



## An Open Letter to *Trial Briefs* from Legal Aid of North Carolina

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**Suzanne Chester's** practice concentrates on domestic, housing, education, consumer, and unemployment benefits cases at the Raleigh Office of Legal Aid. Since Suzanne started the Domestic Violence and Family Law Unit at the Raleigh Office in 1998, Suzanne and the staff attorneys she supervises have represented numerous victims of domestic violence in high-conflict family law cases. Suzanne co-chairs *Project Together*, a program through which the Raleigh Office recruits, trains and mentors volunteer attorneys from Wake County who represent victims of domestic violence in 50B cases. She has taught trial advocacy skills at the NITA program in Chapel Hill for the past two years. After graduating from UNC law school in 1995, Suzanne spent three years at North Carolina Prisoner Legal Services, focusing on post-conviction litigation and a class action lawsuit to improve medical care for women in prison. She currently serves on the Board of NCAWA as chair of the Government Action Committee.

As attorneys of Legal Aid of North Carolina who represent victims of domestic violence, each of us members of the North Carolina Advocates for Justice (NCAJ), we were disturbed by the treatment of our practice area in the April 2009 Family Law issue of **Trial Briefs**. While the issue did include a call to undertake pro bono work for victims of domestic violence, our concern is with the featured article on defending domestic violence actions. In our opinion, the article *Domestic Violence Actions: The Intersection of Family Law and Criminal Law* contains inaccurate and stereotypical characterizations of victims and erroneous portrayals of the remedies typically ordered under 50B. We also feel that the strategies described in the article were markedly at odds with the purported mission of NCAJ—to protect the safety of North Carolina's families in the home, and to protect those who are not capable of protecting themselves.

Throughout the article, the authors freely concede that most plaintiffs who file for domestic violence protective orders are not represented by legal counsel and do not know how to present their evidence at trial.<sup>1</sup> This recognition then leads the authors to emphasize the importance of taking advantage of the victim's lack of knowledge, and trying the 50B case before the victim is represented by an attorney. In addition, the authors recommend making use of law enforcement in the courtroom to serve the plaintiff with a host of legal claims, motions and subpoenas on the day she comes to court for the hearing on her domestic violence complaint—clearly an effort to intimidate an unsuspecting *pro se* plaintiff.

Since 1998, Legal Aid of North Carolina has had a statewide domestic violence prevention program providing assistance to victims of domestic violence across the state. Every year, our attorneys represent hundreds of plaintiffs in 50B actions, individuals who do not have the resources to hire private counsel. Without the as-

sistance that Legal Aid attorneys provide, these victims would have no choice but to represent themselves. Even with the resources that Legal Aid can offer, many victims still find themselves without the assistance of counsel.<sup>2</sup> Proceeding without counsel in a domestic violence hearing can be profoundly intimidating for the victim. Alone, the victim must negotiate a court system where she has no understanding of the law; alone, she must also confront the perpetrator of the violence that prompted her request for a protective order. When the defendant is represented by counsel, the victim faces the even more daunting task of confronting a professional, trained in our adversarial legal system, and hired for the purpose of defeating her request for protection.

The recent change in name of the “North Carolina Academy of Trial Lawyers” to “North Carolina Advocates for Justice” was accompanied by much soul-searching on the part of its members as the organization grappled with the public's negative perception of trial lawyers. Instead of defining itself by the identity of its members—trial lawyers—the organization decided to define itself by the laudable work done by its members on a day-to-day basis such as protecting the safety of workers in the workplace; defending the rights of those accused of crimes from the power of the state; and seeking redress for the those injured as a result of medical negligence. In light of this name change, and the concerns that motivated it, we are struck by the irony of NCAJ publishing an article that blithely encourages defendants' counsel to take advantage of unrepresented victims of domestic violence. In the area of family law and domestic violence, is this really the way the organization wants to be defined? The scorched earth approach promoted in the April article seem at variance with the organization's new self-image.

Throughout the article, defendants in 50B actions are recast as the real victims, the hapless targets of the “extreme animosity” of unreason-

able and irate plaintiffs, and the victims of a judicial system pandering to “domestic violence interest groups.” The only example of domestic violence offered by the authors is the remarkably restrained and tame admonition, “you’ll get yours someday,” allegedly made by an estranged husband to his wife during an exchange of their children.

