

AGENTS FOR CHANGE

Volume 13, Issue 2
April, 2003

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

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Crookston Immigration Forum and Training Success

On April 2, 2003, Program Manager Maria Gloria Fressia traveled to Crookston to conduct Immigration training with the collaboration of Migrant Health Service, Inc. This training was part of a series of trainings on Immigration issues that BWLAP is developing in different rural areas in Minnesota.

This particular training was held in Spanish language, using materials mainly written in Spanish.

We were happy to see that many people from the local Latino community and Advocates from several different organizations were present at the Training.

We discussed different issues that are currently affecting Latino communities, such as the Patriot Act, Grounds for Removals, Driver License Policy, Don't match letters sent from Social Security Department, Process and Requirements to get Naturalization, etc.

All in all, the training was a success and we are happy to have the opportunity to discuss and spread current legal immigration statutes and rules within disenfranchised population.

Upcoming Events at BWLAP

- **April 17th**—Hosting: Immigrant Refugee Task Force meeting (2-4 pm).
- **May 13**—Housing forum focusing on the topics such as sexual assault, domestic violence etc
- **MFIP Domestic Violence Trainings:**
 May 20—Marshall, MN
 May 21—Mankato
 May 22—Rochester
 Somali cultural component.
- **May 28 & 29**—Duluth and Oakdale. Dynamics of domestic violence and developing an effective alternative employment plan. American Indian cultural component.
- **May 22 and 23**—Metro State University. Domestic Violence, family law and immigration.

HELPING WOMEN PREPARE FOR COUNTY WORKER VISITS

If a woman knows that a child protection worker or someone else from the county is coming to her house to talk to her about her children, she may want to consider the following list. This is a list of things to do in preparation for the county worker's visit.

- Have someone else take care of your children. Make arrangements for the children to be watched by someone else during the visit. Even if the county worker wants the children to be present during her visit, it can be helpful to have another adult or older youth to help out with the children in the home. This will allow you time to talk to the worker away from the children. It will also allow you to concentrate on the worker and not have to worry about what the children are doing or that the children might be getting into trouble.
- Have something for the children to do. If you don't have anyone who can help out with the children, try to organize an activity for the children to be doing while the worker is at the house. This could be a matter of pulling out a favorite toy or a toy that holds the children's interest for a good amount of time. You may want to have the children around the kitchen table coloring or reading. Select an activity that works well with your children's ages and interests. Use video games or TV as a last resort.
- Clean up. Do a general clean-up of your house prior to the worker coming. You do not need to do a thorough, full house cleaning. But **do** pick up and take outside any garbage. Empty ash trays. Wash the dishes. Put dirty clothes in a basket or pile on the closet floor. Make sure there are clear spaces to walk through the house and clear places to sit.
- Take care of hazards. Make sure that anything that is unsafe for children is taken care of --- for example, if there is a gun in the house, be sure that it is not loaded and locked up with the ammunition locked up separate from the gun. If you have a fireplace or wood stove in use, is there some barrier to keep toddlers away from the it. If there is a broken window, tape cardboard up so that the children can't get cut on the glass.
- Get rid of any spoiled or rotting food.
- Get rid of beer bottles. Rinse out and place in garbage or recycling any beer or liquor bottles.
- Lock up medicines. Any drugs (aspirin, prescriptions, illegal drugs) should be put up where children cannot get at them.
- Have food. Make sure that you have food in your refrigerator or cupboard. You do not need to have a great amount of food but food for the next 3 or 4 meals.
- Have age-appropriate toys and books available for your children. If you do not have such toys and books, go to the library and borrow books. ECFE (Early Childhood Family Education school programs) usually lends out toys. You do not need to have a lot of toys or expensive toys.

Punto de Vista Latino

En el número pasado hablabamos del adelanto que significó para la mujer víctima de violencia doméstica que no está casada con un residente legal permanente o con un ciudadano norteamericano, la aprobación de la Visa U en el año 2000.

