

# 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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## Immigration Corner

**In a fragmented and complex system, the eternal challenge of an interdisciplinary approach.**

We all know that the complexity of our modern societies has made a necessity the creation and development of many different branches in the law. As doctors in medicine, attorneys today need to choose a compartmented field of the law to acquire the expertise needed in a very complex system.

But the needs of an immigrant battered woman far exceed one single expert in any specific branch of the law. The reality shows that immigrant battered women deal with immigration, family, health, labor and a bunch of other different issues that interconnect and need to be tackled by an interdisciplinary group of professionals working together, in particular immigration and family law attorneys. And that is a challenge we need to perceive and overcome.

As we know, for an immigrant battered woman, the implications of family and immigration status have an enormous impact over each other. The immigration status of the victim is used in the family court to maintain and perpetuate the victimization. At the same time, immigration law provides different relief according to the family status.

In addition to that, the immigration status of a battered woman is used by the abuser to perpetuate the victimization and unfortunately, very often judges make decisions over custody, orders for protection and other civil matters taking into account the immigration status of the victim.

Family attorneys representing immigrant battered women need to know that the abuser will use the legal system to perpetuate the victimization and be prepared at the hearing to rebut arguments related to the immigration status of the victim. If the immigrant woman is undocumented most certainly the abuser will use that fact to argue that he is the parent better fit to receive full legal and physical custody of their children. Even, he might argue that the victim will take the children out of the United States if she is granted custody, because of her links to her foreign country.

Also, in cases in which the immigrant mother is documented, the abuser – if he is a citizen - most probably will use the argument that he is in a better situation to provide for the needs of the children.

There are many counter arguments and strategies a family attorney can use to answer those claims but our point here is that she/he needs to be prepared and work in collaboration with an immigration attorney (just to mention one

*(Continued on page 3)*

## **Host a New Laws Training**

New Laws is an annual training held by BWLAP to update advocates and others about laws affecting battered women. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend. The scope of this training ranges from family to criminal law and government benefits. Each year BWLAP holds the training in six (6) locations throughout the state – two in the North, two in the South, one metro and one in central Minnesota. Last year we held trainings in Alexandria, Lanesboro, White Earth Reservation, Marshall, Duluth, and two in the Twin Cities. In greater Minnesota last year we had an attendance of 134 people. In the Metro area, we provided a first two-day training in Minneapolis with 52 participants, which was quickly booked; shortly afterwards, responding to the public request, we provided a second one in Saint Paul with 41 participants.

We need local agency hosts for the coordination of the training logistics. The host finds a local training site, makes arrangements for food, and supplies information regarding lodging and directions. BWLAP will pay for all the costs. The biggest benefit of hosting the training is you don't have to travel as the training is in your hometown! Like last year, the trainings will be held on Monday/Tuesday and Thursday/Friday and will be held in August and early September. If you would like to host a New Laws Training please e-mail us at [info@bwlap.org](mailto:info@bwlap.org) or call us at 612-343-9842.

Another way to provide input for New Laws is to submit ideas and scenarios that you have experienced over the past year that we could use as example exercises or training topics. Potential topics include: Hands on in advanced and basic legal advocacy (two tracks simultaneously), orders for protection, VAWA 2005, full faith and credit, guardian ad litem, custody issues, immigration, housing, and administrative policies. Please e-mail [info@bwlap.org](mailto:info@bwlap.org) with your comments or if your agency would like to host a training.

## **NEW !!! JOIN BWLAP'S LIST-SERVE FOR LEGAL ADVOCATES**

BWLAP is launching our new list-serve for Minnesota legal advocates in June! The goal of this new email list is to connect advocates to each other, share new resources, and strategize about solutions to common problems. Dorian Eder will be moderating and answering your legal questions on the list.

