress" and in fact "does cause emotional distress to the petitioner." *Id.* Unless rebutted by a preponderance of the evidence, the following conduct is presumed to cause emotional distress:

(i) creating a disturbance at petitioner's place of employment or school;

(ii) repeatedly telephoning petitioner's place of employment, home or residence;

(iii) repeatedly following petitioner about in a public place or places;

(iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;

(v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless the respondent was fleeing an incident or pattern of domestic violence; or

(vi) threatening physical force, confinement or restraint on one or more occasions. *Id.*

Harassment includes but is not limited to behavior such as calling the petitioner names, yelling at or threatening the petitioner, using angry expressions or gestures with the petitioner, humiliating the petitioner either in public or in private, accusing the petitioner of infidelity, breaking or throwing the petitioner's property, constantly telephoning or sending letters and cards to the petitioner, or threatening to commit suicide if the petitioner ever leaves the relationship. These actions are sufficient to create a disturbance and presumably would cause emotional distress. No specific number of times is necessary to meet the "repeatedly" requirement, but at least two or more should be present. Harassment does not necessarily require an overt act of violence. *People v. Whitfield,* 147 Ill.App.3d 675, 498 N.E.2d 262, 101 Ill.Dec. 80 (4th Dist. 1986).

Conduct that courts have upheld as harassment includes the respondent following his former wife in an automobile and staring at her (*Whitfield, supra*); the respondent entering the home of his estranged wife, ordering his wife's guest out of the residence, and attempting to prevent the petitioner from speaking to police on the telephone to have him removed (*People v. Zarebski,* 186 Ill.App.3d 285, 542 N.E.2d 445, 134 Ill.Dec. 266 (2d Dist. 1989)); the respondent pressuring the children to ask the petitioner to allow visitation in contravention of orders entered by the court (*In re Marriage of McCoy,* 253 Ill.App.3d 958, 625 N.E.2d 883, 192 Ill.Dec. 728 (4th Dist. 1993)

(petitioner testified that, when she did not accede to requests, children cried and got upset)). *See also People v. Reynolds,* 302 Ill.App.3d 722, 706 N.E.2d 49, 52, 235 Ill.Dec. 789 (4th Dist. 1999) (post-it note attached to birthday card sent to divorced couple's daughter in handwriting of estranged husband that read, "Bye the bye, the State dropped all charges on you and Jerry's [former spouse's current fiancé] bull you tried to pull. Barry," found to be harassment and violation of order of protection). *See also People v. Karich,* 293 Ill.App.3d 135, 687 N.E.2d 1169, 227 Ill.Dec. 687 (2d Dist. 1997) (discusses proof necessary to establish harassment and violation of order of protection by repeated telephone calls by defendant). The court in *People v. Wett,* 308 Ill.App.3d 729, 721 N.E.2d 190, 194, 242 Ill.Dec. 222 (2d Dist. 1999), distinguished *Karich,* in which the trial court found that the state failed to prove the content of the defendant's allegedly harassing calls. In *Wett,* the victim's testimony was sufficient for the jury to conclude that the defendant repeatedly called her at home and swore at her. Two calls one evening followed by four to five the next morning while under an order of protection to have no contact with the victim constituted a violation of the order of protection by harassment as defined in 750 ILCS 60/103(7)(ii). 721 N.E.2d at 194.

In *Frank v. Hawkins,* 383 Ill.App.3d 799, 891 N.E.2d 522, 528, 322 Ill.Dec. 507 (4th Dist. 2008), the court agreed with the trial court's finding that

> **the statute is clear in that it's not appropriate and it is harassment and abuse for an individual to be subjected to treatment that's been described here in terms of coming home and finding your house in disarray or being threatened that your animals will be hurt if you don't come home, someone repeatedly coming to the home intoxicated and yelling and causing a disruption. All those things constitute abuse and harassment.**

The threat relating to the pets was in the course of a telephone conversation with the children's mother, who replied to the respondent's statements, "[y]ou better not kill my dog, or I'll call the cops on you." 891 N.E.2d at 526.

In *In re Marriage of Young,* 2013 IL App (2d) 121196, 990 N.E.2d 788, 371 Ill.Dec. 600, the trial court held that the husband's creation of a browser history of pornographic sites on the family-used iPod amounted to harassment. The appellate court reversed the plenary order of protection because, under the Domestic Violence Act of 1986, the husband's conduct, as shown at trial, was not "harassment" of the protected persons.

3. [3.10] Interference with Personal Liberty

"Interference with personal liberty" is defined as "committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage." 750 ILCS 60/103(9).

Examples include but are not limited to such behavior as preventing the petitioner from using the telephone to call for help, preventing the petitioner from leaving the residence, isolating the petitioner from family and friends, using any form of restraint, and controlling the petitioner's

movements by, for example, monitoring to whom the petitioner talks or where the petitioner goes. *See In re Marriage of Healy*, 263 Ill.App.3d 596, 635 N.E.2d 666, 200 Ill.Dec. 327 (1st Dist. 1994) (interference with personal liberty would include inability to sleep or eat well, both of which are activities in which petitioner has right to engage).

4. [3.11] Intimidation of a Dependent

"Intimidation of a dependent" is defined as "subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in [750 ILCS 60/103(14)], regardless of whether the abused person is a family or household member." 750 ILCS 60/103(10).

Intimidation along with "psychological abuse," physical abuse, and harassment were found in *Frank v. Hawkins*, 383 Ill.App.3d 799, 891 N.E.2d 522, 534, 322 Ill.Dec. 507 (4th Dist. 2008). The court found the respondent's actions were violent.

> **For the children to come home to find their home in shambles and their personal belongings smashed and thrown around, then to witness and/or hear respondent throwing and destroying things in the basement, and then to see the aftermath of his rampage, could only have led to an atmosphere of emotional distress and anxiety. Respondent's past history of domestic battery against the children's mother, and respondent's rampage on the evening of December 21, 2006, could only have led the children to fear that more was in store for their mother or even them. Respondent's conduct constituted psychological abuse, harassment, and intimidation.** *Id.*

5. [3.12] Willful Deprivation

"Willful deprivation" is defined as

> **wilfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forgo such medical care or treatment.** 750 ILCS 60/103(15).

This definition, however, "does not create any new affirmative duty to provide support to dependent persons." *Id.*

6. [3.13] Neglect

"Neglect" is defined as "the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances." 750 ILCS 60/103(11)(A). Neglect includes but is not limited to

(i) the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse;

(ii) the repeated, careless imposition of unreasonable confinement;

(iii) the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance;

(iv) the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities; or

(v) the failure to protect a high-risk adult with disabilities from health and safety hazards. *Id.*

Section 103(11) shall not be construed "to impose a requirement that assistance be provided to a high-risk adult with disabilities over his or her objection in the absence of a court order, nor to create any new affirmative duty to provide support to a high-risk adult with disabilities." 750 ILCS 60/103(11)(B).

Section 103(11)(A) limits the scope of neglect to apply only to "high-risk adults with disabilities." A "high-risk adult with disabilities" is defined as "a person aged 18 or over whose physical or mental disability impairs his or her ability to seek or obtain protection from abuse, neglect, or exploitation." 750 ILCS 60/103(8).

For example, assume that a petitioner observes that his disabled parent is not being fed or bathed regularly by his live-in caretaker. He also observes the caretaker failing to administer medication as prescribed. These examples may be sufficient to show that a reasonable degree of care is not being exercised toward a high-risk adult with a disability. However, counsel should be very careful to investigate fully before taking any court action. In *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill.App.3d 255, 747 N.E.2d 483, 254 Ill.Dec. 443 (5th Dist. 2001), an attorney working for a community social service center represented an adult with a disability in obtaining an emergency order of protection from the parents of the adult with a disability only to find herself later defending a request for legal fees and sanctions because the trial court determined that the adult's with a disability allegations were totally unfounded. See also §3.57 below.

7. [3.14] Exploitation

"Exploitation" is defined as "the illegal, including tortious, use of a high-risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities," including but not limited to "the misappropriation of assets or resources of a high-risk adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law." 750 ILCS 60/103(5).

Like neglect, exploitation is also limited by the Illinois Domestic Violence Act of 1986 to apply only to high-risk adults with disabilities.

8. [3.15] Stalking

The definition of "stalking" as found in §12-7.3(a) of the Criminal Code of 2012, 720 ILCS 5/12-7.3(a), has been declared unconstitutional per the holding of *People v. Relerford*, 2016 IL App (1st) 132531, 56 N.E.3d 489, 404 Ill.Dec. 505. Counsel should be aware of this decision and the resulting impact its holding has on all previous cases that have analyzed the prohibition of "stalking."

E. What Types of Remedies May Be Obtained Through an Order of Protection?

1. [3.16] Prohibition of Abuse, Neglect, or Exploitation

An order of protection may be used to prohibit the respondent from engaging in abuse, neglect, or exploitation and may be requested to prevent future likely abuse. 750 ILCS 60/214(b)(1).

2. [3.17] Exclusive Possession

The remedy of exclusive possession prohibits the respondent "from entering or remaining in any residence, household, or premises of the petitioner, including one owned or leased by respondent." 750 ILCS 60/214(b)(2). This remedy may be granted only if the petitioner has a right to occupancy of the residence or household. *Id. See Wood v. Wood*, 284 Ill.App.3d 718, 672 N.E.2d 385, 219 Ill.Dec. 877 (4th Dist. 1996), in which the respondent quitclaimed a residence to his parents prior to the petitioner's obtaining an order of protection in which the petitioner requested exclusive possession. The respondent's parents sought forcible entry and detainer, but the court found that the parents were bound by the order of protection because the Illinois Domestic Violence Act of 1986 is to be liberally construed. In dicta, the court stated that, even if the parents had acted independently, there was a possible defense of retaliatory eviction and a possible violation of public policy if a person is evicted for obtaining an order of protection. *See also People v. Oakley*, 187 Ill.2d 472, 719 N.E.2d 654, 241 Ill.Dec. 525 (1999) (even though defendant's name appeared on title to property, his conviction for home invasion upheld because victim awarded marital residence in divorce decree entered six months earlier).

a. [3.18] Right to Occupancy

A party has a "right to occupancy" of a residence or household "if it is solely or jointly owned or leased by that party, that party's spouse, a person with a legal duty to support that party or a minor child in that party's care, or by any person or entity other than the opposing party that authorizes that party's occupancy (*e.g.*, a domestic violence shelter)." 750 ILCS 60/214(b)(2)(A). The standards set forth in §214(b)(2)(B) (governing presumptions of hardship) shall not preclude equitable relief. *Id.* Therefore, a petitioner can obtain a grant of exclusive possession of a residence even if the residence is solely owned by the respondent. See §3.19 below.

P.A. 99-240 (eff. Jan. 1, 2016) amended 750 ILCS 60/210(c) by adding that, in counties with a population over 3 million, a special process server may not be appointed to serve process on the

coresident if the order of protection grants the surrender of a child, the surrender of a firearm or firearm owners identification card, or the exclusive possession of a shared residence. 750 ILCS 60/210(c).

b. [3.19] Balancing of Hardships

If the petitioner and the respondent each have a right to occupy the residence or household, the court must balance the hardships to show that the risk of future abuse outweighs the hardships faced by the respondent in having to leave the residence. 750 ILCS 60/214(b)(2)(B). In weighing the risks, the court is directed by the Illinois Domestic Violence Act of 1986 to balance the hardships to the respondent and any minor child or dependent adult in the respondent's care with the hardships to the petitioner and any minor child or dependent adult in the petitioner's care. No balance of hardships is required if the respondent does not have a right to occupancy. *Id.*

The courts shall examine the "availability, accessibility, cost, safety, adequacy, location and other characteristics of alternate housing for each party and any minor child or dependent adult in the party's care," "the effect on the party's employment," and "the effect on the relationship of the party, and any minor child or dependent adult in the party's care, to family, school, church and community." 750 ILCS 60/214(c)(2).

For example, the judge may consider whether (1) the petitioner cares for minor children or dependent adults; (2) the residence is in close proximity to the children's schools or daycare centers; (3) the children have friends in the area; (4) the petitioner's family lives in the area; (5) the building is owned by the petitioner's family members; (6) the petitioner works out of the home; (7) the respondent works and the petitioner does not, putting the respondent in a better position to afford alternative housing; (8) the respondent has already voluntarily left the residence; (9) the petitioner has no family or friends in the area and therefore no reasonable alternative housing; and (10) the respondent has family or friends in the area and therefore has reasonable alternative housing.

c. [3.20] Presumption of Hardships

In balancing the hardships, there is a presumption in favor of exclusive possession by the petitioner, but this presumption may be rebutted by a preponderance of the evidence showing that the hardships to the respondent substantially outweigh those to the petitioner and any minor child or dependent adult under the petitioner's care. 750 ILCS 60/214(b)(2)(B). If the court finds that the hardships balance in favor of the respondent, the court may also order the respondent to provide suitable, accessible, alternative housing for the petitioner instead of excluding the respondent from the mutual residence. *Id.*

3. [3.21] Stay-Away Orders

The order of protection can prohibit contact between the parties, including contact at the petitioner's residence, place of employment, school, or other specified places at times when the petitioner is present. 750 ILCS 60/214(b)(3).

P.A. 97-294 (eff. Jan. 1, 2012) amended 750 ILCS 60/214 by adding §214(b)(3)(B), which provides for situations in which the petitioner and respondent attend the same school and the court — in weighing the severity of the act, any continuing physical damage or emotional distress to the petitioner, and other relevant factors — may order that the respondent is not to attend the same school and must accept a change of placement. Any such court order requiring a change of placement is to be implemented per the terms of §214(b)(3)(B) and at the cost of the respondent.

P.A. 97-294 also amended 750 ILCS 60/214 by adding subparagraph §214(b)(3)(C), which provides that the court may order the parents, guardian, or legal custodian of a minor respondent to act to ensure the respondent complies with the court order. Costs for such a court-ordered change of school are the respondent's responsibility.

In addition to staying away from the petitioner, the Illinois Domestic Violence Act of 1986 also permits a court to order that the respondent have no contact with other protected parties, including the minor children. *See In re Marriage of McCoy*, 253 Ill.App.3d 958, 625 N.E.2d 883, 192 Ill.Dec. 728 (4th Dist. 1993) (respondent ordered to stay away from minor children's school while children present when respondent had harassed children in attempt to circumvent prior court orders regarding visitation). Hardships need not be balanced for the court to enter this order.

If an order of protection grants the petitioner exclusive possession of the residence, prohibits the respondent from entry, or mandates that the respondent stay away, then the court may allow the respondent access to the residence to remove items of clothing and personal adornment used exclusively by the respondent, medications, and other items as the court may direct. 750 ILCS 60/214(b)(3). Access shall be allowed on only one occasion as directed by the court and in the presence of an agreed-on adult third party or law enforcement officer. *Id.* These items should be agreed on in advance to reduce the amount of communication necessary between the parties and to allow the removal procedure to run as quickly and smoothly as possible.

The term "stay-away" implies proximity in time and space. *See People v. Gee*, 276 Ill.App.3d 198, 658 N.E.2d 508, 213 Ill.Dec. 38 (4th Dist. 1995) (respondent at doorway or one or two steps into room constituted violation of stay-away provision). The court will consider the size of the public area, the total number of people present, the defendant's purpose for being present, the length of time, and whether the defendant knew or should have known that a protected party would be present. *People v. Mandic*, 325 Ill.App.3d 544, 759 N.E.2d 138, 259 Ill.Dec. 658 (2d Dist. 2001). The *Mandic* court found more than presence in the same public place when the defendant intentionally (a) entered a church after being told his wife and children were expected, (b) remained in the sanctuary after observing his children present, (c) entered the church social hall after the service, (d) was warned by his ex-wife's attorney that his conduct was a violation of the order of protection, and then (e) hugged and kissed his children.

One call may constitute a violation of a stay-away order. In *People v. Olsson*, 335 Ill.App.3d 372, 780 N.E.2d 816, 817, 269 Ill.Dec. 344 (4th Dist. 2002), the trial court granted the petitioner an emergency protective order using a preprinted form that ordered the defendant "to stay away from" the petitioner and a minor child and "not communicate directly or indirectly with persons protected . . . whether in person, by telephone, written notes, mail[,] or through third parties." One phone call was charged as the violation. The *Olsson* court held that

> **a "stay[-]away" order can encompass both physical presence and nonphysical contact. The Illinois Domestic Violence Act would fail in its purpose of protecting family harmony and creating an emotional atmosphere "conducive to healthy childhood development" if it cannot protect an abused person, particularly a minor, from receiving even a single or occasional telephone call from his or her abuser. If a protective order forbids telephone contact, then the defendant cannot use the telephone to contact the protected party.** 780 N.E.2d at 819.