Decíamos que para que la mujer pudiera beneficiarse de este tipo de Visa especial, además de la violencia doméstica se deben dar estos otros requisitos:

- § La mujer debe haber sufrido un daño físico o mental sustancial como resultado de la violencia doméstica.
- § La mujer debe poseer información útil para el fiscal del crimen acerca de la actividad delictiva de la que fue víctima.
- § Se debe determinar que la mujer o su hijo/a menor de edad sufrirían un daño muy grande en el caso de volver a su país de origen y asimismo que también la investigación del caso se vería perjudicada si la mujer se alejara de los Estados Unidos.

Existe sin embargo una gran dificultad para la aplicación de esta ley y es que la misma, pese a haber sido aprobada tres años atrás, aún no ha sido reglamentada.

Las reglamentaciones de las leyes, dentro del marco de las mismas, proveen información más particularizada sobre la aplicación o el uso de la ley. Por ejemplo indican que repartición resolverá los casos que se presenten bajo el amparo de la ley, ciertos plazos, la cantidad y calidad de la evidencia necesaria para aprobar la petición, etc.

Por eso la falta de reglamentación hace más difícil la preparación del petitorio de esta Visa y además, hasta cierto punto, torna más incierta la aprobación de la misma.

Sin embargo, si bien reconocemos que la reglamentación es necesaria, no consideramos que la misma sea un requisito "sine qua non" para la aplicación de la ley. Así como "la ignorancia de la ley no sirve de excusa" para el particular que ha violado una norma jurídica, la falta de reglamentación de una ley vigente no puede nunca justificar su no aplicación por parte del Estado.

Desde nuestro punto de vista, el equilibrio de los tres poderes del Estado, esto es el Legislativo, el Ejecutivo y el Judicial, se vería afectado si aceptáramos que una ley no se aplicara sólo por la falta de reglamentación. Y como sabemos, la independencia de esos tres Poderes y el equilibrio entre ellos es el fundamento de una democracia y en última instancia del respeto de los derechos individuales.

Por estas razones, nos alegramos de que existan en Minneapolis abogados que ya hayan comparecido peticionando Visas U pese a las dificultades que su falta de reglamentación provoca. Asimismo alentamos al resto de los abogados de nuestra comunidad a considerar las razones que hemos expresado en esta breve entrega, para decidir presentar peticiones de Visa U, aún sin la reglamentación aprobada.

Community Forums Update

Mutual OFPs

On March 14, 2003 Rumna Chowdhury and Gloria Fressia facilitated the first in a series of monthly community forums held by BWLAP. This forum was conducted with the collaboration of Casa de Esperanza in St. Paul, MN. The topic for our first forum was Mutual Orders for Protection. BWLAP chose this topic after staff noticed an increase in the issuance of mutual and reciprocal orders for protection (OFPs) and harassment restraining orders (HROs). This article will cover the materials that were presented during that forum.

Any time a battered woman and her batterer each have an OFP against the other, we call it a mutual OFP. However, there are two ways this situation may arise. In the first situation, both the battered woman and the batterer have petitioned the court for an OFP against the other, and both are granted. This situation may more accurately be described as one of “reciprocal” orders. In the second situation, only one party has petitioned the court for an OFP (usually the battered woman), but the judge issues orders against both parties. While the two situations are very different, they have many similarities.

How does the situation of mutual OFPs arise, and why is it such a prevalent problem?

Domestic violence advocates know that often the first thing a batterer will do after being served with a petition for an OFP is to file for an OFP themselves. But why would a battered woman agree to the issuance of an order against her? First, a battered woman may not understand the negative ramifications of having an order issued against her. She will often want to expedite the court process and cooperate with the judge and lawyers. She may also be acting to avoid a violent reaction from her batterer. All of these put pressure on her to agree to a mutual order.

