WEBVTT

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00:02:04.360 --> 00:02:05.360
Professor Janet Heppard: Good morning!

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00:02:06.550 --> 00:02:10.619
Professor Janet Heppard: Welcome to our webinar today, Family Violence in Focus.

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00:02:10.820 --> 00:02:14.799
Professor Janet Heppard: Tools, Trends, and Trauma-Informed law practice.

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00:02:15.080 --> 00:02:25.590
Professor Janet Heppard: We have a great program for you today. My name is Professor Janet Heppard, and I, along with Maisha Colter and Barbara Stalder, are your moderators for the day.

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00:02:26.170 --> 00:02:30.419
Professor Janet Heppard: We will be introducing each topic, along with our wonderful speakers.

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00:02:30.710 --> 00:02:50.650
Professor Janet Heppard: Reiterating what Kristina has already mentioned, we ask that you hold your questions until the end of each topic, unless the speaker encourages you to ask questions as we go. All questions will be asked in the Q&A box. Some will be answered as we go, and some at the end of the topic or at the end of the webinar.

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00:02:51.170 --> 00:03:13.219
Professor Janet Heppard: Our first speaker today is Maisha Colter, a lawyer and a licensed clinical social worker who began working at Aid to Victims of Domestic Abuse, AVDA, in 2004, and has been the Chief Executive Officer since 2019. More information about Ms. Colter can be found on the Law Center webinar website.

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00:03:13.220 --> 00:03:20.059
Professor Janet Heppard: Ms. Colter will be speaking on why this education matters to your law practice. Statistics.

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00:03:20.060 --> 00:03:24.770
Professor Janet Heppard: PO effectiveness and preventive measures. Ms. Colter, go ahead.

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00:03:28.880 --> 00:03:36.749

Maisha Colter: Good morning, everyone. As Professor Hepperd said, I'm Maisha Colter, I'm the CEO of AVDA, an attorney and a social worker.

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00:03:36.750 --> 00:04:01.709
Maisha Colter: And those roles have given me different ways to understand domestic violence, and certainly how to approach my cases as a family law practitioner. And I hope to bring you some insight this morning in regard to cases that you may encounter. But before we get to the cases that you may encounter portion, I want to share a little with you about what is happening in our community as it relates to domestic violence.

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00:04:01.710 --> 00:04:13.550
Maisha Colter: So, most of what you'll hear from me this morning will address just the, sheer scope of domestic violence cases in our area, and the,

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00:04:14.080 --> 00:04:31.179
Maisha Colter: anticipation that you as a family law practitioner will come into contact with survivors of domestic abuse, perpetrators of domestic abuse in your family law practice. Sometimes it'll be obvious, and sometimes it will not be obvious to you, and so we're going to try to use this opportunity today to

14
00:04:31.180 --> 00:04:45.050
Maisha Colter: discuss, the cases that you might encounter and make those connections, either for yourself as a practitioner, or for your client who might be a victim of domestic abuse and not really be identifying as such.

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00:04:48.010 --> 00:04:51.779
Maisha Colter: I'm gonna go ahead and get started and share my screen.

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00:04:56.000 --> 00:05:00.279
Maisha Colter: I see my screen, I don't know if anyone can confirm from the panel.

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00:05:00.280 --> 00:05:01.809
Professor Janet Heppard: Yes, we can see your screen.

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00:05:01.810 --> 00:05:03.189
Maisha Colter: Perfect. All right

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00:05:05.040 --> 00:05:24.709

Maisha Colter: So, let's start from the beginning. What are we talking about when we say domestic violence? It is a pattern of behavior used to gain or maintain power and control. It can include physical violence, but also threats, sexual coercion, financial restrictions, isolation, monitoring, and…

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00:05:25.220 --> 00:05:48.810
Maisha Colter: all of these things can be happening all the time, and it's very possible that someone could be in a domestic violence situation and only be experiencing maybe one of these things at any given time. Maybe they've only had one instance of physical violence or sexual abuse in their relationship, but just understand that the motivation behind the behavior from the perpetrator

21
00:05:48.810 --> 00:05:54.910
Maisha Colter: It's about controlling, the, individual that they're in an intimate relationship with.

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00:05:56.770 --> 00:06:05.289
Maisha Colter: Domestic violence is a public health crisis, but it is also a substantial crime that occurs in our community,

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00:06:05.390 --> 00:06:12.679
Maisha Colter: very often. It's classified as a crime, intimate partner violence, unlike most crimes, do,

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00:06:12.680 --> 00:06:35.790
Maisha Colter: lends itself to an opportunity to minimize it because of the intimate relationship aspect of it. Traditionally, because we think about intimate partner situations as being private matters, sometimes it's hard to make the distinction that it should have a public scope and that it has a public impact,

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00:06:43.150 --> 00:06:52.799
Maisha Colter: the frequency of domestic violence. More than, more often than not, people are experiencing domestic violence in their intimate relationships.

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00:06:53.110 --> 00:06:58.070
Maisha Colter: 1 in 3 women will experience domestic violence in her lifetime.

27
00:06:58.310 --> 00:07:02.880
Maisha Colter: 1 in 6 men will experience domestic violence in their lifetime.

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00:07:04.070 --> 00:07:19.189
Maisha Colter: A lot of times, our cases can involve injuries and trauma, alongside very practical

issues like not having access to money, not having, autonomy around coming and going from day to day.

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00:07:19.190 --> 00:07:42.140
Maisha Colter: So we oftentimes will revert our thinking about domestic violence to the more extreme, behavior, the physical assaults, the sexual assaults, and things of that nature, but just recognize, again, that it doesn't always consist of those more obvious, details in terms of who is experiencing domestic violence.

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00:07:43.480 --> 00:07:50.780
Maisha Colter: It is just… it should be clear that there are lots of people who are in intimate relationships where domestic violence is occurring.

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00:07:55.250 --> 00:07:58.580
Maisha Colter: The national estimates that I just spoke about,

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00:07:58.580 --> 00:08:23.489
Maisha Colter: Those come from the CDC, and they kind of summarize the extreme nature of domestic violence. But if we were to look at just our state alone, the most recent reports from DPS say that there were 200,407,896 intimate partner violence cases where it rose to the level of law enforcement intervention.

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00:08:23.490 --> 00:08:29.390
Maisha Colter: So, these are cases that are known, domestic violence offenses across the state.

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00:08:29.450 --> 00:08:44.280
Maisha Colter: There are countless more that never come to law enforcement's attention, but it just should emphasize the scope and magnitude and the frequency of domestic violence cases as they occur in our community.

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00:08:52.820 --> 00:09:11.929
Maisha Colter: More locally, HPD reported in the last 3 years 48,147 cases, that they intervened on in 2023, 49,947 in 24, and 46,396

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00:09:11.960 --> 00:09:19.829
Maisha Colter: in, 2025. And again, this is HPD only, not talking about the sheriff's, department, who has,

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00:09:20.050 --> 00:09:23.640

Maisha Colter: Less numbers, but a similar,

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00:09:23.880 --> 00:09:34.459
Maisha Colter: Count in terms of them being in the thousands of calls, that they respond to as it relates to domestic violence calls.

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00:09:39.970 --> 00:09:54.100
Maisha Colter: Unfortunately, Harris County, has led the state, although it's the biggest county in the state, it has led the state in the number of intimate partner violence homicides,

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00:09:54.100 --> 00:10:06.190
Maisha Colter: for many years, since… well, for at least 20 years, Texas Council on Family Violence has been doing a report called Honoring Texas Victims.

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00:10:06.190 --> 00:10:14.850
Maisha Colter: It is a report in which they detail, all of the reported instances of intimate partner violence homicides.

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00:10:14.850 --> 00:10:34.499
Maisha Colter: They go into not just the homicides themselves, but they talk about the nature of the crime. They talk about the collateral homicides that might occur in any given year, related to the reported intimate partner violence homicides.

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00:10:34.640 --> 00:10:37.859
Maisha Colter: This report also talks about,

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00:10:38.890 --> 00:11:02.720
Maisha Colter: the, circumstances surrounding the individual. So, were they separated? Were they together? What were, their, contacts with the community? It is always done in arrears. So, for example, they are collecting data related to 2026 as we speak, but those numbers will not come out until

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00:11:02.720 --> 00:11:13.819
Maisha Colter: the very end of the year, next year, in 2027, because they, they really go in-depth and try to, detail as much as they possibly can about.

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00:11:13.820 --> 00:11:35.340
Maisha Colter: those victims, to include who's the oldest, fatality, who's the youngest fatality. All of

these measures help us to sort of understand the encounters that these individuals had with different systems, within the communities where these, intimate partner violence, incidents occurred. So, in total,

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00:11:35.340 --> 00:11:46.499
Maisha Colter: Last year, we had a 160 intimate partner violence fatalities, and 26 of those, occurred in Harris County.

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00:11:49.890 --> 00:12:04.539
Maisha Colter: In the surrounding areas, we also had intimate partner fatalities that were reported. So, in Fort Bend, we had 4, Montgomery County 3, Waller 1, Chambers 1, and, 1 in, Liberty.

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00:12:04.720 --> 00:12:17.300
Maisha Colter: In addition to those intimate partner fatalities, there were 10 additional victims in these counties that were, again, what we call collateral, homicides as a result.

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00:12:17.300 --> 00:12:25.030
Maisha Colter: And those collateral, victims could be neighbors, could be a relative, or even a child, of…

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00:12:25.060 --> 00:12:30.300
Maisha Colter: the people who are involved in the intimate partner, relationship.

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00:12:40.520 --> 00:12:48.819
Maisha Colter: In total, 128 minor children lost one or both of their parents, last year's intimate partner homicides.

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00:12:49.380 --> 00:12:54.700
Maisha Colter: 95 adult children also lost one or both of their parents.

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00:13:00.340 --> 00:13:14.379
Maisha Colter: This statistic stood out to me. It was provided in 2023, it was not provided in the same way in 2025, but we know that statistically, year over year.

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00:13:14.490 --> 00:13:39.310
Maisha Colter: The people who are succumbing to these intimate partner homicides are people who have left their intimate relationship. So, for example, in 2023, 52% of the individuals who had succumbed to an intimate partner homicide had already left their intimate relationship. They took affirmative steps to include separation, leaving the residence,

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00:13:39.310 --> 00:14:03.430
Maisha Colter: relocating, filing divorces, seeking protective orders. So that is a substantial number of people, who were taking steps to try to secure their safety, and probably had some awareness of the danger that they were in. What probably was not clear to them is that their risk for harm and risk for lethality actually is at its

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00:14:03.570 --> 00:14:06.179
Maisha Colter: Heightened… most height,

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00:14:06.180 --> 00:14:31.149
Maisha Colter: heightened level when they have left their abusers. And as practitioners, this is something that we should have knowledge about and keep within the scope of our practice, because we are probably the front line for many people who are coming to you where intimate partner violence is a part of the dynamics for why they're seeking your help. Whether that's they're trying to get a protective order, divorce

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00:14:31.150 --> 00:14:32.920
Maisha Colter: and all of those things.

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00:14:33.050 --> 00:14:48.469
Maisha Colter: If they are telling you that they have separated from an abusive partner, this is a time for you to think critically about safety, safety planning, and to use the time that you have with them to assess

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00:14:48.470 --> 00:14:57.139
Maisha Colter: their risk for harm, including lethality. There are a multitude of tools that you could access,

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00:14:57.150 --> 00:15:19.139
Maisha Colter: as a practitioner, that might help to assist you with understanding the scope of lethality that your client might be experiencing. We happen to use the one from Dr. Jacqueline Campbell, but there are many different lethality or risk assessments, and I would highly, encourage, the audience to

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00:15:19.140 --> 00:15:44.100
Maisha Colter: look into this and make it a part of your intake practice, your screening, your evaluation of your cases, especially if it is completely obvious to you that domestic violence is involved. And certainly, like I said, we're going to talk about the fact that sometimes domestic violence is pervasive in a relationship that no one is talking about, including

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00:15:44.100 --> 00:15:47.910
Maisha Colter: The client, who's seeking your assistance.

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00:15:52.480 --> 00:16:04.970
Maisha Colter: Some things that you need to be acutely aware of as it relates to lethality is that, in the instance, of the last year's homicides.

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00:16:05.380 --> 00:16:19.500
Maisha Colter: Most of them, were the result of a firearm being involved, so I think it was 115 of that 160 people who were, shot by their perpetrator,

67
00:16:20.280 --> 00:16:36.530
Maisha Colter: then the rest were stabbed and/or strangled. And those were the three, methods of homicide for all of the victims. Again, the most prevalent is the use of a firearm.

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00:16:36.530 --> 00:16:48.670
Maisha Colter: Strangulation, shows up a lot in domestic violence, cases, although it was not, the primary, source, means for homicide, in this last

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00:16:48.670 --> 00:17:04.850
Maisha Colter: count of people who were killed. When you do hear or see someone say that they have been, strangled, choked, is usually the common vernacular, be…

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00:17:04.960 --> 00:17:24.059
Maisha Colter: aware that that is an indicator of lethality, and risk for lethality. And of course, separation itself is a period of elevated danger for anyone who you are, encountering where domestic violence is an issue that they're presenting to you.

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00:17:28.840 --> 00:17:51.679
Maisha Colter: It's really critical to understand, victim behavior as you, engage survivors of domestic abuse. Obviously, fear dominates, sort of the choices and decisions that they're making, economic dependence, shared custody, children, having, children with their abuser. Hope and love, those are…

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00:17:51.680 --> 00:18:00.780
Maisha Colter: common issues that will keep someone in a relationship. Most people who are in intimate, relationships where intimate violence is occurring

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00:18:00.830 --> 00:18:18.750

Maisha Colter: would like to see the behavior go away, and not necessarily their relationship go away. The reality is, if the person who is perpetrating domestic violence isn't taking affirmative steps, doesn't understand or recognize that they have choices to be made in order to stop the abuse.

74
00:18:18.750 --> 00:18:38.120
Maisha Colter: Then, most of the time, the victim, whether they retreat, whether they comply, will not be able to control and or prevent the behavior from occurring, even though that is something that people tend to hold on and believe when they are dealing with intimate partner violence.

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00:18:38.390 --> 00:18:47.039
Maisha Colter: There's trauma bonding, coercive control, fear, retaliation, and of course, the possibility that it could get worse.

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00:18:50.680 --> 00:19:09.180
Maisha Colter: Law enforcement, has a huge part to play in trying to intervene and prevent, obviously, the more extreme outcomes for individuals, but obviously, if law enforcement is involved, it usually means that the situation has

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00:19:09.180 --> 00:19:20.669
Maisha Colter: gone beyond the scope of what either the victim wants to tolerate, or maybe they have a, a neighbor or someone else who has decided that

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00:19:20.680 --> 00:19:29.990
Maisha Colter: some type of intervention needs to happen, because the frequency of domestic violence is known. It's not a secret,

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00:19:30.180 --> 00:19:35.029
Maisha Colter: Or it is not something that the victim is going to continue to keep a secret.

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00:19:41.150 --> 00:19:50.000
Maisha Colter: We have a lot of systems gaps in our… in our area, and when I say systems gaps, we… we had in, Texas.

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00:19:50.000 --> 00:20:04.709
Maisha Colter: 293,206. These are just crisis calls, hotline calls. These are not calls to law enforcement in 2023. These are agencies and other domestic violence resources that people sought assistance.

82
00:20:04.750 --> 00:20:11.239
Maisha Colter: 59% of shelters' requests were referred elsewhere.

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00:20:11.240 --> 00:20:30.869
Maisha Colter: That is what we call a turnaround rate, and it just means that people who were trying to leave, maybe seek shelter from, you know, really dangerous or volatile situations, had no place to go, even though we have shelters in our area. I will tell you that it may not be known, but we have multiple

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00:20:30.870 --> 00:20:41.030
Maisha Colter: agencies that are domestic violence agencies that are, shelters. Houston Area Women's Center, the Bridge Over Troubled Waters in our area,

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00:20:41.220 --> 00:20:56.080
Maisha Colter: there are family time, there are time… there are multiple agencies that, support victims with housing. But the reality is we have less than 600 beds in the greater Houston community for

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00:20:56.140 --> 00:21:09.169
Maisha Colter: all of the people that might be seeking, shelters. So this is something that people, sort of, they think about that as a solution, but the reality is that we are completely under

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00:21:09.170 --> 00:21:18.749
Maisha Colter: served when it comes to a system where housing, transitional housing, emergency housing is available in our area.

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00:21:24.210 --> 00:21:35.510
Maisha Colter: Another system gap that we should all be aware of is a lack of routine domestic violence screening across systems, and that includes us as family law practitioners. There's not really…

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00:21:35.510 --> 00:22:00.439
Maisha Colter: a thorough recognition of how frequent domestic violence occurs, and how many people we may be encountering. So we really should implement ways to at least ask questions that might give us a clue as to whether or not domestic violence is happening. Other systems include medical system, law enforcement. Law enforcement may be called out for some crime adjacent to domestic violence, and may never

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00:22:00.440 --> 00:22:14.279
Maisha Colter: ever understand that domestic violence was also a crime that is occurring in a

household that they're responding to. So abuse is often not identified, and escalation or crisis, is not always, obvious.

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00:22:21.300 --> 00:22:39.290
Maisha Colter: Follow-up after a call, may not connect the survivor to services, so this is also a systems gap. How many of you are making referrals to resources separate and apart from your legal, expertise to survivors of domestic abuse, whether that could be,

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00:22:39.290 --> 00:22:43.390
Maisha Colter: Therapy, counseling, shelter.

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00:22:43.390 --> 00:23:08.380
Maisha Colter: what resources are you aware of, and how are you using those to help guide and counsel your clients that you might encounter? And if you… and if the answer to that question is, I don't really do that, that's, again, one of those things that you might want to start to think about implementing in your practice, is getting a resource guide, recognizing that your services are obviously critical to the needs of

94
00:23:08.380 --> 00:23:32.860
Maisha Colter: the survivor of domestic abuse, but there are probably other resources that might be completely appropriate, that you should have at least some understanding about and make sure that there's availability, even if it's just, you know, a sheet of paper that you give to every client that you serve, it may trigger at some point that there are some resources on there that they may need and, would be helpful for them. Again, trying to prevent

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00:23:32.880 --> 00:23:45.359
Maisha Colter: escalated risk, lethality, fatality, and all of those things, it's important that we, shore up our, part of the gaps that, that exist in our current system.

96
00:23:47.970 --> 00:24:12.390
Maisha Colter: I have on here, survivors left to navigate systems alone. And that… this is true for a lot of people. I cannot tell you how many times I've encountered people that are not necessarily clients, just having conversations, telling them about, you know, what I do, the work that I do, and they go, oh, I never even heard of something like that. I wish I would have known, and I got divorced, and I was a victim of domestic violence, and, you know, this happened, and that happened.

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00:24:12.390 --> 00:24:19.980
Maisha Colter: And it is true that, obviously we don't really advertise the services that we provide. We certainly have plenty of clients

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00:24:19.980 --> 00:24:28.530
Maisha Colter: But the reality is, because the magnitude of domestic violence in our community is so substantial,

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00:24:28.740 --> 00:24:42.329
Maisha Colter: we're… we, AVDA, is definitely not going to be able to serve and address the issue in isolation, and there needs to be just so many more resources available to the community at large as it relates to this particular issue.

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00:24:45.440 --> 00:25:05.980
Maisha Colter: Limited coordination across law enforcement, courts, healthcare, schools. So, all of these places are places where people show up, and where domestic violence could be found out or learned about. School is a huge one. Lots of people, children go to school and report incidents of domestic abuse, or something that happened in their home.

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00:25:05.980 --> 00:25:30.920
Maisha Colter: Teachers are supposed to report these things to systems, and, you know, those systems are supposed to respond. Do they always? Not necessarily. But these are the kinds of things that I think contribute to the lack of resources and the unfortunate, high numbers of, offenses that we continue to encounter in the greater Houston community.

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00:25:30.920 --> 00:25:37.579
Maisha Colter: It's just that people are not working together, communicating together, and sharing information as it relates to

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00:25:37.600 --> 00:25:45.570
Maisha Colter: their encounter with survivors and or perpetrators of domestic abuse, in the area.

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00:25:47.360 --> 00:25:53.830
Maisha Colter: Other systems gaps, inconsistent enforcement of bond conditions, limited use of monitoring tools, so…

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00:25:53.910 --> 00:26:01.200
Maisha Colter: Some people are on ankle monitors, have geofencing, other people don't. I… I can't tell you,

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00:26:01.250 --> 00:26:11.540
Maisha Colter: to be… to be honest, what… what makes it a priority for someone to get an ankle monitor while they're out on a bond, versus what… why someone doesn't.

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00:26:11.540 --> 00:26:23.830
Maisha Colter: Consistency would probably help to make our communities safer. Resources would obviously help to make our communities safer, and obviously, resources are hard to obtain.

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00:26:23.860 --> 00:26:33.990
Maisha Colter: And lack of universal domestic violence education for offenders. I think this is one of those things that is a missed opportunity within the community.

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00:26:36.210 --> 00:26:42.200
Maisha Colter: I'm gonna kind of speed through the systems failure parts and get to

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00:26:42.250 --> 00:27:04.270
Maisha Colter: a little bit about what works, but also to just kind of get to the point of telling you all some things that I think might be helpful and useful for you as practitioners to think about as you encounter survivors of domestic abuse. So the things that we know that work is coordinated response, early indications of learning about the domestic violence, legal advocacy

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00:27:04.270 --> 00:27:19.149
Maisha Colter: integration, and offender accountability. And that's kind of what AVDA does. We do legal services, we do counseling, we do safety planning, we have offender accountability, and we try to educate the community about domestic violence and how it impacts all of us.

112
00:27:22.870 --> 00:27:33.720
Maisha Colter: This is where we get into some tips for practice. Try to make sure that when you are encountering people that you explain the requirements of confidentiality, gain their trust.

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00:27:33.780 --> 00:27:37.399
Maisha Colter: Have candid, transparent, conversations.

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00:27:37.400 --> 00:28:02.239
Maisha Colter: Ask questions about what actually happens to them in their intimate relationships. Ask questions about who controls money, who tracks, who threatens. Ask about weapons, strangulation, threats involving children. Get to know your client, and explain to them that you're not only asking these questions in preparation for trying to represent them, but also to be honest about

115
00:28:02.320 --> 00:28:09.830
Maisha Colter: I'm trying to understand whether or not there is more to their situation than even they recognize as far as domestic violence is concerned.

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00:28:10.030 --> 00:28:26.869
Maisha Colter: Explain the process. Give clients as much meaningful information as you possibly can. Let them know what their choices are. In practical, circumstances, use short, questions. Use breaks.

117
00:28:27.360 --> 00:28:47.830
Maisha Colter: Ask questions, in a way that if you have someone who has a fragmented recall, or who doesn't quite give you a full picture, if they have experienced trauma, this is actually normal, and it doesn't necessarily mean that you have someone who is… who lacks credibility.

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00:28:50.510 --> 00:29:10.670
Maisha Colter: Connect specific conduct with evidence to the relief that you're requesting. So, obviously, if you have children involved, you want to think about Holley factors, you want to think about what the people in the relationship have been doing with the kids, in front of the kids, how are they supporting the kids, who's likely to,

119
00:29:10.670 --> 00:29:14.659
Maisha Colter: Make sure that the kids are involved with both parents.

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00:29:14.890 --> 00:29:39.840
Maisha Colter: When you start to prepare your cases as a provider who is working with someone who's experienced domestic violence, really get to understand the implications of what your orders might mean for their future, for their engagement with their children, and again, keep top of mind that separation is not a guarantee that the domestic violence or abuse

121
00:29:39.840 --> 00:29:41.810
Maisha Colter: will stop.

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00:29:41.810 --> 00:29:47.619
Maisha Colter: Litigation can be a part of the continuum of domestic violence.

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00:29:49.600 --> 00:30:09.550
Maisha Colter: Always revisit safety throughout your service. So from the time you first meet with them, after hearings, exchanges, confirm safe devices, portals, emails, voicemails. Make sure that you have a clear, safe way to communicate with your clients.

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00:30:09.550 --> 00:30:17.099
Maisha Colter: Make sure that your clients are cognizant of the fact that maybe when they were in the relationship, you know, someone had access to

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00:30:17.100 --> 00:30:33.270
Maisha Colter: their, passwords, or knew how to access their email and voicemail and those kinds of things, or they were on shared communication plans. Make a plan around these things, because it could be a way for, your,

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00:30:33.560 --> 00:30:48.260
Maisha Colter: your case to be hindered, or for the continuation of the domestic violence to occur because of the fact that you were in an intimate relationship with someone who has access to vital information.

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00:30:49.260 --> 00:31:13.710
Maisha Colter: Investigate… this is for people who might be working with someone who has been accused of domestic abuse. Investigate facts and protect your client's rights to be heard. Explain every order and address prohibited contact and monitoring. Make sure they understand what they can't and cannot do. Make it clear to them, make sure you enforce those boundaries, and reiterate the boundaries that they are under.

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00:31:13.710 --> 00:31:30.929
Maisha Colter: For example, if a protective order is issued, or a restraining order has specific behavior that they must adhere to while the case is pending. Preserve evidence, prevent misuse of legal… the legal process, discuss BIPP, and respond to credible threats under Rule 105.

129
00:31:34.070 --> 00:31:36.619
Maisha Colter: Changes your firms can make...

130
00:31:37.270 --> 00:31:47.759
Maisha Colter: A private screening and safe contact routine for clients. Staff training on disclosure. A case plan linking client goals, evidence and specific, relief.

131
00:31:47.850 --> 00:32:08.880
Maisha Colter: A consent-based referral and follow-up responsibility, and what I mean by that is, if you get to the point where you know that your services are not all of the services that your client might need, you might be referring them to a therapist, or referring them to some type of parenting education that's more geared toward

132
00:32:08.880 --> 00:32:20.610
Maisha Colter: high-conflict cases where domestic violence is indicated. Make sure that you get consent to share their information, and then make those referrals appropriately.

133
00:32:20.920 --> 00:32:38.509
Maisha Colter: I think I have come close to my time. I will be resuming this conversation with you all in another portion of today's presentation. At this time, I think I am supposed to be…

134
00:32:38.730 --> 00:32:41.049
Maisha Colter: Introducing the next speaker.

135
00:32:45.850 --> 00:32:51.869
Maisha Colter: And the next speaker is Melissa Cass. I'm gonna stop sharing. Good morning, Melissa.

136
00:32:52.160 --> 00:32:53.090
Melissa Pickett: Good morning.

137
00:32:54.420 --> 00:33:13.989
Melissa Pickett: Thank you. Yes, as Maisha had said, my name is Melissa Cass Pickett, and I am an associate attorney with the law firm Jenkins and Kamin in Houston, Texas, and I'm going to be speaking about protective orders today. I'm going to give some basics about

138
00:33:14.180 --> 00:33:27.209
Melissa Pickett: protective orders brought both under the Texas Family Code and the Code of Criminal Procedure. I won't be speaking about MOEPs. A MOEP is a type of protective order that is brought in as part of a criminal case.

139
00:33:27.500 --> 00:33:41.889
Melissa Pickett: just those civil protective orders that are then criminally enforceable. And so I'm going to talk about some basics, but then I'm also going to talk about some appellate updates, some new cases that have come out over the past year.

140
00:33:41.890 --> 00:33:51.009
Melissa Pickett: Last year, I spoke about legislative changes, because our Family Code changed in some ways under Title IV of the Family Code.

141
00:33:51.010 --> 00:34:14.909
Melissa Pickett: On September 1st, 2025, but today I want to focus on some of the appellate cases, because I think that they're equally important to look at and review in your practice, so that you can see what kind of cases are being appealed, what kind of cases are being reversed and remanded, and why, because even if you never handle an appeal, you're still going to want to know about those cases.

142
00:34:14.909 --> 00:34:26.259
Melissa Pickett: So that you can preserve error at trial, you can be aware of constitutional challenges, and you can be aware of legal burdens, factual burdens of proof at trial.

143
00:34:26.889 --> 00:34:32.060
Melissa Pickett: So, the two main ways, two types of, of family, of

144
00:34:32.360 --> 00:34:40.680
Melissa Pickett: protective orders that you can get in a civil court are under the Family Code Title IV and the Code of Criminal Procedure 7B.

145
00:34:40.860 --> 00:34:44.889
Melissa Pickett: And so the basics of the family law, family code

146
00:34:44.909 --> 00:35:01.099
Melissa Pickett: protective order fall under Title IV, as opposed to an Article 7B protective order, a Texas Family Code protective order is only available to certain people, and so based on the relationship between the applicant and the respondent.

147
00:35:01.200 --> 00:35:11.450
Melissa Pickett: And then, what you must show in a Family Code protective order is that family violence, as it's defined by 71.004 of the Texas Family Code, has occurred.

148
00:35:12.100 --> 00:35:27.429
Melissa Pickett: And so when you look at 71.004, family violence is carefully defined, and then it also references other family code sections, such as Chapter 261,

149
00:35:27.430 --> 00:35:37.789
Melissa Pickett: when discussing or when defining what child abuse and acts against children, which may fall under the title of family violence.

