

AGENTS FOR CHANGE

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

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BWLAP is Here for YOU!

A huge thanks to all the host programs, attendees and guest presenters who made our 2005 session of New Laws a great success. Our annual New Laws training is our best known program, and affords our staff the opportunity to hear from advocates all over Minnesota about the emerging legal issues facing battered women and their children.

We want to take the opportunity to remind everyone of all the other services BWLAP has to offer.

Legal Consultation Hotline:

Through our state-wide toll-free hotline, BWLAP staff are available Monday-Friday, 9AM – 5PM to answer your legal questions related to domestic violence. We will do our very best to track down answers, provide resources and help with strategy. If you need to leave a message, please know we will do everything we can to respond within 24 hours. In the metro area, please call our business line at 612-343-9842. Greater Minnesota callers can reach us toll-free at 1-800-313-2666.

Technical Assistance:

We offer our Technical Assistance Packets via mail-order and on-line through our website at www.bwlap.org. These packets offer concise legal advice and background on more than 30 law-related subjects. You can access most on-line, or download an order form from our website. BWLAP has also recently revised our comprehensive manual for legal advocates, *Agents for Change*.

Areas of Special Expertise:

Anyone on our staff should be able to answer your basic legal questions, or track down the information you need. Each member of our staff also has special areas of expertise, so feel free to call the appropriate staff person direct with your question.

Gloria Fressia: Immigration and VAWA provisions. Fluent in Spanish.

Rana Fuller: Staff Attorney. Housing issues and housing law.

Dorian Eder: Child Protection and other children's issues.

Remember, we are here to help you and your clients!

**Upcoming
Events at
BWLAP**

November 1—2
MN Family Income Program. Training on the impact of on domestic violence on children, how service providers can help instead of being an obstacle for victims, and domestic violence within immigrant communities.

November 9
Immigration remedies for immigrants and refugee battered women.

November 11
DV Law meeting at MCBW

November 17
U.S. protection to asylum seekers and refugees fleeing violence.

BWLAP's Annual Report

Battered Women's Legal Advocacy Project's mission is to effect system's change, to secure access to justice, and to improve the legal system's response to battered women and their children, particularly underrepresented women.

Our Fiscal Year ended in June 30th. 2005 and we want to share with you some of our achievements.

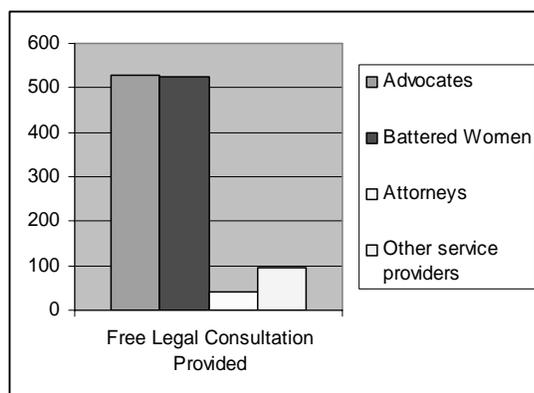
None of our work would be possible without the support of our funders and the recognition and confidence of our community. For that reason, from the very beginning of this report, we want to thank our funders and colleagues working tirelessly to end domestic violence and all kinds of oppression in the lives of women and their children.

BWLAP provides support to battered women in Minnesota by making the law enforcement and legal systems that exist to protect them work more effectively. Established as an independent agency in 1996, BWLAP concentrates on critical, but not always visible, issues in the law enforcement and court arenas which affect all battered women. Programs and services offered include direct advocacy and legal assistance to battered women; training on domestic violence legal issues for advocates and attorneys representing battered women, judges, law enforcement officers, prosecutors, and others; on-going mentoring to battered women's advocates, especially women of color and women in rural areas; technical assistance and program support to battered women's programs; legal advice and consultation to battered women, their advocates or attorneys; and strategic planning and policy development assistance to key players in the battered women's movement working toward similar goals as BWLAP.

Once again, last year, BWLAP was the first call for a battered woman, an advocate or an attorney, while dealing with a difficult domestic violence situation/case. During that year, BWLAP provided consultation assistance, research, and other legal advice in 1190 cases. From those 1190 cases, 530 were consultations from advocates, 525 from battered women directly, 41 from attorneys, and 94 from others supporting battered women and

their children. The above chart shows the number and the origin of legal help requests received by BWLAP in the Fiscal Year 2005.

The geographical breakdown of our callers was 581 from metro area, 517 from rural areas, 8 from reservations, and 84 from out-of-state.



(Continued on page 3)

This year we improved our volunteer program that allows law and other related social science students to have a first hand experience with the intricate issues surrounding domestic violence. During the summer we had nine volunteers working in different projects, researching and updating our technical assistant packages. Some of them decided to continue working with us during the fall and some others have joined us this season.

