

REPORT

of the

**COMMISSION FOR STUDY OF DOMESTIC
ABUSE PROCEEDINGS**

Presented to the Mississippi Supreme Court

December 11, 2008

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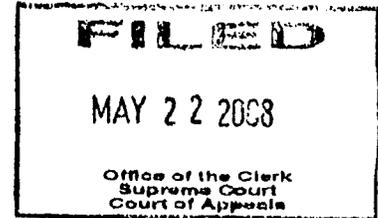
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Serial: 147644

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99034

**IN RE: COMMISSION FOR STUDY OF
DOMESTIC ABUSE PROCEEDINGS**



EN BANC ORDER

The Mississippi Attorney General has requested that the Supreme Court conduct an examination of the laws and procedural rules which impact domestic abuse proceeding, including but not limited to those concerning the issuance of protective orders in domestic abuse cases. The Court recognizes that it has the ultimate responsibility for the adoption of procedural rules for the courts of the state, and, under Miss. Code Ann. § 25-3-35 the justices of the court are charged to make special studies of the laws of the state and to report to each regular session of the Legislature such constructive suggestions as they may deem necessary for the improvement of the administration of justice.

Having considered the Attorney General's request and recognizing its responsibility in these areas, the Court has determined that the interest of justice will be promoted by an examination of such statutes and rules assisted by a commission composed of professionals with experience in dealing with domestic abuse issues.

IT IS THEREFORE ORDERED that the Supreme Court Commission for Study of Domestic Abuse Proceedings is hereby established. The membership will be those persons named in Exhibit "A" hereto, all members having consented to serve. The Commission shall continue in existence through December 31, 2008, or for such additional term as the Chief Justice may order. The Commission shall be co-chaired by Justice Ann H. Lamar and Special Assistant Attorney General Heather Wagner.

IT IS FURTHER ORDERED that the Commission shall study the existing statutes and procedural rules that impact proceedings, civil and criminal, involving charges of domestic abuse, and will on or before December 1, 2008, present its final report to the Court. Such report shall include the Commission's findings and recommendations for changes in the statutes and rules, if such be needed, to improve the just, fair, and effective disposition of such proceedings. Findings and recommendations should consider victim safety, equal access to the courts by victims and accused parties, due process, and accountability of offenders. Specifically, the Commission in its final report should address:

the desirability of a uniform statewide procedures for handling of domestic violence protection orders and proceedings involving such orders;

the impact of constitutional issues regarding custody and visitation provisions in domestic violence protection orders;

the reconciliation of laws and rules pertaining to domestic violence protection orders with uniform acts, other state laws, and federal laws;

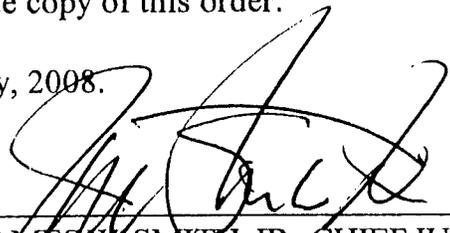
accessibility of the courts to indigent litigants in domestic abuse proceedings;

whether court resources currently devoted to addressing domestic violence are adequate; and

such related issues as the Commission may deem appropriate.

IT IS FURTHER ORDERED that the Clerk of this Court shall transmit to each member of the Commission hereby appointed a true copy of this order.

SO ORDERED, THIS the 21st day of May, 2008.



JAMES W. SMITH, JR., CHIEF JUSTICE,
FOR THE COURT

ATTORNEY
A PUBLIC OFFICER
This the 17th day of May, 2008.

Clerk
Supreme Court and Court of Appeals
State of Missouri
By M. Leana

EXHIBIT "A"

**MEMBERSHIP OF
THE
MISSISSIPPI SUPREME COURT
COMMISSION FOR STUDY OF
DOMESTIC ABUSE PROCEEDINGS**

Co-Chairs:

Honorable Ann H. Lamar,
Supreme Court
Ms. Heather Wagner,
Attorney General's Office

Advocacy Group:

Anna Walker Crump

Law School Representatives:

Professor Deborah Bell
Professor Shirley Kennedy

Prosecutors Association:

Martha Carson
Kassie Ann Coleman

Court of Appeals Judge:

Honorable Virginia Carlton

Law Enforcement Officers:

Ken Winters, Director,
Miss. Police Chiefs Assoc.

Chancery Judges:

Honorable Margaret Alfonso
Honorable Jay Bradley
Honorable Cynthia Brewer

Legal Clinics

Brandi Brown, Representative,
Catholic Charities

Circuit Judges:

Honorable Margaret Carey-McCray
Honorable Vernon Cotten
Honorable Kenneth Thomas

Legislature:

Senator Gray Tollison
Representative Kimberly Campbell

Justice Court Judges:

Honorable Deborah Gambrell

Judicial College:

Cynthia Davis

Municipal Judges:

John Shirley

Serial: 147908

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99034

FILED

MAY 30 2008

IN RE: COMMISSION FOR STUDY OF
DOMESTIC ABUSE PROCEEDINGS

SUPREME COURT CLERK

SUPPLEMENTAL EN BANC ORDER

By order entered May 22, 2008, the Court created the Supreme Court Commission for Study of Domestic Abuse Proceedings and established its membership. Now, the Court amends and supplements that order by adding to the membership of the Commission the following individuals:

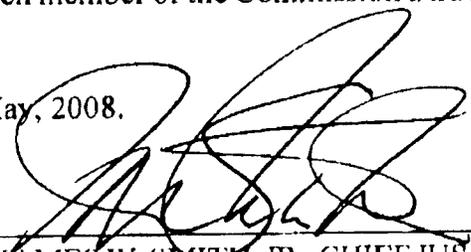
Public Defenders:

William R. LaBarre
Hinds County Public Defender

Virginia Lynn Watkins
Hinds County Public Defender's Office

The Clerk of this Court shall transmit to each member of the Commission a true copy of this order.

SO ORDERED, THIS the 29th day of May, 2008.



JAMES W. SMITH, JR., CHIEF JUSTICE,
FOR THE COURT

INTRODUCTION

By Order entered the 21st day of May, 2008, the Mississippi Supreme Court created the Commission for the Study of Domestic Abuse Proceedings as a time-limited review entity for the purpose of the examination of the laws and procedural rules which impact domestic abuse proceedings. The Order specified the membership of the Commission, and named Justice Ann H. Lamar and Special Assistant Attorney General Heather Wagner as co-chairs. The Commission was given the mandate to address certain specific issues concerning domestic abuse proceedings, and make a final report to the Court by December 1, 2008, containing its findings and recommendations for changes in statutory provisions and procedural rules as necessary to improve the just, fair and effective disposition of domestic abuse proceedings. A copy of the referenced Order is made a part of this Report.

The specific areas the Commission was mandated to address included:

- The desirability of a uniform statewide procedure for handling of domestic violence protection orders and proceedings involving such orders;
- The impact of constitutional issues regarding custody and visitation provisions in domestic violence protection orders;
- The reconciliation of laws and rules pertaining to domestic violence protection orders with uniform acts, other state laws and federal laws;
- Accessibility of the courts to indigent litigants in domestic abuse proceedings;

- Whether court resources currently devoted to addressing domestic violence are adequate; and
- Other related issues the Commission may deem appropriate.

In furtherance of its mandate, the Commission has held four (4) meetings to date, in addition to smaller, regional meetings held by sub-committees. Information relevant to the mandated study areas was gathered from a number of sources. Surveys seeking input were developed and sent to each individual chancery judge, circuit judge, county judge, justice court judge and municipal judge. The results of those surveys were compiled and presented to the full Commission for consideration. A compilation of those surveys are attached as Exhibit 1. Additionally the Co-chairs of the Commission appeared and met with the Conference of Chancery Court Judges (on two separate occasions), the Conference of Circuit Court Judges, the Conference of County Court Judges, as well as with the justice court judges, to discuss the issues under study by the Commission. The Commission received and considered a resolution from the Chancery Conference. A copy of the resolution is attached as Exhibit 2. The Commission also received statistics from the Administrative Office of Courts related to domestic abuse protection order proceedings. The representatives of the advocacy and victim services groups were requested to provide the Commission with their comments and experiences with regard to the court system's ability to accommodate victims of domestic violence from a standpoint of access and victim safety.

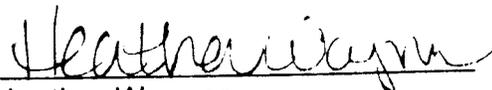
The Commission also benefitted from the research and study of the University of Mississippi Civil Legal Clinic law students for the Fall 2008 semester. The students

researched various issues related to Mississippi's laws governing domestic abuse protection orders as they relate to a number of uniform acts and federal law requirements. The students also performed research on some promising practices that other States have developed to better handle domestic abuse proceedings. The students prepared a report on their findings, which was submitted to and considered by the Commission as part of its deliberations. A copy of this report is attached as Exhibit 3.

The Commission members enthusiastically approached their work identifying areas of concern, engaging in passionate and vigorous debate, and seeking resolution. This report will identify specific areas of concern along with recommendations. Unless noted otherwise, the recommendations represent the unanimous voice of the Commission. The report will also identify those issues which the Commission members determined will need additional study. It is our sincere hope that this report will provide insight and guidance which will lead to improvement in our justice system in the critically important area of domestic violence.



Justice Ann H. Lamar
Mississippi Supreme Court
Commission Co-Chairman



Heather Wagner
Special Assistant Attorney General
Commission Co-Chairman

The Mississippi Protection from Domestic Abuse Act is codified at Miss. Code Ann. §93-21-1 et seq. Originally enacted in 1981, the Act has undergone many changes over the years, but has never been subject to a thorough, wholesale review. The discussions of the Commission covered a variety of issues relevant to the current statutory processes which impact the safety of victims, the efficiency of the court system, and due process.

I. JURISDICTION

Under current Mississippi law, a victim of domestic abuse can obtain a protection order in a number of courts: municipal, justice, county, circuit and chancery.¹ Municipal and justice courts are granted the authority to issue temporary orders (effective for up to ten (10) days) after a hearing to which the respondent is given notice and opportunity to be heard.² County, circuit and chancery courts have the authority to conduct a hearing and issue final (long term) protective orders after a hearing comporting with due process requirements,³ while all courts have the authority to issue temporary ex parte emergency orders without prior notice to the respondent.⁴

The members of the Commission discussed the efficacy of this system of having such a large number of courts with jurisdiction to issue domestic abuse protection orders. The availability of a broad range of courts was seen by some members as a potential benefit to a victim seeking emergency relief. In many counties, particularly in the more

¹M.C.A. §§93-21-3, 93-21-11, 93-21-13, 93-21-15

² M.C.A. § 93-21-13

³M.C.A. §93-21-15

⁴M.C.A. §93-21-11

rural areas of the state, access to a court is a real concern for many victims, and having a greater number of courts from which to seek protection may mean the difference between getting an order in an emergency situation and doing without one. The fact that different areas of the state have different resources available for victims of domestic abuse complicates this situation, not only with regard to private resources such as a domestic violence program, but also with regard to court resources. A victim who lives in a jurisdiction in which there is a domestic violence program who can assist him or her and in which there are judges available every day of the week is likely to have a much better chance of obtaining protection than a victim who does not live in a jurisdiction where an advocacy program is nearby and where the courts may not be available everyday.

