



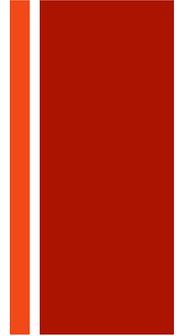
**Representing
Domestic Violence
Survivors at their
Custody, Divorce,
and Child Support
Hearings**



**Pro Bono Training
DC Volunteer Lawyers Project
January 2015**

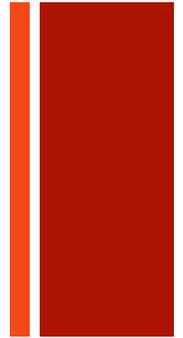


+ About the D.C. Volunteer Lawyers Project



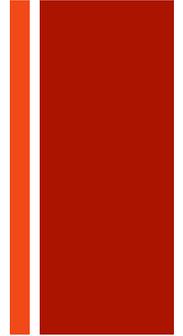
- Pro Bono lawyers
- Indigent DC residents
- Family law cases in DC Superior Court
 - Domestic violence survivors in Civil Protection Order (CPO), custody, and divorce cases
 - Children as Guardians *ad Litem* in high-conflict custody cases
- Immigration cases for DV victims
- Walk-in Domestic Violence Resource Clinic

+ Goals of the Training



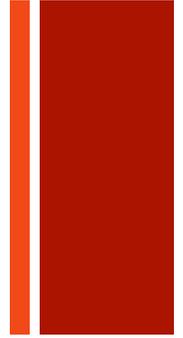
- Provide framework for representing clients
 - DV Background
 - Overview of divorce, custody & child support law in D.C.
 - Practice tips
- Resources
 - Online resource library
 - Supervising Attorney
 - Client Advocate, Kate Margolis

+ Need for Pro Bono Lawyers



- 1 in 4 women will experience domestic violence in their lifetime
- 3 women are killed every day by a current or former intimate partner
- Domestic violence cuts across age, economic status, race, religion, or educational background

+ Clients Are At High Risk



- Most dangerous time is when victim leaves
 - Violence risk increases 70%
- E.g., Alecia Wheeler
 - Mother of 4 young children
 - Filed CPO petition against ex-boyfriend
 - Pro se in court

+ The Washington Post

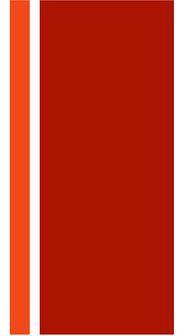
Slain D.C. woman sought court's protection from suspect

By Paul Duggan, Published: September 14, 2011

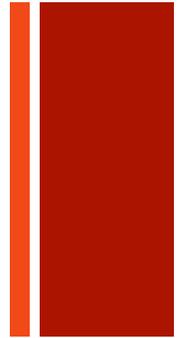
Alecia Wheeler filed at least two court complaints against Claude Kinney, father of three of her children. Describing a pattern of recent domestic assaults, she said Kinney slapped her, punched her, kicked her and threatened her with worse.

One night, while they were together in Northeast Washington, Kinney “jumped out of bed, ran into the kitchen, then came back and pulled a knife out,” Wheeler said in a complaint. She said Kinney, 48, “got in [her] face” with the blade “and told [her] that he should send [her] to hell where she belonged right then.”

Tuesday afternoon, police said, Kinney followed through on his threats, fatally stabbing Wheeler, 42, behind a Northeast Washington recreation center. They said Kinney, who was arrested shortly afterward, confronted Wheeler as she walked with her four children, ages 1 to 9. He allegedly stabbed her repeatedly with the children present.

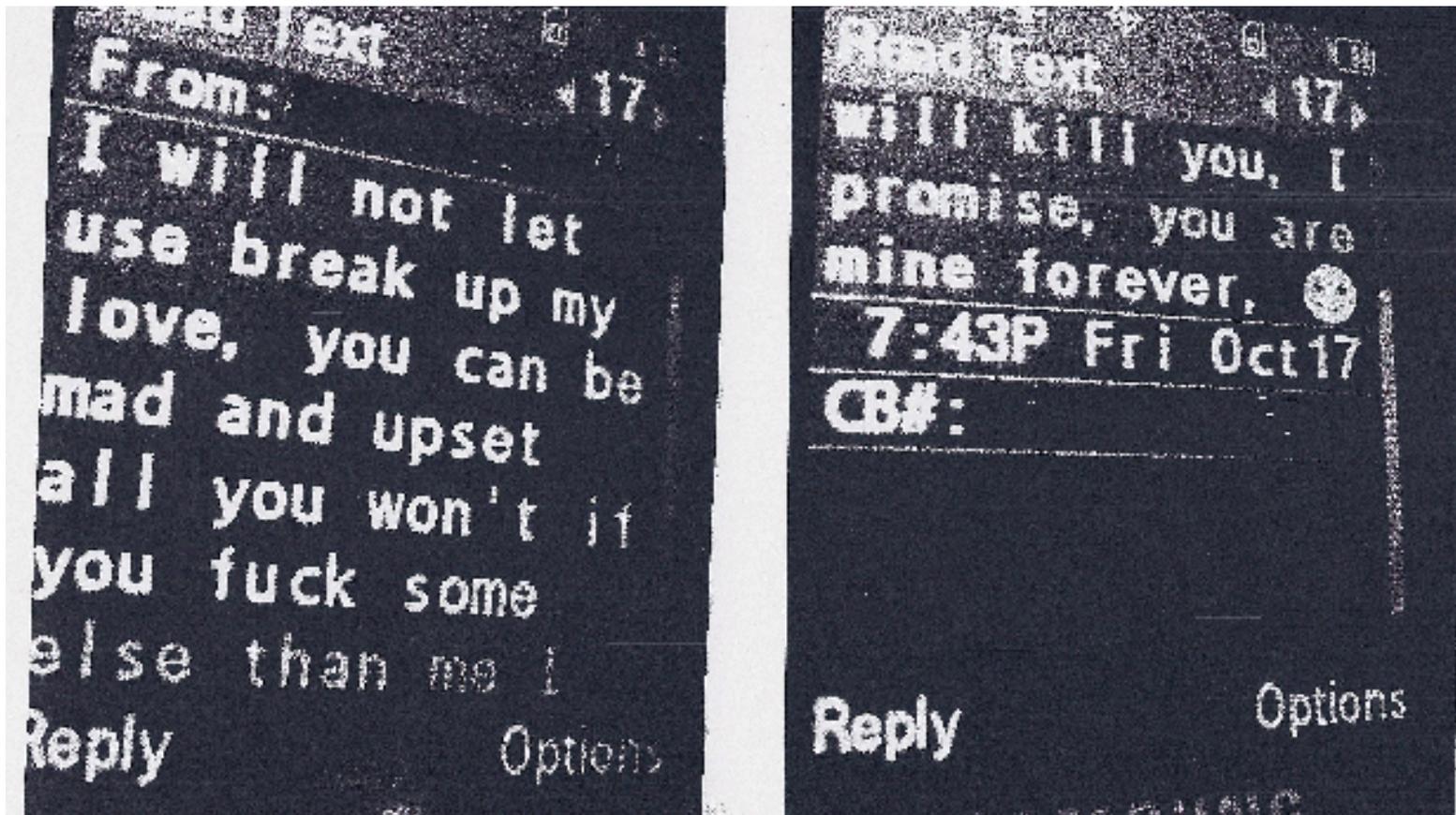


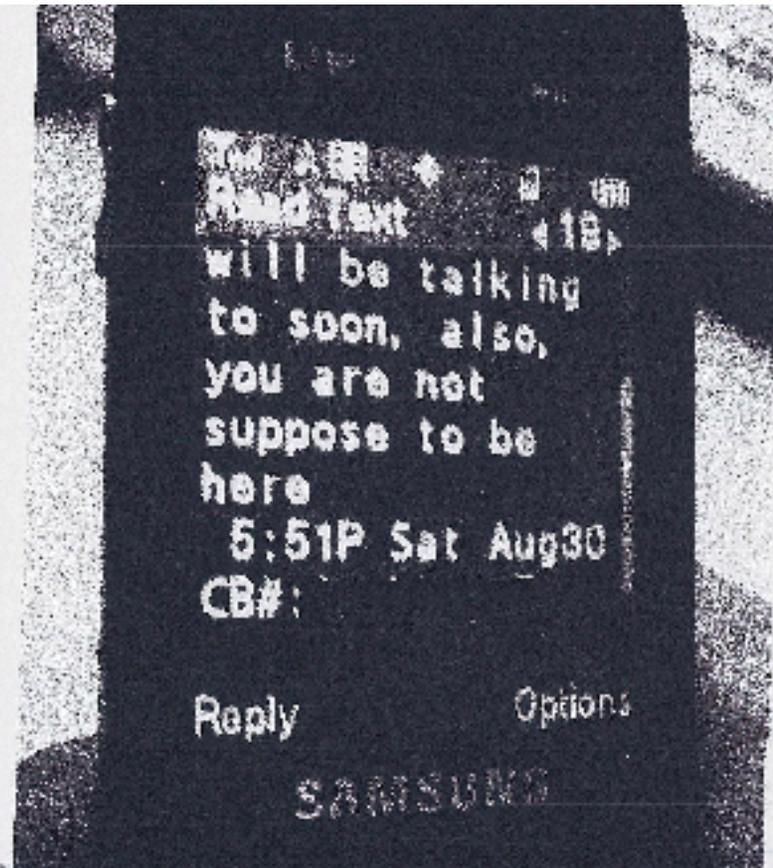
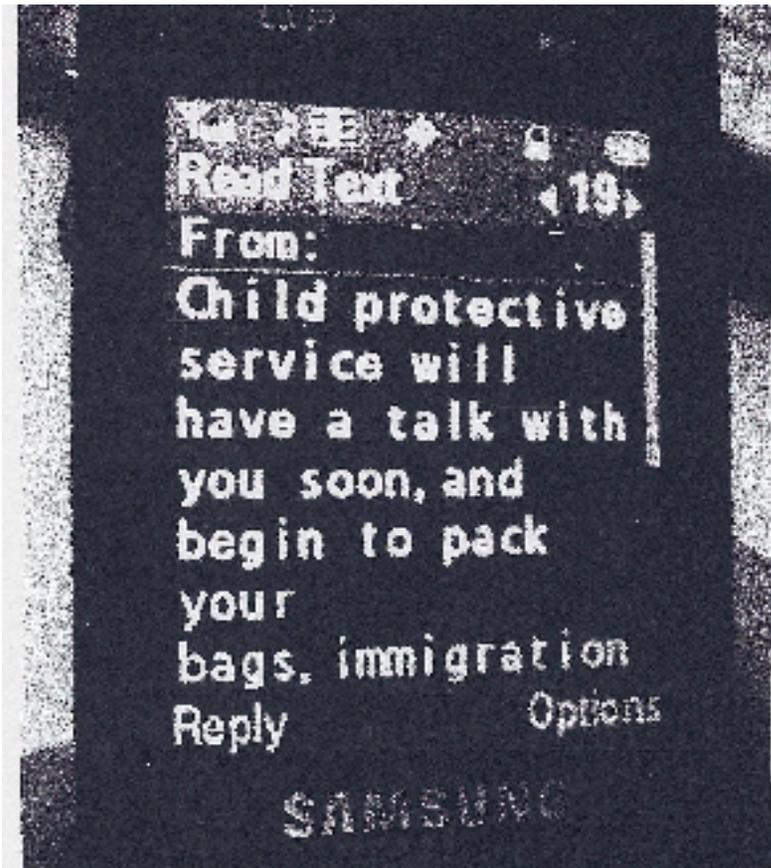
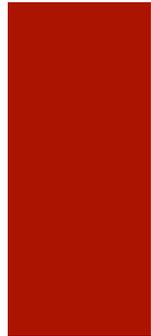
+ Effect of Domestic Violence on Children



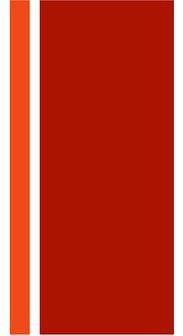
- 70% of DCVLP clients have children, 40% have a Child in Common (CIC) with abuser
- Widespread negative effects on children
 - Emotionally, academically, socially
- Boys who witness DV twice as likely to abuse partners/children as adults
- Adults who abuse an intimate partner are very likely to abuse children

+ Abusers Use Threat of Taking Children to Control Victims





+ What is “Domestic Violence”?



