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In Her Words: Recognizing and Preventing Abusive Litigation

Against Domestic Violence Survivors

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In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors

David Ward*

I. INTRODUCTION

The most horrible sufferings have been not only physical, they have been emotional, psychological, and financial! He never stops harassing me—the courts are his legal playgrounds! He uses the courts to inflict suffering. He constantly, and I do mean constantly, has me in court. His lawyer helps him to wear us out. He wants to inflict as much suffering as he can on me and the court itself enables him to. The end is never coming—it never ends!¹

—Domestic violence survivor interviewed by Battered Mothers' Testimony Project.

When I read this domestic violence survivor's account of her experiences in the legal system, I think of my first client. When I was a new lawyer in Seattle in 1999, a partner at my firm asked if I could help represent a new *pro bono* client named Betsy. She was a domestic violence survivor who had moved across the country with her new husband and her child from her first marriage, hoping to start a new life in the Northwest. Her abusive ex-

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¹ ARIZONA COALITION AGAINST DOMESTIC VIOLENCE, BATTERED MOTHERS' TESTIMONY PROJECT: A HUMAN RIGHTS APPROACH TO CHILD CUSTODY AND DOMESTIC VIOLENCE 39 (2003), available at <http://www.thelizlibrary.org/therapeutic-jurisprudence/AZ-Battered-Mothers-Testimony-Project-Report.pdf>.

husband, the father of her child (and a disbarred attorney), followed her to Seattle. He promptly began litigating court actions in both Washington and Georgia seeking custody of their child, while also seeking an anti-harassment order against her new spouse. By the time my firm agreed to represent Betsy, she had four different court cases pending.

With a team of several lawyers and paralegals, we were able to win each case (while running up well over \$100,000 in *pro bono* time) and ensure our client's safety and custody of her child. At the time, I thought I would never see a case like this again. But as I began representing more domestic violence survivors and developed a better understanding of the dynamics of intimate partner violence, I realized how wrong I was.

Domestic violence is about power and control.² Domestic violence survivors and their advocates have long known that abusers often use the legal system to continue to exert power and control over survivors years after a relationship has ended, particularly through litigation in family court.³ Advocates and courts are increasingly recognizing and describing this misuse of the legal system as a specific form of abuse. Notably, some of the earliest descriptions were in reports by battered women's testimony projects released by the Wellesley Centers for Women in 2002 and the Arizona Coalition Against Domestic Violence in 2003, which were based on interviews with survivors about their experiences in the family court system.⁴

² See EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 13 (2007).

³ See, e.g., Lundy Bancroft, *Understanding the Batterer in Custody and Visitation Disputes*, LUNDY BANCROFT (1998), <http://www.lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes>. "Batterers may continue their harassment of the victim for years, through legal channels and other means," and "[i]f the abuser meets with periodic success in court, he may continue his pattern of abuse through the legal system until the children reach majority." *Id.*

⁴ See CARRIE CUTHBERT ET AL., *BATTERED MOTHERS' TESTIMONY PROJECT AT THE WELLESLEY CENTERS FOR WOMEN, BATTERED MOTHERS SPEAK OUT: A HUMAN*

There is now a small, but slowly growing, amount of literature in legal and social science publications regarding this problem, which I refer to in this article as abusive litigation. However, survivors themselves have had few opportunities in those forums to give voice to their experiences by describing how abusive litigation manifested itself in their cases, how it has impacted them, and how they believe courts should respond to this form of abuse.

The purpose of this article is to give survivors and their advocates the chance to tell their stories and to learn from their experiences in considering how courts can recognize and prevent abusive litigation against domestic violence survivors. It draws upon interviews with domestic violence survivors from across the country, as well as interviews with attorneys for survivors. It also demonstrates that courts have tools at their disposal to address abusive litigation in their courtrooms, and it proposes solutions to the problem, many based on the suggestions of survivors and advocates.

In Part II of this article, I name and define the problem of abusive litigation, an important first step in developing solutions. Part III introduces the survivors and advocates interviewed for this article. In Part IV, I discuss different types of abusive litigation tactics that survivors and advocates commonly reported, noting common themes that emerged from their interviews. Part V describes the impact of abusive litigation on survivors, as reported in their interviews. In Part VI, I propose recommendations that judicial officers can take to respond to abusive litigation effectively.

RIGHTS REPORT ON DOMESTIC VIOLENCE AND CHILD CUSTODY IN THE MASSACHUSETTS FAMILY COURTS 59–64 (2002), *available at* https://secure.touchnet.net/C21764_ustores/web/product_detail.jsp?PRODUCTID=106&SINGLESTORE=true; ARIZONA COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 1, at 39.

II. A PRELIMINARY NOTE ON NAMING AND DEFINING THE PROBLEM

At the outset, the problem I refer to as “abusive litigation” does not have a commonly understood name or definition. When I use the term “abusive litigation,” I am describing a range of tactics that survivors and their advocates have reported that abusers often use in connection with court proceedings in order to control, harass, intimidate, coerce, and/or impoverish survivors. Court rules or statutes may appear on their face to authorize some of these tactics. However, these tactics become abusive litigation when they lack factual support or legal merit and when used for purposes of harassment or coercion.

The lack of a common term or definition for this problem means that a survivor does not have a readily understood name to describe what she is enduring when an abuser uses litigation as a weapon to control her. Without such language, survivors and advocates may have difficulty explaining to courts why an abuser’s conduct amounts to a deliberate effort by the abuser to continue to exert power and control over the survivor. The lack of a name to describe the problem also makes it difficult for survivors and their advocates to locate resources and case law that would be helpful in responding to abusive litigation.⁵

Without a common name, abusive litigation against domestic violence survivors has been described in a variety of ways, including “paper abuse,”⁶

⁵ See, e.g., Nancy J. King, *Naming the Judicial Terrorist: An Exposé of an Abuser’s Successful use of a Judicial Proceeding for Continued Domestic Violence*, 1 TENN. J. RACE, GENDER, & SOC. JUST. 153, 172–74 (2012) (noting the importance of naming the problem and suggesting ‘judicial terrorist’ as a term); see generally Omi Morgenstern Leissner, *The Problem That Has No Name*, 4 CARDOZO WOMEN’S L.J. 321, 322 (1998). “[W]ithout a name for their discontent, women could neither articulate their sorrow nor work to redress it. Later feminist theorists would ensure that the question of naming would emerge as a fundamental issue and as a hallmark of contemporary feminist theory.” *Id.*

⁶ See Susan L. Miller & Nicole L. Smolter, “Paper Abuse”: *When All Else Fails, Batterers Use Procedural Stalking*, 17(5) VIOLENCE AGAINST WOMEN 637, 637 (2011).

“legal bullying,”⁷ “court-related abuse and harassment,”⁸ and “judicial terrorism.”⁹ However, the term “abusive litigation” (or the counterpart term “litigation abuse”) has been used increasingly by advocates and authors.¹⁰ As a result, I use that term here.

