

## **2004 WATCH OFP Report**

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**The mission of WATCH is to make the justice system more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.**

## Introduction

WATCH began monitoring orders for protection (OFP) hearings in 1998, and in 1999 published a report with observations and recommendations in the fall edition of the *WATCH Post*. In that report, WATCH expressed concern about parties' understanding of OFP proceedings, petitioner safety, the application of the federal law prohibiting firearm ownership for respondents, the timeliness of proceedings, and the court's interpretation of the domestic abuse statute. WATCH's study this year was conducted to follow up on patterns identified in the earlier report and to address new concerns that have arisen in the intervening years.

Civil orders for protection (OFPs) provide legal protection to victims of domestic violence from their abusers. The petitioner, the person alleging the abuse, writes a petition describing the acts or threats of physical harm by the respondent, the alleged abuser. The petition describes domestic abuse as defined by the law (see Appendix A). Based on this petition, a judge will sign an emergency *ex parte* order restraining the respondent from committing further acts of domestic abuse and from having contact with the petitioner. In Hennepin County, the respondent is personally served with the *ex parte* order and has a minimum of five days to prepare for an initial hearing. Since the OFP is a civil action, the petitioner must appear at the first hearing or the *ex parte* order will be dismissed.

At the hearing, the respondent is generally presented with three options: he may admit the allegations and agree to the issuance of the order, deny the allegations but agree to the order, or deny the allegations and deny the order. If the respondent denies the allegations and the order, an evidentiary hearing is held to determine whether domestic abuse occurred by a preponderance of the evidence. If the judicial officer finds domestic abuse, an OFP is issued. A petitioner's relief can include: no domestic abuse, no contact, exclusion from a shared residence, temporary legal and physical custody of children in common, child support, spousal maintenance, and restitution. If a respondent violates an OFP, he may be charged in criminal court.

This report is based on observations of almost 300 OFP hearings monitored between March 15 and June 18, 2004.<sup>1</sup> Sixteen WATCH volunteers and staff monitored 16 judicial officers handling 59 morning-long calendars.<sup>2</sup> Not surprisingly, WATCH monitors were in OFP hearings almost every day of the project. OFP monitors were recruited from the already existing WATCH volunteer base. In addition to the standard six-hour training received by all WATCH volunteers, project volunteers reviewed WATCH's original OFP report, learned about 518B, the domestic abuse law that governs OFP hearings, and monitored hearings with a staff member. Volunteers also met in the middle of the project to talk about their observations and to raise and discuss questions and concerns. Volunteer profiles can be found in Appendix B.

At the outset, WATCH sent letters to the family court judicial officers informing them of the project and met with almost all of them during the course of the project. Judicial officers were,

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<sup>1</sup> The MetroTransit bus strike overlapped with the first month of the study. Judging from the very long calendars after the strike ended, it is likely that some potential petitioners slipped through the cracks and that many petitioners were forced to wait for needed protection until affordable transportation was once again available.

<sup>2</sup> It should be noted that eight of the 16 judicial officers presided over 75% of the hearings monitored.

for the most part, receptive, and several commented that WATCH had been a positive influence on the justice system.

Several conventions are used throughout this report to ease readability. Judicial officers are not identified and are presumed female to preserve anonymity. As 89% of petitioners were female and 87% of respondents were male, a petitioner is referred to as “she” and a respondent as “he” except in specific cases.

WATCH and the justice system share the same goal of victim safety in OFPs and much been done to improve the OFP process. The relocation of OFP hearings to the more secure Family Justice Center in 2002, the recent study by the family court on fairness in OFP hearings, and recent efforts by the Hennepin County Family Violence Coordinating Council have all contributed to improved victim safety. However, still more can and should be done to make, as one WATCH volunteer noted, “a good process even better.”

WATCH’s greatest concerns about victim safety are as follows:

- There are serious gaps in helping the parties to understand the OFP process and especially the final order.
- The Family Justice Center has separate, monitored waiting rooms for petitioners and respondents, but these rooms are often not used.
- While federal law prohibits OFP respondents from possessing firearms, petitioners continue to be threatened with guns.
- Petitioner safety is often compromised when setting up communication with the respondent about children in common.