150
00:35:37.790 --> 00:35:46.909
Melissa Pickett: Why is this so important? I find that when attorneys are new to filing protective orders, they really focus on the procedure. What am I supposed to file?

151
00:35:46.910 --> 00:35:59.640
Melissa Pickett: But you would be surprised at the number of times in my career where I have seen a protective order application where there was a supporting affidavit or an unsworn declaration, and if

you reviewed it carefully,

152
00:35:59.640 --> 00:36:09.459
Melissa Pickett: there was not one allegation, if taken as true, that would actually meet the definition of family violence under 71.004.

153
00:36:09.620 --> 00:36:15.460
Melissa Pickett: Now, that wouldn't matter if the applicant is asking for a 7B

154
00:36:15.460 --> 00:36:37.600
Melissa Pickett: Code of Criminal Procedure protective order, but if their sole basis for asking for a protective order is Title IV of the Family Code, this is incredibly important. So if you are the one who is filing on a client's behalf, you want to make sure that the evidence you're going to present at your protective order trial and the evidence that you put in any witness statement

155
00:36:37.600 --> 00:36:41.689
Melissa Pickett: actually provide facts that meet this definition.

156
00:36:43.090 --> 00:37:07.770
Melissa Pickett: There are certain burdens of proof for Family Code Tidal IV protective orders. If you're asking for a two-year protective order, you must show by a preponderance of the evidence that family violence has occurred. But there has been some recent case law, specifically Stary v. Etheridge from 2025, in which the Texas Supreme Court said

157
00:37:07.770 --> 00:37:09.170
Melissa Pickett: that…

158
00:37:09.170 --> 00:37:16.049
Melissa Pickett: If you are looking for, or a court is going to issue a lifetime protective order that affects

159
00:37:16.050 --> 00:37:32.279
Melissa Pickett: a parent from having contact with a child, you… then the applicant must show clear and convincing evidence for why that order should exceed 2 years, and then there also must be a demonstration of why no contact is in the child's best interest.

160
00:37:33.350 --> 00:37:40.020
Melissa Pickett: The basics of a 7B code of criminal procedure protective order are significantly different.

161
00:37:40.020 --> 00:37:53.490
Melissa Pickett: The filing procedure is the same as a Family Code Title IV protective order. However, a 7B protective order can be requested regardless of the relationship between the applicant and the respondent.

162
00:37:53.510 --> 00:37:58.359
Melissa Pickett: And here, under a 7B protective order, you're actually going to have a low

163
00:37:58.360 --> 00:38:18.749
Melissa Pickett: lower burden of proof than preponderance of the evidence. The burden of proof is reasonable grounds, and though that's never been specifically defined by statute or case law, some cases have suggested that it is slightly above probable cause. That's really an incredibly low burden of proof, in my opinion.

164
00:38:18.750 --> 00:38:39.729
Melissa Pickett: What you have to do in order to ask for a 7B protective order is you have to show that the applicant was a victim of one of the following, and then it references different penal code sections. Now, if you're asking for a protective order showing that an applicant was a victim of stalking or harassment, then you're then going to have an even lower evidentiary burden.

165
00:38:39.860 --> 00:38:46.279
Melissa Pickett: Why is it important to know all of this? Because you can file a protective order under 7B

166
00:38:46.420 --> 00:38:52.530
Melissa Pickett: under a Title IV, or both, but you need to make sure that your application

167
00:38:52.530 --> 00:39:13.299
Melissa Pickett: state the grounds properly, and that the evidence matches the request for relief. So when you're filing a 7B protective order, you have to look at these penal code sections and make sure that every evidentiary fact that you're going to and every piece of evidence you're providing to the court meets the penal code

168
00:39:13.300 --> 00:39:36.539
Melissa Pickett: requirements to show that your client was a victim of one of those. It's not a criminal case, so you're not proving beyond a reasonable doubt that the applicant was a victim of trafficking or aggravated sexual assault. You're showing reasonable grounds for the court to believe that the applicant was a victim, but you need to review carefully the underlying supporting penal code sections.

169
00:39:37.310 --> 00:39:53.420
Melissa Pickett: How do you file a protective order application in Texas? I'm going to go rather quickly through these. So, Texas Family Code Section 82.002 defines when you file a Title IV Texas Family Code Protective Order, here are all the people who can file.

170
00:39:54.290 --> 00:40:06.959
Melissa Pickett: Where do you file? Well, you are going to file it where the applicant resides, where the respondent resides, or in any county where the family violence is alleged to have occurred.

171
00:40:06.960 --> 00:40:22.120
Melissa Pickett: But you need to be mindful, especially if there's a final protective order that was issued by a particular county. If you are seeking to modify or rescind that protective order, there are some new mandatory transfer

172
00:40:22.120 --> 00:40:41.059
Melissa Pickett: provisions in the Texas Family Code that became effective September 1st, 2025, specifically Section 85.064. So, if you're planning to do anything post-order, or, you know, if there's a divorce filed and the protective order was granted before that, you need to pay close attention to that section.

173
00:40:41.660 --> 00:40:48.989
Melissa Pickett: One thing to know is now you must use the Office of Court Administration forms.

174
00:40:48.990 --> 00:41:05.180
Melissa Pickett: These can be found, there's the website, you can get it in Word format to fill them out online. Failure to use these forms doesn't affect the validity or enforceability of a temporary ex parte protective order or a final protective order, but you still need to be using those forms.

175
00:41:05.620 --> 00:41:21.529
Melissa Pickett: Okay, let's get to my favorite part, some of the appellate cases that have come down from the appellate courts in Texas over the past year. And really, one of the biggest ones is Noyes v. State. This was a Texas Supreme Court case that

176
00:41:21.530 --> 00:41:34.569
Melissa Pickett: was completed and held in May of this year. And what happened in this case is that the trial court found reasonable grounds to believe that the respondent had engaged

177
00:41:34.570 --> 00:41:42.310
Melissa Pickett: in, the criminal act that underlined… that supported the 7B protective order request.

178
00:41:42.340 --> 00:41:52.170
Melissa Pickett: And what the court did was they granted a lifetime protective order and essentially a lifetime firearm restriction.

179
00:41:52.220 --> 00:42:02.649
Melissa Pickett: And so, Noyes, the respondent, challenged that, and then, it went up to the Texas Supreme Court. And, the Texas Supreme Court

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00:42:02.650 --> 00:42:13.569
Melissa Pickett: vacated part of the protective order and remanded it back to the trial court to reconsider the effect of the lifetime firearm prohibition

181
00:42:13.570 --> 00:42:25.319
Melissa Pickett: based on the United States Supreme Court's ruling from 2024 in the Rahimi case. And what happened in the Rahimi case is that, someone

182
00:42:25.320 --> 00:42:39.250
Melissa Pickett: took the case to the U.S. Supreme Court, challenging, in general, United States, quote, 18 U.S.C. 922, which allows a state to prohibit

183
00:42:39.250 --> 00:42:57.910
Melissa Pickett: possession or ownership of a firearm if a person has committed an act of family violence, and if there's an act of protective order. And so what the U.S. Supreme Court ruled is that that United States Code section does not run afoul of the Second Amendment.

184
00:42:57.910 --> 00:43:03.070
Melissa Pickett: However, the U.S. Supreme Court did not address whether a lifetime

185
00:43:03.070 --> 00:43:07.170
Melissa Pickett: unlike a temporary band on firearm ownership.

186
00:43:07.190 --> 00:43:15.729
Melissa Pickett: But a lifetime ban would run afoul of the Second Amendment. And so, the U.S. Supreme Court kind of left state courts

187
00:43:15.930 --> 00:43:35.569
Melissa Pickett: without really a firm understanding of that constitutional challenge. And so the Texas Supreme Court essentially punted it back to the trial court and said, go and reconsider this in light of

the Rahimi case and determine whether the underlying facts really support

188
00:43:35.750 --> 00:43:44.319
Melissa Pickett: what is essentially a lifetime firearm ban against that person who was the subject of the lifetime protective order.

189
00:43:44.820 --> 00:43:47.149
Melissa Pickett: So, as it stands here

190
00:43:47.150 --> 00:44:12.129
Melissa Pickett: lifetime firearm restrictions remain constitutionally contested. There's no clear, you know, clear rulings about that. And so my practice tip here is you really want to be careful when you're asking for these lifetime protective orders. I know that it, you know, clients may really want you to file one, but in a lot of different ways, it triggers higher burdens of proof, it can trigger constitutional

191
00:44:12.130 --> 00:44:22.159
Melissa Pickett: protections, it can make it more likely that a respondent is going to appeal the protective order. So you really want to think carefully about whether that's what you want to file.

192
00:44:23.160 --> 00:44:40.439
Melissa Pickett: We're going to discuss also the appealability of protective orders. So, in Belmont v. Belmont, the trial court looked at a protective order that occurred during a pending divorce. And, the parties

193
00:44:40.440 --> 00:44:46.940
Melissa Pickett: called it a final protective order, but that did not help them, because the appellate court ruled

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00:44:46.940 --> 00:44:54.700
Melissa Pickett: that a… you can call it a final protective order, but a protective order that was issued during the pendency of a case

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00:44:54.700 --> 00:44:57.440
Melissa Pickett: is not appealable.

196
00:44:57.440 --> 00:45:17.530
Melissa Pickett: You would need to request a writ of mandamus. It is essentially a temporary, not final order until the divorce case is final. And so, unfortunately, because the husband's filings didn't meet the procedural requirements for a mandamus, the appeal was dismissed for lack of jurisdiction.

197
00:45:17.770 --> 00:45:24.799
Melissa Pickett: So my practice tip here is be careful about the sequence of filing a protective order before

198
00:45:24.800 --> 00:45:40.799
Melissa Pickett: versus during a divorce case. And if you're defending, what you should do is consider the immediate remedies if the PO is granted. Understand that if it's granted during the divorce case, the proper procedure to challenge it is not an appeal, but rather a mandamus.

199
00:45:41.230 --> 00:45:48.930
Melissa Pickett: And then here we had really, kind of the opposite. In the Vickers case, we had,

200
00:45:49.110 --> 00:45:59.689
Melissa Pickett: an attorney who was really trying to do what I suggested in the last case, that attorney filed a separate protective order under a separate cause number

201
00:45:59.690 --> 00:46:18.579
Melissa Pickett: and there was a pending suit affecting parent-child relationship modification also pending. Well, even though the attorney filed it under separate cause numbers, they were heard together, and then the final protective order referenced all of the different cause numbers. Well, what happened then? Again

202
00:46:18.620 --> 00:46:25.890
Melissa Pickett: the appellate court dismissed for lack of jurisdiction and held that even though these cases were filed separately,

203
00:46:25.930 --> 00:46:47.250
Melissa Pickett: the proceedings were heard together, and all three cause numbers appeared on the final protective order, so they were not immediately appealable. Again, this was a mandamus case, not an appeal case. So, my practice tip, and I have always felt this way, is don't have them heard together if you can prevent it, not just because of

204
00:46:47.250 --> 00:46:50.720
Melissa Pickett: the facts that come out, and not wanting to…

205
00:46:50.720 --> 00:46:56.439
Melissa Pickett: minimize or water down the impact of the testimony of family violence.

206
00:46:56.820 --> 00:47:05.980
Melissa Pickett: Because it's being heard together with property issues or child support issues, but also consider the appellate ramifications if you have these heard together.

207
00:47:06.710 --> 00:47:18.560
Melissa Pickett: And then what happens when you have an untimely appeal? So, in Rentfro v. Rentfro, the respondent sought to appeal a protective order arguing that,

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00:47:18.560 --> 00:47:29.169
Melissa Pickett: he… oh, pardon me… that he didn't receive proper notice of the order, and he… so the protective order was granted by default. He did not appear.

209
00:47:29.460 --> 00:47:38.440
Melissa Pickett: And so he filed a bunch of motions asking the court to vacate it, and then he filed an appeal.

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00:47:38.440 --> 00:47:49.719
Melissa Pickett: And argued in 2025, arguing that the 2025 protective order was the one he wanted to challenge, not the denial of the motion to vacate.

211
00:47:49.720 --> 00:48:06.330
Melissa Pickett: So the issue was whether a later motion to vacate permitted an appeal from an earlier protective order back in 2023, and the appellate court dismissed for lack of jurisdiction, and held that a later motion does not automatically restart the deadline to appeal the original.

212
00:48:06.330 --> 00:48:23.119
Melissa Pickett: So, here's my practice tip, and what could you have done differently? And what he could have done differently, if I were the attorney on the case, is I would have filed a bill of review, because what Rentfro was saying was he never actually got notice

213
00:48:23.120 --> 00:48:39.820
Melissa Pickett: of the protective order application. Well, you can't challenge that through an appeal or a mandamus in 2025, but it was, you know, he still had within that four-year statute of limitations for a bill of review, and so if I had been his attorney, that's what I would have filed.

214
00:48:40.550 --> 00:48:48.430
Melissa Pickett: Let's look at In re Schmidt. So, on a protective order that is stand-alone.

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00:48:48.700 --> 00:49:06.719
Melissa Pickett: A mandamus is not the proper avenue. So if you have a final stand-alone protective order that is not joined with a divorce, not joined with a SAPCR, then the proper avenue then is a direct appeal, not a mandamus. And so,

216
00:49:06.760 --> 00:49:14.919
Melissa Pickett: my practice tip is where an order can be or could have been challenged through a direct appeal, it can't be challenged by a petition for writ of mandamus.

217
00:49:14.920 --> 00:49:29.599
Melissa Pickett: You need to become familiar with the difference between what an appeal is and what a mandamus is, even if you never intend to file one of these in your practice, because it is going to greatly inform how you approach the protective order at trial.

218
00:49:30.820 --> 00:49:44.200
Melissa Pickett: Let's look at the Mahasneh case. I think this is really fascinating. This is about how you draft protective order applications, and it also calls to mind the Stary v. Etheridge case

219
00:49:44.200 --> 00:49:57.950
Melissa Pickett: that was ruled on by the Texas Supreme Court in 2025, in which the Texas Supreme Court said that, again, as I discussed earlier, if you are seeking a lifetime protective order, or a protective order that exceeds 2 years

220
00:49:57.950 --> 00:50:11.520
Melissa Pickett: and it will have the effect of cutting off communication between a parent and a child, your burden of proof becomes clear and convincing evidence. Well, in the Mahasneh case, the applicant sought protection from her ex-husband

221
00:50:11.520 --> 00:50:22.649
Melissa Pickett: under a, both a 7B protective order and Texas Family Code, and she had a couple of adult children, and then she had one child who was about to turn 18.

222
00:50:22.930 --> 00:50:26.570
Melissa Pickett: And so, interestingly, the respondent

223
00:50:26.660 --> 00:50:51.199
Melissa Pickett: tried to claim on appeal that the higher burden of proof of clear and convincing evidence should have been the burden of proof because it restricted him from contacting his children. And the appellate court said that doesn't apply to adult children. It only applies to minor children.

You… because there's no… there's no, you know, higher burden as in a

224
00:50:51.200 --> 00:50:55.240
Melissa Pickett: termination of parental rights. It just doesn't apply to adult children.

225
00:50:55.240 --> 00:51:08.949
Melissa Pickett: But what was interesting is that the appellate court also looked at the fact that one of the children was still a minor under the first two years that the lifetime protective order would be in effect. So technically

226
00:51:09.060 --> 00:51:13.870
Melissa Pickett: he was being restricted from contacting a minor child.

227
00:51:13.870 --> 00:51:33.019
Melissa Pickett: But what the appellate court said is that because the child became an adult legally during that two years, and not encroaching into the beyond two years, that that did not trigger the higher clear and convincing evidence burden of truth

228
00:51:33.020 --> 00:51:39.359
Melissa Pickett: a burden of proof. And so, why is this important? Well, I think if you're asking for a lifetime protective order.

229
00:51:39.620 --> 00:51:45.110
Melissa Pickett: And you have a minor child who is 16 or 17,

230
00:51:45.110 --> 00:51:59.719
Melissa Pickett: And you… you look at that, you calculate that the child is actually going to turn 18, or become emancipated, or whatever, before that first two years of the lifetime protective order ends.

231
00:51:59.720 --> 00:52:13.520
Melissa Pickett: My argument would be that the clear and convincing evidence burden of proof is not triggered. So it's just, this is a really interesting case if you've got teenage kids in your case and you're asking for a lifetime protective order.

232
00:52:14.550 --> 00:52:30.110
Melissa Pickett: And then drafting PO applications, this is also going to be really important if you are new to drafting protective order applications. So in this case, the applicant sought a protective order against her former live-in boyfriend.

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00:52:30.110 --> 00:52:39.459
Melissa Pickett: She asked for both her new boyfriend and her child to be included. This was a family violence protective order under Title IV.

234
00:52:39.460 --> 00:53:02.159
Melissa Pickett: And so the protective order was granted, and the respondent argued, hey, wait a minute, it doesn't say anywhere in the application that the name of the child, the name of the live-in boyfriend, but their names are on the final protective order, and so it's a situation where the relief that was granted does not match the relief that was requested.

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00:53:02.160 --> 00:53:06.960
Melissa Pickett: And the appellate court affirmed the protective order and said he had

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00:53:06.960 --> 00:53:19.939
Melissa Pickett: He had sufficient notice that applicant was requesting protective orders on behalf of those two people, because she asked for protection for her family members and people in her household.

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00:53:19.940 --> 00:53:31.090
Melissa Pickett: And it was clearly stated in the affidavit that the children were household members, and that her boyfriend was a household member, and respondent never challenged that. So…

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00:53:31.360 --> 00:53:38.290
Melissa Pickett: So that was affirmed, with those additional protected persons named, even though they weren't named in the application.

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00:53:38.290 --> 00:53:57.519
Melissa Pickett: Well, what's the practice tip here? You should really be cautious when adding other household members to the protective order application, and you need to list them by name, especially if the additional protected persons are not biological relatives of the applicant. So if you've got someone who is not

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00:53:57.520 --> 00:54:17.040
Melissa Pickett: you know, a boyfriend, someone who is not a biological family member, and you don't list them by name in the protective order application, there is an argument that can be made that the respondent did not have sufficient notice that you were seeking a protective order on their behalf, because they… there's no…

241
00:54:17.040 --> 00:54:21.939

Melissa Pickett: Notice in the application that that person actually is a household member.

242
00:54:22.320 --> 00:54:37.429
Melissa Pickett: So just be careful drafting those PO applications. And then, you know, obviously you've got to also be careful about the way that you draft final orders. So, in the, I'm gonna mess this up, the… I'm just gonna say

243
00:54:38.030 --> 00:54:55.610
Melissa Pickett: Zbikowski, case, the district attorney applied for a protective order on behalf of a man and his wife against the wife's brother. So, the applicant was the brother-in-law of the respondent, along with his wife. And so the trial court issued a two-year protective order.

244
00:54:55.610 --> 00:55:01.429
Melissa Pickett: And, the… the… there was a factual sufficiency challenge

245
00:55:01.430 --> 00:55:26.240
Melissa Pickett: about protective order provisions. And so, essentially, what the final protective order said was it had a bunch of findings that actually did not match the relationship between the parties, and it was a Title IV protective order where the relationship of the parties is actually part of the statutory basis. And so, the respondent said, wait a minute, this final order

246
00:55:26.240 --> 00:55:37.749
Melissa Pickett: says that I'm the domestic partner, I'm the boyfriend of my sister. Obviously, I'm not, so the whole thing should be set aside. And the appellate court said, no, that's not enough to set it aside.

247
00:55:37.750 --> 00:55:46.599
Melissa Pickett: But I think it's important to, as a practice tip, take some time to meticulously review your affidavit and your declaration.

248
00:55:46.810 --> 00:56:07.410
Melissa Pickett: You really want to make sure that the final protective order has all of the findings as to the relationships of the parties, if it's a Title IV protective order. You want to make sure that it has all the penal code, you know, reasonable grounds, findings. You just want to make sure it has all those. The good news is, is that the appellate court

249
00:56:07.410 --> 00:56:17.029
Melissa Pickett: even though it affirmed the protective order, it did modify the protective order and remove some of those improper, mistaken

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00:56:17.030 --> 00:56:22.530
Melissa Pickett: findings such as that the wife was the intimate partner of her brother.

251
00:56:23.770 --> 00:56:37.139
Melissa Pickett: Criminal enforcement of protective orders. The Layton v. State, this is a criminal case appeal. I think everyone should know this one, because it is about

252
00:56:37.200 --> 00:56:57.060
Melissa Pickett: whether knowledge of an original protective order establishes the required mens rea for violating a subsequently extended order. And so, in this case, the final protective order that was granted against Layton did not have the language in it that said that if he was incarcerated on the date

253
00:56:57.060 --> 00:57:11.479
Melissa Pickett: that the protective order was to expire, it would be extended for another 2 years. And so, for some reason, that language was not in the order. And so, what the applicant did was, or someone… or the prosecutor

254
00:57:11.480 --> 00:57:18.059
Melissa Pickett: filed a motion to modify the protective order asking for that additional statutory

255
00:57:18.060 --> 00:57:30.699
Melissa Pickett: extension. But the prosecutor did not actually serve Mr. Layton with that modification request. And so, the appellate court said, you know, reversed and

256
00:57:30.700 --> 00:57:38.900
Melissa Pickett: and rendered an acquittal, because he was not… he neither had notice of an automatic extension under the

257
00:57:38.900 --> 00:57:51.990
Melissa Pickett: final protective order, nor was he properly noticed of this, of the prosecutor's request to have an extension granted in a modification. So what is the takeaway?

258
00:57:51.990 --> 00:58:02.889
Melissa Pickett: One is always make sure that your final protective order contains the statutory language that it's extended. If it doesn't, if you were not the attorney on the original case.

259
00:58:02.890 --> 00:58:19.040

Melissa Pickett: You will need to file a modification to get that statutory extension, but you need to treat it like a new suit. You are going to need to give service to that person. It's probably going to be relatively easy to effectuate service, because that person is probably going to be incarcerated.

260
00:58:20.050 --> 00:58:32.130
Melissa Pickett: There are some procedural safeguards to discuss. In the In re Sus case, the respondent sought mandamus relief because of the scheduling of the protective order hearing.

261
00:58:32.130 --> 00:58:56.990
Melissa Pickett: He was served within 48 hours of the hearing, but he failed to appear, and he was defaulted. And by statute, under, you know, in a protective order, if you serve someone within 48 hours of the hearing, they are entitled to request a reset. However, they have to appear to request that reset, and so he did not do that. So what he did was he filed a request to reset.

262
00:58:56.990 --> 00:59:01.090
Melissa Pickett: schedule, the 280th court denied that, and then he

263
00:59:01.250 --> 00:59:17.919
Melissa Pickett: he filed a writ of mandamus. Well, the mandamus was denied, and it was denied because it was a final protective order already. So… so that would not… mandamus would not be appropriate with a final granted protective order, but also,

264
00:59:17.970 --> 00:59:33.400
Melissa Pickett: he waited too long. He should have shown up and said, I need a reset. So if you represent a respondent, you know the notice is insufficient. Don't tell your client, oh, don't show up, they have to reset it. They only have to reset it if you show up and request that reset.

265
00:59:34.330 --> 00:59:47.430
Melissa Pickett: This is a case I'll go over very briefly. This is about a lost trial record, where on appeal, there were some parts of the trial record that had been translated into Arabic.

266
00:59:47.430 --> 01:00:12.390
Melissa Pickett: But it was lost, and so because no one could file that… find that lost trial record, the respondent was entitled to a new trial. So really, you have to, even if you don't handle appeals, when you are at the trial level on a protective order, protective order, you've got to think of it as a final trial, treat it as a final trial, and preserve the record like it's going to be appealed, even if you don't think your client

267
01:00:12.390 --> 01:00:13.949

Melissa Pickett: can afford an appeal.

268
01:00:14.340 --> 01:00:25.780
Melissa Pickett: I think that's all my time. I could keep going on about all of these cases, but they'll be in my slideshow, and my… let me give you my contact information.

269
01:00:25.800 --> 01:00:40.080
Melissa Pickett: Also, the very last slide after this is the citations for each one of these cases, if you want to read them, but my last tip is we tend to focus on legislative changes

270
01:00:40.080 --> 01:00:50.980
Melissa Pickett: I think it's equally important to read through all of the appellate cases and see how the appellate courts throughout Texas are treating these appeals.

271
01:00:50.980 --> 01:01:06.820
Melissa Pickett: Anyway, my… there's my work email. If you ever want to reach out to me and you have a question, I would be happy to answer them. I'm going to look and see very quickly if there are any questions for me in the chat. I don't see that there are, so I'm going to hand it back over to Judge Heppard. Thank you.

272
01:01:18.110 --> 01:01:18.900
Hon. Barbara J. Stalder: Got me. Sorry.

273
01:01:18.900 --> 01:01:30.389
Professor Janet Heppard: Now I'm unmuted. Our next speaker is the Honorable Barbara Stalder. She is the former judge of the 280th Judicial District Court.

274
01:01:30.570 --> 01:01:42.389
Professor Janet Heppard: She is, has been, an adjunct and a staff attorney at the University of Houston Law Center. She's currently a senior associate at the Eaton Law Firm.

275
01:01:42.720 --> 01:01:54.340
Professor Janet Heppard: She's a seasoned attorney, a nationally recognized expert in domestic violence law, with a career spanning over three decades dedicated to advocacy, education, and justice.

276
01:01:54.340 --> 01:02:05.210
Professor Janet Heppard: She began her legal journey as an Equal Justice Works Fellow, where she

founded a nonprofit organization focused on representing children in cases involving abuse, neglect,

277
01:02:05.210 --> 01:02:17.530
Professor Janet Heppard: and family violence. And she will be speaking today on protective orders and safety plans, a practitioner's guide to risk response and enforcement. Go ahead, Judge.

278
01:02:17.860 --> 01:02:34.339
Hon. Barbara J. Stalder: Thank you. Thank you so much. I'm very happy to be talking on this subject today. I am not an expert on PowerPoint, so I'm gonna do my best to get this up and running. Let's see if I can do that.

279
01:02:34.680 --> 01:02:43.519
Hon. Barbara J. Stalder: Under… slideshow… Let's see… whoops, let me move myself out of the way.

280
01:02:44.490 --> 01:02:49.059
Hon. Barbara J. Stalder: Okay, can everybody see my, screen?

281
01:02:49.060 --> 01:02:51.620
Professor Janet Heppard: Yes. Okay. And you've got it going, so you're.

282
01:02:51.620 --> 01:03:13.829
Hon. Barbara J. Stalder: Oh, yay! That is a miracle in and of itself. So, welcome everybody. This topic is something that I was especially excited to talk about, for lack of a better word. Safety planning is something that we need to be doing at every step of the way with our clients.

283
01:03:13.830 --> 01:03:28.589
Hon. Barbara J. Stalder: From the moment the client calls you or walks in the door, you need to be asking them some questions, or if you hear something that gives you a clue that there has been domestic abuse in the home, then you need to… to…

284
01:03:28.680 --> 01:03:41.929
Hon. Barbara J. Stalder: Go ahead and probe a little further to figure out exactly what has gone on and what you need to do in that space at that time to keep your client or potential client safe.

285
01:03:41.930 --> 01:04:01.860
Hon. Barbara J. Stalder: What we're going to cover today, hopefully we'll get through all of it, is we're going to talk about safety planning, very practical things that you can impart to your clients or your friends or family members. We're going to talk about the lethality assessment. Maisha touched on it

earlier, and we're going to talk a little bit more about that.

286
01:04:01.860 --> 01:04:14.699
Hon. Barbara J. Stalder: And then we're going to talk about protective orders and enforcement of protective orders. I'm not going to go over the same information that Melissa went. What I'm going to do is talk about them as a tool, and also, once you…

287
01:04:14.700 --> 01:04:33.099
Hon. Barbara J. Stalder: are seeking a protective order, what happens when it's violated. At the end of the presentation, if you would like this PowerPoint, I've given Kristina permission to share it. There's some really good information at the, at the end of the PowerPoint, resources and, other information.

288
01:04:33.260 --> 01:04:41.850
Hon. Barbara J. Stalder: I'm not going to go over the legal definition of the domestic violence, but we do know that the primary

289
01:04:41.850 --> 01:04:58.119
Hon. Barbara J. Stalder: thing that abusers do, it's all about power and control. It's never really about the violence, it's about how can they manipulate and control and keep their narrative going with their significant other, okay?

290
01:04:58.460 --> 01:05:13.550
Hon. Barbara J. Stalder: And today, we're going to talk about the… specifically intimate partner safety planning. There are other forms of domestic violence that involve other members of the family, but today we're just going to talk about intimate partner violence, okay?

291
01:05:13.600 --> 01:05:21.910
Hon. Barbara J. Stalder: One of the very first things that I do when I talk to my clients is I find out what has been going on, and I ask questions

292
01:05:21.910 --> 01:05:46.469
Hon. Barbara J. Stalder: Very specific questions. If you say, are you a victim of domestic violence, most of the time, your clients don't think they are. But when you start asking them questions about have they ever pulled your hair, have they ever pinched you, have they ever drug you across the room, have they ever spit at you? Have they ever thrown objects at you? Have they ever kept you from being able to, you know, open a bank account?