P.A. 93-811 (eff. Jan. 1, 2005) added a definition of "stay away" to the Illinois Domestic Violence Act. " 'Stay Away' means for the respondent to refrain from both physical presence and nonphysical contact with the petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, email, faxes, and written notes), or through third parties who may or may not know about the order of protection." 750 ILCS 60/103(14.5). However, note that a violation of a stay-away order does not encompass aimless, unintentional, or accidental conduct. *Mandic, supra*, 759 N.E.2d at 143.

See also People v. Reher, 361 Ill.App.3d 697, 838 N.E.2d 206, 297 Ill.Dec. 719 (2d Dist. 2005), in which the defendant's conviction for violating an order of protection was reversed because the state failed to present any evidence that the defendant knew or should have known that the protected party would appear at the store when she did. The protected party approached the defendant as he was trying to put model automobiles into a bag that hung on his bicycle in front of a K-Mart located at a busy intersection. Even though the order of protection in effect prohibited any kind of "contact" with the protected party, it was the protected party who approached the defendant.

In *People v. Leezer*, 387 Ill.App.3d 446, 903 N.E.2d 726, 328 Ill.Dec. 66 (4th Dist. 2008), the defendant was convicted of violating an order of protection by driving within 1,000 feet of petitioner's residence. The court held that an order of protection could order the defendant to stay away from the victim's residence at all times, rather than simply when the victim was present. However, in *People v. Gabriel*, 2014 IL App (2d) 130507, 25 N.E.3d 698, 389 Ill.Dec. 53, the court reversed the defendant's conviction for violating a stay-away provision, because a general stay away from the protected person's school at all times was not authorized by the statute. NOTE: The language in the order that caused the confusion in *Gabriel* is part of a standard form order that is in use statewide.

4. [3.22] Counseling

The court may require or recommend counseling for the respondent for a specified duration. 750 ILCS 60/214(b)(4). While counseling for the abuser may prove helpful in certain situations, joint counseling is most often not recommended. In situations involving domestic violence, joint counseling will only provide the abuser with a forum for further abusing the petitioner or trying to persuade the petitioner to reconcile the relationship. Only specially trained professionals should provide counseling for both the offender and victim. Counseling may be provided by (a) social workers, (b) psychologists, (c) clinical psychologists, (d) psychiatrists, (e) family service agencies, (f) alcohol or substance abuse programs, (g) mental health center guidance counselors,

(h) agencies providing services to elders, (i) programs designed for domestic violence abusers, or (j) any other guidance services the court deems appropriate. *Id.* The specific type of counseling ordered by the court along with the duration of the program should be specified in the order of protection.

5. [3.23] Physical Care and Possession of Minor Child

The Illinois Domestic Violence Act of 1986 provides that, in order "to protect the minor child from abuse, neglect, or unwarranted separation from the person who has been the minor child's primary caretaker," the court may do either or both of the following:

a. grant the petitioner physical care and/or possession of the minor child; or

b. order the respondent to return the minor child to or not remove the minor from the physical care of the parent or the person in loco parentis. 750 ILCS 60/214(b)(5).

If, after a hearing, the court finds that the respondent has committed abuse of the minor child, there arises a rebuttable presumption that an award of physical care of the minor child to the respondent would not be in the child's best interests. *Id.*

6. [3.24] Allocation of Parental Responsibilities

A court may award temporary allocation of parental responsibility of a minor child under 750 ILCS 60/214(b)(6). This relief is not available on an ex parte basis through an emergency order of protection. 750 ILCS 60/217(a). The respondent first must be served to allow opportunity for a hearing. 750 ILCS 60/210(e). Therefore, allocation of parental responsibility may be awarded only through a plenary order of protection. Physical care and possession, however, may be awarded in an emergency order of protection. 750 ILCS 60/217(a)(3)(i).

If a court finds after a hearing that the respondent has committed abuse (as defined in 750 ILCS 60/103(1)) of a minor child, there shall be a rebuttable presumption that awarding temporary allocation of parental responsibility to the respondent would not be in the child's best interests. 750 ILCS 60/214(b)(6).

For the petitioner to obtain temporary allocation of parental responsibility of a minor child, the petitioner's counsel should allege in an affidavit that the petitioner is the primary caretaker of the child and that it is in the child's best interests that allocation of parental responsibility be awarded to the petitioner. However, note that an order granting a parent temporary allocation of parental responsibility in an emergency or plenary order of protection is not res judicata on the issue of allocation of parental responsibility: *In re Marriage of Jackson*, 315 Ill.App.3d 741, 734 N.E.2d 513, 248 Ill.Dec. 585 (3d Dist. 2000). In *Jackson,* the trial court erred in giving the determination of custody in the order of protection proceeding res judicata effect in a subsequent petition for dissolution cause of action. This error deprived the father of a fair custody hearing. Temporary legal custody is just temporary.

In determining a grant of temporary allocation of parental responsibility, the court should apply the "best interest of the child" standard. See 750 ILCS 5/602.5. After a hearing or if there are no objections, based solely on the affidavits, the court may award temporary allocation of parental responsibility. 750 ILCS 5/603.5(a). The relevant statutes governing allocation of parental responsibility issues are the Illinois Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/101, *et seq.,* the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), 750 ILCS 36/101, *et seq.,* and the Illinois Parentage Act of 2015 (Parentage Act), 750 ILCS 46/101, *et seq.,* and temporary allocation of parental responsibility awards under the Illinois Domestic Violence Act of 1986 must be made in accordance with these Acts. 750 ILCS 60/214(b)(6). *See In re Marriage of Gordon,* 233 Ill.App.3d 617, 599 N.E.2d 1151, 175 Ill.Dec. 137 (1st Dist. 1992) (IDVA should not be used as subterfuge to gain custody). *See also Wilson v. Jackson,* 312 Ill.App.3d 1156, 728 N.E.2d 832, 245 Ill.Dec. 750 (3d Dist. 2000), in which the petitioner could have filed a petition for visitation or custody under the Parentage Act or the IMDMA. Instead, the petitioner waited until he had physical custody of the child and then sought an ex parte order of protection. A careful review of the entire record convinced the court that the petitioner's primary purpose in seeking an order of protection was not to prevent abuse but to obtain visitation with and custody of the child. The court held that, while the petitioner's desire to be a part of his child's life was laudable, obtaining an order of protection was not the proper procedure for establishing visitation. The petitioner's misuse of the IDVA in this manner warranted reversal of the plenary order of protection.

Practitioners should keep in mind that in allocation of parental responsibility disputes, the court's personal jurisdiction is determined by the UCCJEA. 750 ILCS 60/208, 60/214(b)(6).

In *Sutherlin v. Sutherlin,* 363 Ill.App.3d 691, 843 N.E.2d 398, 300 Ill.Dec. 140 (5th Dist. 2006), a mother who received an emergency order of protection appealed the trial court's refusal to address the issue of temporary custody in an order of protection case. The appellate court found that

> **[**b**]ecause the action in the instant case was not a covert attempt to interfere with child custody or visitation, because the finding of abuse was fully supported by the record, and because the Domestic Violence Act specifically provides that the circuit court may address the issue of temporary child custody, we believe the circuit court erred when it refused to consider the issue of temporary child custody in this case.** 843 N.E.2d at 402.

The case was remanded to the circuit court to address the issue of temporary child custody.

7. [3.25] Parenting Time

In domestic violence cases, parenting time can be used by an abuser as a method of gaining access to or harassing the custodian of the parties' children. Therefore, the Illinois Domestic Violence Act of 1986 addresses the issue of parenting time and sets certain limits on parenting time.

According to the IDVA, the court is to determine the respondent's parenting time rights with the minor child and shall restrict or deny the respondent's parenting time with the child if the court finds that the respondent has (a) abused or endangered the child during parenting time, (b) used the parenting time as an opportunity to abuse or harass the petitioner or the petitioner's family or household members, (c) improperly concealed or detained the child, or (d) otherwise acted in a manner not in the best interests of the child or is likely to engage in any of these activities. 750 ILCS 60/214(b)(7).

a. [3.26] Reasonable Parenting Time

The court is not limited by the standards set forth in §§600 – 610.5 of the IMDMA, 750 ILCS 5/600 – 5/610.5, when setting reasonable parenting time. 750 ILCS 60/214(b)(7). When setting reasonable parenting time. 750 ILCS 60/214(b)(7). If the court grants parenting time, "the order shall specify dates and times for the parenting time to take place or other specific parameters or conditions that are appropriate. No order for parenting time shall refer merely to the term 'reasonable parenting time.' " *Id.*

b. [3.27] Restricted Parenting Time

"Restricted parenting time" means only that there are some restrictions on the conditions of parenting time. For example, the respondent may be prohibited from coming to the petitioner's residence to meet the child for parenting time. 750 ILCS 60/214(b)(7). If this is the case, the parties shall submit to the court their recommendations for reasonable alternative arrangements for parenting time. *Id.* Alternative arrangements may include specifying a safe place for the drop-off and pickup of the children, such as a trusted relative's residence, a police station parking lot, or some other public place. If the primary responsible parent's address is omitted pursuant to 750 ILCS 60/203(b), the court will require the parties to set up a reasonable alternative arrangement for parenting time by the nonprimary responsible parent.

Another restriction on parenting time may be that the respondent may not pick up the children if under the influence of alcohol or drugs. The Illinois Domestic Violence Act of 1986 provides that a petitioner can deny parenting time "if, when respondent arrives for parenting time, respondent is under the influence of drugs or alcohol and constitutes a threat to the safety and well-being of petitioner or petitioner's minor children or is behaving in a violent or abusive manner." 750 ILCS 60/214(b)(7).

Counsel may want to wait until the respondent is in court to set specific restrictions on parenting time. It may be difficult to be specific without consulting with other family members. If the petitioner can specify dates, times, and restrictions, the parenting time arrangement can be put into place as early as through the emergency order of protection. In Cook County, if setting up a specific schedule would prove difficult at this stage, parenting time may be reserved until the plenary hearing by checking off the restricted parenting time box on the petition and indicating that parenting time will be a reserved issue.

c. [3.28] Supervised Parenting Time

The statutory standard for restricted or supervised parenting time is whether the "parenting time would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/602.7(b). For example, supervised parenting time might be a good option when there have been threats of child-snatching. In domestic violence cases, opposing counsel often argues that the violence was directed at the other parent, not the minor children. A good response to this argument is that witnessing violence, especially against a parent, is just as damaging as receiving the abuse. See 750 ILCS 5/602.7(b)(11) (in determining "best interests of the child," courts will consider "physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household").

If the court orders supervised parenting time, a person may be approved to supervise parenting time "only after filing an affidavit accepting that responsibility and acknowledging accountability to the court." 750 ILCS 60/214(b)(7). When friends and family are not available to supervise parenting time or the parties cannot agree on a supervisor, the parties may be able to use a supervised parenting time center as a location for supervised parenting time. There are several supervised parenting time centers in the City of Chicago. For a fee, these centers will provide on-site or off-site supervision of parenting time by staff members. These centers will also help make arrangements, so the children can be dropped off and picked up without the parties meeting. Some supervised parenting time centers offer free services to low-income clients.

d. [3.29] Parenting Time, Allocation of Responsibility, and Support in Relation to Putative Father

The Illinois Domestic Violence Act of 1986 provides the following regarding unmarried parties:

> **No rights or responsibilities for a minor child born outside of marriage attach to a putative father until a father and child relationship has been established under the Illinois Parentage Act of 1984, the Illinois Parentage Act of 2015, the Illinois Public Aid Code, Section 12 of the Vital Records Act, the Juvenile Court Act of 1987, the Probate Act of 1985, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, the Expedited Child Support Act of 1990, any judicial, administrative, or other act of another state or territory, any other Illinois statute, or by any foreign nation establishing the father and child relationship, any other proceeding substantially in conformity with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193), or where both parties appeared in open court or at an administrative hearing acknowledging under oath or admitting by affirmation the existence of a father and child relationship. Absent such an adjudication, finding, or acknowledgment, no putative father shall be granted temporary allocation of parental responsibilities, including parenting time with the minor child, or physical care and possession of the minor child, nor shall an order of payment for support of the minor child be entered.** 750 ILCS 60/214(c)(5).

8. [3.30] Removal or Concealment of Minor Child

The court may prohibit the respondent from "removing a minor child from the State or concealing the child within the State." 750 ILCS 60/214(b)(8).

9. [3.31] Order To Appear

The court may order the respondent "to appear in court, alone or with a minor child, to prevent abuse, neglect, removal or concealment of the child, to return the child to the custody or care of the petitioner or to permit any court-ordered interview or examination of the child or the respondent." 750 ILCS 60/214(b)(9).

10. [3.32] Possession of Personal Property

The court may grant the petitioner exclusive possession of personal property, and if the respondent has possession or control of the personal property, the court may direct the respondent to make it promptly available to the petitioner if (a) the petitioner, but not the respondent, owns the property or (b) the parties own the property jointly, sharing the property would risk further abuse of the petitioner by the respondent or is impracticable, and the balance of hardships favors temporary possession by the petitioner. 750 ILCS 60/214(b)(10). This remedy does not affect title to property. *Id.*

This remedy is similar to the remedy of exclusive possession of a residence in that, if the respondent has a right to possession of the property, the court must balance the hardships. The hardships must be balanced to show that the risk of future abuse to the petitioner outweighs the respondent's right to possession. The Illinois Domestic Violence Act of 1986 directs the court to balance the hardships to the respondent and any minor children or dependent adults in the respondent's care with the hardships to the petitioner and any minor children or dependent adults in the petitioner's care. 750 ILCS 60/214(b)(2)(B). In balancing the hardships, there is a presumption in favor of possession by the petitioner unless the presumption is rebutted by a preponderance of the evidence showing that the hardships to the respondent substantially outweigh the hardships to the petitioner. *Id.*

11. [3.33] Protection of Property

The court may forbid the respondent from "taking, transferring, encumbering, concealing, damaging or otherwise disposing of any real or personal property," provided (a) the petitioner, but not the respondent, owns the property or (b) the parties own the property jointly, and the balance of hardships favors granting this remedy. 750 ILCS 60/214(b)(11).

The court may further prohibit the respondent from improperly using the financial or other resources of an aged member of the family or household for his or her or any other person's profit or advantage. *Id.*

750 ILCS 60/214(b)(11.5) specifically provides for protection of animals and allows the court to award exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing in the residence.

12. [3.34] Order for Payment of Support

If the respondent has a legal obligation to support the petitioner or minor child, the IMDMA shall govern the amount of support, the payment through the clerk, and the withholding of income to secure payment. 750 ILCS 60/214(b)(12).

This remedy is not available in an emergency order of protection. 750 ILCS 60/217(a). The respondent first must be personally served to allow for a hearing. 750 ILCS 60/210(d).

13. [3.35] Order for Payment of Losses

The court may order the respondent to pay the petitioner for "losses suffered as a direct result of the abuse, neglect, or exploitation." 750 ILCS 60/214(b)(13). Rarely have attorneys petitioned for the relief specifically provided for by this statute. Payments may be ordered for the following types of expenses:

a. medical expenses;

b. lost earnings or other support;

c. repair or replacement of property damaged or taken;

d. reasonable attorneys' fees;

e. court costs;

f. moving or other travel expenses; and

g. reasonable expenses for temporary shelter and restaurant meals. *Id.*

This remedy is not available in an emergency order of protection. 750 ILCS 60/217(a). The respondent first must be personally served to allow for a hearing. 750 ILCS 60/210(d).

a. [3.36] Losses Affecting Family Needs

When a party is entitled to seek maintenance, child support, or property distribution from the other party under the IMDMA, the court may order the respondent to reimburse the petitioner's actual losses to the extent that this reimbursement would be appropriate temporary relief. 750 ILCS 60/214(b)(13)(i).

b. [3.37] Recovery of Expenses

When there has been an improper concealment or removal of a minor child, the court may order the respondent to pay reasonable expenses incurred in the search for and recovery of the child, including but not limited to (1) legal fees, (2) court costs, (3) private investigator fees, and (4) travel costs. 750 ILCS 60/214(b)(13)(ii).