While recognizing this disparity in court access from one county to the next, however, Commission members voiced concerns that by granting jurisdiction over this type of matter to so many courts, the Legislature created a more confusing situation for both the victims and the courts, and one that is more easily abused by a petitioner who is not truly a victim of violence. Concerns were expressed about the opportunity for “forum shopping” by litigants - that is, a party who is unsatisfied with the results from one court can simply file in one of the other available courts. Also, the two parties involved may each seek a protective order from a different court, leading to competing orders of protection. The existence of these “dueling” orders complicates enforcement efforts.

Another concern specific to municipal courts is that although municipal courts are included in the definition of “court” under the statute⁵, the general jurisdictional statute for

⁵M.C.A. §93-21-3

municipal courts restricts the jurisdiction to criminal matters involving violations of municipal ordinances or state law misdemeanors occurring within the municipality⁶. There is no specific statutory grant of jurisdiction to the municipal courts to handle civil matters.

Currently, final domestic abuse protection orders issuing from county, circuit and county courts may provide for relief which includes, among other matters, temporary custody, visitation and support of minor children.⁷ Prior to 2007, the authority to address such temporary matters in an order of protection was limited solely to chancery courts. In that year, the relevant code provision was amended to grant the authority to issue final domestic abuse protection orders to a greater number of courts⁸, alleviating the burden on the chancery courts, and providing victims in need of relief with more options. One Commission member expressed grave concerns about the constitutionality of any court, other than chancery, being permitted to issue domestic abuse protection orders containing custody, visitation and support provisions, even on a temporary basis. Concerns were expressed by other members of the Commission that a victim of abuse seeking to leave a relationship must necessarily be able to obtain at least temporary custody of minor children as a part of a protection order. The unavailability of that relief might cause a victim to remain in a dangerous situation. Where abuse is involved, the normal processes for obtaining custody may not provide immediate relief for the petitioner.

⁶M.C.A. §21-23-7

⁷M.C.A. §93-21-15

⁸Ch. 589 (2007)

II. TIME FRAMES AND MANDATES

Other issues discussed by the Commission were the statutory time frames and mandates contained in the Protection from Domestic Abuse Act. Commission members discussed the requirement that petitions filed pursuant to the Protection from Domestic Abuse Act be handled as priority matters on the court docket.⁹ This requirement, while clearly intended to allow victims in immediate danger of continuing abuse to access the court very quickly, creates a huge concern for the courts in managing overcrowded dockets. Under current interpretation by many judges, a request for an emergency domestic abuse protection order will take precedence over all other previously set matters. Additionally, the statutory requirement that a hearing be conducted within ten (10) days of the filing of the petition¹⁰ creates a hardship for the courts in scheduling a hearing on already crowded dockets, and also in having the respondent adequately served with notice of the date and time for the hearing.

Additional concerns were expressed over these time frames in that the limited ten (10) day duration of a temporary domestic abuse protection order¹¹ requires a victim of abuse to request multiple continuances if they are not able to obtain final relief within that time brief period. Continuances of temporary orders are available, but are also limited in time.¹² If a continuance is not requested in a timely manner by the petitioner, or if the time

⁹M.C.A. §93-21-7

¹⁰M.C.A. §93-21-11

¹¹M.C.A. §93-21-11; §93-21-13

¹²M.C.A. §93-21-11; §93-21-13

permitted for continuances has expired, the process must begin anew, which not only places a burden on the petitioner (and could endanger the petitioner), but also places a burden on the court system which must set a new hearing date, issue new process, etc.

A further concern related to the short time frames was service of notice upon the respondent, not only of an order issued on an ex parte basis, but also with notice of the mandatory hearing which must be set within ten (10) days. The consensus was that this time period is not sufficient in many cases to locate and serve the respondent. Additionally, some Commission members voiced the concern that when constables are used for service of process in a justice court action, posting of the notice is utilized many times in lieu of personal service.

The majority of the members of the Commission supported extending the term for temporary orders issued after notice and a hearing. However, they were not in support of expanding the current ten (10) day effective period for ex parte temporary orders issued by municipal and justice courts, which are not courts of record.

III. VARIED PRACTICES (LACK OF UNIFORMITY)

The lack of uniformity on a statewide level is inexorably tied to Mississippi's complicated court system. The different number of counties in each judicial district, the different numbers of judges in each district, and the availability of county courts in limited counties are but a few of the issues which make it virtually impossible to obtain uniformity in the manner in which domestic abuse protection order proceedings are handled by the courts across the State of Mississippi. The current laws related to these proceedings do not take into account some of these differences. For instance, the requirement that a

hearing be held within ten (10) days of the filing of a petition for a domestic abuse jurisdictions, individuals seeking protection are shuffled from court to court as there is no clear path set out in the statute for them.

The Commission discussed whether a “one-stop-shop” would be effective to address some of these concerns, directing all actions brought pursuant to the Act to only one court. Some members suggested that this should logically be the Chancery Court. It was determined that this would not be a viable option at this time, due to the differences between counties and districts discussed above, the availability of the courts, and the burden on the courts, and would quite possibly endanger victims further by restricting access to other available courts.

IV. PRO SE LITIGANTS

The majority of petitions pursuant to the Act are filed by pro se litigants. This presents concerns for the courts seeking to provide relief, and also concerns of victims who need assistance, but yet are unable to obtain legal counsel to guide them through the process. The Attorney General's Office has prepared uniform forms (including petitions, orders, and summons) which are available for use by the courts in issuing domestic abuse protection orders specifically to ease the burden presented by pro se litigants. The use of these forms is voluntary. Some Commission members expressed concerns over the lack of broader input by the judiciary into the development of the form pleadings and orders.

It was reported by advocates who work directly with victims of domestic violence that many times, a victim needing protection from domestic violence is instructed by the court that they must have an attorney representing them before they can proceed. There are limited resources currently available to assist victims in need of an attorney. In only three

locations around the state are there civil legal clinics designed specifically to assist victims of domestic violence with their legal needs, ranging from obtaining orders of protection to divorces, to custody matters.

The Commission was aware that this issue was also being addressed, in a broader fashion and not strictly with domestic violence, by the Access to Justice Commission, also established by the Court. Members felt that combining efforts with the Access to Justice Commission on this particular issue would be the most effective manner of addressing the concerns relevant to pro se litigants.

V. FEES AND COSTS

Current law provides that a petitioner shall not be charged fees, including filing fees, service of process fees, fees related to the issuance of subpoenas, etc., in connection with seeking relief under the Protection from Domestic Abuse Act.¹³ This prohibition against charging fees applies without regard to the financial ability of the petitioner. The fees may be assessed by the court after a hearing on the matter against the party responsible for the abuse or a petitioner who is found by the court not to be a victim of abuse.¹⁴

Although the statute permits the collection of fees after a hearing and a determination of abuse, in very few instances are fees being collected from the party ordered by the court to pay. Many times, this results in process in these cases is not served in a timely fashion (or at all) because no payment is received at the time of service by the process server, some of whom are fee-based officials.

¹³M.C.A. §93-21-7(2)

¹⁴Id.

One Commission member suggested that a process already exists for indigent litigants to access the courts – the filing of a pauper’s oath. However, the statutory waiver of fees was enacted by the Legislature to permit the State of Mississippi to become eligible to receive funding under the Violence Against Women Act (VAWA).¹⁵ Requiring petitioners to comply with federal law, the Violence Against Women Act (VAWA).¹⁶ Requiring petitioners to file a pauper’s oath would not satisfy federal requirements for funding under VAWA, which requires that any entity receiving funding under VAWA certify that the laws, policies and practices of their jurisdiction provide that no victims of domestic violence are charged fees for seeking a civil protection order, regardless of household income or ability to pay.¹⁷ Mississippi is currently in compliance with federal mandates, and to interfere with this statutory scheme would jeopardize funding for every entity receiving funds under VAWA (this would include law enforcement agencies, local municipal and county prosecutors’ offices, district attorneys, domestic violence shelters, domestic violence legal clinics, etc.).

The Commission discussed briefly the need for local jurisdictions to explore use of public funding (via grants) to recoup some of the uncollected expense, or for better and more effective mechanisms for collecting fees either from the respondent who is found to be an abuser, or from a petitioner who is found not to be a victim of domestic abuse.

VI. VENUE

_____The Protection from Domestic Abuse Act contains no specific venue provision. A

¹⁵42 U.S.C.S. §§ 3796gg-5(a)(1) and 3796hh(c)(4) (2008).

¹⁶42 U.S.C.S. §§ 3796gg-5(a)(1) and 3796hh(c)(4) (2008).

¹⁷<http://www.ovw.usdoj.gov/faqvawa2000.htm>

victim of domestic abuse is required to abide by the general venue statutes applicable in general to municipal, justice, county, circuit and chancery courts. These provisions restrict the filing of a petition for relief in the county where the cause of action arose (the abuse) or where the respondent may be found.¹⁸ These general venue provisions do not take into account victims who have fled from their home county out of fear of the abuser.

There are currently only thirteen (13) domestic violence shelters in the State of Mississippi, and often, a victim seeking safety must leave their county of residence to go into shelter. Many members were concerned about the safety issues which may develop by requiring a victim of violence to return to the county where the respondent resides or where the violence occurred to avail themselves of the protection of the courts. Alternatively, while sensitive to the safety concerns, other Commission members felt that a change to the current venue provisions that would allow a victim to initiate an action in a county to which they have moved would implicate the due process rights of the respondent.

VII. MUTUAL ORDERS

A common practice among judges hearing domestic abuse protection order cases is to issue an order containing provisions against both the respondent and the petitioner, even when the respondent has not requested any relief, and has not presented any evidence of being a victim. This type of order is commonly called a mutual order.

