

AGENTS FOR CHANGE

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Florida Appeals Court Applies Domestic Violence Law to Gay Couple

Deciding a new point of Florida law, the Florida District Court of Appeal, 2nd District, unanimously ruled in *Peterman v. Meeker*, 2003 WL 22259814 (October 3), that the state's domestic violence law, Fla. Stat. Sec. 741.30, provides a basis for issuing an injunction in the context of a gay relationship where one member is threatening the other with violence.

John Russell Peterman and Nute Carl Meeker, Jr., were domestic partners for thirteen years and lived together in a house they jointly owned. Toward the end of their relationship there were "violent episodes between these men," according to the opinion for the Court of Appeal by Judge Carolyn K. Fulmer. Meeker went to the Pinellas County Circuit Court, seeking a domestic violence injunction against Peterman. Peterman's attorney filed a motion to dismiss the action, arguing that since the men were not legally related to each other, the Domestic Violence statute did not apply to them and the Court had no authority to issue the injunction.

The statute says that such an injunction may be sought by someone who is either the victim of domestic violence or who has reasonable cause to believe that he is in imminent danger of becoming such a victim. In order to invoke the authority of the Court, the plaintiff and defendant must be family members or members of the same "household." The statute extends to "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married." Interpreting this language, Circuit Judge John C. Lenderman had ruled that the legislature intended to protect "intimate partners" and issued the injunction against Peterman, who appealed the Court's order.

Noting that "there is no reported case in Florida on this issue," Court of Appeals Judge Fulmer reported that "several courts around the country" have ruled that "persons in a same-sex relationship qualified for domestic violence protection." She cited in particular cases from Illinois, Kentucky, and Ohio. She also noted another provision of the Florida statute, which stated that "no person shall be precluded from seeking injunctive relief pursuant to this chap-

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UPCOMING EVENTS

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ter solely on the basis that such a person is not a spouse.” This, together with the persuasive rulings from other jurisdictions, led to the conclusion that “the statute does not exclude those persons who otherwise meet the requirements for a domestic violence injunction but seek protection from a person of the same sex.” A.S.L. Lesbian/Gay Law Notes, November 2003.

Sage Van Voorhis and Rumna Chowdhury will be attending a DOJ (Department of Justice) Conference in Virginia on December 8-10



Strengthening the community

BWLAP is organizing immigration trainings in Spanish.

Both trainings will focus on legal relief for immigrant battered women and their children.

The first training will be done in collaboration with **MUJERES UNIDAS** in Crookston, MN on **December 16**.

The second training will take place on **December 17th** at **CENTRO CAM-PESINO** in Owatonna, MN.

**Please join us
Everyone is invited!
It is free!**

If you want more information about both trainings please call or e-mail Gloria Freesia at (612) 343-9846 or gloria@bwlap.org

What can a battered immigrant woman do, when the batterer threatens to take the children away?

Battered immigrant women can get, and very often have, court orders awarding them custody of their children. All states base custody decisions on the best interests of the child. Some batterers try to use the fact that a battered woman’s immigration status is in question as a basis to obtain custody. If this happens, assist the battered woman in locating a family law attorney who is familiar with domestic violence laws.

If a battered immigrant woman has children, when creating a safety plan, encourage her to keep in a safe, readily-accessible place:

- recent photos
- Passports, visas, residency cards
- Birth certificates for her children
- Immunization records
- Records related to the children’s school and hospital
- A list of addresses and phone numbers of people she or her children (if older) can call when she wants to flee.

Sometimes batterers threaten to take the children back to their native country. It is very important to help the woman get a custody order. This may help to stop the batterer from removing the children from the United States. If the children are U.S. citizens, assist the woman in sending a copy of the order to the embassy of the batterer’s home country and a copy to the U.S. Department of State to prevent the government from issuing passports and visas for the children.



Cross-Cultural Communication

The art of communication can sometimes be difficult even under the best circumstances. Frequently, in cross-cultural communication, an idea can be completely lost through misunderstanding.

Nonverbal communication can also be misinterpreted. For example in many cultures (e.g. African Immigrants) when speaking to authority figures they do not look them directly in the eyes out of respect. Many people, especially within the justice system, misinterpret this action as lying or being deceitful.

