

Domestic Violence and the Court

Judge Shaun R. Floerke

You understand

- Not all domestic violence is the same
- Battering, contextual over time
- DV response as a process, a continuum
- Training essential
- Personal trust and connection matters
- Culturally grounded and informed
- Quality Information, no gaps



Then it goes to court...

Issues?

- Judges:
 - “don’t get it”
 - “don’t care”
 - “won’t take the time”
 - “inconsistent”

How can we get
through to
judges?????

Towards Understanding

- Ethics and System Realities
- Suggestions
- Approaches

Australian (AIJA) Guide to Judicial Conduct 3ed

Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

Judges should bear in mind that the principle of judicial independence extends well beyond the traditional separation of powers and requires that a judge be, and be seen to be, independent of all sources of power or influence in society, including the media and commercial interests.

There are three basic principles against which judicial conduct should be tested to ensure compliance with the stated objectives. These are:

Impartiality;

Judicial independence; and

Integrity and personal behaviour.

These objectives and principles provide a guide to conduct by a judge in private life and in the discharge of the judge's functions. If conduct by a judge is likely to affect adversely the ability of a judge to comply with these principles, that conduct is likely to be inappropriate.

The large volume of case law involving challenges to judicial impartiality testifies to its importance and sensitivity. There is probably no judicial attribute on which the community puts more weight than impartiality. It is the central theme of the judicial oath of office, although the same words of that oath also embrace the concepts of independence and integrity, and indeed, in many cases, those concepts are involved in acting impartially.

If a judge is known to hold strong views on topics that are relevant to issues in the case by reason of public statements or other expression of opinion on such topics, possible disqualification of the judge may have to be addressed, whether or not the matter is raised by the parties. In such a case, the judge will have to assess, and respond to, the risk of an appearance of bias. The risk is especially significant when a judge has taken part publicly in a controversial or political discussion.

Minnesota: External Influence

- Rule 2.4: External Influences on Judicial Conduct
 - (A) A judge shall not be swayed by public clamor or fear of criticism.
 - (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
 - (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Adversarial System

- Facts – in court
 - Everyone hears, responds
- Outside information: must disclose, review
 - Even other files
- Judges reviewing publications, articles, etc. –
debate is on

Judges - People Too?

- Experience, Training and Bias (Implicit or Not)
 - “Why doesn’t she just leave?”
 - “He’s a nice young man, he couldn’t have...”
 - “I want you all to come up in front of the bench and hold hands...”
- Victim of or user of violence
- Skill re addiction, mental health, trauma

The Job...

- Isolation
- Direct and Vicarious Trauma
- Burnout, addiction, MH, life issues
- Decision Fatigue
- I'm the only one in the room who doesn't walk in knowing the answer

Why is it so difficult?

- Pressure to ignore or minimize abuse
- Judges: cases increase in complexity (who to believe, how to interpret behavior), strain resources
- Attorneys: representation more challenging; hesitant to raise the issue with courts/evaluators
- Victims: as in other civil and in criminal contexts, multitude of reasons not to raise the issues

More...

- Fundamental value: co-parenting is best, even after separation
- Corollary: parents who seek sole custody or to restrict other parent's access are not acting in the best interest of their children
- Parents seeking shared parenting are doing so and should be favored in awarding custody
- The "You need to get along!" speech

Assumptions

- Parental involvement is safe for both parents
- Parent-child relationships are safe and healthy; parents are child-focused
- Parents communicate effectively
- Any abuse of a parent is unrelated or does not significantly affect the parents' relationships with the child

Challenges

- Abuse may be difficult to identify
- Stereotypes of abusers are often wrong
- Abusers present well/elicit sympathy
- Victims may present poorly (perhaps because of the abuse) or be hesitant to disclose
- Effects of DV often counter intuitive (children often express love for the abusive parent, victims stay in relationships/accommodate abusers)

Monday, right?



Strategies

Ellen Pence

“If you’re going to go after a judge, make sure you kill him!”

Don't

- Fight the ethics
- Assume it's easy
- Advocate yourself out of credibility
- Ignore the gray areas
- Make it look like you're trying to sign me up for more meetings

Do

- What's your Goal? Judge joining CCR Team?
 - See Guide: Independence, Impartiality
 - Ask yourself, what if the “Our Research Shows Power and Control is Good” group was asking the judge to...
- How about: Communicate re process, issues, calendaring, quality information, consistent responses, resources, DV in family cases?
- Pick a judge or two
- Invite public defender

Do

- Observe, learn, see it from their perspective
 - Example: law enforcement “lazy prosecutor dumps these cases”
- Lose the “they just don’t get it”
 - Example: prosecutor “dumping” cases, key witnesses not interviewed
- Helpful is REALLY hard to rebuff!
 - DVRT report, lethality/risk asses, mediate OFPs, review hearing input
- Information is good! Right channels.

Courtroom

- Speak up, introduce yourself
- Understand all the pressure against you
 - Address it? Talk about the underlying assumptions
- Pick your battles!
- Credibility wins
 - Nonverbal
 - Biases about how people/victims present
- Know yourself!

Writing Matters

- Affidavits, reports, pleadings
 - Timely
 - Informative
 - Persuasive
- I am only ever as good as the information I have and the time I have to process it

Teach in the Case

- Generally people talk about the facts or the law, sometimes both
- How to bring in subject matter expertise?
 - Experts
 - Quality articles
 - Assessment/Testing

Children

- Easily fade from view
- How to give them voice?
- How to explain, account for the impacts, concerns
- Coming to court?
- Talking with the judge?

Trauma and Impacts

- Gotta know this and be able to teach, especially re children
 - ACE's
 - DV dynamics
 - Impacts

Us

- Domestic Violence Restorative Circles
- Visitation Collaborative (Safe Havens)
- DV Court Grant
- Review Hearings
- 3rd Party Status on OFPs
- Safety Plans

Questions?

Thank you so much!

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