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THE CIVIL PROTECTION ORDER AS A TOOL FOR ECONOMIC JUSTICE

By Erika A. Sussman

What would civil protection order advocacy “look like” if we were to place economic justice at the center of our thinking?

Civil protection orders provide survivors of domestic violence with a tool for accessing safety and economic justice. Unlike criminal justice remedies, for which the state wields control over initiation and pursuit of the case, civil protection orders were intended to provide battered women with control over whether and how to initiate the case, the specific relief requested, and enforcement of the relief. Civil protection orders are injunctive in nature, and include provisions that order perpetrators of domestic violence to refrain from or engage in certain proscribed acts for a period of time. Though greatly underutilized, civil protection order codes include provisions that enable survivors to pursue economic relief, including access to material resources. The statutory intent of civil protection order statutes is, simply put, safety. Virtually every state protection order statute emerged from legislative history or contains comments that indicate a legislative purpose to promote future safety or prevent violence.¹

¹ See, e.g., ALA. CODE § 30-5-1(b) (“This chapter shall be liberally construed and applied . . . (1) to assure victims of domestic violence the maximum protection from abuse that the law can provide.”); ARK. CODE ANN. § 9-15-101 (“The purpose of this chapter is to provide an adequate mechanism whereby the State of Arkansas can protect the general health, welfare, and safety of its citizens by intervening when abuse of a member of a household by another member of a household occurs or is threatened to occur, thus preventing further violence.”); CAL. FAM. CODE §6220 (“the purposes of this division are to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence”); COLO. REV. STAT. § 13-14-102(1) (“protection orders are of paramount importance. . . because protection orders promote safety, reduce violence, and prevent serious harm and death”); IDAHO CODE § 39-6302 (“It is the intent of the legislature to expand the ability of the courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent such further incidents of abuse.”); 750 ILL. COMP. STAT. 60/102 (“This Act shall be liberally construed and applied to promote its underlying purposes, which are to . . . (4) support the efforts of victims of domestic violence to avoid further abuse . . . so that victims are not trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services”); IND. CODE § 34-26-5-1

Safety for survivors of domestic violence requires economic security. Domestic violence impoverishes battered women and exposes them to increased risks of violence.² Survivors may incur direct economic harms resulting from the abuse, including medical damages, property destruction, theft, and lost wages.³ Survivors may also incur enormous preventive costs in an attempt to minimize the abuser's access to them and to establish a free and independent life. Such costs of future safety may include housing, health insurance, childcare, transportation, clothing, utilities, and tuition.⁴ Indeed, access to economic resources is the most likely predictor of whether a survivor will be able to permanently separate from her abuser.⁵

Thus, in order for civil protection order statutes to achieve their legislative mandate, courts must honor requests for economic justice. Specific statutory provisions offer direct authority for obtaining economic relief, while “catch all” provisions offer expansive, creative mechanisms for obtaining monetary payments or access to resources required for short and long-term economic security. If guided by strategies that balance both physical and economic safety risks, civil protection orders may offer tools that restore survivors for past economic damages and provide prospective relief necessary for future safety and independence.

This article urges attorneys and advocates for survivors to consider using civil protection orders as a tool for accessing economic justice. Section I sets forth the landscape of economic relief in civil protection order statutes. Section II of this article offers practical advocacy strategies for the issuance and enforcement of civil protection order economic relief provisions.

I. The Landscape of Economic Relief in Protection Order Statutes

Advocates for battered women should be aware of their state's civil protection order statute's economic relief provisions. There are several common categories of relief that are specifically provided for by state civil protection order statutes. At the same time, general “catch all” provisions offer a mechanism for accessing economic relief that is not specifically prescribed.