### **Improving understanding**

Improving the parties’ understanding of the OFP process is an important component of victim safety. Both petitioners and respondents often appeared to be left confused by the minimal assistance provided by the family court, by a lack of attorney representation, and by judicial officers who do not explain what they are doing. On a systemic level, petitioners can rely on the Hennepin County Domestic Abuse Service Center (DASC) advocates for assistance<sup>3</sup> while respondents are provided only the limited instructions of the *ex parte* order.<sup>4</sup>

Appointed counsel is not available in OFP hearings. Considering the low level of attorney representation—only 20% of petitioners and 20% of respondents had counsel—judicial officers play an important role in helping parties to understand the process. This begins at the initial hearing where respondents decide how to respond to the *ex parte* order. Individual judicial officers often went to great lengths to explain the process by providing explanatory sheets or copies of the domestic abuse statute. WATCH was impressed by those judicial officers who began hearings by making sure that the respondent had reviewed and understood the petition,

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<sup>3</sup> Other advocacy agencies, in addition to the county, also provide assistance to petitioners. Respondents may also request assistance from DASC if they self-identify as victims.

<sup>4</sup> Currently, respondents also receive an information sheet about domestic abuse hearings attached to the *ex parte* order that reiterates much of what is said in the order in simpler language. It also includes a brief explanation of the options offered to respondents at the hearing.

clarified that OFPs were civil not criminal actions, and used language that was accessible to most. Still, the majority made only minor efforts to improve the parties' understanding of the process.

The difference between civil and criminal court is something many parties do not understand, and the judicial officer should address this. The respondent may believe that the petitioner is pressing criminal charges against him. Monitors often noted respondents using language restricted to criminal court, such as "charges" or "pleading guilty," without correction or clarification from the judicial officer. The prevalent use of the term "trial" by judicial officers for evidentiary hearings appeared to occasionally compound the problem. In one case, the judicial officer took the respondent's desire to "prove [his] innocence" as a request for an evidentiary hearing without ever explaining that the respondent was not on trial. In another case, the respondent said he would not "plead guilty" and the judicial officer simply ignored this assertion and continued to ask whether he had any problem staying away from the petitioner.

Instead, judicial officers should explain that this type of hearing is not a criminal trial and that the burden of proof is lower than in criminal court. Explaining the difference is especially important when respondents are in custody for a criminal charge. Finally, if the order is issued, judicial officers should remind respondents that having an OFP against you is not a crime, but that violating one is.

The three options are another source of confusion. WATCH monitors felt that the options and their implications were explained well only about 60% of the time. Some judicial officers never stated the options as three different choices for the respondent. Some offered only two options. Some asked whether the respondent agreed to the order or objected to the order without clarifying whether he was admitting or denying the allegations.

WATCH praises those judicial officers who offer all three options and explain their implications. On a cautionary note, explaining the implications should not mean telling a respondent which option is in his best interest as this appears partial and occurred in several instances. In one case, the judicial officer gave the respondent his options and explained their implications, but the respondent remained confused. The monitor noted that the judicial officer was "hinting strongly that the respondent should deny the allegations and agree to the order," even stating, "Remember what I said about taking a hint." In another case, the respondent agreed to have the initial hearing although he had not been given adequate notice, and the judicial officer asked him repeatedly if he wanted to continue the hearing. The respondent, who had been excluded from the house he owned by the *ex parte* order, chose to deny the allegations but agree to the order. The judicial officer reminded him that he would still be excluded from the residence, and the respondent then chose to deny the allegations and requested an evidentiary hearing. The judicial officer proceeded to chat with the respondent after the evidentiary hearing concluded.

Almost 85% of OFPs<sup>5</sup> were issued but only 57% of those were further explained to the parties in the courtroom. One judicial officer rarely explained orders and occasionally ended hearings with,

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<sup>5</sup> This number excludes orders in which petitioners requested dismissal, orders that were continued, and hearings whose outcomes were not explained in court.

