

# Domestic Violence Review



Office of the State Courts Administrator  
Office of Court Improvement

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### Helpful Web Resources

- [Family Courts](#)
- [DV Benchbook 2012](#)
- [Petitioner Brochure](#)
- [Respondent Brochure](#)
- [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](#)
- [Domestic Violence Checklist](#)
- [Stalking Checklist](#)
- [DV Assessment Final Report](#)

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## *Virtual Court Available for Continuing Education Credits*

The Virtual Court program offers Florida domestic violence judges and 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 during an injunction hearing. 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 #1300185N.

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](#).

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

#### **The new and improved [www.flcourts.org](http://www.flcourts.org) website**

The Office of State Courts Administrator is proud to roll out its new and improved Florida Courts website. The upgraded design platform will allow us improved flexibility, a greater efficiency in updating judges, court staff, and other stakeholders with the most current information and research. To access the Office of Court Improvement section of the site, please go to <http://www.flcourts.org/resources-and-services/family-courts/>. Take the website for a spin, tell us what you think!

#### **New Domestic Violence Team Members**

The Office of Court Improvement is pleased to welcome to the domestic violence STOP grant team Susan Proctor, Esq., and Leslie Russell. Their skills and talents are greatly appreciated as the STOP grant team prepares for the next grant cycle's deliverables. Join us in giving them a warm welcome!

#### **The 2013-14 STOP Grant Action Plan**

The STOP grant team would like to extend a very loud and appreciative "Thank you!" to everyone who has provided input into the forthcoming Action Plan. Whether you contributed your opinion through our advisory groups, coordinators' meetings, surveys, or simply informally contacted us to talk about the state of domestic violence court in your jurisdiction, we heard you and we're working on plans for addressing your concerns. Please be on the lookout for the final Action Plan, which will be released in June of 2014 on our website and via email. Thank you once again for your input and for your commitment to making Florida a better, safer state!

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## *Upcoming Projects and Events*

- **FLORIDA JUDICIAL INSTITUTE ON DOMESTIC VIOLENCE** The Office of Court Improvement is working with judges, court staff, and other domestic violence stakeholders to create Florida's "go to" source for the most comprehensive and current information on all matters related to domestic violence. The Florida Judicial Institute on Domestic Violence (FJIDV) will be Florida's premier domestic violence research and training online portal, comprising of a number of different training mediums, a research and document hub, and an extensive and up-to-date series of domestic violence case law updates. This online portal will be available to all stakeholders. Look for future updates as we begin development of this exciting platform!
- **FJIDV REGIONAL TRAININGS** As a part of the upcoming FJIDV training hub, the OCI is working with Domestic Violence experts in Florida to host a series of six (6) one-and-one-half-day trainings. These trainings, aimed at Florida's domestic violence judges, will focus on the fundamentals of domestic violence and will provide the most current information and research about the domestic violence case process, from filing to enforcement. The first day of the program will focus on the fundamentals of domestic violence cases from intake through issuance and enforcement of final injunctions. The second day will address best practices for handling advanced topics such as child support, alimony, firearms, and other issues. The goal of this training program is to improve how courts address the critical area of domestic violence and to work towards achieving statewide consistency and uniformity. All judges who handle either temporary or permanent domestic violence injunctions are invited to attend. OCI will apply for CJE credit. The trainings will be offered at the following locations and dates:

Jacksonville, Florida—September 15-16, 2014

Tallahassee, Florida—September 18-19, 2014

Miami, Florida—October 2-3, 2014

Orlando, Florida—November 3-4, 2014

Tampa, Florida—November 6-7, 2014

West Palm Beach—December 4-5, 2014

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- **2014 DOMESTIC VIOLENCE WEBINARS** In the 2014-15 fiscal year, the Office of Court Improvement will continue to host the Domestic Violence Webinar series -- a series of webinars aimed at providing detailed information on pressing domestic violence issues for judges, court staff, and a variety of other stakeholders and interested parties. The OCI plans on including such topics as elder abuse, emotion in the courtroom, and injunctions and finances; however, we welcome your suggestions for other webinar or lunch-and-learn topics. Any suggestions can be directed to Andy Wentzell, at [wentzella@flcourts.org](mailto:wentzella@flcourts.org).

The next webinar, Economic Security in Domestic Violence, Sexual Assault, Stalking and Dating Violence Cases: Strategies for the Courts, is scheduled for June 20<sup>th</sup> from 12-1:15 pm. The learning objectives will be to:

- Define economic security and its impact on survivor/litigant safety;
- Examine the impact of violence on survivors' economic security and how it affects the court's ability to effectively administer justice;
- Explore the unique roles that judges, court staff and probation/parole officers and others in the court system have in supporting economic security;
- Recommend steps court professionals can take in domestic violence, sexual assault or stalking cases to address economic security;
- Offer useful and informative tools to assist courts and court staff to address issues of economic security.