- Stranger crime vs. domestic violence
- Heightened danger for domestic violence victims

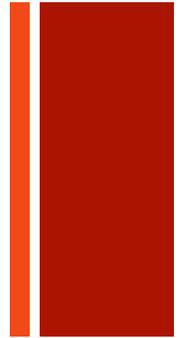


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+ Dynamics of Domestic Violence

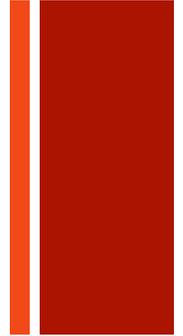
Definition of domestic violence:

“A **pattern** of using abusive behavior to exert **power** and **control** over an intimate partner.”



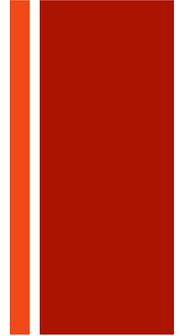


Dynamics of Domestic Violence

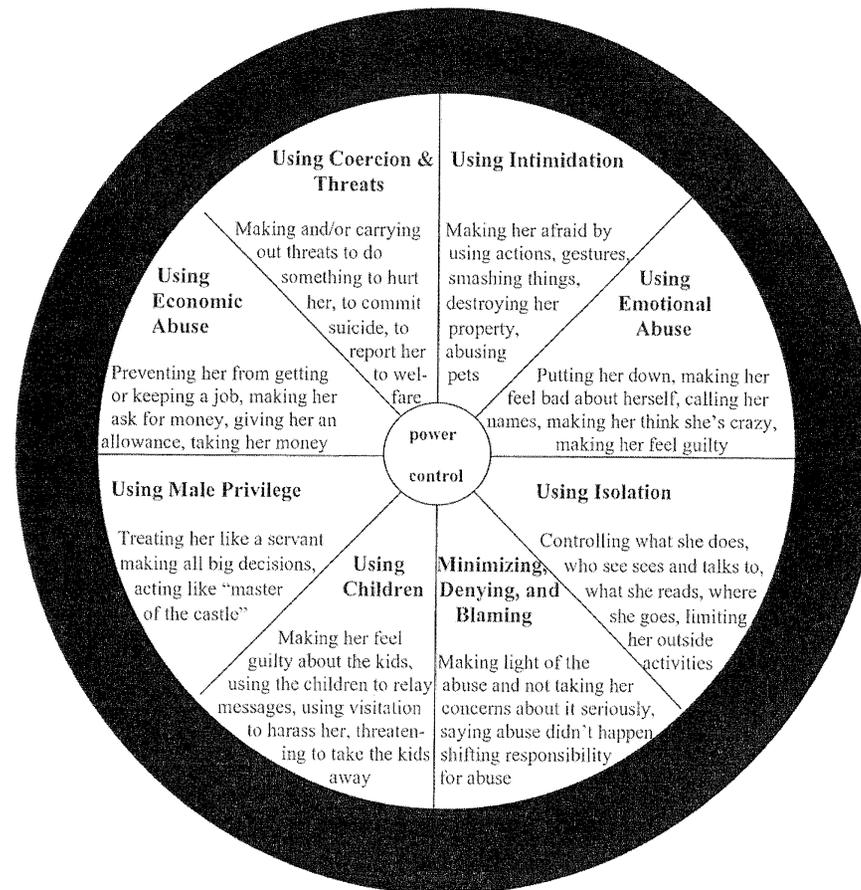


- Violence may occur in families..... but not all violence occurs because “one person wants something and knows s/he can get what s/he wants by using violence..... In coercive control IPV... power and control are the purposes.”
- Representing Victims of Intimate Partner Violence Connected with the Military, Ellen C. Shell, J.D., for The Battered Women’s Justice Project, pg 6.

+ Power and Control

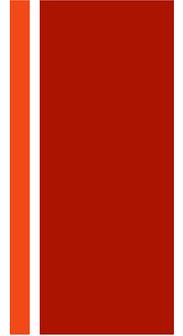


Power & Control Wheel



Adapted from Domestic Abuse Intervention Project, Duluth, MN

+ Legal Definition of Domestic Violence



- In DC, criminal act + intimate relationship = “Intrafamily Offense” (IFO)
- Relationships:
 - Intimate (spouse, dating, sexual)
 - Intrafamily (blood, child in common)
 - Stalking, sexual assault (the crime creates the relationship)
 - Share residence
- Crimes:
 - Assault
 - Threats
 - Destruction of Property
 - Stalking



CAP/OCAP Lethality Assessment

Name: _____

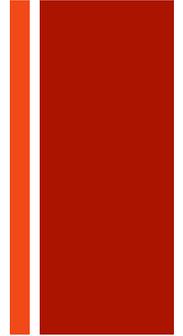
Date: _____

Please answer the following:

- | | | |
|--|-----|----|
| Do you currently have contact with the person who has hurt you? | Yes | No |
| Has the physical or sexual abuse increased in frequency over the past 12 months? | Yes | No |
| Has the physical or sexual abuse increased in severity over the past 12 months? | Yes | No |
| Have you ever been strangled? | Yes | No |
| Has the person who hurt you ever forced you to have sex? | Yes | No |
| Does the person control most or all of your daily activities? | Yes | No |
| Does the person who hurt you drink alcohol or use drugs? | Yes | No |
| Has the person ever threatened or tried to commit suicide? | Yes | No |
| Does the person have access to any weapons such as a gun? | Yes | No |
| Are you currently separated from the person? | Yes | No |
| Has the person threatened to kill you or someone close to you? | Yes | No |
| Has the person violated a TPO/CPO? | Yes | No |
| (If female) Have you ever been hit or beaten while pregnant? | Yes | No |
| Do you have children with someone other than the respondent in this case? | Yes | No |
| Have you attempted to leave or called police in the last 12 months? | Yes | No |
| Have you ever required medical attention for injuries from respondent? | Yes | No |

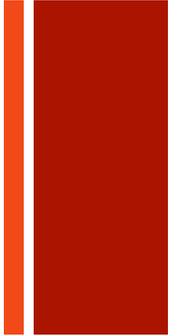


+ Lethality Assessment

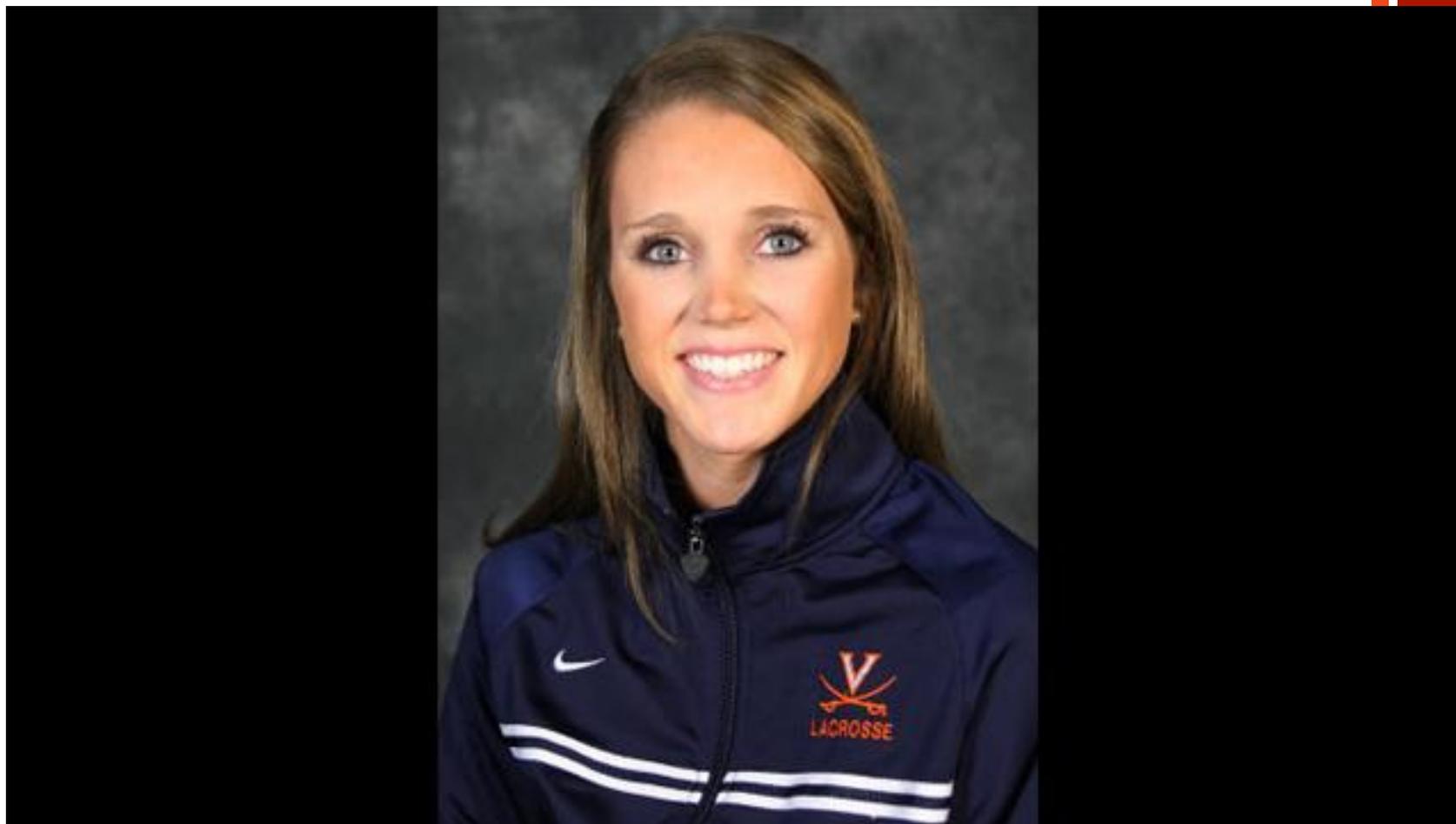


- Factors
 - Obvious factors: threats to kill, choking
 - Less Obvious factors: child by prior relationship
- Substance abuse
 - Alcohol
 - Drugs, e.g. cocaine, PCP
- Lethality index assigned during CPO intake
 - Ask about presence of factors

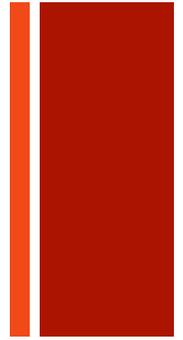
+ Identifying lethality factors in an actual case



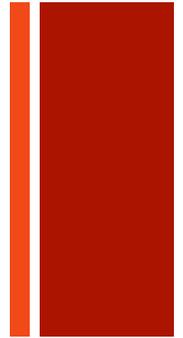
+ Yeardley Love



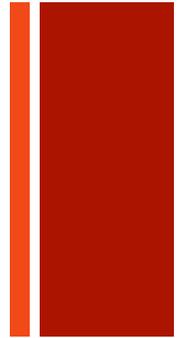
+ Cycle of Violence



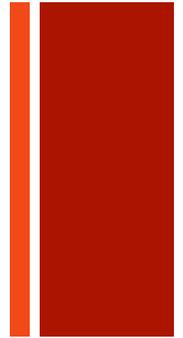
+ Rihanna
February 2009



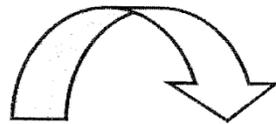
+
Rihanna and Chris Brown
February 2013



+ Cycle of Violence



Adaptation of the Cycle of Violence

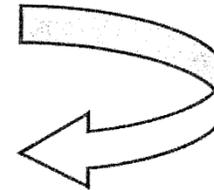


**Stage I
Tension Building**
She feels as though she is
“walking on eggshells or
“waiting for the other shoe
to drop.” He is edgy, moody,
easily agitated, “unpredictable.”
There is an air of “heightened
anxiety.”

