

## Judges set new route to a restraining order

### **DOMESTIC ABUSE: From 2 local benches, a decision that invites heated debate**

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Two Sarasota County family court judges have created a controversial policy requiring domestic violence victims to contact police before they are granted a restraining order.

Many victims of domestic abuse hesitate to call police on an abuser, fearful that an arrest could increase the chance of violence or cause the abuser to lose a job and be unable to help pay child support.

Instead, they go to court and ask a judge to order their abuser to stay away through a civil protective order, which can lead to arrest if violated.

Circuit Judges Robert McDonald and Andrew Owens are now ordering victims to pursue criminal prosecution as part of the civil court process to get a protective order.

The judges say involving law enforcement adds an extra layer of protection for victims by letting abusers know that the police are watching. They also say it will cut down on false abuse claims, because victims will know that officers are going to investigate.

But people who work closely with domestic violence victims say such a requirement could unintentionally put victims in more danger.

They say it could also discourage victims from seeking protective orders from the courts, and could essentially remove an option for victims trying to break free from an abusive relationship.

“One more step, especially calling the police, has a tendency to chill the desire to go forward,” said Sarasota lawyer Susan Chapman, who has represented women in family court for years. “When you see the real fear, the real fear increases every action you take.”

The two judges, who handle cases in north Sarasota County, are the only ones in the state and maybe the nation with the policy. They say the law allows them to order whatever conditions they believe will keep the victim safe.

But the Florida Coalition Against Domestic Violence, or FCADV, and other experts think the judges have stepped beyond their legal authority.

While the facts of a protection order application might constitute a crime, there is no requirement to file a police report or pursue criminal charges anywhere else in Florida, the FCADV said.

And locally, family court judges in south Sarasota County and Manatee County say they have no plans to institute a similar requirement.

Civil injunctions allow victims to seek court protection without facing the potential negative effects of having an abuser arrested, said Deborah Tucker, executive director of the National Center on Domestic and Sexual Violence.

Arresting the abuser can escalate the violence, she said, or cost the abuser a job that may provide support for the victim and any children they care for.

“If it's in the victim's hands, then generally she is going to start with this approach in hopes that it will be enough,” Tucker said. “If you mush the two together, you might be closing off something that has helped a lot of people.”

McDonald and Owens say allegations in most petitions for protective orders constitute a crime. If a petition does not indicate law enforcement is involved, the judges are ordering the victims to pursue criminal prosecution by 4 p.m. the next day.

Victims are safer with law enforcement involvement and when the abuser faces consequences for their actions, and so “excluding law enforcement from the equation just does not make good sense,” McDonald wrote in an e-mail to local attorneys who complained about the requirement.

“It is obvious that criminal consequences for perpetrators is a high priority,” McDonald wrote in another e-mail. “Simply ordering a respondent to stay away from a petitioner as part of a civil injunction cannot, by any stretch, be viewed as a consequence.”

But a University of Kentucky study in 2006 found that more than half of the domestic violence protective orders in that state worked to end the violence without further police action.

And criminal punishment for violating a protective order can happen much quicker than in a criminal domestic battery case, and requires a much lower burden of proof, the study found. Victims can also obtain civil protective orders directly from the court, unlike criminal or other legal proceedings which often require a lawyer.

“Our study shows protective orders work for women and save the state millions of dollars,” said TK Logan, the behavioral science professor who is touring the country to talk about the study.

Judge McDonald also said law enforcement involvement will make anyone “think twice” before fabricating a domestic violence allegation, because “it is naïve to ignore the reality that some allegations in some petitions are false.”

Olivia Thomas, executive director of Safe Place and Rape Crisis Center, a woman's resource center in Sarasota, said the requirement makes it tougher to convince victims to get help when they are already beaten down mentally.

“We're very disturbed by it,” Thomas said. “This really is victim-blaming.”

The sentiment was echoed by the executive director of HOPE Family Services Inc. in Manatee County, as well as several national experts on domestic violence.

Attorneys practicing before McDonald and Owens plan to meet today to discuss the requirement. The judges do not plan to attend.

Judges can grant a domestic violence protective order in cases where violence occurs or when people have a reasonable belief they are in imminent danger.

McDonald and Owens have ordered dozens of petitioners to report their allegations to law enforcement since September.

McDonald wrote in an e-mail that he has never imposed a sanction on a victim who did not follow his order to report to law enforcement.

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