“just stay away from each other.” Another judicial officer told a respondent with a particularly violent history of threats, harassment, and violating orders that the order meant, “no contact in any way, shape, or form” instead of specifying which types of contact were prohibited.

Observing so few final explanations is especially surprising considering the conclusions of a study from Hennepin County’s Fourth Judicial District Research Division released in March 2004. In the study of perceived fairness in family court, researchers wrote:

The Family Court bench of the Fourth Judicial District chose to find out whether giving an explanation of the end of a Domestic Abuse hearing leads to improved perceptions of fair treatment among litigants, increased satisfaction with court, increased perceptions of the court as legitimate and ultimately increased compliance with Orders for Protection... The relationship between having an explanation and outcome fairness was mediated by procedural fairness, favorable outcome, and the opportunity to voice their views. In other words, getting a full explanation from the judicial officer makes litigants feel that they are being treated fairly, that their outcome is favorable and that their opinion is being heard. These three effects in turn lead litigants to feel that the outcome of their case was fair.

That is, the courts’ own researchers found that when judicial officers explained final orders, more parties felt their case outcome was fair, which could lead to increased compliance with the OFP.

Parties who speak a language other than English face even more hurdles in understanding *ex parte* and final orders, since they are not translated. The best being done right now is when judicial officers explain the final order in further detail in the courtroom or ask the interpreter to stay after the hearing to interpret it. The latter solution is problematic, however, as interpreters are trained to interpret speech and not speak on behalf of the court. Interpreters asked to translate written orders also spend more time waiting for judicial officers to prepare individualized orders while they may be needed elsewhere. Furthermore, interpreters are inappropriately placed in the position of responding to questions about the order. WATCH recommends that the county invest in translation of standard OFP forms in the most commonly spoken foreign languages in the community to meet this need.

WATCH recognizes that some of the above recommendations will add time to individual OFP calendars. However, the preliminary information about hearings could be provided by a pamphlet prepared with the joint efforts of the family court bench, a judicial officer talking to separate groups of petitioners and respondents each day, or by placing a videotape which explains the process on continuous loop in the waiting rooms. Streamlining the process at the front end would allow more time for explaining final orders, which is critical for victim safety.

### **Safety inside the courthouse**

WATCH’s 1999 OFP report addressed the need for improved safety inside the courthouse. In particular, separate waiting rooms for petitioners and respondents and configuring courtrooms to allow more space between parties were recommended. The Family Justice Center, with its

separate waiting rooms and its larger courtrooms, is something worth celebrating. The waiting rooms are equipped with cameras monitored by security staff, and deputies are always nearby.

Additional improvements have recently been made to the waiting rooms. Advocates and attorneys for petitioners expressed concern that respondents were intimidating their clients at a pay phone across from the petitioners' waiting room as well as through the window between the waiting rooms. Through the efforts of the Hennepin County Family Violence Coordinating Council Civil Committee, the phone was moved and the window was tinted. Advocates and attorneys in the petitioners' waiting room now report less intimidation.

Unfortunately, there are many times in which the waiting rooms are not used. For example, the waiting rooms are not open in the afternoon as apparently the county cannot afford to staff them. It is not unusual for a long calendar of OFPs to extend into the afternoon, or for judicial officers to schedule lengthy evidentiary hearings in the afternoon. Thus, the parties waiting for evidentiary hearings, among the most volatile, are often asked to sit on opposite ends of a hallway.

Some judicial officers do not use the waiting rooms for their intended purpose even while they are open. In one case, the WATCH monitor observed the judicial officer specifically tell the petitioner and respondent to leave the courtroom together and wait in the hallway, not the waiting rooms. The monitor, who also left the courtroom, observed that the petitioner and respondent sat in the hallway for 30 minutes together. In another instance, the monitor observed the judicial officer instruct the unaccompanied OFP parties to wait for the evidentiary hearing in adjacent meeting rooms. Ten minutes later, the deputy left the courtroom to check on them. Half an hour later, the judicial officer called them back into the courtroom. In a third instance, the WATCH volunteer arrived to find the courtroom locked with about six people waiting outside with no deputy. The volunteer waited for several minutes before a deputy opened the courtroom door and the petitioner and respondent for the first case were allowed in. As the volunteer monitored OFPs inside the courtroom, she observed that the people with whom she was waiting earlier were petitioners and respondents for upcoming cases.<sup>6</sup>

Failing to use the waiting rooms would be less serious if more deputies and security staff patrolled the building. While we are pleased to find that deputies were present in all but a handful of OFP hearings, volunteers often found that this did not allay concerns over security. Volunteers noted deputies going in and out of hearings, saying that they were responsible for several courtrooms at the same time, and sitting behind partitions doing paperwork.