293
01:05:46.470 --> 01:06:03.399
Hon. Barbara J. Stalder: Do you have access to bank accounts? Do you have to check in? All of

those things are part of a domestic abuse scenario, so you have to be aware that those issues exist in order then to talk to them about what you can do as far as planning for safety.

294
01:06:03.550 --> 01:06:26.690
Hon. Barbara J. Stalder: One of the very first things that I do ask them is, do they have security cameras? Are you still in the home? If they are not in the home, and they don't have security cameras, but they think that it's a good idea, then what I usually will suggest is that they buy some off of the internet. They're pretty cheap nowadays. I use Wyze cameras. You can get a Ring

295
01:06:26.690 --> 01:06:43.280
Hon. Barbara J. Stalder: doorbell or a blink doorbell camera for pretty reasonable. There was a national, program to get a free Ring doorbell that Houston actually started, but that program has really expanded, and I'm not sure that

296
01:06:43.280 --> 01:06:47.659
Hon. Barbara J. Stalder: You can even get one through the program anymore, so please don't quote me on that.

297
01:06:47.930 --> 01:06:56.919
Hon. Barbara J. Stalder: You want to talk to them, you can see on this screen about… you want to talk to them about where they go, who they talk to, what

298
01:06:56.920 --> 01:07:09.259
Hon. Barbara J. Stalder: kind of information should they be sharing with other people? One of the very… another very first thing that they… you should tell them is they need to, change the

299
01:07:09.950 --> 01:07:14.330
Hon. Barbara J. Stalder: they need to change all of the passwords on any

300
01:07:14.350 --> 01:07:29.119
Hon. Barbara J. Stalder: device that they own, any emails, any websites, social media, bank accounts. If there's security cameras that are in the home, they need to be changing those as well.

301
01:07:29.130 --> 01:07:38.149
Hon. Barbara J. Stalder: Because what we know is that abusers are very good at being able to get this information, or even figure out what the password is.

302
01:07:38.150 --> 01:08:02.809
Hon. Barbara J. Stalder: Like most of you, probably not a good idea, but I recycle my passwords. One

of the best ways that you can keep your clients safe is to tell them not to use somebody's birth date, or their child's name, or their mom's maiden name. They should be using some password, like, I love peanut butter and jelly, or mac and cheese is the best.

303
01:08:03.000 --> 01:08:16.510
Hon. Barbara J. Stalder: And I know that sounds silly, but when you think about it, those are passwords that the abuser probably isn't even going to be able to figure out. And those are some things that are going to end up keeping your clients safe.

304
01:08:16.520 --> 01:08:24.860
Hon. Barbara J. Stalder: You need to be talking to them about making sure that they check their phones, their tablets, their laptops.

305
01:08:24.859 --> 01:08:48.119
Hon. Barbara J. Stalder: They're children's phones, tablets, laptops, and turning off those location sharing apps on those devices. If you have a family plan for your cell phone, and you think that, or the client thinks that they need to be able to get a different plan.

306
01:08:48.160 --> 01:09:12.299
Hon. Barbara J. Stalder: They are allowed to do that. The legislature passed a law a few years ago that allows them to separate their number from the abusers. In addition, if they need to break their lease because they have a lease with their abuser, or even if it's no longer safe, and they're in an apartment, and they've asked the landlord to move them, and they won't, there is a form

307
01:09:12.310 --> 01:09:36.210
Hon. Barbara J. Stalder: that can be filled out to allow them to break their lease. There's also a form that will allow them to have their utility deposits waived. If you're not familiar with that, and if you can find it on the internet, please let us know. Everyone here today is an expert in this area, and if we don't know, we're definitely going to be able to find it for you.

308
01:09:36.670 --> 01:09:46.659
Hon. Barbara J. Stalder: One of the things you should also be talking to them about, if they've not yet left the home, is gathering those important, information.

309
01:09:46.660 --> 01:10:06.419
Hon. Barbara J. Stalder: Social Security cards, insurance cards, mortgage payments, anything involving property, bank account numbers, and they can take a picture of those things. They don't necessarily have to take those actual documents with them, so long as they have that information.

310
01:10:06.420 --> 01:10:16.080

Hon. Barbara J. Stalder: If they've not yet left the home, one of the things you want to talk to them about, how can they leave safely? Creating a,

311
01:10:16.260 --> 01:10:39.270
Hon. Barbara J. Stalder: a safety plan. There are lots of different safety plans out there. If you're not familiar with them, you can download one from probably any domestic violence agency website, and you can go through that checklist with them. They want to make sure that they have clothing, medication. If they have children, they want to have their child's

312
01:10:39.270 --> 01:10:59.210
Hon. Barbara J. Stalder: favorite toy, they want to have food for the baby, and if, for some reason they're not… they can't leave safely, and they have to go to a shelter, that is better than taking a risk and staying in the home. I know lots of clients don't like to go to shelters, but

313
01:10:59.210 --> 01:11:18.429
Hon. Barbara J. Stalder: they're really, really cognizant these days in the shelters of what clients need, and they really do their best to make sure that they're fulfilling their immediate needs. Something else that they wanna, you need to think about is the pets. What are you gonna do with, you know, with Fido or Snowy?

314
01:11:18.430 --> 01:11:43.419
Hon. Barbara J. Stalder: There is, help available through Purina. Purina will, has a grant. I'm not sure if there are local, shelters for pets here that, are participants of that. I also know that, there, there are lots of shelters that don't take pets, but you may be able to board your pet at a reduced

315
01:11:43.420 --> 01:11:47.649
Hon. Barbara J. Stalder: cost if they know you're a victim of domestic violence, okay?

316
01:11:47.820 --> 01:12:12.330
Hon. Barbara J. Stalder: When you go through your phone, you want to make sure that you're turning off your Google, all… anything in Google that talk… that has a location on it, okay? If you have an iPhone, iPhones are usually better than Android phones, but you need to make sure that each app on your phone has the location turned off.

317
01:12:12.570 --> 01:12:35.830
Hon. Barbara J. Stalder: You need to make sure that if you are staying in the home, that you have your client go up throughout the home and look to see if there are any hidden cameras. If they do not have any security cameras, or they are on a first floor apartment, townhome, or house, one of the things that they can do is they lock all of their windows, and then put

318
01:12:35.830 --> 01:12:46.080
Hon. Barbara J. Stalder: Put things along the window seal, so if the abuser tries to break in, it's going to make enough noise that it will alert them and allow them to get away.

319
01:12:46.080 --> 01:12:47.360
Hon. Barbara J. Stalder: things…

320
01:12:47.360 --> 01:13:12.349
Hon. Barbara J. Stalder: A few years ago, I had a client that put marbles along the window seal. She also put empty, Coke cans, because those made a loud noise. And sure enough, she suspected her abuser was gonna break in, and he did. And by doing that simple thing, by putting things along the window seal, it created a noise. She suspected he was in the house, and then when she verified he was there.

321
01:13:12.350 --> 01:13:16.920
Hon. Barbara J. Stalder: She was able to call 911 and, keep herself safe.

322
01:13:17.460 --> 01:13:30.780
Hon. Barbara J. Stalder: Other things that you can do in order to keep, your, your clients safe are things such as making sure that they are carrying in their purse

323
01:13:30.780 --> 01:13:35.789
Hon. Barbara J. Stalder: a travel spray of either hand sanitizer

324
01:13:35.790 --> 01:13:57.029
Hon. Barbara J. Stalder: or body spray. And if the abuser comes at them, or is being aggressive, they can put that in their hands and spray it in the eyes. And that… most of those body sprays have alcohol in them, and they will give the client or the victim time to get away. And that's mainly what they need to do.

325
01:13:58.160 --> 01:14:23.009
Hon. Barbara J. Stalder: Pepper spray works great too, but if they don't have pepper spray, those body sprays work well. Using their keys and putting their keys in between their fingers and using it to jab the abuser. Stomping on their foot, kneeing them in the groin. And if they have their hands around your neck, one of the things you can do is start prying the fingers back one by one, until

326
01:14:23.080 --> 01:14:28.840
Hon. Barbara J. Stalder: it gives you a little bit of release, and they can get away, okay?

327
01:14:29.170 --> 01:14:48.049
Hon. Barbara J. Stalder: Other types of safety planning that you want to talk to your clients about is social media. Social media has become a big issue, in the last few years among victims and domestic violence, especially in the area of stalking and harassment.

328
01:14:48.050 --> 01:14:54.899
Hon. Barbara J. Stalder: You want to tell your clients, if they want to use social media, that is fine, but do not ever post pictures

329
01:14:54.900 --> 01:15:05.930
Hon. Barbara J. Stalder: in the real time, because your location is embedded in those photos, and if the abuser is good at technology, they can learn where you're at.

330
01:15:05.930 --> 01:15:17.370
Hon. Barbara J. Stalder: Another one recently, that Judge Heppard brought to my attention was the Metaglasses. People are hacking into the Metaglasses and being able to discover people's locations.

331
01:15:17.370 --> 01:15:27.659
Hon. Barbara J. Stalder: The license plate readers, we've heard bunches about that, and we've heard about law enforcement officers who are abusers that have abused those license plate readers.

332
01:15:27.660 --> 01:15:41.959
Hon. Barbara J. Stalder: You want to talk to your clients about taking different routes, especially with these license plate readers. You want to talk to them about when they're going to work, they're going to school, they're going to the grocery store. Vary their route.

333
01:15:41.960 --> 01:15:57.609
Hon. Barbara J. Stalder: Be aware of what is around them. If they have security cameras that can capture the abuser driving by, that is very helpful. If they don't, and they feel comfortable, talk to their neighbor. See if their neighbors have those cameras.

334
01:15:57.610 --> 01:16:10.779
Hon. Barbara J. Stalder: Alert someone that you trust of where you are at all times. Make sure that you develop some sort of… tell your clients to develop a code word with somebody who is trusted.

335
01:16:10.780 --> 01:16:33.670
Hon. Barbara J. Stalder: And if you text that code word, or if you're on the phone and you say that code word, they know you are in trouble and they need to call 911. Okay? A good code word is… and you may have heard some of the public service announcements where the lady calls 911 and she's

pretending that she's ordering a pizza.

336
01:16:33.670 --> 01:16:58.570
Hon. Barbara J. Stalder: Something like that can be very beneficial, because if the abuser is in the room with your client when this is happening, they can't very well say, yeah, he's about to kill me. I mean, they may be able to, but usually they're trying to keep things on an even keel, and by disguising what they're talking about in the form of ordering a pizza is something that can be

337
01:16:58.570 --> 01:17:21.569
Hon. Barbara J. Stalder: can save their lives, okay? Something else to consider is tracking devices. You need to make sure that you have your clients go through their phone to see if there's any tracking devices, spyware, on their phones. Same for tablets, laptops, their children's devices.

338
01:17:21.610 --> 01:17:30.230
Hon. Barbara J. Stalder: In addition, the Apple AirTags and similar devices have become a really, really…

339
01:17:30.380 --> 01:17:55.320
Hon. Barbara J. Stalder: a very successful way of being able to track and stock, your clients. The AirTags are very small, they're easily hidden. When I was on the bench, a lady said she had checked her car over, she had put it up at Jiffy Lube on the rack, couldn't find anything, and finally a friend of hers said, let's open up the spare tire.

340
01:17:55.320 --> 01:18:04.609
Hon. Barbara J. Stalder: location, and underneath the spare tire was an Apple AirTag, and that's how she discovered it.

341
01:18:05.010 --> 01:18:24.739
Hon. Barbara J. Stalder: Another thing that you can do as far as tracking is that you can download to your phone an app that you can take around your car to see if there is one of those Apple AirTags in your car. I've not used one, I know people who have, and they say it has been very helpful to them.

342
01:18:24.940 --> 01:18:37.240
Hon. Barbara J. Stalder: You need to make sure when your children, if there are children involved, and you talk to your clients about the children, to check every single thing the children bring back to you.

343
01:18:37.290 --> 01:18:49.170
Hon. Barbara J. Stalder: Shoes, pockets, jackets, even stuffed animals. Check to see if the abuser has hidden a tracker in the stuffed animal. That has happened.

344
01:18:49.170 --> 01:19:04.950
Hon. Barbara J. Stalder: So, it's real important to kind of look it over and see if it's been, you know, there's been some part that's been re-sewn, and then what you should probably do is help your client opening it up and see if it's located in there.

345
01:19:05.560 --> 01:19:14.459
Hon. Barbara J. Stalder: If you're… if you talk to your client about tracking devices that go on the car, the big ones that you order from these different

346
01:19:14.760 --> 01:19:34.020
Hon. Barbara J. Stalder: places on the internet. If they find it, one of the things that they should do is videotape it, they should take photographs, they should call 911, they should call law enforcement, and have law enforcement come over and remove it, and then you're going to want to keep that as evidence.

347
01:19:34.120 --> 01:19:52.710
Hon. Barbara J. Stalder: I want to transition now and talk to you about the lethality assessment. Maisha talked about this a little bit. Dr. Jacqueline Campbell, she has a PhD and she's an RN from Johns Hopkins School of Medicine, created this assessment tool.

348
01:19:52.710 --> 01:20:02.509
Hon. Barbara J. Stalder: And it's a series of questions and a series of, basically, events that you go over with your client.

349
01:20:02.510 --> 01:20:10.479
Hon. Barbara J. Stalder: To see if they are at higher risk for being a victim of a homicide, an intimate partner homicide.

350
01:20:10.480 --> 01:20:17.580
Hon. Barbara J. Stalder: or if they're evicted… going to be a victim of it escalating into a potential homicide.

351
01:20:17.820 --> 01:20:31.439
Hon. Barbara J. Stalder: Dr. Campbell's research, has shown also that when there, that it… when there's a firearm in the house, it is 5 times more likely that a…

352
01:20:31.730 --> 01:20:47.150
Hon. Barbara J. Stalder: survivor is going to be murdered, than if there is no firearm in the home. If there is non-fatal strangulation, as Maisha had mentioned, that is also a,

353
01:20:47.300 --> 01:21:01.310
Hon. Barbara J. Stalder: a red flag that you need to be aware about, and caution your clients about, you know, what their risk for lethality is if they have some of these, issues.

354
01:21:01.730 --> 01:21:12.329
Hon. Barbara J. Stalder: Strangulation, we do not… do not talk enough about that. It is a very personal crime. It takes a lot of…

355
01:21:12.330 --> 01:21:25.010
Hon. Barbara J. Stalder: emotion to put your hands around somebody's face, throat and squeeze them. So you need to make sure that you specifically ask the question.

356
01:21:25.010 --> 01:21:33.150
Hon. Barbara J. Stalder: Have they ever placed their hands around their throat, and have you ever not been able to breathe?

357
01:21:33.380 --> 01:21:43.119
Hon. Barbara J. Stalder: And if that… the answer to that question is yes, then you need to make sure that you talk to them, and…

358
01:21:43.120 --> 01:21:55.089
Hon. Barbara J. Stalder: in conjunction with, if they disclosed there was a firearm, you need to have a heart-to-heart, very, plain language conversation with them

359
01:21:55.090 --> 01:21:58.759
Hon. Barbara J. Stalder: about how they need to keep themselves safe.

360
01:21:58.980 --> 01:22:23.959
Hon. Barbara J. Stalder: Sometimes they come into their office because litigation has already started, sometimes they're wanting to initiate litigation. And if you see some of these issues of domestic abuse, and you initiate the conversation of a protective order, but they're not interested in it at that time, and as you continue your conversation, or in a subsequent conversation.

361
01:22:25.000 --> 01:22:32.580
Hon. Barbara J. Stalder: You learn that they were strangled, or there was a… they were threatened with a firearm or another weapon.

362
01:22:32.580 --> 01:22:45.769

Hon. Barbara J. Stalder: Then you need to really sit down and have a candid conversation with them about the odds of it escalating to the point that they could be a victim of homicide.

363
01:22:45.770 --> 01:22:57.880
Hon. Barbara J. Stalder: Okay? We know that the greatest time for danger is when they're leaving. We also know that when there's initiation of litigation, that is also a very serious time.

364
01:22:57.880 --> 01:23:22.819
Hon. Barbara J. Stalder: So, when you are talking to them about initiating litigation, especially a protective order, you need to make sure that you put them in touch with whoever your process server is, so the process server and your client will know… your client will know when the abuser has been served, and they can take steps to either go spend the night somewhere else.

365
01:23:22.820 --> 01:23:23.460
Hon. Barbara J. Stalder: else.

366
01:23:23.460 --> 01:23:41.800
Hon. Barbara J. Stalder: You know, get a hotel room if that's possible, or have someone else come over to the house and stay with them. Because I can guarantee you that if the litigation, the divorce, the custody, or the protective order comes out of left field to the abuser.

367
01:23:41.800 --> 01:23:51.379
Hon. Barbara J. Stalder: That is going to be one of the most dangerous times, and you need to be aware of that, and you need to counsel your clients accordingly.

368
01:23:51.530 --> 01:23:57.750
Hon. Barbara J. Stalder: I'm gonna speak just very briefly, again, about strangulation. Sometimes

369
01:23:57.770 --> 01:24:20.069
Hon. Barbara J. Stalder: those wounds are not always visible. You may see red marks, but those red marks may go away. If your clients, after a few days, a week or so, and they're still having headaches, they're having ringing in the ears, they're still having a hoarse voice, if they're feeling very sore around the neck and esophagus.

370
01:24:20.070 --> 01:24:28.720
Hon. Barbara J. Stalder: They need to seek medical treatment, because they could have a serious medical injury as a result of the strangulation, okay?

371
01:24:30.770 --> 01:24:48.660
Hon. Barbara J. Stalder: We've already talked about these. These are the key danger signs. Weapons, he threatened to kill, the abuser has threatened to kill your client or the children. Your client believes that they have the ability and would carry out that threat.

372
01:24:48.660 --> 01:24:50.829
Hon. Barbara J. Stalder: Has a gun, or…

373
01:24:50.830 --> 01:25:01.929
Hon. Barbara J. Stalder: has access to guns. Doesn't necessarily mean that the abuser has the guns, but if they have family members or friends who are, who are not gonna question them.

374
01:25:02.230 --> 01:25:18.700
Hon. Barbara J. Stalder: That can also be a major red flag. So just because the abuser doesn't have one themselves does not mean that they don't have access to those. Again, we talked about strangulation or choking, violent or constant jealousy.

375
01:25:18.750 --> 01:25:30.789
Hon. Barbara J. Stalder: You know, controlling where you are, where your clients are, what they do. They have to check in every hour on the hour, they have to show their cell phones, they have to

376
01:25:30.790 --> 01:25:49.509
Hon. Barbara J. Stalder: call when they get to wherever their location is. They're not allowed to go around friends or family. The abuser doesn't, you know, allow them to wear certain kinds of clothes, or, you know, paint their nails, or wear certain kinds of lipstick. Those are major red flags.

377
01:25:49.510 --> 01:26:12.349
Hon. Barbara J. Stalder: If you see a progression, when you first talk to your client, and you're only hearing, oh, well, he's only called me names, such as a bitch, a whore, you know, a slut, and then the next time you talk to your client, and it's progressed to him, you know, shoving or pushing, and the next time you talk to your client, it's gotten worse, and now he's

378
01:26:12.350 --> 01:26:19.819
Hon. Barbara J. Stalder: threat-making, verbal threats, and it's… and you can see the pattern of escalation.

379
01:26:19.950 --> 01:26:33.600
Hon. Barbara J. Stalder: You need to really seriously talk to them about how they can keep themselves safe, and one of the best ways is to stay away from the abuser. That is not always

possible when there are children involved.

380
01:26:33.600 --> 01:26:57.990
Hon. Barbara J. Stalder: So, one of the things that you need to talk to your clients about is safely transitioning between parents, the children. A safe location. What kind of location? I say wherever there is some sort of security, or there are cameras. That is the best place. Some… or there's lots of people around. I've suggested inside the McDonald's at Walmart.

381
01:26:58.160 --> 01:27:14.729
Hon. Barbara J. Stalder: Because there are a lot of people around, and the abuser is less likely to do anything to your client if there's a lot of people around. Domestic violence is a crime of secrecy. They're there to control the victim. They're not there to control everybody else.

382
01:27:15.050 --> 01:27:31.489
Hon. Barbara J. Stalder: We talked a little bit about how the stalking, if he seems to show up everywhere you are and you don't know how that's possible, you need to have your client check their phone, check their car, check their kids' phones and tablets.

383
01:27:31.490 --> 01:27:40.740
Hon. Barbara J. Stalder: If the abuser is unemployed, there's alcohol and drugs, that exacerbates the danger signs.

384
01:27:40.740 --> 01:27:47.449
Hon. Barbara J. Stalder: Another one that a lot of people don't think about is the abuser threatens to kill himself or herself.

385
01:27:47.640 --> 01:28:09.659
Hon. Barbara J. Stalder: That, to me, is a major red flag. I have seen a lot of serious domestic… physically serious domestic violence when you have somebody that is threatening to kill themselves or attempt suicide because they are now realizing that they are losing control, and that is a very dangerous time for your client.

386
01:28:12.570 --> 01:28:37.540
Hon. Barbara J. Stalder: You need, as I said, to take action. You need to make sure that you're providing your clients with resources, the National Domestic Violence Hotline, Aid to Victims of Domestic Abuse, the Houston Area Women's Center, Fort Bend County Women's Center. Those are all very good programs that can assist your client if you're not in a

387
01:28:37.540 --> 01:28:55.429
Hon. Barbara J. Stalder: place where you know where to send them, okay? And if all else fails, if you

don't know, then, feel free to email me or contact me, and I would be very happy to provide you with some additional resources, okay?

388
01:28:57.470 --> 01:29:18.430
Hon. Barbara J. Stalder: I'm going to talk very briefly, I've only got a couple of minutes, about protective orders and enforcements. It is important that you understand that an ex parte protective order, that's the order that the judge signs, based on the affidavit, it is not valid until it is served on the respondent.

389
01:29:18.430 --> 01:29:24.970
Hon. Barbara J. Stalder: A lot of times, people think when the judge signs it and issues it, that it's valid. It is not.

390
01:29:24.970 --> 01:29:43.949
Hon. Barbara J. Stalder: Protective orders are enforceable, like any other family court order. What you as practitioners need to know is they are technical, and you need to make sure you follow the family code precisely as far as what needs to go into a motion for enforcement.

391
01:29:44.090 --> 01:30:09.070
Hon. Barbara J. Stalder: They are enforceable under the Criminal Code as well. Later on in this PowerPoint, there's information about the criminal effect. I'm gonna leave you with this, and that is that there are only two ways to hold people without bond in Texas. One is capital murder, the other is a violation of the protective order. It has to be serious, and the

392
01:30:09.070 --> 01:30:11.490
Hon. Barbara J. Stalder: has to ask for it.

393
01:30:11.500 --> 01:30:24.380
Hon. Barbara J. Stalder: I think I've finished my time. I didn't get through everything, but please, please, please ask for the PowerPoint. We've got some great resources in there, and

394
01:30:24.760 --> 01:30:40.269
Hon. Barbara J. Stalder: I thank you for the time. I really appreciate it. Please feel free to contact me. Kristina has my information. I would be happy to talk to you, advise you, you know, help you, whatever you need, for your clients. I'm gonna stop sharing.

395
01:30:41.150 --> 01:30:54.889
Hon. Barbara J. Stalder: And I'm now going to introduce one of my most favorite people in the world, Judge Richard Bell. Judge Bell graduated from South Texas College of Law in 1996, I believe?

396
01:30:54.890 --> 01:31:06.000
Hon. Barbara J. Stalder: And he, has been an associate judge in Fort Bend County for the last 15 years, well, I should say, as of, from…

397
01:31:06.220 --> 01:31:27.769
Hon. Barbara J. Stalder: let's see, 2015 to December of 2025, he was an associate judge. He is now currently the judge of our 501st. He is also up for election. I'm gonna do my plug there. Judge Bell has been a presenter in this CLE for many years.

398
01:31:27.770 --> 01:31:38.800
Hon. Barbara J. Stalder: And, he is one of the most knowledgeable judges that I have ever met on the issue of family violence. And,

399
01:31:38.800 --> 01:31:51.059
Hon. Barbara J. Stalder: we really need to keep him on the bench, so you have until today to early vote, and then go out on Tuesday and vote for Judge Bell. I turn it over to Judge Bell. Thank you.

400
01:31:51.400 --> 01:31:52.879
Judge Richard T. Bell: Thank you, Judge Stalder.

401
01:31:53.160 --> 01:31:55.530
Judge Richard T. Bell: I'm gonna share my screen real quick.

402
01:31:56.560 --> 01:32:14.070
Judge Richard T. Bell: And today, first, I want to thank the University of Houston Law Center and AVDA for asking me to speak. It's always an honor to speak and share my knowledge. That's how I learned most of my stuff as a lawyer, was just going to these CLEs and learning little nuggets from other presenters, and so it's…

403
01:32:14.070 --> 01:32:30.310
Judge Richard T. Bell: I'm now getting to that age now where maybe I can share a nugget which may help you and your practice, and I hope that some of the information I share with you today will be something that can make you even better at what you do in the courtroom. So today, what we're going to discuss.

404
01:32:30.320 --> 01:32:34.239
Judge Richard T. Bell: Is the do's and don'ts in the courtroom.

405
01:32:34.470 --> 01:32:47.339
Judge Richard T. Bell: What, what we do in these cases is we want to make sure we're taking a case, and we want to make sure that we're representing the client well. And we take these cases because we want to protect the

406
01:32:47.350 --> 01:32:57.930
Judge Richard T. Bell: client. We want to protect the client's family, and so one of the best ways to protect a client is to make sure that we are, representing them well in the courtroom.

407
01:32:57.930 --> 01:33:19.479
Judge Richard T. Bell: And so today, we're going to discuss several things about how can you enhance your chances of winning in the courtroom, what are some trial nuggets that you can carry with you when you're representing clients that have suffered a traumatic event, or are survivors of domestic violence, and what are some tools that you can use in the courtroom that will make them even better witnesses?

408
01:33:19.480 --> 01:33:22.149
Judge Richard T. Bell: And so today, the learning objectives are simple.

409
01:33:22.290 --> 01:33:33.340
Judge Richard T. Bell: We're going to talk about ways that we can become better at what we do in the courtroom and keep our judges happy. I would say probably the single best thing to remember is just always be prepared.

410
01:33:33.340 --> 01:33:45.089
Judge Richard T. Bell: But I think, quite honestly, the most important part of preparing for these cases is a good initial client interview, and so we're going to talk today about what does that client interview look like.

411
01:33:45.090 --> 01:33:49.400
Judge Richard T. Bell: We'll also discuss some do's and don'ts in front of the courtroom.

412
01:33:49.400 --> 01:34:02.280
Judge Richard T. Bell: We'll identify techniques to better prepare our client for trial, and then we'll talk about trial strategies, like some direct pointers, cross-examination pointers, and these types of cases.

413
01:34:03.600 --> 01:34:26.550
Judge Richard T. Bell: But again, the most important, in my opinion, is the initial client interview. There have been a lot of trials where I see a client call to the witness stand, and they just stand up,

and they're totally confused. They don't know where to go, they don't know what's happening, and you can tell they're just in utter terror as they're getting ready to testify, because they haven't properly been explained the whole process.

414
01:34:26.690 --> 01:34:41.569
Judge Richard T. Bell: And so, in the initial client interview, one thing to remember is that survivors of family violence or intimate partner violence are not normally going to just want to come in and tell a stranger about the intimate details associated with that violence.

415
01:34:41.570 --> 01:35:00.590
Judge Richard T. Bell: So there are a lot of reasons they may not want to open up, and if you're not familiar with those, I would encourage you read some articles or some books on some of the reasons why they don't want to discuss those things with you. I'll cover just a couple today, but I don't have time to go through all of that. But they may be embarrassed to talk about these issues.

416
01:35:00.590 --> 01:35:06.580
Judge Richard T. Bell: They may not understand why it's important to the legal matter to disclose that to you.

417
01:35:06.920 --> 01:35:12.670
Judge Richard T. Bell: They may not trust you with that information, because they don't know your knowledge and your experience.

418
01:35:12.670 --> 01:35:30.049
Judge Richard T. Bell: And they may also sometimes not even know they're in an abusive relationship. They've been so beaten down in the relationship that they believe everything that's going on is their fault, and that's the way they perceive that, so they don't think there's any importance in telling you about that, because that's disclosing bad facts about themselves.

419
01:35:30.050 --> 01:35:37.720
Judge Richard T. Bell: And so just be aware in these initial client interviews that you really need to do things that are going to make the client feel comfortable.

420
01:35:37.760 --> 01:35:55.540
Judge Richard T. Bell: that are going to allow them a good environment, safe environment to open up. And I think one of the best ways to do that is just explain your role first and explain the process to them at the beginning of the interview, because it's going to allow them to settle in a little bit into your office and relax.

421
01:35:55.540 --> 01:36:10.029

Judge Richard T. Bell: It also is building rapport with them and letting them know, look, this person knows what they're doing. This person's not their first case that they're handling, and I can trust this person to help me navigate this process and get me safely through it.