III. LISTENING TO SURVIVORS AND ADVOCATES

The stories from survivors and their advocates in this article come from interviews conducted by volunteer attorneys for the Violence Against Women Workgroup at Legal Voice, a nonprofit women’s rights legal organization based in Seattle. The attorneys initially conducted these interviews to get a better understanding of the issue in order to develop materials on abusive litigation for the Washington Supreme Court’s Domestic Violence Manual for Judges. Advocates in Washington State and other parts of the country referred survivors to us. Interviewers asked each survivor the same questions, while they structured interviews with advocates less formally.

This article includes stories from 10 survivors, as well as several advocates for survivors. To protect the safety and privacy of the survivors and their advocates, I have used pseudonyms to identify each person and taken care to avoid describing their cases in a way that would reveal their

⁷ See *Legal Bullying Fact Sheet*, STOP VIOLENCE AGAINST WOMEN, <http://www.domesticviolenceinfo.ca/article/legal-bullying-fact-sheet-249.asp> (last visited Oct. 11, 2015).

⁸ See ANDREA VOLLANS, COURT-RELATED ABUSE AND HARASSMENT 1 (2010), available at <http://ywcavan.org/sites/default/files/resources/downloads/Litigation%20Abuse%20FINAL.pdf>.

⁹ See King, *supra* note 5, at 153.

¹⁰ See, e.g., Barry Goldstein & Elizabeth Liu, REPRESENTING THE DOMESTIC VIOLENCE SURVIVOR xxiv, 4(13) (2013) (using the term “abusive litigation”); Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and Batterers’ Relentless Pursuit of their Victims Through the Courts*, 9 SEATTLE J. SOC. JUST. 1053 (2011) (using the term “abusive litigation”); Barbara Hart, *Litigation Abuse*, NAT’L BULLETIN ON DOMESTIC VIOLENCE PREVENTION 5 (July 2011) (using the term “litigation abuse”).

identities. I refer to the survivors only by a first name (*e.g.*, Anne, Sarah, Dawn). It is particularly necessary to take such care in protecting the identities of the persons interviewed because it is not uncommon for abusers to sue survivors for defamation if they speak about the abuse they endured or to bring similar lawsuits or complaints to licensing boards against a survivor's attorney.

IV. ABUSIVE LITIGATION TACTICS

Abusers use a wide range of litigation tactics against survivors. During our interviews, we asked about a number of tactics identified in previous reports regarding abusive litigation.¹¹ We also provided opportunities to discuss other ways in which they felt that litigation was used abusively against them.

A. Seeking Sole Custody of Children

Above all else, survivors indicated that seeking sole custody of children was a common tactic that abusers used against them. Of the nine survivors with children, six indicated that their abuser had sought sole custody of their children or threatened to do so.¹² One survivor, who asked to be referred to as Anne, said her abuser “uses the legal system and custody in particular as a way of threatening and intimidating” her.¹³ Sarah reported her ex-husband “has filed for sole custody and then had his own petition dismissed,” but keeps trying to get sole custody nonetheless.¹⁴ Dawn noted that her former husband threatened to file for sole custody and “is constantly threatening to take her children away, and terrorizes the children by telling them he will

¹¹ See VOLLANS, *supra* note 8, at 26 (listing tactics).

¹² Interviews with Stephanie, Sarah, Jennifer, Dawn, Nancy, and Anne.

¹³ Interview with Anne.

¹⁴ Interview with Sarah

take them away.”¹⁵ Another survivor stated simply that her former partner was “using [her] daughter as a weapon against [her].”¹⁶

Advocates for survivors emphasized that the tactic of seeking sole custody of children is a common and effective abusive litigation tactic. One attorney observed, “the most devastating thing is for abusers to file for full custody of the children. A victim is terrified of losing her kids, and she is used to the abuser sweet-talking other people into believing that he is the good person. This is very scary for victims.”¹⁷ Another attorney echoed that view, stating:

Abusers repeatedly file for sole custody of the children, even when there is no way they will get custody. They do this to prolong the case but mainly to scare the victim. ‘I’m going to get the kid’—this terrifies the victim. It is used as a way to control the victim and to get the victim to agree to their terms and to talk with them. Victims get scared and always think they will lose custody.¹⁸

The tactic of seeking sole custody reported by survivors and advocates is consistent with reports from other sources, which indicate that abusive fathers are more than twice as likely as non-abusive fathers to seek sole custody of their children.¹⁹ These reports suggest that abusers recognize that the threat of taking custody of children away from survivors is a highly effective way to coerce and terrorize survivors in litigation.

B. Abusers Portraying Themselves as the Victim

Another theme that emerged in many interviews was reports that abusers sought to portray themselves as the victims in litigation. Researchers have

¹⁵ Interview with Dawn.

¹⁶ Interview with Angela.

¹⁷ Interview with Jamie.

¹⁸ Interview with Maria.

¹⁹ Rita Smith & Pamela Coukos, *Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations*, 36 JUDGES’ J. 38, 40 (1997).

described this tactic as a “preemptive strike,” in which the abuser “accuses the victim of doing all the things that he has done.”²⁰ Such tactics “can succeed in distracting attention from his pattern of abusiveness; in the midst of a cross-fire of accusations, court representatives are tempted to throw up their hands and declare the couple equally abusive and unreasonable.”²¹

Nancy said her ex-husband “portrayed himself as a victim throughout the legal proceedings” and “alleged that [she] was the actual abuser.” He sought a protection order against her, but the court denied it.²² Elizabeth reported that her abuser called the police twice on her to claim he was the victim, telling them that he was a soldier and she was here illegally.²³

While the abusers’ tactics of portraying themselves as victims did not work in those cases, sometimes it can result in the survivor’s arrest. Angela reported that when police arrived after a domestic violence call, her abuser claimed she assaulted him, and the police arrested her on domestic violence charges, while her abuser obtained a no-contact order against her due to the arrest. Eventually, all charges against her were dismissed. Angela also noted that her abuser’s mother later sought an anti-harassment order against her while the abuser sought his own protection order against her. Both were unsuccessful.²⁴

Abusers also claim that survivors lie. Jennifer noted her abuser repeatedly stated she was lying about him in court, while he presented himself as the

²⁰ Bancroft, *supra* note 3.

²¹ *Id.*

²² Interview with Nancy.

²³ Interview with Elizabeth.

²⁴ Interview with Angela. Angela also said that when she reported the abuse to child protective services, she had to fight to keep her children because she had remained with an abuser. As Angela noted, “What CPS does not understand is how hard it is to leave an abusive relationship.” *Id.*

victim.²⁵ Angela stated that her abuser “claims that [she] make[s] false accusations against him for harassment and stalking.”²⁶

Several survivors noted that their abusers claim that the survivors made false domestic violence allegations in order to gain an advantage in a custody dispute. Anne reported that her ex-husband “accuses [her] of using the protection order and the domestic violence allegations for leverage in the custody dispute.”²⁷ Sarah also reported that her abuser “claims that [she] use[s] false allegations to gain leverage for custody.”²⁸ Dawn reported her abuser constantly portrays himself as the victim, insisting that she is keeping him away from their children.²⁹

Some survivors suggested that abusers have an advantage when they portray themselves as victims because they present well in court. Stephanie noted her abuser “presents himself incredibly well. He walks into court in a three-piece suit and tie and presents himself as a kind, caring, and loving father,” who is “only trying to do the best for his kids. That he is forced to file these motions to protect his kids because he only wants what is best for them.”³⁰ Anne reported that her ex-husband is from a wealthy family and is “well-dressed and he looks great on paper,” while he “portrays himself as a victim.”³¹ This is consistent with observations of researchers, who note that an “abuser focuses on being charming and persuasive during a custody dispute, with an effect that can be highly misleading” to judicial officers and court-appointed parenting evaluators.³²

²⁵ Interview with Jennifer.