Finally, as the parties were supposed to enter the courtroom at different times to limit contact, it was surprising to find that exits were often not staggered. Some judicial officers and deputies did stagger exits, and some went farther and reminded parties to take separate elevators. However, volunteers wrote about advocates, attorneys, and even interpreters forced to take responsibility

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<sup>6</sup> In this incident, the judicial officer responded that our volunteer's observations were incorrect based on computer records of when parties were sent from the waiting rooms. However, in light of the volunteer's experience and reliability, we stand by her observations.

for staggering exits when judicial officers and deputies failed to do so. Volunteers even monitored whole calendars where neither the judicial officer nor the deputy ever initiated a staggered exit.

### **Safety outside the courthouse**

Ensuring a victim's safety outside the courthouse is still the most important—and difficult—task confronting the justice system. The recommendations in this section pertain to matters that have a critical impact on victim safety, including dismissals, *ex parte* order violations, parties picking up belongings from formerly shared residences, and the federal firearms prohibition.

WATCH praises the many judicial officers who were persistent in petitioner-requested dismissals to keep petitioners safe. Several judicial officers or their deputies asked for a petitioner's identification to ensure that the right person was requesting the dismissal. Many judicial officers asked petitioners why they no longer needed the order and if they had been threatened to drop it. Some reviewed the allegations and urged petitioners to tell prosecutors their story. Several made sure that recent domestic abuse charges did not have criminal no contact orders as conditions of release. And some suggested amending the order so it prohibited abuse but not contact.

Petitioners' reasons for dropping orders varied from renewed hope in the relationship with the respondent, confidence in counseling and treatment received by the respondent, and increased inconvenience in exchanging children. Our volunteers found that petitioners dropping the order because they wanted the respondents to see the children did not always receive a further response from judicial officers. WATCH urges judicial officers to help these petitioners plan a better visitation schedule and tell them that they may request more limited no abuse orders instead of dropping the order altogether.

Judicial officers responded differently to dismissals when the petitioner did not show for the initial hearing. Some asked the respondent if he knew where the petitioner was or had put pressure on the petitioner not to appear. In some cases, judicial officers urged respondents not to have contact with the petitioner even though no order was in effect. WATCH encourages judicial officers to continue asking these respondents about absent petitioners' whereabouts and to discourage contact between the parties.

When one party has to pick up belongings from a formerly shared home, it can be dangerous to the petitioner. A case in point is the recent murder in St. Paul of Sheng Vang by her former husband, Moua Her. Vang had just received an OFP against Her and was picking up some belongings at the home where she had lived with him. From our observations, judicial officers appear to tell parties that they have the option of a police escort to pick up belongings. However, some judicial officers do not talk about the option of a police escort and instead order the respondent to pick up his belongings at a specific time when the petitioner is not there. While this may be a solution for less volatile cases, it can leave petitioners vulnerable to property damage so common in abusive relationships.

Another danger to petitioners is the overwhelming failure to talk about the firearms ownership prohibition with OFP respondents. WATCH recognizes that even a decade after the prohibition

was enacted under the Violence Against Women Act, no systemic method of enforcing it has been established. Thus, judicial officers may be reluctant to spend time on something that most likely will not be enforced. Some judicial officers may also be concerned that raising the firearms issue—especially in greater Minnesota where many respondents are hunters—may make it more difficult for respondents to agree to necessary orders.