A. Specific Types of Economic Relief Available

Most civil protection order statutes include specific provisions that provide direct authority for orders of monetary payment, access to material resources, or injunctive relief designed to facilitate the survivors' economic well-being. Below are some common examples:

1. Restitution for Medical Expenses, Property Damages, and Other Compensatory Losses

Many state civil protection order statutes enable courts to grant restitution for costs stemming directly from the respondent's abuse of the survivor. Many state civil protection order statutes specifically authorize payment and/or reimbursement for medical costs resulting from the abuse. Medical expenses may be physical or psychological in nature, and they may include an emergency hospital visit as well as follow-up medical visits related to the abuse. Similarly, courts in many states are authorized to award reimbursement and/or payment for property damages resulting from the respondent's abuse. Frequently, statutes authorize a list of compensatory losses, including attorneys fees, shelter, and lost wages.⁶

2. Housing Access and Payments

Survivors of domestic violence cite the need for housing as a substantial obstacle to their safety.⁷ Civil protection order statutes provide housing access in a variety of different ways.⁸

Many protection order statutes specifically authorize orders to vacate a previously shared residence. Several states enable courts to issue vacate orders regardless of ownership of the residence. For example, the Alaska statute authorizes the court to “remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence.”⁹ Other statutes limit the scope of “vacate provisions” to circumstances in which the property is jointly owned, leased or rented. For example, the District of Columbia statute authorizes the court to order the abuser to vacate the residence if the residence is “marital property; jointly owned, leased, or rented; or Petitioner individually owns, leases or rents.”¹⁰ Still other statutes limit “vacate orders” to circumstances in which the survivor individually owns, leases, or rents the previously shared residence.¹¹

(“This chapter shall be construed to promote the (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and (2) prevention of future domestic and family violence”).

² See Martha F. Davis, *The Economics of Abuse: How Violence Perpetuates Women's Poverty*, in *BATTERED WOMEN, CHILDREN AND WELFARE REFORM: THE TIES THAT BIND* (Ruth A. Brandwein ed., Sage Series on Violence Against Women 1999).

³ See LAWRENCE A. GREENFIELD ET AL., U.S. DEPT. OF JUSTICE, *VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS* 21 (1998); TED R. MILLER ET AL., U.S. DEPT. OF JUSTICE, *VICTIM COSTS AND CONSEQUENCES: A NEW LOOK* (1996); Barbara J. Hart, *Legal Road to Freedom*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 18 (Marsali Hansen et al. eds., 1993).

⁴ See Barbara J. Hart & Erika A. Sussman, *Civil Tort Suits and Economic Justice for Battered Women*, 4(3) *THE VICTIM ADVOCATE*, at 3-4 (Spring 2004).

⁵ See EDWARD GONDOLF & ELLEN R. FISCHER, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* 95 (1988).

⁶ See, e.g., DEL. CODE ANN. TIT. 10, §1045(a)(7) (“compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental, and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney's fees”).

⁷ See Violence Against Women Act of 2005, sec. 601; U.S. Conference of Mayors/Sodexo Survey on Hunger and Homelessness, 2005.

⁸ Indeed, the District of Columbia Court of Appeals affirmed the courts' power to order abusers to vacate their home in *Robinson v. Robinson*, 886 A.2d 78 (DC Ct. App. 2005). Finding it inadequate for the respondent to vacate the marital home but live right next door, the court held that the broad remedial purposes of the civil protection order act allowed “safety concerns to trump property rights.” *Id.* at 86.

⁹ ALASKA STAT. § 18.66.100(3).

¹⁰ D.C. CODE ANN. § 16-1005(c)(4).

¹¹ See, e.g. KAN. STAT. ANN. § 60-3107(d) ; MD. CODE ANN., FAM. LAW § 4-506(d)(4) ; N.H. REV. STAT. ANN. § 173-B:5 ; OHIO REV. CODE ANN. § 3113.31(E)(1)(b).

An order to vacate a residence may not offer adequate assistance if a survivor lacks the monetary resources to pay for the rent or mortgage. Therefore, many state statutes explicitly direct the abuser to make rent or mortgage payments.¹² Other statutory provisions order the abuser to provide “suitable alternative housing” to the victim and her children.¹³ Protection order statutes may condition these types of relief upon marital status or having a child-in-common (i.e, a duty to support). For example, Missouri’s protection order statute provides explicit authority for the court to order the respondent to “pay the petitioner’s rent at a residence other than the one previously shared by the parties if the Respondent is found to have a duty to support. . . and the petitioner requests alternative housing.”¹⁴ However, many statutes do not require a “duty to support,” other than that stemming from the economic justice needs related to the abuse.

