

# Domestic Violence Review



Office of the State Courts Administrator  
Office of Court Improvement

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### Helpful Web Resources

- [Family Courts](#)
- [DV Benchbook](#)
- [DV Strategic Plan](#)
- [Petitioner Brochures](#)
- [Respondent Brochures](#)
- [DV Civil Injunction Survey Report](#)
- [DV Resources for Court Staff](#)
- [DV Case Management Guidelines](#)
- [Best Practices: Child Support in DV cases](#)
- [Dating Violence Checklist](#)
- [Repeat Violence Checklist](#)
- [Sexual Violence Checklist](#)
- [DV Checklist](#)
- [DV Court Action Plan](#)
- [DV Assessment Final Report](#)

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### *Virtual Court Available for Continuing Education Credits*

The Virtual Court program offers Florida's domestic violence stakeholders an opportunity to learn about domestic violence proceedings and see the case through the judge's eyes. The program allows the user to act as judge in a domestic violence simulation. The case is fictitious, but the questions are real questions that judges must grapple with every day. Learn the laws that guide judges' actions during domestic violence proceedings with our engaging, interactive online program. The program can be accessed at: <http://virtualcourt.flcourts.org>.

The Virtual Court program is approved for up to 1.50 non-conference Domestic Violence CJE credit hours. Judges may apply for Continuing Judicial Education (CJE) credit by emailing a request to [CJEMail@flcourts.org](mailto:CJEMail@flcourts.org) or writing to: Court Education Division, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, Florida 32399-1900 (Attention: CJE Credit). Judges who have completed the program but have not yet requested a certificate of completion may do so by sending an email request to [vcsupport@flcourts.org](mailto:vcsupport@flcourts.org).

The Florida Bar has approved 2.00 hours of general Continuing Legal Education (CLE) credit (including 1.50 hours of Marital and Family Law Certification credit) for the completion of this training module. Individuals are required to post their CLE activity on the Florida Bar website, [www.floridabar.org](http://www.floridabar.org), to receive credit. Please refer to course #19141.

Completion of the Domestic Violence Virtual Court training module can count as 2.0 hours of Domestic Violence Continuing Mediator Education (CME) credit. Individuals are required to keep the information pertaining to the completed virtual court course during the two-year cycle. Individuals will then report the information on the CME Reporting Form included in the renewal packet at the time of renewal, not when the credit is earned. The CME Reporting Form is also available on the Dispute Resolution Center's [website](#).

### *News from the Office of Court Improvement*

**The 2012 Domestic Violence Benchbook** -- The Office of Court Improvement has released the newly updated 2012 Domestic Violence Benchbook. In addition to the checklists, guides, and legal outlines found in the current benchbook, the 2012 benchbook includes updated cases and in-depth information on current issues the courts may encounter. The updated version is available in hard copy format by contacting the Office of Court Improvement, and will be made available electronically in the near future.

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### Domestic Violence Publications

The OCI is proud to announce a number of new DV publications, available online at [www.flcourts.org](http://www.flcourts.org). The first of these new publications is a checklist devoted to the newly developed Injunction for Protection Against Stalking. This checklist walks the reader through the Stalking hearing process, and discusses important issues that are addressed using the Stalking injunction. The other new publication is an Elder Abuse Benchcard. This publication provides focused, specific information about the elder abuse problem in Florida. These publications are available on the OCI website, at [www.flcourts.org](http://www.flcourts.org).

### *Upcoming Projects and Events*

- **FLORIDA FAMILY AND CONCILIATION COURTS CONFERENCE** The Office of Court Improvement, in conjunction with the Florida Family and Conciliation Courts (FLAFCC), will be hosting a conference on a number of Family Court issues, including a track that will offer several workshops on domestic violence issues as well as an interactive session on human trafficking. The conference is scheduled for March 14 - 16, 2013, in Orlando, Florida.
- **THE OCI WEBINAR SERIES** The Office of Court Improvement is proud to be championing the latest in education services. During the 2012-13 fiscal year, the OCI will offer two (2) webinars devoted to current domestic violence issues; these webinars will be available to any interested stakeholders in Florida. For more information about the webinars, including their intended presentation dates, please contact the OCI domestic violence team.



## **Broward County's Innovative Diversion Program**

Since 2008, Broward County has been running a rather unique domestic violence diversion program. To begin with, the **victim** of the offense must consent to the defendant's participation in the program. At the other end of the program, if the defendant successfully completes the program requirements within the strictly enforced eight-month time limit, the defendant's (program-mandated) guilty plea is vacated and the case is nolle prossed.