14. Prohibition

a. [3.38] Of Entry

The court may prohibit the respondent from "entering or remaining in the residence or household while the respondent is under the influence of alcohol or drugs and constitutes a threat to the safety and well-being of the petitioner or the petitioner's children." 750 ILCS 60/214(b)(14).

b. Of Firearm Possession

(1) [3.39] In general

When the respondent "has threatened or is likely to use firearms illegally against the petitioner," the court, after testimony by the petitioner, may prohibit the respondent from possessing any firearms. 750 ILCS 60/214(b)(14.5)(a). If this remedy is granted, the court will order the respondent to turn over any firearms to a local law enforcement agency for the duration of the order of protection. *Id.*

Section 214 also includes the following restrictions of the possession of a firearm:

(a) Prohibit a respondent against whom an order of protection was issued from possessing any firearms during the duration of the order if the order:

(1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(2) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibit the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Any Firearm Owner's Identification Card in the possession of the respondent, except as provided in subsection (b), shall be ordered by the court to be turned over to the local law enforcement agency. The local law enforcement agency shall immediately mail the card to the Department of State Police Firearm Owner's Identification Card Office for safekeeping. The court shall issue a warrant for seizure of any firearm in the possession of the respondent, to be kept by the local law enforcement agency for safekeeping, except as provided in subsection (b). The period of safekeeping shall be for the duration of the order

> **of protection. The firearm or firearms and Firearm Owner's Identification Card, if unexpired, shall at the respondent's request, be returned to the respondent at the end of the order of protection. It is the respondent's responsibility to notify the Department of State Police Firearm Owner's Identification Card Office.** 750 ILCS 60/214(b)(14.5).

In *People v. Costello,* 2014 IL App (3d) 121001, 20 N.E.3d 771, 386 Ill.Dec. 395, the defendant's conviction for violating the order of protection was affirmed when he failed to turn over a specified list of fire arms to the police.

(2) [3.40] Police officers

When the respondent is a police or other peace officer, the respondent will be ordered to turn over any firearms used in conjunction with the performance of job duties to the chief law enforcement executive of the agency in which the respondent is employed for safekeeping during the duration of the order. 750 ILCS 60/214(b)(14.5)(b).

c. [3.41] Of Access to Records

If an order of protection prohibits the respondent from having contact with a minor child who is in the care of the petitioner, if the petitioner's address is omitted pursuant to §203(b) of the Illinois Domestic Violence Act of 1986, or if it is necessary to prevent abuse or wrongful removal or concealment of the child, the court shall deny the respondent access to and prohibit the respondent from inspecting and obtaining or attempting to inspect or obtain school or any other records concerning the child. 750 ILCS 60/214(b)(15). Section 203(c) of the IDVA also provides that the petitioner may omit from all documents filed with the court the name and address of any daycare facility, preschool, prekindergarten, private school, public school district, college, or university if the petition states that disclosure of this information would risk abuse to the petitioner or child protected under the order. 750 ILCS 60/203.

15. [3.42] Order for Payment of Shelter Services

The court may order the respondent to "reimburse a shelter providing temporary housing and counseling services to the petitioner for the cost of the services, as certified by the shelter and deemed reasonable by the court." 750 ILCS 60/214(b)(16).

This remedy is not available in an emergency order of protection. 750 ILCS 60/217(a). The respondent first must be personally served to allow for a hearing. 750 ILCS 60/210(d).

16. [3.43] Order for Injunctive Relief

The court may enter an order for injunctive relief, supported by the balance of hardships, if it is necessary and appropriate to prevent further abuse of family or household members or to effect a granted remedy. 750 ILCS 60/214(b)(17). No further evidence is necessary to establish that the harm is an irreparable injury if the harm to be prevented by the injunction is abuse or any other harm that one of the remedies listed in §214 is designed to prevent. *Id.*

F. [3.44] What Findings Must Be Made?

750 ILCS 60/214(c)(1) provides that, in "determining whether to grant a specific remedy, other than payment of support, the court shall consider relevant factors" that include but are not limited to

1. "the nature, frequency, severity, pattern and consequences of the respondent's past abuse";

2. the respondent's "concealment of his or her location in order to evade service of process or notice";

3. "the likelihood of danger of future abuse"; and

4. "the danger that any minor child will be abused or neglected or improperly removed from the jurisdiction, improperly concealed within the State or improperly separated from the child's primary caretaker."

The Illinois Domestic Violence Act of 1986 requires that specific findings be made when an order of protection is granted. The court's findings must be made in an official record or in writing and must set forth at a minimum (1) that the court has considered the applicable relevant factors; (2) whether the conduct or actions of the respondent, unless prohibited, will likely cause irreparable harm or continued abuse; and (3) whether it is necessary to grant the requested relief in order to protect the petitioner or other allegedly abused persons. 750 ILCS 60/214(c)(3). *See People ex rel. Minteer v. Kozin,* 297 Ill.App.3d 1038, 697 N.E.2d 891, 232 Ill.Dec. 149 (1st Dist. 1998), in which the appellate court held that evidence during the ex parte hearing should not have been considered to relieve the petitioner of her burden of proving by a preponderance of the evidence that the respondent had abused her. The trial court improperly determined that the petitioner had established a prima facie case through the evidence she presented at the ex parte hearing and then compounded that error by finding that the respondent failed to overcome the prima facie case. In *Mowen v. Holland,* 336 Ill.App.3d 368, 783 N.E.2d 180, 270 Ill.Dec. 605 (4th Dist. 2003), the court accepted as appropriate a process similar to that rejected in *Minteer.* The *Mowen* court stated, "When the trial court issued its 'Order Following Issuance of Emergency Order of Protection' continuing the emergency order in full force and effect as a plenary order of protection, the relevant findings of the emergency order were effectively incorporated by reference into the plenary order." 783 N.E.2d at 186.

In *In re Marriage of Henry,* 297 Ill.App.3d 139, 696 N.E.2d 1181, 231 Ill.Dec. 610 (2d Dist. 1998), the appellate court reversed for failure to make specific findings per §214(c)(3). Neither the transcript nor the order indicated that the court had considered relevant factors. Even though the issue was not raised in the trial court, the appellate court in *Hedrick-Koroll v. Bagley,* 352 Ill.App.3d 590, 816 N.E.2d 849, 287 Ill.Dec. 882 (2d Dist. 2004), found that it was not precluded from addressing the issue of lack of factual findings by the trial court judge, who granted the emergency and plenary orders of protection without making any findings for the record. The appellate court stated, "Nevertheless, given the clear authority of section 214(c)(3) of the Act, we must remand for compliance with that statutory provision." 816 N.E.2d at 853.

G. [3.45] What May Be the Bases for a Denial of Remedies?

The denial of any remedy may not be based in whole or in part on evidence

1. that the respondent has "cause" for any use of force unless that cause satisfies the standards for justifiable use of force provided by the Criminal Code of 2012;

2. that the respondent was voluntarily intoxicated;

3. that the petitioner acted or failed to act in self-defense or defense of another, provided that the force was justifiable under the Criminal Code of 2012;

4. that the petitioner left or failed to leave the residence or household to avoid further abuse by the respondent; or

5. that the conduct by any family or household member excused the abuse of the respondent unless that same conduct would have excused this abuse if the parties had not been family or household members. 750 ILCS 60/214(e).

In *People ex rel. Minteer v. Kozin,* 297 Ill.App.3d 1038, 697 N.E.2d 891, 232 Ill.Dec. 149 (1st Dist. 1998), the record showed that the petitioner complained that (1) the respondent was at a bar that she frequented even though he did not say anything to her, (2) she saw the respondent leave notes on her car on one occasion, and (3) the respondent was arrested for telephone harassment for telephoning the petitioner at her place of employment but those charges were dismissed. The appellate court held that the evidence was not sufficient for an order of protection. *See also In re Marriage of Healy,* 263 Ill.App.3d 596, 635 N.E.2d 666, 200 Ill.Dec. 327 (1st Dist. 1994), in which an order of protection was improperly entered when the petitioner alleged abuse but failed to present evidence other than the fact that she was unable to eat or sleep. No evidence was presented that the respondent's conduct was unreasonable under the circumstances or that the respondent's conduct even caused the symptoms. *See also People v. Spencer,* 314 Ill.App.3d 206, 731 N.E.2d 1250, 247 Ill.Dec. 242 (2d Dist. 2000), in which the appellate court could not find an intent to harass based on a single telephone call, the purpose of which was never established. *But see People v. Olsson,* 335 Ill.App.3d 372, 780 N.E.2d 816, 819, 269 Ill.Dec. 344 (4th Dist. 2002), as discussed in §3.21 above, in which the court found one phone call sufficient to constitute a basis for violating an order of protection because the prosecution was predicated on §214(b)(3), which the court found is legislatively intended to "prohibit all types of contact."

In *People v. Houar,* 365 Ill.App.3d 682, 850 N.E.2d 327, 302 Ill.Dec. 890 (2d Dist. 2006), the issuance of an order of protection was reversed because the trial court erred in its finding that the plenary order of protection should be issued, based on the court's application of a negative inference from the defendant's assertion of his Fifth Amendment privilege against self-incrimination and his resulting silence at his hearing. The respondent's silence was not additional evidence pointing towards abuse; it was the only evidence. The direct inference of guilt from silence is improper.

III. PROCEDURES FOR OBTAINING ORDERS OF PROTECTION

A. [3.46] Necessary Documents

Practitioners seeking to file an order of protection first should prepare the following documents, which can be obtained from most county clerks' offices:

1. petition for order of protection (for Cook County, see http://12.218.239.52/Forms/pdf_files/CCGN800A.pdf (case sensitive),

   http://12.218.239.52/Forms/pdf_files/CCGN800B.pdf (case sensitive),

   http://12.218.239.52/Forms/pdf_files/CCGN800C.pdf (case sensitive),

   http://12.218.239.52/Forms/pdf_files/CCGN800D.pdf (case sensitive), and

   http://12.218.239.52/Forms/pdf_files/CCGN800E.pdf (case sensitive); for McHenry County, see www.co.mchenry.il.us/home/showdocument?id=22532 (can be adapted for counties other than Cook));

2. affidavit in support of an order of protection (there is no official court form; this will need to be drafted from scratch; see §3.101 below) (*see Whitten v. Whitten*, 292 Ill.App.3d 780, 686 N.E.2d 19, 226 Ill.Dec. 670 (3d Dist. 1997) (petitioner may establish exigent circumstances to excuse prior notice of verified petition without attaching separate sworn affidavit));

3. seven-day summons (see §3.74 below);

4. domestic relations cover sheet (Cook County only; see http://12.218.239.52/forms/pdf_files/ccdr0601.pdf); and

5. emergency order of protection (for Cook County, see http://12.218.239.52/forms/pdf_files/ccgn801a.pdf,

   http://12.218.239.52/forms/pdf_files/ccgn801b.pdf, and

   http://12.218.239.52/forms/pdf_files/ccgn801c.pdf; for McHenry County, see www.co.mchenry.il.us/home/showdocument?id=22530 (can be adapted for counties other than Cook)).

In preparing any documents, counsel should always be mindful that he or she is an officer of the court and duty bound to comply with court rules. In particular, counsel should be aware of Supreme Court Rule 137 in general and its more stringent application in §226 of the Illinois Domestic Violence Act of 1986. Section 226 provides:

> **Allegations and denials, made without reasonable cause and found to be untrue, shall subject the party pleading them to the payment of reasonable expenses actually**

> **incurred by the other party by reason of the untrue pleading, together with a reasonable attorney's fee, to be summarily taxed by the court upon motion made within 30 days of the judgment or dismissal, as provided in Supreme Court Rule 137. The Court may direct that a copy of an order entered under this Section be provided to the State's Attorney so that he or she may determine whether to prosecute for perjury.** 750 ILCS 60/226.

The reason §226 is as harsh as it appears is to offset the liberal application of the Act, understandably to protect those who need to be protected, by a petitioner who may consider utilizing the Act for purposes other than protection. Harassment and abuse of process are not always the work of the respondent.

B. [3.47] Application of Civil Procedure

In any proceeding to "obtain, modify, reopen or appeal an order of protection, whether commenced alone or in conjunction with a civil or criminal proceeding," the Code of Civil Procedure, 735 ILCS 5/1-101, *et seq.*, and the Illinois Supreme Court Rules shall apply. 750 ILCS 60/205(a). In criminal court, the judges and attorneys are really functioning simultaneously as criminal and civil judges and attorneys. The rules of criminal procedure apply to processing the criminal complaint, information, or indictment. However, when processing a petition for an emergency, interim, or plenary order of protection, the rules of civil procedure apply. It does not matter whether the conjoined proceeding is criminal or civil; when processing an order of protection, the Code of Civil Procedure applies. Requests for substitution of judge, substitution of attorney, pretrial conference, etc., should all proceed pursuant to the Code of Civil Procedure.

In *In re Marriage of Flannery*, 328 Ill.App.3d 602, 768 N.E.2d 34, 263 Ill.Dec. 274 (2d Dist. 2002), the court found that the plain language of 750 ILCS 60/205(a) mandated the application of §8-2601 of the Code of Civil Procedure in assessing the admissibility of a minor's out-of-court statements in cases brought under the Illinois Domestic Violence Act of 1986. Note, however, that this holding is contrary to the Third District Appellate Court's decision in *Daria W. v. Bradley W.*, 317 Ill.App.3d 194, 738 N.E.2d 974, 250 Ill.Dec. 505 (3d Dist. 2000). See further discussion in §3.89 below.

1. [3.48] Standard of Proof

Regardless of whether a proceeding concerning an order of protection is filed in criminal or civil court, the standard of proof in the proceeding is by a preponderance of the evidence. 750 ILCS 60/205(a).

2. [3.49] Jurisdiction

750 ILCS 60/207 governs subject-matter jurisdiction. Under the Illinois Domestic Violence Act of 1986, circuit courts of Illinois shall have the power to issue orders of protection. *Id.*

750 ILCS 60/208 addresses personal jurisdiction. According to the IDVA, the Illinois courts have jurisdiction to bind residents and nonresidents having minimum contacts with the state to the extent permitted by the long-arm statute, 735 ILCS 5/2-209. In child custody proceedings, the court's personal jurisdiction is determined by the Uniform Child-Custody Jurisdiction and Enforcement Act. 750 ILCS 60/208.

3. [3.50] Venue

A petition for an order of protection may be filed in any county in which (a) the petitioner resides, (b) the respondent resides, (c) the alleged abuse occurred, or (d) the petitioner is temporarily located if he or she left the residence to avoid further abuse and could not obtain safe, accessible, and adequate temporary housing in the same county. 750 ILCS 60/209(a).

4. [3.51] Right to a Jury Trial

There is no right to trial by jury in any proceeding to obtain, modify, vacate, or extend any order of protection under the Illinois Domestic Violence Act of 1986. 750 ILCS 60/206. However, this provision does not deny any existing right to trial by jury in a criminal proceeding. *Id.*

5. [3.52] Right to Appointed Counsel

There is no right to appointed counsel in a proceeding regarding an order of protection. *See In re T.W.,* 166 Ill.App.3d 1022, 520 N.E.2d 1107, 117 Ill.Dec. 756 (4th Dist. 1988), holding that, because the order of protection is not a deprivation of physical liberty requiring the right to counsel, the court is not required to advise a respondent of his or her right to counsel in a civil petition for an order of protection. However, the Fourth District Appellate Court has approved the practice of the trial judge appointing an attorney for the petitioner when the respondent is represented by counsel and the petitioner is pro se:

> **Trial courts are in fact encouraged to appoint counsel to the indigent in "domestic relations matters." . . . Lawsuits involving orders of protection are a "domestic relations matter" under the Domestic Relations Legal Funding Act. 705 ILCS 130/10. The legislature has found that "providing legal representation to the indigent party in domestic relations cases has a great potential for efficiently reducing the volume of matters which burden the court system in this State." 705 ILCS 130/5. [**Citation omitted.**]** *Scroggins v. Scroggins,* 327 Ill.App.3d 333, 762 N.E.2d 1195, 1199, 261 Ill.Dec. 268 (4th Dist. 2002).