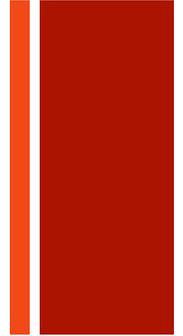
**Stage II
Active or Abusive**
This is the most violent
stage: concentrated, intense,
emotional and physical abuse;
an explosion or eruption of
the tension previously
described.



**Stage III
“Honeymoon”**
He says, “I’m sorry. I’ll never
do it again.” He may blame
her for his actions with “If
you wouldn’t... I wouldn’t get
angry.” He wants to make up
with “hearts and flowers” or
sex. She experiences many
feelings from anger to love to
confusion. She believes him
and the cycle continues.

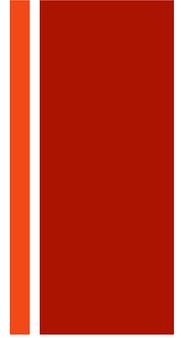


+ Cycle of Violence (cont.)



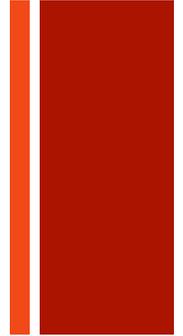
- Research shows that it takes most victims 7-8 attempts to leave an abusive relationship
- Obstacles to leaving include children in common, economic dependency on the abuser, pressure from family/community, fear of reprisals

+ #whyistayed



- I was told marriage is forever. I didn't want to be a failure
- Because he said he would kill himself if I left
- Because i thought if i loved him enough he would stop being abusive
- Because I was embarrassed to admit to myself & family that I was a victim.

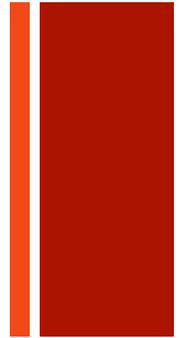
+ Trauma-Informed Advocacy



- Client has suffered from trauma
 - physical and emotional
 - Post-traumatic Stress Disorder (PTSD)
- Client is in crisis
 - May be in a DV shelter, emergency housing or other temporary living situation
 - 70% of DCVLP clients are caring for young children
 - Chaos caused by poverty

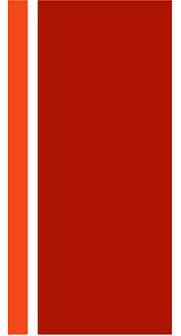
+ Working with DV Survivors

- PTSD/Symptoms of trauma
 - Difficulty regulating emotions: flat affect, laughing, angry outbursts
 - Cognitive problems: having trouble remembering the dangerous event, flashbacks
 - Difficulty sleeping and eating



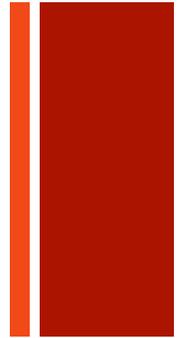
+ Working with DV Survivors

- PTSD/Symptoms of trauma cont.
 - **Avoidance:** staying away from places, events, or objects that are reminders of the experience
 - **Hyper arousal symptoms:** being easily startled; feeling stressed, in danger, tense and/or "on edge," even when there is not an eminent threat

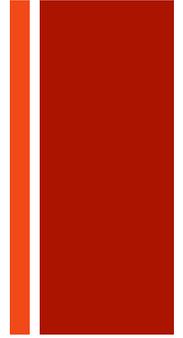


+ Working with DV Survivors

- Chaos caused by poverty
 - Moving out of home, staying in shelter/with family/friends
 - Changing/finding school or day care
 - Missing work for court dates
 - Transportation
 - Communication

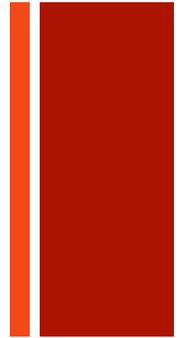


+ Working with DV Survivors



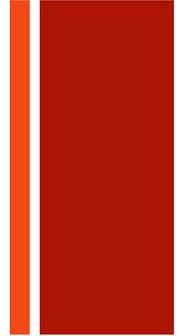
- Working with poverty
 - Meet client at convenient location
 - Be flexible
 - Understand lack of communication and cancellations

+ Working with DV Survivors



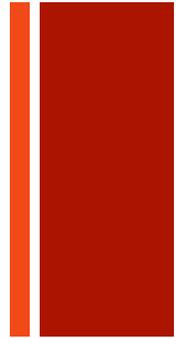
- Refer client to Client Advocate
 - Emotional support
 - Social services
 - May attend court with client if needed
 - Can recommend long-term counseling

+ Civil Protection Order (CPO) Process



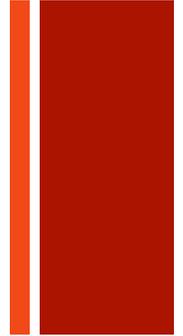
- A violent incident occurs; victim is referred to the Superior Court Domestic Violence Intake Center, usually by police
- Victim files Petition for CPO (one year protection order)
- On the same date, the petitioner goes before a judge *ex parte* and obtains an Temporary Protection Order (two week protection order)
- May have a related criminal prosecution by the US Attorney's Office (usually "DVM" case)

+ Civil Protection Order



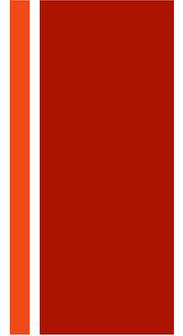
- CPO affords a wide range of relief to client
 - Stay away from Petitioner and her children
 - TEMPORARY custody of children and child support to Petitioner , with visitation arrangements for R
 - Respondent to vacate the residence
 - Respondent to attend domestic violence counseling, substance abuse assessment, mental health evaluation
- CPO may be obtained:
 - By default, if R is served and does not appear
 - By negotiated consent, with or without admissions
 - Through a contested hearing
 - Or, the court may deny the petition (note that Petitioner bears the burden of proof)

+ Post-CPO



- After a CPO expires, the temporary custody order also expires, leaving no custody order in place
- CPO may be extended for one year for “good cause”
- DCVLP counsels clients with children to file for custody BEFORE the CPO expires
- Clients who are married to abuser may file for divorce
- Clients who request representation in custody/divorce cases are placed on DCVLP waitlist
- DCVLP offers representation to waitlist clients as resources permit

+ Domestic Violence Court v. Family Court

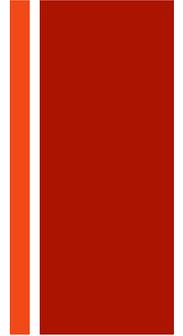


- DV Unit: protect victims and their children. Relief provided by CPO is designed to allow victims to leave the relationship safely. Focus is on evidence of IFO committed by one party against the other. Courts often order supervised visitation.
- Domestic Relations Branch (DRB): emphasis on parents working together for the sake of the children. Belief that children need both parents. Tendency to view violence as “mutual conflict,” rather than a crime by one party against the other.
 - Example: Mandatory PAC program, “Program for Agreement and Cooperation in Contested Custody Cases.” Does not address issue of how parents are to “cooperate” when there is a CPO

+ Domestic Violence is Very Common in Contested Custody Cases

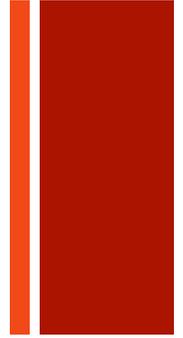
- DRB judges tend to be suspicious of dv allegations; believe mothers use dv allegations as a weapon in custody cases
- Reality: 80% of custody matters are resolved out of court
 - The majority of parents who are truly motivated by the best interests of their children agree on custody arrangements
 - Of the 20% of custody cases that are filed, most are settled; only 4% go to contested trial
 - Unsurprisingly, many of these cases that remain contested involve domestic violence; abusers are not motivated by best interests of children

+ Motives for Seeking Custody



- Abusers are more likely to seek sole custody than non-abusers
- Motives for seeking custody include:
 - Revenge for filing CPO
 - Making good on threat to take children away (cell phone slides)
 - Opportunity to continue to control/interact with victim
 - Avoid/minimize child support payments

+ Impact on Clients' and Children's Lives



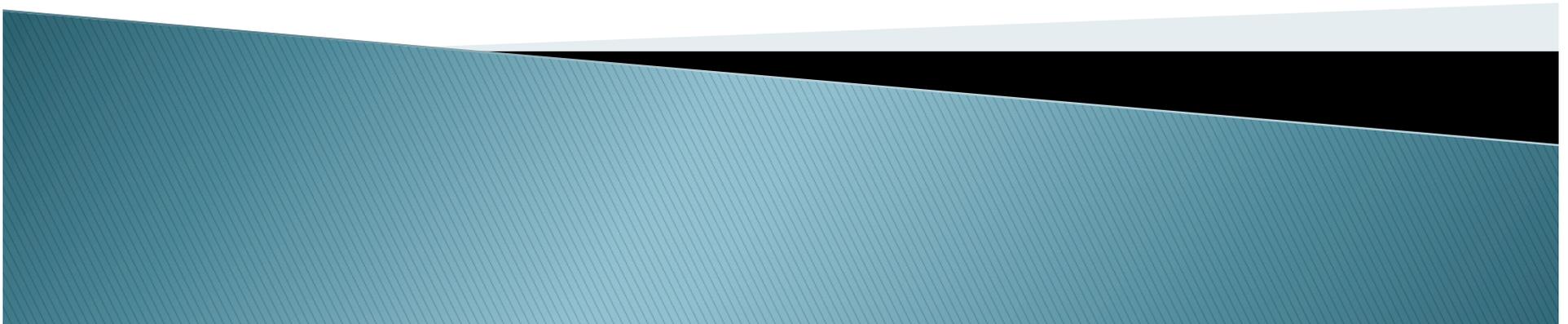
- A client's comments to her lawyers after obtaining a divorce and custody of her daughter:

"the feeling that he does not have absolute power over me, that he cannot treat me like a nothing, is so great. No more screaming, cursing, hitting, anger, hate ... I love the peace I gained again ... You help me and [my daughter] tremendously. You gave us beginning of a new chapter in our life. Thank you very, very much!"