Still, it was startling that even when the petitioner's allegations involved firearms, the firearms prohibition was rarely mentioned. In one case, the petitioner alleged that the respondent had said he wished he had a gun "so he could blow [her] brains out." The OFP was issued, but the firearms prohibition was never mentioned. In another case, the respondent admitted that he had threatened to get a gun and kill the petitioner in front of their three daughters. Again, the order was issued, but the firearms prohibition was never mentioned. In a third case, the petitioner testified she was divorcing the respondent and that the respondent had a long history of abuse including past OFPs and at least three prior domestic charges where she was the victim. The petitioner said that she was afraid because the respondent had taken his guns and ammunition from their shared home in addition to the house and car keys. Once again, the judicial officer issued the order, but never said anything to the parties about the firearms prohibition.

WATCH also monitored cases where petitioners continued to be threatened with guns after an OFP had been issued. In one case, the petitioner testified that the respondent threatened her and said, "Did you forget I have a gun?" The respondent denied that this could have happened because he apparently gave up his gun in early 2004 when another OFP was issued against him. While the judicial officer explained no contact in greater detail, she did not reiterate the firearms prohibition to the respondent. In another case, the petitioner seeking another OFP against the respondent said that he fired a gun in a bar that she was in, even though a prior OFP was in place at the time. The order was issued, and in this instance the judicial officer did reiterate the firearms prohibition.

### **Children in OFPs**

When petitioners and respondents share children, as in 53% of the hearings in the study, petitioners are often at greater risk for further abuse.<sup>7</sup> Petitioners may be harassed, threatened, or harmed while exchanging children or when communicating about visitation arrangements. Some respondents also use children as a tool to further torment petitioners, keeping children longer than allowed or even threatening to or actually harming them. Perhaps recognizing these factors, some judicial officers were reluctant to assign temporary visitation at OFP hearings and told parties to go through court services, but others appeared eager to assign temporary visitation and did so.

Unfortunately, the safest way of communicating about the children was not always encouraged or adopted. Phone contact was actually suggested or urged in some cases where verbal threats were the primary form of abuse, in effect placing the respondent's considerations and convenience above the petitioner's safety. In the case where the respondent admitted that he had threatened to kill the petitioner in front of their three children, phone calls were allowed in order

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<sup>7</sup> This is one number that could be distorted down by the bus strike as petitioners with children may have faced more hurdles finding alternate transportation.

to communicate about the children. In a similar case, the petitioner testified that the respondent called her incessantly, was verbally abusive, and said that she wanted nothing to do with him. The order was issued, but the judicial officer allowed phone contact to discuss their child. In yet another case, the petitioner testified that the respondent, a drug user, had sexually abused their children, constantly threatened her, and that she wanted no contact with him. The order was issued, but the judicial officer asked the petitioner whether she “insisted” that the respondent not be able to call. The judicial officer then convinced the petitioner to accept phone calls from the respondent with a warning to talk only about the children.

Several judicial officers took it upon themselves to initiate a discussion of parenting time, even when the respondent-father had not indicated that this was an issue nor was it clear that he possessed that right. According to Minnesota law, an unmarried mother has all legal and custodial rights to the child. While the father may sign a recognition of parentage (ROP) form requiring him to pay child support, he does not have legal rights to a custody or parenting time order in an OFP proceeding unless he is adjudicated the father in a separate court proceeding.

This notwithstanding, several judicial officers went ahead and assigned visitation without adjudication against the wishes of the petitioner. Two specifically said that the ROP and adjudication are equivalent under Minnesota law. In perhaps the worst such case, the judicial officer assigned the unadjudicated father unsupervised parenting time while a reciprocal hearing was pending. At the first hearing, the child’s mother testified that the child’s father had beaten and threatened to kill her. The judicial officer issued the order and asked about assigning parenting time, to which the mother expressed reservations unless it was supervised. She explained that the father would probably take the child to his mother’s house, where the child would have contact with the father’s younger brother, who had a history of sexually abusing children. For the two days between hearings, the judicial officer assigned unsupervised visitation to the father. After the father’s hearing, the same judicial officer determined that the father should only have supervised parenting time as his sporadic presence in the child’s life had not equipped him to take care of the child alone.