Federal full faith and credit provisions which ensure that domestic abuse protection orders are fully enforceable across state lines require that the protection order be granted after due process requirements are met, and only if both parties made independent requests

¹⁸M.C.A. §§ 11-11-3(1)(a)(I), 11-9-3, and 11-5-1.

for relief and proved the existence of abuse.¹⁹ Additionally, any entities receiving federal VAWA funding must certify that the state's law prohibits mutual orders.²⁰

Currently, Mississippi law requires that no order of protection shall be issued unless based upon an independent petition, and the judge makes specific findings of abuse.²¹

VIII. ELECTRONIC FILINGS AND PROCEEDINGS

The Commission discussed the use of electronic filings and proceedings as a mechanism which may address many of the concerns set out above. The benefits of allowing petitioners to file electronically and allowing the judge to conduct hearings electronically were briefly discussed as having a positive effect on victim access to the courts, and streamlining the process. The use of electronic filings and proceedings could also serve to enhance the safety of victims who have fled from their abuser to another jurisdiction, by allowing them to file and appear before the court without traveling to that location and possibly endangering themselves by doing so. This process could not be mandated, however, as not all jurisdictions have the resources to enable them to establish a system of this nature.

IX. ENFORCEMENT OF DOMESTIC ABUSE PROTECTION ORDERS

The Commission discussed generally the provisions of current law that discuss enforcement of domestic abuse protection orders, both by the judiciary and by law enforcement, including foreign protection orders.²²

¹⁹18 U.S.C.S. 2265©

²⁰42 U.S.C.S. § 3796hh

²¹M.C.A. §§ 93-21-11, 93-21-13 and 93-21-15

²²42 U.S.C.S. § 3796hh; M.C.A. §§ 93-21-16, 93-22-5 and 93-22-7.

In addressing law enforcement involvement in the enforcement of a domestic abuse protection order, several Commission members voiced concern over the transmission of such orders to the FBI's National Crime Information Center's Protection Order File. Some of the areas of concern were that temporary orders are issued by justice courts and municipal courts which are not courts of record, may be issued without prior notice to the Respondent on an ex parte basis, and are short term and will expire or will be modified by higher court. The benefits of having these orders on NCIC are clear from a law enforcement perspective, as they give an officer trying to determine the validity of an order some measure of confidence. The appearance of such records on NCIC also enhances officer safety when responding to a scene, as they are able to gather not just criminal history involving a potential suspect, but also whether there are any orders of protection currently in effect. The law enforcement representative of the Commission pointed out that NCIC records are limited access records, and are not available to the general public. It was pointed out that the Mississippi Protective Order Registry currently under development by the Attorney General's Office will automatically transmit any protective orders (whether temporary or final) to NCIC for retention in the NCIC Protective Order File.

Recommendations

In its review of the statutes and rules as related to civil domestic abuse protection order proceedings, taking into account the issues presented for specific study by the Court, the Commission identified three major areas causing concern. These three areas were generally identified as: confusion in the interaction between the courts having jurisdiction in these matters; the lack of uniformity in proceedings and pleadings statewide; and the lack of adequate access of victims to the courts.

After first identifying the concerns, the discussions of the Commission centered around ways to improve the process in order to balance the competing views of victim safety and access, maintaining the integrity of the judicial system and judicial economy. While the Commission was not able to reach unanimous consensus on all of the concerns set forth above, consensus was achieved with regard to the following recommendations for improvement of proceedings pursuant to the Protection from Domestic Abuse Act (M.C.A. §93-21-1 et seq.):

1. Circuit courts should be removed from the definition of “court” under the Protection from Domestic Abuse Act. The removal of this court alleviates the concerns surrounding the varied courts authorized to issue permanent domestic abuse protection orders, and should not impact victim access as these courts are not widely issuing orders of protection. The Commission identified M.C.A. §§93-21-3(c) and 93-21-15(1) as being affected by this suggested change.
2. Specific authority should be granted to municipal courts to address civil matters pursuant to the Protection from Domestic Abuse Act. While municipal courts are currently included in the definition of “court” under the Protection from Domestic Abuse Act, municipal court jurisdiction is limited to criminal jurisdiction over state misdemeanors and violations of municipal ordinances. Granting to municipal courts limited civil jurisdiction to issue domestic abuse protection orders will enhance the ability of victims to access the courts. The Commission identified M.C.A. §21-23-7 as being affected by this suggested change.
3. Require that all petitions for emergency ex parte relief be initiated in municipal, justice or county courts. One of the main concerns of the chancery judges was the requirement that they set aside other matters on their docket to hear emergency requests, which may or may not be followed by a request for long-term relief. Requiring that all requests for ex parte relief be obtained from the municipal, justice or county court, will reduce the burden on the chancery courts. Victim access to the courts should not be impaired by this scheme, as in most circumstances, a municipal, justice, or county judge is available for the issuance of an order on an emergency basis. However, the Commission members felt that parties should be able to initiate an action directly in chancery court, unless requesting emergency ex

parte relief, and a party to an ongoing chancery court action should be permitted to file for temporary relief pursuant to this chapter within that action. The Commission identified M.C.A. §§93-21-11 and 93-21-13 as being affected by this suggested change.

4. Extension of the effective period for a temporary domestic abuse protection orders issued after a hearing from ten (10) day to thirty (30) days. This extension of the effective period for domestic abuse protection orders will help to alleviate the burden on the courts' dockets, and will also permit additional time to serve the respondent. The Commission identified M.C.A. §93-21-13(2) as being affected by this suggested change.
5. Permit a de novo appeal to chancery court for any party aggrieved of a decision granting or denying temporary relief by a municipal or justice court. Due to the concerns expressed by some Commission members about granting authority to issue 30 day orders to justice and municipal courts, the Commission recommends this process to permit a party aggrieved by the decision of a municipal or justice court to request an expedited appeal on a de novo basis. The Commission identified M.C.A. §§93-21-11, 93-21-13 and 93-21-15 as being affected by this suggested change.
6. Limit the courts who may issue final orders and hear de novo appeals to chancery and county courts. A party seeking long term protection should obtain such an order from the chancery or county court. A party would be entitled to initiate an action in one of these courts if they were not in immediate danger of continuing abuse. All those seeking emergency relief would apply to the municipal, justice or county court. Note: One member maintains strong opposition to allowing any court other than chancery to issue final orders containing provisions regarding temporary custody or visitation. The Commission identified M.C.A. § 93-21-15 as being affected by this suggested change.
7. Enact a time limitation on temporary custody, visitation and support provisions contained in final protective orders to one hundred and eighty (180) days. Currently there is no limitation on how long such provisions are effective in a final order. Note: One member maintains strong opposition to allowing any court other than chancery to issue orders regarding temporary custody or visitation, even if limited. The Commission identified M.C.A. §93-21-15(1)(d) and (e) as being affected by this suggested change.

8. Modify statute to clearly prohibit the issuance of mutual orders. While current law prohibits this type of order without directly stating, a clarification of the Legislature's intent in this regard is recommended. The Commission identified M.C.A. §§93-21-11(6), 93-21-13(4) and 93-21-15(2) as being affected by this suggested change.
9. Enact enabling legislation which would permit the use of electronic filing and electronic proceedings in domestic abuse protective order matters.
10. With regard to the need for potential change in venue statutes, the Commission was unable to come to a consensus, but does recommend that the Legislature further study this issue which involves very legitimate concerns for victims of domestic abuse.

Issues Requiring Further Study

Due to the immensity of the task presented to it, the Commission was not able in the limited time frame provided, to address all of the issues contained in its mandate. As can be seen from the report and recommendations above, more study and discussion is necessary to adequately address the identified concerns related to civil domestic abuse proceedings. The following are major areas of concern which the Commission did not adequately address:

1. The use of standardized forms for protection order proceedings; and
2. The issue of victim access to the courts.

The Commission members recommend that the term of the Commission should be extended to adequately explore these issues and to permit the Commission to combine efforts with the Access to Justice Commission to jointly address the question of access to the courts.

With regard to further study of criminal domestic abuse proceedings and offender accountability, the Commission recommends that the Attorney General's Office create a

separate task force to include prosecutors, judges, defense attorneys, victim advocates and any other disciplines deemed necessary, to review current laws and practices and to make recommendations for improvements to the process.

**MS SUPREME COURT
COMMISSION ON THE STUDY OF DOMESTIC ABUSE PROCEEDINGS
JUDICIAL SURVEY FORM
(CHANCERY COURTS)**

In an effort to better determine the practice among the various courts of this State, the MS Commission on the Study of Domestic Abuse Proceedings has developed the following survey. Please assist the Commission in its information gathering process by responding to the following questions. If you need additional space for your answers, please use the reverse.

26 RESPONSES

2. Please estimate the number of petitions for domestic violence protection orders which are filed in your court on a monthly basis.

1-10 - 19
11-20 - 5
21-30 - 1
31 or more - 1

3. Please estimate the percentage of such actions which are brought by pro se litigants.

Less than 10% - 5
10% to 25% - 1
25% to 50% - 3
more than 50% -17

4. Please estimate the percentage of actions for a domestic violence protection order in which a protection order is issued.

less than 10% - 5
10% to 25% - 1
25% to 50% - 5
more than 50% - 13
NO RESPONSE:- 2

5. Are you experiencing problems with abuse of the process for obtaining a domestic violence protective order in your jurisdiction (for example, use of the protective order process for purposes other than safety or protection)?

Yes - 20

- Justice courts refuse to hear and send to chancery
- 99% hearsay/ no factual basis
- use to get a leg up in custody
- court being asked to impose criminal sanctions
- litigant using action as a ploy to get back at spouse
- gaining tactical advantage
- actions used when no "abuse"
- child visitation, not protection, is real issue
- difficult to ascertain facts with pro se litigants
- used by dating partners in spats

- using as coercion
- law enforcement directing parties not entitled to go to court
- neighbors filing
- using to harrass clerks to assist litigants by rendering legal opinions
- petitioners don't show and withdraw the petition

No - 6

- small problem but manageable

6. Is your court currently issuing domestic violence protective orders which contain provisions for the temporary visitation and custody of children as are permitted by §93-21-15?

Yes - 19

- not in temporaries, but in finals if merited
- placing time limit on custody provisions in p.o. to file proper custody action

No - 6 (plus 1 no response)

- no time to "fool" with these cases, they belong in justice or county court
- chancery court should only address custody when properly plead in appropriate action, not in domestic violence case
- requires separate action on custody with separate hearing

7. Are you experiencing difficulty in your court meeting the statutory requirement to hold a hearing within ten (10) days of the filing of a petition for relief from domestic abuse, or to handle these cases on an expedited basis?

Yes - 13

No - 13

If yes, what, if any, mechanisms has your court developed to address these issues?