3. Property Use, Transfer, and Protection

Civil protection orders in many states contain specific provisions that grant the survivor the temporary use of a vehicle or other personal property. For example, Georgia’s civil protection order statute enables the court to “provide for possession of personal property of the parties.”¹⁵ Statutes may condition temporary possession of a vehicle upon ownership or alternative means of transportation. For example, the Alabama protection order statute allows the court to grant temporary possession of a vehicle “if the plaintiff has no other means of transportation of his or her own and the defendant either has control of more than one vehicle or has alternate means of transportation.”¹⁶ In contrast, Alaska specifically authorizes a protection order that grants the survivor “possession and use of a vehicle and other essential personal items, regardless of ownership of the items.”¹⁷

Some statutory provisions aim to protect property from damage or misappropriation by the abusive partner. For example, the Illinois statute authorizes an order that “forbids the respondent from taking, transferring, encumbering, concealing, damaging, or otherwise disposing of any real or personal property.”¹⁸

Many state statutes provide for the exchange of personal property between the parties. Several include provisions that order the police to accompany the victim or the abuser to retrieve his or her belongings from a shared residence.¹⁹ By explicitly addressing the details of the exchange in the order-- identifying specific items, the date, time, and method of transfer-- courts are able to assist battered women in ensuring that the property transfer actually takes place and that it occurs without further incident.

¹² See, e.g., IND. CODE § 34-26-5-9(c)(3)(b); NEV. REV. STAT § 33.030(2)(b)(2).

¹³ See, e.g., 23 PA. CONS. STAT. § 6108(a)(2).

¹⁴ MO. REV. STAT. § 455.050.

¹⁵ GA. CODE ANN. § 19-13-4(8).

¹⁶ ALA. CODE § 30-5-7(d)(6).

¹⁷ ALASKA STAT §18.66.100 (B)(10).

¹⁸ ILL. COMP. STAT. § 5/112A-14(11).

¹⁹ See, e.g., KAN. STAT. ANN. § 60-3107(8) (“making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary”); OR. REV. STAT. §107.718 (1)(d) (“that a peace officer accompany the party who is leaving or has left the parties’ residence to remove essential personal effects of the party”).

4. Liens, Debts Due, and Other Economic Burdens

Many civil protection order statutes offer an opportunity to address routine financial obligations that continue throughout the duration of the protection order. For example, California authorizes “the payment of any liens or encumbrances coming due during the period the order is in effect.”²⁰ Minnesota specifically grants “the continuance of all currently available insurance coverage without change in coverage or beneficiary designation.”²¹

5. Support Payments

The majority of state protection order statutes offer specific authority for ordering the abuser to pay temporary child support for children-in-common or to pay temporary spousal support where the parties are married. For example, the Pennsylvania statute allows an order “directing the defendant to pay financial support to those persons the defendant has a duty to support.”²² The New Jersey statute provides that “compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support.”²³ A New Jersey court recognized the connection between domestic violence and the need for support in *Mugan v. Mugan*, where it held “when a defendant’s violent acts result in his removal from the marital residence and bar contact with his wife, this may well cause the loss to her of the funds necessary to maintain herself and the house. Such consequences are as direct as removal.”²⁴ The *Mugan* court added a policy justification for the provision of support, stating that survivors of domestic violence should not be discouraged from attempting to separate from their abusers by a threat of financial distress.²⁵

6. Stay Away and No Contact Provisions

Virtually every state civil protection order statute contains “stay away” and “no contact” provisions. Though typically associated with physical protection from abuse, “stay away” and “no contact” orders also can have a direct impact on a survivor’s economic security. For example, an order to stay away from a survivor’s place of employment may mean the difference between employment and unemployment.²⁶ An abuser who stalks a survivor at work may cause her to lose her job—due to an employer’s unlawful decision to fire her or due to the survivor’s fear of abuse and resulting inability to go to her workplace. Similarly, stay away orders restricting the abuser from the survivor’s home may enable her to remain in her home, and thus avoid the costs of relocation, or may prevent eviction based upon the abuser’s conduct, which, though generally unlawful, is

²⁰ CAL. FAMILY CODE § 6324.