To enhance your ability to effectively communicate with someone from a different cultural background, review what you know about this person and his or her culture. Be aware of differences between your culture and theirs, and the assumptions you may bring to the situation.

Actions or words heard in the context of one set of norms may appear vastly different from another. Language, behavior, and appearance that seem odd or inappropriate in your culture may be very normal or legitimate in another culture.

Often, court personnel and attorneys must explain the justice system to witnesses, victims, or their families who come from other countries. Not every country has a presumption of innocence, a bail system, or a jury system.

Tips when working with clients who come from different cultures:

Be patient and allow extra time for communication. When using an interpreter, an interview may take twice as long.

Pay attention to nonverbal cues that signal lack of un-

derstanding, such as facial expressions that may indicate confusion.

Court personnel, judges, lawyers, advocates, and all service providers may need to respond to what the individual is saying explicitly and what is being implied at. Use reflective listening to understand both explicit and implicit messages and to affirm what has been said:

- * "Let me make sure I understand what you are saying...."
- * "I want to be certain I understand you so we are not confused...."
- * Do not assume that your clients understand the court process; **make sure** that she or he understands

Be careful not to speak louder when you are not understood. Speaking loudly is a common reaction, but to the listener you may seem intimidating, impatient, or even aggressive. Recognize that the person with whom you are communicating may also attempt to make herself/himself understood by speaking more loudly to you. Try not to misinterpret her or his frustration with language as anger or frustration with you.

It is possible to increase our effectiveness as cross-cultural communicators and problem solvers. Even though there is uncertainty in diversity, with an open mind and patience, we all could be able to communicate across cultures. However, the effectiveness in the process of cross-cultural communication comes through patience, knowledge, and commitment.

We cannot know all things about all cultures. But it is a fact that in every culture, people respond well when they are given respect.

By Zabat Awed

A recent decision by the Minnesota Court of Appeals clarifies that, in a prosecution for domestic abuse, evidence of similar conduct by the Defendant is admissible only if that prior similar conduct is proven by clear and convincing evidence.

The case, *State v. Tyrone S. McCoy*, C4-02-1788 (Minn. App. 09/09/03), available at <http://www.lawlibrary.state.mn.us/archive/ctappub/0309/op021788-0909.htm>, was an appeal from a conviction for misdemeanor domestic assault. The issue on appeal was which of two different standards of proof must be applied to evidence of prior similar conduct for that evidence to be admitted at trial. The standard of the Minnesota Rules of Evidence Rule 404(b) requires that in order for evidence of similar prior conduct to be admitted, there must be “clear and convincing” evidence that the prior incident occurred. The second standard was that of Minnesota Statutes Section 634.20, which allows admission of “evidence of similar conduct by the accused against the victim of domestic abuse, or against other family member or household members, unless the probative value is substantially outweighed by the danger of unfair prejudice....” Minn. Stat. § 634.20 is silent as to the evidentiary standard by which the prior conduct must be proved to have occurred.

The trial court admitted evidence of prior abuse, namely a police report and medical records from an assault by the Defendant against the victim years before, ruling that Minn. Stat. § 634.20 applied and that it did not require clear and convincing evidence to establish the prior act. The Court of Appeals reversed, holding that even though Minn. Stat. § 634.20 is silent as to its evidentiary standard, the legislature that enacted the law did not intend to abrogate the existing “clear and convincing” standard set forth in the Rules of Evidence for prior conduct. Therefore, the Court reasoned, Minn. Stat. § 634.20 and Minn. R. Evid. Rule 404(b) are not in conflict because the “clear and convincing” standard governs both.

The case is noteworthy because its holding is in direct contradiction with an earlier statement of the Minnesota Supreme Court in *State v. Cross*, 577 N.W.2d 721 (Minn. 1998): “We note that the legislature has expressed an intent to remove evidence of ‘similar prior conduct’ in domestic abuse (non-homicide) prosecutions from the ‘clear and convincing’ standard of Rule 404(b).” The Court of Appeals addressed the contradiction by explaining that the standard of proof under Minn. Stat. § 634.20 was not at issue in the *Cross* case, and that this statement by the Supreme Court “is dicta by which we are not bound.” However, the deadline for the State to appeal the decision to the Minnesota Supreme Court has passed.