- meeting required time frame, but to detriment of other matters
- put them on the docket and hope for the best
- chinese fire drill
- difficult to get parties to appear for subsequent hearing dates
- they may not always be heard in 10 days - difficult to bump equally important case such as those involving child abuse allegations
- the law should be changed to require the justice courts (with big salary increase) to hold the initial hearings w/o notice. If the order is granted, then the matter should be referred/transferred to chancery for a hearing with notice
- justice and municipal courts should handle: they already handle "domestic" matters such as assaults and chancery is not a criminal court
- send them to county court or justice court where they belong

8. Does your court have a good working relationship with other courts in your jurisdiction authorized to issue domestic violence protection orders?

Yes 18

No 4

Unsure/maybe/no answer 4

- I can always refer
- all courts work together
- we communicate and share info

9. Has your court developed any instructions or other materials for pro se litigants to assist in the access to the court?

Yes 5
 No 20
 Not sure 1

several courts noted that they utilize the forms developed by AG office for pro se litigants.

10. Are your court clerks instructed with regard to assisting pro se litigants (e.g., providing litigants with forms, instructions on how to complete forms, instructions on how to obtain a court date, and other information not comprising legal advice)?

Yes 16
 No 9
 Unsure 1

Some the comments:

- clerks not instructed by judge, but by Judicial College
- court clerks provide forms to litigants and advise where ct. administrator's office is
- all my clerks do is set court date
- against the law for clerks to practice law

11. Do you have a domestic violence advocacy program in your area?

Yes 12
 No 5
 Don't know 9

12. If you have a domestic violence advocacy program in your area, do you have a cooperative relationship with that program?

- they are available by phone
- I have referred parties for assistance, and have been contacted by victim in shelter needing assistance

13. Would you favor a change to the current system to require that all actions under the Protection from Domestic Abuse Act must be brought solely in chancery court?

Yes 4

- chancery best suited to handle these
- to ensure uniformity in the administration of the Act
- orders from other courts can conflict with chancery orders
- other related matters such as custody/visitation should be in chancery

No 23

- person may need immediate relief

- other courts should continue to handle emergency, only custody-related matters to chancery
- chancellors not always available to hear emergency petitions
- best handled in Justice court
- we have enough to deal with already
- chancery court not given constitutional authority in criminal action
- should be combination of justice and chancery
- only one chancellor for several counties - disruptive to docket for me to hear all petitions
- justice for temporary/chancery for permanent
- municipal or justice could enter emergency relief and set return date to chancery
- people cannot afford to go to chancery

14. Would you favor a system in which multiple courts are granted the authority to issue temporary emergency relief, but that only the chancery courts are authorized to grant final relief?

Yes 12

- final relief for custody/visitation could be reserved for chancery
- if children not involved, other courts should be able to issue final relief too

No 10

- Justice court should be initial court for all cases with 60 day authority - then parties could choose to proceed to chancery
- this would limit victim access to courts - if children not involved, other courts should handle final relief

15. Would you favor leaving the system as it currently exists?

Yes 5
No 20

16. Would you favor an expansion of the role of the family master in chancery court to handle domestic violence protection order issues?

Yes 12

- would make judge more readily accessible
- but where would funding come from
- only if the role of chancery is expanded
- should be at option of chancellor

No 9

- using regular judge more economical than master
- no funding for master
- our district does not use masters
- there are sufficient courts to handle these matters
- master can play role in discretion of chancellor already

undecided 5

- depends on the volume of cases

**MS SUPREME COURT
COMMISSION ON THE STUDY OF DOMESTIC ABUSE PROCEEDINGS
CIRCUIT COURT JUDICIAL SURVEY FORM**

22 Responses received from Circuit Court Judges:

1. I am currently a:

Circuit Court Judge

2. Please estimate the number of petitions for domestic violence protection orders which are filed in your court on a monthly basis.

1-10	<u>15</u>
11-20	<u> </u>
21-30	<u> </u>
31 or more	<u> </u>
None	<u>8</u>

3. Please estimate the percentage of such actions which are brought by pro se litigants.

Less than 10%	<u>6</u>
10% to 25%	<u> </u>
25% to 50%	<u> </u>
more than 50%	<u>9</u>
None	<u>4</u>

4. Please estimate the percentage of actions for a domestic violence protection order in which a protection order is issued.

less than 10%	<u>6</u>
10% to 25%	<u> </u>
25% to 50%	<u>3</u>
more than 50%	<u>5</u>
None	<u>3</u>

5. Are you experiencing problems with abuse of the process for obtaining a domestic violence protective order in your jurisdiction (for example, use of the protective order process for purposes other than safety or protection)?

Yes 4

- Using Circuit Court as method to gain advantage prior to divorce proceedings.
- Complaint filed when other proceedings are ongoing in Chancery Court then dropped when the Circuit Court has the hearing. I suspect the complaint is filed in Circuit to get some advantage in Chancery.
- Harassment of parties during pending divorce and /or when issued and children are involved.

No 13

- I have never been asked to issue one.
- The alleged victim does not always appear to follow through, but that could be due to fear on the victim's part.

6. Is your court currently issuing domestic violence protective orders which contain provisions for the temporary visitation and custody of children as are permitted by §93-21-15?

Yes 5

No 13

If no, explain:

- Should be done by Chancery Court.
- Allow Chancery Court the opportunity.
- No petition has been filed before this court.
- Have not had this issue presented to me.
- This issue has not arisen before me.

7. Are you experiencing difficulty in your court meeting the statutory requirement to hold a hearing within ten (10) days of the filing of a petition for relief from domestic abuse, or to handle these cases on an expedited basis?

Yes 7

- It is difficult from a scheduling standpoint, especially when I hold court in another county.
- No set mechanisms have been put in place. The cases are merely handled on a case by case basis as the problems present.
- The matter is set as soon as possible.
- We can't address this issue. I am a Circuit Judge with responsibilities in 3 counties. I am often unable to schedule a hearing because I am in another county. In Washington County, there is only 1 courtroom. I am often unable to schedule hearings because another judge has the courtroom. Also, Circuit Courts are simply not emergency courts. We usually do things on longer schedules due to the rules under which we operate.

No 10

- If yes, what, if any, mechanisms has your court developed to address these issues?
- Truly only one case filed.

8. Does your court have a good working relationship with other courts in your jurisdiction authorized to issue domestic violence protection orders?

Yes 13

If yes, explain:

- The Chancery Court has handled them in this district so far.
- Circuit only hears DV cases in Lincoln Co. rotating basis with Chancery
- Justice Courts and Chancery Courts and County Courts have appropriately handled those filed.
- Share courtroom space. Would call upon xxxx concurrent jurisdiction, if unable to give priority status.
- I answered yes because I have not observed any problems. However, I have become aware that some Chancellors have some concerns on a constitutional basis. I have not observed them in my district.
- Simply, defer to Chancery County Youth Court.
- These are principally handled in Chancery and County courts.
- We all get along.

No 7

- No cases filed.
- I am told by the circuit clerk that some judges in other courts refuse to take these cases.

9. Has your court developed any instructions or other materials for pro se litigants to assist in the access to the court?

Yes 2

No 20

10. Are your court clerks instructed with regard to assisting pro se litigants (e.g., providing litigants with forms, instructions on how to complete forms, instructions on how to obtain a court date, and other information not comprising legal advice)?

Yes 14

No 7

11. Do you have a domestic violence advocacy program in your area?

Yes 10

No

Don't know 12

12. If you have a domestic violence advocacy program in your area, do you have a cooperative relationship with that program?

Yes 8

- Our House, offers anger management courses and other services to both men and women.

No 3

- No, but I could have such.

13. Would you favor a change to the current system to require that all actions under the Protection from Domestic Abuse Act must be brought solely in chancery court?

Yes 18

- Chancery is where they belong. Usually where they end up anyway.
- Chancery Court has always handled matters of domestic disputes, child custody, and award of residential custody for benefit of minors. Any handling of these cases by Circuit Courts will conflict with criminal jurisdiction.
- Uniformity
- This would work especially well if a Chancellor would have a Master or other designee to handle such matters. Like Circuit Judges, Chancellors now have an increased budget allowance.
- More suited for Chancery.
- Usually involve family problems which Chancery is better equipped to handle.
- Circuit Court is not designed to handle these cases.
- Seems to be more appropriately a Chancery matter.
- Chancery is proper court for domestic matters.
- They deal with these issues regularly, we don't!
- As I mentioned, complaints are filed in Circuit while related matters are pending in Chancery. This sets up a potential conflict between the courts. Also, complaints are filed in circuit the week the matter is scheduled in Chancery with the purpose of Harassment or attempt to gain some tactical psychological advantage.
- Because the Circuit Courts are not really good venues for proceedings which are in the nature of emergencies. Also, the fact that this court is in a 3 county district, I am often unavailable in any one county.

No 3

- If criminal charges have been filed, the matter should be before the court that would

have jurisdiction of the criminal case.

14. Would you favor a system in which multiple courts are granted the authority to issue temporary emergency relief, but that only the chancery courts are authorized to grant final relief?

Yes 13

- The problem arises as to conflicting information being given to 2 different forums and decisions as to what constitutes an emergency.
- Uniformity
- Yes, if the avenue in item 13, above, is not taken.
- This would provide more options for person asking for relief.
- It would lead to a more consistent disposition of cases and specialization.
- As to cases where no criminal charges are pending.

No 7

- Chancery should handle these matters.
- Possible abuse.
- There is rarely a need for this in Lauderdale County.
- I don't see that this would alleviate any of our problems.

15. Would you favor leaving the system as it currently exists?

Yes 5

No 15

- The system is ill advised from the outset.

16. Would you favor an expansion of the role of the family master in chancery court to handle domestic violence protection order issues?

Yes 16

- Assist Chancellor with his caseload.
- It would provide for specialization and consistency.

No 2

- Too many matters are being referred to Family Masters. Chancery Court should hear matters of such importance. Once Masters are placed in charge it usually results in allegations of partiality and abuse.
- Possible abuse.
- I cannot answer this questions because I do not know what the "Family Master" procedures are.

17. Would you favor permitting municipal courts to issue domestic violence protective orders?

Yes 11

- Access
- Yes, but only if item 13 were not pursued.
- A large number of these cases appear in Justice Court.
- Yes, but powers should be limited.
- They are set up to work on short notice.

No 8

- Unless the role was limited to temporary relief.
- In cases where allegations are made of domestic violence, warrants for the arrest of those charged should be issued.

18. Do you feel that a limitation on the number of courts able to issue domestic violence protective orders limit the ability of victims of such violence to receive protection in your jurisdiction?