Custody and Child Support in D.C. Superior Court

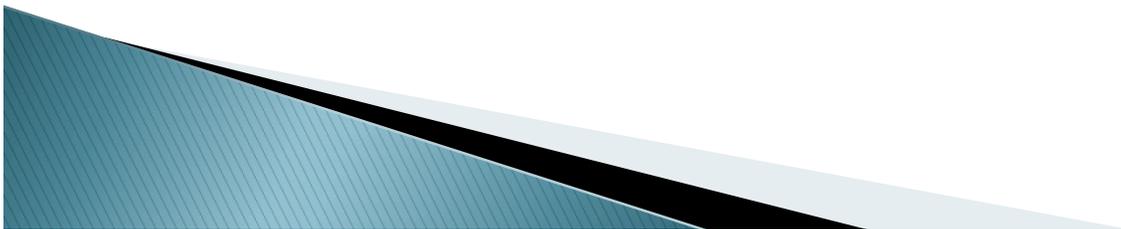
January 29, 2015

Virginia Kling
Managing Attorney
vkling@dcvlp.org



How does a custody case come into court?

1. Complaint for Custody
2. Complaint for Divorce
3. Civil Protection Order (CPO) case



Jurisdiction

Uniform Child Custody Jurisdiction and Enforcement Act, *D.C. Code*
§ 16-4602.01

When does a DC Court have Jurisdiction to make an initial custody determination?

1. Home State

Living in DC for 6 months? Gone from D.C. for fewer than 6 months and a parent still lives in D.C.

2. Significant Connections

3. More Appropriate Court

4. No Other Court

5. Temporary Emergency Jurisdiction



Continuing Exclusive Jurisdiction

Once a court has made an initial custody determination, it has **continuing exclusive jurisdiction** over all future custody determinations unless:

- ▶ Neither child, nor child and one parent, nor child and any person acting as parent have significant connection with state OR
- ▶ Neither child nor either of parents lives in DC.

Uniform Child Custody Jurisdiction and Enforcement Act, *D.C. Code*
§ 16-4602.02.

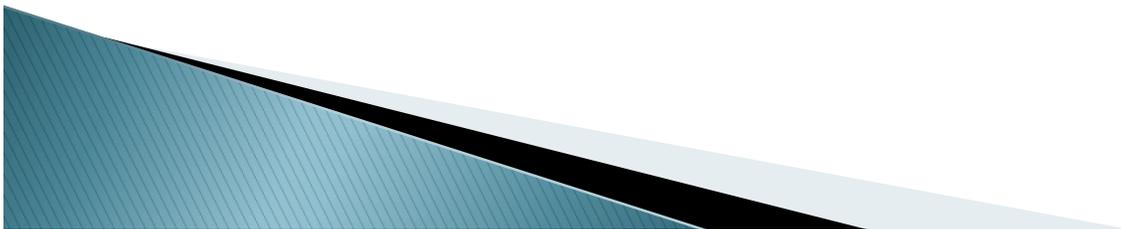


Jurisdiction Concerns

Common problematic situations:

1. No one remains in D.C.
2. One party uses a false address
3. Third party has no standing

Speak with your supervisor about the best way to proceed.



One Family, One Judge Rule

Section 11-1104 Family Court Act of 2001

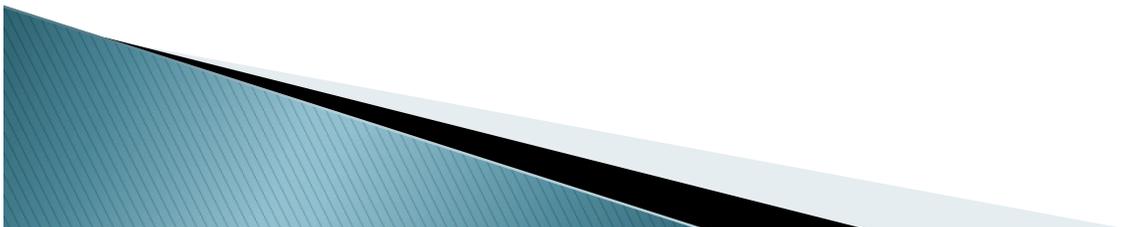
WHAT DOES THIS MEAN?

All family cases for members of same family should be consolidated

Same judge for duration of case

WHERE TO FILE MOTION TO CONSOLIDATE?

With judge you want to hear the case



Custody 16-914(a)(1)(A)(B)

What is LEGAL CUSTODY?

Right to make decisions

Right to obtain information

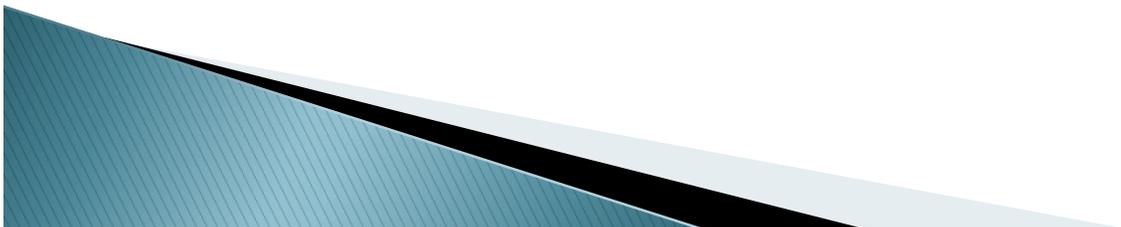
Right to speak with professionals/ providers

What does LEGAL CUSTODY pertain to?

Medical

Religious

Educational



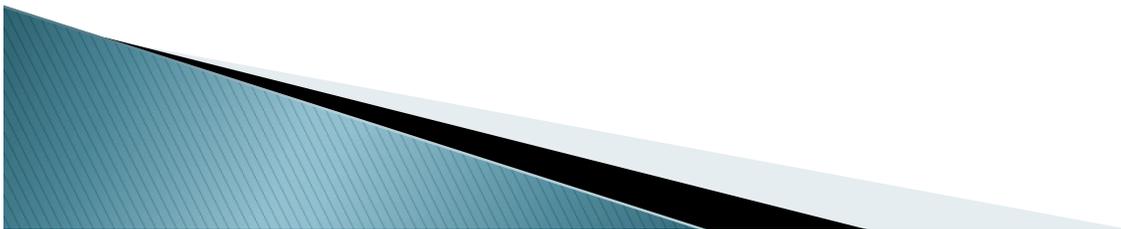
Custody (continued)

What is PHYSICAL CUSTODY?

Where the child sleeps/resides

Holiday/ Vacation schedules

Visitation arrangements



Custody (continued)

Sole vs. Joint Custody

Joint Custody is not always equal or 50/50
(*See Estopina v. O'Brian*)

Pendente Lite vs. Permanent Custody

Permanent Custody Order can be modified with **substantial and material change in circumstances** and a showing that modification is in the child's best interests up until the child is **eighteen years old**.



Best Interests of the Child

Section 16-914(a)(3)

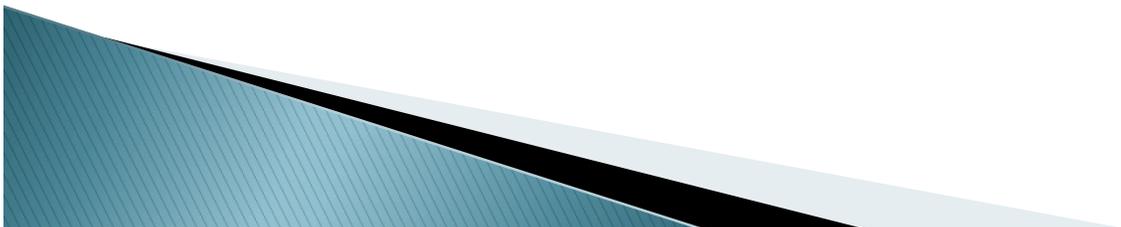
- ▶ Basic Test for Custody Determination (17 factors)

1. Wishes of Child
2. Wishes of Parents
3. Interaction of child with parents, siblings, and any other person who may affect the child's best interest
4. Child's adjustment to home, school, and community
5. Mental and physical health of all involved
6. Evidence of Intrafamily Offense
7. Capacity of parents to communicate and co-parent



Basic Test for Custody Determination (17 factors continued)

8. Willingness of parents to share custody
9. Prior involvement of each parent in child's life
10. Potential disruption of child's social and school life
11. Geographic proximity of parental homes
12. Demands of parental employment
13. Age and number of children
14. Sincerity of each parent's request
15. Parents abilities to financially support joint custody arrangement
16. Impact on TANF, medical assistance, or other public benefits
17. Benefit to the parties



Legal Presumption of Joint Custody

D.C. Code Ann. §16-914 (2)

There is a **REBUTTABLE PRESUMPTION** that joint custody is in the best interest of the child.

There is a **REBUTTABLE PRESUMPTION** that joint custody is **NOT** in the best interest of the child when:

- Judicial finding of Intrafamily Offense
- Judicial finding of child abuse
- Judicial finding of child neglect
- Parental kidnapping has occurred



What if there is a history of Domestic Violence/ Intrafamily Offense?

Presumption of Sole Custody to non-abusing parent

- Offending parent may only have visitation if:
 - Visitation is possible without compromising safety or emotional development of child and/or safety of other parent.
 - Abuser bears the burden
 - Court must make written findings if awarding abuser any kind of custody or visitation rights
 - D.C. Code Ann. § 16-1005(c-1)(2007)



The Significance of a Judicial Finding of an Intrafamily Offense

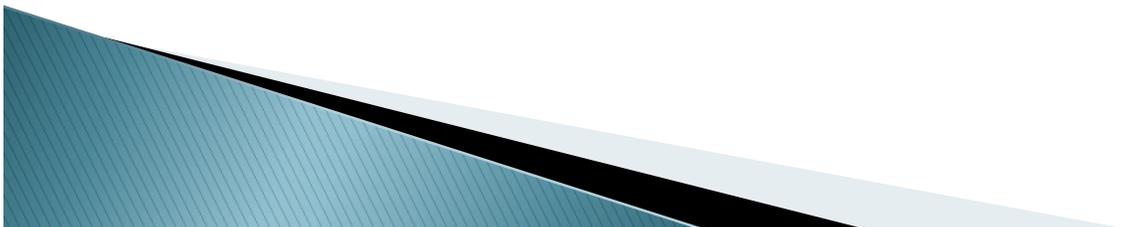
Adjudicated CPO = Intrafamily Offense

Default CPO = Intrafamily Offense

Consent CPO with Admissions = Intrafamily Offense

Consent CPO without Admissions = Not a Finding of an Intrafamily Offense

Denial of CPO– Possible *Res Judicata* issues





CIVIL PROTECTION ORDER

DOMESTIC VIOLENCE

Case No. _____

- Adjudicated Hearing
- Consent w/ Admissions
- Consent w/o Admissions
- Default Order

**SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA**
(202) 879-0157

PETITIONER Minor

PETITIONER IDENTIFIERS

First Name Middle Last Name

Petitioner's Date of Birth

Vs

Other protected person/DOB



RESPONDENT Minor

RESPONDENT IDENTIFIERS

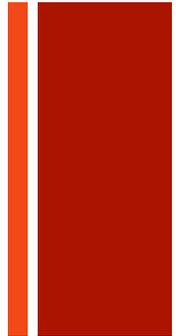
Name Middle Last Name First

- Relationship to Petitioner: Have a child in common;
 Marriage; Blood; Legal Custody;
 Now or previously having shared the same;
 Romantic/dating relationship; Other (specify)