Speakers will be Malore Dusenberry, Economic Security for Survivors Project Associate from Wider Opportunities for Women, Judge Lynn Tepper of the 6<sup>th</sup> Judicial Circuit, and Robin Thompson, Esquire. Both CJE and CLE credit have been applied for. Please plan to join us on June 20<sup>th</sup> for this informative session at [webcast.flcourts.org](http://webcast.flcourts.org).

- **2015 UPDATE FOR THE FLORIDA DOMESTIC VIOLENCE BENCHBOOK** The Florida Domestic Violence Benchbook has been an invaluable resource for judges, court staff, and other stakeholders since it was compiled in 2008. Last updated in 2012, it is time to update the Benchbook again, to include the

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most current trends, legislation, and advances in the field of domestic violence. If you have suggestions for topics for the 2015 update, please submit them to Susan Proctor, at [proctors@flcourts.org](mailto:proctors@flcourts.org).

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*Featured Article Summary*

Teen sexual violence is fast becoming a nationally recognized issue, especially as courts struggle to find appropriate responses to the burgeoning epidemic that is teen sexting. Enter the non-profit group Futures Without Violence. In 2012, Lucy Salcido Carter, JD, wrote an excellently detailed article entitled *Effective Responses to Teen Sexting: A Guide for Judges and Other Professionals*.<sup>1</sup> Looking at the issue of teen sexting from a nationwide perspective, and identifying new trends in legislation and court response, the author highlights many important issues that judges and court staff need to consider when handling a teen sexual violence case involving teen sexting.

As the author explains, sexting is often defined as “the practice of taking and sending nude or semi-nude photos using cell phones.” *Effective Responses* at 2. The problem with teen sexting, however, is that once the photograph leaves the sender’s possession, he or she has no control over its use or further distribution. Further complicating the issue is the muddy legislative response to child pornography, a category of crime under which teen sexting often falls. The current landscape of child pornography laws puts a heavy punishment on the sender as well as the receiver, no matter the reason behind the photo’s transmission.

The article’s author continues her discussion by analyzing court responses, citing a number of cases in a number of jurisdictions with a number of different outcomes. States thus far have no collective, unified response, which further adds to the difficulty involved in handling such cases. The author discusses several common judicial responses, from mandatory education to diversion to

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<sup>1</sup> Lucy Salcido Carter. *Effective Responses to Teen Sexting: A Guide for Judges and Other Professionals* (Jennifer White & Michael Runner, eds., Futures Without Violence 2012).

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prosecution; in addition, she details school responses, state legislature responses, media responses, and non-profit responses to this multifaceted problem.

Finally, the author includes a very well-developed quick reference guide for judges who find themselves presiding over such a case. This quick reference guide is reprinted at the end of this newsletter with permission from Futures Without Violence; for the complete article, please visit:

<http://www.futureswithoutviolence.org/userfiles/file/Judicial/Effective%20Responses%20to%20Teen%20Sexting.pdf>



### *Caselaw Corner*



Reyes v. Reyes, 104 So.3d 1206, 2012 WL 6213134 (Fla. 5th DCA 2012). **DENIAL OF MOTION TO DISSOLVE AN INJUNCTION AFFIRMED.** The father appealed the trial court's order that denied his motion to modify or dissolve his domestic violence injunction. In 2004, the trial court entered an injunction in favor of the mother. The father's motion to modify the injunction challenged the original injunction and made several other claims, but failed to allege any change in circumstances; the trial court denied the motion. The appellate court held that, "for a movant to be entitled to obtain relief on a motion to modify or dissolve a domestic violence injunction, the movant must prove a change in circumstances." Because the father's motion failed to allege any change in circumstances, the court affirmed the lower court's decision. December 14, 2012.

<http://www.5dca.org/Opinions/Opin2012/121012/5D11-4082.op.pdf>

Bacchus v. Bacchus, 108 So.3d 712, 2013 WL 756350 (Fla. 5th DCA 2013). **TEMPORARY INJUNCTION REVERSED.** The husband appealed an order that extended a temporary injunction against domestic violence for one year. The court reversed and noted that the purpose of extending a temporary injunction is to preserve the status quo until a final evidentiary hearing can be held. In this case, the temporary injunction was extended in lieu of a full hearing on a

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permanent injunction, which is not authorized by the Florida Statutes. The court also noted that there was not enough evidence presented to support the issuance of a permanent injunction; however, since the wife was limited by the court in her ability to present evidence, the case was remanded for a full hearing. March 1, 2013.

<http://www.5dca.org/Opinions/Opin2013/022513/5D12-1939.op.pdf>

Hunter v. Booker, \_\_So.3d\_\_, 2014 WL 895188, (Fla.1<sup>st</sup> DCA 2014).