C. [3.53] Commencement of Actions

An attorney seeking to file a petition for an order of protection on behalf of his or her client must first determine where to file the action. In making this determination, the practitioner will have to assess whether there are any other criminal or civil cases pending in court between the victim and the respondent. Based on this determination, the action shall be filed either independently or in conjunction with another civil or criminal proceeding. The Illinois Domestic

Violence Act of 1986 allows for both. Often, a petitioner seeking an order of protection will have other actions pending with the respondent.

Under the IDVA, orders of protection can be commenced:

(1) Independently: By filing a petition for an order of protection in any civil court, unless specific courts are designated by local rule or [court**] order.**

(2) In conjunction with another civil proceeding: By filing a petition for an order of protection under the same case number as another civil proceeding involving the parties, including but not limited to: (i) any proceeding under the Illinois Marriage and Dissolution of Marriage Act, Illinois Parentage Act of 2015, Nonsupport of Spouse and Children Act, Revised Uniform Reciprocal Enforcement of Support Act or an action for nonsupport brought under Article X of the Illinois Public Aid Code, provided that a petitioner and the respondent are a party to or the subject of that proceeding or (ii) a guardianship proceeding under the Probate Act of 1975, or a proceeding for involuntary commitment under the Mental Health and Developmental Disabilities Code, or any proceeding, other than a delinquency petition, under the Juvenile Court Act of 1987, provided that a petitioner or the respondent is a party to or the subject of such proceeding.

(3) In conjunction with a delinquency petition or a criminal prosecution: By filing a petition for an order of protection, under the same case number as the delinquency petition or criminal prosecution, to be granted during pre-trial release of a defendant, with any dispositional order issued under Section 5-710 of the Juvenile Court Act of 1987 or as a condition of release, supervision, conditional discharge, probation, periodic imprisonment, parole, aftercare release, or mandatory supervised release, or in conjunction with imprisonment or a bond forfeiture warrant; provided that:

(i) the violation is alleged in an information, complaint, indictment or delinquency petition on file, and the alleged offender and victim are family or household members or persons protected by this Act; and

(ii) the petition, which is filed by the State's Attorney, names a victim of the alleged crime as a petitioner. 750 ILCS 60/202(a).

NOTE: Effective January 1, 2018, P.A. 100-199 will amend §202(a)(3) to read: "In conjunction with a delinquency petition or a criminal prosecution as provided in Section 112A–20 of the Code of Criminal Procedure of 1963." Subsections (i) and (ii) of §202(a)(3) will be deleted.

Although there is no right to appointed counsel (see §3.52 above), a protected party in an order of protection case may be represented by counsel of his or her choice. *Macknin v. Macknin*, 404 Ill.App.3d 520, 937 N.E.2d 270, 344 Ill.Dec. 564 (2d Dist. 2010).

1. [3.54] Dissolution of Marriage Cases

If there is a dissolution of marriage action pending between the parties, the practitioner shall file under the case number of the dissolution action. 750 ILCS 60/202(a)(2). The domestic relations judge assigned to the case will be responsible for determining all issues, including whether to grant an order of protection. If the practitioner chooses to file the order of protection action first and later files a petition for dissolution of marriage, the two actions will be consolidated. In *In re Marriage of Jackson,* 315 Ill.App.3d 741, 734 N.E.2d 513, 248 Ill.Dec. 585 (3d Dist. 2000), the appellate court held that the trial court improperly gave res judicata effect to the custody provisions of a plenary order of protection entered before the commencement of the dissolution of marriage proceeding.

2. [3.55] Parentage Actions

The issues of parentage and child support are often present in cases involving domestic violence. In Cook County, child support-related cases are handled by the Child Support Enforcement Division (CSED) of the Cook County State's Attorney's Office. The CSED deals exclusively with issues of parentage, child support, medical insurance, arrearages, and enforcement of support orders. Title IV, Part D of the Social Security Act, ch. 531, 49 Stat. 620, (1935), requires each state to have an agency to administer a child-support enforcement program, also known as an "IV-D agency." See 42 U.S.C. §651.

The IV-D agency in Illinois is the Illinois Department of Healthcare and Family Services (HFS), formerly known as the Department of Public Aid. As such, HFS does the initial screening of prospective clients and refers the cases to the CSED for legal action. Under the Illinois Public Aid Code, 305 ILCS 5/1-1, *et seq.*, any custodial parent or responsible person, regardless of whether that person is a public aid recipient, seeking to establish paternity or seeking to set or enforce child support is eligible for services through the IV-D program. 305 ILCS 5/10-1. Although the IV-D program is open to both public aid recipients and those who do not receive aid, the IDPA requires all applicants for public aid to cooperate in establishing parentage. *Id.* In a situation involving domestic violence, when harm or danger could result from establishing parentage, a "good cause" exemption entitles a public aid recipient to refuse to cooperate in establishing parentage. See also Cook County State's Attorney's Office, Domestic Violence Division, DOMESTIC VIOLENCE: A PROSECUTOR'S GUIDE IV-63 (1996).

When a support action has been filed by HFS on behalf of a petitioner, the petition for order of protection shall be filed under the case number assigned to the parentage action. Practitioners should be aware that often, when HFS files a case on behalf of a public aid recipient, the petitioner may not know the action has been filed. It is therefore necessary to check with the clerk's office to determine the existence of any concurrent action existing between the parties.

In *Petillino v. Williams,* 2016 IL App (1st) 151861, ¶24, 61 N.E.3d 1014, 406 Ill.Dec. 746, the court held:

> **[**I**]t is well settled that we cannot read into a statute words which are not within the plain meaning of the legislature as determined from the statute itself. [***Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago,*** 95 Ill.2d 211, 447

> N.E.2d 394, 397, 69 Ill.Dec. 177 (1983), quoting *Bovinette v. City of Mascoutah*, 55 Ill.2d 129, 133, 302 N.E.2d 313 (1973)**]. It is readily apparent here that section 202 does not include the word "pending." Such word is not in the statute, and we cannot place it there.**

The court allowed the petitioner's request for a protective order to proceed in the same court before the same judge who processed the parentage action.

3. [3.56] Juvenile Cases

Petitions for orders of protection may also be filed in juvenile court. 750 ILCS 60/202(a)(2), 60/202(a)(3). Juvenile court is unique in that it involves both criminal and civil issues in cases of family violence. These cases include parental or caretaker abuse or neglect of a child and may also apply to situations involving criminal conduct by juveniles against parents or other family members.

A petition for order of protection can be sought in juvenile court as part of an abuse, neglect, dependency, or delinquency proceeding.

D. [3.57] Filing of Petition for Order of Protection

The petition for an order of protection is the initial pleading document in the action. Under 750 ILCS 60/203(a), the petition must (1) be in writing and verified or accompanied by an affidavit, (2) allege that the petitioner has been abused by the respondent, (3) allege that the respondent is a family or household member as defined by 750 ILCS 60/103(6), and (4) set forth whether there are any other pending actions between the parties.

At the conclusion of a misdemeanor trial, the state orally requested the issuance of two plenary orders of protection as part of the sentence imposed. The trial court complied only to have the orders reversed "because the State's oral petition [did] not satisfy the writing requirement of sections 202(a)(3) and 203(a)." *People v. Cuevas*, 371 Ill.App.3d 192, 862 N.E.2d 631, 636, 308 Ill.Dec. 698 (2d Dist. 2007).

The requirement that the petition be verified or accompanied by an affidavit is essential and is the area that places the practitioner at greatest risk. In *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill.App.3d 255, 747 N.E.2d 483, 486, 254 Ill.Dec. 443 (5th Dist. 2001), an attorney for Franklin-Williamson Human Services signed a petition for an order of protection on behalf of the petitioner, a "high risk adult with disabilities," without ever speaking with the respondents and the parents of the petitioner regarding the purported physical neglect, lack of hygiene, acts of limiting fluid intake, and the petitioner's bedroom confinement. The emergency order was granted and extended. After a full hearing on the petition for plenary order of protection, the trial court found that "there was absolutely no evidence that any order of protection was ever required." 747 N.E.2d at 487. In response to a request for S.Ct. Rule 137 sanctions, counsel contended that she did not become the attorney of record and the attorney on the case until 19 days after the "pro se" petition was filed. The court found that, because she began acting as pro se petitioner's attorney almost 60 days before filing her court appearance by advising him of what steps to take, she was subject to sanctions.

There is a continuing duty of inquiry. In a companion suit for the appointment of a guardian, the appellate court in *Heidlebaugh,* citing *Cmarko v. Fisher,* 208 Ill.App.3d 440, 567 N.E.2d 352, 355, 153 Ill.Dec. 394 (1st Dist. 1990), stated, "Once [counsel] recognized that, as Judge Murphy stated, '[n]othing approaching abuse or justifying removal of Joe from his parents was apparent from the evidence presented', she had a duty to dismiss the petition for the appointment of guardian or else she risked the possibility of sanctions." 747 N.E.2d at 494.

At all times when drafting or filling in the forms for an order of protection, counsel should keep 750 ILCS 60/226, regarding untrue statements, in mind.

The remedies granted must be requested in the petition. Practitioners should object to the opposing party orally seeking relief. For example, the respondent cannot request visitation if the petitioner did not raise the issue in the petition unless the respondent has independently filed a petition for visitation.

PRACTICE POINTER

✓ 1. Investigate. Make reasonable inquiry into the basis for your pleading.

2. Read the petition carefully before signing.

3. Remember that your representations must be well grounded in fact and law.

4. Do not become a conduit for your client's desire to harass the opponent.

5. Do not use the Illinois Domestic Violence Act of 1986 to avoid the notice requirements of other statutes.

6. Do not use the IDVA unless there is a genuine basis and need for ex parte relief.

7. Remember that you have a continuing duty to inquire.

8. If you recognize that you have no case, stop pursuing it.

9. Act as an officer of the court.

E. [3.58] Omission of Address

The Illinois Domestic Violence Act of 1986 allows for the petitioner's address to be omitted from all pleadings. 750 ILCS 60/203(b). If the petitioner states that the disclosure of the address would risk further abuse to him or her or any member of his or her family or reveal the confidential address of a shelter for domestic violence victims, the address may be omitted from all documents filed with the court. If disclosure is necessary to determine jurisdiction or venue, the disclosure shall be made orally and in camera. *Id.*

If the petitioner's address has been omitted from all court documents, it will be necessary to designate an alternative address at which the respondent may serve notice of any motions. *Id.* The address of an attorney's office will suffice.

It is very important to omit the petitioner's address when the party has escaped abuse by moving to an undisclosed location. Often, the abuser will be quite diligent in attempting to locate the victim. Attempts may include calling friends and relatives or visiting a minor child's school or medical practitioners seeking information from records. In addition to omitting the petitioner's address from the pleadings, the IDVA also provides a means for denying the respondent access to school or any other records of the child. See 750 ILCS 60/214(b)(15). Section 203(c) of the IDVA provides that the petitioner may omit from all documents filed with the court the name and address of any daycare facility, preschool, prekindergarten, private school, public school district, college, or university if the petition states that disclosure of this information would risk abuse to the petitioner or a child protected under the order.

F. [3.59] Filing Fees

Once the practitioner has determined whether to file independently or in conjunction with another civil proceeding and has drafted the appropriate documents, the next step is to file the pleadings with the clerk of the court. 750 ILCS 60/202(b) provides that no fee shall be charged by the clerk for filing, amending, vacating, certifying, or photocopying petitions or orders. No fee shall be charged for issuing an alias summons or for any related filing service. Likewise, no fee shall be charged by the sheriff for service of a petition, rule, motion, or order in an action commenced under the Illinois Domestic Violence Act of 1986. *Id.* A respondent to an order of protection, however, is charged a fee for filing an appearance. The appearance fee may be waived by the court if the respondent is unemployed or otherwise qualifies as indigent. Many judges are quick to waive this fee for respondents. In Cook County, the practitioner should request a fee waiver petition from the clerk of the court. This form is commonly identified as a "298 petition" and is used by the court to determine whether a litigant is indigent.

If the respondent is not indigent, the filing fee for responding to a civil suit is collected by the clerk of the court at the time an appearance is filed for each case. Therefore, at least in Cook County, if the respondent files an appearance and responsive pleading in, for example, juvenile court and the case is dismissed and refiled in another division (*e.g.*, domestic relations), another appearance fee is collected because the domestic relations file is a new case. Dismissal in one division and refiling in another is an abusive practice that should not be allowed. The appropriate practice procedurally would be to transfer the cause of action from one division to the other. In counties outside of Cook, this is often done without complication because the same judge may be hearing all of the related matters as he or she may be assigned to several divisions.

G. [3.60] Statutory Elements

There are three statutory elements required for the entry of an order of protection under §§217 – 219 of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/217 – 60/219:

1. The court first must find that it has subject-matter or personal jurisdiction under 750 ILCS 60/207 or 60/208. See §3.49 above.

2. The court must determine whether the petitioner is a "family or household member" as defined in 750 ILCS 60/103(6). See §3.4 above.

3. The court must determine whether there has been "abuse" as defined in 750 ILCS 60/103(1). See §§3.7 – 3.15 above.

If all the requirements are met, the court shall issue the order prohibiting the abuse, neglect, or exploitation alleged by the petitioner. 750 ILCS 60/214(a). In *Sanches v. Torres*, 2016 IL App (1st) 151189, 48 N.E.3d 271, 400 Ill.Dec. 322, the court stated that "once the trial court finds respondent has committed an abuse against petitioner, it 'shall issue' an order of protection." The trial judge was reversed for entering a civil restraining order after finding abuse occurred. See also 725 ILCS 5/112A-17, regarding emergency orders of protection issued under the Code of Criminal Procedure of 1963.

In *Carolyn Anne H. v. Robert H.*, 2015 IL App (2d) 150409, 45 N.E.3d 713, 399 Ill.Dec. 42, the trial court could not deny the wife's petition for an order of protection under the Illinois Domestic Violence Act of 1986, following abuse by the husband, on the basis of the bond condition that protected the wife during the pendency of criminal proceedings. Beyond the fact that the bond condition was not part of record, it was "perfectly proper for a plenary order of protection to exist alongside conditions imposed during the pendency of criminal proceedings." 2015 IL App (2d) 150409 at ¶37.

H. [3.61] Mutual Orders of Protection

750 ILCS 60/215 prohibits mutual orders of protection. They are allowed only when each party has properly filed written pleadings, proved past abuse by the other party, given prior written notice to the other party, and otherwise complied with the Illinois Domestic Violence Act of 1986. *Id.*

At times, two orders of protection may be granted from two separate courts. For example, one party may proceed in criminal court while the other party races to civil court. The statute, court forms, and computers provide a mechanism to prevent conflicting orders. However, occasionally, the race to the courthouse is too swift or the litigants are not completely truthful in their representations, resulting in conflicting orders. In *People v. Stiles*, 334 Ill.App.3d 953, 779 N.E.2d 397, 268 Ill.Dec. 783 (1st Dist. 2002), the defendant had attempted to obtain a civil order of protection against his ex-girlfriend but was informed by a court clerk that she had already obtained an order of protection against him days earlier. He was served with her order of protection against him. The next day, he returned to court and obtained an emergency order of protection against her, never indicating that there was another action pending or informing the judge that he was in fact the subject of an order of protection. His defense to violating her order of protection was that he was in possession of a valid order of protection prohibiting her from entering a pub at which he was trying to find employment. The trial court found that the defendant's order of protection was fraudulently obtained, and the appellate court affirmed his conviction and sentence for violating his ex-girlfriend's order.

However, the court in *In re Marriage of Kiferbaum*, 2014 IL App (1st) 130736, 19 N.E.3d 1204, 386 Ill.Dec. 51, specifically allowed and set forth an example of a correlative order of protection.

Section 215 of the Illinois Domestic Violence Act provides in full:

> **Mutual orders of protection; correlative separate orders. Mutual orders of protection are prohibited. Correlative separate orders of protection undermine the purposes of this Act and are prohibited unless both parties have properly filed written pleadings, proved past abuse by the other party, given prior written notice to the other party unless excused under Section 217, satisfied all prerequisites for the type of order and each remedy granted, and otherwise complied with this Act. In these cases, the court shall hear relevant evidence, make findings, and issue separate orders in accordance with Sections 214 and 221. The fact that correlative separate orders are issued shall not be a sufficient basis to deny any remedy to petitioner or to prove that the parties are equally at fault or equally endangered**. 750 ILCS 60/215.