Respondent's Address

Sex	Race	DOB	Height	Weight
Eyes	Hair			
Driver's License #			State	
PDID#:				

THE COURT HEREBY FINDS:



Visitation

- ▶ Factors to Consider
 - Supervised/Unsupervised
 - If Supervised; by whom?
 - Child's wishes
- ▶ CPO Custody Provision
- ▶ Custody statute requires provision for “frequent and continuing contact” between child and non-custodial parent
- ▶ Judges are very reluctant to deny or cut off visitation, even in extreme circumstances



Court Supervised Visitation Center

▶ Pros:

- Parents do not come into contact with one another
- Visits are supervised by a trained social worker who will document visit and take notes
- Witness if necessary for trial
- Armed security

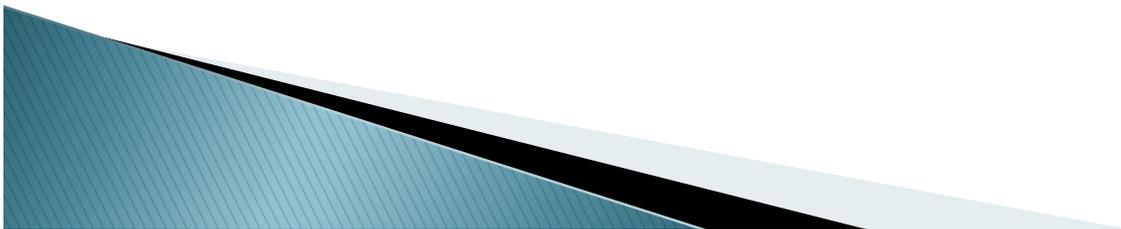
Cons:

- Inconvenient
- Records will show if client is ever late or cancels visit



Unsupervised Visitation

- ▶ Allowed when child is older
 - Child can report abuse
 - No history of abuse of child by Defendant
- ▶ Exchange of child
 - Parents should not come in contact, if possible
 - Pick up and drop offs to school/daycare
 - Alternate plan for school closures
 - Supervised visitation center
 - Arrange for third party to assist with exchanges
 - Exchange at local police station, church, metro



Visitation Risks: Abduction

▶ Visitation Risks

- Abduction
 - Risks/ Warning Signs
 - Hague Convention on Civil Aspects of International Child Abduction
 - Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2008)



What if someone other than a parent wants custody of a child?

Third Party Custody Statute (The Safe and Stable Homes for Children and Youth Act of 2007, D.C. Code Sections 16-831.01-831.13)

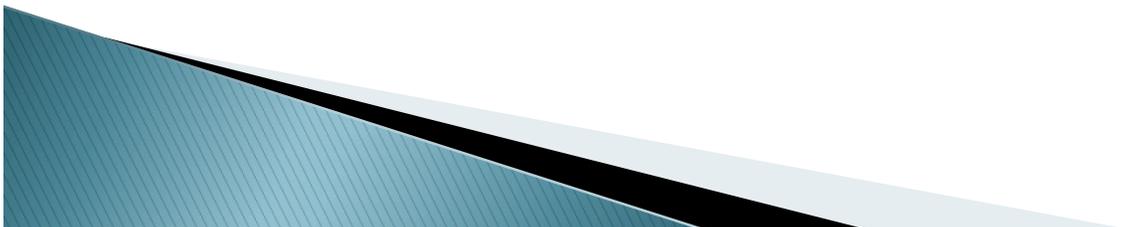
When is this statute relevant?

When is a third party eligible?

1. Parent consents;
 2. Living with child 4 of 6 months preceding complaint and assumed parental duties;
 3. Exceptional circumstances
- 

Child Support

- ▶ DC Child Support Guidelines, D.C. Code Section 16-916
- ▶ Calculated based on:
 - Percentage of time each parent has custody of the child.
 - Each party's income
 - Certain enumerated expenses (i.e., child care)
 - Number of children, and other children supported
- ▶ Child support to a third party:
 - If a third party is awarded custody, both parents owe child support to the third party.
- ▶ Duration of child support:
 - Until child is 21 (custody/visitation only until 18.)



Child Support Amount Decreases as Custody Increases

- ▶ For all scenarios, assume calculation is for 1 child, Mother's income: \$30,000, Father's income: \$40,000. No other costs, alimony, etc.
- Sole custody to mom (so no provision to enter number of days.) Child Support: Dad pays \$574 per month to mom.
- 220 days to mom; 145 days to dad. Child Support: Dad pays \$257 per month to mom.
- 183 days to mom; 182 days to dad. Child Support: Dad pays \$106 to mom.



Child Support and Paternity

- ▶ What happens if the other party denies he is the child's father?
 - Testing at the Court
 - Free of charge if within the context of a child support case
 - May be circumstances when father is precluded from denying paternity
 - On birth certificate or filed acknowledgement of paternity, and did not challenge in timely manner



Child Support ,TANF, and OAG

- ▶ Signing over right of child support required as a condition of receiving TANF
- ▶ Office of Attorney General (OAG) seeks payment of support
- ▶ Money goes to DC Government, not custodial parent, except for “Pass Through”
- ▶ Pass Through is up to \$150
- ▶ Even for parent not on TANF, OAG will handle child support for \$5 fee



Child Support Calculator Sample Worksheet

Child Support Sole Custody Guideline 20% 40% 60% 80% 100%

Mother: Jane Smith **Father:** John Smith
Docket #: **IV-D #:**
Custodial Parent: Mother
Guideline date: February 11, 2014 **Prepared by:** Sara Tennen  Not clear?
of minor Children: 2  **Change Text Size:**

Description	Mother	Father	Combined
1. Gross Income	\$25,000.00 	\$30,000.00 	
a. Minus 1/2 Self-employment taxes actually paid	\$1,500.00	\$2,100.00	
b. Plus or Minus alimony actually paid or received	\$0.00	\$0.00	
c. Minus child support orders actually paid	\$0.00	\$0.00	
d. Plus SSDI derivative benefits	\$0.00	\$0.00	
e. Adjustment for additional children living in the home	\$0.00	\$0.00	
2. Adjusted Gross Income	\$25,000.00	\$30,000.00	\$55,000.00
3. Percentage Share of Adjusted Gross Income	45%	55%	100%
4. Basic Obligation			\$13,780.00
5. Each Parent's Share of the Basic Child Support Obligation	\$6,201.00	\$7,579.00	\$13,780.00

Child Support Calculator Sample Worksheet page 2

Browser: http://csgc.oag.dc.gov/application/main/Calc005.asp

Buttons: Print Guideline, Export to Excel, Start a New Guideline

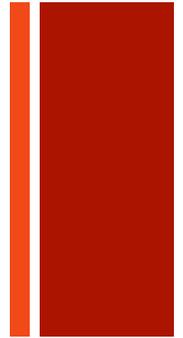
3. Percentage Share of Adjusted Gross Income	45%	55%	100%
4. Basic Obligation			\$13,780.00
5. Each Parent's Share of the Basic Child Support Obligation	\$6,201.00	\$7,579.00	\$13,780.00
6. Adjustment for Additional Expenses			
a. Children's portion of health insurance premium actually paid	\$2,400.00	\$0.00	\$2,400.00
b. Extraordinary medical expenses actually paid	\$0.00	\$0.00	\$0.00
c. Reasonable Child care expenses due to employment or education actually paid	\$1,200.00	\$0.00	\$1,200.00
d. Total Adjustments	\$3,600.00	\$0.00	\$3,600.00
7. Parent with Legal Duty to Pay Support's Share of Additional Expenses		\$1,980.00	
8. Parent with Legal Duty to Pay Support's Share of Child Support Obligation		\$9,559.00	
9. Low Income Adjustment for Parent with Legal Duty to Pay Support		\$15,282.00	
a. Self-support reserve			
b. Paying parent's income available for support		\$14,718.00	
10. Adjusted Presumptive Child Support Obligation Per Month		\$797.00	

Child Support To Dos:

- ▶ If Father is employed, be sure to run child support calculator to get an idea of what order will look like.
- ▶ If Father is unemployed or underemployed, provide evidence of the fact that this is intentional.
- ▶ Ask the court to impute income to an unemployed or underemployed party
- ▶ Link on court website (Family Court, Paternity and Support Branch):
<http://csgc.oag.dc.gov/application/main/intro.aspx>



+ A Client's Perspective



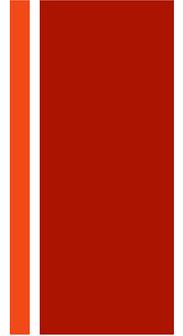


Overview of Divorce



Katherine Bradley
DCVLP Arsht Fellow
kbradley@dcvlp.org

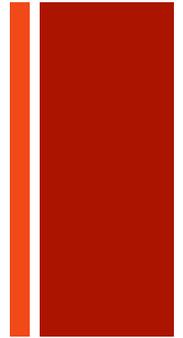
+ What is Divorce?



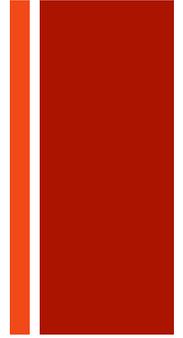
- Three ways to change status of marriage: absolute divorce, legal separation, annulment
- Absolute Divorce § 16-904(a)
 - Complete dissolution of marriage contract
 - Permanent
 - Frees parties to remarry
 - Terminates their marital property interests

+ What is Divorce? (cont.)

- Legal Separation § 16-904(b)
 - Does not dissolve marriage contract, but parties legally live separate and apart but are still married
 - Not free to remarry
 - Court may order spousal support
 - Court must divide marital property interests
 - No requirement to obtain legal sep. before divorce
- Annulment § 16-904(c)
 - § 46-401.1 Void ab initio – incest and bigamy
 - § 46-403 Void from date of decree – mental incapacity, fraud or coercion, or under age of consent

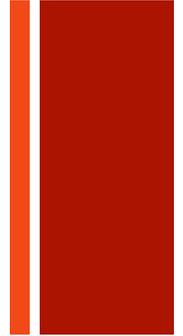


+ Relief Available in Divorce



- Divide and distribute property and debt § 16-910
- Award alimony § 16-913
- Determine custody & visitation § 16-914
- Award child support § 16-916
- Restore former name § 16-915

+ Legal Requirements to Obtain a Divorce



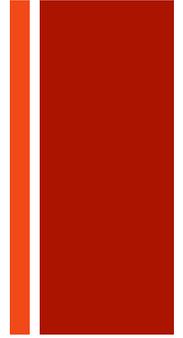
1. Residency:

- “No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six (6) months next preceding the commencement of the action.” D.C. Code § 16-902.
- Exceptions re military

2. Marriage:

- Ceremonial Marriage: certified copy of marriage certificate
 - Not specifically required by law but most judges require it.
 - \$10.00 to be paid to Superior Court

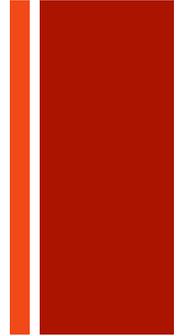
+ Legal Requirements to Obtain a Divorce (cont.)



2. Marriage (cont.)

- Common Law Marriage
 - Recognized in D.C.
 - Elements:
 - free to marry
 - “express mutual agreement with words in the present tense” to be married
 - had sexual relations together and lived together in D.C. or other jurisdiction that recognizes common law marriage

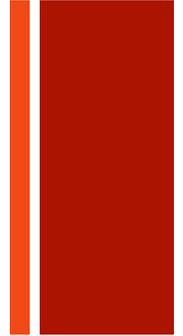
+ Legal Requirements to Obtain a Divorce (cont.)