But these features only scratch the surface of this domestic violence diversionary program. The program is only available to first-time batterers where the victim suffered minor physical injuries. And to enter the program, the defendant must enter a guilty plea and a waiver of the right to contest any determination of non-compliance. Once in the program, the defendant cannot consume any alcohol/controlled substances without prescription, and is subjected to random urinalysis/breathalyzer tests. Finally, while in the program, any arrest or charge for any criminal offense results in automatic termination from the program, and the defendant returns to court to be sentenced for the original domestic violence crime.

For more information about this program, please contact the Broward County State Attorney's Office.

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## Civil Orders of Protection Against Domestic Violence for Same-sex Couples in Florida

By: Austin Newberry

### Same Gender Couple Violence

Statistical evidence suggests that same-sex relationships include elements of domestic violence at levels similar to that of heterosexual couples. Approximately 11% of lesbians reported violence by their female partner and 15% of gay men who had lived with a male partner reported being victimized by a male partner.<sup>1</sup> More recent research conducted by the UCLA Center for Health and Policy Research, suggest that the rates of violence among same-sex couples might be even higher, particularly among male couples.<sup>2</sup> That this should be the case among males makes sense given our current understanding of the relationship between power and control and male privilege, the determining factor being that they are both men, not that they are homosexual.

#### ***Myths about LGBT Domestic Violence***

*ABA Commission on Domestic Violence: Tool for Attorneys Working with Lesbian, Gay, Bisexual, and Transgender (LGBT) Survivors of Domestic Violence*

[http://www.americanbar.org/content/dam/aba/multimedia/domestic\\_violence/publications/lgbttoolkit\\_aba\\_lgbt\\_tools\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/publications/lgbttoolkit_aba_lgbt_tools_final.authcheckdam.pdf)

**Myth:** Women can't be abusers and when lesbian couples fight, it is just a "cat fight," not domestic violence. Men are too tough to be abused and when men fight, it is simply "boys being boys."

**Fact:** Domestic violence is about power and control. Statistically, LGBT individuals experience domestic violence at the same rate as heterosexual women.

**Myth:** The bigger, more masculine, or stronger partner is always the abuser in LGBT relationships.

**Fact:** People of all shapes, sizes, sexual orientations and gender identities can be abusers or survivor in LGBT relationships. Focusing simply on physical attributes ignores the non-physical ways abusers assert power and control, including emotionally, verbally, psychologically, and financially, as well as the very real physical abuse that can come from a smaller partner.

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<sup>1</sup> Patricia Tjaden & Nancy Thoennes, *Extent and Nature of Intimate Partner Violence: Findings From the National Violence Against Women Survey*, 37 National Institute of Justice (2000).

<sup>2</sup> E. G. Zahnd ET AL., *Nearly Four Million California Adults Are Victims of Intimate Partner Violence*, 6 UCLA Health Policy Research Brief, (2010).

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**Myth:** Most abuse that occurs in LGBT relationships is mutual.

**Fact:** No evidence indicates LGBT people are more involved in “mutual abuse” than heterosexuals. While survivors of all genders and sexual orientations might use physical force to defend themselves, this is not mutual domestic violence. In domestic violence, one partner uses a pattern of power and control over the other partner.

**Myth:** The dynamics of domestic violence in LGBT relationships are identical to the dynamics of domestic violence in heterosexual relationships; there is nothing more I need to know.

**Fact:** While the dynamics of power and control might be the same, abusers of LGBT people have different tools at their disposal and LGBT survivors face different realities when seeking help. LGBT people also face a different legal landscape in many jurisdictions.

## Florida Law

Most states (including Florida<sup>3</sup>) have gender neutral domestic violence statutes. This leaves the protection of same-sex victims of domestic violence up to interpretation by the courts. Florida, however, has case law affirming that the domestic violence statute applies to same-sex couples.

### **Peterman v. Meeker**

855 So.2d 690 (Fla. 2d DCA, 2003)

**Holding:** State statute authorizing family or household members to seek domestic violence injunctions applies to same-sex couples.

**Summary:** John Russell Peterman (Appellant) and Nute Meeker (Appellee) were partners for thirteen years and lived together in a house they jointly owned. As their relationship was ending there were a number of violent episodes between the couple. Meeker eventually sought an injunction against Peterman under a statute (§741.30) authorizing family or household members to seek injunctions against domestic violence. Included in the definition of “family or household members” are “persons who are presently residing together as if a family or who have resided together in the past as if a family.” Peterman’s attorney sought to dismiss the petition, arguing that same-sex couples did not qualify as “persons residing together as if a family” because same-sex couples cannot marry in the state of Florida. The trial court denied the motion and granted the injunction. Peterman appealed.