I. Types of Orders of Protection

1. [3.62] Emergency Orders of Protection

An emergency order of protection is designed to provide immediate or "emergency" relief to the petitioner. It should be used in emergency cases when there is reason to believe that, absent the emergency order, the petitioner will suffer further abuse.

a. [3.63] Duration

An emergency order of protection is intended to be only temporary in duration. The order is valid for not less than 14 days and not more than 21 days. 750 ILCS 60/220(a)(1).

In *People v. Brzowski*, 2015 IL App (3d) 120376, ¶36, 32 N.E.3d 1152, 392 Ill.Dec. 576, the court relied on §1.11 of the Statute on Statutes, 5 ILCS 70/1.11, which provides "[t]he time within which any act provided by law is to be done shall be computed by excluding the first day and including the last." An emergency order of protection dissolves 21 days *after* the day it is issued. *In re A.M.*, 2013 IL App (3d) 120809, ¶41, 987 N.E.2d 434, 369 Ill.Dec. 807.

b. [3.64] Notice

An emergency order of protection may be entered without notice to the respondent. 750 ILCS 60/217(a)(3). Because of the ex parte nature of the proceeding, the petitioner must justify to the court why the respondent was not given prior notice. The petitioner must allege in the affidavit and testimony that the remedies he or she seeks are intended to prevent harm that likely would occur if the respondent were given prior notice or greater notice than was actually given. 750 ILCS 60/217(a)(3)(i).

The emergency order of protection does not become enforceable until the respondent has been served notice of the order or has otherwise acquired actual knowledge of the order and its contents. 750 ILCS 60/223(d).

P.A. 97-50 (eff. June 28, 2011) amended 750 ILCS 60/222.10 by adding §222.10(f), which provides that "a single short form notification form may be used for orders of protection under [the Illinois Domestic Violence Act of 1986], stalking no contact orders under the Stalking No Contact Order Act, and civil no contact orders under the Civil No Contact Order Act."

750 ILCS 60/221(d) requires that an emergency order of protection must state: "This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261 – 2262)."

If the respondent is present in court when a petition for an emergency order of protection is filed, the respondent may file an appearance and testify. 750 ILCS 60/217(b). In this case, the practitioner may seek a 30-day interim order of protection (*id.*) or a plenary order of protection (750 ILCS 60/219(3)).

P.A. 96-1241 (eff. Jan. 1, 2011) amended 750 ILCS 60/217(c)(2) to include an affirmative obligation of the court: "The judge who issued the order under this Section shall promptly communicate or convey the order to the sheriff to facilitate the entry of the order into the Law Enforcement Agencies Data System by the Department of State Police pursuant to Section 302."

P.A. 97-904 (eff. Jan. 1, 2013) amended 750 ILCS 60/222(b) by adding:

> **If the respondent, at the time of the issuance of the order, is committed to the custody of the Illinois Department of Corrections or Illinois Department of Juvenile Justice or is on parole, aftercare release, or mandatory supervised release, the sheriff or other law enforcement officials charged with maintaining Department of State Police records shall notify the Department of Corrections or Department of Juvenile Justice within 48 hours of receipt of a copy of the order of protection from the clerk of the issuing judge or the petitioner. Such notice shall include the name of the respondent, the respondent's IDOC inmate number or IDJJ youth identification number, the respondent's date of birth, and the LEADS Record Index Number.**

c. [3.65] Remedies

An emergency order of protection may not include the counseling, legal custody, payment of support, or monetary compensation remedies. 750 ILCS 60/217(a)(3)(iii), 60/214(b)(14.5)(a). However, per P.A. 96-1239 (eff. Jan. 1, 2011), even if the respondent is not present in court, the court shall issue a warrant for the seizure of any firearm and Firearm Owner's Identification Card in the possession of the respondent if the court is satisfied that there is any danger of the illegal use of firearms. See §3.39 above.

2. Interim Orders of Protection

a. [3.66] Duration

An interim order of protection is valid for up to 30 days. 750 ILCS 60/220(a)(2).

b. [3.67] Notice

An interim order of protection may be issued if the petitioner has served notice of the hearing for that order on the respondent or if the petitioner is diligently attempting to complete the required service of process. 750 ILCS 60/218(a). An interim order of protection may also be issued if the respondent appears in court or files an appearance. 750 ILCS 60/218(a)(3).

750 ILCS 60/221(e) requires that an interim or plenary order of protection must state:

> **This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act ([**18 U.S.C. §2265**]). Violating this Order of Protection may subject the respondent to federal charges and punishment ([**18 U.S.C. §§2261 – 2262**]). The respondent may be subject to federal criminal penalties for pocessing, transporting, shipping, or receiving any firearm or ammunition under the Gun Control Act ([**18 U.S.C. §§922(g)(8) and 922(g)(9)**]).**

c. [3.68] Remedies

An interim order of protection may not include the counseling, payment of support, or monetary compensation remedies unless the respondent has filed an appearance or has been personally served. 750 ILCS 60/218(a).

3. Plenary Orders of Protection

a. [3.69] Duration

A plenary order of protection can be valid for varying lengths of time. An independent plenary order of protection is valid for a fixed period of time not to exceed two years. 750 ILCS 60/220(b). If the plenary order of protection is entered in conjunction with another civil proceeding, it can theoretically last longer than two years. 750 ILCS 60/220(b)(1)(i). For example, if entered in conjunction with a divorce, the order can run for the life of the final decree and, if entered in conjunction with any other proceeding, until the conclusion of the case.

b. [3.70] Notice

A plenary order of protection may be issued if the petitioner has served notice of the hearing for that order on the respondent or if the respondent has filed an appearance. 750 ILCS 60/219(3). Notice to the respondent may be either actual or constructive. 750 ILCS 60/210(d), 60/210(e). In *People v. Hinton*, 402 Ill.App.3d 181, 931 N.E.2d 769, 341 Ill.Dec. 872 (3d Dist. 2010), the

defendant's conviction for violating an order of protection was reversed because the state failed to prove that he had notice or knowledge of the order of protection.

c. [3.71] Remedies

All of the remedies pursuant to §214(b) of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/214(b), are available in a plenary order of protection.

J. [3.72] Hearings

A petition for an order of protection must be treated by the court as an expedited proceeding. 750 ILCS 60/212(a). If the court transfers or otherwise declines to decide any issue of the order of protection, judgment on that issue shall be expressly reserved, and ruling on other issues shall not be delayed or declined. 750 ILCS 60/212(c). Continuances are granted only for good cause shown and are kept to the minimum reasonable duration. 750 ILCS 60/213(b). If a continuance is necessary for some, but not all, of the requested remedies, a hearing on the other remedies shall not be delayed. *Id.*

1. Emergency Orders of Protection

a. [3.73] In General

Because emergencies may arise at any time, the Illinois Domestic Violence Act of 1986 authorizes judges to be available to process requests for emergency orders out of the courthouse and at times when the court is otherwise closed. 750 ILCS 60/217(c)(1) states: "When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available circuit judge or associate judge who may grant relief under this Act." Also, 750 ILCS 60/217(c)(1.5) provides: "The chief judge of the circuit court may designate for each county in the circuit at least one judge to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency order of protection at all times, whether or not the court is in session." Counsel should note, however, that these judicial services may not be available in a particular jurisdiction as the legislature made these sections discretionary.

To obtain an emergency order of protection in Cook County, an ex parte hearing must be held in open court. At the hearing, the petitioner and any other witnesses will be sworn in by the court. The practitioner should be identified for the record and should proceed to prove up the elements of the case. Counsel should focus on the following information:

1. the petitioner's name;

2. the respondent's name;

3. the petitioner's address;

4. the respondent's address;

5. the relationship of the parties;

6. the names and ages of any children;

7. the parentage status of the children;

8. any other protected parties or addresses;

9. the exclusive possession of the residence or property (balancing the hardships);

10. the personal property sought to be protected; and

11. whether the respondent would try to prevent the petitioner from obtaining an order of protection or harm him or her further if the respondent knew the petitioner was trying to obtain an order of protection.

See the model script for presenting testimony in §3.102 below.

In a hearing for an emergency order of protection, the judge may allow counsel to lead the petitioner or other witnesses.

Following entry of an emergency order of protection, the court will set a date when a hearing will be held to determine whether there should be entry of a plenary order of protection. This hearing date will be set for not less than 14 days and not more than 21 days after entry of the emergency order of protection. See 750 ILCS 60/220(a)(1). Between the emergency order of protection hearing and the hearing for the plenary order of protection, an attempt at service should be made.

b. [3.74] Service

The purpose of service is to notify the respondent of the pendency of the action in order to provide him or her with an opportunity to defend. Any action for an order of protection, whether commenced alone or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served. 750 ILCS 60/210(a). The summons shall require the respondent to answer or appear within seven days. *Id.* The summons shall be served by the sheriff or other law enforcement officer at the earliest possible time. 750 ILCS 60/210(c). Summonses for orders of protection shall take precedence over other summonses except those of a similar emergency nature. In addition to the sheriff, a special process server may be appointed at any time. *Id.* The respondent may also be served notice in conjunction with another pending civil case. 750 ILCS 60/210.1(a).

Attachments to the summons or notice shall include the petition for an order of protection and any supporting affidavits and the emergency order of protection. 750 ILCS 60/210(a).

Notice to the respondent may be effected by either personal or constructive service. Personal service is made by leaving a copy of the summons with the respondent personally. Personal

service is necessary to obtain certain remedies, such as counseling, payment of support, payment of shelter services, and payment of losses due to the respondent's abuse. 750 ILCS 60/210(d).

Constructive process is service effected by leaving a copy of the summons at the respondent's usual place of abode, provided (1) the summons is left with a family member or a person residing at the household who is at least 13 years old, (2) the person is informed of the contents of the summons, and (3) the sheriff sends a copy by mail to the respondent. 735 ILCS 5/2-203(a).

Under the Illinois Domestic Violence Act of 1986, constructive notice is sufficient for entry of a plenary order of protection only if (1) the petitioner has made all reasonable efforts to accomplish actual service of process personally on the respondent but the respondent cannot be found to effect this service and (2) the petitioner files an affidavit or presents sworn testimony as to those efforts. 750 ILCS 60/210(e).

2. [3.75] Plenary Orders of Protection

Three results are possible when service on the respondent is attempted. Based on the outcome of the service attempt, the practitioner should proceed in one of the ways described in §§3.76 – 3.82 below. The Cook County Interim/Plenary Order of Protection is available on the Clerk of the Circuit Court's website, www.cookcountycourt.org/aboutthecourt/countydepartment/domesticviolence/forms.aspx. The McHenry County Interim/Plenary Order of Protection, which can be adapted for use in counties other than Cook, is available on the Circuit Clerk's website, www.co.mchenry.il.us/home/showdocument?id=22528.

a. [3.76] Respondent Is Not Served

If the respondent has not been served by the hearing date for the plenary order of protection, it may be necessary to attempt service again. The petitioner will not be entitled to a plenary order of protection until service has been effected in some manner. Further attempts at service can be made in one of the ways described in §§3.77 – 3.79 below.

(1) [3.77] Alias summons

If the petitioner knows of a new or different address at which to serve the respondent, the practitioner can draft an "alias summons" or second summons directing the sheriff to effect service at this new address. An alias summons is drafted simply by writing in the word "alias" next to the heading of "summons" on an original summons sheet and substituting in a new address. This alias summons must be filed with the clerk's office and delivered to the sheriff.

(2) [3.78] Appointment of a special process server

Under 750 ILCS 60/210(c), a special process server may be appointed at any time. The court, in its discretion and upon motion, may order service to be made by a private person over 18 years of age who is not a party to the action. 735 ILCS 5/2-202(a). For example, the petitioner's brother or son may serve as a special process server. Likewise, an employee of the attorney could be appointed as a special process server.

In order to get a special process server appointed, it is necessary for the practitioner to prepare an affidavit explaining the specific reasons why the respondent is likely to be hostile to further service attempts by the sheriff. The affidavit may be by anyone with personal knowledge of these facts. The affiant can be an attorney. *See generally Nolan v. Barnes*, 294 Ill. 25, 128 N.E. 293 (1920) (complainant or attorney may make affidavit).

At the next court date, the practitioner should draw up a motion for appointment of special process server and present the motion to the court. At that time, the affiant must also be present in court and be prepared to testify. The petitioner, if not also the affiant, should be present in court as well. The proposed process server need not be present.

Once the judge has signed the order, the practitioner will need to have the appropriate service documents filed by the clerk's office before passing them on to the special process server. Once process has been effected, the process server will need to fill out a certification form and have it notarized.

The Cook County Affidavit of Special Process Server is available on the Clerk of the Circuit Court's website, www.cookcountyclerkofcourt.org/forms/pdf_files/ccgn060.pdf. The Cook County Motion for Appointment of Special Process Server is available at www.cookcountyclerkofcourt.org/forms/pdf_files/ccdrn030.pdf.

(3) [3.79] Order for publication

Service by publication is also a statutorily acceptable method of service. 750 ILCS 60/210(e). Service by publication is especially effective when the respondent has gone out of state or cannot be found after due inquiry and, therefore, process cannot be served. Service by publication is permitted by the court only when (a) the petitioner has made all reasonable efforts to accomplish actual service of process personally on the respondent but the respondent cannot be found to effect this service and (b) the petitioner files an affidavit or presents sworn testimony as to these efforts. *Id.*

In order to serve a respondent by publication, the practitioner will need to prepare an affidavit for service by publication. The affidavit must state that the petitioner has made all reasonable efforts to accomplish actual service of process personally on the respondent. *Id.* At a minimum, the petitioner must be unaware of the respondent's whereabouts and must have made reasonable efforts to locate the respondent. For example, the petitioner should try to contact the respondent's friends and relatives in an attempt to locate the person's whereabouts. The court may require the petitioner to give testimony to this effect. The affidavit may be signed by either the petitioner or his or her attorney as long as the affiant has knowledge of the contents of the affidavit. The affidavit must be notarized and filed with the clerk's office. A sample affidavit for service by publication is available at the Cook County Clerk of the Circuit Court website, www.cookcountyclerkofcourt.org/forms/pdf_files/ccg0013.pdf.

The practitioner will also need to prepare an order for service by publication. The proposed order for publication should include a provision waiving all publication fees pursuant to 750 ILCS 60/202(b). In Cook County, the signed order and affidavit must be brought to the Chicago

Daily Law Bulletin counter and arrangements made for publication. The Law Bulletin will issue a default date beyond which, if the respondent has not filed an appearance, the petitioner may proceed toward a default plenary order of protection. The default date will be approximately six weeks after the order for publication is entered. For a sample order, see §3.104 below.

Service by publication is not sufficient for the remedies of counseling, temporary support, monetary compensation, prohibition of firearm possession, or compensation for shelter. 750 ILCS 60/210(d), 60/214(b)(14.5)(a).

(4) [3.80] Extensions

Provided service cannot be effected by the plenary order of protection hearing date, it is important for the practitioner to ask the court to extend the petitioner's emergency order of protection to keep a valid order of protection in place while service is being attempted. The Illinois Domestic Violence Act of 1986 provides that any emergency, interim, or plenary order may be extended one or more times. 750 ILCS 60/220(e). An emergency order of protection may be extended for not less than 14 days and not more than 21 days. 750 ILCS 60/220(a)(1). In *Lutz v. Lutz,* 313 Ill.App.3d 286, 728 N.E.2d 1234, 245 Ill.Dec. 877 (4th Dist. 2000), the parties' consent to the original plenary order of protection essentially conceded the factual basis necessary to support the order, and evidence of the respondent's alleged violation of the original order lent further evidentiary support for the trial court's determination to extend the order.