3. Grounds: No Fault, and only two (2) grounds:

- Six Months Mutual & Voluntary Separation: “Both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation for a period of six months next preceding the commencement of the action.” OR
- One Year Separation: “Both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.”

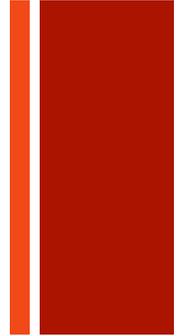
+ Legal Requirements to Obtain a Divorce (cont.)



3. Grounds (cont.)

- Mutual and voluntary – if one party doesn't consent, does not qualify
- Separate and apart
 - "Parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though...they reside under the same roof." § 16-904(c)
 - Divorcing Parties DON'T: cook or clean for each other; entertain together; sleep together; go out together; share bank accounts

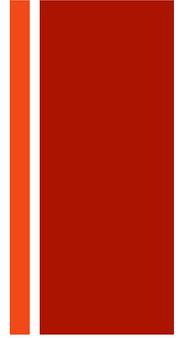
+ Legal Requirements to Obtain a Divorce (cont.)



3. Grounds (cont.)

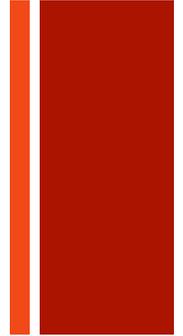
- Without cohabitation
 - “Parties may not litigate by day and copulate by night inter sese et pendente lite.” *Holt v. Holt*, 77 F.3d 538 (D.C. Cir. 1935)
- Operative Time: Date of filing complaint
 - The required separation period must be completed BEFORE filing the divorce complaint.

+ Effective Date of Divorce



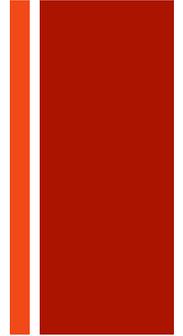
- Under § 16-920:
 - Divorce becomes final 30 days after docketing of decree
 - UNLESS party applies for a stay
 - Parties may file joint waiver of the right to appeal from the entry of decree, in which case, divorce is final immediately.

+ Common Types of Property



- Property under § 16-910:
 - Def.: Property is anything of value
 - Types:
 - Real estate
 - Bank accounts
 - Retirement Accounts & Pensions
 - Severance pay
 - Tangible personal property including furniture, cars, jewelry
 - Intangible assets (e.g. good will, personal injury claims)

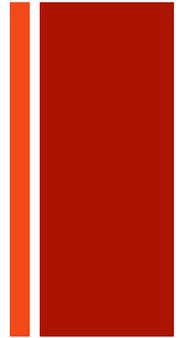
+ Relief in Divorce: Division of Property



- Court determines whether property is **separate** or **marital**
 - Each party leaves the marriage with his or her separate property (including debt) acquired before and during the marriage
 - Gifts, inheritance, property owned at time of marriage
 - Property (including debt) accumulated during the marriage is marital property, regardless of how titled.
 - Separate property can become marital by changing title or comingling.
 - Example: H owns home, marries W, who moves in and contributes to mortgage payments through marital funds, care of home, etc. during marriage. Separate or marital?

+ Relief in Divorce: Valuing and Distributing Marital Property – D.C. Code § 16-910 – 12 factors:

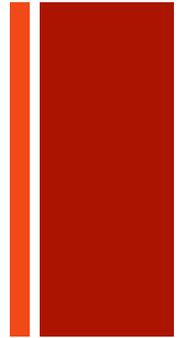
- Standard: “in manner that is equitable, just and reasonable” considering all relevant factors, including:
 - Duration of marriage
 - Age, health, employability of each party
 - Provisions for custody of minor children
 - Property in lieu of or in addition to alimony
 - Obligation from prior marriage or to other children
 - Each party’s opportunity for future acquisition of assets/ income



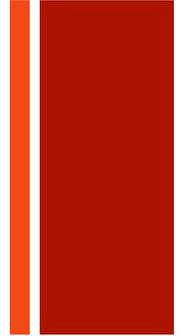
+ Factors for Division of Assets

D.C. Code § 16-910 – 12 factors continued:

- Contribution as a homemaker or otherwise to family unit
- Contribution to other's education that increased earning ability
- Increase or decrease in income due to the marriage or duties of home/children
- Contribution to appreciation or depreciation of assets, and whether before or after separation
- Effects of taxation
- Circumstances that contributed to the estrangement of the parties

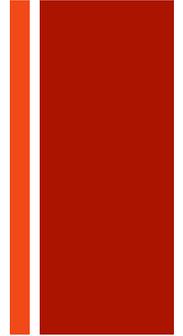


+ How the Court Distributes Property in Divorce



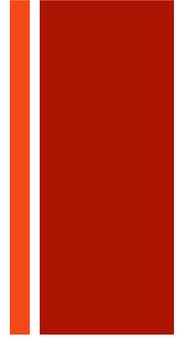
- Methods:
 - Transfer title of real or personal property located in D.C.
 - Order party to execute documents to convey title if not in D.C.
 - Appoint trustee to effect sale of real estate or property
 - Separate suit for partition
 - Order party to pay money or turn over property
 - Attach property of disobedient party
 - Allocate in kind
 - QDRO for retirement benefits
 - And others

+ Dissipation in Divorce



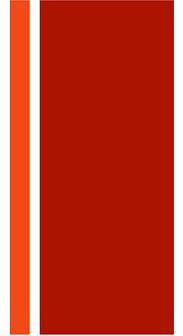
- Dissipation: disposition of marital property in a manner intended to circumvent equitable distribution
 - CANNOT dissipate or conceal marital assets
 - Need evidence spouse used marital property for own benefit and for purpose unrelated to marriage when marriage was undergoing irreconcilable breakdown
- Addressed by Court in final distribution of assets/debt:
16-910(b)(10) : “each party’s contribution to the . . .
dissipation, or depreciation in value of the assets which are
subject to distribution
- Motion to prevent dissipation of assets

+ Common Problem: Ending Partner's Liability for Debt



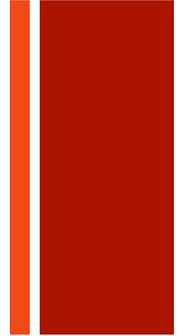
- Spouse running up debts is reason to file for legal separation rather than waiting for divorce period to run
- Court has express authority to allocate debt accumulated during marriage under § 16-910(b)
 - Will look at “whether the asset was acquired or the debt incurred after separation.” § 16-910(b)(10)
- Does it matter in whose name?

+ Alimony



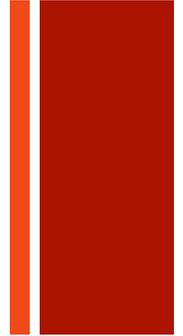
- Under § 16-913, “the Court may require either party to pay alimony if it seems just and proper.”
 - Available in divorce, legal separation, or termination of domestic partnership
 - Discretionary
 - May be “indefinite or term-limited and structured as appropriate to the facts”
 - Retroactive to the date of the filing of the pleading the requests alimony
 - Key inquiry is “reasonable need” versus ability to pay

+ Alimony (cont.)

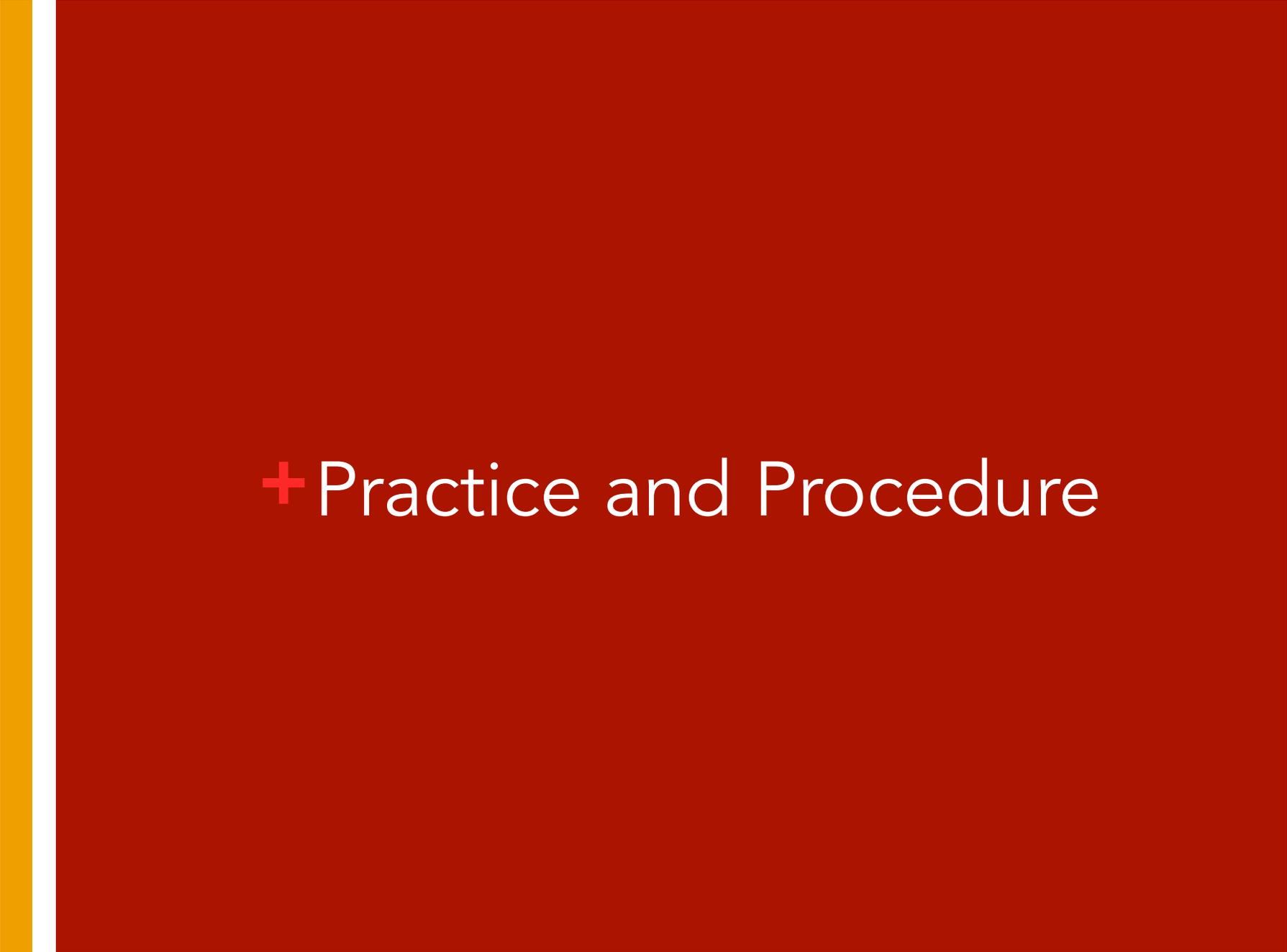


- The Court must consider **all relevant factors** necessary for a fair and equitable award, including, but not limited to:
 - Ability of party seeking alimony to be wholly or partly self-supporting
 - Time necessary for party to gain sufficient education or training to secure suitable employment
 - Standard of living that the parties established during marriage
 - Duration of marriage/domestic partnership
 - Circumstances which contributed to estrangement
 - Age of parties; physical and mental condition of parties
 - Financial needs and resources of each party