²⁶ Interview with Angela.

²⁷ Interview with Anne.

²⁸ Interview with Sarah.

²⁹ Interview with Dawn.

³⁰ Interview with Stephanie.

³¹ Interview with Anne.

³² Bancroft, *supra* note 3.

C. Making Litigation Long, Expensive, and Embarrassing

Survivors and advocates identified many difficult ways in which abusers seek to prolong litigation and make it more expensive and embarrassing for survivors to endure. These tactics take a variety of forms and can be draining both emotionally and financially on survivors.

Excessive and Frivolous Filings: Most of the survivors that we interviewed reported excessive and often frivolous court filings by their abusers. Anne said that the court docket in her case is 50 pages, a case in which she initiated only two filings herself (a petition for a protection order and the divorce papers).³³ Dawn indicated that since filing for divorce in 2009, there has “always been something pending in court,” with the court docket reaching 18 pages.³⁴ She reported her abuser has made “crazy motions” in front of four different courts, and “nobody stops him.”³⁵ Stephanie said that the litigation between her and her ex-partner now has over 500 docket entries.³⁶ Nancy stated that since her divorce, her former husband has filed eight complaints in state court, as well as litigation against her parents. Her divorce case alone has almost 3,000 docket entries.³⁷ Her attorney noted that the ex-husband’s attorneys often “paper bomb” the court with 500 page motions and/or threats of lawsuits.³⁸

Attorneys for survivors described the use of excessive filings to overwhelm survivors and their lawyers. One attorney noted, “A part of litigant behavior in abusive use of litigation is to bury the survivor in documents by filing lots of motions.” In one of her cases, which involved a *pro se* defendant, it was not uncommon for motions filed by the abuser,

³³ Interview with Anne.

³⁴ Interview with Dawn.

³⁵ *Id.*

³⁶ Interview with Stephanie.

³⁷ Interview with Nancy.

³⁸ *Id.*

along with supporting materials, to be over 100 pages.³⁹ She also observed that another common tactic used in custody cases is to repeatedly seek modification of the parenting plan. “They can just keep filing petitions for modification, and they will file even if there is no basis,” and while courts will dismiss such petitions, “it takes a great deal of time and energy by the survivor to get each petition dismissed.” She noted, “Courts tend to be reluctant to take steps that prohibit anyone from accessing the courts and abusers use this to harass survivors.”⁴⁰

Relitigating Issues: Survivors observed that their abusers would often try to repeatedly relitigate issues that had already been decided, such as by moving to modify orders or seeking reconsideration of decisions. Sarah stated, “He has tried to modify the custody order non-stop.”⁴¹ Stephanie said, “every time we filed motions for anything, my ex would file another motion for reconsideration. This pattern occurred every time the decision turned against him.”⁴² Nancy observed, “He always filed for re-hearings and reconsideration if he did not like the outcomes in court. He has filed a lot of appeals.”⁴³

Several survivors also reported that if their abusers lost a case or a motion, they would simply refile in a different court or before a different judge. Sarah indicated that when a court dismissed her abuser’s modification action in one state, he filed a new action a month later in a different state.⁴⁴ She stated, “He goes from judge to judge and court to court to get away with his abusive litigation.”⁴⁵ Dawn also noted her former husband has filed motions in different courts and different counties.⁴⁶

³⁹ Interview with Yvonne.

⁴⁰ *Id.*

⁴¹ Interview with Sarah.

⁴² Interview with Stephanie.

⁴³ Interview with Nancy.

⁴⁴ Interview with Sarah.

⁴⁵ Interview with Sarah.

⁴⁶ Interview with Dawn.

Nancy said, “once I got custody back he would go to other counties and split the causes of action to try to get different results.”⁴⁷ Nancy’s attorney emphasized this point, noting, “He has filed the exact same lawsuit in different counties. He tries different counties when he does not get the positive results that he wants. He gets judges recused in one county after another and gets cases transferred from one county to the next.”⁴⁸

Anne noted that she had been through three judges, but the “main judge” stopped that practice by not allowing any other judges to review the custody and child support orders. When her ex-husband tried to modify the support and custody orders by getting in front of a new judge, the “main judge” vacated that hearing and kept jurisdiction over the case.⁴⁹

Seeking Continuances: Another way to prolong litigation is to repeatedly seek continuances of hearings and deadlines. Anne reported her abuser “dragged out the court proceedings saying he needed more time. He filed more and more continuances to drag out the process.”⁵⁰ Dawn said her abuser constantly seeks continuances for related criminal proceedings as a means of delaying her protection order hearing.⁵¹ Melissa called her former husband “a master of delay tactics.” He would request continuances “all the time,” and courts always granted them. Every time she would set a hearing, he would file documents at the eleventh hour and then request a continuance.⁵²

Attorneys for survivors expressed similar views. One attorney noted that repeated requests for continuances forces the survivor to take the day off work, seek out child care, and prepare herself mentally for the confrontation, and “when the hearing is postponed, there is increased

⁴⁷ Interview with Nancy.

⁴⁸ *Id.*

⁴⁹ Interview with Anne.

⁵⁰ Interview with Anne.

⁵¹ Interview with Dawn.

⁵² Interview with Melissa.

anxiety and a sense of helplessness that the survivor feels—she cannot escape him.” She said, “Abusers continue the case to have constant control over the victim” and “drag out the process as long as possible.”⁵³ Another attorney noted, “Abusers repeatedly request continuances, even when they have an attorney. This forces the survivor to confront their abuser time and time again.”⁵⁴

Reneging on Agreements: Survivors also noted that abusers can prolong litigation by appearing to enter into an agreement, and then reneging. Jennifer reported that she and her ex-husband had made pre-trial arrangements for mediation, and then he reneged.⁵⁵ Dawn said her former husband constantly violates agreements made regarding the children, and then claims she never shows up to the agreed meeting places.⁵⁶ Nancy reported that her ex-husband would “negotiate and then at the last minute he would pull the rug out.”⁵⁷

Abusing the Discovery Process: The discovery process provides another way for abusers to exert control over survivors by seeking highly personal, and sometimes embarrassing, information about survivors. Angela noted she “had to submit all of this extremely personal medical information—I had to provide information about my medications and medical treatment. I had to give up information about my 12-step meetings.”⁵⁸ Jennifer reported her abuser tried to use discovery during child custody proceedings to embarrass her with irrelevant information.⁵⁹ Dawn also reported her former husband has used discovery to embarrass her.⁶⁰ Melissa said that when she went into therapy, her abuser threatened to get copies of her therapist’s

⁵³ Interview with Jamie.

⁵⁴ Interview with Maria.