With volunteers' help, not only have we updated several technical assistant packages and produced some new ones on different cutting edge issues, but also we were able to update our Agents for Change Manual. Shortly we will be announcing the availability for purchase of our new Manual on our web page and in our newsletter. Regarding new technical assistant packages, some of them are: No Child Left Behind, Providing Education for Homeless Children; Juvenile Court, a Basic Introduction; Parental Kidnapping; Expungement of Court and Arrest Records; Action Alert: Protect the Renters' Credit; Renters Credit is Saved; Filing for Legal Permanent Status: Waivers Available.

Because we believe that an important piece of systems' change is holding judges accountable for their unfair/wrong decisions regarding battered women's rights, last year we have expanded our core services to an upper level, providing training and legal assistance to advocates whose battered women clients are willing to appeal blatantly wrongful court decisions.

Same as in former years, BWLAP facilitated, with the co-sponsorship and participation of Minnesota Coalition for Battered Women, our already classic New Laws two-day training in six different locations around Minnesota, five in rural Minnesota and this year two in the metro area. In greater Minnesota, New Laws trainings were attended by 135 advocates, attorneys, and other service providers. In the Metro area, in our first two-day training in Minneapolis 45 participants attended. The first Metro New Laws training fill up so quickly that we needed to provide an additional training date. Therefore, we scheduled another New Laws training in St. Paul, which Minnesota Coalition for Battered Women gratuitously agreed to host on a very short notice. At second Metro location, we trained 40 participants. BWLAP had a total of 215 participants this year at the New Laws training. The evaluations and comments received at those trainings are enormously encouraging.

In addition to our core services we continued working in some others projects, such as:

The Orders for Protection Project in which we represented women seeking orders for protection at Hennepin County. For this project we had an attorney full time at Domestic Abuse Service Center.

The Housing Project by which we are working closely with Minnesota Coalition for the Homeless and other organizations to eradicate homelessness for battered women.

The Immigration Project, that enhances the need for cultural competency, provides technical assistance to advocates throughout Minnesota to help battered women represent themselves and receive immigration relief by filing for VAWA, Visas U and T, for work permit, for adjustment of status, for stay of deportation, naturalization when possible, etc.

With the help of Bush Foundation we have initiated the implementation phase of our strategic planning. In this implementation phase we will be revising the administrative structure of the Agency and strategizing our goals and objectives for the near future.

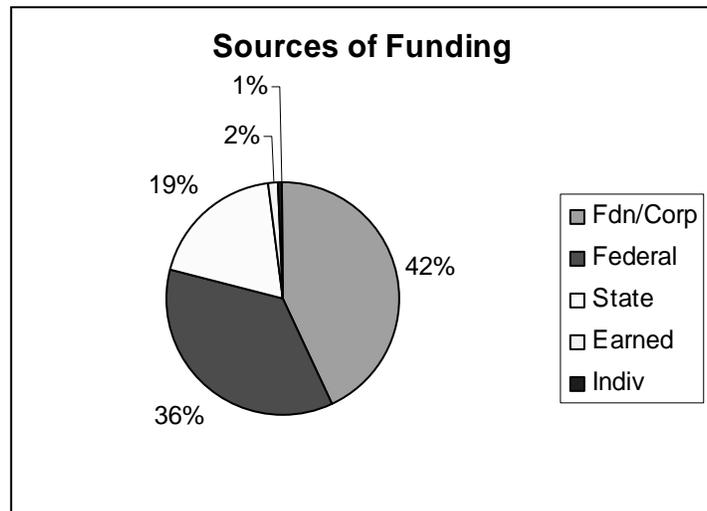
As a result of our Board of Trustees Development program, our Board of Trustees has grown in number, diversity, and skills. BWLAP's Board is currently composed of nine great women from different backgrounds, all of them united by their commitment to eradicate domestic violence and oppression from our community.

The composition of the staff has changed too. Recognizing that advocates and attorneys need to work to-

gether to effect systems change, our staff is currently comprised by two attorneys (Rana Fuller and Kimberly Weinacht) and two advocates. On May 2005 we hired Dorian Eder, an advocate with eight years of experience in the battered women's movement in Minnesota.

Our achievements are only possible with the generous support of our funders. We greatly appreciate their help without which we would not be able to offer the services we provide within our community. This fiscal year, BWLAP received its largest support from private foundations. Federal and state support continued to be important as well. The following chart shows our different source of incomes for this last fiscal year 2005.

We look to the future with optimism. We are committed to fulfill our mission of making a difference in the lives of women victims of abuse, especially women of color and women in rural areas. Our hope is to get to a point in which our services will be no longer necessary. That is the vision that guides our daily work.