We are concerned not only about the NC Advocates for Justice and the attitude of its members about our work and our clients, but also about the attitude of the private family law bar at large. We are disappointed by the recent treatment of domestic violence at the North Carolina Bar Association’s annual family law conference. Less than a month after **Trial Briefs** published its pro-defendant article on 50Bs, the family law section of the North Carolina Bar Association hosted their annual family law conference, “*Men have issues too.*” Despite the fact that Chapter 50B has been a part of the law in North Carolina for over twenty years, this was the *first* year that the family law conference devoted a session to the topic. Disappointingly, the session focused exclusively on defending clients in 50B actions, with a heavy emphasis on protecting a defendant from having his guns confiscated as a result of the entry of a 50B order. Similar to the article in **Trial Briefs**, the introduction to the session mischaracterized the use of 50Bs, implying that they are based on frivolous incidents, and routinely abused by unreasonable litigants motivated by exaggerated or fanciful fears.<sup>3</sup>

As attorneys trying 50B actions on behalf of victims in courtrooms in every county in North Carolina for over ten years, North Carolina Legal Aid attorneys can tell a very different story. On a daily basis, we deal with the human misery and the devastation wrought by domestic violence. We see numerous victims with bruises and broken bones; we deal with wives and girlfriends who have been sexually assaulted by intimate partners in their own bedrooms; children who have seen a beloved parent beaten, strangled or threatened with a knife or gun; young girls and boys who have been sexually abused for years by a trusted father-figure; battered

immigrants for whom the lack of legal status has become another quiver in the arrow of the perpetrator; the girlfriend whose mental health has been seriously jeopardized by continuing harassment or stalking by an ex-boyfriend. We also see many cases where a couple has separated but the violence recurs when the victim and perpetrator are forced to deal with issues relating to custody and visitation of their children, with no court order in effect to regulate the exchanges of the children.

No doubt, there are instances when a 50B complaint or ex parte order is not warranted. However, contrary to the accusations periodically made by some in the private family law bar, this does not automatically mean that the plaintiff is “abusing” the process to get an upper hand in a custody matter, or employing a legal trick as a quick and dirty way to force a spouse out of the house. Unfortunately, at times, plaintiffs are mistakenly instructed by local DSS agencies, or by law enforcement, to seek a domestic violence protective order, even though the incident does not meet the definition of domestic violence under the law, or the plaintiff does not have the means to effectively present evidence of the violence in court. The recent case of *Burress v. Burress*, 672 S.E.2d 732 (2009), is a good example of a case where the *pro se* plaintiff did not know how to present evidence of child sexual abuse—always a notoriously difficult allegation to prove—and erroneously relied on hearsay evidence and the mere fact of an ongoing investigation by DSS to prove her case. Not surprisingly, the Court of Appeals overturned the trial court’s entry of a domestic violence protective order.

As in every area of family law, there is a small percentage of cases where litigants actually abuse the process by filing groundless complaints for domestic violence protective orders, or by filing for improper purposes. This is no different than other areas of domestic law which are *routinely* abused: domestic litigants represented by counsel who abuse the issuance of ex-parte emergency custody orders under Chapter 50; non-custodial

parents who are served with child support papers and retaliate by filing for child custody for the purpose of avoiding their child support obligations; wealthy litigants who spend thousands of dollars on attorneys to defend against claims for alimony, spuriously denying their ability to provide financial support to a dependent spouse; one-sided separation agreements which divest the *pro se* spouse of significant legal rights; or non-custodial parents who would prefer to impoverish a former spouse than provide child support to the custodial parent. No doubt every one of these litigants has an individual right that is entitled to be protected, and an attorney who is more than willing to protect that right. But let’s not fool ourselves: just because most victims of domestic violence cannot afford to hire private counsel, their injuries are no less real, their rights no less important. In our view, they deserve more respect from North Carolina Advocates for Justice. ♦

1. “First, most people who take out 50Bs are not represented by legal counsel. Unlike with criminal charges, the alleged victim will not necessarily be represented by an attorney who would have subpoena powers, know the rules of evidence, or have the legal background to vigorously prosecute a 50B action.” . . . *Domestic Violence Actions: The Intersection of Family Law and Criminal Law*, p. 10, North Carolina Advocates for Justice, *Trial Briefs*, April 2009.

“And allowing the opposing party time to reflect on the incident often makes him or her more likely to hire a lawyer and prepare any additional evidence against your client for trial. This evidence could be in the form of voicemails, pictures, letters, emails, or other items that otherwise might not have been collected or produced by the alleged victim in the ten-day period.” *Id* at p. 9.

2. In some counties, lawyers from the private bar provide much needed assistance on a *pro bono* basis to victims of domestic violence. Project Together in Wake County is a notable example of attorneys who generously donate their time to assisting victims who would otherwise go unrepresented. On October 22, 2009, the Raleigh Legal Aid Office will be conducting its annual training of Project Together attorneys. For more information, contact Celia Mansaray at CeliaM@legalaidnc.org.

3. The introduction to the session on 50Bs hypothesizes a scenario where a husband makes a threat to kill his wife after being subjected to almost an hour of verbal abuse by her. The husband leaves the house and does not return. The wife proceeds to seek a 50B protective order.