Yes 1

No 19

- A Family Master could handle this matter effectively.
- Chancery should be adequate.
- Increasing the number of different courts only allows for forum shopping and other mischief.

19. Other comments:

- I do not agree with the legislation and the unlimited authority granted to Circuit, County and Justices courts in dealing with custody of children and possession of living quarters based upon the affidavit of a party. I will comply with my oath, however, to follow the law.

- Judge Samac Richardson writes:

-These cases are a nightmare for Circuit Judges who have active dockets and more than one county in the district. It is very difficult meeting the 10 day window. It is better for the Court and the clerk and the attorneys and the parties to conduct the hearing in the county where the petition is filed. We have 17(?) 2 week trial terms with set motion days in each county and the 10 day window is not adequate for scheduling a hearing in the appropriate county in a timely manner. These DV petition should be directed to a court that could consider them in a timely manner. We have Drug Courts. Proposed Business Courts - How about a Domestic Violence Court? Why don't we try for a DUI Court or elect more judges and have nightly court. Judges have too many multi headed monsters to slay now; the job just gets bigger and more time is required and judges cannot get to the business of the court of letting/insuring everyone avail themselves of the court system, so their case can be heard.

_____ name

_____ phone number

**MS SUPREME COURT
COMMISSION ON THE STUDY OF DOMESTIC ABUSE PROCEEDINGS
COUNTY COURT JUDICIAL SURVEY FORM**

8 Responses received from County Court Judges:

1. I am currently a:

County Court Judge

2. Please estimate the number of petitions for domestic violence protection orders which are filed in your court on a monthly basis.

1-10	<u>4</u>
11-20	<u> </u>
21-30	<u> </u>
31 or more	<u> </u>
None	<u>4</u>

3. Please estimate the percentage of such actions which are brought by pro se litigants.

less than 10%	<u>1</u>
10% to 25%	<u>1</u>
25% to 50%	<u> </u>
more than 50%	<u>2</u>
None	<u>1</u>

4. Please estimate the percentage of actions for a domestic violence protection order in which a protection order is issued.

less than 10%	<u>2</u>
10% to 25%	<u>1</u>
25% to 50%	<u> </u>
more than 50%	<u>1</u>
None	<u> </u>

5. Are you experiencing problems with abuse of the process for obtaining a domestic violence

protective order in your jurisdiction (for example, use of the protective order process for purposes other than safety or protection)?

Yes 2

- Using Circuit Court as method to gain advantage prior to divorce proceedings.
- Complaint filed when other proceedings are ongoing in Chancery Court then dropped when the Circuit Court has the hearing. I suspect the complaint is filed in Circuit to get some advantage in Chancery.

No 5

- I have never been asked to issue one.
- The alleged victim does not always appear to follow through, but that could be due to fear on the victim's part.

6. Is your court currently issuing domestic violence protective orders which contain provisions for the temporary visitation and custody of children as are permitted by §93-21-15?

Yes 2

No 2

If no, explain:

No petition has been filed before this court.

The only case, I have actually heard did not involve those issues of temp visitation and custody of children.

7. Are you experiencing difficulty in your court meeting the statutory requirement to hold a hearing within ten (10) days of the filing of a petition for relief from domestic abuse, or to handle these cases on an expedited basis?

Yes

- It is difficult from a scheduling standpoint, especially when I hold court in another county.
- No set mechanisms have been put in place. The cases are merely handled on a case by case basis as the problems present.

No 5

- issues?
- If yes, what, if any, mechanisms has your court developed to address these
 - Truly only one case filed.

8. Does your court have a good working relationship with other courts in your jurisdiction authorized to issue domestic violence protection orders?

Yes 8

If yes, explain:

-We have a good working relationship with other courts in all matters

Nothing has occurred. I just cannot imagine any of us being uncooperative with one another in such situations. I know I would go out of my way to help any judge out.

Justice and Chancery are both set up to handle these very smoothly, and litigants are apparent~' being referred there and are getting results, because we are never called upon to do any. Justice and Chancery are the two courts with original jurisdiction of cases (criminal or cMI) filed regarding domestic violence.

I have assisted the Chancery Court in the county.

The other courts handle all these orders.

My understanding the chancellor is of opinion he can't handle domestic violence because of statutes and does not do so. I am only judge to handle these cases. I don't know if I sitting circuit judge has been approved to handle their cases.

No

- No cases filed.

9. Has your court developed any instructions or other materials for pro se litigants to assist in the access to the court?

Yes 1

No 6

- But other courts in this county have.

10. Are your court clerks instructed with regard to assisting pro se litigants (e.g., providing litigants with forms, instructions on how to complete forms, instructions on how to obtain a court date, and other information not comprising legal advice)?

Yes 3

No 3

- They have the attorney general forum.

11. Do you have a domestic violence advocacy program in your area?

Yes 2

No 1

Don't know 5

12. If you have a domestic violence advocacy program in your area, do you have a cooperative relationship with that program?

Yes 2

- Our House, offers anger management courses and other services to both men and women.

No

- No, but I could have such.

- Unaware of such a program in my area at this time.

- I meet with the director regularly at another agency meeting.

13. Would you favor a change to the current system to require that all actions under the Protection from Domestic Abuse Act must be brought solely in chancery court?

Yes 6

-This is where it should be held (chancery).

Chancery already has jurisdiction over domestic relations and child custody.

The current system permits all manner of mischief, e.g. court shopping and seriously infringes the jurisdiction of Chancery Court to the extent it permits other courts to do anything with/to a family other than keep the violent offender out of the home until a Chancery hearing can be had.

The subject matter falls under traditional chancery jurisdiction and chancery courts are familiar with that type case.

These actions usually involved mixed custody/divorce issues.

No _____

14. Would you favor a system in which multiple courts are granted the authority to issue temporary emergency relief, but that only the chancery courts are authorized to grant final relief?

Yes 5

Again the chancellor is one to have final say.

If the final relief is granted in chancery court, the ruling would be more consistent and often these parties are involved in divorce proceedings anyway.

Victims need an emergency court when chancery is not available.

Because the initial emergency of the protective order would be in place and the matter is under domestic relations which generally the chancellor handles.

Absolutely- This answer is for civil/family issues. Sometimes this temporary relief is related to a criminal action. In those cases, as in the civil cases, the temporary order should be transferred to Chancery (or the Criminal Court) by any further action. If no case has been filed in Chancery or a Criminal Court, the order should expire by its terms and should not be renewable or revivable.

No 1

- Chancery should handle these matters.
- Possible abuse.
- There is rarely a need for this in Lauderdale County.

15. Would you favor leaving the system as it currently exists?

Yes 2

No 4

- The system is ill advised from the outset.

16. Would you favor an expansion of the role of the family master in chancery court to handle domestic violence protection order issues?

Yes 6

-Consistency

..The position of family master is presently partime, but perphaps with more pay it would be an

-incentive for our family master to be full time.

..Relieve chancellor's work load.

No 1

17. Would you favor permitting municipal courts to issue domestic violence protective orders?

Yes 3

..Quick access to court.

..They are trained lawyers and have the same abilitys to listen and make decisions as trial judges at the courts of records level.

Coextensive with this Court's criminal jurisdiction, they should be able to issue orders (limited) effective until the hearing on the criminal case.

No 4

-Our municipal courts have lax record keeping.

-No, because it needs to be centrally located and not in records of several courts.

18. Do you feel that a limitation on the number of courts able to issue domestic violence protective orders limit the ability of victims of such violence to receive protection in your jurisdiction?

Yes 3

-In some areas of the state, there are a few judges on a regular basis

-Domestic violence is a serious offense that can ultimately result in the death of a victim or victims, I would hate to think it happened in our jurisdiction because only one court had jurisdiction to hear such cases.

...The problem is not the number of courts available, the problem is the broad (overbroad, I suggest) power vested in so many courts. A temporary order (10-30 days) ought to be widely available but limited in its scope and not renewable except in the court of proper jurisdiction (e.g. Chancery, Justice or Municipal) for plenary disposition of any case arising out of the violence or domestic discord. It goes without saying too much that a reduction in the number of courts available will limit access for victims" but should not limit protection when it's really needed.

No 5

-No more than other jurisdictional restrictions limit access to courts which, in my opinion, is not at all.

19. Other comments:

- My greatest concern is to advise the alleged subject of the domestic violence that a piece of paper will not stop a person bent on doing harm to them. That they should call police immediately when an incident appears likely.

...The recent expansion of powers and jurisdiction under the PDAA was a very bad idea undertaken without any significant input from the courts who are being called upon to be the "violence police". The very ex parte nature of these orders (even when legitimately needed) should have caused someone to be concerned before now. I am thankful the Commission is taking a look at this ill-conceived nonsense.

**MS SUPREME COURT
COMMISSION ON THE STUDY OF DOMESTIC ABUSE PROCEEDINGS
JUDICIAL SURVEY FORM
JUSTICE COURT SUMMARY**

Responses Received: 81

1. Please estimate the number of petitions for domestic violence protection orders which are filed in your court on a monthly basis.

<u> </u> 1-10	<u>59</u>
<u> </u> 11-20	<u>17</u>
<u> </u> 21-30	<u>5</u>
<u> </u> 31 or more	<u>0</u>

2. Please estimate the percentage of such actions which are brought by pro se litigants.

Less than 10%	<u>8</u>
10% to 25%	<u>7</u>
25% to 50%	<u>5</u>
more than 50%	<u>60</u>

3. Please estimate the percentage of actions for a domestic violence protection order in which a protection order is issued (consider ex parte orders and those issued after a hearing).

less than 10%	<u>16</u>
10% to 25%	<u>7</u>
25% to 50%	<u>18</u>
more than 50%	<u>37</u>
no response	<u>3</u>

4. Are you experiencing problems with abuse of the process for obtaining a domestic violence protective order in your jurisdiction (people who are not in domestic relationships filing, people filing for reasons other than seeking protection from abuse)?

Yes	<u>42</u>
No	<u>38</u>
No response	<u>1</u>

Of the courts that indicated yes, some of the common reasons were:

- Don't show up for hearing
- People use them for divorce/custody
- no domestic relationships (in-laws, neighbors, friends)
- confusion about restraining orders vs. dv protective orders
- petitioners not being abused, just upset/mad with spouse/partner, just want to break up, playing games, want to get their personal stuff
- divorce lawyers encourage clients to obtain protective order when not warranted
- use as way to get partner out of house when not in danger
- law enforcement advising persons about protective orders when not domestic
- revenge
- no immediate danger (but alleged to avoid giving respondent notice)

Most courts who indicated "no" did not explain, however one court indicated that a small percentage of the time the process is being abused, but that the judge can weed through those petitions without merit.