⁵⁵ Interview with Jennifer.

⁵⁶ Interview with Dawn.

⁵⁷ Interview with Nancy.

⁵⁸ Interview with Angela.

⁵⁹ Interview with Jennifer.

⁶⁰ Interview with Dawn.

notes.⁶¹ Nancy said her ex-husband “has consistently tried to embarrass me using irrelevant information during custody proceedings. If I had a boyfriend, he would bring that up. . . . He tried to discredit me with how I was living my life. . . . If I went out and I was drinking, he brought it up.”⁶²

Violating Court Orders: Even after a court enters an order, abusers can continue to prolong the litigation process by refusing to comply with the court’s order, a tactic that forces survivors to return to court in order to seek enforcement. Nearly every survivor we interviewed reported that their abuser repeatedly violated court orders, usually with no consequences. Anne reported, “My ex is constantly violating court orders, but there are never any repercussions from the court. Sometimes there is an admonishment, but he still gets away with it.”⁶³ Angela stated, “he has repeatedly refused to comply with court orders,” and “he is never held accountable for orders that have been put in place.”⁶⁴ Nancy reported similar conduct by her abuser, with her attorney adding that her ex-husband believes he is “immune from court orders.”⁶⁵ Melissa noted that her abuser never responded to subpoenas, never provided a witness list, and never provided discovery responses. She felt there were “no teeth” in the court’s orders.⁶⁶

D. False Attacks on Survivors

During the litigation process, abusers also use different means to bring false allegations against survivors. Abusers use these tactics not only to try to discredit survivors in litigation, but also to threaten survivors with the loss of their children or their livelihoods.

⁶¹ Interview with Melissa.

⁶² Interview with Nancy.

⁶³ Interview with Anne.

⁶⁴ Interview with Angela.

⁶⁵ Interview with Nancy.

⁶⁶ Interview with Melissa.

False Reports to CPS: Several survivors said their abusers had made false allegations about them to Child Protective Services (CPS). Angela reported that her ex-husband made two complaints to CPS against her, but he was never held accountable for these false accusations.⁶⁷ Jennifer also said her abuser made reports to CPS accusing her of being an unfit parent and “parading men around her children,” but CPS determined the reports were unfounded.⁶⁸ Dawn also said her abuser has filed false reports with CPS alleging that she has abused her children.⁶⁹

Attorneys reported these tactics as well. One attorney noted that false reports to CPS “happen a lot,” with claims ranging from “issues with a new boyfriend, that she is neglectful or has bad roommates, and that she is using drugs.”⁷⁰ Another said, “Abusers will make false reports to CPS all the time, and also multiple reports, one after another, regardless of whether these successive reports are founded or unfounded.”⁷¹

False Reports to Licensing Agencies: Two survivors also reported that their abusers had made false reports about them to attempt to prevent them from keeping professional licenses. Nancy said that her abuser tried to get her professional license revoked, claiming to the licensing board that she had committed fraud.⁷² Similarly, Angela described how her abuser had made complaints to her professional licensing board alleging that she had abused him. She reported that he did so to try to get her fired from her job.⁷³

Falsely Portraying the Survivor as Unfit: Abusers also try to undermine survivors by making unfounded allegations that they have mental health problems or substance abuse issues. Even if there is no evidence to support

⁶⁷ Interview with Angela.

⁶⁸ Interview with Jennifer.

⁶⁹ Interview with Dawn.

⁷⁰ Interview with Linda.

⁷¹ Interview with Maria.

⁷² Interview with Nancy.

⁷³ Interview with Angela.

these allegations, raising them in court can still force survivors to undergo mental health or substance abuse evaluations.

Angela reported that her abuser filed an emergency motion to demand that she go to in-patient treatment for alcohol abuse issues, while also seeking temporary custody of their child. Although the judge denied the motion and said the motion was “ridiculous,” the judge did not reprimand the abuser, and she had to pay her attorney fees to respond to the motion.⁷⁴

Other survivors reported being forced to have mental health evaluations due to their abusers’ allegations that they were mentally unstable. Anne stated, “Psychological evaluations are common, and I was evaluated. He accused me of mental illness and called me embarrassing names.”⁷⁵ Nancy also had to undergo a mental health evaluation.⁷⁶

Angela reported her abuser has “emailed the court and told the court that the GAL [guardian ad litem] claimed that I have mental health problems.” She noted that he “does not get anywhere with these allegations, but the court lets this behavior continue and the GAL encourages the behavior.”⁷⁷ Dawn said her former husband has called her crazy and claimed she is bipolar.⁷⁸

Attorneys observed that “abusers will raise mental health issues, which of course forces a mental health evaluation” and “will claim the survivor/mother is a terrible person and a terrible mother, all the while making untrue statements about the survivor.”⁷⁹ Another attorney noted, “Abusers will repeatedly try to portray the victim as mentally unfit to care for the child. They will often say that the victim is crazy.”⁸⁰

⁷⁴ Interview with Angela.

⁷⁵ Interview with Anne.

⁷⁶ Interview with Nancy.

⁷⁷ Interview with Angela.

⁷⁸ Interview with Dawn.

⁷⁹ Interview with Linda.

⁸⁰ Interview with Maria.

E. Threats and Retaliation Against Others

A tactic reported by many survivors concerned abusers who take or threaten retaliation against a survivor's friends and family, as well as that survivor's attorneys. This tactic has the effect of isolating the survivor from her support network because they fear the abuser harming them.

Nancy said her ex-husband "has taken legal action against [her] family, [her] friends, and neighbors, and even against advocates and lawyers working on [her] behalf. He files lawsuits against witnesses from our custody trial, and each time he loses on a complaint, he just files new ones."⁸¹ Nancy also indicated that her abuser has filed lawsuits against three of her attorneys, as well as complaints against her attorneys with the state bar. He also filed judicial conduct complaints against the judges.⁸² Nancy's ex-spouse has also sued her for defamation because she called the police for help.⁸³

Similarly, Dawn reported that her former husband took legal action against her friends who provided supportive statements for her, including seeking restraining orders against them.⁸⁴ She also indicated that her abuser filed a defamation case against a police officer, which arose from her seeking assistance from the police.⁸⁵ She also reported that he has threatened the judge.⁸⁶

Melissa said her abuser often threatens to file suit against individuals who try to help her and is fond of mentioning that he has attorneys working

⁸¹ Interview with Nancy.

⁸² Interview with Nancy.

⁸³ Interview with Nancy.

⁸⁴ Interview with Dawn.

⁸⁵ Interview with Dawn.

⁸⁶ Interview with Dawn.

