

DOMESTIC VIOLENCE HEARING OFFICER PROGRAM

The Supreme Court on May 8, 2001 adopted this set of Operating Standards for the Domestic Violence Hearing Officer Program. The standards and the accompanying commentary were developed and recommended by the Conferences of Family Division Managers and Family Presiding Judges. The standards are applicable to the program as implemented in all vicinages.

I. Standards/Best Practices -- Domestic Violence Case Processing

Domestic violence case processing standards/"best practices" are in essence set forth in the Domestic Violence Procedures Manual, as jointly promulgated by the Supreme Court and the Attorney General for use by courts and law enforcement personnel throughout the State. The standards set forth here are presented in the same narrative format, so that they are consistent with and can be inserted directly into the Procedures Manual.

II. Standards/Best Practices --Domestic Violence Hearing Officer (DVHO) Program

DVHO Standard # 1: Appointment

DVHOs shall be hired at the vicinage level in the same manner as all other Judiciary employees based on the qualifications of the position adopted by the Department of Personnel, supplemented in the "Note" section as set forth below. All successful candidates for the DVHO position prior to hearing any cases shall complete

a training program developed by the Administrative Office of the Courts. The Training Committee of the Conference of Family Division Managers will develop the training program in coordination with the Judiciary's Chief of Training and Staff Development and in consultation with the DVHO Advisory Committee of the State Domestic Violence Working Group.

Qualifications for the DVHO position will be consistent with those of other Hearing Officers in the Judiciary. The job announcement will require experience in the area of domestic violence or family crisis, or family law, including legal work including domestic violence.

All future DVHO job announcements should include in the "Note" section the following language: "Awareness of the dynamics of domestic violence and its impact upon victims, families, and abusers is helpful."

The Training Committee of the Conference of Family Division Managers has developed statewide training for new Family staff and training for Family Team Leaders. The Training Committee will develop the curriculum for newly hired Domestic Violence Hearing Officers. In developing that curriculum, the Training Committee should coordinate with the Judiciary's Chief of Training and Staff Development and consult with the Domestic Violence Hearing Officer Advisory Committee of the State Domestic Violence Working Group (which includes representatives from the New Jersey Coalition for Battered Women, Division of Youth and Family Services, a Family Division Manager, Domestic Violence Hearing Officers, a Family Presiding Judge, and AOC Family Practice staff). The Conferences of Family

Division Managers and Family Presiding Judges must review and approve the curriculum prior to its implementation.

DVHO Standard #2: Duties and Responsibilities

A. Domestic Violence Hearing Officers conduct hearings on requests for Temporary Restraining Orders. In doing so, a DVHO shall:

1. Review all related case files involving the parties;
2. Inform Plaintiff about her/his legal rights and options, and about available protective services, including shelter care;
3. Explain to Plaintiff the domestic violence legal process and procedures;
4. Explain to Plaintiff that appearance before the Domestic Violence Hearing Officer is voluntary, and that no adverse inference shall be drawn if Plaintiff seeks to appear instead before a judge;
5. Take testimony and establish a record, including findings of fact concerning the basis for his/her recommendations;
6. Rule on the admissibility of evidence;
7. Draft a comprehensive, case-specific Temporary Restraining Order, where appropriate;
8. Forward the recommended Temporary Restraining Order for review and signature by a judge;
9. Make appropriate referrals to other agencies for assistance.

10. Inform Plaintiff of the right to a hearing *de novo* before a Superior Court Judge if the DVHO has recommended that a TRO not be granted.

B. The DVHO will be expected to assume other similar duties in the Family Division when time allows. However, even in those counties in which conducting TRO hearings does not comprise the majority of the DVHO's time, such hearing shall take precedence over other duties assigned to the DVHO. Any other duties assigned to the DVHO must be consistent with the skills, abilities, and status of the DVHO position.

DVHO Standard # 3: Management Structure

A. The DVHO shall report to the Assistant Family Division Manager, and for legal consultation or case issues shall have access to the Family Division Presiding Judge or a judge designated by the Presiding Judge.

B. The DVHO should participate in relevant meetings and discussions in the vicinage held by the Presiding Judge, Division Manager, and Assistant Division Manager(s).

C. The DVHO should participate in the County Domestic Violence Working Group, and in other intra-court and interagency committees/groups at the state and local levels that are identified as appropriate by Family Division Management (e.g. Presiding Judge, Family Division Manager or Assistant Family Division Manager).

D. The DVHO should attend statewide DVHO meetings, which are to be called by the Family Division Manager who is designated to chair meetings of the DVHOs, and may also attend other training events identified and approved by Family Division Management, the SDVWG's DVHO Advisory Committee, and the AOC.

The regular statewide meetings of DVHOs will be scheduled at the direction of the Chair of the Conference of Family Presiding Judges, and will be chaired by the designated Family Division Manager. It is expected that there will be at least nine such meetings during 2001, with such meetings scheduled on a regular basis thereafter. It is also the expectation of the Conference of Family Presiding Judges that all DVHOs will be encouraged and permitted to attend all such statewide meetings. At the local level, the DVHO is expected to be an active member of the County Domestic Violence Working Group in order to contribute his/her expertise to the resolution of local and statewide issues related to the implementation of the Prevention of Domestic Violence Act.