5. Are you experiencing difficulty meeting the statutory requirement to hold a hearing within ten (10) days of the filing of a petition for relief from domestic abuse, or to handle these cases on an expedited basis?

Yes 27

No 52

 No response: 2

The courts indicating a problem had the following explanations:

- problems getting respondents served
- not holding court regularly enough to have hearings in 10 days
- not enough time for a person to proceed to get a final order
- not difficult to set the time, but getting respondent served if avoiding service or in another county
- no judges available on designated hearing dates (all out of town, etc.)

6. Does your court have a good working relationship with other courts in your jurisdiction authorized to issue domestic violence protection orders?

Yes 39

- great relationship but chancery sends them to justice first to get temporary
- talk with chancery often; refer victims who ultimately want permanent order
- chancery and circuit judges always available on daily basis
- good working relationship
- chancery court good, circuit will not do them

No 34

- other courts send them all to justice (even if judge is available in that court)
- no communication at all with other courts
- chancery tells all they must have lawyer
- higher courts won't work with justice courts
- other courts drop the ball
- clerks of other courts tell petitioners "we don't do those here" or "we can't enforce that order"

No response 8

- don't know; we don't communicate

7. Has your court developed any instructions or other materials for pro se litigants to assist in the access to the court?

Yes 32

- one court indicated they used information provided to them by MS Judicial College and AG office

No 45

No response 4

8. Are your court clerks instructed with regard to assisting pro se litigants (e.g., providing litigants with forms, instructions on how to complete forms, instructions on how to obtain a court date, and other information not comprising legal advice)?

Yes 71

No 6

No Response 4

one response: new clerk - don't know

9. Do you have a domestic violence advocacy program in your area (a domestic violence shelter, legal clinic or other service)?

Yes 42

-if you count 50 miles away

No 28

Don't know 9

No response 2

10. If you have a domestic violence advocacy program in your area, do you have a cooperative relationship with that program? (Only those who indicated yes to above question responded)

Yes 34

-shelter staff will come to court and help victim fill out paperwork
-court clerks provide number of advocacy program and they will respond
-we meet periodically with them
-shelter staff cordial and helpful
-program will assist victim finding temporary housing and make referrals to other agencies
-someone from shelter is always in court
-they come to our courts and do workshops for judges and law enforcement

No 8

-no direct communication, but will help with orders
-too far away

11. Would you favor a change to the current system to require that all actions under the Protection from Domestic Abuse Act must be brought solely in chancery court (including emergency petitions)?

Yes 55

- justice courts have too much to do; it's a burden to our court
- chancery is where final should come from anyway
- a 10 day protection order is very little protection; expires before hearing in chancery
- too confusing to have so many courts
- should be in chancery if dealing with kids or property rights; mostly marriage issues
- keep victims from going through 2 filing processes
- better system - keep victims in one court start to finish; victims don't have to go to court multiple times, missing work, finding child care
- most cases proceed to higher court if long-term protection needed
- chancery courts don't want to become involved if justice has issued order
- unless there is a dire emergency
- petitioners get discouraged when told they can only get a 10 day in justice

No 21

- easy access to justice courts; chancellors often in another county
- transfer procedures would help; better communication between courts
- favor a change ONLY if victims can get into chancery as quickly as they can justice court; chancery takes too long
- this would be disservice to person seeking relief
- too difficult for those in need to get to chancery
- chancery court wants money and lawyers to file in their court
- too few chancellors; more justice court judges and better geographically located;
- victims will be hampered in getting ex parte orders; ex parte and temporary orders should be extended if keep system intact
- it would never get done
- emergency ex parte should be in other courts besides chancery

No response 4

12. Do you favor a system in which multiple courts are granted the authority to issue temporary emergency relief?

Yes 55

- think municipal court should handle for city residents
- will take the burden off us
- more access for victims
- not burdensome to any one court
- allows more avenues for help
- b/c domestic violence is so dangerous and volatile, need as many outlets as possible for relief
- expediency
- but should be communication to make sure parties aren't jumping from court to court (linked by computer)
- someone always available in emergencies
- to be able to contact another judge in a different court to assist
- because there are times it is totally necessary for a person to have protection for their safety and their children
- courts should not be permitted to turn a victim away if a judge is available

No 23

- should be a chancery matter
- complicates matters when multiple courts have concurrent jurisdiction
- victims better served when municipal and justice courts have jurisdiction over temporary emergency relief

- multiple courts are confusing to pro se litigants
- if initiated in chancery, chancellor will know if litigants abusing system
- too hard for municipal/justice to deal with custody/property
- maybe, if they afforded more time for protection

No response 3

13. Do you think it is important for justice courts to be able to issue domestic violence protection orders in emergency situations?

Yes 66

- only if chancery is truly unavailable and emergency
- justice and municipal best set up to handle emergency situations
- could save a life
- we are more available
- to protect the petitioner
- chancery, county, municipal courts not in session all the time - always justice court judge - no county court
- relief should be available at all times

No 13

- more practical to stay in one court throughout
- order duration too short to be useful

Not sure/no response 2

14. Do you favor permitting municipal courts to issue domestic violence protective orders?

Yes 65

- to relieve load from justice court
- many litigants live within city; city police have arrested and city charges pending
- another avenue for the victims
- only if limited solely to city limits with city residents
- county has enough to do without worrying about city matters
- only emergency orders
- all courts needed if system is to work
- assistance to justice courts in temporaries
- all courts should have authority
- municipal court should handle cases arising in municipality
- justice court staff overworked handling county matters
- municipal judges are lawyers

No 13

- they don't want to do it
- they refer to justice
- should be solely in chancery
- justice is enough along with chancery

No response 3

15. Would a limitation on the number of courts able to issue domestic violence protective orders limit the ability of victims of such violence to receive protection in your jurisdiction?

Yes 44

-we are most accessible court
-chancery and circuit judges travel a lot

No 28

-depends on the courts doing their jobs
-once public understands which court, it shouldn't be a problem

No response 9

16. In your jurisdiction, are the county, circuit and chancery courts accepting petitions for domestic violence protective orders?

Yes 21

No 27

-only chancery is accepting

Don't know 32

17. Other comments:

These were varied:

- chancery will not accept without filing fee and lawyer! They need to do their job.
- there is no communication between the different courts handling these matters
- no coordination or follow-up to the emergency orders
- temporary order duration should be at least 30 days, renewable for another 30 to give time to get into other court
- circuit, county and chancery courts refuse to issue protective orders
- there should be a system in place between the courts
- service on respondents across jurisdictional lines a problem
- should develop system where justice court can issue emergency order, then send to chancery for hearing
- for emergency relief litigants should follow procedure like in Rule 65 for TRO
- notice should always be required for respondents
- either expand jc authority to issue for longer than 10 days, or get jc out of this area

RESOLUTION

The Conference of Chancery Judges did resolve and determine a resolution regarding Domestic Violence Statutes. Said Resolution was discussed and presented while in the called Study Meeting of October 24, 2008, at Choctaw Mississippi.

IT WAS RESOLVED by the Conference of Chancery Judges as follows:

All Orders of Temporary Protection from Domestic Abuse shall originate within the Justice Court or Municipal Court of the respective county; said Temporary Protective Orders shall expire after thirty (30) days from date of issuance. All Justice or Municipal Court Judges shall advise the Petitioner of an opportunity to avail themselves of further relief by filing a civil domestic action or criminal action within the Court of Appropriate jurisdiction, either the County, Chancery or Circuit Courts.

SO RESOLVED this the 24th day of October, 2008.

CONFERENCE OF CHANCERY JUDGES

**REPORT OF THE DOMESTIC VIOLENCE CLINIC, UNIVERSITY OF MISSISSIPPI
TO THE DOMESTIC VIOLENCE COMMISSION**

November 12, 2008

This paper discusses issues identified by Commission members with regard to Mississippi domestic violence laws, as well as issues and ideas identified by Clinic students. The paper represents the combined work of Kristen Blanchard, Ligi George, Matthew Shoemaker, and Nicole Tisdale, members of the Domestic Violence Clinic of the University of Mississippi Civil Legal Clinic, working under the supervision of Professor Deborah Bell and Managing Attorney Marie Cope.

Each section of this report begins with a short summary of the Clinic's research. Sample statutes from other states are attached as Appendices.

I. JURISDICTION TO AWARD CUSTODY IN PROTECTION ORDERS

SUMMARY: If circuit and county courts are to have authority to award custody in protective orders, the Commission may want to recommend limiting this authority by (1) requiring that circuit and county court custody orders be limited to a specific time period; and/or (2) by providing for transfer to the proper chancery court. Precedent for such temporary, emergency jurisdiction can be found in analogous county habeas jurisdiction and UCCJEA emergency jurisdiction provisions.

DISCUSSION:

A Mississippi domestic violence survivor may seek a protection order from chancery court, circuit court, justice court, municipal court or county court. MISS. CODE ANN. § 93-21-3 (2008). Chancery courts, circuit courts and county courts may award temporary custody as part of a protective order. MISS. CODE ANN. § 93-21-15(1)(d) (2008).

Commission members have identified several problems with allowing circuit and county courts to award temporary custody in these proceedings. First, chancery courts are vested with authority over matters related to children. Circuit and county courts do not regularly handle family law matters or matters related to children. Second, the statute does not set a time limit for the "temporary" order or provide for transfer to chancery court. As a result, it is possible that a circuit or county court custody order could effectively become a permanent order. Third, if there is already an outstanding custody order, a circuit or county court temporary order could act as a modification of a chancery order.

There is precedent for authorizing a non-family law court to enter a temporary custody order in Mississippi. A parent may file a habeas petition asking a county court to

award temporary custody of a child, even though a chancery court custody order is outstanding. MISS. CODE ANN. § 9-9-23 (2002). For example, in *Wade v. Lee*, 471 So. 2d 1213 (Miss. 1985), a Hinds County Court awarded a noncustodial father temporary custody in a habeas proceeding, even though the Sharkey Chancery Court had awarded custody to the mother. After a weekend visit in Hinds County, the father refused to return the child because the mother was intoxicated. The mother filed a petition for writ of habeas corpus against the father in Hinds County. The county court awarded the father temporary custody, but without placing a maximum time period for the temporary award. The Mississippi Supreme Court held that the county court should have provided the father with a reasonable period of time within which to obtain a chancery modification of the original custody decree, failing which matters would revert to the terms and conditions specified in the original decree. Similarly, in *C.M. v. R.D.H.*, 947 So. 2d 1023 (Miss. Ct. App. 2007), a divorce decree was entered by the Scott County Chancery Court giving the mother custody. The father filed a petition for emergency relief for temporary custody in Hinds County, where the children were located, because he believed the children were in danger. The appellate court held that the Hinds County court had jurisdiction to grant custody, but only for a temporary period.