P.A. 95-886 (eff. Jan. 1, 2009) amended 750 ILCS 60/220(e) to include the additional language that "[a]n extension of a plenary order of protection may be granted, upon good cause shown, to remain in effect until the order of protection is vacated or modified."

b. [3.81] Respondent Is Served but Does Not Appear in Court

If the respondent has been served with notice but does not appear in court, a plenary order of protection may be entered by default. 750 ILCS 60/210(f). Before entering a plenary order of protection by default, the court may ask the petitioner to testify that there has been no change in circumstances since entry of the emergency order of protection.

c. [3.82] Respondent Is Served and Appears in Court

If both parties appear for the hearing date for the plenary order of protection, the practitioner should determine whether the respondent will agree to an order of protection. If negotiations are unsuccessful, a hearing will be held to determine whether the court should grant a plenary order of protection. At the hearing, the practitioner should present the same type of testimony as for the emergency order of protection hearing. See §3.73 above. Each allegation of abuse and the types of remedies sought should be addressed in the testimony. However, this hearing will be more extensive than the hearing for the emergency order of protection. Judges will require more fact-finding. The practitioner will need to prepare very brief opening and closing statements and to prepare both the petitioner and any other witnesses for a direct examination as well as a cross-examination by the opposing side. Any physical evidence, such as photographs, police reports,

and medical records, should be used in the case and entered into evidence when appropriate. Unlike the hearing for the emergency order of protection, the judge will not allow the practitioner to lead witnesses during the plenary hearing.

3. [3.83] Rehearing of Orders of Protection

A respondent subject to an emergency order of protection or an interim order of protection can appear and petition the court to rehear the petition with two days' notice to the petitioner or with shorter notice by leave of court. 750 ILCS 60/224(d). Any petition to rehear, including a petition to rehear a plenary order of protection, must be verified and allege

a. that the respondent did not receive prior notice of the initial hearing in which the emergency, interim, or plenary order was entered; and

b. that the respondent had a meritorious defense to the order or any of its remedies or that any of its remedies were not authorized by the Illinois Domestic Violence Act of 1986. *Id.*

If the petitioner was granted the remedy of exclusive possession of the residence as authorized by §214(b)(2) of the IDVA and the respondent seeks to reopen or vacate that grant, the court must set the rehearing date within 14 days on all issues relating to exclusive possession. 750 ILCS 60/224(e). Under no circumstance shall a court continue a hearing concerning exclusive possession beyond the 14th day except by agreement of the parties. *Id.*

K. [3.84] Vacation of Orders of Protection

The Illinois Domestic Violence Act of 1986 provides for the expiration of orders of protection. An emergency order of protection terminates on its return date unless extended by order of court. 750 ILCS 60/220(a)(1). A plenary order of protection will terminate up to two years after its entry on a date set by the court. 750 ILCS 60/220(b). If the petitioner wishes to vacate the emergency order of protection once it has been issued, the practitioner should notify the court of this decision at the return hearing date. At that time, the court may vacate the emergency order of protection.

If the petitioner wishes to vacate a plenary order of protection before the termination date, the practitioner will need to motion the case up and petition the court to vacate the order of protection. The practitioner should draft a form for the court file indicating that the order of protection has been vacated. This may be done directly on an extension form by checking off the appropriate language indicating that the order was vacated.

L. [3.85] Modification of Orders of Protection

Emergency, interim, and plenary orders of protection may be modified by both the petitioner and the respondent. The petitioner may add, subtract, or alter remedies contained in the original order if there has been subsequent abuse by the respondent. 750 ILCS 60/224(a)(1). If there has

been no subsequent abuse, the petitioner may petition to modify the order as to remedies that have been reserved, not requested, or denied on procedural grounds. 750 ILCS 60/224(a)(2). However, absent further abuse, the petitioner cannot seek to add any remedies that were denied on their merits. *Id.*

The petitioner or the respondent can modify any prior order of protection's remedy for custody, visitation, or payment of support in accordance with the relevant provisions of the IMDMA. 750 ILCS 60/224(b). Attorneys seeking to modify these remedies should file a motion and notice of motion under the IMDMA.

1. [3.86] Time Limitation

If either the petitioner or the respondent wants to modify an order of protection more than 30 days after its entry, it must be alleged on the petition and affidavit to modify the order of protection that there were changes in the law or that facts that took place after the court's original plenary order warrant its modification. 750 ILCS 60/224(c).

2. [3.87] Procedure

Attorneys wishing to modify existing emergency, interim, or plenary orders of protection need to draft the appropriate paperwork, obtain a court date from the motion counter, and serve the respondent or the petitioner with the proposed amended documents. For example, a petitioner might obtain an emergency order of protection and shortly thereafter move to another residence. The petitioner will need to modify the emergency order to reflect this new address. The petitioner's attorney should draft an amended order of protection including the new information. The order should otherwise mirror the original order. The practitioner will need to motion the case up for a new court date and serve the respondent with the amended order of protection by regular and certified mail.

All modifications of existing orders of protection do not necessarily follow the procedures described in the last paragraph. *In re Marriage of Munger,* 339 Ill.App.3d 1104, 791 N.E.2d 573, 274 Ill.Dec. 481 (4th Dist. 2003), is a very good reminder to all practitioners that orders of protection are really injunctive orders over which trial courts have inherent authority to dissolve or modify in order to provide full remedial relief to all litigants.

Attorneys should note that issues involving orders of protection should be handled by the courts on an expedited basis. Therefore, the clerk should put the case on the expedited hearing call. This is especially true when the practitioner wishes to amend certain substantive abuse remedies. Many Illinois courts have a judge assigned to handle emergency matters.

M. Enforcement of Orders of Protection

1. [3.88] Methods of Enforcement

Orders of protection are only as good as the petitioner's ability to enforce them. The Illinois Domestic Violence Act of 1986 allows for both civil and criminal enforcement of orders of

protection. See 750 ILCS 60/223; 725 ILCS 5/112A-23; *People v. Horton,* 250 Ill.App.3d 944, 620 N.E.2d 437, 441, 189 Ill.Dec. 469 (4th Dist. 1993). Under §112A-23(a)(1) of the Code of Criminal Procedure of 1963, orders of protection can be enforced criminally regardless of whether the original order was issued in a civil or criminal proceeding. Note, however, that P.A. 93-359 (eff. Jan. 1, 2004) eliminated some of the discretionary options attorneys had in selecting an avenue of enforcement by amending §§112A-23(a) and 223(a) to provide that, if a violation of an order of protection fits under the definition of a crime, it "*shall* be enforced by a criminal court," regardless of whether it was issued in a civil or quasi-criminal proceeding. [Emphasis added.] Otherwise, practitioners seeking to enforce orders of protection on behalf of their clients have several options. There are four main methods for enforcing an order of protection:

a. as an independent criminal offense;

b. as a civil tort;

c. as a crime, "violation of order of protection"; or

d. as a contempt of court action.

All of these options are enforceable against the respondent when the respondent's subsequent acts or omissions are contrary to the court's order of protection. Violations include subsequent abuse directed toward not only the petitioner but also other protected parties listed in the petitioner's order. 750 ILCS 60/223(a)(1); 725 ILCS 5/112A-23(a)(1). Attorneys should note that, although an order of protection is entered for the protection of the petitioner, it remains the court's order. Therefore, the petitioner cannot invite the respondent to violate the order of protection. *See People v. Townsend,* 183 Ill.App.3d 268, 538 N.E.2d 1297, 131 Ill.Dec. 741 (4th Dist. 1989). In *Townsend,* the Fourth District Appellate Court held that an invitation by the person who originally sought protection in a domestic violence case to violate the court's order does not free the violator from conviction for willful misconduct for violating the court's order: "Orders of protection are orders of the *court,* not orders of the *victims.*" [Emphasis added.] 538 N.E.2d at 1299. *See also Doe v. Lutz,* 253 Ill.App.3d 59, 625 N.E.2d 325, 192 Ill.Dec. 365 (1st Dist. 1993) (protective orders are orders of court, not of person to whom they extend protection); Celia Guzaldo Gamrath, *Enforcing Orders of Protection Across State Lines,* 88 Ill.B.J. 452 (2000) (dealing with how to protect victims of domestic violence based on out-of-state orders of protection and how to enforce out-of-state orders of protection).

a. [3.89] Enforcement as an Independent Criminal Offense

The remedies contained in orders of protection provide for a potentially wide range of prohibited conduct. See §§3.16 – 3.43 above. Most of these remedies contemplate prohibitions against conduct that is already actionable under the existing criminal and civil codes. See generally the Criminal Code of 2012, 720 ILCS 5/1-1, *et seq.* Simply because an order of protection is in place, the state or a private actor is not prevented from taking the types of remedial or punitive actions against the respondent that were formerly available before the Illinois Domestic Violence Act of 1986 was passed. The local state's attorney's office may choose to prosecute violations brought to its attention. The state's attorney can choose to

prosecute violations as independent criminal offenses or prosecute the respondent for the crime of "violation of order of protection." 720 ILCS 5/12-3.4. But see §3.100 below regarding double jeopardy. In *People v. Williams*, 222 Ill.App.3d 129, 582 N.E.2d 1158, 1163, 164 Ill.Dec. 214 (1st Dist. 1991), the court held that a defendant who entered his wife's residence in violation of an order of protection could be convicted of residential burglary: "The Illinois Domestic Violence Act does not provide that it is an *exclusive* remedy. . . . The marriage between the resident or custodian and the invader does not create any exception under the [residential burglary] statute. . . . [The defendant] was legally excluded from the premises but broke into the house . . . and [unlawfully] restrained [the wife]." [Emphasis added.]

The following is a list of the most frequently used remedies on the Cook County order of protection forms and a non-exhaustive sample of correlating criminal offenses:

1. Physical abuse:

    a. Battery (720 ILCS 5/12-3);

    b. Domestic battery (720 ILCS 5/12-3.2);

    c. Aggravated battery (720 ILCS 5/12-3.05);

    d. Heinous battery (720 ILCS 5/12-4.1) (Please note that even though prior printed court forms may list this offence, it was repealed effective July 1, 2011.);

2. Harassment:

    a. Harassment by telephone (720 ILCS 135/1-1) (Please note that even though prior printed court forms may list this offence, it was repealed, effective January 1, 2013.);

    b. Assault (720 ILCS 5/12-1);

    c. Criminal damage to property (720 ILCS 5/21-1);

3. Interference with personal liberty:

    a. Unlawful restraint (720 ILCS 5/10-3);

    b. Kidnapping (720 ILCS 5/10-1);

    c. Forcible detention (720 ILCS 5/10-4);

4. Stalking:

    a. Stalking (720 ILCS 5/12-7.3);

    b. Aggravated stalking (720 ILCS 5/12-7.4);

5. Intimidation of dependent:

    a. Sexual exploitation of a child (720 ILCS 5/11-9.1);

    b. Exploitation of a child (720 ILCS 5/11-19.2) (Please note that even though prior printed court forms may list this offence, it has been repealed effective July 1, 2011.).

In regard to battery, *see People v. Krstic,* 292 Ill.App.3d 720, 686 N.E.2d 692, 226 Ill.Dec. 909 (1st Dist. 1997), in which the prosecution for domestic battery as a violation of an order of protection was not collaterally estopped despite a judicial finding in the civil proceeding of no abuse. In *Krstic,* the state was not a party in the civil proceeding. In *People v. Wouk,* 317 Ill.App.3d 33, 739 N.E.2d 64, 250 Ill.Dec. 603 (1st Dist. 2000), the court confronted the question left unanswered in *Krstic:* Does collateral estoppel prevent the state from prosecuting a domestic battery charge after a hearing judge dismisses an order of protection petition brought and tried by the state? Answering in the negative, the *Wouk* court affirmed the defendant's conviction. In *Wouk,* important public policy reasons existed to prevent the application of collateral estoppel. In *People v. Priest,* 297 Ill.App.3d 797, 698 N.E.2d 223, 232 Ill.Dec. 385 (4th Dist. 1998), convictions for both domestic battery and home invasion were upheld when the defendant entered the petitioner's residence and physically assaulted her in violation of an order of protection. The court found that the unlawful entry was a separate act from causing bodily harm and held that consecutive sentences could be imposed because this was not a single course of conduct. In *People v. Jones,* 306 Ill.App.3d 793, 715 N.E.2d 256, 239 Ill.Dec. 811 (2d Dist. 1999), the defendant was charged with domestic battery on three separate occasions. The first charge did not result in a conviction, and the second charge was dismissed. As to the third charge, the court held that the defendant was correctly charged with and convicted of Class 4 felony domestic battery. *See also People v. Ramos,* 316 Ill.App.3d 18, 735 N.E.2d 1094, 249 Ill.Dec. 269 (2d Dist. 2000) (police orally informing respondent of existing order of protection with specific provision to stay out of home was adequate basis for court finding of second violation due to second return to house; four-year sentence upheld on appeal). In *People v. Irvine,* 379 Ill.App.3d 116, 882 N.E.2d 1124, 318 Ill.Dec. 1 (1st Dist. 2008), the defendant's conviction for domestic battery was affirmed notwithstanding his contentions that the state failed to establish a "dating relationship" because they saw each other for only a month and a half.

Enhanced penalties have become the rule for recidivists and abuse that occurs within the sight or hearing capability of a child. Domestic battery committed in the presence of a child (meaning a person under age 18) who is the defendant's or victim's child is punishable by a minimum of 10 days or 300 hours of community service or both in addition to the cost of any counseling required for the child. 720 ILCS 5/12-3.2(c).

Stalking convictions were affirmed in *People v. Nakajima,* 294 Ill.App.3d 809, 691 N.E.2d 153, 229 Ill.Dec. 217 (4th Dist. 1998); *People v. Zamudio,* 293 Ill.App.3d 976, 689 N.E.2d 254, 228 Ill.Dec. 382 (1st Dist. 1997); *People v. Rand,* 291 Ill.App.3d 431, 683 N.E.2d 1243, 225 Ill.Dec. 580 (1st Dist. 1997); *People v. Cortez,* 286 Ill.App.3d 478, 676 N.E.2d 195, 221 Ill.Dec. 674 (1st Dist. 1996); *People v. Daniel,* 283 Ill.App.3d 1003, 670 N.E.2d 861, 219 Ill.Dec. 183 (1st Dist. 1996) (element of surveillance established); and *People v. Curtis,* 354 Ill.App.3d 312, 820 N.E.2d 1116, 1127, 290 Ill.Dec. 49 (1st Dist. 2004), which cites *Daniel* in holding that "there

was no minimum amount of time a defendant must remain in the vicinity of the victim's building and although 'remain' had a temporal connotation, there was no basis to conclude that a defendant must stop, stay or wait for a set period of time for his actions to constitute surveillance under the stalking statute."

NOTE: The definition of "stalking" as found in §12-7.3(a) of the Criminal Code of 2012, 720 ILCS 5/12-7.3(a), has been declared unconstitutional per the holding of *People v. Relerford*, 2016 IL App (1st) 132531, 56 N.E.3d 489, 404 Ill.Dec. 505. Counsel should be aware of this decision and the resulting impact its holding has on all previous cases that have analyzed the prohibition of "stalking." See §3.15 above.

In any attempt to obtain an order of protection for a child allegedly sexually abused, the hearsay statements of the child may be admitted under 750 ILCS 5/606.5(c) (previously 750 ILCS 5/606(e)). *Daria W. v. Bradley W.*, 317 Ill.App.3d 194, 738 N.E.2d 974, 250 Ill.Dec. 505 (3d Dist. 2000). However, counsel should also take special notice of *In re Marriage of Flannery*, 328 Ill.App.3d 602, 768 N.E.2d 34, 263 Ill.Dec. 274 (2d Dist. 2002), in which the court declined to follow *Daria W.*, reversing the trial court's judgment granting an order of protection outright without remand. The court's analysis centered on the plain language of 750 ILCS 60/205(a), which, the appellate court held, mandates the application of 735 ILCS 5/8-2601 and not the application of 750 ILCS 5/606(e). 768 N.E.2d at 38. Section 8-2601 adds the further requirement that the court must conduct a hearing and find sufficient indicia of reliability as mandated by *Idaho v. Wright*, 497 U.S. 805, 111 L.Ed.2d 638, 110 S.Ct. 3139 (1990). See also Francis A. Gembala and William J. Serritella Jr., *Three Recent United States Supreme Court Decisions for Professionals Who Testify in Child Sexual Abuse Cases*, 1 J. Child Sexual Abuse No. 3, 15 (1992), which discusses the evolution and necessity of applying the safeguard of reliability. This principle has often been overlooked and even ignored by some courts in the quest to protect children. Practitioners must be mindful that this requirement has been the Supreme Court's mandate since 1990.