“24/7” on his case.⁸⁷ Angela said her ex-husband “tried to get people fired for giving [her] information.”⁸⁸

Elizabeth reported a variety of ways that her abuser tried to retaliate against those who helped her. She said her abuser contacted her shelter and threatened advocates about a letter they wrote on her behalf. The shelter eventually told her that they did not want to help her anymore because of her husband. Her husband also twice filed restraining orders against one of her witnesses, and sent text messages to scare another witness who then did not want to testify. He also threatened to file a defamation lawsuit against one of her witnesses. Elizabeth felt she was losing her support system, and “no one wanted to speak up” for her as a result of his tactics.⁸⁹

Attorneys who represent survivors also noted this tactic, including some attorneys who have been sued themselves by abusers. An attorney stated that in one case, the abuser “filed federal court lawsuits against me, my employer, the custody investigator, and a judge.”⁹⁰ She noted, “Abusers will not only punish survivors but they will attempt to control and punish anyone who tries to help them.”⁹¹

F. Threats Against Immigrant Survivors

Finally, immigrant survivors are especially vulnerable during the litigation process. We interviewed two immigrant survivors, both of whom reported that their abusers tried to use their immigration status against them. Elizabeth’s abuser tried to use her immigration status to attack her credibility, claiming that she made everything up because she wanted a visa to stay in the country. She reported that the immigration subject was a very

⁸⁷ Interview with Melissa.

⁸⁸ Interview with Angela.

⁸⁹ Interview with Elizabeth.

⁹⁰ Interview with Yvonne.

⁹¹ *Id.*

strong threat.⁹² Anne, an immigrant with conditional resident status, said her abuser threatened to “kick [her] out of the country in 48 hours,” so she would never see her daughter again. Anne also indicated that her abuser continued to attempt to use her status as an immigrant against her even after she obtained US citizenship. She said that despite obtaining citizenship, her abuser went to the State Department to prevent the children from getting passports, and “the theme of [her] flight from the [United States] continued re-appearing,” and “we have an order that my older daughter cannot get near the specific embassy.”⁹³

Attorneys spoke of similar problems. One attorney noted, “Abusers will threaten to report the survivor to immigration authorities and to have the survivor deported” and will “also threaten to report relatives and have relatives deported.” She noted, “Often, a survivor who is faced with these very real threats will give in to the abuser and give up her rights. The threats are used to deter a survivor from participating in a case or taking steps to protect herself.”⁹⁴

V. IMPACT OF ABUSIVE LITIGATION ON SURVIVORS

The abusive litigation tactics described above are highly effective ways that abusers can exert control over survivors for years after a relationship has ended. When we asked survivors to describe how abusive litigation impacted them, an overarching response was the feeling that they were trapped and controlled as a result of litigation.

For example, Anne expressed despair that “there is no end in sight for the abusive litigation until my daughter turns 18. Why would he ever change his ways?”⁹⁵ Sarah reported, “The ongoing court battle has been a

⁹² Interview with Elizabeth.

⁹³ Interview with Anne.

⁹⁴ Interview with Yvonne.

⁹⁵ Interview with Anne.

nightmare,” feeling she was “trapped in the court system because of his lies.” She stated, “I am very tried and frustrated, and he never suffers any consequences.”⁹⁶ Melissa stated, “We are living out a life sentence of trauma and terror sanctioned by family court.”⁹⁷

Nancy presented her feelings in a way that described how litigation impacted every aspect of her life. She said:

This takes up all my time and I have no life. . . . He is able to control my personal life and the free time that I have. He controls all the decisions that I make. In the back of my mind, I’m always worried about what he or the court will think about what I am doing. There is a black cloud of danger always over me. I am always being scrutinized and I always fear future scrutiny . . . It starts to control what I am capable of doing on a daily basis; it just ends up eating up your whole life.⁹⁸

Survivors also reported several other common themes in describing how abusive litigation had impacted their lives, both emotionally and financially.

A. Loss of Trust in the Legal System

Abusive litigation results in survivors having no sense of trust in the legal system. This is unsurprising because of the numerous ways that litigation seems to legitimize the abuser’s actions and cause harm to the survivor.

Elizabeth observed that “the law is not just words, it also has a spirit,” and she believed the spirit of the law was violated in her case. With the exception of one judge, she “felt so embattled, so let down and betrayed” as if she was “not worthy to have a better proceeding.”⁹⁹

Nancy expressed similar loss of trust in the legal system. “No one should have to fear the judicial system that they grew up believing was there to

⁹⁶ Interview with Sarah.

⁹⁷ Interview with Melissa.

⁹⁸ Interview with Nancy.

⁹⁹ Interview with Elizabeth.

help them. The judicial system has become a playground for many abusers who use it as their weapon of choice.”¹⁰⁰

Sarah stated, “I am very grateful that I have custody of my son,” but continued, “I am very angry with the courts. How can someone be allowed to sue over and over again without any penalties? I am fed up with the court system.” She feels, “The court is the problem because the court enables and emboldens him. If he felt that the court would get tough on him, maybe it would stop but the court does nothing to stop him.”¹⁰¹ Stephanie said simply, “I can’t imagine why the judge doesn’t get it and doesn’t see through this all.”¹⁰²

When survivors feel as if they cannot obtain justice, it makes them reluctant to go to court to seek protection or to enforce orders entered by courts. This loss of trust results in loss of access to the justice system and the protections it is supposed to offer survivors.

B. Pressure to Make Concessions to Stop the Abusive Litigation

Both survivors and their attorneys noted that abusive litigation is an effective tool to force survivors to make concessions in the hopes of ending the litigation. Elizabeth characterized her experience as “do what I want or you will go to jail, or you will be deported, or I will kill you.”¹⁰³ Angela noted, “He is trying to get me to cave in by attacking me through every possible venue.”¹⁰⁴ Sarah said, “You should not be subjected to lawsuit after lawsuit, but the judges don’t care. You are powerless and many survivors just end up giving in just to make it stop. The resulting financial devastation creates the possibility of losing custody by default.”¹⁰⁵

¹⁰⁰ Interview with Nancy.

¹⁰¹ Interview with Sarah.

¹⁰² Interview with Stephanie.

¹⁰³ Interview with Elizabeth.

¹⁰⁴ Interview with Angela.

¹⁰⁵ Interview with Sarah.

Attorneys shared similar concerns. One attorney noted:

Survivors get very weary from these tactics. Abusers are relentless and it wears them down. Abusers know that if the survivor is worn down, the abuser will get what he wants. A survivor just wants it over with and wants that person out of their life. This creates an incentive for a survivor to agree to custody arrangements that may not be in her or the child's best interests.¹⁰⁶

Another attorney said the result of abusive litigation is that many survivors "give in early" and "don't get what is rightfully theirs." She noted that even making such concessions does not end the abuse. "The cases end up being 'agreed' to, but just set up for the abuser to have continued access to her and the kids. She's not actually safe. The abuser continues to control."¹⁰⁷

Other attorneys expressed the same view. One attorney observed that abusive litigation "takes an enormous toll on mothers. They get worn down and they want to give up, and then they end up relenting and giving in. Just to make it stop they will agree to the custody agreement."¹⁰⁸ The tactic of seeking sole custody of a child is one way to force concessions. "Many times abusers come to hearings already hearing from attorneys that they are very unlikely to get custody, yet they still force the victims into court. It is a way to shake the victim up until she gives up. It becomes psychological torture for her at this point."¹⁰⁹

When abusers use litigation as a means to try to force survivors to make concessions, they put survivors and children at risk. In particular, some survivors may feel coerced to return to abusers because they are afraid of losing their children in legal proceedings. Preventing abusive litigation in these cases is key to ensuring the safety of survivors and their children.