Lawyers and judges often do not think it makes a real difference whether an OFP is mutual or against the batterer only. Either way they will tell the woman to stay away from the abuser – so what is the big deal if she agrees to an order? Also, if both parties agree to mutual orders, there is no need to move to an evidentiary hearing; thus, judges and lawyers are able to keep their calendars clear. This is not to say that all judges necessarily have ill intent when they issue mutual orders. Judges may believe it is in the woman’s best interest to have an order against her, because it may prevent her from trying to reconcile with the batterer. Judges are often frustrated to see the pattern of reconciliation and escalating violence, and mutual orders is one thing they can do to try to break the cycle. However, such thinking does not take into account that domestic violence victims often reconcile with their batterers because it is their safest option. So, while judges’ and lawyers’ may intend to promote the best interest of the battered woman, many are unable to actually do so because they do not have the proper understanding of battering dynamics. This is why it is especially important for advocates to educate their clients, so that the client may speak for herself and educate the court about the reasons why an order against her is contrary to her own interests.

Why is it wrong for a judge to issue two orders from only one petition?

The main reason a judge cannot issue an order against a battered woman unless there was first a petition to the court is because of the due process clause of the Fourteenth Amendment of the Constitution. The due process clause provides individuals with protection from restraint absent an evidentiary showing. This concept has been adopted into the Domestic Abuse Statute, which gives the respondent the right to notice and a full hearing before an order for protection may be issued. Thus, it is not legal for a judge to issue an order against a battered woman unless a petition against her has been filed through the normal process and she is given adequate time to prepare for a hearing. This means that if your client is served with a petition against her just before a hearing against her batterer, she may object if the judge agrees to hear both petitions at that time, because she was not given proper notice to prepare. Keep in mind that the right to notice is one that may be

waived; if the woman does not object immediately, her right to notice is automatically considered waived.

Now we know that she is entitled to a hearing – but what does that mean?

Generally, the right to a full order for protection hearing means you have the right to the following:

- § The right to present and examine witnesses
- § The right to introduce documents
- § The right to have the case decided based on statutory requirements
- § The court must make specific findings of domestic abuse before issuing an order.
- § The petitioner must prove by a preponderance of the evidence that domestic violence has occurred.

Why mutual OFPs are bad for battered women

1. As a matter of principle – the battered woman is not the person whose actions are being questioned. Just because she agrees to stay away from the respondent, does not mean that she should agree to an order against her.
2. Judicial behavior strongly influences the possibility of future violence – issuing mutual orders can send the message that the victim is also to blame for the batterer's behavior.
3. Mutual OFPs strongly reinforce the batterer's beliefs and claims that the violence is the victim's fault, and that the problem is not his but is the result of external factors. To the batterer, the fact that a judge issued an order against the woman provides support for his internal rationalization of his violence against her.
4. Mutual OFPs empower the batterer by providing him with another tool to manipulate and control the battered woman – if an order is issued against her, it is easier for the batterer to call the police and have the victim arrested.
5. The implication is that there is no accountability for the batterer.
6. The issuance of a mutual OFP may reinforce the battered woman's "learned helplessness," the concept that she is not in control of anything and that the abuse is her fault.
7. Battered women are often not given proper notice before the issuance of a mutual OFP – this is a violation of her statutory and constitutional rights.
8. Law enforcement is confused when they are called for an OFP violation – mutual orders imply that both parties are equally abusive. The police do not usually know the history of violence and who is the primary aggressor. As a result, the true victim is not adequately protected.
9. Mutual orders are not enforced as well as regular orders. When police arrive on the scene they are unsure how to proceed. Often they will arrest both parties "just to be safe."
10. If a woman is arrested, she may have to deal with the affects of having a criminal record. This may impact immigration, housing or employment.
11. Mutual orders create a disincentive to calling the police – because women know they are at greater risk for arrest.
12. Mutual OFPs may affect future court proceedings about custody or divorce, civil domestic violence proceedings, criminal proceedings against the abuser, or criminal proceedings against the battered woman.