Similar authority exists for a state to take temporary emergency jurisdiction over custody even though jurisdiction lies in another state under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). This is the case even if another state has continuing exclusive jurisdiction pursuant to an outstanding custody order. A Mississippi chancery court may exercise temporary emergency jurisdiction if a child is present in Mississippi and has been abandoned, or it is necessary to protect the child because the child, or a sibling *or parent* of the child, is in danger of abuse. *See* MISS. CODE ANN. § 93-27-204(1) (2004). If there is a previous custody determination from another state, the Mississippi emergency order must specify a period of time in which the petitioner must obtain an order from the other state. *See* MISS. CODE ANN. § 93-27-204(3). The Mississippi order remains in effect until an order is obtained from the other state, or the period expires. *See id.*

If there is no previous custody determination, a Mississippi emergency custody award remains in effect until an order is obtained from a court having initial custody jurisdiction. *See* MISS. CODE ANN. § 93-27-204(2). If such an order is not obtained, the Mississippi emergency child custody determination becomes final if it so provides. *See id.*

The emergency habeas authority of county courts and the emergency jurisdiction of states under the UCCJEA is analogous to the county/circuit court authority to issue temporary custody in protection orders. However, no statutory mechanism provides for transfer or places a time limit on the temporary custody of protective orders. If the Commission finds that these courts should continue to address custody in protective orders, the Commission may want to consider recommending one of the following:

- Prohibiting circuit/county awards of custody when a chancery court has already entered a custody order, or

- Requiring that the circuit/county order set a reasonable time in which the parties must seek modification in the appropriate chancery court, or the custody status will revert to the original order

If custody has not previously been addressed:

- Requiring that a circuit/county custody order provide for transfer of the custody matter to the appropriate chancery court, or
- Requiring that the circuit/county custody order set a reasonable time in which the parties must seek an order in the appropriate chancery court, or the custody status will revert to the original order, or
- Allowing the circuit/county order to provide that if the respondent does not seek chancery court oversight within a set period of time, the custody order will become permanent, but with future jurisdiction for modification in the chancery court.

II. UCCJEA /VAWA COMPLIANCE

SUMMARY: Several issues discussed by the Commission – mutual orders, fee waivers, and police enforcement of foreign orders – must be considered in light of the requirements of the Violence Against Women Act (VAWA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It is important to address these issues in a manner that does not place Mississippi out of compliance with either statute, both in order to preserve the effectiveness of Mississippi protective orders in other states, and to ensure Mississippi’s compliance for funding purposes.

DISCUSSION:

A. Mutual orders

As used in this paper, the term “mutual order” means an order that restrains BOTH parties from contact, even though the defendant did not request protection and did not prove that he/she was a victim of domestic violence. Both VAWA and the UCCJEA deny full faith and credit to mutual orders. In addition, VAWA funding is limited to states that prohibit mutual orders.

Current Mississippi law appears to prohibit mutual orders. Section 93-21-15(2) of the Mississippi Code provides that “No protective order shall be issued unless supported by an *independent petition* requesting relief pursuant to this chapter.” (emphasis added). *See also* MISS. CODE ANN. § 93-21-11(6) (2008). In addition, Mississippi judges may only enforce foreign mutual orders if the respondent filed a written pleading seeking protection AND the issuing state made specific findings in favor of the respondent. MISS.

CODE ANN. § 93-22-5(7) (2004). These statutes have the effect of prohibiting mutual orders issued only upon the petitioner's request. However, the prohibition is not spelled out clearly and, in practice, courts often issue mutual orders.

VAWA does not recognize mutual orders as valid and does not grant the orders full faith and credit: "A protection order issued by a State, tribal, or territorial court *against* one who has petitioned . . . for protection against abuse . . . is not entitled to full faith and credit *unless* the defendant filed a cross or counter petition seeking protection *and* the court made specific findings that each party was entitled to an order." 18 U.S.C.A. §2265(c). The UCCJEA, in effect in most states, including Mississippi, also provides that courts may only enforce the provisions of a mutual foreign protection order which favor the respondent if the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state, and the tribunal of the issuing state made specific findings in favor of the respondent. *See* MISS. CODE ANN. § 93-22-5(7). As a result, a Mississippi mutual order is not enforceable in other states, putting domestic violence survivors at risk in interstate cases. VAWA provisions related to funding also prohibit mutual orders. *See* 42 U.S.C.A. § 3796hh.

The Task Force may want to recommend adding an explicit provision to the Mississippi statute that would more clearly define and prohibit mutual orders, for example:

"A "mutual protection order" is a protection order that includes provisions in favor of both the protected individual seeking enforcement and the respondent.

The chancery, circuit, or county court shall be empowered to grant a mutual protection order only if:

- (a) a respondent files an independent petition for a protection order alleging abuse by a petitioner; and
- (b) specific findings of abuse by both parties are made."

B. Fee waivers

One issue that has been discussed by the Commission is the difficulty of covering the costs of petitions for protective orders. Mississippi law provides that petitioners should not bear the costs associated with filing or the issuance or service of any notice of a hearing, or order of protection, on the respondent. The court may assess costs to the petitioner, however, if the allegations of abuse are determined to be without merit. *See* MISS. CODE ANN. § 93-21-7(2) (2008). The respondent is to pay all costs incurred including attorney's fees unless the court determines that the petitioner is not a victim of abuse and that the claims are without merit. *Id.*

While fee waivers may present some financial strain on courts, this practice is necessary in order to comply with, and to secure funds under, the Violence Against Women Act (VAWA). State governments and entities must certify that their "laws, policies, and practices do not require the victim to bear the costs associated with the filing

of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction.” 42 U.S.C.S. §§ 3796gg-5(a)(1) and 3796hh(c)(4) (2008).

The intent of the provision is to ensure “that *all* victims can access legal relief in the civil and criminal justice systems” (<http://www.ovw.usdoj.gov/faqvawa2000.htm>). Therefore, states may not grant fee waivers only to domestic violence survivors below a certain income level, but instead must make fee waivers available to all victims, regardless of their ability to pay. *Id.* Charging victims court fees and then later reimbursing them is not in compliance with VAWA given that victims would still “bear the cost” until reimbursement occurred. *Id.* Nor is the requirement of a pauper’s oath VAWA-compliant. Domestic violence is a crime that “affects people of all socioeconomic backgrounds and education levels” (<http://www.ndvh.org/get-educated/>).

Clinic students explored possible avenues for generating revenue that would assist courts in covering the costs of protective order filings. Currently in Mississippi, certain funds go into a “Victims of Domestic Violence Fund” administered by the State Department of Health. The funds are to be used solely to support shelters for victims of domestic violence. MISS. CODE ANN. § 93-21-117 (2008). The funds may include legislative appropriations. Funds deposited into this account also include \$14.00 of each fee collected for a marriage license, *see* MISS. CODE ANN. § 25-7-13 (2008) and 49 cents from fees charged for certain criminal convictions, *see* MISS. CODE ANN. § 99-19-73.

In Florida, the party guilty of certain crimes, ranging from simple battery to felony battery and stalking, must pay not only sanctions for the crimes, but also a \$201 surcharge of which \$85 is deposited into a Domestic Violence Trust Fund. FLA. STAT. § 938.08 (2008). The clerk of the court retains \$1 of each surcharge as a service charge of the clerk’s office. The remainder of the surcharge funds the costs of incarcerating domestic violence abusers and providing additional domestic violence training to law enforcement personnel.” *Id.* Illinois retains \$5 from marriage license fees for its state domestic violence fund whereas North Carolina collects \$20. 55 ILL. COMP. STAT. 5/4-4001 (2008); N.C. GEN. STAT. § 161-11.2 (2008). In addition to marriage license fees, South Dakota and Idaho collect \$20 and \$25, respectively, from divorce actions for domestic violence projects. IDAHO CODE ANN. § 39-5213 (2008); S.D. CODIFIED LAWS § 16-2-45 (2008). Ohio receives \$32 from every divorce, annulment, or dissolution of marriage for its domestic violence shelters. OHIO REV. CODE ANN. § 3113.34 (LexisNexis 2008). In addition to marriage license fees, Nevada collects \$5 from the justice of the peace and commissioner of civil marriages for each celebration of marriage. NEV. REV. STAT. ANN. §§ 4.060 and 122.181 (2008). New York has another creative way of raising money by issuing distinctive “peace at home” license plates at regular registration costs but with an annual \$25 service charge to fund its state domestic violence awareness fund. N.Y. VEH. & TRAF. § 404-t (2) (Consol. 2008). Although not for the sole purpose of recouping court expenses, the states discussed have employed useful methods in raising funds and awareness of domestic violence issues.

C. Foreign order enforcement

The Commission has also discussed whether more discretion could be afforded to law enforcement in enforcing foreign protection orders that provide for custody. However, VAWA requires that states enforce facially valid protective orders from other states.

Valid protective orders from other states are entitled to full faith and credit in Mississippi under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (“UIEDVPOA”). *See* MISS. CODE ANN. §§ 93-22-1 to -17 (2004). A protection order is presumed to be valid if it: (i) identifies the protected individual and the respondent; (ii) is in effect at the time enforcement is sought; (iii) was issued by a tribunal that had jurisdiction; and (iv) was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and afforded an opportunity to be heard within a reasonable time after the issuing of the order, consistent with the respondent’s due process rights. *See* MISS. CODE ANN. § 93-22-5(4).

Mississippi law enforcement officers must enforce foreign protection orders upon determining probable cause to believe that an order is valid and has been violated. *See* MISS. CODE ANN. § 93-22-7(1). Presentation of a protection order that identifies both the protected individual and the respondent, and on its face is in effect at the time enforcement is being sought, constitutes probable cause that a valid foreign protection order exists. *See id.*

Mississippi tribunals must also enforce custody and visitation provisions of a valid foreign protection order. *See* MISS. CODE ANN. § 93-22-5(2). The custody and visitation provisions must have been issued in accordance with the jurisdictional requirements in the issuing state, which is the UCCJEA in all states and the District of Columbia, excluding Massachusetts, Missouri, New Hampshire, and Vermont.