**TO SIGN UP:** Contact Dori at [dorian@bwlap.org](mailto:dorian@bwlap.org) with your preferred email address.

## **Goodbye Spring Interns, Hello Summer Interns**

As summer comes around the corner, it is time again to say goodbye to our Spring interns, Sarah , Meghan , Amy , Rebecca, Julie and Ann. Thank you all for your hard work! It is truly because of your work that BWLAP is able to provide the services we do. Remember, if you are looking for an internship for the fall, give us a call. You are all welcome back!

It is also time to say hello to our new summer interns: Moriah, Jessica, Sarah, Kristin, Imran, and Christine. We are looking forward to an exciting and productive summer. Welcome!

## Case Update

In the October addition of *Agent for Change*, we reported on an appeal in which BWLAP, MCBW, MNCASA and Sexual Violence Center filed an *Amicus Curiae*. On May 9, 2006, the Minnesota Court of Appeals handed down their decision in *Hilliker v. Miller*, No. A05-1538 (Minn. App. May 9, 2006) (UNPUBLISHED)

In *Hilliker v. Miller*, 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 who claimed to be a victim of domestic abuse.

While the facts of this case seemed clear to BWLAP and the other *amici*, the facts were not as clear to the Court. The Court found that Ms. Hilliker did not provide enough evidence to prove to the Court that she was in fact a victim of sexual assault and thus the district court did not commit a clear error. The Court found that since there was not enough evidence, the Court must defer to the district court in their finding that the sex was consensual.

Since the Court found that the sex was consensual, the Court then found that the award of liberal parenting to be appropriate. The Court stated there was, "...adequate evidence supporting the award of liberal parenting time, including evidence from the court-appointed evaluator that appellant is "focused on supporting [the child's] intellectual, physical, and social development," and from a doctor who concluded that there was no direct evidence that the child's well-being is at risk in appellant's presence."

The Court did rule that the district court cannot appoint a parenting time expeditor over the objects of a party who claims to be a victim of domestic abuse. "The statute [Minn. Stat. § 518.1751, subd. 1] does not require proof or a judicial finding of domestic abuse, nor does it give the court the power to compel cooperation with an expeditor if the court finds the claim of domestic abuse to be without sufficient support."

While it is frustrating and disheartening to have the Court of Appeals find that Ms. Hilliker was not raped, it is good news that the Court did agree that parenting time expeditors should not be appointed over the objections of a victim of domestic abuse.

strategy, if the abusive citizen spouse petitioned to the U.S. Citizenship and Immigration Services for the spouse, it is possible for the victim to file a Freedom of Information Act (FOIA) to obtain the Affidavit of Support necessarily attached to the immigration family petition, Form I-130 and use that document to reverse completely the arguments of the abuser to convince the judge the victim lacks of economic sustainability to be awarded custody of their children.)

On the other hand an immigration attorney working in collaboration with a family law attorney can save time for her/his immigrant battered client and many times, also save her from being deported, working in collaboration with a family law attorney.

Immigration attorneys need to know, for example, that there are many creative ways in which it is possible to seek, through an order for protection petition, the turn over to the immigrant abused petitioner information or documents, and even, when necessary, have the respondent sign USCIS Freedom of Information Act request. Other creative components of an order for protection can take the form of a judge order to the abuser to file, not withdraw, or not revoke immigration visas on behalf of their spouses or children.

In conclusion, the need a benefit for inter-disciplinary collaboration is obvious; overcoming our often fragmented point of view is a challenge we ought to overcome. For more information, tips or ideas, please contact Gloria at either 612-343-9846 or [Gloria@bwlap.org](mailto:Gloria@bwlap.org).

## *Punto de Vista Latino*

### **El reconocimiento de Paternidad: Derechos Otorga. Ventajas y Desventajas de Firmar este Documento**

#### **1.- Qué es el reconocimiento de paternidad, cuándo y cómo se puede hacer?**

El reconocimiento de paternidad es una declaración que un hombre mayor de 18 años hace en un documento, firmado por él y por la madre, también mayor de 18 años, por la cual declara ser el padre biológico de un niño/a nacido fuera de un matrimonio.