For all of the above reasons, it is important that we educate our clients that no matter how much pressure they are feeling from the court, they should not agree to a mutual OFP.

Our next community forum will be on the subject of [Cultural competency]. It will take place at [Brian Coyle] on April 26 at 10am-2pm. Please contact Program Manager Zabat A wed at 612-343-9842 or Zabat@BWLAP.org for more information or if you have an idea about a topic for a future community forum.

(continued from page 2)

- When the worker arrives:
 - Be clean and dressed.
 - Turn off the T.V. or any stereo.
 - Greet the worker at the door. Don't yell for the worker to come in.
 - Be courteous even if you are very angry about the worker being there. Be nice, even if the worker is not.
 - If possible, don't smoke while the worker is at your house. If you need to smoke, try to minimize the amount of smoke around the children.
 - If you have pets, put them outside or in the basement while the worker is there.

Thanks to the Board

We at BWLAP would like to thank our Board of Trustees for their hard work and guidance. Board Members include Candy Bakion, San Juana Flores, Ka Yang, Andrea Fortune and Kileen Weise



Housing Forum

Join us for an informative discussion about the issues battered women face in housing. Nicole Forkenbrock Lindemyer from the Housing Discrimination Law Project will speak about sexual harassment and other issues facing low-income women in the Twin Cities as they pertain to housing. Bring your ideas & tell others about what your clients are experiencing.

Date: Tuesday, May 13, 2003

Time: Noon to 1:30 pm

Location: BWLAP conference room (1611 Park Ave S, Suite 2) or TBA if larger space required.

Cost: Free, bring your lunch!

To register, please call by
April 30, 2003!
612-343-0793

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

- Federal Firearms Prohibitions
- State Firearm Prohibitions
- Harassment Restraining Order
- Criminal Court Sentencing Options
- Custody Determinations: Best Interest Factors
- Data Practices and Confidentiality
- Expungement of Court Records
- Expunging your Eviction (UD)
- Extraordinary Writs: Writs of Mandamus and Writs of Prohibition
- Family Court Motion Practice
- Filing Complaints Against Attorneys
- Filing Complaints Against Judges
- Filing a Motion a Preparing for a Hearing
- How to Become A Notary Public
- How to Hire An Attorney/ Fee Arbitration
- Juvenile Court: A Basic Introduction
- MN Harassment/Stalking Law
- MN Court of Appeals Practice / Pro Se Appeals
- Mutual OFP
- Name and Social Security Number Change Information
- OFP Without Hearings
- OFP: Finding Personal Jurisdiction Over Non-resident Batterers
- OFP: Methods of Service of Process
- Alternatives to OFP: Harassment Restraining Orders
- Qualifying for *In Forma Pauperis* Status in Legal Proceedings
- Using An Interpreter In Court
- Violence Against Women Act (VAWA): Full

Technical Assistance Packets are available at no cost (up to three copies only)

To order, check the desired packets on this order form and complete the "mail to" section.

Send your request/order form to:

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

612-343-9842
staff@bwlap.org

Mail packets to:

Name _____

Organization _____

Address _____

E mail: _____



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

Questions or Comments? Email us: staff@bwlap.org

MARK YOUR CALENDARS!

April 17

Board of Trustees Bi-monthly Meeting

Time: 10:30–12:30

Call Tamara at 612.343.9842 for more info

Brunch provided

Community Forum Topics

April: Working with Diverse Communities

Location: Brian Coyle Community Center

420 15th Ave S, Minneapolis

Date: April 26th, 2003

Time: 10:00 am - 2:00 pm

May: Native American Month

June: Gay Pride Month

July: State-sanctioned Violence

Please call Rumna at 612.343.9842 for more details.

VOLUNTEERS

Needed for Spanish translation of documents. Please call or email if interested in volunteering. E mail:

sage@bwlap.org

612.343.0793