These Mississippi provisions put Mississippi in compliance with VAWA. A protection order that is consistent with VAWA must be enforced both judicially and by law enforcement personnel as if it were an order of an enforcing state. *See* 18 U.S.C.S. § 2265(a). Notwithstanding failure to comply with a registration or filing requirement of an enforcing state, a protection order consistent with VAWA is accorded full faith and credit. *See* 18 U.S.C.S. § 2265(d)(2). If a Mississippi law enforcement officer refuses to enforce a valid order, they are likely in violation of both state and federal law. A law providing law enforcement with discretion beyond that set out in current Mississippi law would likely run be in violation of VAWA.

III. VENUE

SUMMARY: The Mississippi protective order statutes do not address venue. The general venue statutes do not provide local venue for a domestic violence survivor who has sought temporary shelter away from the defendant's residence. The Commission may want to recommend a statutory amendment to provide for more expansive venue in protective order cases.

DISCUSSION:

The Mississippi Civil Protection Order statute does not specifically address venue. Currently, requests for protection orders may be filed in chancery, county, circuit, justice and municipal* courts. MISS. CODE ANN. § 93-21-3(c) (2008) (* added by SB 2797, 2008 Regular Session). The general venue statute that applies to these courts establishes that civil actions may be brought "where the defendant resides, or... in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred." MISS. CODE ANN. § 11-11-3(1)(a)(i) (2004). Venue in county and justice courts is the same as generally provided above or "may hereafter be provided with respect to the particular action, suit or proceedings." MISS. CODE ANN. § 11-9-3 (2004). Venue in chancery courts lies "where the defendant, or any necessary party defendant, may reside *or be found*." MISS. CODE ANN. § 11-5-1 (2002).

In summary, venue in Mississippi state courts focuses on the rights of the defendant and the underlying conduct that prompted the action. However, in domestic violence cases, venue arguably should be broadened to protect the rights of the petitioner – the domestic violence survivor. Many domestic violence survivors leave their homes to seek temporary safety in shelters that may be located far away from their abusers in other counties. They may lack transportation or other resources to travel to another county to file suit. If venue does not also lie where the petitioner is physically located, then the petitioner would be compelled to return to the county where the abuser resides, potentially adding further risk to the survivor's safety and well-being.

The following proposed venue provision provides for broader venue in domestic violence cases in Mississippi. This provision was drafted based on a review of other state statutes regarding venue (attached as Appendix A):

"A petition for a protective order may be filed in any county: (1) where the petitioner currently or temporarily resides to avoid domestic violence; (2) where the respondent resides; (3) where domestic or family violence occurred; (4) where a divorce action between the parties may be brought; or (5) where a pending or completed family court proceeding involving the parties or their minor children was brought.

A minimum period of residency is not required to petition the court for an order of protection."

IV. CONDONATION

SUMMARY: The common law doctrine of condonation, as applied in Mississippi, prevents a victim of domestic violence who leaves and then returns home from seeking a divorce based on violence that predated the leaving. As a result, a victim must be physically abused again before the grounds for divorce are revived. The Commission may want to recommend a statutory amendment limiting the doctrine as it applies to victims of domestic violence.

DISCUSSION:

The Civil Legal Clinic Domestic Violence Clinic students have identified a common law doctrine that negatively affects victims of domestic violence. Under Mississippi law, habitual cruel and inhuman treatment may be grounds for obtaining a fault-based divorce for domestic violence survivors. MISS. CODE ANN. § 93-5-1 (2008). Condonation, a defense most commonly used in cases of adultery, is express or implied forgiveness of the marital wrong by the offended spouse and is conditioned upon the offending spouse's good behavior. *Ashburn v. Ashburn*, 970 So. 2d 204, 215 (Miss. Ct. App. 2007). The defense of condonation is generally not applied to prevent a divorce based on cruelty simply because the injured spouse remained with the abuser. In fact, "it shall be no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse." MISS. CODE ANN. § 93-5-4 (2004).

However, the Mississippi Supreme Court has held that a victim who leaves home, then reconciles, condones all violence that occurred before the reconciliation. "Cruel and inhuman treatment is not condoned when the parties cohabit, but it may be condoned if the parties resume their relationship after a separation." *Kumar v. Kumar*, 976 So. 2d 957, 962 (Miss. Ct. App. 2008). In essence, the survivor is penalized for making the decision to return and is prohibited from divorce *unless* the violence recurs.

A recent case starkly illustrates this problem. During her twenty-seven year marriage, Bhavna Kumar experienced demeaning abuse at the hands of her husband. *Id.* at 961. She was physically abused two to three times each year, including abuse during her pregnancy, a jaw injury that hospitalized her, and attempted strangulation. Her husband's adultery caused her to contract a sexually transmitted disease. She left her husband several times and then resumed the relationship. The court's opinion confirmed prior caselaw that by leaving the marital home and then reconciling, she "condoned" the prior violence and could not use the violence as grounds for divorce. However, in this case, the husband's abuse was revived as a ground because he struck her with a belt after her last return. *Id.* at 962.

On average, a domestic violence victim leaves and returns five to seven times

before the survivor leaves permanently. 28 WOMEN'S RIGHTS L. REP. 49, 50 (2007). Application of the Mississippi condonation rule means that a woman who returns, then resolves to finally leave, cannot obtain a divorce but must wait for physical abuse to recur.

A number of states have provided better protection for domestic violence victims by statutorily limiting application of condonation to continuing offenses such as cruel and inhuman treatment. Example statutes from South Dakota and North Dakota are attached as Appendix B.

Since current court interpretation of condonation in Mississippi does not adequately protect the domestic violence survivor's interests and instead may impede obtaining a divorce, the Commission may want to recommend amending Mississippi divorce statutes to include North Dakota provisions §§ 14-05-13 and 14-05-14. Also, the provision should incorporate the phrase "unless accompanied by *voluntary* express agreement to condone" so that the survivor's true intentions are preserved. In doing so, the law would protect domestic violence survivors from waiting until another - potentially fatal - act of violence to occur before securing an enforceable ground for divorce.

V. DELIVERY OF SERVICES

Clinic students looked at programs in several states that provide for streamlined services for domestic violence survivors. Programs include the use of law school students or volunteers to man hotlines for referral services, the use of special masters for hearing petitions for protective orders, and the creation of special, "one-stop" domestic violence courts. A description of some of these programs is attached as Appendix C.

Appendix A
Venue Statutes

<http://www.abanet.org/domviol/docs/FleeingPersonalJurisdictionChart.pdf>

Alabama: ALA. CODE § 30-5-3(c), (e):

A petition for a protection order may be filed in any county as follows: ... (2) Where the plaintiff is temporarily located if he or she has left his or her residence to avoid further abuse... *A minimum period of residency is not required to petition the court for an order of protection.*

Delaware: DEL. CODE ANN. tit. 10, § 1042(c):

A petition for a protective order may be filed in any county where the petitioner resides, the respondent resides, the alleged domestic violence occurs, or where the petitioner is temporarily located away from the residence to avoid domestic violence.

Florida: FLA. STAT. § 741.30(1)(j):

[A] petition for an injunction against domestic violence may be filed in the circuit where *the petitioner currently or temporarily resides*, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

Minnesota: MINN. STAT. § 518B.01(3):

An application for relief under this chapter may be filed in the court having jurisdiction over dissolution actions, in the county of residence of either party, *in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought*, or in the county in which the alleged domestic violence occurred. There are no residency requirements that apply to a petition for an order for protection.

West Virginia: W. VA. CODE § 48-27-302:

The action may be heard in the county in which the domestic violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. *If the parties are married to each other, the action may also be brought in the county in which the action for divorce between the parties may be brought[.]*

Appendix B
Condonation Statutes

South Dakota: S.D. CODIFIED LAWS § 25-4-22:

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. The following requirements are necessary to condonation:

- (1) A knowledge on the part of the condoner of the facts constituting the cause of divorce;
- (2) Reconciliation and remission of the offense by the injured party;
- (3) Restoration of the offending party to all marital rights.

South Dakota: S.D. CODIFIED LAWS § 25-4-23:

Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill treatment, which may aggregately constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

North Dakota: N.D. Cent. Code § 14-05-13:

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party; and
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which aggregately may constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoids such condonation.

North Dakota: N.D. CENT. CODE § 14-05-14:

Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled.

Appendix C
Delivery of Services
Program Descriptions

Arizona State University

Hotline: The APADV Hotline is a message service where people call in and leave messages detailing legal issues, etc. Callers are instructed NOT to leave a message if they are experiencing an emergency situation, but to call 9-1-1 instead. The Hotline is staffed by students (1Ls, 2Ls, and 3Ls) who are each assigned a specific day and time of day (a.m. or p.m.) to pull messages off and return them. Students are provided one-on-one training with the Hotline Coordinator and any follow up training that they request. This training entails logistics of the Hotline (how to retrieve, listen to, and delete messages), how to return messages, problematic phone calls, most frequently used legal referrals, etc. This training is about 30 minutes to one hour in length. The Hotline Coordinator, tells students to contact her directly prior to returning a message if they are apprehensive about the call or if they are unsure of how to respond. The group has compiled a 130+ page resource manual for students to use when returning phone calls. This manual has been shortened to a "Most Frequently Used" portion consisting of a few pages.

Miami-Dade County Florida- the Eleventh Judicial Circuit of Florida

Program: In Dade County, Florida civil and criminal domestic violence matters are combined and judicial officers "specifically trained in family violence administer the DCDVC" (Dade County Domestic Violence Court). All key participants in the DCDVC are required to attend domestic violence training and to participate in public education on domestic violence and court issues. The Eleventh Judicial Circuit of Florida created a specialized Domestic Violence Division, comprised of seven judges and support services to deal exclusively with this type of crime. Domestic Violence-related misdemeanors, injunction violations, and injunctions for protection (restraining orders) are all heard within the Domestic Violence Division. The Division's support services include an Intake Unit and a Case Management Unit. The Intake Unit serves as the victim's first contact with the court, helping the victim to obtain an Injunction for protection against domestic or repeat violence, connecting those in need of services with community agencies and providing information and referrals to Respondents (perpetrators) in need of assistance. The Case Management Unit assists the Domestic Violence judges in injunction cases regarding structured visitation schedules, child support, specialized court orders, treatment referrals, and case management. As the "customer service" arm of the Division, this unit also provides procedural information to parties in a case, and assists with scheduling emergency hearings and requests to change the conditions of an injunction. There are several court intake locations in the community where Intake Unit staff are available to assist persons with filing for an injunction. They will also help with referrals to social service agencies in the community, safety planning, and procedural information about the court process. There are procedures in place, which make it possible to obtain an injunction in Miami-Dade County 24 hours a day, 7 days a week.