However, in *In re Marriage of Gilbert*, 355 Ill.App.3d 104, 822 N.E.2d 116, 122, 290 Ill.Dec. 834 (1st Dist. 2004), the court concluded, "[W]e believe that [750 ILCS 5/606(e)] is the appropriate statute to consider in relation to these hearsay statements because the instant petition was brought under the name and title of the original dissolution petition." The court further stated, "We recognize that if this were a proceeding under the Domestic Violence Act, it might be argued that the guiding rules are those set out in the Domestic Violence Act or perhaps even those set out in the Illinois Code of Civil Procedure." *Id.* The appellate court approved the practice of not conducting a hearing to find sufficient indicia of reliability. The court reasoned that a separate hearing was not necessary when the trial judge, not a jury, determines the reliability of the evidence presented to the trial court.

This practice continues as reflected in the following case: Notwithstanding the fact that 750 ILCS 5/606(e) has been repealed effective January 1, 2016 but is now addressed in 750 ILCS 5/606.5(c), the court in *Countryman v Racy*, 2017 IL App (3d) 160379, ¶¶14 – 16, affirmed the trial court hearing of February 2016:

> **We find section 606(e) is the applicable statute and that the trial court did not err when it found the Marriage Act applied to the admission of S.C.'s hearsay statements.**

Based on our determination that the Marriage Act was the applicable statute, we reject Racy's claim that the trial court was required to conduct a hearing to determine the reliability of S.C.'s hearsay statements. Section 606(e) did not require a hearing on reliability and one is not needed in a bench trial. *In re Marriage of Gilbert,* 355 Ill.App.3d 104, 112, 290 Ill.Dec. 834, 822 N.E.2d 116 (2004) (comparing section 8-2601(a)'s hearing requirement with lack of requirement in section 606(e)).

We are able to determine the above issues as matters of law and based on the trial court's June 20, 2016, order denying Racy's motion for a retrial. In the order, the trial court stated that it relied on Daria and rejected Flannery. The court also found that Hoffman's testimony was credible, reliable and subject to cross-examination and that there was sufficient corroboration for the use of her report. It pointed to specific testimony by Hoffman that supported entry of the order of protection.

In *People v. Barwicki*, 365 Ill.App.3d 398, 849 N.E.2d 462, 302 Ill.Dec. 670 (2d Dist. 2006), the trial judge who presided over the dissolution proceedings vacated the emergency order of protection retroactively; therefore, the emergency order of protection could not form the basis for the criminal complaint alleging violation of the order of protection.

b. [3.90] Enforcement by Civil Tort Remedies

Practitioners may pursue general tort remedies available for all actionable injury. The respondent's violation of the remedy of exclusive possession of residence, for example, can be actionable in tort as a trespass. See 12 ILL.JUR. *Personal Injuries and Torts* §§16.76 – 16.81 (2008). Violation of the prohibition against physical abuse can be pursued under the tort of battery. See 11 ILL.JUR. *Personal Injuries and Torts* §§7.9 – 7.13 (2009). An attorney may pursue a respondent's stalking violation under an action for the tort of intentional infliction of emotional distress. See 11 ILL.JUR. *Personal Injuries and Torts* §§6.1 – 6.24 (2009). An attorney may also consider suing the respondent in tort in addition to using other methods of enforcement.

In *Feltmeier v. Feltmeier*, 333 Ill.App.3d 1167, 777 N.E.2d 1032, 268 Ill.Dec. 109 (5th Dist. 2002), the appellate court accepted three issues certified for review. The first was whether the plaintiff could maintain an action for the intentional infliction of emotional distress to recover monetary damages proximately caused by her ex-husband's pattern of abusive treatment during the course of their 11-year failed marriage. The court answered "yes." The plaintiff adequately alleged that she was physically beaten at least 11 times, physically restrained against her will, and systematically isolated from family and friends. When she took action to rid herself of the abuse, the defendant stalked her. In all, the plaintiff alleged more than 45 episodes of abusive conduct constituting extreme and outrageous behavior that the court found was actionable. The second issue was whether the plaintiff's claims for the intentional infliction of emotional distress based on conduct prior to the 2-year statute of limitations date were barred. To this, the court answered "no." The court adopted the continuing tort theory to the claims for the intentional infliction of emotional distress, under which the statute of limitations does not begin to run until the date of the last injury suffered by the plaintiff or when the tortuous acts cease to occur. The third issue was whether the plaintiff's claim against the defendant for the intentional infliction of emotional

distress had been released by the language of the marital settlement agreement. Again, the court answered "no." The general release of claims and bars to future suits language was insufficient to prevent the plaintiff from filing her suit because neither party was aware of the plaintiff's claims when they signed the marital settlement agreement. The Illinois Supreme Court affirmed the appellate court's decision. *Feltmeier v. Feltmeier,* 207 Ill.2d 263, 798 N.E.2d 75, 278 Ill.Dec. 228 (2003).

Occasionally, victims have sought civil monetary relief from local branches of government on police negligence theories. *Calloway v. Kinkelaar,* 261 Ill.App.3d 63, 633 N.E.2d 1380, 199 Ill.Dec. 389 (5th Dist. 1994) (Illinois Domestic Violence Act of 1986 affords relief for plaintiffs if police willfully and wantonly negligent in enforcement of orders of protection), *aff'd,* 168 Ill.2d 312 (1995); *Didzerekis v. Stewart,* 41 F.Supp.2d 840 (N.D.Ill. 1999) (officers' deliberate failure to act resulted in denial of qualified immunity). *See also Sneed v. Howell,* 306 Ill.App.3d 1149, 716 N.E.2d 336, 240 Ill.Dec. 203 (5th Dist. 1999), in which the decedent took all of the necessary steps to put both the respondent and the city's police department on notice of the plenary order of protection. The decedent reported to the police three violations by the respondent of the order of protection: (1) on June 23, 1996, the respondent slashed her tires, and during a photo lineup at the police station, the decedent even had an eyewitness identify him as the culprit; (2) on June 24, 1996, the decedent reported the respondent watching her at her place of work from the restaurant across the street; and (3) on July 1, 1996, she again reported to the police that he was watching her at work from the restaurant across the street. Despite the notice, the police took no action. The Illinois Domestic Violence Act of 1986 puts an affirmative duty on the police to respond to and investigate complaints.

In *Moore v. Green,* 355 Ill.App.3d 81, 822 N.E.2d 69, 290 Ill.Dec. 787 (1st Dist. 2004), the certified question brought to the appellate court in a permissive interlocutory appeal was whether §4-102 or §4-107 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-102 or 10/4-107, provides absolute immunity to a municipality and its police officers who are alleged to have willfully and wantonly failed to prevent a crime against a victim of domestic violence. The court answered the certified question in the negative and remanded the cause. The court stated:

> **Based on the plain language of the Domestic Violence Act, the supreme court's construction of the stated purposes of the Act, in particular section 305, in *Calloway*, [***supra,*** 168 Ill.2d 312,**] and the Fifth District's subsequent decision in *Sneed,* we hold that section 305 providing partial immunity applies in this case, and, therefore, answer the certified question in the negative.** 822 N.E.2d at 79.

In *Lacey v. Village of Palatine,* 379 Ill.App.3d 62, 882 N.E.2d 1187, 1198, 318 Ill.Dec. 64 (1st Dist. 2008), the court followed the precedent and holding of *Moore,* stating, "The holding in *Moore* prevents defendants from establishing that absolute immunity defeats the complaint as a matter of law." The cause was remanded because there was a genuine issue of material fact as to willful and wanton conduct. The facts at issue were whether the police investigation was sufficient to avoid a finding of willful and wanton conduct and whether "[f]rom October 22, 2004 to December 13, 2004, Mary Lacey repeatedly called the Palatine and Glenview police departments." 882 N.E.2d at 1199. The Supreme Court in *Lacey v. Village of Palatine,* 232 Ill.2d

349, 904 N.E.2d 18, 328 Ill.Dec. 256 (2009), reversed the appellate court, holding that there was no genuine issue of material fact with regard to the defendant's enforcement of the IDVA. In this case, absolute immunity under §§4-102 and 4-107 of the Tort Immunity Act applied to the police, who have absolute immunity for failure to provide police protection. The Supreme Court held that the officers were not "otherwise enforcing" the Act so as to bring their conduct within the Act's limited immunity provisions. The IDVA does not impose a general open-ended duty to protect victims of domestic violence.

The court in *Beyer v. City of Joliet,* 392 Ill.App.3d 81, 910 N.E.2d 621, 331 Ill.Dec. 212 (3d Dist. 2009), held as a matter of first impression that a domestic violence victim was not required to obtain an order of protection in order to qualify as a protected person entitled to file a lawsuit against police under the IDVA. The facts pleaded were that the police did nothing in response to the decedent's calls for help immediately before her death other than to show up and leave. The trial court's dismissal of the complaint was reversed, and the case was remanded for further proceedings.

Fenton v. City of Chicago, 2013 IL App (1st) 111596, 984 N.E.2d 74, 368 Ill.Dec. 349, provides further authority that a domestic violence victim is not required to obtain an order of protection in order to qualify as a protected person entitled to file a lawsuit against police under the IDVA. In this case, the police officers' willful and wanton misconduct in responding to the domestic disturbance calls of a victim of abuse was the proximate cause of the victim's death at the hands of the son of the victim's girlfriend. After responding to two domestic disturbance calls and observing a drunken younger man arguing with his mother and the victim, the officers — instead of arresting the man — left the agitator less than a block from the scene of the confrontation. One officer instructed the mother to lock the door after the son was removed from the home because the officer contemplated the possibility that her son might return.

c. [3.91] Prosecution for the Crime of Violation of Order of Protection

When a respondent violates an order of protection, a separate and distinct crime is committed. The party can be prosecuted by the state's attorney's office for a Class A misdemeanor for a first offense and a Class 4 felony for a second or subsequent offense. The respondent commits the crime of violation of order of protection pursuant to §12-3.4(a) of the Criminal Code of 2012, 720 ILCS 5/12-3.4(a), if

> **(1) He or she knowingly commits an act which was prohibited by a court or fails to commit an act which was ordered by a court in violation of:**
>
> > **(i) a remedy in a valid order of protection authorized under paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, [**750 ILCS 60/214,**]**
> >
> > **(ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986,**

(iii) any other remedy when the act constitutes a crime against the protected parties as the term protected parties is defined in Section 112A-4 of the Code of Criminal Procedure of 1963; and

(2) Such violation occurs after the offender has been served notice of the contents of the order, pursuant to the Illinois Domestic Violence Act of 1986 or any substantially similar statute of another state, tribe or United States territory, or otherwise has acquired actual knowledge of the contents of the order.

An order of protection issued by a state, tribal or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe or territory. There shall be a presumption of validity where an order is certified and appears authentic on its face.

P.A. 97-919 (eff. Aug. 10, 2012) amended 720 ILCS 5/12-3.4(d), which now provides that "any prior conviction under the law of another jurisdiction for an offense that could be charged in [Illinois] as a domestic battery or violation of an order of protection" will constitute the basis to elevate the offense of violation of an order of protection to a Class 4 felony. P.A. 97-919 also added §12-3.4(f), which provides that the principles of accountability are applicable to the offenses defined in the Violation of Order of Protection statutes without regard to the mental state of the third party acting at the direction of the defendant.

Each violation is considered a separate offense and is punishable as such. The respondent is criminally liable for violations against any person named as a protected person on the petitioner's order. The respondent may be held criminally liable for both the criminal offense of the violation of an order of protection and any crime that may have been committed at the time of the violation of the order of protection. 750 ILCS 60/223(a). As is discussed in §§3.92 – 3.100 below, prosecuting the crime of violation of order of protection does not diminish the court's authority to enforce its orders through the normal civil or criminal contempt proceedings. See 750 ILCS 60/223(b). Also, it does not prevent concurrent prosecution for any crime committed by the respondent at the time of the violation of order of protection. 750 ILCS 60/223(a). For purposes of prosecuting the respondent for the crime of violation of an order of protection, it is immaterial whether the order was issued in a criminal or civil proceeding. *Id.*

Proof of harassment is all that is required in order to establish the offense of violating an order of protection under 720 ILCS 5/12-3.4. *People v. Peterson,* 336 Ill.App.3d 628, 783 N.E.2d 1067, 270 Ill.Dec. 767 (5th Dist. 2003). In *Peterson,* the defendant was ordered not to have any contact with his fourth wife. However, he in fact went several miles out of his way to drive past her home six times in one day. A few days earlier, he admitted seeing her at a bank but denied any attempt to engage in conversation. He was charged with the offense of violation of an order of protection in harassing and stalking her. In affirming the conviction and issuing a sentence of three years, the appellate court held that proof of harassment is all that is required to establish the offense of violation of an order of protection.

In *People v. Wett*, 308 Ill.App.3d 729, 721 N.E.2d 190, 242 Ill.Dec. 222 (2d Dist. 1999), two calls one evening followed by four to five the next morning constituted a violation of an order of protection by harassment as defined in 750 ILCS 60/103(7).

Conviction for the offense of violation of an order of protection was affirmed notwithstanding the defendant's request for the transcript of proceedings of his misdemeanor jury trial in *People v. Majka*, 365 Ill.App.3d 362, 849 N.E.2d 428, 302 Ill.Dec. 636 (2d Dist. 2006).

In *People v. Hoffman*, 2012 IL App (2d) 110462, 980 N.E.2d 191, 366 Ill.Dec. 391, the defendant was charged with sending text messages to his estranged wife concerning a family vacation, tickets to a concert, the broadcast of a movie on TV, requests to come to the marital home, and expressions of his dissatisfaction with his estranged wife's attorney. He often closed his text messages by expressing his love for her. The estranged wife testified that the text messages were harassing and that she felt threatened by them. The jury verdict of guilty of violation of order of protection was affirmed.

d. Enforcement by Contempt of Court Proceedings

(1) [3.92] Indirect contempt generally

In addition to criminal enforcement remedies, orders of protection can be enforced through civil and criminal contempt of court proceedings. 750 ILCS 60/223(b). *See also People v. Horton*, 250 Ill.App.3d 944, 620 N.E.2d 437, 441, 189 Ill.Dec. 469 (4th Dist. 1993). The Illinois Domestic Violence Act of 1986 provides that a violation of

> **any valid Illinois order of protection, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the order of protection were committed, to the extent consistent with the venue provisions of this Act.** 750 ILCS 60/223(b).

Illinois courts can also enforce any valid order of protection issued in another state. *Id.* "Contempt of court" is defined as "[a]ny act which is calculated to embarrass, hinder or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity." BLACK'S LAW DICTIONARY, p. 319 (6th ed. 1990).

Both criminal and civil contempt come in two forms — direct and indirect. Most frequently, attorneys practicing in the area of domestic violence will encounter indirect contempt of court. Indirect contempt arises when the contemnor acts outside the presence of the judge. Often, respondents will violate the court's stay-away order or some other provision of the court's order. These violations, by their nature, most often take place outside the view of the judge and thus are considered indirect contempt of court. *See generally People v. Townsend*, 183 Ill.App.3d 268, 538 N.E.2d 1297, 131 Ill.Dec. 741 (4th Dist. 1989) (defendant willfully violated court's order of protection by entering property and physically abusing petitioner and thus was in indirect contempt of court). Indirect contempt sanctions may not be imposed on individuals unless they have been accorded due process of law with respect to contempt charges. See the discussion on rules to show cause in §3.96 below.

P.A. 97-294 (eff. Jan. 1, 2012) amended 750 ILCS 60/223 by adding §223(b-1), which precludes the court from holding a school or any of its employees in civil or criminal contempt unless the school has been allowed to intervene and §223(b-2), which allows the court to hold parents, guardians, or legal custodians of a minor in civil or criminal contempt for a violation of any provisions of any order entered under the Act if the conduct of the minor was "directed, encouraged, or assisted" by the parent, guardian, or legal custodian.