On appeal, the court affirmed. The court cited §741.30(1)(e), which states: “(n)o Person shall be precluded from seeking injunctive relieve pursuant to this chapter solely on the basis that such

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<sup>3</sup> §741.30, Florida Statutes.

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a person is not a spouse.” Therefore, the court concluded that the statute does not exclude persons who otherwise meet the requirements for relief but seek protection from a person of the same-sex. The court further cited court cases around the country addressing the issue that have held same-sex partners qualified for protection under domestic violence statutes.<sup>4</sup>

## Dynamics

The power and control dynamics at work among heterosexual couples experiencing domestic violence are similar to those affecting same-sex couples although more research needs to be done on this topic, especially as it relates to female couples. The definition of intimate partner abuse provided by the Gay Men’s Domestic Violence Project (GMDVP) can, in fact, serve as a primer for understanding this kind of abuse in all of its contexts. “The GMDVP’s definition of intimate partner abuse is: An intentional (consciously or subconsciously) and methodical pattern of abusive tactics used to gain power and to exert control over the partner in order to meet the abusers needs.”<sup>5</sup> The coercive tactics used by abusers include not only physical violence but emotional, psychological, sexual, financial and identity abuse as well. Identity abuse is a unique feature of same-sex abuse that focuses on the victim’s sexual orientation as a way of exercising control.<sup>6</sup>

## Unique Issues

Identity abuse necessarily leads to a discussion of those aspects of domestic violence that are unique to same-sex couples. The American Bar Association’s Commission on Domestic Violence has enumerated a number of these unique issues. While some of the information is anecdotal, there is research to support much of what is described.<sup>7</sup> Some of these different domestic violence dynamics experienced by LGBT individuals include:

**Outing:** Abusers have the added tool in their arsenals of “outing” survivors to people or systems that survivors do not want to know about their sexual orientation and/or gender identity, including employers, religious communities, families, friends and child protective services. Outing can pose severe personal, professional and financial ramifications for individuals. For example, as of the date of this publication, individuals can be legally terminated from employment in 31 states based on their sexual orientation, and in 39 states based on their gender identity. (Apart from some local city or county ordinances, there are no employment or housing protections for LGBT individuals in Florida.)

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<sup>4</sup> *Civil Protection Orders for LGBT Victims of Domestic Violence: Relevant Case Summaries*, ABA Commission on Domestic Violence, p.1, [http://www.americanbar.org/content/dam/aba/multimedia/domestic\\_violence/publications/lgbttoolkit\\_case\\_summaries.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/publications/lgbttoolkit_case_summaries.authcheckdam.pdf).

<sup>5</sup> *Domestic Violence/Intimate Partner Abuse*, Gay Men’s Domestic Violence Project, <http://gmdvp.org/domestic-violence/domestic-violence/>.

<sup>6</sup> *Types of Domestic Abuse*, Gay Men’s Domestic Violence Project, <http://gmdvp.org/domestic-violence/types-domestic-abuse/>.

<sup>7</sup> Joanna Bunker Rohrbaugh, *Domestic Violence In Same-Gender Relationships*, 44 Family Court Review 287,293-294, (2006).

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**Systemic Oppression:** LGBT individuals may face (hostility because of their orientation and/or gender identity) from courts, police, housing providers, domestic violence service agencies, and others, making it extremely difficult for them to get help. Even if these groups are welcoming and informed, LGBT survivors might not know this and might not seek help fearing that they will be treated poorly.

**Exclusion from Services:** LGBT survivors who do reach out for support may be turned away or forced to hide their sexual orientation and/or gender identity to obtain services. Gay men, bisexual men, and transgender individuals may be turned away from “women’s only” shelters or services. Lesbians, bisexual women, and transgender individuals may be excluded from services because their abusive female partners have preemptively sought assistance, or may have been told to hide their identities to make other participants more comfortable. Even if service providers welcome participation of all survivors, past exclusion might lead LGBT people to not access services.

**Children:** LGBT parents may fear losing custody of their children if their sexual orientation and/or gender identity is disclosed. Non-legal or non-biological parents may also fear that coming forward about abuse will lead to losing all contact with the children they have co-parented.