Este no es el único modo en que un padre biológico puede convertirse en padre legítimo, pero sin duda el más económico. Hay casos en que el padre biológico o la madre no quiere o no puede firmar el reconocimiento de paternidad (ya sea por una razón de voluntad o porque es menor de edad.) En este caso ese padre biológico puede ser demandado ante la corte de familia y el juez, previa disposición de los análisis de sangre y pruebas genéticas que corresponda, declarará la paternidad y mandará asentar esa declaración en la oficina del registro público.

En otros casos, cuando el padre y la madre se casan luego del nacimiento del niño/a, ambos pueden firmar una declaración jurada ante notario y entregarla a la oficina del registro del estado. Esta declaración también establece la paternidad, salvo que con anterioridad haya habido otro reconocimiento.

Si un niño/a es nacido de una pareja que está casada, no es necesario este documento o procedimiento judicial. El niño es considerado hijo legítimo de ambos.

En el caso de que una madre casada tenga un hijo/a con un padre biológico que no es su esposo, igualmente puede existir un reconocimiento de paternidad por parte del padre biológico, pero en este caso, para que dicho reconocimiento sea válido, debe ir acompañado por una denegación de paternidad del marido de la madre, por la cual declara que no es padre del niño/a.

En todos los casos, los documentos a los que nos referimos más arriba deben estar notariados.

Normalmente el formulario de reconocimiento de paternidad es facilitado por el hospital donde la madre tuvo al niño/a. Cuando es el hospital el que interviene, generalmente luego de recogerse las firmas de padre y madre ante notario, el hospital se ocupa de la inscripción en el registro.

Si no se firma el reconocimiento en el hospital, igualmente puede firmarse después. El documento en blanco se obtiene en la oficina de manutención del condado, o en la oficina de registro de estado civil o en cualquier centro de maternidad de Minnesota. En este caso, luego de firmado el documento frente a notario público, debe ser enviado a la oficina de registro del estado en:

Minnesota Department of Health  
Office of the State Registrar  
P O Box 9441  
Minneapolis, MN 55440-0441

#### **2.- Derechos que otorga este reconocimiento**

Los derechos que otorga el reconocimiento de paternidad son muchos, aunque no son iguales a los que otorga la adjudicación de la paternidad por parte de un juez.

Para la padre, el reconocimiento de paternidad:

Le permite solicitar ante la corte de familia los derechos de custodia (legal y física) y de visita sobre el niño/a..

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

**Check out BWLAP's**

**Website**

**[www.bwlap.org](http://www.bwlap.org)**

Es importante destacar acá que el reconocimiento de paternidad no confiere de por sí derechos de custodia o de visita sino que abre para el padre la posibilidad o el derecho de acudir a un juez de familia y, en base a dicho reconocimiento, pedir que se le confiera el derecho de custodia y de visita del niño/a.

Esta aclaración es muy importante porque vemos muy a menudo que en las audiencias por órdenes de protección algunos jueces, equivocadamente, confieren a padres que solo han firmado el reconocimiento de paternidad derechos de visita o de custodia.

Si usted se encontrara en un caso como éste, comuníquese inmediatamente con nosotros para que podamos ayudarla a apelar esa decisión judicial errónea.

Le permite poner a su hijo en su seguro médico y dental.

Le permite poner su nombre en el registro de nacimiento del niño/a.

Le da el derecho de ser notificado de cualquier trámite de adopción que se inicie con relación a su hijo.

Para la madre, el reconocimiento de paternidad:

Le da el derecho de solicitar ayuda financiera y manutención al padre del niño/a.

Le da el derecho de obtener información médica acerca del padre, si es que el niño/a lo necesitara.

Para el niño/a:

El reconocimiento de paternidad le da derechos hereditarios sobre los bienes de su padre.

Le da derecho de obtener información médica sobre su padre.