²¹ MINN. STAT. § 518B.01(6)(11).

²² 23 PA. CONS. STAT. § 6108.

²³ N.J. STAT. ANN. §2C:25-29(4).

²⁴ 555 A.2d 2, 3 (N.J. Super Ct. App. Div. 1989).

²⁵ *Id.*; See also, Powell v. Powell, 547 A.2d 973 (1988) (holding that the catch-all provision of the District of Columbia civil protection order statute authorized an award of child support).

²⁶ See generally, Wendy R. Weiser and Deborah A. Widiss, *Employment Protection for Domestic Violence Victims*, CLEARINGHOUSE REV., 3-11 (May–June 2004).

commonly faced by survivors of domestic violence.²⁷ Simply put, stay away and no contact provisions offer a means of restricting the abuser's ability to inflict substantial economic costs in the future.

7. Punitive Damages and Compensation for Pain and Suffering

The New Jersey protection order statute offers extraordinarily comprehensive economic relief for survivors of domestic violence. In addition to a wide array of financial measures found in various other state civil protection order statutes, the New Jersey statute specifically authorizes "compensation for pain and suffering" and "where appropriate, punitive damages."²⁸ In *Sielski v. Sielski*, the court awarded \$6,000 in punitive damages to the survivor, after the court found that the abuser had acted viciously and sadistically when he yanked her out of bed by her hair, slapped her about the face and neck, attempted to push her face in the toilet, yanked at her pubic hair, threw cold water at her, violently broke a lamp and cut the phone connection so that the plaintiff could not summon assistance.²⁹ The court held "it cannot be argued that torture such as reported here is not an evil-minded act warranting both the protection of the Prevention of Domestic Violence Act of 1990 and punitive damages."³⁰ Thus, the New Jersey court held that punitive damages were warranted where the respondent perpetrated cruel acts of domestic violence.

B. Catch-All Relief Provisions

Catch-all provisions enable survivors to recoup economic damages that resulted from the batterer's violence and/or that cover the costs of future safety and independent living. The specific language of catch-all provisions varies from state to state, but is consistently equitable in nature.³¹ Courts have interpreted statutory catch-all provisions to authorize creative and particularized remedies that are needed to prevent future abuse. In its Civil Protection Order Study, the National Institute of Justice found that the majority of jurisdictions "explicitly grant judges the latitude to grant any constitutionally defensible relief that is warranted."³²

Moreover, appellate case law supports the use of catch all provisions for awards of monetary relief. In *Powell v. Powell*, the District of Columbia Court of Appeals held that the court had the authority to grant monetary relief in a civil protection order proceeding, even though such relief was not specifically provided

for in the civil protection order statute.³³ The DC statute's catch-all provision enabled the court to award relief "appropriate to the effective resolution of the matter."³⁴ The survivor argued that, because her financial dependency on her husband was a major factor in the perpetuation of violence in the family, the only effective means of stopping the abuse and protecting her in the future was for the abuser to vacate the home and make it financially and physically secure. The court looked to the legislative history of the domestic violence statute and concluded that the statute was to be read expansively.³⁵ In light of that expansive reading and remedial purpose, the court held that the intent of the catch-all provision was to enable courts to grant individualized solutions, tailored to meet the safety needs of each case.³⁶

Thus, advocates for survivors should use catch-all provisions creatively and opportunistically in order to access monetary payments and resources specifically tailored to meet the individual safety and restoration needs of survivors.

II. Practical Strategies for Accessing Economic Relief

Despite the clear link between economic security and safety, judges are often reluctant to grant economic relief in civil protection orders. Therefore, advocates for survivors must carefully assess, advocate, and fully litigate the economic issues before the court.