422
01:36:10.030 --> 01:36:17.680
Judge Richard T. Bell: So, explaining your role and explaining the process is giving them some comfort in knowing that they can trust you with the information that they have.

423
01:36:18.440 --> 01:36:32.699
Judge Richard T. Bell: In that initial client interview, you want to stress the importance of full and honest disclosure. And I will say, if you're getting into trials in your practice, and you're regularly discovering that your client's getting raked over the coals in cross-examination.

424
01:36:32.810 --> 01:36:48.989
Judge Richard T. Bell: and you're not anticipating that, or you're like, man, I didn't know about that, that's a big, big red flag for you in these initial client interviews. You need to figure out tactics that you can use that are going to allow your client to feel comfortable opening up about bad facts.

425
01:36:49.130 --> 01:37:06.599
Judge Richard T. Bell: And some creative ways to do that sometimes is, again, people don't want to admit things that are bad about them to a stranger that they're meeting for the very first time. It's just not how we normally talk about ourselves. We want to talk about things that are good, or things that other people have done wrong, but not about our own faults.

426
01:37:06.880 --> 01:37:16.599
Judge Richard T. Bell: But ways that you can do this that I found effective for me is after you've gotten through the entire interview talking about the things, you can say things like.

427
01:37:17.910 --> 01:37:30.729
Judge Richard T. Bell: what does your spouse, or what does your partner say about you, or accuse you of doing when y'all get in arguments? Because then you're giving them the ability to say, well, this is what they say about me, it's not necessarily true.

428
01:37:30.730 --> 01:37:43.209
Judge Richard T. Bell: And so it's a way for you to get into some of these topics without somebody coming in and saying, well, you know, I have an issue. And if you do that, and you figure out ways that you can get someone to open up to you.

429
01:37:43.410 --> 01:37:47.980

Judge Richard T. Bell: That can prevent you from having those surprises in the courtroom.

430
01:37:48.020 --> 01:38:10.510
Judge Richard T. Bell: And then, also, I think it's important in these cases, two things, and I know Judge Stalder probably talked about the safety planning. I didn't get a chance to listen to that, because I had a docket this morning, so I came on just before I spoke, but letting them know that the safety planning and going through that with them, but also letting them know you're not going to take any step in this case without their permission.

431
01:38:10.670 --> 01:38:18.850
Judge Richard T. Bell: Because if they know that you're not just going to go take their information and start running with it, it'll make them a little more comfortable to open up to you.

432
01:38:20.990 --> 01:38:22.950
Judge Richard T. Bell: So, interview techniques.

433
01:38:22.950 --> 01:38:47.759
Judge Richard T. Bell: Here, I would say, you know, begin with easy questions, just like if you've got them on the stand. I always recommend when you get somebody on the stand at first, start with basics. You know, generally, the judge doesn't know a whole lot about the case, so starting with basics not only gives your judge a little bit of the background about who the actors are in this play, and what is the, you know, setting in this play, because you're really telling a story when you're presenting these cases.

434
01:38:47.940 --> 01:39:07.840
Judge Richard T. Bell: So starting with the basics helps your judge, but it also helps your client calm down. Like, and they'll get their… you'll see after 2 or 3 minutes, their breathing will kind of get back to normal, because they're super nervous when they first take the stand. So start by asking some simple questions, because that does two things. Helps your judge, and it helps your client calm down.

435
01:39:09.200 --> 01:39:16.220
Judge Richard T. Bell: When you're asking questions… I'm sorry, in the interview, you want to make sure that you ask open-ended questions.

436
01:39:16.330 --> 01:39:21.160
Judge Richard T. Bell: So, when they're telling their story, treat it like it's a direct examination.

437
01:39:21.260 --> 01:39:24.150
Judge Richard T. Bell: So, just ask them, you know, what happened?

438
01:39:25.200 --> 01:39:26.700
Judge Richard T. Bell: What happened next?

439
01:39:27.060 --> 01:39:28.910
Judge Richard T. Bell: How did that make you feel?

440
01:39:29.290 --> 01:39:46.649
Judge Richard T. Bell: How did he respond? And then just be quiet. Let them tell their story, because by doing that, what you're really getting to do is you're seeing their testimony, just like it's the first time, and you'll be able to digest and kind of assess what that testimony's gonna look like.

441
01:39:46.730 --> 01:39:58.730
Judge Richard T. Bell: And if you hear things that are… have a gap in them, or you hear things that just don't make sense to you, just jot a little note down, but listen to them during this part of their interview.

442
01:39:58.730 --> 01:40:12.400
Judge Richard T. Bell: And make sure you're making eye contact with them. Don't be afraid of silence. Like, if they stop talking, or they have a breakdown emotionally, just give them time to recover, let that silence sink in, and let them continue their story.

443
01:40:12.400 --> 01:40:20.049
Judge Richard T. Bell: Because that's going to give you a really good idea of just the emotion that can come out if the story is told that way in the courtroom.

444
01:40:20.940 --> 01:40:23.859
Judge Richard T. Bell: Once they're done giving you that,

445
01:40:24.250 --> 01:40:43.189
Judge Richard T. Bell: their story, then I would tell them something like, look, I don't want you to have to go through this and tell this story and relive these issues over and over again. So I'm going to ask you some detailed questions now, and I'm going to take notes so that my hope is we won't have to talk about this again unless we're actually talking about it in the courtroom.

446
01:40:43.190 --> 01:40:49.770
Judge Richard T. Bell: And they will appreciate the fact that you're not making them relive this every time you come in, and you're reopening these

447
01:40:49.770 --> 01:41:05.769
Judge Richard T. Bell: these wounds and these traumatic events and having them relive them every time they come in and talk to you. Because if you take really good, detailed notes in that first initial interview, you should be able to clean up most of that story by gathering your other evidence.

448
01:41:05.880 --> 01:41:17.529
Judge Richard T. Bell: That's the time where I would say you do ask questions, you… if you were… if you found some areas that seemed inconsistent or didn't make sense to you, make sure you're cleaning those up in that initial client interview.

449
01:41:18.490 --> 01:41:23.150
Judge Richard T. Bell: And don't be afraid to ask difficult questions in the initial client interview.

450
01:41:23.230 --> 01:41:42.539
Judge Richard T. Bell: I think you're doing your client a disservice if you don't address those issues with them in a safe office environment. Like, if they're getting these questions about inconsistencies for the first time in cross-examination, that's setting them up for a bad day in court. So, if you do have concerns

451
01:41:42.680 --> 01:41:50.749
Judge Richard T. Bell: then you need to be addressing those concerns with them in the initial interview and asking questions to make sure this is a good case.

452
01:41:50.750 --> 01:42:10.880
Judge Richard T. Bell: There are times where we can run into thinking, you know, every case, we're looking for these red flags. So, for example, there may be innocent conduct that looks like controlling, like financial control, for example. We may have a situation where someone comes in and says, I can't spend any money, he has total control of my finances,

453
01:42:10.880 --> 01:42:17.979
Judge Richard T. Bell: has me on a budget. Well, that sounds like financial abuse, right? It sounds like controlling behavior from an abuser.

454
01:42:18.660 --> 01:42:37.290
Judge Richard T. Bell: But it may also be that it's just innocent marital issues where we have somebody that's continually overspending, the bank account's continually getting overdrafted, and so there's been kind of a reaction to try to fix that. And so we want to make sure we're not,

455
01:42:37.590 --> 01:42:50.479

Judge Richard T. Bell: just taking cases into court that may not be an actual protective order. And this is your opportunity to do this with him in this initial client interview to verify you've got a good, strong case that needs to go to court.

456
01:42:51.990 --> 01:42:57.359
Judge Richard T. Bell: So, you also, in the interview, want to make sure you're gathering evidence. I…

457
01:42:57.850 --> 01:43:20.620
Judge Richard T. Bell: think that when you're hearing these stories, you're getting your dates down. Well, once you get the dates of the instances of intimate partner violence, you want to get, like, emails, text messages, phone records immediately before, during, and after, kind of, that episode. If you've got police reports, if the police were called out, get those police reports.

458
01:43:20.620 --> 01:43:32.929
Judge Richard T. Bell: Because that's going to tell the exact time, the exact date, so you can verify that the information and the dates that you were giving were correct, because sometimes with traumatic

459
01:43:32.930 --> 01:43:56.799
Judge Richard T. Bell: survivors of traumatic events, they have fragmented memories, they are not real good at remembering dates, and so you don't want to put something in a pleading that can end up subjecting them to being crossed and discredited, because we didn't gather some evidence that could have cleaned that up before we actually filed. So I would look for that evidence as well, and make them get that information to you.

460
01:43:57.380 --> 01:44:12.989
Judge Richard T. Bell: If there's any kind of physical evidence, you want to make sure you're gathering that, too. That could be, you know, broken cell phone, it can be, you know, blood on a shirt, it could be pictures of holes in the wall, anything that you can use

461
01:44:12.990 --> 01:44:17.429
Judge Richard T. Bell: to corroborate their testimony and show the judge just how chaotic

462
01:44:17.430 --> 01:44:20.030
Judge Richard T. Bell: this environment that they're living in is.

463
01:44:20.030 --> 01:44:44.289
Judge Richard T. Bell: You may or may not have that, but I can tell you that's very powerful to a

judge. When I see holes in a wall, when I see furniture turned over, when I see things broken, sentimental personal property that's broken of the survivor, like, those are things that tell me a lot about what's going on in that household, and so don't forget that that evidence, because sometimes you have a difficult witness that's hard to pull stuff out of.

464
01:44:44.290 --> 01:44:52.249
Judge Richard T. Bell: It's just not a really strong witness. So be looking for this other evidence that's going to enhance your ability to tell that story to the judge in court.

465
01:44:52.630 --> 01:45:17.360
Judge Richard T. Bell: And then identify any witnesses that might be out there. As with most of these cases, we don't have eyewitnesses of what's going on, or the eyewitness is a child of the relationship that you don't want to bring into court. But here, I'm talking about maybe witnesses that saw the client before, the day before, the day of, or maybe they saw them a day or two after the incident, they can testify

466
01:45:17.360 --> 01:45:34.790
Judge Richard T. Bell: that there were no injuries, now there are injuries. Or it could be a witness that was called immediately before the incident, where there was just terror in your client's voice, and they got that phone call, and then there was an incident after that. Those can be very powerful witnesses that you can call in your case.

467
01:45:36.240 --> 01:45:53.869
Judge Richard T. Bell: Another thing that I think's really important to enhancing your chances of winning in court is just explaining and woodshedding your client, explaining the process to them. This won't be in that initial client interview. This would be something typically you want to do a day or two before the hearing.

468
01:45:54.140 --> 01:45:57.089
Judge Richard T. Bell: If you're doing this the morning of your hearings,

469
01:45:57.350 --> 01:46:15.579
Judge Richard T. Bell: they're not going to be able to digest everything you're telling them. There's too much going on in their brain, there's too much that they're nervous and worried about, that most of the information you're giving them the morning of a hearing is not going to sink in. So I would highly encourage that you do this a day before, two days before

470
01:46:15.580 --> 01:46:24.769
Judge Richard T. Bell: your actual hearing on the case, but describe to them basics. Remember, most of them have never been in a courtroom before, so describe the courtroom. What does it look like?

471
01:46:24.770 --> 01:46:41.270
Judge Richard T. Bell: If you're in a county where you can bring him or her to the courtroom a week before, or a few days before, and just show them the courtroom, then you can do that. If you're there in another hearing, you say, hey, why don't you meet me at the courthouse this morning? It'll just take 5 or 10 minutes. I just want to show you the courtroom.

472
01:46:41.270 --> 01:46:51.450
Judge Richard T. Bell: You'd be amazed how comforting that can be for them, just kind of seeing where they're going to be and knowing where they're going to be sitting can bring them a little bit of ease on the morning of a hearing.

473
01:46:51.800 --> 01:47:05.040
Judge Richard T. Bell: Also, describe who's going to be there and what their roles are. That there's a bailiff there that's going to protect us and make sure that the courtroom's safe. The judge is going to be sitting up there. Explain the court reporter and the court reporter's role.

474
01:47:05.290 --> 01:47:18.770
Judge Richard T. Bell: Explain to them how direct and cross-examination work, how the process works, that they're going to be called by you first, and they'll be allowed to tell their story through open-ended questions. Then explain to them when they're done.

475
01:47:18.940 --> 01:47:38.289
Judge Richard T. Bell: They're going to get cross-examined, and that if they feel like something… they really want to explain and answer in cross-examination, they didn't get a chance to do that, that you're going to have the ability to ask them questions later and redirect if you need to. But let them kind of understand a little bit about that process before they're actually going through it.

476
01:47:39.090 --> 01:47:43.619
Judge Richard T. Bell: And then lastly, I would say make sure you're explaining proper courtroom etiquette.

477
01:47:43.860 --> 01:47:45.999
Judge Richard T. Bell: And here, it's really more of…

478
01:47:46.090 --> 01:47:57.220
Judge Richard T. Bell: just things that may… a judge may find annoying if it's happening, that you can prevent by just telling them. So, for example, just answer the question that's asked.

479
01:47:57.220 --> 01:48:00.869

Judge Richard T. Bell: Even if another lawyer's not objecting to your client,

480
01:48:00.870 --> 01:48:25.060
Judge Richard T. Bell: being non-responsive, that's going to be something the judge is noticing, and it's going to distract the judge, so just make sure you go through with them. Just answer the question that's asked. I'm telling the story here, I'm kind of playing a movie for the judge, that the judge can follow along, and you just have to trust me that I'm going to pull every single fact out of you that I need to pull out of you. But just make sure you're just answering the question that's being asked.

481
01:48:25.240 --> 01:48:26.410
Judge Richard T. Bell: Also,

482
01:48:26.520 --> 01:48:43.260
Judge Richard T. Bell: when a lawyer stands up, tell them, stop talking. That means there's going to be an objection, and explain that process to them, so you don't have a court reporter upset with them, you don't have a judge getting upset with them because they can't get a good, clean record because two people are talking at the same time.

483
01:48:44.780 --> 01:48:47.280
Judge Richard T. Bell: Alright, let's move into trial testimony.

484
01:48:47.690 --> 01:48:58.820
Judge Richard T. Bell: When you're actually in trial, and you're, giving them a direct examination, make sure, once you move into the family violence, that you're asking open-ended questions.

485
01:48:59.180 --> 01:49:05.249
Judge Richard T. Bell: the… Most important thing is to let them tell their story.

486
01:49:05.560 --> 01:49:14.950
Judge Richard T. Bell: Just like when they're sitting in there with your initial interview, and you've probably been in some of these initial interviews, where you hear them telling the story, and you almost feel like

487
01:49:14.950 --> 01:49:26.830
Judge Richard T. Bell: you could start crying, like you're reliving their moment. It's like you're seeing a movie as they're telling you the story. That's the way you want it to come across in court. You want the judge to literally be in that room,

488
01:49:27.480 --> 01:49:33.050
Judge Richard T. Bell: like, seeing what's happening. And if you let your client tell that story on direct,

489
01:49:33.150 --> 01:49:50.620
Judge Richard T. Bell: you're going to get the raw emotion that comes from them telling that story with first-hand knowledge. If the spotlight is on you and your questions in the direct examination, you're not doing a good job in the courtroom. You need to make sure you're not leading during this portion of your testimony, of her testimony.

490
01:49:50.860 --> 01:50:06.859
Judge Richard T. Bell: So just make sure you're asking open-ended questions and letting the story come through them. If they forget important information that you think was really beneficial for the court to know, you know that story if you did a good client interview, and you can fill in those gaps for them.

491
01:50:06.860 --> 01:50:15.900
Judge Richard T. Bell: So, for example, they leave out a fact, like they had an accident during the incident, and they had to change clothes before the police got there.

492
01:50:15.900 --> 01:50:20.820
Judge Richard T. Bell: That's something that, if they leave that out, and you think that's important, you want the judge to know just how…

493
01:50:21.500 --> 01:50:43.889
Judge Richard T. Bell: difficult situation this was for your client, then you can ask that question and fill in the holes later. But just don't interrupt them. You can do that after they've completed their testimony and say, I want to mention… I want to ask you one thing. And if you draw a leading question on that, it's okay. Just know how to flip that into a non-leading question so that you can help the client get their full story out to the judge.

494
01:50:45.290 --> 01:50:53.860
Judge Richard T. Bell: If you have bad facts in your case, a good strategy is to make sure you deal with those bad facts on your direct.

495
01:50:54.260 --> 01:51:07.849
Judge Richard T. Bell: And I always call this to my clients, we want to steal their thunder, right? We want to take their good facts, or what are perceived as our bad facts, and we want to deal with those on direct. So, for example.

496
01:51:08.220 --> 01:51:11.569
Judge Richard T. Bell: Let's say you've got a situation where,

497
01:51:12.110 --> 01:51:18.039
Judge Richard T. Bell: the abuser's face was just all scratched up, bloody from your client.

498
01:51:18.810 --> 01:51:31.339
Judge Richard T. Bell: You know that's coming out in cross, and so why not deal with that on direct? And just say, you know, what was… what did you do when he was choking you? Well, I reached back and I scratched his face.

499
01:51:31.670 --> 01:51:37.289
Judge Richard T. Bell: What happened after you scratched his face? Well, he released his grip on me, and I was able to breathe again.

500
01:51:37.390 --> 01:51:45.810
Judge Richard T. Bell: And then when the other lawyer starts bringing out pictures of his bloody face, your judge is going to be looking at that going, yeah, I mean, that probably saved her life.

501
01:51:45.870 --> 01:52:06.130
Judge Richard T. Bell: You've taken something that could be perceived as a bad fact by the other side, and you've explained it to the judge in your direct examination. So make sure you're doing that. If your client has some difficult facts, go ahead and bring those out on direct. I think that's a better way to approach that, rather than ignoring it and letting somebody pounce on them on cross-examination.

502
01:52:06.880 --> 01:52:15.079
Judge Richard T. Bell: And then lastly, on… trial testimony with the survivor. Make sure you explain to them that credibility is everything.

503
01:52:15.320 --> 01:52:25.169
Judge Richard T. Bell: You're never going to be able to anticipate every single thing that could happen on cross, right? And there's some great lawyers out there that are going to think of some really clever or creative things to do.

504
01:52:25.260 --> 01:52:36.960
Judge Richard T. Bell: The best advice is to just always tell them, tell the truth, no matter what. And with the exception of Fifth Amendment privilege issues, just tell them to tell the truth, because

505
01:52:36.960 --> 01:52:52.720
Judge Richard T. Bell: they're building credibility with the judge by doing that. And if they lose credibility because they get caught in some kind of fib, then the judge is second-guessing every single thing that he's heard from their mouth. So just make sure you stress that to them.

506
01:52:53.930 --> 01:53:02.940
Judge Richard T. Bell: Alright, trial testimony, testifying aids. If you're not doing timelines on these family violence cases, I would encourage you to start doing them.

507
01:53:03.390 --> 01:53:12.109
Judge Richard T. Bell: Do a timeline on every case that has multiple instances of family violence. It is a great tool for your witness, or for your client.

508
01:53:12.520 --> 01:53:28.150
Judge Richard T. Bell: Be careful, though, and don't make these timelines super detailed. I would have the timelines be very, very simple, because I've seen them in court where they're very detailed, and the client is handed the timeline, and they just… you can tell, they can't even read

509
01:53:28.150 --> 01:53:45.330
Judge Richard T. Bell: to jog their memory. They can't even read it, because all the words are just kind of running around on their page. So it should be something that's very succinct and very easy to read, so it can be something like, April 24th, 2026, Galveston, San Luis Hotel.

510
01:53:45.690 --> 01:53:47.730
Judge Richard T. Bell: Choked in the hotel room.

511
01:53:48.200 --> 01:53:52.710
Judge Richard T. Bell: May 23rd, 2026, Lake Conroe.

512
01:53:52.780 --> 01:53:54.570
Judge Richard T. Bell: Hit with a beer bottle,

513
01:53:54.570 --> 01:54:19.409
Judge Richard T. Bell: glass beer bottle. And so it's something that's really, really short, tells them what the date was that it happened, tells them the location where it happened, and gives them one or two just kind of facts to trigger their memory, this is what happened on that day. And it's really, really easy for them to see that, and know exactly where you're taking them in the examination. And I would have that exhibit up, I would enter it as a shorthand rendition of their testimony.

514
01:54:19.410 --> 01:54:33.550
Judge Richard T. Bell: I'd have that up in front of them on the computer, if you have computers in your courtroom. If you don't, have a hard copy for them, or have it… blow it up and have it on an easel, so that they've got that testifying aid with them that can help their memory.

515
01:54:33.880 --> 01:54:39.909
Judge Richard T. Bell: If they can't remember some details that are in the affidavit, you can use the affidavit to refresh their recollection.

516
01:54:40.130 --> 01:54:52.360
Judge Richard T. Bell: Use pictures and videos, and if you have any documentary evidence, like medical records, police reports, phone records, know how to get that information in. If you don't know the predicates on that

517
01:54:52.380 --> 01:55:00.280
Judge Richard T. Bell: that's okay. I mean, even experienced trial lawyers sometimes forget predicates when they're in the middle of a heated moment.

518
01:55:00.280 --> 01:55:23.099
Judge Richard T. Bell: What I recommend is I had the predicates manual, which is a book that the Texas Family Law Section puts on. It has literally the predicates for every single piece of evidence that you can get in, and I would just make a copy of that. If I had, like, a videotape I was getting in, or I had an audio tape, I would photocopy that predicates manual page or two, and put that in my trial notebook, just in case.

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01:55:23.100 --> 01:55:31.540
Judge Richard T. Bell: I couldn't remember the predicate, or I got an objection, and the judge sustained the objection for improper predicate, then I would flip to that page. It tells the judge.

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01:55:31.540 --> 01:55:45.909
Judge Richard T. Bell: I knew this might come up, I've got my predicate here, and I'm going to go through it in painstaking detail so that I get my evidence in. So, if you don't have that manual, it's a good tool, and you might want to look at getting that, but make sure you're able to get your evidence in your hearings.

521
01:55:47.030 --> 01:56:01.730
Judge Richard T. Bell: Witnesses, we talked a little bit about this before. You may not have a witness of the incident, but you may have one before or after. I think these can be really powerful in court, because if you've got someone that can come in and testify before your client

522
01:56:01.780 --> 01:56:17.120
Judge Richard T. Bell: that will maybe lay out that there were no injuries before that date, or that the person was called right before the abuser came and attacked your client. It allows you to get a witness in there so that your client sees somebody testify on the stand.

523
01:56:17.120 --> 01:56:25.920
Judge Richard T. Bell: They see how direct examination works, how cross-examination works. They even see how the lawyer's objecting works.

524
01:56:25.920 --> 01:56:39.090
Judge Richard T. Bell: And so they're able to kind of see, before they're up there doing it themselves, how the process works. So if you've got a collateral witness, it could be a really good way to let your client further relax before they're the main actress or actor on the stand.

525
01:56:39.530 --> 01:56:56.030
Judge Richard T. Bell: Also, on the excited utterance and present sense impression, I put that in here because many times if there is a call and the client is excited, the things that are being said, or a child says something because the child sees something that happens.

526
01:56:56.030 --> 01:57:00.269
Judge Richard T. Bell: Many times, that's going to be an excited utterance, or it's going to be a present-sense impression.

527
01:57:00.720 --> 01:57:05.969
Judge Richard T. Bell: And I want you to understand, because I see this so often, where a lawyer will ask a question

528
01:57:06.110 --> 01:57:13.919
Judge Richard T. Bell: and there's an objection to hearsay, and I sustain that as a judge, but in my brain, I'm thinking, I heard that the person's crying.

529
01:57:13.920 --> 01:57:32.550
Judge Richard T. Bell: So, it's probably an excited utterance, but then they just move on, and they don't put the evidence in. And I'm really wanting to know, you know, what did this child say, or what did this person say? So, just understand your predicates on those two. So, if it's an excited utterance, you have to prove that there was some stimulating event. They saw the violent episode

530
01:57:32.580 --> 01:57:49.089
Judge Richard T. Bell: that they were still under the stress of seeing or witnessing that event. And

then, once you've laid that predicate, you can get the statement in. So just make sure that you're anticipating these things, anticipating the objection from the other side, and that you're going to be able to get your evidence in.

531
01:57:49.970 --> 01:58:00.569
Judge Richard T. Bell: On cross-examination, make sure you're protecting your client on when they're getting cross-examined. And by that, you want to make sure that you're controlling your opposing counsel.

532
01:58:00.640 --> 01:58:14.509
Judge Richard T. Bell: If they are getting up there right on top of your client and questioning them from the witness chair, which a lot of veteran lawyers like to do, they like to get in people's comfort zone and try to rattle them that way.

533
01:58:14.510 --> 01:58:24.869
Judge Richard T. Bell: Make sure that if they're not questioning from a document, or they're finished questioning from that document, you stand up and you object, and you say, Judge, I'd like Mr. Bell to go back and question my client from council table.

534
01:58:24.950 --> 01:58:30.850
Judge Richard T. Bell: The judge is going to protect your client, and the judge is going to make the lawyer go back to counsel table and question from there.

535
01:58:30.950 --> 01:58:49.309
Judge Richard T. Bell: But judges, we can't really interject and take care of things on our own, or we don't want to do that, so it's really your duty to protect your client by objecting. And I can tell you, we want to take care of those situations, but we may not feel like we can interject ourselves into the trial and do that on our own, unless it's being

536
01:58:49.310 --> 01:58:53.049
Judge Richard T. Bell: extreme. so, make them question from counsel table.

537
01:58:53.050 --> 01:59:11.639
Judge Richard T. Bell: If they're making sidebar remarks, they're badgering your client, stand up and object. The judge wants to control that. Let the judge do it. And if they're objecting to… if they're offering cumulative evidence, they keep beating a dead horse with your client on the stand, object, please, and let the judge make that lawyer move on.

538
01:59:13.080 --> 01:59:25.319
Judge Richard T. Bell: Two big points here on cross-examination. If you got a good story on direct

examination, you feel like your client did a really good job, and the cross did not hurt you too badly.

539
01:59:25.500 --> 01:59:35.310
Judge Richard T. Bell: Really, really, really consider whether or not you'll need to open them up to another cross. And it's very possible that the best strategy is just say, judge, I don't have any redirect.

540
01:59:35.310 --> 01:59:46.469
Judge Richard T. Bell: Many times, that's the best approach in those cases, is let them go ahead and get off the stand. You've told… you've let her tell her story, you got her through it now, or him through it, and let them get down.

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01:59:46.470 --> 01:59:53.020
Judge Richard T. Bell: The other thing I would say is this, on your affidavits on, the applications for protective orders.

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01:59:53.330 --> 01:59:56.880
Judge Richard T. Bell: Many times I get these applications, and the…

543
01:59:57.100 --> 02:00:07.640
Judge Richard T. Bell: affidavit's 8 pages long, and it's got, like, 25 years of family violence all in this affidavit. If you're doing that, please stop doing that. It's, in my opinion, a terrible strategy.

544
02:00:07.640 --> 02:00:29.900
Judge Richard T. Bell: You don't need that. And all you're doing is laying your poker hand down for the other side to go through 25 years or 10 years of family violence instances and look for areas where they can poke a hole in one of these dates or one of these things that your client has sworn to under oath in that affidavit. The affidavit only needs to prove clear and present danger. That's what the judge is,

545
02:00:29.960 --> 02:00:38.289
Judge Richard T. Bell: burden is on granting a temporary ex parte protective order. So I'm looking at, like, the last 30, 60, 90 days on these

546
02:00:38.330 --> 02:01:03.229
Judge Richard T. Bell: applications for protective orders in these affidavits to see if I'm going to grant a temporary ex parte protective order, so do not set them up by giving your opposing counsel all of these stories, all these instances that you don't need to do. This is not a criminal case. Your application for protective order in your affidavit's not an indictment or an information. It's not a motion for enforcement, where you need to list out every single

547
02:01:03.230 --> 02:01:11.399
Judge Richard T. Bell: fact that was done. And I've heard that objection before in these protective order hearings... Judge, that's not in their affidavit. They shouldn't be allowed to go into that.

548
02:01:11.400 --> 02:01:21.160
Judge Richard T. Bell: And I overrule that every time, because that's not the burden. These are notice pleadings, and you don't have to put every single instance of family violence in those affidavits, and you shouldn't be doing that.

549
02:01:22.150 --> 02:01:28.679
Judge Richard T. Bell: Alright, in court, always, always, always have a courtesy copy of your exhibits for the judge.

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02:01:29.370 --> 02:01:35.639
Judge Richard T. Bell: If you don't remember anything else about today, please make courtesy copies for your judge. It's very, very powerful.

551
02:01:35.790 --> 02:01:45.929
Judge Richard T. Bell: It allows me to follow along with your evidence, and so I'm reading the text messages, I'm seeing the tone of those text messages or those emails.

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02:01:46.000 --> 02:02:03.580
Judge Richard T. Bell: But more importantly, if you have photos, a lot of times, and I don't know why that is, when you're getting your evidence in, I can't tell you how many times I'm in a protective order hearing, and I see a bloody lip, or I see a black eye, or I see bruising all around the neck, and I'm looking at that picture going, man…

553
02:02:04.040 --> 02:02:06.890
Judge Richard T. Bell: and it just stays… my binder stays open on that picture.