(2) [3.93] Direct contempt generally

Direct contempt of court is contemptuous conduct that occurs in the presence of the judge. It is strictly limited to actions seen and known by the judge. *In re Marriage of Betts*, 200 Ill.App.3d 26, 558 N.E.2d 404, 419, 146 Ill.Dec. 441 (4th Dist. 1990). Direct contempt of court arises in the context of an order of protection when the respondent threatens or otherwise abuses the petitioner in the courtroom in front of the judge in violation of that order. In contrast to indirect contempt, defendants facing the charge of direct contempt, whether it be civil or criminal, have few due-process rights. Direct contempt sanctions are imposed for the purpose of maintaining order in the courtroom, and these actions are usually summarily adjudicated immediately upon occurrence. *Id.*

(3) [3.94] Distinction between civil and criminal contempt of court

The primary determinant of whether contempt proceedings are civil or criminal in nature is the purpose for which the contempt sanctions are imposed. If contempt sanctions are imposed for coercive purposes (*i.e.*, to compel the contemnor to perform a particular act), contempt is civil in nature. By contrast, criminal sanctions are imposed for the purpose of punishing past misconduct. *In re Marriage of Betts*, 200 Ill.App.3d 26, 558 N.E.2d 404, 415, 146 Ill.Dec. 441 (4th Dist. 1990). In *Sanders v. Shephard*, 163 Ill.2d 534, 645 N.E.2d 900, 206 Ill.Dec. 648 (1994), the Illinois Supreme Court adopted the trial court's finding of fact and found the respondent to be in civil contempt of court for his failure to comply with a court order directing him to produce his daughter, whom he had previously taken from the child's mother. The respondent was jailed. His release was conditioned on disclosing the whereabouts of his daughter. The trial court used the sanction of jail to coerce the respondent to comply with its order. In civil contempt cases, once a respondent complies, the respondent should be released from jail, and no further sanctions should be imposed.

In *People v. Townsend*, 183 Ill.App.3d 268, 538 N.E.2d 1297, 131 Ill.Dec. 741 (4th Dist. 1989), the trial court found the respondent in indirect criminal contempt of court for violating the terms and conditions of the court's plenary order of protection. The order of protection prohibited the respondent from, among other things, physically abusing the petitioner and entering the petitioner's residence. The trial court found that the respondent violated the conditions of the order of protection by entering the petitioner's residence and abusing her. The trial court found him in contempt and sentenced him to 50 days in jail. This jail sentence was a criminal sanction. It was punitive. It was not imposed for the purpose of coercing the respondent to do anything. Rather, it was imposed for the purpose of punishing him for the past misconduct of violating the court's order. *See also Sanders, supra.*

(4) [3.95] Enforcement through indirect criminal contempt

Indirect criminal contempt, like indirect civil contempt, involves conduct that does not occur in the presence of the trial court and is therefore not within personal observation and knowledge of the judge. *People v. Townsend*, 183 Ill.App.3d 268, 538 N.E.2d 1297, 1299, 131 Ill.Dec. 741 (4th Dist. 1989). Criminal contempt, however, is a crime, and it must be proved beyond a reasonable doubt that the defendant willfully violated a valid court order of protection.

e. [3.96] Enforcement Through Petitions for Rule To Show Cause

The primary method attorneys use to enforce their clients' orders of protection is in the context of an indirect criminal contempt proceeding. Attorneys may proceed against the respondent for a violation of an order of protection by using the courts' inherent power to compel compliance with their valid orders. Respondents who are accused of indirect civil or criminal contempt are entitled to procedural due-process rights. Among these rights are the rights to notice, counsel, written charges, an opportunity to answer, and a hearing. See Cook County State's Attorney's Office, Domestic Violence Division, DOMESTIC VIOLENCE: A PROSECUTOR'S GUIDE IV-102 (1996). See also Cook County Rule 22.9, Contempt Proceedings, for the rules and forms for enforcement of orders of protection. Attorneys should proceed by filing a petition for rule to show cause why the respondent should not be held in contempt of court. A petition for rule to show cause should set forth particular facts evidencing the respondent's contemptuous acts or omissions. It should pray that the respondent be called into court to answer for the violations. Attorneys should file the petition for rule to show cause, along with a notice of motion, with the county clerk's office and serve these documents on the respondent through regular and certified mail. The Illinois Domestic Violence Act of 1986 provides that a petition for rule to show cause for violating an order of protection shall be treated by the courts in an expedited manner. 750 ILCS 60/223(b)(2). It is, therefore, important for attorneys to motion the case up on the expedited emergency calendar. Most courthouses have an emergency judge assigned for the purpose of handling expedited matters.

(1) [3.97] Body attachment

Section 223 of the Illinois Domestic Violence Act of 1986 provides:

> **In a contempt proceeding where the petition for a rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children or on dependent adults in petitioner's care, the court may order the attachment of the respondent without prior service of the rule to show cause or the petition for a rule to show cause.** 750 ILCS 60/223(b)(1).

This mechanism is known as a "body attachment." A body attachment is a separate order that directs the county sheriff to arrest the respondent and bring the person into court immediately for a full hearing on the rule. A sample form of an attachment order is available on the Cook County Clerk of the Circuit Court website, www.cookcountyclerkofcourt.org/Forms/pdf_files/ccdrn018.pdf.

(2) [3.98] Notice requirement

Orders of protection may be enforced if the respondent violates the order after acquiring actual knowledge of its contents. 750 ILCS 60/223(d). Section 223(d) provides that actual knowledge can be demonstrated through one of the following methods:

a. by service, delivery, or notice under 750 ILCS 60/210;

b. by service of notice in conjunction with a pending civil action under 750 ILCS 60/210.1 or service of notice of a hearing under 750 ILCS 60/211;

c. by service of the order of protection under 750 ILCS 60/222; or

d. by "other means" demonstrating actual knowledge of the contents of the order.

"Other means" can include being told of the order by the police or even by the petitioner. Often, a respondent will violate an order of protection several times before the violations are brought to the attention of prosecuting authorities or the petitioner's attorney. Most often, during this time the petitioner or the police will advise of the existence and contents of the order of protection against the respondent. If the respondent was advised of the existence and contents of the order, then the respondent has actual knowledge of it and is subject to its prohibitions. The attorney for the petitioner should call as a witness any person who told the respondent of the order in order to establish that the respondent had actual knowledge of it at the time of or prior to the violation.

Upon the request of the petitioner, within 24 hours of the issuance of an order of protection, the clerk of the issuing judge shall send written notice of the order of protection along with a certified copy of the order of protection to "the day-care facility, pre-school or pre-kindergarten, or private school or the principal office of the public school district or any college or university in which any child who is a protected person under the order of protection or any child of the petitioner is enrolled." 750 ILCS 60/222(e).

The Illinois Domestic Violence Act of 1986 also provides for the filing, enforcement, and processing to the state police of orders of protection granted in foreign jurisdictions. 750 ILCS 60/222.5.

The sheriff may use a short form to effectuate service:

Instead of personal service of an order of protection under Section 222, a sheriff, other law enforcement official, or special process server may serve a respondent with a short form notification. The short form notification must include the following items:

(1) The respondent's name.

(2) The respondent's date of birth, if known.

(3) The petitioner's name.

(4) The names of other protected parties.

(5) The date and county in which the order of protection was filed.

(6) The court file number.

(7) The hearing date and time, if known.

(8) The conditions that apply to the respondent, either in checklist form or handwritten.

(9) The name of the judge who signed the order. 750 ILCS 60/222.10(a).

f. [3.99] Other Uses of Respondent's Violation of Order of Protection

If entered during pretrial proceedings in a criminal prosecution, a violation of an order of protection may serve as the basis for an increase in bond or revocation of bail, as evidence in the criminal trial, or as a factor in aggravation in sentencing. An order entered as a condition of a sentencing disposition of supervision, conditional discharge, or probation in a criminal prosecution may be enforceable as a violation of the disposition of supervision, conditional discharge, or probation. See Cook County State's Attorney's Office, Domestic Violence Division, DOMESTIC VIOLENCE: A PROSECUTOR'S GUIDE IV-96 (1996). P.A. 95-773 (eff. Jan. 1, 2009), also known as the Cindy Bischof Law, requires courts to order respondents charged with violating an order of protection and seeking bail to undergo "a risk assessment evaluation . . . conducted by an Illinois Department of Human Services approved partner abuse intervention program provider, pretrial service, probation, or parole agency." 725 ILCS 5/110-5(f). Additionally, persons convicted of violating an order of protection are to wear a global-positioning device as a condition of parole, mandatory supervised release, or early release. Courts may require that offenders wear a global-positioning device if sentenced to probation or conditional discharge for violating an order of protection or as a condition of bail if charged with a violation of an order of protection. Persons convicted of violating an order of protection are to pay an additional fine of not less than $200 to pay for the surveillance. 730 ILCS 5/5-9-1.16(a).

2. [3.100] The Problem of Double Jeopardy

Prosecutors who seek to enforce orders of protection through criminal contempt and criminal prosecution may be limited by collateral estoppel or the constitutional prohibition against double jeopardy. 750 ILCS 60/223(b) provides that Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings unless the action that is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy.

If the nature of the contempt sanctions is civil and not criminal, double jeopardy does not come into play. When the same conduct amounts to both a violation of a court order and a separate criminal offense, double jeopardy does not bar successive prosecutions if elements of the statutory offense and indirect criminal contempt are differently defined. *In re Marriage of D'Attomo,* 211 Ill.App.3d 914, 570 N.E.2d 796, 156 Ill.Dec. 320 (1st Dist. 1991). In *People v.*

Totten, 118 Ill.2d 124, 514 N.E.2d 959, 113 Ill.Dec. 47 (1987), the Illinois Supreme Court adopted the *Blockburger* test for analyzing issues of double jeopardy. *See Blockburger v. United States*, 284 U.S. 299, 76 L.Ed. 306, 52 S.Ct. 180 (1932). The *Totten* court held inter alia that (a) a prosecution for aggravated battery following and arising out of adjudication of direct criminal contempt did not offend the Double Jeopardy Clause and (b) if each offense requires proof of an additional fact not required to prove the other, then the two offenses are not the same for double jeopardy purposes. 514 N.E.2d at 963. In the case of prosecution for aggravated battery and indirect criminal contempt arising out of the same incident, there are facts that are not common to each offense charged. While aggravated battery requires proof of great bodily harm, indirect criminal contempt does not. Indirect criminal contempt, unlike aggravated battery, requires proof of the existence of a court order. 514 N.E.2d at 965. See §§3.89 and 3.92 above.

IV. APPENDIX — FORMS

A. [3.101] Affidavit in Support of Petition for Order of Protection

IN THE CIRCUIT COURT OF _____ COUNTY, ILLINOIS
[COUNTY DEPARTMENT,**] [**DOMESTIC RELATIONS**] DIVISION**

In re:	**)**	
	)	
_____,	**)**	
	)	
Petitioner,	**)**	
	)	
v.	**)**	**Case No._____**
	)	
_____,	**)**	
	)	
Respondent.	**)**	

AFFIDAVIT OF [Petitioner**] IN SUPPORT**
OF PETITION FOR AN ORDER OF PROTECTION

[Petitioner's name**] swears or affirms on oath that the following statements are true:**

1. I am the Petitioner in this action.

2. Throughout the course of our relationship, the Respondent repeatedly physically abused me. What follows is a brief description of the most serious and recent incidents of physical abuse:

A. _____

_____

B. _____

_____

C. _____

_____

3. The Respondent has been verbally and emotionally abusive to me throughout the course of our relationship as follows:

A. _____

_____

B. _____

_____

C. _____

_____

4. [Given the Respondent's previous threats and/or behavior, I am afraid that the Respondent will begin to stalk me.**] [**The Respondent has stalked me. What follows is a brief description of the incidents.

A. _____

_____

B. _____

_____**]**

5. The Respondent has interfered with my personal liberties and harassed me as follows:

A. _____

_____

B. _____

_____

6. I believe that if the Respondent knew that I was trying to obtain an Order of Protection or had notice that I was trying to obtain an Order of Protection, the Respondent would try to stop me and/or hurt me again.

7. Because of the violence, frequency, and unpredictability of the Respondent's attacks on me and the seriousness of the Respondent's verbal threats, I fear for my safety and the safety of my minor [child**] [**children**].**

_____

Petitioner

CERTIFICATION

Under penalties of by law pursuant to §1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

_____

Petitioner

[attorney information**]**

B. [3.102] Model Script for Presenting Testimony

The script below should be used only as a model to suggest the crucial and most common areas of inquiry during an order of protection hearing. Counsel should modify questions, add or delete questions or subject areas, or go into more detail as needed for the particular case.

A MODEL SCRIPT FOR PRESENTING TESTIMONY
IN AN EMERGENCY ORDER OF PROTECTION HEARING

[NOTE: The judge will allow you to lead your witness.**]**

Your honor, this is the matter of _____ v. _____, case no. _____.

My name is [attorney's name**], counsel for the firm of [**firm**], on behalf of the Petitioner, [**petitioner's name**].**

[Swear the witness.**]**

A. BACKGROUND INFORMATION/NOTICE

1. Could you please state your name for the record?

2. Are you here today seeking an Emergency Order of Protection?

3. Are you appearing in court today without the Respondent present?

4. [What is your address?**] [**Are you asking that your address be omitted from these court proceedings pursuant to statute?**]**

5. Are you the Petitioner in this case?

6. What is the Respondent's name?

7. What is the Respondent's address?

8. What is your relationship to the Respondent?

B. DEVELOPING YOUR CASE — USE ONLY AS APPLICABLE!

1. CHILDREN

a. Do you have children?

Could you please state their names and ages for the record?

b. Has the Respondent been adjudged the father of any of these children?

c. Do your children currently live with you?

2. EMPLOYMENT

a. Are you currently employed?

b. Where do you work?

c. What is the address of your place of employment?

3. SCHOOL

a. Do you currently attend school?

b. Where do you attend school?

c. What is the address of your school?

4. ALCOHOL/DRUG USE

a. Does the Respondent drink or use drugs?

b. Does this make the Respondent more violent/abusive?

C. ABUSE HISTORY — MANDATORY TESTIMONY!

1. Do you recall the date of [date 1**]?**

a. Did you see the Respondent on that date?

b. Where did you see the Respondent?

c. What happened?

d. Were your children present during this incident?

2. Do you recall the date of [date 2**]?**

a. Did you see the Respondent on that date?

b. Where did you see the Respondent?

c. What happened?

d. Were your children present during this incident?

D. SOME ADVANCED ISSUES — USE ONLY AS APPLICABLE!

1. CHILD-SNATCHING

a. Has the Respondent ever threatened to take your children from you?

b. When did this occur?

c. What did the Respondent say to you?

2. EXCLUSIVE POSSESSION OF SHARED RESIDENCE

a. Are you asking for exclusive possession of the residence?

b. Whose name is on the lease or deed of your residence?

3. IF BOTH NAMES ARE ON THE LEASE OR DEED, BALANCE THE HARDSHIPS.

a. Does the Respondent have family or friends in the area with whom [he**] [**she**] can stay?**

b. Do you have any family or friends in the area with whom you can stay?

c. Do your children attend school?

d. How do they get to school?

e. Is the school in close proximity to your residence?

f. Do your children have friends in the area?

g. Is your place of employment in close proximity to your residence?

4. CUSTODY

a. Are you seeking custody and physical care of your children?

b. Are you primarily responsible for taking care of your children?

(1) Who takes care of the children most often?

(2) Who takes them to the doctor?

(3) Who makes their meals?

(4) Who gets them dressed?

(5) Who puts them to bed?

(6) Who plays with them?

(7) Who buys them clothing?

(8) Who does the shopping?

E. SOME CATCHALL QUESTIONS TO BRING THINGS HOME

1. Are you afraid of the Respondent?

2. If the Respondent knew you were trying to get an order of protection, do you think the Respondent would try to hurt you or prevent you from getting this order?

Your Honor, I have nothing further.

C. [3.103] Disposition Order

The Cook County Disposition Order is available on the Clerk of the Circuit Court's website, www.cookcountyclerkofcourt.org/forms/pdf_files/ccgn804.pdf.

D. [3.104] Order for Service by Publication

[Caption**]**

ORDER

THIS MATTER coming on to be heard on the petition of [petitioner's name**], by [**his**] [**her**] attorney, [**attorney's name**], of the firm of [**firm**], requesting an Order of Protection under the provision of the Illinois Domestic Violence Act of 1986, for which fees for service of process are prohibited according to Article II of said Act, and it appearing that in order that the Petitioner may proceed with this action, it is necessary that service be had on the Respondent by publication in accordance with Article II of the Code of Civil Procedure and that the Petitioner is unable to pay the cost of such publication:**

IT IS ORDERED that the Clerk of this Court cause publication to be made herein in the manner provided by the law and that the Clerk pay the costs of such publication.

Dated: [date signed**]**

ENTER: _____
Judge Judge's No.

[attorney information**]**