DVHO Standard #4: Facilities and Staff Support

A. The DVHO should conduct the hearing in a hearing room specifically set up and designed to accommodate domestic violence proceedings.

Hearing rooms shall be equipped with a desk/bench for the DVHO, chairs for the victim and witnesses, space for support staff and security, phone, and PC with access to FACTS, PROMIS/GAVEL, ACS, ACSES, as well probation, warrant, and jail information, and the Judiciary's InfoNet.¹

B. DVHOs shall be provided appropriate security, consistent with and as reflected in the vicinage's security plan.

¹Counties that cannot meet this standard immediately will be asked to develop a specific plan to meet the standard within a reasonable period of time.

C. All hearings conducted by the DVHO shall be recorded and a log shall be maintained. A court staff member should be provided during hearings to operate the recording equipment, maintain the logs, take files to the judge for review and signature, and, when necessary, escort the victim to a courtroom or back to Intake.

D. DVHOs shall be provided with the current version of the Domestic Violence Reference Manual, which includes the Domestic Violence Procedures Manual.

DVHOs also shall have regular access to the following:

1. New Jersey Rules of Court;
2. New Jersey Rules of Evidence;
3. New Jersey Code of Criminal Justice;
4. New Jersey Law Journal and/or New Jersey Lawyer;
5. Family Division slip opinions, as well as any other slip opinions relating to domestic violence.

DVHO Standard #5: Jurisdiction

A. DVHOs shall only hear requests for Temporary Restraining Orders made at the Family Division during regular court hours. Appearance before the DVHO is voluntary and a plaintiff may elect to appear before a judge instead. No adverse inferences shall be drawn from a plaintiff's election to appear before a judge.

B. The DVHO shall be governed by the New Jersey Prevention of Domestic Violence Act, New Jersey Court Rule 5:7A, the Domestic Violence Procedures Manual, and these Standards in making recommendations regarding the issuance of an initial Temporary Restraining Order and its specific provisions.

C. DVHOs may draft and recommend Amended Temporary Restraining Orders where only the Plaintiff appears and none of the exclusions listed in Section D below apply.

D. DVHOs shall not hear a particular matter if any of the following circumstances exist:

1. When a change in or suspension of an existing custody or visitation order is sought by plaintiff;

2. When there are cross-complaints, complex issues or circumstances, or pending or recently resolved cases involving the parties that make the matter “complex”; (this determination of “complexity” by the Hearing Officer is subject to the oversight of the Presiding Judge or Lead Domestic Violence Judge)

3. Where a party has submitted an application for dismissal;

4. When both parties are present;

5. When a TRO has been denied by the Municipal Court, and the Plaintiff appears at the Family Division for a hearing *de novo*;

6. When a conflict of interest or the appearance of impropriety would result.

E. Other than the matters set forth in Section D above, all cases shall be brought to the attention of the DVHO, who can make referrals to the designated judge as necessary and appropriate.

F. The following provisions are applicable to cases involving the use or threatened use of weapons.

[1. When a domestic violence complaint is taken in a matter that involves the use or threatened use of a weapon, or where the defendant possesses or has access to a

firearm or other weapon described in N.J.S.A. 2C:39-1r, this information should be noted on the complaint and transmittal form that will be attached to the other paperwork forwarded to the DVHO;]

[2. If the DVHO finds that good cause exists for the issuance of a TRO, the DVHO should proceed to review and check off those restraints and reliefs being recommended;]

[3. During the hearing, when the DVHO reaches the section of the TRO prohibiting weapons possession, and after having determined that there are weapons to be seized, the DVHO should ask for as detailed a description as possible concerning the type and number of weapons, and their specific location(s);]

[4. If the DVHO determines that there is probable cause for seizure, the DVHO should note this on the record and then should:]

[5. Complete the weapons seizure affidavit form [Attachment] based on Plaintiff's testimony, including details about the weapon(s) to be seized and the likely location(s) of the weapon(s), as well as the basis for Plaintiff's belief that such weapons are in Defendant's possession or are accessible to Defendant;]

[6. Review the contents of the affidavit with Plaintiff on the record and have Plaintiff sign the affidavit; the DVHO should witness Plaintiff's signature;]

[7. Complete the warrant portion of the TRO with specificity regarding the weapon(s), location(s) of same, and any other instructions to law enforcement;]

[8. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and

signature. The probable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information;]

[9. If the judge does not concur with the TRO as recommended, or wishes to take testimony directly from the victim, or if the DVHO finds no basis for the issuance of the TRO or a lack of probable cause for weapons seizure and Plaintiff requests a hearing de novo on either determination, the case should be handled as an excluded case and forwarded to the judge for a hearing de novo.]