554
02:02:07.070 --> 02:02:21.429
Judge Richard T. Bell: And so I'm hearing from her, and I'm seeing this picture, and I'm reliving her moment, right? Or I'm looking at this picture, and I'm hearing him tell me how this is all her fault, and it's getting me, you know, angry as a judge.

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02:02:21.430 --> 02:02:28.670
Judge Richard T. Bell: So, make sure you're getting your exhibits in front of the judge, because those can be very powerful, just sitting in front of a judge.

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02:02:28.670 --> 02:02:33.919
Judge Richard T. Bell: If you have voluminous data, summarize it for the judge. If you have, like, a bunch of text messages,

557
02:02:33.920 --> 02:02:53.049
Judge Richard T. Bell: do a shorthand summary of that so that you can bring out the exhibit and the page number where you want the judge to go. Always be honest and professional. Finish your case, have a proposed order ready, get it signed by the judge, and have the respondent served in open court after your protective order. And I'm going to end with this.

558
02:02:53.080 --> 02:03:09.709
Judge Richard T. Bell: Never, ever, ever do these things in court. Disrespect the judge. That doesn't mean back down from a bad judge. Make sure you're getting rulings. Do your offers of proof if you have a judge that's inexperienced and giving you bad rulings. Never make sidebar remarks or address opposing counsel.

559
02:03:09.710 --> 02:03:21.669
Judge Richard T. Bell: And please, please object if somebody's repeating the same facts over and over again, or they're giving speaking objections. That is my presentation. Thank you so much for giving me time to speak today, and I hope some of this helps you.

560
02:03:28.280 --> 02:03:43.490
Hon. Barbara J. Stalder: Hi, everybody. I am back, and our next speakers, I'm going to introduce them. We have John Reyes, who is the… he has over 20 years of working with youth

561
02:03:43.490 --> 02:04:06.310
Hon. Barbara J. Stalder: in the area of prevention and building healthy relationships. He is currently at Aid to Victims of Domestic Abuse. I'm not sure how long John has been there, but he's been there a pretty long time, for as long as I can remember. And then we also have Maisha Colter, who is the CEO of AVDA, Aid to Victims of Domestic Abuse. She's been the CEO since 2019.

562
02:04:06.310 --> 02:04:30.219
Hon. Barbara J. Stalder: I can tell you that Maisha has over 20 years' experience working with victims of domestic violence. She also is a very unique position because she's also a licensed social worker, so she brings to the table something that a lot of us who don't have that viewpoint, are able to assess with the clients and be able to help them in some different ways that

563
02:04:30.220 --> 02:04:37.959
Hon. Barbara J. Stalder: just plain… us plain old lawyers aren't able to do. So I'm going to turn this over to Maisha and John, and we thank you very, very much.

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02:04:40.080 --> 02:04:42.719
Maisha Colter: Thank you so much, Judge Stalder Stalder.

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02:04:42.990 --> 02:05:07.119
Maisha Colter: We are going to get started, but before we do, I want John to share a little bit about his role here at AVDA, because it's pretty unique. For the most part, people know that we do legal representation, and that we do the BIP services, but we do have a totally different team that's out there, and they probably see more people than legal and BIP

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02:05:07.120 --> 02:05:09.200
Maisha Colter: do, combined.

567
02:05:10.360 --> 02:05:22.400
John Reyes: All right, good morning, everybody, and thanks for having us here. My name is John Reyes, I am the Prevention and Education Manager here at AVDA, part of the CAP team, and we pretty much do education and outreach, so everything from

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02:05:22.400 --> 02:05:36.439
John Reyes: putting the word out into the community through health fairs and speaking engagements to training of social service staff, law enforcement, medical staff, and my role in particular is I

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02:05:36.440 --> 02:05:47.190
John Reyes: focus again on the youth, presentations and programming in, middle schools, high schools, juvenile detention centers, community colleges. Our tiny team is…

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02:05:47.190 --> 02:05:59.349
John Reyes: small, but we're fierce, and we share as much information, and like Maisha has said in the past, our primary goal is to share the word enough that we put ourselves out of business and eliminate

571
02:05:59.390 --> 02:06:01.520
John Reyes: abuse in relationships.

572
02:06:01.570 --> 02:06:07.449
John Reyes: But yeah, we, if y'all ever need anybody to talk to a group, we do that. So, thank you.

573
02:06:07.810 --> 02:06:32.780
Maisha Colter: Thank you, John. And thank you, Judge Bell. I think, actually, I didn't know the content

of Judge Bell's presentation, but I think it segues very nicely into what John and I are going to talk to you about. Earlier, I kind of talked to you about data and statistics related to what's happening in our area as far as domestic violence is concerned. Now we want to drill down and really kind of get into the type of client that might come walking

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02:06:32.780 --> 02:06:57.770
Maisha Colter: into your office with a issue that involves intimate partner or family violence, and try to kind of give you some ideas about how to think about your work with these particular clients. We're going to try to be as interactive as we can in a Zoom presentation, so bear with us. We are… I did the poll function the

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02:06:57.770 --> 02:07:19.509
Maisha Colter: last event that we did last year, and it worked pretty well. We're gonna try to do that, this morning, and hopefully it'll be practical and give you all some, and keep you engaged, because we actually have a pretty long presentation time, as opposed to some of our predecessors in the presentation this morning. So, I'm going to pass it to John.

576
02:07:19.880 --> 02:07:36.309
John Reyes: All right, so let me get onto my little clicky thingy. Technology and I are not really good friends sometimes, but there we go. So this is basically gonna be a work for us to work together. We're gonna give you, five different kind of scenarios, fictional, of course, no real

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02:07:36.310 --> 02:07:44.129
John Reyes: people involved, and all the clients that are going to be in these scenarios have different needs and different situations.

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02:07:44.130 --> 02:07:58.339
John Reyes: In the midst of that, we will have four poll questions, so you'll have an opportunity to give your opinion on what next steps should be based on the information we share with you all. And throughout the process, if anything,

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02:07:58.360 --> 02:08:18.369
John Reyes: triggers something that either you've been involved with, or you may have a question, feel free to drop it into the chat. Just know that please don't put any client identifiers or personal information in your questions, but I'm sure not only myself and Maisha, but other members of the panel, if they have insight on these

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02:08:18.370 --> 02:08:31.529
John Reyes: situations, would love to be able to answer or respond to that. And at the very end, we're going to try to save a couple of minutes, as long as we stay on schedule, for any questions that come out that we want to do as a general for the entire audience kind of thing.

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02:08:31.680 --> 02:08:37.870
John Reyes: So, that being said, let's go ahead and move on into our little activities and stories.

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02:08:38.780 --> 02:08:53.499
John Reyes: Sometimes we might misread clients, and our initial interactions with them may require us to take a little bit more time to pay attention to what their need is, and the way they're

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02:08:53.780 --> 02:09:10.940
John Reyes: bringing or presenting that need to us. Of the presentations that we're doing, we'll have one where there's a very calm professional who doesn't seem to show, or describes what's going on with them without any visible emotion. We have an angry parent who has

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02:09:11.140 --> 02:09:19.409
John Reyes: who's having issues giving linear accounts. Their medical situation is affecting their ability to

585
02:09:19.510 --> 02:09:37.090
John Reyes: you know, to be actively engaged. We're gonna have a man, or potentially an LGBTQ, who is, expecting people not to believe them in their story and how they share. And we even have a situation scenario where we're talking about a teen who

586
02:09:37.640 --> 02:09:56.599
John Reyes: kind of categorizes the surveillance and things that are going on in their situation as just, you know, typical relationship trauma. And another one where we have a client who's being very forceful in the expectations and demands of what they expect the outcome of their situation to be. So, again,

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02:09:56.860 --> 02:10:09.219
John Reyes: appearance and demeanor when we first see our clients, that gives us opportunity to ask questions, not just make assumptions based on what they're sharing with us.

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02:10:09.750 --> 02:10:16.000
John Reyes: And a lot of times, and I know that in listening to the presentations beforehand, we've talked about our first

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02:10:16.270 --> 02:10:24.200
John Reyes: conversations with our clients and asking questions. We really think it's super important to think about.

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02:10:24.450 --> 02:10:28.250
John Reyes: How we set up our conversations initially,

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02:10:28.660 --> 02:10:48.450
John Reyes: many times with our clients, some are in office, some are via Zoom and technology, so finding out from the very beginning questions like, can you speak freely? Do you feel safe? Who else has access to whatever device that we're communicating in? And as they start telling you that they have privacy and you start these conversations.

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02:10:48.810 --> 02:10:59.010
John Reyes: You know, the simple questions like, what… what could happen if this person, disagrees with you, or… or if you… they…

593
02:10:59.010 --> 02:11:01.560
John Reyes: they don't like that you disagree, or you try to leave.

594
02:11:01.560 --> 02:11:19.119
John Reyes: Have you ever been… and then you ask the questions, like, have you ever been blocked from leaving a situation, or place, or forced sex, or strangulation, or threatening you? And at the very end, you know, what would make… or before we even get into all the potential help we can give them legally, what would make legal help

595
02:11:19.150 --> 02:11:25.009
John Reyes: safer and more useful for you today? How can we make this be something that's positive for you?

596
02:11:25.280 --> 02:11:28.230
John Reyes: And… alright, so let's keep moving on to the next one.

597
02:11:28.430 --> 02:11:34.120
John Reyes: So let's go ahead and talk about our first, our first scenario here.

598
02:11:34.250 --> 02:11:41.490
John Reyes: Nadia wants the divorce finished. So she's 36, and she's a physician, parent of two children.

599
02:11:42.160 --> 02:11:52.840
John Reyes: Her spouse checks her phone, threatens immigration status, so immigration is

something that they're going to, be dealing with. Oh, I'm sorry, I hit the wrong thing. Where am I at? -Oh. Apologies.

600
02:11:53.850 --> 02:11:57.530
John Reyes: Sorry, I'm way off. Am I going the wrong way?

601
02:11:59.360 --> 02:12:03.500
John Reyes: Here it is. My apologies, y'all. Hit the wrong scroll.

602
02:12:03.530 --> 02:12:09.350
John Reyes: He also has assaulted her physically in front of the children on several occasions in the past.

603
02:12:09.350 --> 02:12:25.789
John Reyes: Last month, blocked a doorway, gripped her arm. And for Nadia, her primary concern, or what she's hoping to get out of the end result of all of this, is she wants a quick divorce that's agreed upon. And her biggest fear is that, one, serving

604
02:12:25.810 --> 02:12:29.889
John Reyes: her husband, she's not sure what that will trigger within him.

605
02:12:34.730 --> 02:12:39.130
John Reyes: So the… Maisha, do you want to do the poll questions? Or do you want me to go ahead and just read them?

606
02:12:39.130 --> 02:12:45.789
Maisha Colter: You need to launch… well, I think the first one is launched, so give them time to, answer the first poll question.

607
02:12:46.210 --> 02:12:50.470
John Reyes: Okay. Well, the first poll question is, asking you

608
02:12:51.180 --> 02:13:04.810
John Reyes: what… what… where do we go with, what comes next for Nadia? And the responses are, send the intake paper packet, you know, to a shared family email address, agree on a safe contact method, and clarify her priorities.

609
02:13:04.850 --> 02:13:13.129

John Reyes: File and serve immediately without further consultation, or invite the spouse to explain the accounts and restrictions. Account restrictions, the money part, yeah.

610
02:13:13.260 --> 02:13:18.420
Maisha Colter: Let's stand by and see if we get a response from the audience in regard to the poll.

611
02:13:19.080 --> 02:13:22.880
John Reyes: We're… they're launching the poll for us, right?

612
02:13:23.700 --> 02:13:24.189
Maisha Colter: The first one.

613
02:13:24.190 --> 02:13:24.530
John Reyes: It should be

614
02:13:24.530 --> 02:13:25.759
Maisha Colter: already queued up.

615
02:13:25.990 --> 02:13:26.630
John Reyes: Okay.

616
02:13:28.970 --> 02:13:31.249
Maisha Colter: We'll have to launch the next three, though, John.

617
02:13:31.580 --> 02:13:34.089
John Reyes: Okay, I don't see it on my screen, that's why I'm asking.

618
02:13:34.530 --> 02:13:38.569
Maisha Colter: Oh, go to… Where it says poll.

619
02:13:39.870 --> 02:13:43.070
John Reyes: I'm sorry about that, every time I press that…

620
02:13:47.470 --> 02:13:55.670
John Reyes: I don't see a poll… If you… okay, polls and quizzes, Oh yeah, okay.

621
02:13:59.220 --> 02:14:00.210
John Reyes: Alright.

622
02:14:00.870 --> 02:14:04.199
John Reyes: So we'll give a couple more seconds if anybody didn't get a chance to respond.

623
02:14:10.610 --> 02:14:15.760
John Reyes: And then I'm gonna go ahead and switch to the next one, and let Maisha go over the…

624
02:14:16.320 --> 02:14:18.289
John Reyes: The results and how this would work.

625
02:14:20.100 --> 02:14:21.280
John Reyes: You ready, Maisha?

626
02:14:21.280 --> 02:14:21.850
Maisha Colter: I.

627
02:14:21.850 --> 02:14:22.599
John Reyes: Alright, we've still got time.

628
02:14:22.600 --> 02:14:28.340
Maisha Colter: No, I don't see the poll results. Kristina, I'm not sure if you're on, if you can help us.

629
02:14:28.340 --> 02:14:33.360
Kristina Van Arsdel: Yes, sure. If you hit the button End Poll, that should give you the results.

630
02:14:33.700 --> 02:14:36.490
Kristina Van Arsdel: I'm happy to do that, or if you see it…

631
02:14:36.490 --> 02:14:40.350
John Reyes: I don't see an End Poll, I just see the poll things.

632
02:14:40.350 --> 02:14:42.879
Kristina Van Arsdel: Okay, I will hit it, and you should see results.

633
02:14:43.130 --> 02:14:44.169
John Reyes: Okay, thank you.

634
02:14:48.030 --> 02:14:49.970
Kristina Van Arsdel: Okay, I have ended the poll.

635
02:14:50.680 --> 02:14:51.370
John Reyes: Okay.

636
02:14:52.530 --> 02:14:53.550
Maisha Colter: Let's see…

637
02:14:55.100 --> 02:14:55.990
John Reyes: do I.

638
02:14:56.180 --> 02:14:56.880
Maisha Colter: I, I got it.

639
02:14:56.880 --> 02:15:21.340
Maisha Colter: I can see it, John, thank you. So, it says, and you all, the audience is primarily correct. I think we got about 85% saying B is the, correct, or best answer. And B basically says, the best next steps under these facts. So, let's talk about the facts and what we should be taking into consideration as it relates to Nadia's circumstances.

640
02:15:21.340 --> 02:15:29.090
Maisha Colter: First and foremost, Nadia comes into your office. She is a professional, she obviously has some

641
02:15:29.190 --> 02:15:54.069
Maisha Colter: resources, because she's the primary earner in this, in this scenario, but if you note the, facts that Nadia is experiencing, financial abuse in this situation, she, she expresses that she earns the money, but he keeps the money. She also, indicates that she has, some type of status issue as far as

642
02:15:54.070 --> 02:15:59.469
Maisha Colter: immigration is concerned. She could be on a visa. She is a physician.

643
02:15:59.470 --> 02:16:15.360
Maisha Colter: She might be sponsored by her spouse, you know, there's some question there. And so, when you have a case like this, it's not just about the family law issue, but it might involve you making a referral to an immigration expert if that is not your area of expertise.

644
02:16:15.360 --> 02:16:27.230
Maisha Colter: But the most important thing that I saw in the Nadia scenario from a facts standpoint, are twofold. One, that there's domestic violence happening, and that's clear.

645
02:16:27.390 --> 02:16:44.120
Maisha Colter: At the time that this person presents, it isn't clear, at least in the scenario as we provided it, whether or not she's still in the home with the partner. But what we need to do in our initial interview, and Judge Bell eloquently said this, and I wholeheartedly agree.

646
02:16:44.160 --> 02:16:49.820
Maisha Colter: Intake, your initial interview with your client is where you establish

647
02:16:49.820 --> 02:17:13.339
Maisha Colter: the relationship, establish the rapport, you will probably get the most information at the, at that initial intake, if you do it properly. And so, Nadia may have in mind to get out of this relationship quickly, but the facts that Nadia is experiencing, or at least that she's presenting to you, do not, in my opinion

648
02:17:13.340 --> 02:17:20.099
Maisha Colter: look like the type of case that should be rushed. There are…

649
02:17:20.100 --> 02:17:44.809
Maisha Colter: issues related to the children. Certainly, since there's been a long-standing history of physical and economic abuse, we probably need to assess what does the community look like here? Why is she unable to control the resources that she brings in? Are there things that you can do with a temporary order that

650
02:17:44.809 --> 02:17:52.130
Maisha Colter: might help you to sort out their finances. Are there things that need to happen so that you can make a determination about

651
02:17:52.129 --> 02:18:17.039
Maisha Colter: the household, where they live, where she lives, where the children live, decisions about how those children should be… how the children should be shared, what does possession

access look like, what do rights and duties look like in this particular scenario, given the facts that Nadia initially provided, and of course, the things that you are going to discover as you do a thorough assessment of

652
02:18:17.040 --> 02:18:19.059
Maisha Colter: Claudia's particular legal needs.

653
02:18:19.059 --> 02:18:23.070
Maisha Colter: When Nadia first came to us, she indicated that she wanted a

654
02:18:23.070 --> 02:18:46.590
Maisha Colter: agreed divorce. Based on what you know about Nadia's husband, is it very likely that a person with these particular facts are going to simply agree to a divorce? The answer is probably no. And so, you are going to have to counsel and advise Nadia about the reality of her circumstances, such that she will probably not be in a situation where you all can sign a waiver.

655
02:18:46.600 --> 02:18:51.849
Maisha Colter: Ethically, and be able to conclude this matter, you know, in…

656
02:18:52.100 --> 02:19:03.509
Maisha Colter: you know, 60, 90 days, which is what she intends, but she only intends those things because she thinks that's the safest way to remove herself from this abusive partner.

657
02:19:03.860 --> 02:19:28.070
Maisha Colter: But these are the types of things that should be evaluated and assessed as you start to talk to the people who you will encounter. And as we engage in this process, we're gonna go through different scenarios and sort of think through things that might be worth evaluating and assessing, so that you can put yourself, your client, in the best position to go in

658
02:19:28.070 --> 02:19:52.880
Maisha Colter: and seek the relief that they really, need. Not only the relief that they want, but the relief that they need for the immediate circumstances, for their future circumstances, and for their long-term circumstances. We didn't put in the composite how old Nadia's child is with her abuser, but that might be a factor.

659
02:19:52.880 --> 02:20:11.859
Maisha Colter: We kind of left these composites a little bit broad, in… in terms of what they might… what we might know here, because I really want you all to think through, real-life scenarios that you may encounter, and depending on the age of the children.

660
02:20:11.860 --> 02:20:35.780
Maisha Colter: Your requested relief may look different. So if Nadia had, you know, a toddler, what would custody and possession and access look like under those circumstances? If Nadia has a teenager, what does that look like? So you need to really be looking at your client and the person who's in front of you, and the potential needs that they have

661
02:20:35.780 --> 02:20:40.310
Maisha Colter: based on their particular, facts and circumstances

662
02:20:40.310 --> 02:20:55.649
Maisha Colter: while always, again, keeping in mind the safety aspect of them coming to you. Again, the fact that Nadia is wanting a quick divorce, but it isn't even clear at this point whether or not Nadia and her abusive spouse

663
02:20:55.650 --> 02:21:15.140
Maisha Colter: are still sharing the same, under the same household. Those are the kinds of things that will require you to really do a thorough, and robust examination around safety. It may require you all to wait and delay filing a lawsuit, so that she can find a, a safe

664
02:21:15.140 --> 02:21:37.880
Maisha Colter: residence. Maybe she needs to find a safe residence where she is away from the abuser for a time and secreted away while this case is being served. Remember, she advised that she doesn't know what he will do if he's served with papers. So just kind of think through the types of things that are being presented to you

665
02:21:37.880 --> 02:22:00.149
Maisha Colter: either spoken to you, or what you can surmise as a result of what the person is explaining. And remember what Judge Bell said, educate your client. Give them a real expectation around this process. There are lots of people who come into, our care

666
02:22:00.150 --> 02:22:25.059
Maisha Colter: thinking that we can do certain things that we can't do, or not understanding that we have the ability to do things that they didn't know we had the ability to do. They don't know that we have the ability to potentially, freeze assets with restraining orders, that we have the ability to do discovery and find out what might be hidden from them that they never had access to. You know, you have an economic

667
02:22:25.060 --> 02:22:49.840
Maisha Colter: situation. Maybe Nadia doesn't know all of what the husband has done as it relates to the finances of the parties. So these are opportunities for you to strategize. Remember, you're the

legal expert. They are the experts on their lives, but you are the person who is going to, provide to them expertise that's gonna make sure that as they transition out

668
02:22:49.840 --> 02:22:56.440
Maisha Colter: of this relationship, that they transition with safety and with protections that the law will afford them.

669
02:22:57.340 --> 02:22:58.730
John Reyes: Ready for the next one? Here we go.

670
02:23:01.620 --> 02:23:10.779
Maisha Colter: Another thing that has come up in the Nadia scenario, is obviously if there's an immigration, issue, is…

671
02:23:10.860 --> 02:23:34.970
Maisha Colter: a lot of times, we don't take into consideration cultural identity and competencies, when it comes to divorces, custody, and things of that nature, but these are missed opportunities often. And so, you might want to find out, what does Nadia's community look like? Who… who… who is, a resource for her? Who…

672
02:23:35.180 --> 02:23:53.609
Maisha Colter: who can help her? You know, for example, we don't know where she's gonna go if in fact she needs to leave that residence. Are there people in the community that she could go to that would not, you know, burden her in terms of costs? Does she have relatives? Or is all of her relatives away in a home country?

673
02:23:53.610 --> 02:23:59.609
Maisha Colter: Those things will matter as you assess your client's information. Remember, we need to think

674
02:23:59.610 --> 02:24:07.849
Maisha Colter: about the whole person, in order to be the most effective advocate for our client

675
02:24:08.060 --> 02:24:32.620
Maisha Colter: who feels safe to… who does she feel safe to involve? Who does she need to exclude? Which language or communication format works best? We have clients who may speak perfectly good English, but they have a preference when they're talking about traumatic events that they speak in their, native language. These are the types of things that, one, will improve your practice

676
02:24:32.620 --> 02:24:57.220
Maisha Colter: and improve your skill sets as attorneys. So think about cultural and identity from this vantage point, because it can factor into whether or not, again, you give them the full measure of representation that really highlights and heightens your ability, and it will heighten your ability when it comes to that case presentation. So you heard Judge Bell talk about preparation.

677
02:24:57.220 --> 02:25:07.470
Maisha Colter: This is the preparation that should be implemented from us as practitioners doing this level of work for our clients.

678
02:25:07.670 --> 02:25:08.670
Maisha Colter: Next slide.

679
02:25:12.560 --> 02:25:16.610
Maisha Colter: So now you're gonna have to… you're gonna have to launch the next poll question.

680
02:25:16.610 --> 02:25:17.430
John Reyes: I can launch it

681
02:25:17.430 --> 02:25:18.580
Kristina Van Arsdel: for you.

682
02:25:18.580 --> 02:25:18.930
John Reyes: Thank you.

683
02:25:19.220 --> 02:25:20.210
Kristina Van Arsdel: Yes, of course.

684
02:25:20.210 --> 02:25:24.879
Maisha Colter: My lights keep going off, y'all, I'm so sorry. If I sit too still in my office,

685
02:25:25.510 --> 02:25:26.560
Maisha Colter: thinks I'm not here.

686
02:25:26.880 --> 02:25:29.690
Kristina Van Arsdel: Okay, everyone should see question 2.

687
02:25:31.080 --> 02:25:35.649
Kristina Van Arsdel: And I'll keep this up for as long as you'd like, and then end the poll for the results.

688
02:26:08.340 --> 02:26:12.110
Kristina Van Arsdel: I'll give it another 15 seconds for everyone to answer.

689
02:26:12.990 --> 02:26:15.510
Kristina Van Arsdel: I can see they're answering.

690
02:26:32.550 --> 02:26:37.560
Kristina Van Arsdel: Okay, I am going to end the poll, so anyone who hasn't had a chance to answer…

691
02:26:38.140 --> 02:26:39.609
Kristina Van Arsdel: Couple more seconds.

692
02:26:41.960 --> 02:26:44.229
Kristina Van Arsdel: Okay, ending the poll now.

693
02:26:44.730 --> 02:26:46.199
Maisha Colter: Thank you, Kristina.

694
02:26:46.200 --> 02:26:48.080
Kristina Van Arsdel: Yes, you should see the results.

695
02:26:48.430 --> 02:27:13.380
Maisha Colter: And we do, and once again, the audience is right on point, for the most part. Connect specific incidents and evidence to tailored, results. So, when we are going into court, especially when we're going in court for the initial, hearings, which typically is going to be a temporary orders hearing, you want to be as eloquent as you possibly can about what you're seeking

696
02:27:13.380 --> 02:27:25.490
Maisha Colter: in court, and that includes, obviously the witnesses and the people who are gonna tell the story and ask for the relief that you are seeking on the client's behalf.

697
02:27:25.520 --> 02:27:31.320
Maisha Colter: But you also should have the opportunity to, prepare,

698
02:27:31.500 --> 02:27:54.219
Maisha Colter: a, you know, a relief request, and I try to encourage, you know, the attorneys that I work with, I do it myself, I used to do it myself, is I would draft a relief request, for the court, and it would include every, contested, you know, issue that we were going to present evidence on. So if we're… if we have a case where, and again, in Nadia's case.

699
02:27:54.300 --> 02:28:06.120
Maisha Colter: Custody might be an issue. Calculation of child support, might be an issue. How custody is going to occur, whether that's going to be

700
02:28:06.260 --> 02:28:11.409
Maisha Colter: restricted access and possession, whether it's gonna be a,

701
02:28:11.550 --> 02:28:32.130
Maisha Colter: a SPO, your facts should align with what it is that you are seeking. So you get your relief requested, you know what you're going to be asking the court to provide to your client in the form of an order, and then your evidence should support why the court should give you that relief.

702
02:28:32.130 --> 02:28:55.969
Maisha Colter: You should be looking, again, at things like Holley factors as it relates to the children. You should obviously be telling the court that Nadia is a victim of domestic abuse. And the way that you do that is you, in your pleadings, you're saying that, you know, the reason that this divorce is happening is because of cruel treatment. Cruelty is, where we kind of…

703
02:28:55.970 --> 02:29:18.269
Maisha Colter: explain to the court that domestic violence has happened, or at least we allege to the court. And then your evidence, whether that's, you know, testimony from Nadia about physical assaults that she underwent during her marriage, whether that's witnesses who can attest to something that they encountered.

704
02:29:18.270 --> 02:29:43.249
Maisha Colter: In the scenario, the composite, we did say that there were instances where the children saw Nadia assaulted by her spouse. You obviously may need to assess and evaluate whether or not children will be brought in as witnesses. Generally speaking, we do not want to do that. In certain situations, it may be appropriate, but that's an evaluation that you as the attorney

705
02:29:43.250 --> 02:30:07.409
Maisha Colter: need to make. Does an amicus need to be involved in this case? Does an ad litem need to be involved in this case? Does a social study need to be involved in this case? These are the types of things, again, that you need to be evaluating and assessing to make the right decisions about

how you're going to litigate on behalf of your client and get them the relief that they're ultimately seeking as it relates to

706
02:30:07.410 --> 02:30:10.130
Maisha Colter: their particular circumstances.

707
02:30:12.160 --> 02:30:14.419
Maisha Colter: If you want to advance the slide. Okay.

708
02:30:15.840 --> 02:30:16.690
Maisha Colter: Yeah.

709
02:30:16.740 --> 02:30:22.550
Maisha Colter: This, this is kind of what I, I was referencing, support

710
02:30:22.550 --> 02:30:47.200
Maisha Colter: fact-based request for relief, Apply 153.004 to conservatorship and access when children are involved. Address exchanges, contact, decision-making, enforcement details. Make sure that you're taking into account where exchanges are potentially going to occur. Who's going to be involved in those exchanges? Maybe Nadia and her spouse don't need to have

711
02:30:47.200 --> 02:31:05.520
Maisha Colter: any type of contact with one another. Maybe there needs to be a third party involved in the exchanges. Maybe there needs to be a formal exchange site. So the Harris County DRO does safe visits, but they also do safe exchange. So you may bring a child there,

712
02:31:05.600 --> 02:31:24.369
Maisha Colter: they get picked up by the other party. It keeps them from having to have contact with one another. Again, take into consideration the fears that are expressed by your client. Is this a case where there should have been a protective order, filed on Nadia's behalf, or the children, or both?

713
02:31:24.590 --> 02:31:42.719
Maisha Colter: But these are the types of things that you should be assessing as you move your case along. Evaluate family violence objections, SAPCRs, mediation. So, there might be times where you want to go straight to court and avoid mediation. Again,

714
02:31:43.340 --> 02:31:50.149
Maisha Colter: are you able to engage with this spouse? Is this spouse gonna have their own representation?