A. Intake and Assessment

Advocates for survivors should consider economic security at the initial stages of the civil protection order process. They can explore the universe of potential economic relief in two steps: First, identify the prior economic harms. Consider each individual instance of physical and sexual violence in order to identify the direct economic damages including property damage, medical damages, lost wages, etc. Also consider the economic abuses perpetrated against the survivor, including identity theft, stolen money, credit card fraud, etc. Second, consider the costs of future safety. Brainstorm relief tailored to meet the cost of safe and independent living, including things like housing, transportation, child care, health care, food, clothing, tuition, etc. Advocates will need to demonstrate that these future costs are critical to her safety, and are therefore required to meet the statutory purpose of the civil protection order.

In light of the potential economic protection order relief, advocates and survivors should consider how likely the abuser is to pay monetary relief or provide the material resources ordered by the court. Does the abuser have the income, assets, or other resources to pay or satisfy the sought after relief?³⁷ How can the economic wherewithal of the abuser be most quickly and fully accessed? Given those possibilities and constraints, what

²⁷ See generally, Wendy R. Weiser and Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, CLEARINGHOUSE REV., 708-718 (March-April 2002).

²⁸ N.J. STAT. ANN. § 2C:25-29(b)(4).

²⁹ *Sielski v. Sielski*, 604 A.2d 206, 207 (N.J. Super. Ct. Ch. Div. 1992).

³⁰ *Id.* at 210.

³¹ See, e.g., D.C. CODE ANN. § 16-1005(c)(10) ("directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter"); N.C. CODE § 50B-3(a)(13) ("include any additional prohibitions or requirements the court deems necessary to protect any party of any minor child"); 23 PA. CONS. STAT. § 6108(a)(10) ("granting any other appropriate relief sought by the plaintiff").

³² Peter Finn and Sarah Colson, National Inst. of Justice, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* 33 (1990).

³³ See *Powell*, 547 A.2d 973.

³⁴ D.C. CODE ANN. § 16-1005(c)(10).

³⁵ See *Powell*, 547 A.2d at 974-75.

³⁶ See *id.*

³⁷ Note that "inability to perform" is a defense to a civil contempt action. See *Smith v. Smith*, 427 A.2d 928, 932 (D.C. 1981). This is discussed below in the section related to Civil Contempt Actions.

specific terms are most likely to result in payment in this case? At the same time, advocates should work with survivors to consider how receipt of economic relief in protection order proceedings might impact eligibility for other economic resources including public benefits and victims' compensation funds. Lawyers should examine the *res judicata* impact that civil protection order litigation may have on subsequent cases (e.g., family law, tort, personal injury) to determine which legal course of action is most advantageous.

The decision to pursue economic relief must be grounded in the survivor's own risk assessment.³⁸ Advocates should work with survivors to explore various economic options that might address prior harms and future economic costs. While the civil protection order may provide powerful tools for economic justice, such requests have the potential to trigger retaliatory violence by the abuser against the survivor.³⁹ Therefore, assessment must engage the survivor in carefully considering how economic orders are likely to impact her safety. Both economic risks and physical safety risks must be analyzed, with an eye toward crafting solutions that provide access to economic security while minimizing safety risks. In some instances, survivors may decide that the risk of physical abuse or retaliation (or the risk of accessing the justice system) outweighs the potential economic benefit, or that other options outside of the protection order system involve a lower risk of retaliatory abuse. Only the survivor can determine whether and what type of economic relief is desirable in her particular circumstance.

B. Strategies to Promote Safety

The desirability of a request for economic relief will depend entirely upon a survivor's own assessment. That said, the following are strategies that may (or may not) minimize the risks for physical harm:

Survivors may feel that bifurcating the civil protection order proceeding – separating the liability phase from the damages phase of the case – will minimize risk, keeping the court's order of a particular payment plan for a later date.

A survivor may wish to include payment methods that minimize contact with herself and her children or other family members. She might consider requesting that the court order the abuser to send his payments to the court, or that the court withhold monetary payments from his wages as is often done with child support awards.

Survivors may wish to request that the court order monetary payments in installments, as opposed to one lump sum.

³⁸ See generally, JILL DAVIES, SAFETY PLANNING WITH BATTERED WOMEN: COMPLEX LIVES/DIFFICULT CHOICES (1998).