¹⁰⁶ Interview with Yvonne.

¹⁰⁷ Interview with Bette.

¹⁰⁸ Interview with Linda.

¹⁰⁹ Interview with Maria.

C. Financial Impacts

Nearly all survivors reported that abusive litigation has significantly impacted them financially. The financial impact not only includes legal fees,¹¹⁰ but the loss of jobs and career opportunities.

Elizabeth reported that the legal procedures were “more than a full time job” and consumed all of her time.¹¹¹ Amy reported that her previous employer laid her off for frequently missing work to attend court proceedings.¹¹² Jennifer had just found a job and feared losing that job because of repeated court appearances. She reported that the court battles caused her to suffer an emotional breakdown, which has affected her career options.¹¹³

Melissa said she has spent \$20,000 on legal expenses and has had to declare bankruptcy. She has also been unable to pay her attorneys, and as a result, they have withdrawn from representing her. When she told a judge that she had depleted her retirement savings, the judge said, “That’s why you need to get along.”¹¹⁴ Stephanie said, “I invested everything I had, and I leveraged my home to try to fight this. He destroyed me financially through the courts. As a mom, the impact of watching my kids go through this is unreal.”¹¹⁵

Nancy noted,

¹¹⁰ One survey of self-identified protective parents indicated that the average cost of court proceedings was over \$80,000, and over one-fourth of protective parents reported being forced to file for bankruptcy as a result of custody litigation. Stephanie Dallam, *Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?*, LEADERSHIP COUNCIL ON CHILD ABUSE & INTERPERSONAL VIOLENCE (May 27, 2006), <http://www.leadershipcouncil.org/1/pas/dv.html>.

¹¹¹ Interview with Elizabeth.

¹¹² Interview with Amy.

¹¹³ Interview with Jennifer.

¹¹⁴ Interview with Melissa.

¹¹⁵ Interview with Stephanie.

He has used the legal system to control and intimidate me. He has also done this through financial control. He has unlimited funds and he bragged to a friend that he could run me into the ground financially and that he would do it. He is able to do that because of the money he has and I am forced to go *pro se*.¹¹⁶

She also said that “making repeated and unnecessary court appearances has become a full time job for me; this has been going on . . . since I left him. My whole existence since I left him has been unnecessary court appearances. It is impossible to hold down a regular job.”¹¹⁷

Anne noted that when legal proceedings started, she had a good job making more than \$100,000 per year. She said her total legal costs are now several hundred thousand dollars. She lost her job and her house as a result. Her new job paid 60 percent of the previous one, and she now lives in a one-bedroom apartment with “no pension, no savings, and lots of debt.”¹¹⁸

Sarah reported, “I need to keep spending money to fight his lies and keep him from modifying the custody order.”¹¹⁹ She called the experience “a financial and emotional roller coaster of endless litigation resulting in financial devastation.” She said, “He wants to show me that if I am not with him, he will make my life miserable. He wants to see me broke and enjoys threatening and controlling me with custody threats.”¹²⁰

Angela reported having to take time off work to deal with issues, including her ex-husband’s false reports to CPS about her.¹²¹ She said, “I have had to take time off from work and I am spending a lot of money on attorney’s fees. This drives me crazy—it feels like it will never end. I

¹¹⁶ Interview with Nancy.

¹¹⁷ Interview with Nancy.

¹¹⁸ Interview with Anne.

¹¹⁹ Interview with Sarah.

¹²⁰ Interview with Sarah.

¹²¹ Interview with Angela.

believe he will continue to take me to trial over custody and then make yearly efforts to get his child support payments reduced.”¹²²

Dawn said litigation has been a huge financial burden on her. The litigation drained all her money and left her with nothing. She also said she lost her last job because she was dragged into court so many times. She has spent nearly \$200,000 in legal expenses. Her financial situation frightens her, and she worries she will be unable to pay her mortgage.¹²³

An attorney for one of the survivors said, “He believes that litigation is a sport, and an intellectual game where he can use the power of his money to run his litigation opponents right out of the litigation through extreme costs.”¹²⁴ Another attorney stated, “Survivors will lose time at work, which is a huge problem. If you are embroiled in contentious litigation over your children, you also can’t get a job or even look for a job. You will not know when you can actually go to work.”¹²⁵

The severe financial impacts on survivors as a result of abusive litigation are not the unavoidable consequences of our system of justice. As the survivors’ stories illustrate, it is the result of abusers deliberately using litigation as a means to impoverish, punish, and control survivors for leaving abusive relationships. It amounts to economic abuse, long recognized as a form of domestic violence.¹²⁶

D. Forced Contact with Abuser

Some survivors emphasized that abusive litigation forced them to be in continued contact with their abusers due to repeated court appearances. This

¹²² Interview with Angela.

¹²³ Interview with Dawn.

¹²⁴ Interview with Nancy.

¹²⁵ Interview with Yvonne.

¹²⁶ Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, 83 FEB N.Y. STATE BAR ASS’N J. 40, 40 (Feb. 2011).

type of forced contact can traumatize survivors and can provide abusers repeated opportunities to continue confronting and intimidating survivors.

Sarah stated, “He had me in court constantly to have contact with me so he could threaten and harass me.” She noted, “I keep trying to stay away from him but he keeps dragging me back into court.” She reported, “He files constant petitions for modification because he wants direct contact with me,” and noted, “He can’t come around me so he uses the court system to continue the abuse.” Sarah reported that, in 2013, she made seven court appearances and had to see her abuser at least nine times for depositions, court appearances, and mediation.¹²⁷ Similarly, Jennifer noted, “The only power he had over me was to keep me in the courtroom.”¹²⁸

In these cases abusers seem to recognize (and exploit) the fact that forcing survivors into court is often the only legal way that remains to continue to have contact with survivors. Such forced contact can provide an effective means for an abuser to attempt to maintain control over a survivor for years.

E. Emotional and Psychological Impacts

Virtually all survivors reported that in one way or another, abusive litigation has impacted them emotionally or psychologically. Elizabeth reported, “The pressure that you are constantly under from being involved and receiving summons for court processes . . . when you don’t have the money to pay an attorney to represent you, it is overwhelming.” She described the experience as “exhausting,” and she “felt embattled everyday.” She spoke about “the trauma, the nightmares, the fear of what is

¹²⁷ Interview with Sarah. Sarah rightfully noted that she was “sick and tired that they want to force me into mediation with my abuser.” *Id.*

¹²⁸ Interview with Jennifer.

going to happen next—when will it end—and that he will walk away with everything.”¹²⁹

Jennifer said she eventually had a break down. She felt she would “never be free, never have peace of mind.” Jennifer reported that her ex-spouse was always threatening to take her children and her home away. She was constantly on edge because he was “messing with [her] head and I would never be free,” and she is “never sure what he would do next.”¹³⁰ Dawn said her life has becoming a “living hell” and feels it will continue until the children turn 18.¹³¹ Melissa stated, “I literally get sick. I shake. I cry. I hate going to court.”¹³²

Amy had told her ex-husband after their divorce that going to court was the most traumatic experience she ever had. Since then, she believes that he has made it a point to bring her to court whenever he sees an opportunity. Unlike her ex-husband, Amy has never been able to afford an attorney. Amy reported that going to court is now a thoroughly traumatic experience for her that has induced symptoms of post-traumatic stress disorder (PTSD).¹³³

Similarly, Stephanie said, “going through this process, I went from being diagnosed with anxiety to now that I am struggling with PTSD.”¹³⁴ Nancy also reported that she currently suffers from PTSD stemming from the effects of her ex-husband’s abusive litigation.¹³⁵ Consistent with the survivors’ reports, one attorney emphasized, “This kind of prolonged litigation . . . causes mental health effects for the victims, and judges need to be educated about the mental health effects of abusive litigation.”¹³⁶

¹²⁹ Interview with Elizabeth.