715
02:31:50.260 --> 02:32:04.610
Maisha Colter: Are they gonna be pro se? That might dictate, or at least guide how you're going to be responding to, or, dealing with this particular respondent under the circumstances.

716
02:32:05.580 --> 02:32:06.680
Maisha Colter: Let's watch.

717
02:32:06.930 --> 02:32:22.379
John Reyes: Alright, so now we're gonna go to the next scenario, from Marcus. Marcus says he fought back. Marcus is 41. He seeks divorce from his husband. They co-parent a child. He describes repeated threats, blocked exits, and financial monitoring.

718
02:32:22.610 --> 02:32:36.379
John Reyes: He pushed his husband during the latest incident, and his husband fell and hit his head. He sustained a large contusion. The police were called, and Marcus was arrested. He fears his anger and the arrest will define the custody case.

719
02:32:36.380 --> 02:32:45.760
John Reyes: So at this point, it's about understanding, you know, what happened before, during, and after that situation, and it's collecting information.

720
02:32:45.760 --> 02:33:02.349
John Reyes: Were there incidents before? How has this affected the child and their fear and their experiences with both parents? And of course, if there was a criminal counsel for the arrest, you know, getting information from them might be helpful, too, as far as figuring out if

721
02:33:02.350 --> 02:33:05.909
John Reyes: was what happened with Marcus, was this just a reactionary thing, or was he…

722
02:33:05.910 --> 02:33:11.070
John Reyes: You know, the aggressor and abusive, the person doing the abusive stuff, so…

723
02:33:11.360 --> 02:33:18.059
John Reyes: The poll question, and if we could launch the next poll question, is… How should,

724
02:33:18.720 --> 02:33:21.870
John Reyes: You know, how should… where is it? How should we…

725
02:33:22.150 --> 02:33:35.790
John Reyes: the use of force, and how should we deal with it? Again, you got four different answers, and then when the poll's over, Maisha will go over with you the correct answer and scenarios that will help you in dealing with this situation.

726
02:33:47.550 --> 02:33:52.009
Kristina Van Arsdel: Poll has launched. I'll give it 30 more seconds for everyone to respond.

727
02:34:19.260 --> 02:34:23.419
Kristina Van Arsdel: Okay, I am ending the poll, and Maisha, you should see the results.

728
02:34:24.910 --> 02:34:29.589
Maisha Colter: And the results, once again, align with what I think might be the best

729
02:34:29.800 --> 02:34:36.780
Maisha Colter: approach for Marcus. Examine the pattern, context, and purpose of each person's conduct. So,

730
02:34:36.780 --> 02:34:54.829
Maisha Colter: as we previously advised, Marcus did push back, and it resulted in an injury to his spouse, but historically, Marcus has not been the primary aggressor. The facts as they were presented here indicate that, for the most part,

731
02:34:54.830 --> 02:35:11.180
Maisha Colter: Marcus was probably being, threatened physically, at least at some point, may have been assaulted and or at least blocked and physically, approached by the, the husband. So,

732
02:35:11.610 --> 02:35:30.400
Maisha Colter: but the fact that he was arrested, the fact that there's a pending charge is going to matter. And, again, I'm going to rely on Judge Bell's guidance, which was perfect and spot-on for this scenario. If you have bad facts, explain them. And in this instance,

733
02:35:30.650 --> 02:35:55.509
Maisha Colter: there might be, an opportunity here, so Sections 71.0021 and 701.004 expressly address defense… defensive measures. So there is a possibility that you might be able to, allow Marcus the opportunity to explain that he was not the primary aggressor. Police may have responded to the

734
02:35:55.510 --> 02:36:02.310
Maisha Colter: injury, as opposed to the facts and scenario that led up to that injury on the part of

735
02:36:02.310 --> 02:36:20.389
Maisha Colter: Marcus, by his, to his, his spouse. So, the police are responding to what they're responding to, and they have a charge to, to make, based on their evaluation. That does not preclude you from

736
02:36:20.420 --> 02:36:40.250
Maisha Colter: one, presenting much more of a robust, history in your, in your court scenario. You don't necessarily have to wait for, the criminal case to conclude before you proceed with your family law matter. Certainly if, if

737
02:36:40.250 --> 02:36:47.400
Maisha Colter: eventually, the charges are dismissed, that might be helpful to your situation, but even if that is not the case,

738
02:36:47.550 --> 02:37:06.110
Maisha Colter: giving a more robust history of the circumstances and the facts surrounding this relationship are gonna go a long way with allowing you to potentially protect Marcus, protect his access, rights of possession related to the child. Again, there is a child.

739
02:37:06.110 --> 02:37:14.409
Maisha Colter: There might be a need to do a custody evaluation to get other… Sort of assess, you know,

740
02:37:14.570 --> 02:37:26.440
Maisha Colter: parenting history, how they, you know, share in the responsibilities and duties as it relates to caring for this child. There's just a lot more of an obligation here than

741
02:37:26.440 --> 02:37:43.110
Maisha Colter: the fact that there was a, you know, an arrest and maybe a Class C misdemeanor filed against this person. And I will tell you, candidly, that there are a lot of people who are victims of domestic abuse who do not have the best facts, who do not have the best,

742
02:37:45.060 --> 02:38:09.000
Maisha Colter: they're not necessarily the best witnesses, and so a part of our responsibility is to kind of get our clients primed and ready for the opportunity to tell their story effectively, and when they have shortcomings, make decisions about how they can be effective, and when they cannot be

effective, what does that mean from a strategic standpoint

743
02:38:09.000 --> 02:38:20.669
Maisha Colter: as to what you will do with this particular client. Is this a case where you let the custody evaluation lead? You let, you don't go into a temporary orders hearing first

744
02:38:20.800 --> 02:38:42.779
Maisha Colter: that you involve third parties, maybe a therapist, a school teacher who can tell you that Marcus is, you know, an excellent parent, he's at, you know, all of the PTA events, he's a volunteer classroom leader. Whatever it is to paint a picture that highlights the positives about your client despite bad facts. Because

745
02:38:42.780 --> 02:39:02.679
Maisha Colter: most of the time, the family law judge is looking at the total circumstances as opposed to one isolated incident, and in this case, as it is presented, it does look like it is more of an isolated incident that obviously resulted in a pretty substantial thing, but it is in isolation.

746
02:39:03.010 --> 02:39:08.290
Maisha Colter: Examine demeanor, fear, control, defensiveness.

747
02:39:08.290 --> 02:39:32.030
Maisha Colter: And obviously, coordinate with any criminal counsel that Marcus may have obtained, so that you all are on the same page. If criminal counsel is telling you, I'm probably going to be able to get this case dismissed, you need to know when that's going to happen, how that's gonna happen, because it might impact your timeline and when you go into court, or when you file a, you know,

748
02:39:32.030 --> 02:39:44.249
Maisha Colter: go to mediation, and things like that. So, just think through, collaborate, and obviously, guide your client through this process, with clear eyes.

749
02:39:45.560 --> 02:39:53.810
John Reyes: All right. Our next case we won't have a poll question for, but it's still pretty interesting. Renee needs access to her own money.

750
02:39:54.040 --> 02:40:10.500
John Reyes: Renee is a 68-year-old. She seeks a divorce after 32 years of marriage. A stroke affected her speech and mobility. She understands the discussion, so she can participate, or at least listen to the discussion. Her spouse withholds medication and moves retirement funds.

751
02:40:10.650 --> 02:40:23.720
John Reyes: Her adult daughter has been answering all the questions and offers to pay for counsel if necessary, so we have to also take into account that there's someone else involved in this particular case, so…

752
02:40:24.860 --> 02:40:25.520
Maisha Colter: And so with.

753
02:40:25.970 --> 02:40:26.620
John Reyes: Yeah.

754
02:40:26.620 --> 02:40:32.619
Maisha Colter: Without a poll… without a poll, I want to kind of talk about some of the… you can go back to the first slide, John.

755
02:40:32.620 --> 02:40:33.230
John Reyes: Okay.

756
02:40:33.230 --> 02:40:42.909
Maisha Colter: That kind of describes the composite. So, without a poll, we know that, Renee is 68 years old, she's been in a 32-year marriage.

757
02:40:42.910 --> 02:41:07.370
Maisha Colter: And that in and of itself is pretty substantial. 32 years means that there's been probably 32 years of community, there's probably been some wealth, accumulation. We have a hint here that there were retirement accounts. Obviously, with her medical condition and her, limitations as a result of that, again, that limitation is

758
02:41:07.370 --> 02:41:22.350
Maisha Colter: speech and mobility is not necessarily cognitive. So, we… my impression of this composite is that Renee is capable of understanding everything. She can engage, but

759
02:41:22.450 --> 02:41:37.030
Maisha Colter: at the point that she… you encounter her, adult daughter is doing all the talking. That is a place to pause immediately. Adult daughter is answering questions, and adult daughter is paying.

760
02:41:37.130 --> 02:42:01.849
Maisha Colter: There probably is some people in the audience that might think adult daughter is

somehow the client, and I would make sure that you don't, go along those thoughts, because if, Renee has her cognitive abilities and her capacity, and she's the one with the legal need, and that's who you're gonna engage and represent in a divorce, and seek, you know,

761
02:42:01.920 --> 02:42:06.389
Maisha Colter: property division, seek, potentially,

762
02:42:09.120 --> 02:42:24.619
Maisha Colter: for spousal maintenance as a result of the length of the marriage, the cruelty that she's experienced. Again, we didn't expound so much on the cruelty, but we know that the spouse is withholding medicine after someone had a stroke. That's pretty cruel.

763
02:42:24.620 --> 02:42:32.389
Maisha Colter: They're moving money, which means that they have some assets, and they don't want the other person to have those assets. Also pretty cruel.

764
02:42:32.390 --> 02:42:50.890
Maisha Colter: I don't know what the daughter can communicate about what's happening on a day-to-day basis. It doesn't appear in the composite that Renee is living specifically with the daughter, but it could be that she is living with the daughter and has left the marital home. Is Renee entitled to

765
02:42:50.900 --> 02:43:07.030
Maisha Colter: assets from that home, the home itself. Would it be better for Renee to remain in that home? Would it be better for Renee to sell that home, or they sell that home? All of these things are factors that you should be assessing and trying to learn.

766
02:43:07.220 --> 02:43:15.100
Maisha Colter: Here's the first thing that I would look at as it relates to Renee's abilities and her limitations.

767
02:43:15.100 --> 02:43:39.809
Maisha Colter: Is there a way for you and Renee, to communicate, even if the communication is, a little bit more, laborious, right? So, she can speak, but she speaks slowly. Does this mean you need to break up your initial consult into, you know, more than one visit, so that she can have the privacy? With the daughter being present

768
02:43:39.840 --> 02:44:01.139
Maisha Colter: we have to look at our confidentiality and whether or not we're breaking confidentiality by having that third party present while we're having a consultation with a client. So all of these are things that, again, you need to be factoring in, making assessments about as the professional, as the

person who's going to guide this person who is dealing with these facts, and scenarios

769
02:44:01.430 --> 02:44:12.650
Maisha Colter: tell you, although these are fictional composites, I've had a Renee-type client, with very, very, where we had to take

770
02:44:12.910 --> 02:44:34.499
Maisha Colter: steps to figure out a way to best communicate, so that we knew that she was expressing what she desired about the situation and the outcomes and the relief that she was seeking. What were her priorities? And if the goal is to hear from your client, then you need to make the process

771
02:44:34.500 --> 02:44:41.829
Maisha Colter: and the, ability to hear from your client a priority. And whatever that means, then you need to take those steps.

772
02:44:46.190 --> 02:44:49.860
John Reyes: And you kind of already went over that in your answers, correct? Yes. Okay, so…

773
02:44:49.860 --> 02:45:00.990
Maisha Colter: Yeah, I did mention, I did mention, one thing that, that has come up, that should have come up in, in this particular scenario, is when we are

774
02:45:01.050 --> 02:45:25.629
Maisha Colter: engaging clients, especially clients that are elderly, we need to be given disclosures about what we have to keep confidential, and what we have to report. And if we had heard something from Renee that rose to the level of elder abuse, it needed to be clear to her, and even potentially to her daughter, that you may need to make a report to Adult Protective Services. I just want to make sure I

775
02:45:25.630 --> 02:45:26.990
Maisha Colter: I cover that as well.

776
02:45:28.410 --> 02:45:29.430
Maisha Colter: Next slide, John.

777
02:45:29.430 --> 02:45:33.210
John Reyes: Alright, next one is Eli. He just wants the messages to stop.

778
02:45:33.290 --> 02:45:50.300
John Reyes: Eli is 15. He reports an ex-partner's tracking and threats to share intimate images. The ex also threatens to hurt Eli after school. Eli fears family rejection and losing access to friends. Parents want to hire counsel and receive every update.

779
02:45:53.110 --> 02:45:55.669
John Reyes: So, do we, share the next poll?

780
02:45:55.860 --> 02:45:58.439
John Reyes: Yeah. So I believe Eli has a poll, excuse me.

781
02:45:59.000 --> 02:46:01.030
Kristina Van Arsdel: I am launching it now.

782
02:46:01.230 --> 02:46:03.739
Kristina Van Arsdel: I'll give it one minute for responses.

783
02:46:15.840 --> 02:46:17.550
John Reyes: Did I miss the poll page?

784
02:46:20.920 --> 02:46:23.619
Kristina Van Arsdel: It is up, and people are responding.

785
02:46:23.620 --> 02:46:24.410
John Reyes: Okay.

786
02:46:24.410 --> 02:46:27.340
Kristina Van Arsdel: We'll have 30 seconds left to respond.

787
02:47:00.370 --> 02:47:05.239
Kristina Van Arsdel: Okay, I am ending the poll now, and I will turn it back over to you, Maisha.

788
02:47:05.430 --> 02:47:16.399
Maisha Colter: Okay, so once again, for the most part, the audience is correct in regard to the best response. This one's a little bit tricky because there are some things that… that look…

789
02:47:16.560 --> 02:47:26.950

Maisha Colter: actually the complete opposite from the Renee scenario to the, Eli scenario. Now we have a minor, and the adult is, is…

790
02:47:27.250 --> 02:47:38.020
Maisha Colter: potentially a client, depending on the circumstances. So, if you will, John, let's go back to the composite so we can kind of talk a little bit about

791
02:47:38.020 --> 02:48:02.629
Maisha Colter: who Eli is and the facts that I think the audience should take into consideration. So, we know that Eli had a dating relationship at 15 years old, and reports that there was tracking and threats to share intimate images. The ex also threatened to hurt or harm Eli after school. Eli fears family rejection and losing access to friends.

792
02:48:02.630 --> 02:48:15.000
Maisha Colter: A parent wants to hire counsel and receive every update. So, this may be a case where parent comes to you and they're seeking, let's say, a protective order on behalf of Eli from this

793
02:48:15.000 --> 02:48:37.760
Maisha Colter: ex-partner. Assuming that Eli and his ex-partner go to school together, there's a lot of things that need to be sort of assessed here, but one of the things that, immediately comes to mind for me as I'm thinking about the Eli scenario, Section 82.002 includes, permitting a child member of a dating relationship to apply for

794
02:48:37.760 --> 02:48:43.369
Maisha Colter: a protective order, but it also allows any adult to apply to protect a child. So…

795
02:48:43.370 --> 02:49:08.340
Maisha Colter: there might be room in here for Eli to get his own protective order, or there might be room for it to be an application that the parent applies for on behalf of the child. You also need to think about the facts that we don't know. Is this person a child themself? Are they an adult? We don't really know that, but this is obviously something that needs to be

796
02:49:08.340 --> 02:49:14.069
Maisha Colter: because depending on if it's a child versus if it's an adult, then your obligations

797
02:49:14.070 --> 02:49:34.360
Maisha Colter: will start to ramp it up, right? So if the person is an adult, then we may be looking at a scenario where we need to be making a report again about child abuse. If it is a peer, and let's say they don't attend the same school, and they are no longer involved with one another, is…

798
02:49:34.360 --> 02:49:59.229
Maisha Colter: Is the protective order the right route to take? And it may very well be. So you're just trying to figure out what exactly is the legal case that you would take on on behalf of this person. Is this an opportunity for you to make referrals? Remember, we talked about this earlier, but referring to other resources. We kind of got a little bit of… about the… the immigration expert, but maybe there

799
02:49:59.230 --> 02:50:24.089
Maisha Colter: counseling, needed here, someone who can work with Eli. He's obviously got some emotional damage as a result of this. He's got fear of family rejection, losing friends, so there's a lot of things that are happening with Eli, and there are probably other resources that would be appropriate for Eli to have, other than, I need a lawyer, right? So, think about

800
02:50:24.090 --> 02:50:29.150
Maisha Colter: that, as you process a Eli-type fact scenario.

801
02:50:29.440 --> 02:50:35.169
Maisha Colter: The Code publishes dual versions of, of subsection B

802
02:50:35.440 --> 02:51:00.329
Maisha Colter: filing route and local procedures. Protective order provisions does not decide about counseling or consent, so there's a lot of things that we need to be thinking about as it relates to this particular type of scenario. Now, I know that you probably don't have a practice where you see a whole lot of Eli-type clients, but they are out there, and I just wanted to kind of make sure that we

803
02:51:00.330 --> 02:51:25.299
Maisha Colter: use our brains, you know, broadly as it relates to the issue of domestic violence, and try to give you a composite… the composites that we gave you that really stretch the gambit of who might be dealing with domestic violence. I don't know if I highlighted earlier when I spoke to you all about who was the youngest intimate partner fatality in 2025, but I will tell you that that person

804
02:51:25.300 --> 02:51:37.740
Maisha Colter: 16 years old. I have a 16-year-old. She's a junior in high school. The oldest person, last… in the fatalities last year was 87 years old. So domestic violence is

805
02:51:37.740 --> 02:51:56.769
Maisha Colter: is rampant, and it is all over the place in terms of the ages of people who might encounter it, and so I really don't want you to have a limited scope or view about the potential clients that might be walking through the door, as it relates to the DV type of case that you might, encounter.

806
02:51:57.680 --> 02:51:59.020
Maisha Colter: Next slide.

807
02:52:00.180 --> 02:52:16.750
Maisha Colter: We, we need to focus on the confidentiality part of this, because what are you required to keep confidential if Eli is the, the, is the client as opposed to the applicant parent? What do you have to share?

808
02:52:16.770 --> 02:52:35.870
Maisha Colter: So that, again, you, you might have to examine and evaluate this. Make sure you… you look at your practice ma- I mean, not your practice manual, but your, your code of ethics, your, duties and responsibilities as it relates to this sort of, conflicting type of scenario.

809
02:52:36.290 --> 02:52:49.140
Maisha Colter: Make sure that you, again, think about duties that you might have outside of just being a practitioner, like reporting child abuse, reporting neglect, and things of that nature.

810
02:52:49.640 --> 02:53:14.590
Maisha Colter: And talk, and make sure you are doing a thorough evaluation around what privilege is, which communications are privileged, and who that privilege belongs to. Also, obviously, keep awareness about reporting agencies and your duties related to those. Make sure you know the 800 number to report, you know, to Adult Protective Services, Child

811
02:53:14.590 --> 02:53:38.809
Maisha Colter: Protective Services, because you will potentially be the first-time caller on behalf of a child or an elderly person. I've had clients who come into my office, and they tell me something about their children, and I ask them, you know, has this been reported to CPS? And they say no. And it is definitely child abuse. Not at their hand, but at the hand of the other party.

812
02:53:38.810 --> 02:53:58.410
Maisha Colter: And we may still be making the report, and CPS may not do much about it because they feel like the children are safe with the parent, the parent who's protective, your client. But I still think that we have that obligation and that duty when we do hear things that have not been reported, appropriately. So just kind of keep those

813
02:53:58.410 --> 02:54:16.430
Maisha Colter: tips and, practice, procedures in mind as you, develop your, your practice. I'm getting the signal that we're at 5 minutes. We wanted to reserve the 5 minutes for the opportunity to

814
02:54:17.180 --> 02:54:20.970
Maisha Colter: answer questions, but I think we have a couple of more… do we have more.

815
02:54:20.970 --> 02:54:23.970
John Reyes: We have one more scenario, we can skip that if you'd like.

816
02:54:24.220 --> 02:54:32.339
Maisha Colter: Let's do the last scenario, and I don't see any, let me just make sure that there aren't any questions in the Q&A.

817
02:54:36.650 --> 02:54:38.690
Maisha Colter: Okay, yeah, let's do the last scenario instead.

818
02:54:38.690 --> 02:54:39.290
John Reyes: Okay.

819
02:54:41.210 --> 02:54:52.959
John Reyes: Darren wants to send a… wants his counselor to send a message. Darren denies abuse, but admits monitoring his spouse's location. He wants litigation to pressure her into returning.

820
02:54:53.000 --> 02:55:01.529
John Reyes: He has the right to legal representation and contests allegations. His instructions raise questions about improper use of the case.

821
02:55:03.470 --> 02:55:05.869
John Reyes: Do you want me to switch to the next one, or leave it on there?

822
02:55:06.190 --> 02:55:07.770
Maisha Colter: Now, you can go to the next one.

823
02:55:07.770 --> 02:55:08.410
John Reyes: Okay.

824
02:55:11.890 --> 02:55:20.849
Maisha Colter: With this person, you, you, they're obviously entitled to counsel, evaluate the,

825
02:55:20.980 --> 02:55:34.050

Maisha Colter: the circumstances, be clear about your responsibilities, your duties. If someone is explicitly telling you that they want to hire you so that they can make

826
02:55:34.060 --> 02:55:46.909
Maisha Colter: someone return to them, or make someone behave in a certain way. That is a red flag, to my mind. So just be careful about,

827
02:55:47.160 --> 02:55:51.230
Maisha Colter: How you establish the relationship with a person who

828
02:55:51.490 --> 02:56:07.520
Maisha Colter: explicitly express that they want you to… they're hiring you to modify the behavior of the person, especially if, let's say, for example, other party has already filed for a divorce, and they're insistent that, you know, this is…

829
02:56:07.530 --> 02:56:13.359
Maisha Colter: a game, and, you know, once I get an attorney, then she's gonna fold, and she'll be back, you know, in… in…

830
02:56:13.360 --> 02:56:38.249
Maisha Colter: with me, and so I just needed to hire you so that we can… we can, I can scare her into coming back. Those are kinds of, things that you may not necessarily want to take on that case, but again, they're entitled to, obviously, representation. They're entitled to have the full measure of your legal expertise as it relates to going through the divorce. Just make sure that you, are conscientious about,

831
02:56:38.250 --> 02:56:45.220
Maisha Colter: someone who might be approaching you, who could be using you as the

832
02:56:45.490 --> 02:56:52.570
Maisha Colter: the new tool for the continuation of abuse through the litigation process.

833
02:56:55.130 --> 02:56:55.800
John Reyes:

834
02:56:57.140 --> 02:56:59.430
Maisha Colter: I'm gonna just check the Q&A, because I think…

835
02:56:59.430 --> 02:56:59.810
John Reyes: Okay.

836
02:56:59.810 --> 02:57:01.380
Maisha Colter: There might be a question.

837
02:57:03.710 --> 02:57:07.959
Maisha Colter: It looks like all of the questions that are in the Q&A have been answered.

838
02:57:07.960 --> 02:57:31.759
Maisha Colter: Plan for the next client meeting, record a safe, contact method and explain privacy limits, ask about behavior, fear, consequences of disagreement, agree on the client's next legal steps and needed, support, and document facts and revisit safety before each major case event. So basically, you need to treat your client like your client.

839
02:57:32.020 --> 02:57:33.429
Maisha Colter: You need to…

840
02:57:33.430 --> 02:57:55.419
Maisha Colter: to move forward if you do decide to take this case and prioritize, okay, I know that you want to, reconcile or get back with this person, but if they should choose not to reconcile, then what are your next steps? What are you trying to achieve as a result of this, divorce? What do we need to protect? How can we effectively

841
02:57:55.450 --> 02:58:06.359
Maisha Colter: get you through this, even though you may not necessarily want this to occur. This might be another one of those, clients that you want to refer to other, resources. So,

842
02:58:06.360 --> 02:58:29.540
Maisha Colter: getting a divorce is a very difficult thing, and maybe, emotionally, they're not ready for that next step, but it's happening. The divorce is filed. They're responding. What does that look like? Is a therapist appropriate? Is counseling appropriate? Is, you know, a support group at a church that does divorce care appropriate? But again, trying to find the most

843
02:58:29.540 --> 02:58:39.080
Maisha Colter: resources to effectively do your role as the person who's going to represent them, regardless to, sort of, their behavior, because

844
02:58:39.210 --> 02:58:47.560
Maisha Colter: again, there are no perfect clients, victims or person who might be identified as abusive. People are people,

845
02:58:47.620 --> 02:59:12.290
Maisha Colter: the work that we do is difficult. We are meeting people in their most difficult circumstances. Oftentimes, they're going into a system that they probably have never encountered in any other time in their life, and so you, as a professional who goes into these courts, deal with these types of things on a daily basis, can guide them forward in a way that

846
02:59:12.890 --> 02:59:37.719
Maisha Colter: ends with a pretty good outcome, not a great outcome, because, again, it's not a great thing that, you know, you're working on a divorce when the person doesn't want it. But what's the best solution for the parties, for children? I always… I always look for the most vulnerable people who are involved in these cases. And if it's the children, then although you're still representing and you need to advocate for your client.

847
02:59:37.720 --> 02:59:48.859
Maisha Colter: Think about the vulnerability, and remind your clients about that vulnerability, because I think if they prioritize those things, then you might wind up on the right side of, an outcome or a solution for everybody.

848
02:59:49.690 --> 02:59:55.040
Maisha Colter: Checking the questions one more time.

849
02:59:55.230 --> 02:59:55.870
John Reyes: Yeah.

850
02:59:55.870 --> 03:00:20.810
Maisha Colter: And I think we are… everything has been answered. So, I have a QR code here, before I introduce our next presenter. If anybody wants to, take the QR code, it's just a… it basically gives you access to, AVDA's monthly newsletter. It will… that newsletter lets you know what's going on at our agency, to include things like

851
03:00:20.810 --> 03:00:45.710
Maisha Colter: you know, this event, we do a lot of CLEs. John and his team do TCOLE-accredited classes to law enforcement throughout the year. We do some classes that, get, those law enforcement-required domestic violence hours. We do classes that get judges, required domestic violence hours. So, being, in tune with what's going on here

852
03:00:45.710 --> 03:00:54.279
Maisha Colter: might be helpful. Also, if you are interested in, volunteering, joining any of our

853
03:00:54.340 --> 03:01:01.919
Maisha Colter: support programs. We have a Young Friends program. It's a opportunity for

854
03:01:01.920 --> 03:01:26.499
Maisha Colter: up-and-coming young professionals to get involved with the agency, support the agency. We do networking events, throughout the year. They do fundraising on behalf of the agency, so I'm not sure who's in the audience. I know we have a pretty large number of people in the audience, but, just wanted to share that, QR code. And then I want to introduce our next speaker, who is Allison Guerra.

855
03:01:26.500 --> 03:01:50.990
Maisha Colter: Allison has been at AVDA, and I'm not sure how many years, but I'll say, like Barbara, many, many years. Allison was actually an intern before she made her way through the BIP program to become our current BIP director. She is a licensed professional counselor. She is a fearless leader of all of the BIP facilitators that we have here at AVDA

856
03:01:50.990 --> 03:02:11.449
Maisha Colter: of whom there are many. She is a consummate professional, she has a very cool demeanor, and she's gonna share something that we don't generally talk too much about at these types of presentations, which is, what do you do in regard to battering and battering intervention services? So I'm going to turn it over to Allison.

857
03:02:13.280 --> 03:02:14.860
Allison- AVDA: Thank you, Maisha.

858
03:02:16.040 --> 03:02:40.520
Allison- AVDA: Good afternoon, everybody. Thank you guys for hanging in. I got the lunch hour, the lunch portion, so I know we're almost there. Just like Maisha said, I'm gonna jump right in. My name is Allison. I am a licensed professional counselor in Texas. I've been with AVDA since about 2016 now. And today I want to give you guys a better understanding of what BIP is, you know, why it matters, and how it connects to the work that you may be doing.

859
03:02:40.920 --> 03:03:00.359
Allison- AVDA: When we often talk about domestic violence, the conversation often focuses on, of course, the incident, the charges being filed, those legal ramifications, those consequences. But one question, you know, that I would want the audience to consider as I speak today is what happens after the incident.

860
03:03:00.360 --> 03:03:06.759
Allison- AVDA: How do we address the behaviors, the beliefs, and the patterns that contribute to abusive relationships?

861
03:03:06.760 --> 03:03:26.300
Allison- AVDA: And how do we hold individuals accountable while also working to prevent future violence? So that is where my team and I, as Maisha said, we are, like John said earlier, we're also small, but mighty. As well, there's about maybe a total of 8 or 9 of us now. And that's where BIPP comes in. So I'm going to share my screen.