³⁹ See Desmond Ellis & Walter S. DeKeseredy, *Marital Status and Woman Abuse: The DAD Model*, 19 INT'L J. OF SOCIOLOGY OF THE FAMILY 67-87 (1989) (finding that "post separation abuse" correlates with women's assertion of independence); JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 80-81 (Claire Renzetti, ed., Northeastern University Press 1999) (finding that eighty percent of women interviewed indicated that their partners made threats or attempts at physically forcing them to return to the relationship).

Such smaller amounts may seem less threatening to an abuser and may therefore be less likely to spur retaliation.

A survivor may decide to pursue some types of economic relief, based upon her knowledge of the batterer, while refraining from seeking others. Advocates can assist survivors in this complex strategizing by offering alternative sources of economic relief to compliment those forms of economic relief that she obtains through the civil protection order process (e.g. victims compensation funds).

C. Strategies to Promote Enforceability

As with all civil protection order provisions, economic relief provisions should be crafted with specificity with regard to the method and amount of payment in order to maximize the likelihood of enforceability. Advocates should request that the court include specific details about the property to be exchanged, the prohibited or required actions of the abuser and/or the monetary amounts, the dates on which monetary payments are to be paid or actions to be carried out, and the specific methods for doing so. Smaller installments (as opposed to one lump sum) should be requested where the amount is more than the abuser's income and assets can bear. For items that are non-monetary in nature, such as property, advocates should ask the court to include in its order a list and description of the various items to avoid future dispute.

D. Strategies to Access Relief When the Damages Amount is Unknown

Because civil protection order hearings are expedited proceedings, survivors often do not know the cost of economic damages at the time of the hearing. For example, a survivor who sought medical treatment may not have received the bill specifying the amount at the time of the hearing. Such timing issues need not preclude survivors from pursuing economic justice for their losses. Under these circumstances, the survivor can ask the court to litigate liability (i.e., whether the abuser is liable), but leave the amount of damages for a status hearing at a later date. The survivor may request that the court order the respondent to appear at a status hearing specifying the date and time within the civil protection order itself. Then, at the status hearing, the survivor can present the proper evidence and the court can order the amount and specific method of payment at that time.

Alternatively, if the court is unwilling to set a status hearing date or if the survivor wishes to avoid having to appear for future hearing dates, an advocate may request that the court order the abuser to pay the medical bills once they become available. Typically, the survivor or her advocate will need to forward the bills to the abuser. Note that such a strategy, though necessary under certain circumstances, is open to manipulation by the abuser and is more difficult to enforce than a specific amount of damages ordered by the court.

If the survivor discovers an economic injury that was unknown at the time of the initial hearing (e.g., medical conditions subsequently discovered), or if the damages are more extensive than prescribed by the original order (e.g., follow-up

medical visits are required), the survivor may file a motion to modify the civil protection order, arguing that the newly discovered damages constitute “good cause” or a “change in circumstances” that justify a modification.⁴⁰

E. Proving Up the Case

Even sympathetic judges who wish to read their protection order statutes broadly and award remedial economic relief cannot do so unless advocates present the courts with the evidence and legal arguments to do so.

1. Physical Evidence

a) Evidence of Liability: Advocates should, where possible, present the court with physical evidence of economic harms. Evidence of economic harms resulting from physical abuse might include photos of physical injuries or property damage, destroyed clothing, broken furniture, and medical records. Evidence of harms resulting from economic abuse might include forged checks, credit card bills, or credit reports.

b) Evidence of Damages Amount: After proving liability, advocates for survivors need to offer evidence to prove the amount of damages for which the abuser is liable. Evidence of the costs of prior economic harms might include medical bills, receipts for property purchases, or repair receipts. Evidence of the costs of future safety might include a residential lease, a childcare bill, an automobile lease or monthly bus pass, or a utility bill.