#### WRIT GRANTED FOR REMOVAL OF TIME-SHARING PLAN

The petitioner filed a petition for protection against domestic violence and was granted a temporary injunction ex parte which gave her 100% of the time-sharing for her son. At the subsequent hearing, the court denied the injunction, but established a time-sharing plan, even though the respondent did not request the time-sharing and there was no pending action to establish parental responsibility or visitation. The petitioner appealed. Appellate court held that the trial court lacked the statutory authority to establish a temporary parenting plan since the court dismissed the temporary injunction and denied the permanent injunction. Appellate court noted that the Florida Statutes only authorize a trial court to establish a temporary parenting plan when the court has issued an injunction. It also held that the trial court's order violated the petitioner's right to due process and departed from the essential requirements of law because the mother's pleading had not presented the issue of shared custody and the father had not requested custody of the child. If it had been proper for the judge to order time-sharing, the trial court also failed to consider the criteria set out in section 61.13, Florida Statutes, for developing a time-sharing plan. March 7, 2014.

Cannon v. Thomas ex rel. Jewett, \_\_So.3d\_\_, 2014 WL 949856, (Fla.1<sup>st</sup> DCA 2014)

**INJUNCTION VACATED** A mother was granted an injunction for repeat violence on behalf of a child and against another child. The appellate court reversed since there was no evidence that the aggressive student committed the requisite two acts of violence. The court also noted that sending threatening messages through social media (Facebook) the night before did not constitute assault under section 784.011, Florida Statutes, since the child did not believe the violence was imminent. A concurring opinion urges the legislature to consider creating an injunction that would apply to school-related violence. March 12, 2014.

<http://opinions.1dca.org/written/opinions2014/03-13-2014/13-2040.pdf>

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United States v. Castleman, (U.S. Supreme Court, March 26, 2014)

Respondent moved to dismiss his indictment under a statute forbidding possession of firearms by anyone convicted of a “misdemeanor crime of domestic violence.” He argued that his previous conviction of “intentionally and knowingly” causing bodily injury to the mother of his child did not qualify as a misdemeanor crime of domestic violence because it did not involve “the use or attempted use of physical force.” The District Court agreed with him, reasoning that while “physical force” entails violent contact, bodily injury can be caused without violent contact. It cited poisoning as an example. The Sixth Circuit affirmed on a different rationale. It held that the degree of physical force required for conviction to constitute a misdemeanor crime of domestic violence is the same as that required for a violent felony under the Armed Career Criminal Act—violent force. It held that the respondent could have been convicted for causing slight injury by nonviolent conduct. The Supreme Court held that his conviction qualified as a misdemeanor crime of domestic violence. It concluded that in the statute under which he was indicted, the “physical force” requirement is satisfied by the degree of force that supports a battery conviction in common law—offensive touching. The Court stated that Congress is presumed to have intended to incorporate the common law meaning of terms used in its statutes and that nothing suggested that Congress intended to do otherwise here. Although the term “violence” when standing alone implies a substantial use of force, that is not necessarily true in domestic violence cases, because domestic violence is a term of art encompassing acts that might not be characterized as violent in a nondomestic context.



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People wishing to contribute to future editions of the "Domestic Violence Review" should contact Andrew Wentzell at [Wentzella@flicourts.org](mailto:Wentzella@flicourts.org).

## Guidelines for Judges in Teen Sexting Cases

Legal scholars emphasize the importance of judicial discretion in teen sexting cases because no two cases are alike, teens' motivations for sexting vary, and each incident requires a tailored response. In the courtroom, judges should assess each teen sexting case individually to determine the nature of harm and whether the sexting is part of a broader pattern of cyberbullying or teen dating violence. Judges also have an important role to play in the broader community to provide leadership and education to prevent harms to teens from sexting.

### **What factors should judges consider in adjudicating teen sexting cases?**

- Assess each case individually to determine the intentions of the sexting teens, the scope and circumstances around the dissemination and the presence and breadth of any possible harm from their actions.
- Consider in your assessment:
  - any significant age differences among participants
  - the extent of distribution of the photos
  - the presence of abusive or coercive behavior
  - any prior incidents of sexting
  - the level of understanding by participants of the potential harms of sexting.

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- Determine whether the exchange of photos was consensual and intended to be private or whether the teen who sent the picture felt pressured to do so. Sometimes actions that appear voluntary are the result of coercion or abuse.
- Ask teens who send the photos of themselves if they have felt pressure in the relationship to engage in other behaviors against their will. Dynamics of power and control indicate possible teen dating abuse.
- Determine whether the distribution of the photos included derogatory or abusive language against the person in the photos. Did the person distributing the photos do so to harm or humiliate the person in the photos? Were the recipients of the photos selected to cause greater harm or humiliation to the photographed teen?
- Assess whether the participants have engaged in other bullying behaviors that could be part of a pattern of cyberbullying or digital harassment.
- Provide accountability measures that are age-appropriate and reasonable with respect to the level of harm, if any.
- Mandate counseling and education for teens who are unaware of the potential harms of sexting.
- Refer teens who have been hurt by a sexting incident to support services to help them cope with the negative consequences and protect themselves from additional harm.
- Refer teens who have been hurt from sexting as part of teen dating violence to specialized services for victims of dating violence.

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This material was reprinted from the publication entitled "Effective Responses to Teen Sexting: A Guide for Judges and Other Professionals" produced by Futures Without Violence. This publication was made possible by Grant No. 2008-TA-AX-K038 from the Office on Violence Against Women, U.S. Department of Justice.