1. When a domestic violence complaint is taken in a matter that involves the use or threatened use of a weapon, or where the defendant possesses or has access to a firearm or other weapon defined in N.J.S.A. 2C:39-1r, this information should be noted on the complaint and transmittal form that will be attached to the paperwork forwarded to the DVHO;

2. During the hearing, when the DVHO reaches the section of the TRO prohibiting weapons possession, the DVHO must ask the Plaintiff if the defendant possess or has access to any firearms and/or weapons and if so ask the Plaintiff for as detailed a description as possible concerning the type and number of firearms and/or weapons and their specific location(s);

3. The DVHO shall ask the Plaintiff if she/he has any fear of the defendant having the firearm(s) and/or weapon(s) and if so why the Plaintiff is afraid of defendant possessing the firearm(s) and/or weapon(s);

4. The DVHO shall then assist the Plaintiff in completing the weapons seizure affidavit form as prescribed in Appendix _____, listing the firearm(s) and/or

weapon(s) to be seized the likely location(s) of the firearm(s) and/or weapon(s), the reasons or facts that support the Plaintiff's fear of defendant possessing the firearm(s) and/or weapon(s) and the facts that support the Plaintiff's belief that the defendant's possession of the firearm(s) and/or weapon(s) exposes the Plaintiff to a risk of serious bodily injury;

5. The DVHO shall then have the Plaintiff sign the affidavit;

6. The case shall then be brought to the Judge with the signed affidavit;

7. The Judge shall then review the affidavit and may also question the Plaintiff on the record regarding whether the defendant possess or has access to any firearms and/or weapons, the type and possible location(s) of the firearm(s) and/or weapon(s), the prior history of domestic violence, the facts and context in which the current alleged act of domestic violence has occurred and any fear the Plaintiff may have that the defendant's possession of the firearm(s) and /or weapon(s) pose a risk of serious bodily injury to the Plaintiff;

8. If the Judge finds probable cause to issue the search warrant portion of the temporary restraining order, the Judge shall place on the record the reasons and facts supporting the conclusion that the defendant's possession of firearms and/or weapons expose the Plaintiff to a risk of serious bodily injury;

9. The Judge shall then complete the search warrant portion of the temporary restraining order specifying the firearm(s) and/or weapon(s) to be searched for and seized, the location(s) to be searched and any other instructions to law enforcement.

G. All recommendations made by the DVHO shall be reviewed by a Family Division Judge or other Superior Court Judge, as follows:

1. The Family Presiding Judge or a judge designated by the Presiding Judge immediately shall review all Temporary Restraining Orders recommended by the DVHO. If the judge finds the recommended TRO to be appropriate, he or she should sign the TRO. The fact that the matter was heard by a DVHO may be noted on the file but shall not appear on the TRO itself.

2. A plaintiff who does not agree with the findings and/or recommendations of the DVHO shall be entitled to an immediate hearing *de novo* conducted by the Family Presiding Judge or a designated Family Division judge.

3. Copies of the signed TRO shall be provided to Plaintiff by the court or court staff, in accordance with local practice, before Plaintiff leaves the courthouse. Defendant shall be served a copy pursuant to N.J.S.A. 2C:25-17 et seq.

The Domestic Violence Procedures Manual sets out the standard for the maximum amount of time that an individual should have to wait for a hearing. Every effort should be made for cases to be heard within one hour after the time the complaint was completed. The Domestic Violence Technical Assistance Team has examined this aspect of the process in every county and has made recommendations for improvement in those counties in which the amount of time a victim waits exceeds the standard.

Concern has been expressed that the DVHOs' caseloads will expand as a result of the specific authority to hear matters involving weapons, as set forth above. This will be monitored at DVHO meetings and will be brought to the attention to the Presiding Judges-Family Division Managers Domestic Violence Subcommittee, if necessary.

AFFIDAVIT IN SUPPORT OF DOMESTIC VIOLENCE SEARCH WARRANT

I, _____, having been duly sworn upon my oath according to the law, depose and say:

1. On _____, 200__, I was subjected to an act of Domestic Violence by the above defendant.

2. I allege that the defendant committed [an] act(s) of Domestic Violence as described in the attached Complaint, [such acts] and poses[ing] an imminent danger to my life, health or well-being because _____

3. I also believe that the defendant is in possession of a firearm(s) or weapon(s) that I reasonably believe would expose me to a risk of serious bodily injury because (insert facts that support belief that firearms/weapons pose risk of injury to victim) _____

4. These firearm(s) and/or weapon(s) consist of (be as specific as possible) _____

5. I am aware that the defendant possesses or has access to these firearm(s) and/or weapons based upon (how the victim is aware of weapons)

6. The defendant's firearms and/or weapons, noted in Item 4, are located at (be as specific as possible as to location of the weapons and owner of the premises, if not the defendant.)

7. I would request that the items in Item 4, as well as any other weapon that may be located by law enforcement at the location(s), be seized for safekeeping purposes. I would further request all of the defendant's permits to carry a firearm, firearms purchaser identification card, and any outstanding applications to purchase firearms be seized.

Signature of Affiant

Oath administered and witnessed by:

Hearing Officer

Date: _____

APPENDIX F