Native American Mentorship Project

BWLAP, in conjunction with Women’s Project Shelter is hosting a training in Mille Lacs . The training is called “Domestic Violence Training in the Tribal Community”.

Location: Grand Casino Hotel

Date: February 9th, 2004

Time: 9 am– 5 pm

We are inviting advocates who work with battered native women to call Winnie Davis at (320) 495-3623 to register for the conference. Lunch is provided. **The training is free so please mark your calendars!**

IMMIGRATION CORNER

by Maria Gloria Fressia

Today, from this corner, we would like to share with you some information about VAWA (Violence Against Women Act) self-petitions. As you already know VAWA, first approved in 1994 and later improved with several modifications, brings very important relief to immigrant women and their children, victims of domestic violence, married with American citizens or legal permanent residents.

Recently we went to the Annual Conference of the National Network to End Violence Against Immigrant Women. The Conference dedicated two (Q & A) sessions with representatives of the U.S. Citizenship and Immigration Services.

During the sessions very important information was provided. We wanted to share with you some of the highlighted issues that was addressed by the Immigration Services representatives:

- *Self-petition submission.* All VAWA submissions should have 'VAWA' noted in bold red letters on the envelope to avoid being misrouted in the mailroom in Vermont Service Center (VSC).
- *Prima Facie Determination.* The VSC is limited by an internal policy memo to issuance Prima Facie Determinations notices valid for a 150-day period, to be extended in 60-day increments. Clerical staff should send out extensions automatically, but advocates or lawyers are welcome and encouraged by VSC to submit extension requests by phone or by mail.
- *Evidence issues.* The VSC confirmed that the determination of "extreme cruelty" focuses on evidence that addresses how the abuser's conduct impacted the quality of life of the victim. Consequently, the evidence needs to state both, what the abuser did, and how the self-petitioner felt or suffered as a result of the abuser's behavior.
- *Expedite request.* The VSC consider that being in removal proceedings while the VAWA application is pending does not constitute enough reason to ask for a expedite request. According to VSC expedited adjudication will be considered *only in compelling circumstances* like, for example, the self-petitioner being in danger of *imminent removal*. In such circumstances, the VAWA unit will check with district counsel to confirm the urgency of the situation.
- *Change in Abuser's status.* In any case in which the abuser has lost the qualifying status, self-petitioner must bring evidence that the *loss of status was due to domestic violence*.
- *Cases in which the abuser gains LPR after separation.* VAWA self-petition will be granted in those cases in which the abuser gains qualification after separation, as long as the divorce is pending.

We hope this information will be helpful for you in serving immigrant women and their children. Questions and/or comments are welcome at gloria@bwlap.org.



Little Blurbs

“When will our consciences grow so tender that we will act to prevent human misery rather than avenge it?” -Eleanor Roosevelt

“We wish to make rage into a fire that cooks things rather than a fire of conflagration.” --Clarissa Pinkola Estes

CHECK OUT OUR WEBSITE!
WWW.BWLAP.ORG

OFP Project Update

BWLAP's OFP Project has been in progress since the beginning of October. So far, the BWLAP Staff Attorney, Rumna Chowdhury, has met with many people regarding the project and has represented several battered women seeking OFPs. The purpose of the OFP project is to increase battered women's access to the civil court system by providing them with representation, while taking on larger issues in the courts that impede battered women's access. One major issue that has come up for several battered women is that of custody; in many cases, batterers have been granted custody of children, even though they are not adjudicated fathers and have no legal rights to the children. For a more detailed description of the law regarding paternity and custody for unadjudicated fathers, see BWLAP's technical assistance packet entitled “OFP Hearings: Contested Custody.” You may find this and other technical assistance packets on our website, at www.bwlap.org.

we are updating our mailing list. If the name and address this newsletter was sent to is not current or correct, please call Nicole at 612-343-9844 or 800-313-2666 (toll-free) and leave the current or correct name and address to which future newsletters should be sent.

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

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

*Updated **New

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

Send your request/order form to:

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

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

Mail packets to:

Name _____

Organization _____

Address _____

E-mail _____

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

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

MARK YOUR CALENDARS!

January 23 , 2004

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

Cell Phone Donations

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

VOLUNTEERS

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