2. Testimonial Evidence

Survivors must present testimony in court to illustrate the *nexus* between the violence and the need for economic relief. While judges may readily see the need for a stay away or no contact order, they may need some assistance in understanding how economic relief is critical to this survivor’s short and long-term safety. The survivor may be best positioned to articulate the need for economic relief in her life, through her testimony. For example, in a case seeking reimbursement for damage to work clothes, a survivor might testify, “Without replacement of my suit, I cannot go on a job interview and will not be able to provide a safe home for myself and my child.” Or, “Without monthly rental payments, I will not be able to remain in my apartment and my children and I will be homeless.” Or, “My boyfriend has terrorized me and my daughter with his abuse for the past five years. I need the court to order financial relief to provide us with the resources to remain separate from him and to live free of his violence.” Testimony should be specific, not only about the need for the relief, but also about how the particular request—amount, timing, method of payment or access—are tailored to meet this survivor’s individual economic and physical safety needs.

⁴⁰ Most jurisdictions require that one of these two standards be met prior to issuing a modification or extension of a civil protection order. See e.g., D.C. CODE ANN. § 16-1005(d) (“modify the order for good cause shown”); MO. REV. STAT. § 455.060(1) (“showing a change in circumstances sufficient to warrant the modification”).

F. Arguments

As stated above, the overarching aim in arguing for economic relief is to articulate the *nexus* between the economic relief requested and the legislative purpose of the civil protection order statute—safety. To illustrate that connection, advocates must educate judges on the importance of economic independence for survivors in general and demonstrate how economic relief will impact this survivor’s life in particular. Below are some pointers for advocates arguing for economic relief in civil protection orders:

- If your state civil protection order statute contains explicit provisions that specifically authorize the type of economic relief sought, rely upon that statutory provision.
- Use catch-all provisions where the statute does not specifically provide for the relief requested. See above for the *Powell* court’s holding that a catch-all provision authorized the court to award monetary payments in civil protection order hearings.⁴¹
- Cite to the legislative history and purpose of the statute to support requests for liberal relief individually tailored to prevent future violence and achieve safety. For example, in *Powell*, the D.C. Court of Appeals cited to legislative amendments intending to achieve an expansive reading of the Act.⁴² Subsequently, in *Cruz-Foster v. Foster* the D.C. court held that “[t]he paramount consideration concerning this legislation is that it is remedial,” and the Act must be liberally construed in furtherance of its remedial purpose.⁴³ Advocates can draw upon their state’s legislative history and case law interpreting that history to support their arguments for economic relief.
- Argue that *short-term* economic relief is essential. Many courts are reluctant to offer economic relief, because they believe that such relief can more properly be obtained in family law proceedings or through tort actions. Thus, advocates should explain how immediate economic relief is essential to the survivor’s short-term safety. Without it, she may not be able to separate or to remain separated from the abuser. Such a result would be at odds with the goal of the civil protection order statute. Moreover, in instances where the survivor and the abuser are not married, the civil protection order case may be the only venue for economic justice.
- Request that the court include specificity in its award of economic relief, in order to enhance enforcement.
- Explain how the particular requests—amounts, items, timing, and method—“make sense” in light of the survivor’s larger safety plan.

⁴¹ See *Powell*, 547 A.2d 973.

⁴² *Id.*

⁴³ *Cruz-Foster v. Foster*, 597 A.2d 927, 929 (D.C. Ct. App. 1991) (citing *United States v. Harrison*, 149 U.S. App.D.C. 123, 124-125, 461 F.2d 1209, 1210-11(1972)).

- Submit a trial memo that outlines the above and that provides the court with authority – statutory law, case law, and social science related to economic requirements for survivor safety—to support the court’s award.
- To make the record, in the event of an appeal, request that the court make written findings of economic harm and articulate the legal basis for awarding economic relief.

G. Enforcement Advocacy

Civil protection orders are not self-implementing. Obtaining the court’s order is only part of the process. For civil protection orders (or any order) to be effective following their issuance, advocates and survivors must take various steps to facilitate the abuser’s compliance.

1. Third Parties

Survivors should consider whether to enlist third parties as allies in the enforcement of the economic terms of a protection order.

Example: Imagine a protection order that directs the abuser to re-pay the survivor for \$1,000 worth of credit card debt which he incurred as an authorized user on her card. A survivor or her advocate might use the civil protection order as a tool for advocating with the credit card company to either waive the debt or develop a lenient payment plan that coincides with the terms of the protection order.