### **3.- Ventajas y Desventajas del Reconocimiento de Paternidad**

No existiendo abuso o violencia doméstica en la pareja, parece a todas luces evidente que firmar el reconocimiento de paternidad, es beneficioso para el niño/a.

Sin embargo, cuando existen antecedentes de abuso o de violencia, la madre debe pensar muy bien antes de decidirse a firmar el reconocimiento de paternidad. Sin su firma el documento no tiene ningún valor, pero su firma junto con la del padre biológico, le da a éste el derecho de solicitar la custodia del niño/a. En otras palabras, si el padre biológico es abusador, la madre, al firmar el reconocimiento de paternidad debe estar consciente que le está poniendo en sus manos un arma muy peligrosa: la posibilidad que en un futuro la chantajee con la pérdida de la custodia de su hijo/a y aún eventualmente con la misma pérdida de custodia si el abusador se decide a solicitarla judicialmente y puede probar, a consideración del juez, que los mejores intereses del niño/a hacen que pase a vivir con él.

Cuando la madre es inmigrante y el padre biológico es un ciudadano o un residente legal permanente, estos peligros se agudizan. Vemos todos los días a abusadores usando la falta de estatus migratorio de la madre en las cortes, para convencer al juez que él debe ser quien tenga la custodia del niño/a ya que mientras él es ciudadano o residente legal permanente (y goza de todos los beneficios que le da ese estatus) la madre en cambio es pobre y además puede ser deportada en cualquier momento.

Si usted tiene dudas al respecto, puede consultarnos llamándonos directamente al 612 343 9846. Con gusto la asesoraremos.

### **Would You Like to Receive *Agents for Change* Via E-mail?**

If so, let us know! We can either e-mail each new addition of *Agents for Change* to you or let you know when the newsletter is posted on our website.

If you are interested in receiving this newsletter in electronic form instead of on paper, send an e-mail to [info@bwlap.org](mailto:info@bwlap.org) and let us know how you would like to receive the newsletter.

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WEBSITE!  
[WWW.BWLAP.ORG](http://WWW.BWLAP.ORG)**

## NEW HOUSING PROVISION IN VAWA 2005

On January 5, 2006, the Violence Against Women Act (VAWA) of 1994 was amended for the third time. This version of VAWA includes a number of ground breaking and life saving additions. Specifically VAWA addressed the housing needs and concerns of domestic violence victims/survivors. In Title VI entitled “Housing Opportunities and Safety for Battered Women and Children”, Congress made a number of specific finding about the intersection between housing and domestic violence. Some of these findings are that 44% of homeless women identified the primary cause of their homelessness as domestic violence. 92% of homeless women have experienced severe physical or sexual abuse at some point in their lives. Domestic violence victims are denied housing or evicted because they are victims of domestic violence. Victims of domestic violence in rural areas have additional barriers and unique situations such as isolation, poverty, lack of transportation, lack of health care, lack of under-insured, confidentiality and a general decrease to access of many resources.

To address these identified problems, Congress enacted Title VI of VAWA. VAWA establishes three new grants, requires Public Housing Authorities to adjust rules and procedures and creates new confidentiality rules for domestic violence programs that use the Homeless Management Information Services (HMIS) database.

*Author’s note: VAWA’s housing amendments provide for protection to domestic violence, dating violence and stalking victims. However, for simplicity I have only used the term domestic violence victims to cover all three categories.*

### New Grants

One of the grants aims is to develop the long-term sustainability and self-sufficiency of adult and youth domestic violence victims who are currently homeless or at risk at becoming homeless through partnerships between domestic violence organizations and homeless or housing service providers. Another grant aims to combat domestic violence in public and assisted housing by funding public housing authorities to establish appropriate housing policies and practices, to increase collaboration with victim services organization and to reduce the number of victims who are evicted or denied housing because they are victims. The last grant actually increase the amount of funding available to transitional housing providers who provide transitional housing to domestic violence victims/survivors.

