Instructions for Using the Supplement Template for the National Attorneys Handbook

The Domestic Violence and Mental Health Collaboration Project in King County, Washington created this template to streamline the process for adapting our King County Supplement for your area. We have had a very positive response to our Supplement, and we want you to be able to benefit from this resource as well.

To tailor this template to your community, follow these steps:

1. Save this as a Word document and rename it;
2. Save or print these instructions, then delete them from your supplement;
3. Change the footer so that it includes the name of your jurisdiction (e.g., ours is called the King County Supplement)
4. Click on each shaded grey area in this template and add the content that is relevant including state laws, local rules, and procedures (saving it along the way) – perhaps recruit a wonderful law student or volunteer attorney to help you with this;
5. We recommend having one or more people review your new content (preferably attorneys with expertise in domestic violence, trauma, and family law);
6. Send a copy of your supplement to Alison Iser, the Project Manager of the Domestic Violence and Mental Health Collaboration Project, at alison@endgv.org (*Really, please do this!)*;
7. If your supplement is available online, send a link to Rachel White-Domain, Project Manager at the National Center on Domestic Violence, Trauma & Mental Health, at rwhitedomain@ncdvtmh.org so they can link to your supplement;
8. Publicize the availability of this supplement to the legal community in your area; and
9. Celebrate that you have a great, new resource for your community!

We hope this template will make your life easier. If you have questions about using this template or about our project, you are welcome to contact me.

Alison Iser, MA

Project Manager, the Domestic Violence and Mental Health Collaboration Project

Coalition Ending Gender-Based Violence

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**Your Jurisdiction's Name Supplement to**

The National Center on

Domestic Violence, Trauma & Mental Health’s

*Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges:*

*A Handbook for Attorneys*

Enter date

Add your logo if you wish

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Introduction

Some domestic violence survivors have mental health concerns that are exacerbated by experiencing domestic violence. Many others experience mental health concerns as a direct result of the abuse and coercive control perpetrated by their partners. Domestic violence survivors who have experienced trauma or mental health concerns face significant barriers in participating in the legal process. Unfortunately, many survivors find themselves at risk of continued abuse and trauma when they attempt to secure safety for themselves and their children through the legal system. People who are abusive frequently manipulate the legal process to portray survivors as mentally unfit in order to obtain custody of their children, or play into social stigma to discredit survivors. On top of this, survivors risk further trauma when having to reveal and litigate the details of the abuse they have experienced including how trauma has impacted their mental health.

Recognizing all of this, the [National Center on Domestic Violence, Trauma & Mental Health](http://www.nationalcenterdvtraumamh.org/) (National Center) created [*Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys*](http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2012/01/AttorneyHandbookMay282012.pdf). This excellent resource, written by Mary Malefyt Seighman, JD, Erika Sussman, JD, and Olga Trujillo, JD, provides attorneys with valuable information and practical tips on how to represent domestic violence survivors effectively in civil matters when mental health may be a factor.

The name of your organization created this your jurisdiction Supplement to the National Center’s handbook to provide attorneys with the local information you need to represent successfully survivors in your jurisdiction courts. We have created this supplement with the permission of the National Center.

For the sake of brevity, we will refer to the National Center’s publication as the “National Attorneys Handbook” and to this document as the “your jurisdiction Supplement.”

The your jurisdiction Supplement is intended to be used together with the National Attorneys Handbook. We recommend that you read the National Attorneys Handbook first, and then use the your jurisdiction Supplement to find specific discussions relevant to attorneys practicing in your jurisdiction.

When you read the National Attorneys Handbook, you will see many references to state and local laws, rules, and practices. We created the your jurisdiction Supplement so you could easily access all of the relevant local information without having to research it yourself. For each section of the National Attorneys Handbook (except the 1st one which makes no local references), we provide:

* The page in the National Attorneys Handbook that we are supplementing
* The reference from the National Attorneys Handbook that we are addressing
* The local information you need including links to relevant statutes and rules

We hope that reading the your jurisdiction Supplement along with the National Attorneys Handbook will help you to be better able to represent domestic violence survivors with mental health concerns successfully in the term used for protection orders in your jurisdiction and family law cases in your jurisdiction.

This guide is for educational purposes only. It is not legal advice. The information in this guide was current at the time of its publication, but laws, links, and other content may have changed.

Section Two: Client Counseling

**Page 13 of the National Attorneys Handbook**

*Some state courts (e.g., Ohio and Rhode Island) have developed special provisions that allow for out-of-court testimony by victims of sex crimes, abuse, and neglect who live with mental disabilities, thereby helping them to avoid retraumatization in the courtroom.*

Enter content that addresses this

Section Three: Discovery and Evidence

**Page 17**

*9Consult your state's family code for the factors that a court may consider in making custody decisions, and the weight given to particular items.*

Enter content that addresses this

**Page 20**

*What your state's code requires for insurance records to be released as part of a civil legal case or child protective services administrative proceedings.*

Enter content that addresses this

**Page 20**

*What your state's code requires for mental health records to be released as part of a civil legal case or child protective administration proceedings. Does the statute provide standards for release that are relatively difficult or easy to meet?*

Enter content that addresses this

**Page 20**

*Does your state code explicitly provide for a psychotherapist-patient or a counselor-client privilege? Who qualifies under this privilege? What are the exceptions?*

Enter content that addresses this

**Page 20**

*What do the rules of evidence say about release of information?*

Enter content that addresses this

**Page 21**

*(6) Whether state statute or case law allows for a blanket exception to mental health record confidentiality or psychotherapist or counselor privilege pursuant to a subpoena, and how likely the court is to grant a request to subpoena your client's mental health records or the appearance of her/his mental health care provider(s).*