Welcome and Thank You to Our Interns

BWLAP would like to welcome Steven, Ann, Rebecca and Amy. They will be interning with us through the fall. Already all of our interns have been a tremendous help with through and timely research and training material development. BWLAP is also very lucky to continue to have Sarah and Meghan interning with us. It is through our wonderful and dedicated interns and volunteers, that BWLAP is able to give the best possible services to domestic violence victims/survivors, advocates and attorneys. THANK YOU!

Advocates as Expert Witnesses?

By Dorian Eder

Earlier this month, I was fortunate to be in Austin, Texas for *Trial Run: Expert Witnesses in Domestic Violence Cases*, a training sponsored by the National Center on Domestic and Sexual Violence. The training was excellent, and gave careful attention to the issues faced by advocates in deciding whether to serve as expert witnesses in trial court. I returned to Minnesota believing that this is something we should consider, and have asked to begin a state-wide discussion about the merits and pitfalls of advocate testimony at the next meeting of the Domestic Violence and the Law Committee, hosted by MCBW on November 11 at 12PM. The meeting is open to everyone. I will be presenting a synopsis of the training, outline some of the potential advantages and drawbacks of advocate testimony, and solicit advice on how we should proceed in Minnesota. If you are unable to attend the meeting, but still have thoughts you'd like to share, please contact me directly at 612-343-9845.

Do you need technical assistance with Minnesota's current domestic violence issues?

Check out BWLAP's

Website

www.bwlap.org

Immigration Corner

An immigrant who has obtained permanent residence based on a marriage that is less than two years old will have a two year conditional status before their actual permanent status is granted. During these two years, the immigrant has the same rights, privileges and responsibilities as other permanent residents, but the conditional permanent resident must take additional steps to obtain legal permanent resident status. According to INA 216 (c), the spouses must file a joint petition to remove the condition at the end of the two year period. The form to be filed is Form I-751; this must be filed within 90 days before the second anniversary of the date when the person obtained the conditional residence. If the conditional resident is still legally married to the citizen or legal permanent resident, the couple will file this form as a joint petition.

There are four situations in which the Form I-175 can be filed by the condition alone, and will instead be considered an application for a waiver for the joint filing requirement, according to 8 CFR 216(a)(1). These situations are:

Marriage was entered in good faith but the spouse died.

The marriage was entered in good faith but it ended in divorce or annulment.

The marriage was entered in good faith but the spouse abused or exposed the conditional resident to extreme cruelty.

The termination of the individual's residence will result in extreme hardship.

These four reasons are not mutually exclusive. The individual should claim all reasons that are applicable to her situation because the Immigration Judge has jurisdiction to review only those issues reviewed by the BCIS. Therefore, if the case goes from the to an Immigration Judge, the judge will be able to review all possible reasons for the waiver application.

The waiver should be filed within the ninety days before the expiration of the two years. After the INS receives the application to waive of joint petition requirement, they will send the individual a filing receipt. When the conditional status expires at the end of the two years, this receipt will serve as evidence of the person's lawful status. 8 CFR 216.5(c). The INS will refer the case to the Immigration Judge in the conditional resident's jurisdiction. At that time, a hearing will be held where the conditional resident must provide the evidence supporting the waiver.

When filing a waiver based on the first three situations, the individual must provide evidence that the marriage was entered in good faith. The standard to qualify for approval of the good faith waiver is the same standard that applies to the approval of the marriage-based visa petition; the conditional resident must prove that there was a bona fide intent to join their lives together when the couple married. There must be evidence of commitment by both parties. Such evidence usually include documentation of the following (all four if possible): 1) sharing of financial assets and liabilities, 2) length of cohabitation, 3) birth certificates of children born of the marriage, and 4) any other pertinent evidence. INA 216(c)(4)(B).

The following is a summary of the evidence the conditional resident must provide when filing a waiver of requirement of the joint petition to remove conditional status:

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Filing a waiver because the marriage was entered in good faith but ended because of divorce or annulment (INA 216(c)(4)(B)):

There is no requirement that the permanent resident/citizen spouse must be at fault in the break up of the marriage, or that the conditional resident is free from fault. There is no requirement that the alien spouse be the party who terminates the marriage but must establish that he or she was not at fault in failing to file a joint I-751 petition. To apply for a waiver because of divorce or annulment, “submit a copy of the divorce decree or other document terminating or annulling the marriage with your I-175 petition.” William R. Yates, Bureau of Citizenship and Immigration Services, April 10, 2003.

The I-175 waiver cannot be filed until the divorce is final, but the individual can request continuance to allow for the completion of divorce. If the divorce or annulment proceedings have begun, but are not finalized, the individual cannot apply for a waiver of the joint filing requirement based on the good faith exception. Instead, the individual must apply for a continuance of the waiver with the immigration judge. Matter of Anderson, 20 I&N Dec. 888 (BIA, 1994). The conditional resident will then be issued a temporary I-551 (Green Card) during the pending case before the immigration judge. William R. Yates, Bureau of Citizenship and Immigration Services, April 10, 2003.