862
03:03:34.100 --> 03:03:53.479
Allison- AVDA: And some objectives for the time that I have is, of course, I'm going to give you an overview of what BIPP is, if you don't know, or maybe this is your first time hearing, the word BIPP. I'm going to focus on accountability for my presentation, since that is the center focus of our program. Definitely give you guys some challenges in BIPP.

863
03:03:53.590 --> 03:03:59.540
Allison- AVDA: how we as facilitators in the program enhance accountability in BIPP, and why BIPP matters.

864
03:04:00.620 --> 03:04:08.090
Allison- AVDA: What I first want to spotlight is that BIPP is sometimes confused with anger management, so…

865
03:04:08.090 --> 03:04:23.060
Allison- AVDA: it is definitely not anger management, it's not going to be couples counseling, it's not going to be any family counseling, and it's not going to be individual therapy. Group is done or BIPP groups are done in that group setting.

866
03:04:23.060 --> 03:04:48.000
Allison- AVDA: There is not… it's not going to be substance abuse counseling, and it's not going to be any type of mental health therapy. I want to also just shed some light on these four components here. A BIT participant may very well need couples counseling, families counseling, or individual therapy, the substance abuse counseling, but that is going to be a separate referral.

867
03:04:48.000 --> 03:04:56.349
Allison- AVDA: for the individual coming into BIPP. So when we look at AVDA' BIPP program, it's a fully accredited program by TDCJ-CJAD.

868
03:04:56.390 --> 03:05:09.530
Allison- AVDA: It is an 18-week program conducted in a 6-phase model, so we get the client referral, so maybe for, you know, my audience today is maybe we get a referral from an attorney.

869
03:05:09.530 --> 03:05:17.060
Allison- AVDA: And they are letting us know that they want their client to enroll in this BIPP program now.

870
03:05:17.360 --> 03:05:38.880
Allison- AVDA: So that is where we take it from there. We're going to encourage the… we're going to start accountability, hopefully, straight at the beginning. So, we want the client to call in, right? That is where they are acknowledging that, hey, there's a problem, something happened, I do have this referral, somebody is telling me that I need to take this program.

871
03:05:38.990 --> 03:05:42.580
Allison- AVDA: So they may have some resistance from the jump.

872
03:05:42.720 --> 03:06:01.199
Allison- AVDA: So we'll get the client referral. The registration process begins on our side. We have two primary, individuals with AVDA who conduct our registrations. So, Carolyn will get the call, she'll register the client.

873
03:06:01.200 --> 03:06:06.250
Allison- AVDA: We ask for most common things, like the demographic information.

874
03:06:06.250 --> 03:06:14.150
Allison- AVDA: Who's referring you to this program? So they may say, my attorney's referring me, or I'm currently in the, you know, the legal process

875
03:06:14.150 --> 03:06:22.189
Allison- AVDA: and I need to take this program. So we get them registered for 3 and 4, which is an orientation and an evaluation.

876
03:06:22.850 --> 03:06:40.509
Allison- AVDA: And once we go down, we finish orientation, we'll complete an evaluation, then the group sessions begin. So in the state of Texas, the minimum requirement is 36 hours, so that'll total to an 18-week program once they start from week 1.

877
03:06:40.650 --> 03:07:05.069
Allison- AVDA: We do provide some additional support. I'm going to talk on the next slide a little bit in detail about orientation and evaluation, and the additional support will make a bit more sense. AVDA does serve 16 groups across the greater Houston area, so right now we have 14 male groups. Two of those male groups are going to be our Spanish-speaking groups, and we do also have two female BIPP groups.

878
03:07:05.070 --> 03:07:12.410
Allison- AVDA: Another component on our program, you know, component of accountability is that this is a fee-based program.

879
03:07:12.410 --> 03:07:18.290
Allison- AVDA: So a lot of our services, you know, that we may have discussed earlier with AVDA

880
03:07:18.510 --> 03:07:36.209
Allison- AVDA: are not… are free for the most part, but the BIPP program is going to be fee-based. So that begins on a sliding scale. We do ask the participant, to provide documentation of their proof of income, and we'll start at the minimum, which is $25.

881
03:07:36.230 --> 03:07:41.149
Allison- AVDA: And we do assess our program fees, up to $70.

882
03:07:45.040 --> 03:08:05.949
Allison- AVDA: Okay, so the intake process and orientation process, so the intake is going to be what we call, now the evaluation process. So that is going to be done on a one-on-one basis. So that session is going to be with, a trained BIP facilitator, so if I am the facilitator in the room with this individual.

883
03:08:05.950 --> 03:08:13.250
Allison- AVDA: I'm going to meet with him or her one-on-one, and I'm going to now… we have a background questionnaire, is what it's called.

884
03:08:13.250 --> 03:08:24.219
Allison- AVDA: And if you see on the screen, I break it down. We'll go over the general background information. We also go in and talk about our family background, or their family background,

885
03:08:24.230 --> 03:08:36.150
Allison- AVDA: current or most recent relationship history. We do focus on past relationships and current relationships, just to see some of those patterns of abusive behaviors and if they're ongoing.

886
03:08:36.250 --> 03:08:55.440
Allison- AVDA: We do also look at a client's mental health concerns, or any substance abuse concerns, and what I like to save for last is that referring incident, so when the abuse took place, when it happened, where you were at, were there children present, were you under the influence of any alcohol or drugs?

887
03:08:55.600 --> 03:08:58.540
Allison- AVDA: And then we get into

888
03:08:59.030 --> 03:09:14.290
Allison- AVDA: to start to look at those. The thing about BIPP is that we are really challenging these beliefs that have been held, you know, by these individuals who choose to harm, you know, their partner, current or past. So we're really trying to break down some of those, you know

889
03:09:14.400 --> 03:09:22.230
Allison- AVDA: systemic beliefs that they have, and that's a good opportunity for us to see where they're at as they begin the program with us.

890
03:09:22.560 --> 03:09:39.530
Allison- AVDA: So, they will also attend an orientation. Orientation is done in a group format, and that is also designed to give our participants information on the program services. So, just a little bit what I've touched on on the last slide, or the slide before this, is

891
03:09:39.530 --> 03:09:50.529
Allison- AVDA: you know, how long the program is, what the expectations are on their fees, the limits to confidentiality, their rights and responsibility, and the program goals.

892
03:09:50.820 --> 03:10:05.519
Allison- AVDA: Participants are also expected, to make a commitment to active participation, so if we have somebody, you know, in the setting, you know, giving some… I don't want to say typical, but it can be a typical answer of, I don't know why I'm here.

893
03:10:05.520 --> 03:10:15.340
Allison- AVDA: I didn't do anything, my attorney's just telling me I have to do this, I think the charges are gonna get dismissed, it was just a one-time thing.

894
03:10:15.680 --> 03:10:28.919
Allison- AVDA: So we'll start to break down, you know, some of those answers with him or her, and just explore a little bit more why they are being referred to the program, and we also expect them to

commit to active participation.

895
03:10:32.800 --> 03:10:36.120
Allison- AVDA: Let me get my slide for some reason.

896
03:10:36.990 --> 03:10:37.839
Allison- AVDA: There we go.

897
03:10:38.390 --> 03:10:47.429
Allison- AVDA: So now we have a client that has worked through the program in the beginning, so they call in, they attend evaluation, they're going to attend an orientation now.

898
03:10:47.760 --> 03:11:05.479
Allison- AVDA: And the evaluator is now deeming them appropriate for our program. There could be some reasons as well that an individual is not appropriate to begin the BIT program, and that could look more like mental health concerns, substance abuse concerns.

899
03:11:05.480 --> 03:11:14.550
Allison- AVDA: We may have an individual who is actively, you know, in addiction, battling the disease, and we may want to refer him or her, or we will refer him or her.

900
03:11:14.720 --> 03:11:17.400
Allison- AVDA: To get that help first.

901
03:11:17.550 --> 03:11:27.350
Allison- AVDA: As I like to say as a therapist is, you know, when our mind, our body is clear, we can really start to focus and look at our behavior in a much clearer lens.

902
03:11:27.570 --> 03:11:47.059
Allison- AVDA: So if this individual is now, you know, deemed appropriate for the program, they start, they're assigned a group session, and as I like to say now, the work begins. So I did put on here, so AVDA, you know, is an accredited program, as I said, so a part of that is that we do follow a curriculum.

903
03:11:47.060 --> 03:11:52.539
Allison- AVDA: And we follow the Duluth model, which is creating a process of change for men who batter.

904
03:11:52.820 --> 03:12:10.220
Allison- AVDA: And there's 18 curriculum topics. There's only about 10 here, that I put on here, so I'm gonna kind of jump around, just not read, you know, verbatim, but we talk about empathy, nonviolent and responsible parenting. Children is probably my favorite

905
03:12:10.220 --> 03:12:15.680
Allison- AVDA: topic to talk about. I think it's very impactful, and it's really important in the work that we do.

906
03:12:15.730 --> 03:12:20.399
Allison- AVDA: Sexual abuse as a form of violence in a relationship, in a marriage.

907
03:12:20.800 --> 03:12:39.439
Allison- AVDA: Fostering respect, intimacy, commitment, conflict resolution. We identify critical thinking, different choices. We talk about how abuse can be a learned behavior, but it's also ultimately their choice to abuse the person that they love.

908
03:12:39.630 --> 03:12:49.650
Allison- AVDA: And that responsibility is solely on the batterer. It's not going to be… and that is where the, victim safety component comes in as well in our program.

909
03:12:49.650 --> 03:13:01.039
Allison- AVDA: And I hold it very near and dear to my heart, is to really hold these individuals accountable and get them to understand that it is their choice 100%, and there's no excuse

910
03:13:01.040 --> 03:13:03.430
Allison- AVDA: to hurt the people that they love.

911
03:13:07.450 --> 03:13:32.450
Allison- AVDA: So, let me see my slides. Okay, maybe that's right. Okay. So there is some required reporting in case management that I wanted to highlight, and the first one there is that we do report to the identified victim in their case, whether that is the past or present. They… somebody coming into our program may very well still be married to the person that they chose to hold,

912
03:13:32.450 --> 03:13:35.090
Allison- AVDA: and they're living in the same home.

913
03:13:35.090 --> 03:13:47.499

Allison- AVDA: So whether it is past or current, we are going to send out a notification, that the individual is enrolled in our program. And Carolyn also sends out safety planning

914
03:13:47.500 --> 03:13:59.969
Allison- AVDA: for the individual, and AVDA can provide, you know, the counseling services for the kiddos, they provide the counseling, of course, for mom, dad, who is the victim of the abuse.

915
03:13:59.970 --> 03:14:10.160
Allison- AVDA: We also report on the entry into BIPP, to the referral source. We will also report on the exit circumstances.

916
03:14:10.160 --> 03:14:28.029
Allison- AVDA: And the status of their exit, meaning if they successfully completed after 18 weeks, or if they were discharged for any reason. And those reasons could be, for lack of participation, lack of accountability,

917
03:14:28.750 --> 03:14:35.190
Allison- AVDA: not paying their fees, and there is a reason… there is going to be a reason for the exit that we report on.

918
03:14:35.450 --> 03:14:38.980
Allison- AVDA: We also do report on any safety concerns.

919
03:14:38.980 --> 03:15:01.700
Allison- AVDA: You know, I just had a client this past Wednesday, you know, had to report on that, just really concerned about his lack of accountability and his seriousness in the program. So, I reached out, talked to a probation officer, and that is where we can get that community response to where I am holding him accountable ethically and group, and then probation officer is also going to hold him accountable as well.

920
03:15:01.910 --> 03:15:07.630
Allison- AVDA: One big question, you know, that I'll get a lot is, you know, will he change?

921
03:15:07.910 --> 03:15:18.530
Allison- AVDA: Will she change? Is he changing? I may get as well, or is she changing? And I like to rephrase it as, can he change, or can she change?

922
03:15:18.530 --> 03:15:29.510

Allison- AVDA: And ultimately, the choice is going to be up to the individual. So our program cannot report explicitly on change. We can report on compliance. He is participating,

923
03:15:29.570 --> 03:15:41.410
Allison- AVDA: it seems like he's talking a bit more. He's being a bit open. He's been honest. He sees how it impacts his children. He shows the motivation to make some changes.

924
03:15:48.070 --> 03:15:54.069
Allison- AVDA: I have here just accountability defined. I hear a lot of different

925
03:15:54.610 --> 03:16:13.410
Allison- AVDA: words on what accountability is, and I really like what it says here, that accountability is the obligation or willingness to accept responsibility for your actions, decisions, and outcomes. It involves taking ownership of results, being… of the results, being transparent about your choices.

926
03:16:13.620 --> 03:16:17.469
Allison- AVDA: And answering to expectations without making excuses.

927
03:16:22.200 --> 03:16:27.369
Allison- AVDA: Some challenges now in working with the batterer, the individual in our program.

928
03:16:27.990 --> 03:16:38.680
Allison- AVDA: Some of the common barriers that we are going to see in group are these five here, and what I like to call them is really the cracks in accountability. It's what's preventing

929
03:16:38.680 --> 03:16:51.419
Allison- AVDA: the participant group from making the changes, or at least seeing that he needs to make some changes. Minimization is typically going to sound like it wasn't that bad.

930
03:16:51.470 --> 03:16:59.799
Allison- AVDA: I didn't do it, she bruises very easily, she's very dramatic, she just makes a big deal out of everything.

931
03:17:00.690 --> 03:17:15.390
Allison- AVDA: We can hear a lot of denial. Denial can be, in the form of, I don't remember. That is one that I challenge quite often. Were you drinking? Were you using any drugs? No, no, no.

932
03:17:15.390 --> 03:17:24.100
Allison- AVDA: Have you hit your head before? Have you had, you know, a history of head injuries? No. So let's talk a little bit about more why you don't remember.

933
03:17:24.190 --> 03:17:30.469
Allison- AVDA: Denial could simply be, I just didn't do it, what she said, I didn't do it, I don't know why I'm here.

934
03:17:30.950 --> 03:17:34.680
Allison- AVDA: We, of course, will hear some common, like, blame.

935
03:17:34.790 --> 03:17:39.780
Allison- AVDA: She made me do it, he made me do it, she knows how mad that I get.

936
03:17:39.960 --> 03:17:45.960
Allison- AVDA: It was the alcohol, I had too much to drink, that just wasn't me.

937
03:17:46.800 --> 03:17:50.059
Allison- AVDA: We'll also hear justification in group.

938
03:17:50.310 --> 03:18:05.300
Allison- AVDA: I did this because she makes me so mad, or I did this because I've had just a really long week at work. We'll hear collusion, and collusion can occur between group members.

939
03:18:05.410 --> 03:18:18.089
Allison- AVDA: In a training we just recently did for the Duluth curriculum, and collusion can also occur between facilitator and the participants as well. So if I, as the facilitator, am not

940
03:18:18.090 --> 03:18:33.099
Allison- AVDA: challenging these cracks in accountability and saying, hey, right now what you're saying is you're blaming her for your choices and your actions. If I were just to kind of skate it and throw it under the rug and group, I would now be colluding

941
03:18:33.100 --> 03:18:34.959
Allison- AVDA: with this individual and group.

942
03:18:35.250 --> 03:18:38.809

Allison- AVDA: So collusion can occur in both ways.

943
03:18:47.030 --> 03:19:01.059
Allison- AVDA: Some excuses common. I just lost control. She made me do it. It was the alcohol. She did it to me first. I was only a little aggressive, that's the minimization. I did not know any better.

944
03:19:06.440 --> 03:19:18.950
Allison- AVDA: When we look at how do we enhance accountability in group, I think it's important to start from clear group expectations that you see here, is we define accountability from day one.

945
03:19:19.380 --> 03:19:26.490
Allison- AVDA: We reinforce attendance, participation, honesty, and respectful communication.

946
03:19:26.730 --> 03:19:30.820
Allison- AVDA: It's important to review the group rules on a consistent basis,

947
03:19:31.230 --> 03:19:34.479
Allison- AVDA: focusing on impact over intent.

948
03:19:34.710 --> 03:19:49.350
Allison- AVDA: Try to shift a lot of the conversations from, I didn't mean to do it, I didn't know I did it, what impact now, let's look at the behavior that you did do, what impact does your behavior have on your partner, on your children, and on yourself?

949
03:19:50.350 --> 03:19:53.999
Allison- AVDA: Encourage empathy and awareness of the harm caused.

950
03:19:54.610 --> 03:20:03.769
Allison- AVDA: Facilitators and group were encouraging self-reflection. So facilitators can ask some questions of, what choices did you make in that situation?

951
03:20:03.950 --> 03:20:09.610
Allison- AVDA: What was affected by your behavior? What could accountability look like right now for you?

952
03:20:09.760 --> 03:20:12.190
Allison- AVDA: And what patterns did you notice?

953
03:20:13.640 --> 03:20:23.230
Allison- AVDA: We are in a unique situation where we're in a group setting, so I think that is super important when we're talking about this work here, and that's how we promote the peer accountability.

954
03:20:23.290 --> 03:20:36.630
Allison- AVDA: So, I'm gonna turn it to the group members now in group to respectfully challenge one another. So, we want them to begin to say, okay, John, you're making this statement. That's an unhealthy statement, let's talk about it.

955
03:20:36.630 --> 03:20:46.080
Allison- AVDA: So, healthy peer confrontation often increases the insights, reduces denial. I've always said the group members are going to respond better

956
03:20:46.110 --> 03:21:03.920
Allison- AVDA: hearing from… I facilitate a male group, so I'm going to say he right now, is he is going to take that feedback 100% better from his peer, that challenge of, hey, you should not be doing that, versus hearing it from the facilitator at some times.

957
03:21:03.960 --> 03:21:24.290
Allison- AVDA: So it's really good to see in group when the group members are able to respectfully challenge one another, and encourage constructive, is what I always say. We want to encourage constructive feedback, and never shame. It's not… we're not in group to shame. We're in there to encourage healthy behaviors and recognize the impact of their behavior.

958
03:21:25.420 --> 03:21:35.400
Allison- AVDA: If we connect accountability to behavioral change, accountability must include some action steps, so… We have improved communication.

959
03:21:35.550 --> 03:21:39.990
Allison- AVDA: We have emotional regulation, compliance with program requirements.

960
03:21:40.300 --> 03:21:44.969
Allison- AVDA: Repairing harm when appropriate. And safety-focused decision-making.

961
03:21:47.170 --> 03:21:48.509
Allison- AVDA: I think I'm back.

962
03:21:56.010 --> 03:22:10.460

Allison- AVDA: And as we continue the facilitator skills that support accountability, motivational interviewing techniques, active listening, it's important to, speak in a lens from trauma-informed facilitation.

963
03:22:10.460 --> 03:22:26.989
Allison- AVDA: I see a lot of our participants in the program that have had traumatic childhood. Now, it's not an excuse to use, as you continue and as you learn and as you grow, but when we speak from that lens, that may help us connect with the participant and group better.

964
03:22:27.260 --> 03:22:30.109
Allison- AVDA: Manage resistance without escalating.

965
03:22:30.770 --> 03:22:37.530
Allison- AVDA: Conflict in group. Maintaining boundaries, and working from cultural humility and awareness.

966
03:22:37.990 --> 03:22:45.030
Allison- AVDA: Facilitator responses are to address excuses and manipulation respectfully and directly.

967
03:22:45.340 --> 03:22:48.869
Allison- AVDA: Maintain consistency across participants.

968
03:22:49.130 --> 03:22:56.459
Allison- AVDA: Avoid power struggles that are very easy to fall into in group, while staying firm on your boundaries.

969
03:22:57.260 --> 03:23:08.899
Allison- AVDA: And if we think about, okay, is this person working? Are they making the work, doing the steps? What could be some signs, that accountability is increasing now?

970
03:23:08.990 --> 03:23:18.869
Allison- AVDA: We're gonna hear a lot of reduced blaming language, so I didn't do it from, I chose to do this to my partner, and I hurt her.

971
03:23:19.820 --> 03:23:25.179
Allison- AVDA: We're gonna hear the increased ownership of statements, so as I just said, I chose.

972
03:23:25.270 --> 03:23:41.990
Allison- AVDA: Even attendance and participation. We may see that somebody in the beginning is really struggling just to get in in that 15 minute. We have a grace period in group. That's also a sign of a lack of accountability. They're probably going to drag their feet to get in there. I'm going to come in right when I know

973
03:23:42.010 --> 03:23:49.760
Allison- AVDA: I'll make it in right on time when I have to. So, even improved attendance and participation. More honest self-reporting.

974
03:23:50.140 --> 03:23:58.520
Allison- AVDA: I got angry this week, and I… I used, some pretty nasty words to my partner.

975
03:23:58.750 --> 03:24:00.320
Allison- AVDA: And then we talk about it.

976
03:24:01.110 --> 03:24:04.359
Allison- AVDA: Willingness to discuss harmful behaviors openly.

977
03:24:04.560 --> 03:24:07.849
Allison- AVDA: And demonstrated behavioral changes outside of group.

978
03:24:09.300 --> 03:24:16.350
Allison- AVDA: The goal was to develop a non-violent lifestyle, so we're going to increase in the ability to identify their feelings.

979
03:24:16.660 --> 03:24:18.830
Allison- AVDA: Conflict resolution skills.

980
03:24:19.020 --> 03:24:21.930
Allison- AVDA: Challenge gender role expectations.

981
03:24:22.720 --> 03:24:27.209
Allison- AVDA: They are to present a nonviolence plan at the end of their program.

982
03:24:27.540 --> 03:24:32.180
Allison- AVDA: We're identifying distorted thinking and development of sexual respect.

983
03:24:38.270 --> 03:24:41.380
Allison- AVDA: Check time… Okay.

984
03:24:41.470 --> 03:25:00.789
Allison- AVDA: We'll see here the accountability ladder. I just… I like this in group, and showing it to our participants. It's very… it's amazing to see when we can start from, you know, bottom of the ladder is typical. It's not uncommon. We're gonna start there. Really, I don't see anything wrong. It's their fault, not mine.

985
03:25:00.880 --> 03:25:05.610
Allison- AVDA: Well, I can't do it. It just happened one time.

986
03:25:05.820 --> 03:25:16.280
Allison- AVDA: So now, as we start to get higher up on that ladder, I shouldn't have done that. It is my problem, I have to take ownership, I gotta call it. It was me.

987
03:25:16.460 --> 03:25:18.360
Allison- AVDA: What can I start to do

988
03:25:18.940 --> 03:25:20.720
Allison- AVDA: to make these changes.

989
03:25:23.610 --> 03:25:34.260
Allison- AVDA: And why it matters. I have some statistics here, so 30-60% of perpetrators of intimate partner violence also abuse children in their household.

990
03:25:34.630 --> 03:25:40.359
Allison- AVDA: Boys who witness domestic violence are twice as likely to abuse their own partners when they become adults.

991
03:25:40.820 --> 03:25:47.779
Allison- AVDA: Witnessing parental violence is the strongest risk factor in transmitting violent behavior to the next generation.

992
03:25:48.170 --> 03:25:55.119
Allison- AVDA: Daughters of abused women are 6 times more likely to be sexually abused as girls from non-abusive families.

993
03:25:55.680 --> 03:26:01.800
Allison- AVDA: So BIPP matters because we're promoting victim safety. We're addressing patterns, not just incidents.

994
03:26:02.120 --> 03:26:09.060
Allison- AVDA: We want to support long-term behavioral change, help break generational cycles, strengthen our communities.

995
03:26:09.290 --> 03:26:23.790
Allison- AVDA: BIPP is prevention work, intervention work, and community safety work. BIPP matters because it creates opportunities for accountability, behavioral change, and safer families, while strengthening the health and safety of our communities.

996
03:26:24.230 --> 03:26:35.000
Allison- AVDA: And just to the right, it's all about choice, is my model in group, and it is absolutely the person's choice that's sitting in the seat with us every night.

997
03:26:35.220 --> 03:26:40.809
Allison- AVDA: It is his or her choice to be abusive or to make those changes for themselves and their family.

998
03:26:42.820 --> 03:26:44.140
Allison- AVDA: I think that's it.

999
03:26:44.860 --> 03:26:45.860
Allison- AVDA: Thank you.

1000
03:26:50.790 --> 03:26:52.249
Maisha Colter: Thank you, Allison.

1001
03:26:53.570 --> 03:27:05.260
Maisha Colter: Now it is my turn to introduce our next speakers, which are going to be, Madeline Bergstrom and Janet Heppard.

1002
03:27:05.730 --> 03:27:25.050
Maisha Colter: I'll tell you a little bit about Madeline. I don't know Madeline, but I'm gonna read a little bit of her bio. Madeline earned her JD from Texas A&M, and she, during her law school, she served in the Immigrant Rights Clinic and Innocence Projects Clinic. She's an associate right now with

Skillern Firm. Oh, we know Skillern.

1003
03:27:25.400 --> 03:27:35.740
Maisha Colter: They support AVDA sometimes in, in, in some of our events. Awesome. And, she is, does child, custody, I'm sorry, she does…

1004
03:27:35.910 --> 03:27:40.369
Maisha Colter: divorced and child custody cases here in, Houston, Texas.

1005
03:27:41.280 --> 03:27:45.089
Maisha Colter: And Professor Heppard, we already know, so I'm gonna pass it along.

1006
03:27:47.560 --> 03:27:54.520
Madeline Bergstrom: Alright, well, we are going to be your last group of today, and second half of lunch hour.

1007
03:27:54.790 --> 03:28:04.579
Madeline Bergstrom: If you haven't ordered your lunch delivery yet, this is your cue to do so. And I'm gonna go ahead and get started with sharing my screen.

1008
03:28:05.180 --> 03:28:08.570
Madeline Bergstrom: And if you can give me just one second…

1009
03:28:11.700 --> 03:28:18.740
Madeline Bergstrom: I just want to go ahead and thank Judge Heppard for asking me to participate in this. I've been,

1010
03:28:18.870 --> 03:28:21.590
Madeline Bergstrom: viewer and participant in this…

1011
03:28:21.960 --> 03:28:30.339
Madeline Bergstrom: CLE before, but never having presented, so it's just a really exciting opportunity, just very grateful to be here.

1012
03:28:32.020 --> 03:28:45.310
Madeline Bergstrom: Our presentation today is on the Hague Convention, and specifically on that convention, International Child Abduction and Prevention. When we refer to this convention, there are multiple

1013
03:28:45.540 --> 03:28:49.089
Madeline Bergstrom: conventions, this one is the one we're specifically referring to.

1014
03:28:52.530 --> 03:28:57.450
Madeline Bergstrom: Let me see… And it's also not letting me go. Okay.

1015
03:28:58.450 --> 03:29:09.999
Madeline Bergstrom: Just a brief history of The Hague. This convention was signed in October of 1980. The United States became a signatory of it in 1981.

1016
03:29:10.170 --> 03:29:14.840
Madeline Bergstrom: It was effective for the United States in December 1983.

1017
03:29:15.240 --> 03:29:21.509
Madeline Bergstrom: And the U.S. enacted the implementation legislation in July of 1988.

1018
03:29:21.910 --> 03:29:32.230
Madeline Bergstrom: Right now, there are about 103 countries or territories which have ratified, ceded to, or otherwise become parties to the convention.

1019
03:29:32.430 --> 03:29:36.970
Madeline Bergstrom: Anytime that you're facing a Hague case, this is your first

1020
03:29:37.280 --> 03:29:47.340
Madeline Bergstrom: job is to check and see if there is another country in play. Have they ratified a seat of two, or become parties to the convention?

1021
03:29:50.930 --> 03:29:53.329
Madeline Bergstrom: Now, what is the purpose?

1022
03:29:53.860 --> 03:30:08.729
Madeline Bergstrom: The purpose is to secure the prompt return of children who have been wrongfully removed to or retained in any contracting state. And here, when we say contracting state, it's used interchangeably with countries or nations.

1023
03:30:10.000 --> 03:30:15.370
Madeline Bergstrom: This is also used to prevent forum shopping for a more sympathetic venue.

1024
03:30:15.680 --> 03:30:28.820
Madeline Bergstrom: And ultimately, to ensure that possession and access rights under one of the contracting states are respected in other contracting states. And our number one remedy here is to return the child.

1025
03:30:32.230 --> 03:30:33.090
Madeline Bergstrom: Alright.

1026
03:30:33.650 --> 03:30:37.129
Madeline Bergstrom: So, the elements of a Hague case.

1027
03:30:37.690 --> 03:30:48.019
Madeline Bergstrom: First is the proof of wrongful removal or retention. At the time of the removal or retention, there is a custody order in the child's habitual residence.

1028
03:30:48.490 --> 03:30:56.199
Madeline Bergstrom: And the second element is that possession rights were actually being exercised, either jointly or alone.

1029
03:30:56.460 --> 03:31:01.269
Madeline Bergstrom: Or would have been so exercised but for the removal or retention?

1030
03:31:05.390 --> 03:31:21.609
Madeline Bergstrom: The first question we often get asked, too, is what's the habitual residence, and our typical attorney response applies. It depends. So, there's no specific definition in the convention itself. It's defined by case law.

1031
03:31:21.940 --> 03:31:28.070
Madeline Bergstrom: Determined at the point in time before… immediately before the removal or retention.