¹³⁰ Interview with Jennifer.

¹³¹ Interview with Dawn.

¹³² Interview with Melissa.

¹³³ Interview with Amy.

¹³⁴ Interview with Stephanie.

¹³⁵ Interview with Nancy.

¹³⁶ Interview with Nancy.

Some survivors also indicated that abusive litigation had affected their physical health. Amy reported that she has gained over 150 pounds and developed numerous physical ailments as a result of the stress she is under.¹³⁷ Anne reported, “I have suffered significant health effects from all this.”¹³⁸ Stephanie said she had nightmares and trouble sleeping and lost a lot of weight during court proceedings.¹³⁹

Abusive litigation can also severely isolate survivors from their support networks, particularly when abusers use litigation as a tool to threaten and harass survivors’ friends, family, and advocates. Elizabeth in particular cited the isolation as a primary impact of the litigation. She reported that she “felt isolated” and all by herself. She said that her family and friends asked her to “delete” everything from them. She felt that she could not have friends or make new friends because their safety would be compromised, while the few friends she had were traumatized they would be followed or harmed in some way if they remained her friend. It also affected her ability to volunteer at an agency because the agency felt having her there was a threat and that her abuser would do something to the agency and to Elizabeth.¹⁴⁰

Family law litigation can be emotionally and psychologically draining under many different circumstances. However, in the context of domestic violence, it is important to recognize that abusive litigation is not simply an example of a “high conflict” family law matter. It is a form of emotional and psychological abuse that should be recognized as part of a pattern of controlling and coercive behaviors used by abusers.¹⁴¹

¹³⁷ Interview with Amy.

¹³⁸ Interview with Anne.

¹³⁹ Interview with Elizabeth.

¹⁴⁰ Interview with Elizabeth.

¹⁴¹ See VOLLANS, *supra* note 8, at 20–21.

VI. RECOMMENDATIONS FOR CURBING ABUSIVE LITIGATION

When I discuss the problem of abusive litigation with judicial officers and attorneys, nearly every person brings up his or her own story about a case where abusive litigation was present. There is little question that judges and attorneys know that abusive litigation occurs. The more difficult issue is to recognize when abusive litigation is occurring and what steps can address it, consistent with constitutional rights of access to the courts.

We asked survivors and attorneys to offer judicial officers recommendations regarding how they can prevent abusive litigation. A general theme was that judicial officers must recognize the problem and its impact on survivors, and then impose consequences on abusers who misuse the legal system. For example, Angela reported, “The court just lets my ex-husband’s abusive tactics continue—it just keeps happening. The court just dismisses the behavior and then it happens again and again; he is not being punished for his behavior and therefore it keeps going on.”¹⁴² In a similar vein, Sarah said, “The court allows him to file over and over again with no consequences He will not stop this because this is his only form of harassment and contact—he has nothing left.”¹⁴³ She emphasized that “there must be some tangible response to constant lying to the court and repeated frivolous motions. There must be a reason for abusers to stop.”¹⁴⁴

Survivors and attorneys indicated that judicial officers in their cases rarely demonstrated that they recognized abusive litigation when it was occurring in their courtrooms. However, they reported that when judicial officers identified the problem—and took action—the situation would improve. The most hopeful message we received from survivors was that when judicial officers “get it,” they can be effective in stopping abusive litigation.

¹⁴² Interview with Angela.

¹⁴³ Interview with Sarah.

¹⁴⁴ *Id.*

The people we interviewed had a variety of suggestions for judicial officers to address abusive litigation. These proposals include: (1) ensuring that the same judicial officer oversees such cases throughout all proceedings; (2) imposing consequences for abusive litigation, such as sanctions and/or attorneys' fees; (3) restricting excessive filings; and (4) educating judicial officers and attorneys about the problem. Each of these suggestions is discussed in turn below.

A. Have One Judicial Officer Oversee All Litigation

Several survivors and attorneys indicated that having one judicial officer handle all matters involving the parties could help reduce abusive litigation. Too often, multiple judicial officers preside over litigation at different points in the case, meaning that none of the judicial officers have a full picture of the history of the litigation or the abuser's conduct.

Sarah said, "These cases should be kept with the same judge who will know the behavior."¹⁴⁵ Similarly, Stephanie said, "Sticking with the same judicial officer would have been beneficial to me. I feel like it would have been beneficial to have only one judge throughout."¹⁴⁶

One attorney noted that, in the county where she practices, a party can keep filing motions and going before different judicial officers who "are not looking at the whole history of the case." She noted that when the same judge hears all matters, it "forced that judge to be familiar with the whole history of the case," and "there was more opportunity to have one judge track what was happening in the case."¹⁴⁷ Another attorney said it is important for judicial officers to review the entire docket and to see who has

¹⁴⁵ Interview with Sarah.

¹⁴⁶ Interview with Stephanie.

¹⁴⁷ Interview with Laura.

been filing the motions and petitions. She observed, “When you go to the doctor, they should know your history. The same is true for judges.”¹⁴⁸

The feasibility of adopting this type of model should not be difficult. It is largely a matter of case management practices of the court, and models already exist in the form of a unified family court, which is already implemented in a number of jurisdictions, in which one judge or judicial team handles all aspects of a case.¹⁴⁹ Ensuring that the same judicial officer will hear all matters in cases in which concerns arise about abusive litigation could be implemented readily through similar policy changes.

B. Impose Consequences, Including Sanctions and Attorney Fee Awards

Survivors and attorneys also repeatedly emphasized the need for courts to impose real consequences on abusers who manipulate the legal system to control and harass survivors. Judicial officers already have a number of tools at their disposal to impose such consequences, including sanctions under existing court rules for filing frivolous or harassing pleadings,¹⁵⁰ fee award provisions authorized by statutes for frivolous or bad faith litigation, and the inherent authority of courts to control their courtrooms. However, several people we interviewed expressed a sense that courts were reluctant to impose such consequences, but instead relied primarily on verbal admonishments in an attempt to address litigation abuse.

While some expressed the view that verbal admonishments by the court were helpful, others reported that admonishments were ineffective unless the judicial officer followed through and took concrete steps to sanction the abuser. For example, Dawn noted that judges have admonished her former husband, but that does not deter him. Since the admonishments occur

¹⁴⁸ Interview with Bette.

¹⁴⁹ See, e.g., WASH. STATE CTR FOR JUDICIAL RESEARCH, AN EVALUATION OF UNIFIED FAMILY COURT PILOT SITES IN WASHINGTON STATE 33 (2004), available at <https://www.courts.wa.gov/newsinfo/content/pdf/UFCExecSummary.pdf>.