Enter content that addresses this

**Page 24**

*(a) Production of the records or testimony of the individual would violate the counselor-patient privilege or confidentiality. You should directly address all exceptions enumerated in the relevant state code section that could possibly apply in the case.*

Enter content that addresses this

Section Four: Custody and Mental Health Evaluations

**Page 27**

*Factors to examine in this decision making process include the culture of the particular court, the facts and circumstances of the case, and the laws of the jurisdiction.*

Enter content that addresses this

**Page 28**

*(1) The Law Requires Grant of Custody. Under the law of many states, where there is evidence of domestic violence, no evaluation is needed to determine that a child's best interests are served by granting custody to the protective parent.*

Enter content that addresses this

**Page 28**

*(2) Trauma Caused by the Abusive Parent Cannot Be Used Against Victims in Custody Case. Attorneys should consult with their local statutes to determine the law governing child custody evaluations.*

*Some states have statutory provisions that state that the effects of domestic violence cannot be used against victims in custody litigation.*

Enter content that addresses this

**Page 29**

*Assess the Qualifications of a Custody Evaluator - First, determine that your jurisdiction has guidelines for designating evaluators with particular competence in domestic violence.*

Enter content that addresses this

**Page 32**

*Consult with the Following Sources for Professional and Ethical Guidelines for Custody Evaluations: State Licensing Board, Statutory criteria in your state*

Enter content that addresses this

**Page 33**

*Determine the evidentiary standard governing admissibility of scientific evidence in your jurisdiction. Most states follow some version of the Daubert or Frye standards.*

Enter content that addresses this

**Page 34**

*Mental Health Evaluations in General: Most state statutory schemes limit the circumstances under which you can ask for a mental health evaluation. Most statutes say that you must make a finding of good cause.*

Enter content that addresses this

**Page 34**

*Although some state statutes say that a request for child custody puts mental health at issue, it is the exception.*

Enter content that addresses this

Section Five: Deciding which course to take and preparing your client for mediation/negotiation or trial

**Page 37**

*Know the Proceedings in Your Jurisdiction and Court: Make sure that you know the structure of the proceedings - negotiation, mediation, and trial - in your particular jurisdiction and under your particular judge.*

*Mandatory Custody Mediation and Domestic Violence - Some jurisdictions require mediation in every child custody case. Many statutes waive this requirement in domestic violence cases, though others do not. Be sure to know the rules regarding domestic violence custody mediation in your jurisdiction.*

Enter content that addresses this

**Page 38**

*Attorneys should draw from their jurisdiction's rules and statutory provisions to illustrate the potential harm in the instant case.*

Enter content that addresses this

**Page 38**

*Mandatory Protection Order Negotiation: Some jurisdictions, such as the District of Columbia, require that parties to a civil protection order attempt to negotiate their case prior to moving to trial…Other jurisdictions require a genuine attempt to settle the matter and avoid the courtroom.*

Enter content that addresses this

**Pages 38-39**

*However, it is worth noting that there are some jurisdictions and courts that allow for evidentiary exceptions that enable survivors to present testimony that was obtained in advance of trial in lieu of trial testimony.*

Enter content that addresses this

**Page 40**

*Explore the requirements of the jurisdiction you are in around mediation/negotiation and how they look and feel.*

Enter content that addresses this

**Page 40**

*Discuss with her what may arise during either process, the impact of mental health evidence on the case, the legal structure of your jurisdiction and whether there are exceptions to mediation/negotiation requirements.*

Enter content that addresses this

Section Six: Determining Whether You Should Have an Expert Witness

**Page 45**

*As with all stages of the litigation process, carefully consider whether these strategies fit the needs and desired outcomes expressed by your client, the culture of the court, and the laws of the jurisdiction.*

Enter content that addresses this

Section Seven: Cross-Examining the Opposing Party

**Page 54**

*27In a custody case or protection order case, you may be able to enter evidence of prior acts of abuse, in your case-in-chief, as well, because many State custody statutes direct the court to consider domestic violence when conducting a best interest analysis, and evidence of past acts of abuse is often allowable in a protection order proceeding.*

Enter content that addresses this

Section Eight: Closing Argument

**Page 61**

*When crafting your argument, consider the culture of the court, the facts of the case, the laws of your jurisdiction, and the needs and desired outcomes expressed by your client.*

Enter content that addresses this

**Pages 61-62**

*If your state has a presumption against an award of custody to a parent who has committed intimate partner abuse, articulate the presumption provision and highlight the evidence of abuse in the case before the court. If your state requires that the court consider domestic violence in its best interest determination, highlight the statutory language for the court and illustrate the impact of the batterer's conflict on the child and the protective parent.*

Enter content that addresses this

**Page 62**

*If your state has a statutory provision that prohibits the effects of domestic violence from being used against a party in a custody case, reiterate the requirements of the code section.*

Enter content that addresses this

Additional Resources

Free family law tools for attorneys, mental health service providers, and survivors are available from [the Domestic Violence and Mental Health Collaboration Project](http://endgv.org/projects/domestic-violence-mental-health-collaboration-project/). You can access them at:

* <http://endgv.org/toolkits/family-law-toolkit-for-attorneys/>
* <http://endgv.org/toolkits/family-law-toolkit-for-mental-health-service-providers/>
* <http://endgv.org/toolkits/family-law-toolkit-for-domestic-violence-survivors/>

Add additional resources that are relevant in your jurisdiction

Acknowledgements

You may wish to express your gratitude here for anyone who helped complete this template

This tool was adapted from the Domestic Violence and Mental Health Collaboration Project’s Family Law Toolkit for Attorneys.

The original version of this tool can be found at

<http://endgv.org/toolkits/family-law-toolkit-for-attorneys/>.

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