### Public Housing Authorities

Public Housing Authorities (PHA) are required to complete an annual and 5 year plans detailing many aspects of their housing programs including who is assisted and how the programs will be administered. PHAs are now required to include a statement of their “goals, objectives, policies or programs that ... serve the needs of victims of domestic violence...”. Specifically the PHA’s statement should include how the PHA is helping to end domestic violence, assisting victims in enhancing their safety, and assisting victims in maintaining or obtain housing.

VAWA has also altered the United States Housing Act (42 U.S.C. 1437f and 1437d) as it relates to public housing and Section 8; both project based and scattered site housing.

### What a PHA Cannot Do:

- 1) A PHA cannot deny victims of domestic violence housing if they would otherwise be eligible. Simply being a victim of domestic violence is no longer a reason for the PHA or a Section 8 landlord to deny housing to someone.
- 2) An incident of actual or threatened domestic violence does not qualify as a serious or repeated violation of a PHA lease and is not good cause for terminating assistance, tenancy, or occupancy rights of the victim.
- 3) Criminal activity directly relating to domestic violence does not constitute grounds for termination of a tenancy. This includes actions committed by a member of the tenant’s household, any guest, or other person deemed in the tenant’s control.

4) A PHA cannot hold a domestic violence victim to a higher standard than other tenants.

### **What a PHA Can Do:**

- 1) A PHA can require documentation to show the tenant is a victim of domestic violence.
- 2) Information provided to the PHA must be kept confidential and the information cannot be entered into a shared data base or given to any related entity.
- 2) A PHA must honor OFPs and other family court orders that address the right to access or control of the home.
- 3) A PHA can bifurcate the lease to remove, evict or terminate assistance to the abuser without removing, evicting or terminating the victim.
- 4) Allow a domestic violence victim with a Section 8 voucher to move to another jurisdiction to protect the health and safety of the victim and her family, as long as the family is otherwise in compliance with the program. The victim is allowed to change jurisdictions even if moving would otherwise be a lease violation.

### **Notification**

The PHA must notify current and future residence of these new rights. The PHA is also required to include these new rules and policies in their 5 year plan, leases, housing assistance payment contracts and project-based Section 8 contracts.

### **What you need to do**

It has come to my attention that many PHAs are unaware of VAWA and the changes in the law. However we can all help our local PHA to understand the new changes and help them in incorporating the new language needed in their 5 year plans.

- 1) Contact your local PHA to obtain their current and/or draft 5 year plan.
  - Ask when the next draft plan will be available.
  - Ask when the next opportunity for public comment will be.
- 2) Read the plan.
  - Does the plan include a statement about the activities/services or programs the PHA is providing to domestic violence victims or providing to prevent domestic violence or providing to help domestic violence victims obtain or maintain housing.
  - Has the PHA incorporated policies and rules regarding evictions and leases, including bifurcation?
  - Policies about portability of vouchers?
  - Created a notification process about tenants' new rights?
- 3) Contact your local PHA and schedule a meeting to discuss the new rules and policies implemented by VAWA.
  - Let your PHA know that you are willing to help in drafting language. (BWLAP is currently working with Central Minnesota Legal Services and Mid-Minnesota Legal Assistance to create draft language. Contact Rana for more information at 612-343-9844.)

This is a great opportunity for local programs to partner with their local PHA to create policies that protect our clients, to put domestic violence on the PHA's radar (if it is not already) and allow for our clients to obtain and maintain safe, affordable housing.

## **A Call for Pro/Low Bono Attorneys**

BWLAP is calling for pro/low bono attorneys to represent battered women throughout the State. If you are an attorney and interested in helping battered women in a variety of legal situations, please e-mail us at [info@bwlap.org](mailto:info@bwlap.org) and let us know. If you are an organization that has a list of attorneys who will represent battered women in either a pro or low bono way, let us know. Through pro/low bono attorneys, we can make sure that all battered women receive the representation that they need and deserve.

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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.

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## Cell Phone Donations

BWLAP is still collecting old cell phones . 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, no matter the condition. 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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