¹⁵⁰ See, e.g., WASH. SUPER. CT. CIV. R. 11; FED. R. CIV. P. 11.

without any tangible punishment, he can afford to continue hiring attorneys.¹⁵¹ Sarah said, “Courts should use attorneys’ fees to control abuse” and that “some form of sanctions must be used to curb the abuse.”¹⁵²

Other survivors reported that judicial officers did take steps to impose consequences. Jennifer reported that the court ordered her abuser to pay her attorney’s fees.¹⁵³ In Stephanie’s case, the court awarded her sanctions under Rule 11 amounting to \$10,000 in attorney’s fees.¹⁵⁴

Attorneys also emphasized the need for sanctions and fee awards against abusive litigants. One attorney said, “Courts should be awarding attorneys’ fees, court costs, and when the survivor is *pro se*, awarding survivors some kind of compensation.” She noted that “admonishments do work at times, but when you are hurting the abusers in their pocket, they lose power if they have to give money to the victim since they don’t want to give the victim anything If they are forced to comply with monetary sanctions, they then lose power.”¹⁵⁵ Another attorney said, “Abusers need to get the message that they will not get away with it. When abusers are not sanctioned or admonished, it adds fuel to the fire. The abuser sees it as a victory and it fuels their energy and motivates them to continue their abusive tactics.”¹⁵⁶

C. Take Steps to Curb Excessive Court Filings

Some survivors suggested that courts should take action to limit an abusive litigant’s ability to file excessive motions in court. Angela said, “There should be limitations on what they can say and do and how many

¹⁵¹ Interview with Dawn.

¹⁵² Interview with Sarah.

¹⁵³ Interview with Jennifer.

¹⁵⁴ Interview with Stephanie.

¹⁵⁵ Interview with Maria.

¹⁵⁶ Interview with Yvonne.

motions they can file.”¹⁵⁷ Sarah suggested, “There should be a burden of evidence to meet that should stop repeated complaints.”¹⁵⁸

Jennifer reported that the judge in her case took steps to limit filings. She reported the judge recognized the abuser was using the court for manipulation and really “let him have it.” The judge required her ex-husband to complete domestic violence treatment and childcare classes before filing any more motions.¹⁵⁹ Similarly, Stephanie reported that, after the third trial, she had a judge who recognized the abusive tactics, and the judge ordered that the state division of child support review the child support order every two years, “a review process that was designed to keep us out of the courtroom.”¹⁶⁰

Attorneys offered similar views about the need for judicial officers to curb excessive filings. One attorney said, “Something needs to be developed to curb repeated filings” and that “petitions for modification are made over and over.” She suggested imposing “some kind of restriction that would be consistent with the statute and allow due process, but still limit the abuser’s ability to keep filing.”¹⁶¹

In the case involving Betsy, described at the beginning of this article, the judge did not specifically limit filings by our opposing party, but took a creative step to minimize the need for our client to respond to the constant barrage of motions. The judge issued an order providing that whenever a party filed a motion in the case, no response was required from the opposing party until the judge had reviewed it for merit and requested a response from the other side. This simple step, based on the court’s inherent authority to control the litigants before it, gave our clients (and her

¹⁵⁷ Interview with Angela.

¹⁵⁸ Interview with Sarah.

¹⁵⁹ Interview with Jennifer.

¹⁶⁰ Interview with Stephanie.

¹⁶¹ Interview with Laura.

attorneys) enormous relief and significantly reduced the number of filings in the case.

E. Educate Judges and Lawyers

Finally, many survivors and attorneys emphasized the need to educate both judicial officers and lawyers about abusive litigation. Dawn feels that judges need to be educated “in order to stop these crazy motions.” She noted that judges should be looking into the complete history of harassment and domestic violence.¹⁶² Anne added that in her experience, “judges are simply not educated about domestic violence.”¹⁶³

One attorney emphasized that the need for judicial education went beyond abusive litigation, but to broader training in handling domestic violence cases. She suggested:

Commissioners need broad, multi-faceted mandatory training to deal with domestic violence cases. They need mandatory DV training and training on all aspects of DV, such as understanding the myths of false reporting. Commissioners believe that victims will false[ly] report to gain leverage in custody proceedings. And education must be continuing and mandatory.¹⁶⁴

Nancy focused on the need to start by educating lawyers. She said, “Lawyers need to be able to spot this kind of abuse. If lawyers are not being trained about this kind of abuse, then just training judges will not be effective. It starts with the lawyers.”¹⁶⁵ Other survivors expressed similar views that attorneys needed training to recognize and respond to abusive litigation effectively. Sarah noted, “My attorney has never addressed this abuse as abusive litigation.”¹⁶⁶ Angela expressed similar views saying, “My

¹⁶² Interview with Dawn.

¹⁶³ Interview with Anne.

¹⁶⁴ Interview with Jamie.

¹⁶⁵ Interview with Nancy.

¹⁶⁶ Interview with Sarah.

attorney has not made any effort to put an end to the abusive litigation—my attorney has never really stood up for me.”¹⁶⁷

Attorneys also emphasized the need for lawyers representing victims to learn how to respond to abusive litigation. Nancy’s attorney said, “There has never been an attorney involved in the case that knew everything that was going on with the abusive litigation that could present it all to a judge in a cohesive manner.”¹⁶⁸ Another attorney stated that lawyers “need to bring the pattern to the court’s attention,” and “it is really up to the attorney to put abusive issues out there”¹⁶⁹

Many states now require training on domestic violence for all judicial officers.¹⁷⁰ No reason exists why every state in the country could not only require judicial training on domestic violence, but also require that trainings include sessions on how to recognize and prevent abusive litigation against domestic violence survivors.

I have presented several such trainings on abusive litigation for judges and attorneys in Washington State, in which I have illustrated the problems by citing the experiences of the survivors and attorneys interviewed for this article. The amount of information that can be conveyed in a relatively short session goes a long way toward helping judicial officers identify common abusive litigation tactics, the impact on survivors, and the steps they can take to restrain abusive litigation while upholding constitutional rights of access to the courts.

¹⁶⁷ Interview with Angela.

¹⁶⁸ Interview with Nancy.

¹⁶⁹ Interview with Laura.

¹⁷⁰ See NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MANDATORY DOMESTIC VIOLENCE TRAINING FOR JUDGES 1–3 (2013), available at <http://www.ncjfcj.org/sites/default/files/chart-mandatory-dv-training-for-cps.pdf>.

VII. CONCLUSION

When I represented Betsy 17 years ago, I had no idea that the type of abuse she was enduring was a common problem for domestic violence survivors. Although the problem is starting to receive more recognition, too many attorneys and judicial officers still do not recognize abusive litigation when it is occurring, much less take steps to address it. But telling the stories of survivors and their attorneys who have experienced abusive litigation is a critical step toward understanding the problem and developing effective strategies to respond to it. The survivors and attorneys we interviewed expressed hope that, by sharing their stories, they can help those who find themselves in this situation—and prevent it from happening to others.