Example: Imagine a protection order that directs the abuser to stay away from her place of employment. Provided that she feels safe in doing so, a survivor might share a copy of her protection order with her employer so that he/she can aid in enforcing that stay away provision in the event that the abuser appears at the workplace.

2. The Abuser

Advocates for survivors should consider taking various steps to enforce the economic terms of protection orders. If the abuser fails to make a payment, her attorney might write a letter to the abuser or (if he is represented) to his attorney to remind him of the specific terms of the court order and to document his non-compliance.

3. Civil Contempt Proceedings

When an abuser fails to comply with the economic relief provisions of a civil protection order, a survivor may choose to file a civil contempt action against him.⁴⁴ While criminal contempt actions punish the violator for past disobedience, civil contempt actions are intended to encourage compliance with the order and will generally be more efficacious where economic relief is needed.⁴⁵ Survivors will need to present evidence of the abuser’s knowledge of the order as well as evidence of the

abuser’s non-compliance.⁴⁶ In instances where monetary payments were to be directed to the courthouse, the survivor might provide official copies from the court financial office to prove his failure to pay. Similarly, where payments were to be made directly to a creditor, the survivor might offer an official business record from that institution to prove non-payment. Also, advocates should be prepared to respond to the abuser’s justifications or defenses for non-compliance, based upon an “inability to pay.”⁴⁷ Employer statements, tax returns, and other documentary evidence of the batterer’s income and assets can be used to rebut such arguments.

There is no safety without economic justice. Economic security is vital to the short and long term safety of survivors. If advocates are to address the needs of survivors, we must expand our definitions of safety to include economic security. Civil protection order statutes are intended to provide survivors with a mechanism that meets their particular safety needs. As our definitions of safety expand to include economic justice, so too must our vision of civil protection orders. We must engage survivors in creatively brainstorming and assessing the economic protection order possibilities. By employing expansive thinking and integrating physical and economic risks, advocates can assist battered women in accessing economic relief in civil protection orders in a manner that more fully achieves the statutory purpose and more comprehensively meets survivors’ needs. ☞

THE IMPACT OF THE NEW BANKRUPTCY CODE ON DOMESTIC VIOLENCE CLIENTS

By Christine Zellar Church

Advocates understand that abusers use finances to exercise power and control over their partners. Advocates also understand that when a client leaves her abuser, financial woes and worries can compel a survivor to return to the abuser.¹ Basic bankruptcy knowledge, and knowledge about how bankruptcy can help a client save her home, her car, stop a garnishment or simply liquidate debt can make a huge difference in the client’s financial future. Basic bankruptcy knowledge also helps advocates understand how to structure financial provisions in orders and decrees to prevent abusers from subsequently undermining the decree (and continuing to use economic power over the client) by filing for bankruptcy protection.

This article does not seek to make advocates bankruptcy experts, or even practitioners, nor is it a comprehensive review of current bankruptcy law and practice. Rather it is to help the civil legal assistance attorney recognize when bankruptcy can help the

⁴⁶ See, e.g., *D.D. v. M.T.*, 550 A.2d 37, 43 (D.C. App. 1988); Unlike criminal contempt actions, evidence of the contemnor’s intent is irrelevant to a finding of civil contempt. See *Bolden v. Bolden*, 376 A.2d 430, 432-33 (D.C. App. 1977) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949)).

⁴⁷ Defenses to civil contempt include: inability to pay and substantial compliance. See *D.D.*, 550 A.2d at 43; *Smith v. Smith*, 427 A.2d 928, 932 (D.C. 1989).

¹ Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 52 (1994) (explaining monetary dependence as external factor in preventing woman from leaving abusive relationship); See *State v. Felton*, 329 N.W.2d 161, 163 (Wis. 1983) (recounting that the defendant testified that she returned to her abusive husband because she was experiencing financial problems); Lisae C. Jordan, *Secure Safety First*, 27 FAM. ADVOC. 10, Spring 2005.

⁴⁴ See, *Domestic Violence Practice and Procedure*, at § 4:35.

⁴⁵ See, e.g., D.C. CODE ANN. § 16-115(f).