**Small Communities:** LGBT communities are often small and insular, particularly in rural areas or in specific racial, ethnic, socio-economic, or other sub-communities. This may make it more difficult for LGBT survivors to find “safe spaces” where they can find support and not risk running into their abusers. For example, there might only be one LGBT-friendly church, bookstore, medical practice or bar in their community.<sup>8</sup>

## Florida’s Other Four Orders of Protection Against Violence

In addition to Domestic Violence, Florida offers four other protection orders that might be sought out by persons in same-sex relationships. The case law previously cited is pertinent only to the definition of “persons residing together as if a family” in the domestic violence statute. An Order for Protection Against Repeat Violence requires two incidents but does not have any requirement concerning the relationship between the individuals involved. The stalking, dating, and sexual violence statutory language found in Chapter 784 is gender neutral and without the more nuanced definition of the relationship found in Chapter 741. There is nothing in the statute to indicate that an Order for Protection Against Stalking, Sexual Violence and/or Dating Violence should not be available to the victim of same-sex sexual violence (if reported to law

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<sup>8</sup> *Tool for Attorneys Working with Lesbian, Gay, Bisexual, and Transgender (LGBT) Survivors of Domestic Violence*, ABA Commission on Domestic Violence, p.1, [http://www.americanbar.org/content/dam/aba/multimedia/domestic\\_violence/publications/lgbttoolkit\\_aba\\_lgbt\\_tools\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/publications/lgbttoolkit_aba_lgbt_tools_final.authcheckdam.pdf).

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enforcement), to someone in a same-sex dating relationship, or to someone being stalked by a member of the same sex.

## Conclusion

The 2010 census indicates that there was a 60% increase in the number of same-sex households reported in Florida since 2000. Census numbers also indicate that while the majority of these couples live in cities, there are same-sex couples in every county in Florida.<sup>9</sup> For a variety of reasons already mentioned, these people are less likely to show up in Florida courts seeking Orders for Protection Against Domestic Violence than their heterosexual counterparts, but the likelihood that you will be seeing same-sex partners seeking these protections in local courthouses continues to increase. Knowledge of the pertinent Florida case law on this subject along with an understanding of the unique aspects of domestic violence in same-sex relationships can assist court staff and judges make justice accessible, fair, effective, responsive, and accountable for this particular population.<sup>10</sup> In all cases, however, the determination of standing remains the role of the judge.

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<sup>9</sup> Jeff Kunerth, *Florida's Gay Couples Increase in 2010 Census*, Orlando Sentinel, August 18, 2011, [http://articles.orlandosentinel.com/2011-08-18/features/os-gay-2010-census-20110817\\_1\\_gay-couples-gay-civil-rights-organization-gary-j-gates](http://articles.orlandosentinel.com/2011-08-18/features/os-gay-2010-census-20110817_1_gay-couples-gay-civil-rights-organization-gary-j-gates).

<sup>10</sup> "Justice in Florida will be accessible, fair, effective, responsive, and accountable." Vision of the Florida Judicial Branch.



## Caselaw Corner



*In re: Amendments to Florida Family Law Rules of Procedure*, \_\_\_ So. 3d \_\_\_, 2012 WL 2849216 (Fla. 2012). **RULES AMENDED**. In response to newly passed legislation, the court approved changes to the family law rules that amended references throughout the rules to injunctions for domestic, repeat, dating and sexual violence to include stalking. The amendments took effect on October 1, 2012, at the same time that the cause of action for an injunction for protection against stalking becomes effective. July 12, 2012. <http://www.floridasupremecourt.org/decisions/2012/sc12-1205.pdf>

*Lee v. Lee*, \_\_\_ So. 3d \_\_\_, 2012 WL 3054123, (Fla. 2d DCA 2012). **EXTENTION FOR INJUNCTION REMANDED FOR HEARING**. A petitioner filed a motion for an extension of an injunction for protection against domestic violence. An ex parte order was entered that extended the injunction and then a hearing was held on the motion. Despite the respondent's opposition to the motion, the trial court entered an order permanently extending the injunction without hearing any evidence; the respondent appealed. Section 741.30(1)(a), Florida Statutes (2010), states, "[w]hen moving for an extension of a preexisting injunction, the petitioner must establish either that additional domestic violence has

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occurred or that, at the time the petition for extension is filed, he or she has a continuing reasonable fear of being in imminent danger of becoming the victim of domestic violence.” Since the trial court failed to hear any evidence or make any findings that additional domestic violence had occurred or that the petitioner had a continuing reasonable fear of being in imminent danger, the appellate court held that the ex parte order temporarily extending the injunction for protection against domestic violence could not be permanently extended against the respondent, in absence of the required findings and in absence of opportunity for the respondent to be heard in opposition to the motion. July 27, 2012.

[http://www.2dca.org/opinions/Opinion\\_Pages/Opinion\\_Page\\_2012/July/July%2027,%202012/2D10-6087.pdf](http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2012/July/July%2027,%202012/2D10-6087.pdf)



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