Filing a waiver because the marriage was entered in good faith but the spouse abused or exposed the conditional resident to extreme cruelty

In an abusive situation, if a divorce is in progress, the petitioner should cite both the abuse and divorce as reasons for the waiver, but there is no requirement that the marriage is terminated. Examples of such abuse are: being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in mental injury, sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution. Allegations of abuse should include expert testimony. Experts include police, judges, medical personnel, school officials, and social service agency personnel. 8 CFR § 216.5(e)(3)(iii).

The petitioner can also claim “extreme mental cruelty” instead of or in addition to abuse. 8 CFR §216.5(e)(3). The evidence required for this claim would be documentation from specially trained professionals such as clinical social workers, psychologists, and psychiatrists. The evaluation of any expert must include the professional’s full name, professional address and license number, and the authority which licensed, certified, or registered the expert. 8 CFR §216.5(e)(3)(iv). The INS only accepts evidence of factors and events arising since the acquisition of the conditional residence. There are practical problems involved with this requirement, because these types of evaluations may be too expensive for the conditional resident. Therefore, the former INS has clarified that they will not require the recommendation of a mental health professional or any other specific form of evidence to support a Form I-751 waiver based on abuse or extreme cruelty.

The conditional resident who is in an abusive situation should not file a VAWA self-petition instead of the waiver; they should continue with the conditional permanent resident process by filing for the waiver. If the waiver (the I-751 form) is file late or denied, a VAWA self-petition may be an option.

The termination of the individual’s residence will result in extreme hardship:

The Form I-751 states that the conditional resident must choose a good faith or an extreme hardship waiver, the grounds are not exclusive. An applicant may claim and argue for either basis.

The waiver will only be granted where the hardship is extreme, and the conditional resident has the burden of proving this. Because removal will always cause some type of hardship, there is a burden to prove that the hardship is extreme. The hardship which would result from the conditional resident's removal from the U.S. can also be the hardship her child or subsequent spouse may experience. Typically the hardship cannot be mere economic hardship unless combined with other factors, such as the person's age, family ties in the U.S. and in the home country, state of health, ties to and position in the community in the U.S., economic and political conditions in the home country (which should be thoroughly documented with reasons why they would be singled out for persecution), immigration history, and whether any other options exist for remaining in the U.S. All of the ways removal will cause hardship must be documented as thoroughly as possible.

The hardship waiver can be granted even if there is no evidence that the marriage was entered into in good faith.

BWLAP Files *Amicus Curiae*

BWLAP along with the Minnesota Coalition for Battered Women, the Minnesota Coalition Against Sexual Assault and the Sexual Violence Center filed an *amicus curiae* in a paternity case that is being appealed to the Minnesota Court of Appeals. *Amicus Curiae*, or just *amicus*, means in Latin "friend of the court". An *amicus* is a brief to an appeals court, submitted by an organization that is not a party to the court action. In the brief, the *amici* file the brief because they have a strong interest in the subject matter of the issues on appeal.

In this case*, the judge gave liberal parenting time to a father of a child who had been conceived from a single nonconsensual sexual act. The judge also appointed a parenting time expeditor over the objects of the mother. BWLAP and the other organizations filed the *amicus* brief in support of the mother.

We argued that granting custody or parenting time to a rapist is not in the best interests of the child. We also argued that granting parental rights to a rapist rewards the rapist for his wrongdoing; this reward would subject the rape victim to repeated victimizations at the hands of the rapist and would place the child in an untenable position.

Second we argued that according to Minnesota Statute section 518.1751, Subdivision 1a(1) a parenting time expeditor should not be appointed when "one of the parties claims to be victim of domestic abuse by the other party." In this case, the mother claimed to be a victim of domestic abuse; however the judge appointed a parenting time expeditor over her objections. We argued that the court should have to follow the letter of the statute and that the mere claim of domestic abuse is enough to trigger this provision of the statute.

Finally, we argued that the mother also qualified under Minnesota Statute section 518.1751, Subdivision 1a(2) which states, "the court determines there is probable cause that one of the parties ... has been physically abused or threatened with physical abuse by the other party." We argued that the court had found that a non-consensual sexual act had taken place. This act was tantamount to rape and thus physical abuse.

This case has yet to be scheduled for oral arguments, so we hope to have a decision by the Court of Appeals in the next six months. We will keep you posted on the outcomes.

*The name and location of this case has been withheld until a decision is handed down by the Court of Appeals.

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

Cell Phone Donations

BWLAP is still collecting old cell phones for reuse 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 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.

Thank you!

BWLAP extends its heartfelt gratitude to our funders:

It is only with the help of our funders that we may help others. *Thank you!*

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