+ Pendente Lite Relief in Divorce

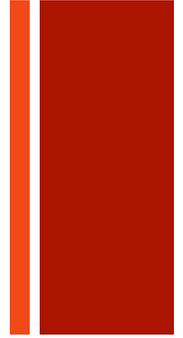


- Motion to Prevent Dissipation of Assets
- Pendente Lite Alimony
- Pendente Lite Use of Vehicle and/or Home
- Maintaining Health Insurance



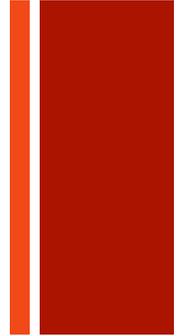
+ Practice and Procedure

+ Practice in D.C. Superior Court



- Applicable Rules
 - General Rules of Family Court
 - Rules Governing Proceedings in Domestic Relations
 - Civil Rules of Procedure – if no DR rule
 - No Codified Rules of Evidence – Look to case law
- One family, one judge system – D.C. Code § 11-1104(a)
- Intake center, clerk's office, law clerk, courtroom clerk

+ Where DCVLP Gets its Divorce and Custody Cases

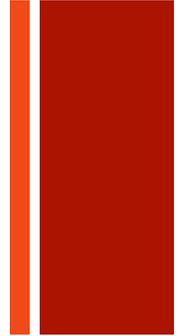


- DRB cases are from:
 - CPO cases handled by DCVLP
 - DCVLP's Domestic Violence Clinic
 - Other legal service organizations

- Put on wait list until DCVLP can take case

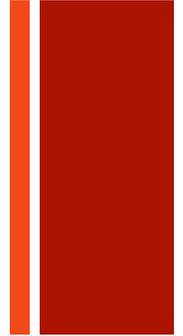
- Client: Always a domestic abuse survivor

+ Letter Sent to Volunteer Attorney



- Volunteer Coordinator sends an email with the following information:
 - Lead attorney, supervising attorney and/or co-counsel or shadow
 - How to e-file
 - How to get a google number
 - How to access lexis/nexis
 - Check list for client interview
 - Check list for case preparation
 - Available documents, including CPO (if any) and documents already filed

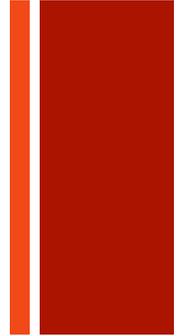
+ First Steps: Assess where the case is procedurally



- CPO in effect; no DRB case filed yet
 - Most common presentation
 - Can control when to begin case
 - No hearings scheduled yet
- Client or opposing party has filed complaint and/or answer
 - May already have hearing scheduled
- Case already in progress
 - Previous volunteer can no longer handle the case
 - The case is being reactivated; e.g. contempt, modification of custody, etc.

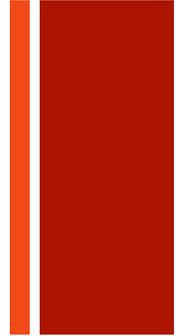


Most Common Scenario CPO in Place



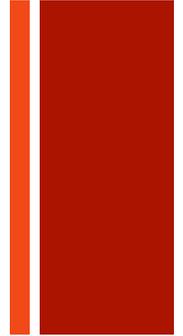
- No DRB case yet, but may be provisions in the CPO relevant to divorce/custody action:
 - Custody/visitation
 - Child support
 - Order to vacate home
 - Assistance with rent/mortgage
 - Retrieval of personal property

+ Set up Initial Meetings



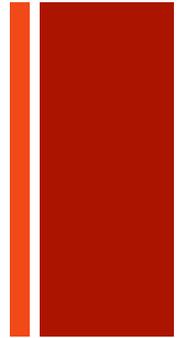
- Meeting with Attorneys
 - Lead attorney, shadow and supervisor set up time to discuss the case.
 - May be done by phone
- Meeting with Client
 - Depending on client's availability, this can be done at the DCVLP offices, at the client's home, or other location convenient for client.
 - Should be done in person

+ Client Interview



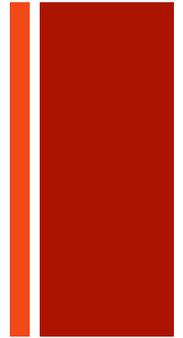
- Have client sign retainer
- Checklist for what to cover in custody and divorce interviews in assignment email (also in pleadings library)
- Goal is to obtain information but also to establish a rapport with your client
- Helpful if one person does most of talking while other takes notes

+ Draft Complaint



- Examples in pleadings library
 - Check out the DC Bar Pro Se Pleadings as well <http://www.dcbbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm>
- Must establish jurisdiction
- For divorce, must establish grounds (separate and apart for six months or one year)
- **Complaint must be signed by your client under penalty of perjury before filing**

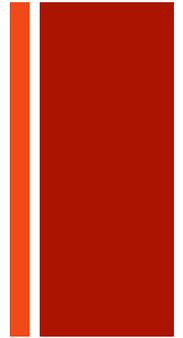
+ Draft Complaint (cont.)



- Issues covered in divorce complaint
 - Custody (see below)
 - Child Support
 - Alimony
 - Division of marital property and debt
 - Name change
- Issues covered in custody complaint
 - Factors relevant to custody, including domestic violence
 - Typically child support would be handled by Office of Attorney General unless other financial issues

+ File Motion in Forma Pauperis

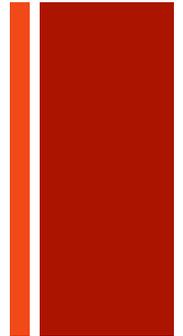
- “Application to Proceed Without Prepayment of Costs”
 - Automatic if client receives certain public benefits, including
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Security Income (SSI)
 - May be awarded without financial information if client receives health care benefits, including Medicaid
 - Otherwise, will need to file financial information
- Filed at D.C. Superior Court in Room 4220 before the Judge in Chambers
 - Client presence usually necessary
 - Likely to take several hours
 - Bring underlying pleading (complaint or answer)



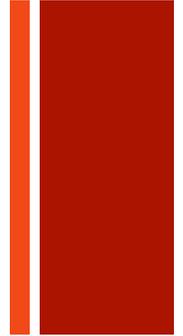
+ File Complaint

- File at the Central Intake Center (JM level)
 - IFP Order (usually can file complaint same day obtain IFP)
 - Original complaint, and three copies to be date stamped
 - Copies for your file, your client, service on defendant
 - Family Court Intake Cross-Reference

- Clerk will give you service packet to **serve on Defendant**
 - Complaint
 - Summons (usually yellow, unless a copy)
 - Scheduling Order
 - Date for initial hearing and judge
 - Date for mandatory parenting seminar
 - Date for mediation intake
 - File Proof of Service



+ Next Moves

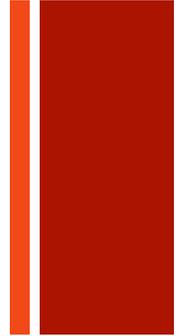


- Answer/counter-claim
 - Defendant has 20 days after service of complaint

- Reply to counterclaim
 - Plaintiff has 20 days after service of answer

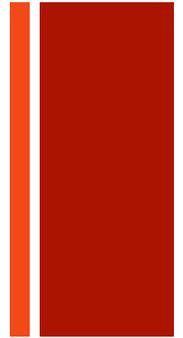
- Pendente lite (temporary) motion
 - In divorce: child support, custody, alimony, possession of home
 - In custody: child support, custody
 - Can be filed with complaint or any time thereafter
 - Evidentiary hearing: generally after initial status hearing
 - Will receive notice that pendente lite hearing scheduled

+ Initial Status Hearing



- Relatively informal hearing
- Court wants to get a sense of issues in case
- Most judges will hear oral motions for visitation, home study, drug testing or psychological exam
 - Some want written motions; discuss with supervisor
- Temporary visitation schedule frequently decided at hearing based on representations of parties (not an evidentiary hearing)
- May discuss deadline for discovery or pretrial motions

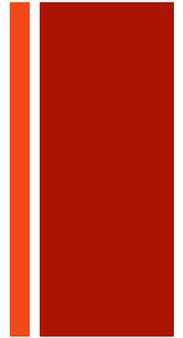
+ Pretrial Proceedings



■ Discovery

- Formal Discovery
 - Depositions
 - Interrogatories
 - Requests for production of documents
 - Requests for admissions
 - Subpoenas
 - Employer statement
 - Financial statement
 - Physical and mental health exams

+ Pretrial Proceedings (cont.)

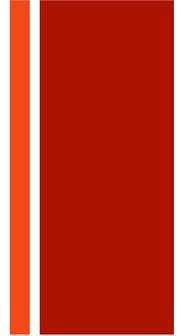


■ Discovery

■ Informal discovery

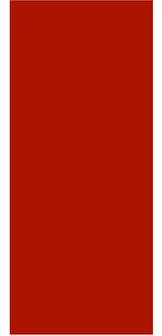
- Client/witness interviews: school, day care, friends, family, pediatrician, coaches
- School records, medical records, criminal records check, court records check, family photos

+ Motions Practice



- Motion for Alternative Service if Def. evading service or can't be located
- Pendente Lite Motions – custody, alimony, child support
- Discovery Motions – Motion to compel
- Motions in Limine – Anticipated evidentiary issues
- Emergency Motions – Is it *really* an emergency?
 - Child in imminent danger
 - Kidnapping
 - Total denial of access to child
 - <http://www.dccourts.gov/internet/documents/14-23-Revised-Case-Management-Plan-for-DRB-Dec-31-2014.pdf>

+ Evaluations and Experts

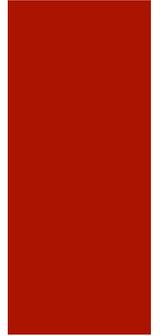


- D.C. Superior Court Assessment Center:
 - Mental Health Evaluation
 - Bonding/Attachment Study
 - Interactive Study
 - No cost to parties

- Outside Experts
 - Treating therapist
 - School psychologist
 - Other

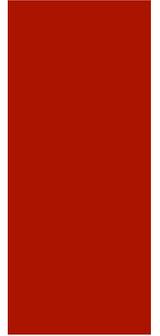
- Guardian ad Litem
 - Attorney to represent child's best interests (not express wishes)
 - May be requested by either party or appointed *sua sponte* by court

+ Settlement Negotiations: Mandatory and Voluntary



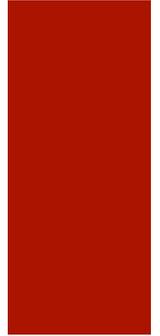
- Mandatory: all parties in DRB cases are ordered to go to Superior Court mediation program, called “Multi-Door Dispute Resolution”
 - But note that mediation is widely considered inappropriate in cases involving domestic violence
 - Parties cannot negotiate when there is a power imbalance
 - Some judges still order parties to go to mediation intake, but any cases involving DV may be rejected by mediation program
- New “Pilot program” for mediation where history of DV
 - Shuttle mediation
 - Mediation by videoconference
 - May require modification of CPO
 - Too soon to assess

+ Voluntary - ADR



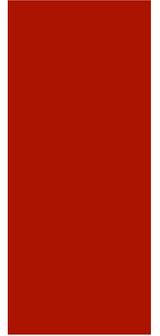
- Alternative Dispute Resolution (ADR):
 - Informal agreement by private family lawyers to serve as ADR facilitators in DRB cases, on a “low bono” (reduced fee) basis
 - If parties agree to use ADR, must request a referral order from the judge
 - Order will appoint an ADR facilitator and state percentage of fee to be paid by each party
 - Advantages:
 - ADR facilitators are neutral third parties and experts in family law; can provide a “reality check” re what each party can expect in terms of custody, alimony, etc.