1032
03:31:28.770 --> 03:31:37.720
Madeline Bergstrom: That point in time is also subject to a fact determination. And we use the words return… removal or retention here often.

1033
03:31:37.900 --> 03:31:50.839
Madeline Bergstrom: But this fact determination is really important when we come to the issue of when kids might be well settled, and the facts about the appropriateness of returning them to the

habitual residence.

1034
03:31:51.290 --> 03:32:04.730
Madeline Bergstrom: Removal occurs. If there's a restriction on travel, child cannot leave the country or go to a specific country, you know, wheels up on the airplane, that's when that wrongful removal happens.

1035
03:32:05.210 --> 03:32:08.659
Madeline Bergstrom: Retention can be, if there is the authority

1036
03:32:08.980 --> 03:32:14.679
Madeline Bergstrom: to take a child internationally, to a specific country, but

1037
03:32:15.260 --> 03:32:27.600
Madeline Bergstrom: they overstay. Now the other parent should be entitled to some level of custody, and they're not in the United States, they are not given that right to custody.

1038
03:32:28.700 --> 03:32:37.719
Madeline Bergstrom: The test is pursuant to Monasky v. Taglieri. This is a SCOTUS decision, right around 2020.

1039
03:32:37.820 --> 03:32:47.239
Madeline Bergstrom: And the test is totality of the circumstances. Prior to this case, we followed a decision out of the Fifth Circuit,

1040
03:32:47.550 --> 03:32:58.070
Madeline Bergstrom: which identified the test as shared intent, that is no longer the test. Now it's a fact basis totality of the circumstances.

1041
03:33:02.900 --> 03:33:06.330
Madeline Bergstrom: It's important to remember what a Hague case is not.

1042
03:33:06.690 --> 03:33:12.470
Madeline Bergstrom: A Hague case is not a child custody dispute. It's not a best interest dispute.

1043
03:33:12.610 --> 03:33:22.509
Madeline Bergstrom: It's not a judgment on a parent's fitness to have custody of their child, and in fact, it's not a final determination as to where the child should reside.

1044
03:33:22.900 --> 03:33:32.170
Madeline Bergstrom: A Hague case is a jurisdictional question of removing a child To their habitual residence.

1045
03:33:37.860 --> 03:33:46.189
Madeline Bergstrom: Some additional information before we dive into really what ties this into the domestic violence portion of our seminar.

1046
03:33:46.290 --> 03:33:47.240
Madeline Bergstrom:

1047
03:33:47.690 --> 03:33:54.130
Madeline Bergstrom: Our custody orders in Texas traditionally apply, you know, until a kid turns 18 years old.

1048
03:33:54.580 --> 03:33:59.340
Madeline Bergstrom: Hague cases only apply while the child is under 16 years old.

1049
03:33:59.730 --> 03:34:06.089
Madeline Bergstrom: So we have to be conscious about how old the child or the children are in these cases.

1050
03:34:06.940 --> 03:34:19.490
Madeline Bergstrom: The actual application, when a child is removed, is filed in the country which the child is removed to. So if child lives in England

1051
03:34:19.750 --> 03:34:26.010
Madeline Bergstrom: before the removal, now they've been taken to Texas, the application will be filed here in the United States.

1052
03:34:26.190 --> 03:34:38.220
Madeline Bergstrom: And it gets filed with an entity called the Central Authority. There's one for each country, so you have to make sure when you're looking at

1053
03:34:38.670 --> 03:34:44.790
Madeline Bergstrom: where are we filing the case? We also need to identify that contracting authority, or central authority.

1054
03:34:46.410 --> 03:34:59.019
Madeline Bergstrom: Once we have an actual, hey, case client has retained you, where do we file the court case? This is unique in the fact that you can file it in either state or in federal court.

1055
03:34:59.700 --> 03:35:08.810
Madeline Bergstrom: It is also, I believe, the only case that can be removed from a state court and brought into a federal court.

1056
03:35:09.030 --> 03:35:11.740
Madeline Bergstrom: So… with one of the…

1057
03:35:12.010 --> 03:35:18.089
Madeline Bergstrom: purposes of the Hague Convention to prevent form shopping, we do get a little bit of choice

1058
03:35:18.110 --> 03:35:34.670
Madeline Bergstrom: here in the U.S. of whether we initially file it in state or federal. I think most of us on this call primarily practice family law, so we might be more comfortable with state courts, but just know that that option is available if you do want to file it into federal.

1059
03:35:35.620 --> 03:35:40.140
Madeline Bergstrom: The burden of proof for the elements of a Hague case

1060
03:35:40.310 --> 03:35:43.900
Madeline Bergstrom: is preponderance of the evidence. It's a very low burden.

1061
03:35:44.050 --> 03:35:53.450
Madeline Bergstrom: So, when you're going through that prima facie case and the elements, just know, was there a custody order in place at the time of removal?

1062
03:35:53.650 --> 03:36:00.250
Madeline Bergstrom: And was the other person, the parent, the left-behind parent, exercising those periods of possession?

1063
03:36:04.200 --> 03:36:07.180
Madeline Bergstrom: Again, court cases

1064
03:36:07.460 --> 03:36:20.609
Madeline Bergstrom: considering… or courts considering Hague cases only to determine where the custody case should be decided, where… if the child should be removed, not who should have custody, or what that schedule should look like.

1065
03:36:21.610 --> 03:36:28.339
Madeline Bergstrom: There is a level of consideration of foreign law when the court is making a determination, so…

1066
03:36:28.460 --> 03:36:43.779
Madeline Bergstrom: If you're dealing, you know, you will be dealing with an international case here. Always a good idea to have a consultation and speak to someone who regularly practices in the other jurisdiction, so that you can have that advice to the judge.

1067
03:36:45.040 --> 03:36:51.100
Madeline Bergstrom: This next portion has a little bit of an asterisk next to it, but…

1068
03:36:51.230 --> 03:37:01.419
Madeline Bergstrom: There is no time limit for filing. A child could be removed from their habitual residence at 1 years old. You can file a Hague case when they're 10.

1069
03:37:02.160 --> 03:37:14.040
Madeline Bergstrom: However, one of the affirmative defenses we'll see is going to be well settled, and we'll talk about why filing these cases is more important to be done as quickly as possible.

1070
03:37:14.890 --> 03:37:19.369
Madeline Bergstrom: And a general defense is proper notice of the prior court order.

1071
03:37:23.400 --> 03:37:28.689
Madeline Bergstrom: Before we jump in, I just want to check with Judge Heppard and see if she has anything to add so far.

1072
03:37:29.370 --> 03:37:31.030
Professor Janet Heppard: Oh, no, I'm good!

1073
03:37:31.310 --> 03:37:33.010
Madeline Bergstrom: Perfect, we'll keep on going.

1074
03:37:33.370 --> 03:37:43.239
Madeline Bergstrom: So there are 5 affirmative defenses that can be brought to defend against a hate case. We'll go through each of these in detail, but as a little bit of a roadmap.

1075
03:37:43.570 --> 03:37:50.289
Madeline Bergstrom: They are well settled, not actually exercising possession. Child objects to removal.

1076
03:37:50.310 --> 03:38:07.220
Madeline Bergstrom: Grave risk of harm, and public policy. Some of these are more common than others, and the ones that are really related to domestic violence, family violence, are going to be grave risk of harm, and to some extent, public policy.

1077
03:38:08.740 --> 03:38:17.090
Madeline Bergstrom: Alright, affirmative defense, well settled. This is that asterisk to The time limit for filing.

1078
03:38:17.450 --> 03:38:23.709
Madeline Bergstrom: If there's been less than one year since the wrongful removal or the wrongful retention.

1079
03:38:23.950 --> 03:38:27.259
Madeline Bergstrom: Then this affirmative defense will not apply.

1080
03:38:27.850 --> 03:38:32.290
Madeline Bergstrom: Once you hit that 365-day mark and go beyond.

1081
03:38:32.630 --> 03:38:37.749
Madeline Bergstrom: This defense will say that the child is now settled in the new environment.

1082
03:38:37.980 --> 03:38:42.130
Madeline Bergstrom: And a big note is that the time is not told.

1083
03:38:42.320 --> 03:38:52.439
Madeline Bergstrom: So, a lot of times when we have a parent who is removing a child from the country, and they go into hiding, they don't announce where they've gone to.

1084
03:38:52.590 --> 03:38:58.199
Madeline Bergstrom: We said earlier that these cases are filed into the country where the kids are now at.

1085
03:38:58.870 --> 03:39:12.229
Madeline Bergstrom: This presents a problem to the well-settled defense, because if we don't know where they are, we can't file, and now we've got an affirmative defense one year after they've been removed.

1086
03:39:14.070 --> 03:39:17.159
Madeline Bergstrom: This can be a fact-based determination.

1087
03:39:17.280 --> 03:39:26.320
Madeline Bergstrom: It's really important when we're having those initial consultations with these clients that we establish what are the facts that are in place right now.

1088
03:39:26.750 --> 03:39:30.000
Madeline Bergstrom: What are the facts that were in place at the time of removal?

1089
03:39:34.260 --> 03:39:47.199
Madeline Bergstrom: So, these facts can include, you know, change in physical location. Were they initially removed to another country, and now they've been moved again. Were they in one city? Now they've been moved again.

1090
03:39:47.880 --> 03:39:56.259
Madeline Bergstrom: Location of personal possessions, even pets. The facts here are so detailed and specific, getting that information from clients is really important.

1091
03:39:56.980 --> 03:39:58.830
Madeline Bergstrom: How much time has passed?

1092
03:39:59.000 --> 03:40:05.949
Madeline Bergstrom: You know, has it been 10 years? Has it been 2 years? Has it been 366 days?

1093
03:40:06.210 --> 03:40:08.989
Madeline Bergstrom: Very important to determine.

1094
03:40:09.470 --> 03:40:15.989
Madeline Bergstrom: Did the family retain the prior residence or sold before relocation? Has a child been enrolled in school?

1095
03:40:16.550 --> 03:40:24.090
Madeline Bergstrom: What was the intention at the time of the move? Again, this used to be more determinative, now it's just a factor.

1096
03:40:24.810 --> 03:40:32.289
Madeline Bergstrom: And whether the child has established relationships in the new location. So how… settled, are they?

1097
03:40:34.180 --> 03:40:45.959
Madeline Bergstrom: The second affirmative defense is not actually exercising possession. We'll go through this real quick, because it is such a low bar. It's a fact-based determination, not a question of law.

1098
03:40:46.170 --> 03:40:49.509
Madeline Bergstrom: Essentially, anything above abandonment.

1099
03:40:49.860 --> 03:40:53.779
Madeline Bergstrom: is exercising possession. It doesn't have to be regular periods.

1100
03:40:53.950 --> 03:41:10.549
Madeline Bergstrom: There are some countries that have this idea of ne exiat, probably pronouncing that wrong, but it is essentially just the right to object to the child's removal from that country. That can be enough to meet this burden of exercising possession.

1101
03:41:10.740 --> 03:41:13.340
Madeline Bergstrom: So, really low burden, you're not…

1102
03:41:13.510 --> 03:41:16.959
Madeline Bergstrom: Gonna be successful most of the time with this defense.

1103
03:41:18.860 --> 03:41:20.410
Madeline Bergstrom: The child objects.

1104
03:41:21.050 --> 03:41:30.770
Madeline Bergstrom: If the child objects to being returned, the court can consider this. Now, the court has to determine whether or not the child has reached an age

1105
03:41:30.820 --> 03:41:43.340
Madeline Bergstrom: or level of maturity where it's appropriate to take their accounts in view. Child is 14, court's gonna value their objection a lot more than if they're 3 years old. We also see this when we have

1106
03:41:43.400 --> 03:41:46.569
Madeline Bergstrom: a parent who've removed the child coaching.

1107
03:41:46.980 --> 03:41:50.540
Madeline Bergstrom: And telling the kid, you know, law enforcement comes to you.

1108
03:41:50.810 --> 03:42:04.649
Madeline Bergstrom: Say that you've been abused, say that you don't want to go back. I'm going to bribe you with reasons to stay here with me. So this is something, you know, you need to consider, but it is a preponderance of the evidence standard.

1109
03:42:06.550 --> 03:42:13.000
Madeline Bergstrom: Alright, this is our key point for domestic and family violence, is grade risk.

1110
03:42:13.850 --> 03:42:18.850
Madeline Bergstrom: The argument is, will exposing the child

1111
03:42:19.510 --> 03:42:26.619
Madeline Bergstrom: to… if returning the child will expose them to a grave risk of physical or psychological harm.

1112
03:42:27.500 --> 03:42:40.210
Madeline Bergstrom: This is not a comparative lifestyle defense. We're not looking at, you know, cost of living. We're not looking at whether mom or dad would have to work or not work, or, you know, who might be involved in the child's care.

1113
03:42:40.360 --> 03:42:44.609
Madeline Bergstrom: Ordinary hardship will not be enough to reach this level.

1114
03:42:44.890 --> 03:42:48.419
Madeline Bergstrom: We're… we're looking specifically at this child.

1115
03:42:48.970 --> 03:42:56.420
Madeline Bergstrom: And what kind of risk lies in returning them to their habitual residence?

1116
03:42:57.130 --> 03:43:03.960
Madeline Bergstrom: This can include abuse of the child. It can also include exposure of domestic violence in some cases.

1117
03:43:04.140 --> 03:43:20.939
Madeline Bergstrom: So again, a very fact-based consideration. This is where, when you're doing those consultations, having those honest discussions with your client, and opening up that space in your office for them to be vulnerable, this is where we really need to evaluate

1118
03:43:21.380 --> 03:43:26.850
Madeline Bergstrom: how returning them to the previous country might affect this specific child.

1119
03:43:29.090 --> 03:43:45.880
Madeline Bergstrom: Defenses against grave risk. These are optional for the courts to consider, but if the court finds grave risk, the court may consider if there are measures that can be taken to reduce the risk so that the child can be returned.

1120
03:43:46.200 --> 03:43:51.230
Madeline Bergstrom: The court is not obligated to consider all possible ameliorative measures.

1121
03:43:51.610 --> 03:43:57.900
Madeline Bergstrom: And the measures that are proposed must actually mitigate the specific risk to this individual child.

1122
03:43:58.670 --> 03:44:09.499
Madeline Bergstrom: So, examples of this, we have options here in Texas of supervised possession, protective orders, things like that. They must address the specific risk to that child.

1123
03:44:11.450 --> 03:44:26.359
Madeline Bergstrom: The last affirmative defense is public policy. This is also one that we do not see often. It's not often successful, but it's relating to, generally, human rights and those fundamental freedoms.

1124
03:44:26.640 --> 03:44:37.370
Madeline Bergstrom: So, the requested state may refuse to recognize or enforce a foreign judgment if doing so would violate the fundamental principles of the requested state

1125
03:44:37.500 --> 03:44:41.380
Madeline Bergstrom: relating to protection of human rights and fundamental freedoms.

1126
03:44:41.670 --> 03:44:46.849
Madeline Bergstrom: It's a very narrow… defense, it's very rarely used.

1127
03:44:47.460 --> 03:44:50.500
Madeline Bergstrom: But how does this compare to grave risk?

1128
03:44:50.800 --> 03:44:55.980
Madeline Bergstrom: Grave risk is specific and individualized to the child, the subject of the suit.

1129
03:44:56.270 --> 03:45:00.980
Madeline Bergstrom: Public policy is generalized to the countries

1130
03:45:01.360 --> 03:45:07.809
Madeline Bergstrom: you know, systemic violations, human rights, it's not this individual child.

1131
03:45:09.080 --> 03:45:19.490
Madeline Bergstrom: Both of these affirmative defenses require a clear and convincing evidence standard, so it's a much higher than most of the other standards that require preponderance of the evidence.

1132
03:45:24.020 --> 03:45:29.380
Madeline Bergstrom: Practical application. When we're having those initial meetings with clients.

1133
03:45:29.580 --> 03:45:38.090
Madeline Bergstrom: What are those risk factors? And before we even get to the need for a hate case, what can we do to prevent this?

1134
03:45:40.300 --> 03:45:43.350
Madeline Bergstrom: First, we have to consider abduction risk factors.

1135
03:45:43.610 --> 03:45:49.790
Madeline Bergstrom: Has the other parent previously concealed the child, or threatened to take the child from the other parent?

1136
03:45:50.190 --> 03:45:54.540
Madeline Bergstrom: Have… are there a lack of financial resources?

1137
03:45:55.140 --> 03:45:58.369
Madeline Bergstrom: And reasons to remain in the United States.

1138
03:45:58.730 --> 03:46:06.879
Madeline Bergstrom: Are there businesses that might be located in another country, investments and finances that are available in another country?

1139
03:46:07.310 --> 03:46:12.189
Madeline Bergstrom: A history of domestic violence can also be an abduction risk factor

1140
03:46:12.920 --> 03:46:28.050
Madeline Bergstrom: and a history of violating court orders. If we know that with the opposing party, they're gonna view an order as ink on a piece of paper, and not something that they're gonna have to abide by, this is a significant abduction risk factor that we need to consider.

1141
03:46:30.400 --> 03:46:34.100
Madeline Bergstrom: Well, how do we prevent removal.

1142
03:46:34.880 --> 03:46:45.850
Madeline Bergstrom: We can order the parent to post a bond, and this can be for an amount that might be necessary to return the child to the habitual residence.

1143
03:46:46.190 --> 03:46:51.170
Madeline Bergstrom: We can order passport controls, who can apply for passports, who can hold the passports.

1144
03:46:51.500 --> 03:46:57.180
Madeline Bergstrom: Supervised visits is really common when we do have that high level of risk.

1145
03:46:58.050 --> 03:47:05.110

Madeline Bergstrom: And then specific language in the order, which identifies the United States as a country of habitual residence,

1146
03:47:05.580 --> 03:47:13.370
Madeline Bergstrom: clearly defines the basis of the court jurisdiction and states penalties for violating that underlying border.

1147
03:47:13.690 --> 03:47:16.559
Madeline Bergstrom: And of course, this is a non-exhaustive list.

1148
03:47:17.110 --> 03:47:22.189
Madeline Bergstrom: When your clients come in and sit across from you, there might be other…

1149
03:47:22.660 --> 03:47:32.580
Madeline Bergstrom: you know, facts that you consider that are important for this judge to know if you're going through a custody case or a divorce. We want to prevent the need for a hate case in the future.

1150
03:47:34.310 --> 03:47:38.780
Madeline Bergstrom: The secondary prevention costs… prevention measure is cost.

1151
03:47:39.150 --> 03:47:55.170
Madeline Bergstrom: If the court orders the child to be returned, the court is required to order a respondent to pay any necessary expenses incurred on behalf of or by the petitioner. So, court costs, legal fees, sometimes we might even have foster home fees.

1152
03:47:55.360 --> 03:48:05.610
Madeline Bergstrom: Transportation costs, again, an asterisk. If it's clearly inappropriate, you're probably not going to get fees on this. You know, clients should not be taking private jets to go and get their kids.

1153
03:48:06.260 --> 03:48:07.899
Madeline Bergstrom: Likely not going to be covered.

1154
03:48:09.510 --> 03:48:26.450
Madeline Bergstrom: In the PowerPoint, I've put some order language in here that I've used in some of my cases, identifying specifically state of Texas, U.S. is the state and country of the child's habitual residence for any enforcement proceedings under the Hague Convention.

1155
03:48:26.700 --> 03:48:29.429
Madeline Bergstrom: Listing out those…

1156
03:48:29.810 --> 03:48:34.970
Madeline Bergstrom: Costs that might be required to be paid if there is a violation of this order.

1157
03:48:37.990 --> 03:48:45.050
Madeline Bergstrom: There might be other remedies that we might ask for, rather than specifically the return of the child.

1158
03:48:45.180 --> 03:49:00.240
Madeline Bergstrom: The central authority may assist the left-behind parent to get agreements related to possession, rights of access, that allow the child to remain in the habitual residence.

1159
03:49:00.310 --> 03:49:07.460
Madeline Bergstrom: This might be more appropriate if the child has been in another country and hasn't had a relationship with that parent for a long time.

1160
03:49:07.540 --> 03:49:14.409
Madeline Bergstrom: It could just be, let's get some periods of possession, but keep the child in their space.

1161
03:49:15.530 --> 03:49:27.169
Madeline Bergstrom: We also have, in Texas law enforcement of custody orders that can even apply to other countries. Just remember that enforcing those orders requires a registration in Texas first.

1162
03:49:30.390 --> 03:49:37.409
Madeline Bergstrom: The Hague application and case procedure, you've been retained on a Hague case, what do you do now?

1163
03:49:39.520 --> 03:49:45.950
Madeline Bergstrom: The first is to file an application for return with the United States Central Authority.

1164
03:49:46.040 --> 03:50:01.000
Madeline Bergstrom: A lot of the presentations leading up to this have talked about, you know, taking the time to really evaluate and understand and kind of get the client ready, especially when they've been the survivor of violence.

1165
03:50:01.150 --> 03:50:04.260
Madeline Bergstrom: This is not going to follow that model.

1166
03:50:04.400 --> 03:50:20.909
Madeline Bergstrom: We do want to get the application on file as soon as possible, because we have that well-settled affirmative defense, and it is very persuasive to judges and courts when kids were removed, and now when they might be returned.

1167
03:50:22.000 --> 03:50:22.599
Madeline Bergstrom: Once you…

1168
03:50:22.600 --> 03:50:37.939
Professor Janet Heppard: Let me add one thing on that. If you file the application for return with the Central Authority, especially if you don't know where the child is, the U.S. Central Authority will assist in trying to locate where the child is.

1169
03:50:40.180 --> 03:50:41.650
Professor Janet Heppard: Go ahead, sorry, Madeline.

1170
03:50:41.650 --> 03:50:53.619
Madeline Bergstrom: No, you're good. Yeah. And that can be really beneficial when we've got, you know, possible multiple international communities that the child could be brought to, child is, you know, being hidden.

1171
03:50:53.800 --> 03:50:58.719
Madeline Bergstrom: So, very important to just go ahead and get that application on file.

1172
03:50:59.630 --> 03:51:08.249
Madeline Bergstrom: When you receive a copy of the application from the Central Authority, then you can file the court case, again, either in state or federal court.

1173
03:51:10.160 --> 03:51:18.590
Madeline Bergstrom: At that point, we serve the application. Most of the time, we're going to follow the Hague Convention regarding service procedures.

1174
03:51:18.720 --> 03:51:30.509
Madeline Bergstrom: Also, keep in mind the Texas rules of civil procedure. In some circumstances, you can use the U.S. Marshals for service, but primarily we're following the Hague Convention.

1175
03:51:30.790 --> 03:51:39.569
Madeline Bergstrom: And then we do what we do best. We prepare for the hearing. We gather all those facts and that evidence from our clients. We understand

1176
03:51:39.910 --> 03:51:50.170
Madeline Bergstrom: the ramifications of, you know, if they're in the U.S, and we're trying to get them back to… we're trying to keep them in the U.S, they're in another country, we want to bring them back here.

1177
03:51:50.580 --> 03:52:07.420
Madeline Bergstrom: The court may order the parties to mediate prior to a hearing, and a little plug to our sponsors and hosts for this event, the U of H Law Center, I believe, does offer mediation services for Hague cases, so…

1178
03:52:07.460 --> 03:52:13.190
Madeline Bergstrom: Always a good idea, Judge Heppard is here, reach out to her, reach out to U of H, and see if

1179
03:52:13.260 --> 03:52:19.539
Madeline Bergstrom: your case, the Hague case, might be appropriate to mediate before actually bringing this in front of a judge.

1180
03:52:23.140 --> 03:52:31.759
Madeline Bergstrom: Alright, so we're moving pretty quickly through here, so we'll probably have time for a couple questions at the end, but what is a Hague case?

1181
03:52:32.130 --> 03:52:45.570
Madeline Bergstrom: It's jurisdictional, it's about whether there's been a wrongful removal, and it's not about best interest. It's about, should we return the child to their habitual residence?

1182
03:52:46.540 --> 03:52:57.480
Madeline Bergstrom: The elements of the Hague case are that the person who's seeking the return of the child must have a custody order in place, and must be exercising possession of that child. Again, that second part,

1183
03:52:58.200 --> 03:52:59.320
Madeline Bergstrom: very low bar.

1184
03:52:59.640 --> 03:53:03.890
Madeline Bergstrom: Exceptions that we talked about today, well settled.

1185
03:53:04.050 --> 03:53:11.590
Madeline Bergstrom: The parents seeking their return did not have possession rights, or wasn't exercising their periods of possession.

1186
03:53:11.740 --> 03:53:17.030
Madeline Bergstrom: There's a grave risk of return of this individual specific child

1187
03:53:17.190 --> 03:53:28.089
Madeline Bergstrom: whether or not the child objects to return to the home country, and that public policy defense. The laws of that country, we would return the child to

1188
03:53:28.380 --> 03:53:31.909
Madeline Bergstrom: are such that there's a fundamental difference

1189
03:53:32.320 --> 03:53:42.420
Madeline Bergstrom: in how, you know, the United States, or how that country where the child currently is, and the requesting country for the child to be returned to.

1190
03:53:43.580 --> 03:53:50.890
Madeline Bergstrom: And with that, we've got our questions slide, so I'm gonna stop sharing, and we can look and see if anyone has.

1191
03:53:51.390 --> 03:54:01.670
Professor Janet Heppard: Oh, yeah, so let me make one more comment, the first element is… they have…

1192
03:54:01.960 --> 03:54:05.230
Professor Janet Heppard: Rights of custody and possession.

1193
03:54:06.190 --> 03:54:08.919
Professor Janet Heppard: It's better if there's a court order.

1194
03:54:09.360 --> 03:54:14.620
Professor Janet Heppard: And if there's not, you need to look at the law of the home state, or

1195
03:54:14.810 --> 03:54:22.659
Professor Janet Heppard: Where you're trying to get the child back to, to see what the law says in that particular jurisdiction about

1196
03:54:22.870 --> 03:54:23.990
Professor Janet Heppard:

1197
03:54:24.470 --> 03:54:29.640
Professor Janet Heppard: Who has rights of custody and visitation?

1198
03:54:31.240 --> 03:54:39.469
Professor Janet Heppard: So it does get confusing, but the State Department can also help with, copies of the laws.

1199
03:54:39.700 --> 03:54:47.320
Professor Janet Heppard: One of the things to know is that when you file your petition for return, everything that you attach

1200
03:54:48.080 --> 03:55:05.830
Professor Janet Heppard: is automatically… I don't have to worry about getting into… getting it into evidence. It's automatically, in evidence in a hearing, so I don't have to worry about the rules of evidence for that, for those documents,

1201
03:55:05.850 --> 03:55:09.620
Professor Janet Heppard: which is nice. The State Department will also help you with

1202
03:55:09.680 --> 03:55:15.670
Professor Janet Heppard: translating any documents that are in a foreign language.

1203
03:55:16.030 --> 03:55:17.880
Professor Janet Heppard: So that's also helpful.

1204
03:55:19.250 --> 03:55:25.380
Professor Janet Heppard: And I think I had… Okay, not…

1205
03:55:25.520 --> 03:55:27.920
Professor Janet Heppard: I see we have a question here.

1206
03:55:28.070 --> 03:55:33.020
Professor Janet Heppard: And, it is probably easier…

1207
03:55:33.170 --> 03:55:39.820
Professor Janet Heppard: Carrie, if you send me an email so that we can chat about what you're looking to do.

1208
03:55:40.350 --> 03:55:53.819
Madeline Bergstrom: I think this also kind of speaks to the idea of the wrongful removal and consent. So, if there is any type of correspondence that's consent of, you know, taking the child

1209
03:55:53.890 --> 03:56:02.329
Madeline Bergstrom: from the U.S. to another country, or vice versa, you're going to run into issues with Hague cases of this idea of wrongful.

1210
03:56:02.430 --> 03:56:10.839
Madeline Bergstrom: So, just make sure when you're advising your clients, have you sent any text messages, emails, phone conversations, saying, yeah, it's okay, go ahead and take

1211
03:56:11.310 --> 03:56:13.579
Madeline Bergstrom: the child to another country.

1212
03:56:15.370 --> 03:56:16.000
Professor Janet Heppard: Right.

1213
03:56:16.230 --> 03:56:22.280
Professor Janet Heppard: The courts… I will say the courts are very reluctant to put restrictions…

1214
03:56:22.570 --> 03:56:37.340
Professor Janet Heppard: in a court order. That's why Madeline had talked about being very careful if you're doing an order here, like a final degree of divorce or a custody order here, making sure you have appropriate language so that it's clear…

1215
03:56:37.460 --> 03:56:45.540
Professor Janet Heppard: Who has the rights, what the habitual residence is of the child, that sort of thing to make it easier to,

1216
03:56:45.910 --> 03:56:54.050
Professor Janet Heppard: be able to enforce. One of the things… one of the first things, and Madeline mentioned this, but it was at the beginning of the presentation,

1217
03:56:54.180 --> 03:57:11.110
Professor Janet Heppard: one of the first things you want to do is make sure that the countries are members of the Hague. If not, then the Hague Convention doesn't apply, and then you have to go in a different way to, do your enforcement, take care of things.