+ Voluntary – Private Negotiations



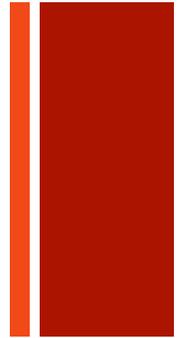
- Easiest when both parties are represented
- Since DV is involved, “shuttle diplomacy” is best approach (each party is in a separate room and attorneys go back and forth)
- If opposing party is unrepresented, settlement negotiations can still be productive
 - But note ethics rules on dealing with an unrepresented party; attorney must disclose s/he represents the other party, and cannot give advice to the unrepresented party, other than the advice to secure counsel
 - Rules of Professional Conduct, Rule 4.3

+ Managing Client Expectations



- Managing client expectations is important to settlement
 - Clients have difficulty realizing negative facts in their case
 - Clients may have unrealistic expectations re alimony, property
- Attorneys have an ethical obligation to convey any settlement offer to client
 - Rules of Professional Conduct, Rule 1.4

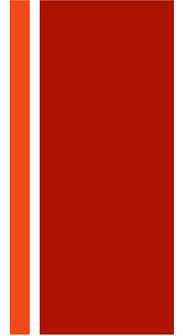
+ Pretrial Statement and Conference



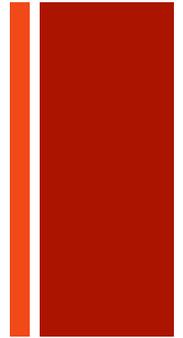
- Most DRB judges schedule a Pretrial Conference several weeks before trial
- Both parties must submit a Joint Pretrial Statement before the Pretrial Conference
- The Pretrial Statement is intended to limit the issues for trial. It lists all agreed upon facts, along with disputed facts, witnesses and exhibits. Good opportunity to get stipulations as to admission of evidence, experts witnesses, etc.
- At the Pretrial Conference, the judge may rule on any disputed evidentiary issues, such as admission of particular documents
- IF NOT LISTED IN PRETRIAL STATEMENT, IT MAY NOT BE ALLOWED AT TRIAL!

+ TRIAL PREP & TRIAL

- Interview and prepare witnesses
- DCVLP staff available to compile exhibit notebooks, etc.
- DCVLP supervisor will review drafts of opening statement, direct and cross examinations, closing argument
- Trial may range from one-half day to multiple days (not necessarily sequential)
- See Trial Skills Training on DCVLP website

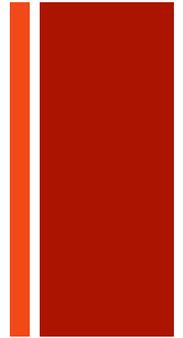


+ Post-trial



- Each party may be requested to submit Proposed Findings of Fact/Conclusions of Law
- There are examples in the Pleadings Library
- The Proposed Findings are essentially a written decision in your client's favor, citing all of the evidence in support of your position
- Many judges request FOF/COL as a word doc and issue it as the final decision

+ Pleadings Library – How to Get There



- Go to: www.dcvlp.org
- Click on User Page
 - Click on Pleadings Library

PLEADINGS LIBRARY – How to Get There

- Go to: www.dcvlp.org
 - Log in to your account
 - Click on Pleadings Library



The screenshot shows the website header for the DC Volunteer Lawyers Project. The header is red and contains the organization's logo on the left, the text "DC VOLUNTEER LAWYERS PROJECT" and "Bringing Justice Home" in the center, and a "Login" link and a "Donate Now" button on the right. Below the header is a dark grey navigation bar with the following links: HOME, WHO WE ARE, WHAT WE DO, TO VOLUNTEER, TRAINING/EVENTS, SUPPORTERS, DONATE NOW, and CONTACT. A dropdown menu is open under the "TO VOLUNTEER" link, showing two options: "Virtual Training Videos" and "Pleadings Library". A red arrow points to the "Pleadings Library" option. Below the navigation bar, the breadcrumb "Home / volunteer" is visible, followed by the word "volunteer" in a large red font.

Pleadings Library: Opening Screen

Home / Filedepot

Filedepot

The PL is searchable!

New File more actions... Tags Keyword Search Search

- Reports
 - Latest Files
 - Notifications
 - Owned by me
 - Downloaded by me
 - Unread Files
 - Locked by me
 - Flagged by me
- Top Level Folders
 - DCVLP Files
 - Pleadings Library

latestfiles					
<input type="checkbox"/>	Filename	[Show File Details]	Folder	Date	Action
<input type="checkbox"/>	drb	Custody, Divorce & Child Support		01/14/15	↓
<input type="checkbox"/>	Request for Judicial Action.docx				
<input type="checkbox"/>	A Table of Contents			01/14/15	↓
<input type="checkbox"/>	Table of Contents.doc				
<input type="checkbox"/>	drb				

List of all documents in PL

Organized by Document Type

The screenshot shows the Filedepot interface. On the left is a sidebar with navigation options. A red arrow points to the 'Pleadings Library' folder, with the text 'Click Here' below it. The main content area displays a table of documents under the 'Pleadings Library' folder.

Filename	[Show File Details]	[Expand Folders]	Date	Action
			01/14/15	
A Table of Contents				
			11/24/14	
Administrative Forms, Letters & Information				
			01/06/15	
Authorization for Release of Information Forms				
			10/27/14	
Client Resources and Social Services				

Practice Area Resources: Custody and Divorce

Filedepot

New File more actions... Tags Keyword Search Search

Reports

- Latest Files
- Notifications
- Owned by me
- Downloaded by me
- Unread Files
- Locked by me
- Flagged by me

Top Level Folders

- DCVLP Files
- Pleadings Library

Pleadings Library >

Practice Area Resources ← **Click this option on previous screen**

Filename	[Show File Details]	[Expand Folders]	Date	Action
			10/27/14	
<u>Adoption</u>				
			09/09/14	
<u>Child Support</u>				
			01/06/15	
<u>Civil Protection Order</u>				
			01/14/15	
<u>Custody and Divorce</u>				

←

Pleadings by Practice Area: Custody and Divorce

Click this option on previous screen

<input type="checkbox"/>	Filename	[Show File Details]	[Expand Folders]	Date	Action
<input type="checkbox"/>				10/27/14	
<input type="checkbox"/>	Adoption & Guardianship				
<input type="checkbox"/>				01/14/15	
<input type="checkbox"/>	Civil Protection Order				
<input type="checkbox"/>				01/14/15	
<input type="checkbox"/>	Custody, Divorce & Child Support				
<input type="checkbox"/>				09/10/14	
<input type="checkbox"/>	Guardian Ad Litem				

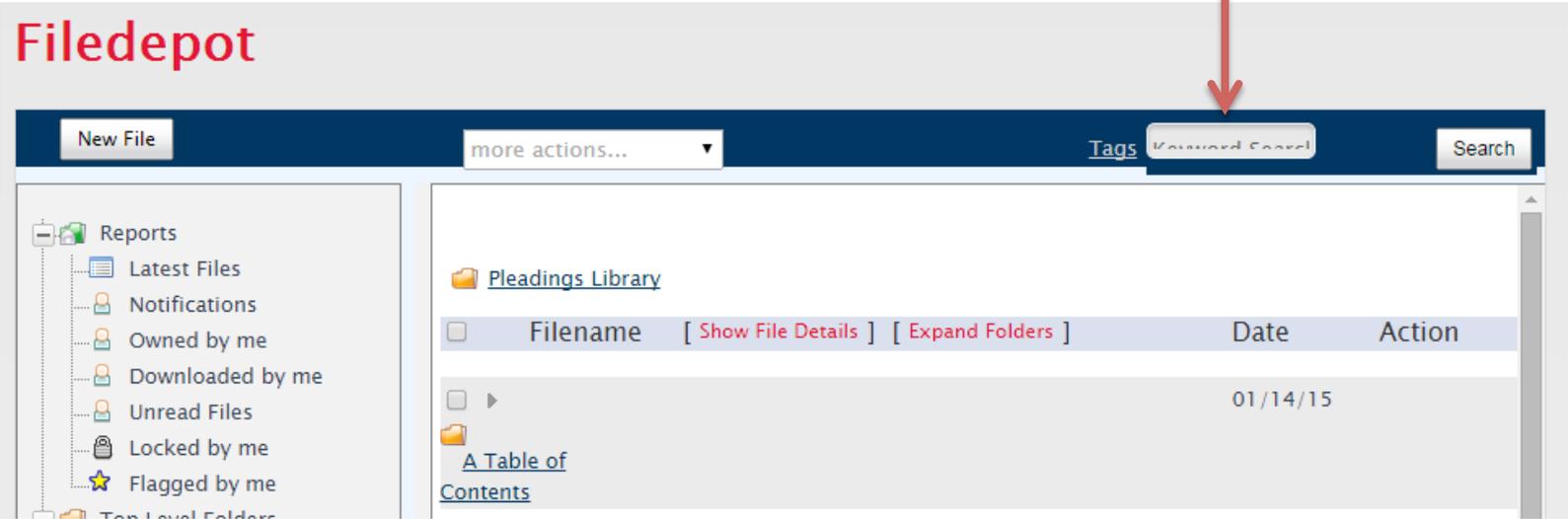
Sample Pleadings

The screenshot displays a web-based interface for legal research. On the left is a navigation sidebar with a tree view under 'Reports' and 'Top Level Folders'. The main area shows a list of documents with the following details:

Document Title	Tags	Date	Action
Discovery(custody_divorce).doc	drb, divorce, motion	09/10/14	Download
Complaint for Absolute Divorce, Distribution of Property.doc	drb, custody, motion	09/10/14	Download
Complaint for Custody (Sample 1).doc	drb, custody, motion	09/10/14	Download
Complaint for Custody (Sample 2).doc	drb, custody, divorce, motion	09/10/14	Download
Consent motion for continuance (esl edits).doc			

Searching for Documents

- Note: Everything in the PL is text searchable!
- Enter your keywords here:



The screenshot shows the Filedepot interface. At the top left, the logo "Filedepot" is displayed in red. Below it is a dark blue navigation bar containing a "New File" button, a "more actions..." dropdown menu, a "Tags" link, a "Keyword Search" input field, and a "Search" button. A red arrow points to the "Keyword Search" input field. On the left side, there is a sidebar with a "Reports" section containing links for "Latest Files", "Notifications", "Owned by me", "Downloaded by me", "Unread Files", "Locked by me", and "Flagged by me". The main content area displays a "Pleadings Library" section with a table of documents. The table has columns for "Filename", "Date", and "Action".

Filename	Date	Action
A Table of Contents	01/14/15	

Sample Complaint for Custody

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
Domestic Relations Branch

[JB] [Address])	
)	
Plaintiff,)	
)	
v.)	Civil Action No. DR-_____
)	Related Case: [- CPO -]
)	
[SY] [Address])	
)	
Defendant,)	

COMPLAINT FOR CUSTODY OF A MINOR CHILD

THE PLAINTIFF, [JB], states to the Court as follows:

1. The Court has jurisdiction over this matter under D.C. Code § 16-4602.01 (a)(1), because both parties and the Minor Child, [A], born [___], 1994 – age 14], currently reside in the District of Columbia and have lived in the District continuously for the past five years.
2. Plaintiff [JB] is the biological father of the Minor Child.
3. Defendant [SY] is the biological mother of the Minor Child.