This appearance of favoring fathers in assigning visitation may stem from some judicial officers’ belief that petitioners often use OFPs to get an advantage in custody proceedings. More than one judicial officer mentioned this during our meetings with them, but WATCH found little evidence to substantiate this disturbing perspective. In fact, *ex parte* orders were rarely dismissed due to allegations that did not meet the requirements of the domestic abuse statute. This belief, however, does explain why one judicial officer regularly and inappropriately asked the respondent whether the petitioner is a good parent.

Keeping the children longer than planned or threatening to or actually harming them is also an effective way for respondents to emotionally abuse petitioners. When petitioners express this fear, it should be taken seriously. The recent case of five-year-old Mikayla Tester, murdered by her father, John Tester, is a cautionary example. Tester had a long history of abusing Mikayla’s mother, Leigh Ann Olson, and recently Olson had expressed fears that Tester might harm Mikayla. During the WATCH study, one judicial officer told a petitioner expressing this fear that the petitioner had the burden of proving that the child would be in danger with the respondent. WATCH recommends that judicial officers comply with the statutory standard that the safety of

the petitioner and children is the primary consideration when awarding temporary custody and parenting time.

### **Conclusion**

WATCH is encouraged that some steps have been taken to enhance petitioner safety but is disappointed to find that many of the problems highlighted five years ago in the *WATCHPost* remain today. The gaps in parties' comprehension of the process, the underuse of the waiting rooms, the rarity in which the federal firearms prohibition is stated to respondents and the neglect of the potential dangers to petitioners caused by contact about children all represent continuing challenges to petitioner safety.

WATCH encourages the family court to make victim safety a priority. The following section of "Best Practices" summarizes WATCH's recommendations. Additional case examples can be found in Appendix C.

## Best Practices

### Improving comprehension

- **Reading the petition:** Judicial officers should ask every respondent if he has read and understands the petition. If he is not familiar with the allegations in the petition, they should be reviewed aloud to account for the possibility that the respondent cannot read or understand English.
- **Language:** Judicial officers should avoid using unnecessary legal language with parties who do not have representation.
- **Civil v. criminal:** Judicial officers should explain to parties that OFPs take place in civil court and not criminal court. They should remind respondents that having an OFP against them does not indicate a crime, but that violating one is a crime. Finally, and especially before evidentiary hearings, judicial officers should explain that there is a lower burden of proof in civil court than in criminal court. At minimum, judicial officers should respond to parties who use language that applies to criminal court, such as “pleading guilty,” “trial,” or “charges,” to make sure that parties understand that OFPs are civil actions.
- **The options:** Judicial officers should offer all three options to the respondent at the beginning of the hearing. To further aid in comprehension, judicial officers may explain the implications of each option to the respondent without showing a preference for any one option.
- **Firearms:** Judicial officers should inform respondents that having an OFP issued against them prohibits them from owning firearms.
- **Findings of abuse:** If there are findings of abuse after an OFP, the judicial officer should read and explain them to both parties.
- **No contact:** If a no contact order is issued, judicial officers should explain that the respondent cannot contact the petitioner directly or through others.
- **Violation of the order:** If the order is issued, judicial officers should tell respondents that they, and not petitioners, can be arrested and charged with a crime for violating it.
- **Interpreters:** All interpreters should be sworn in so that court records can be reviewed if a problem with interpretation arises. Respondents with interpreters should always be asked if they understand the petition. Judicial officers should speak deliberately to allow for more coherent interpretation. Most importantly, judicial officers should explain any final orders to the parties in the courtroom with an interpreter present.
- **Order translation:** OFPs for parties who need interpreters should be translated. At minimum, OFPs should be translated into the most commonly used foreign languages in Hennepin County. Judicial officers should inform parties of available resources if they have more questions.
- **Explanatory videotape:** To ease the burden on judicial officers, one judicial officer should provide an explanation of the OFP process on a video to be played on continuous loop in both petitioners’ and respondents’ waiting rooms.

### Safety inside the courthouse

- **Calling parties:** Parties should be called several minutes apart to minimize the possibility of contact in elevators or narrow hallways. Only one set of parties should be called at a time.
- **Staggered exits:** Deputies or judicial officers should stagger the exits of parties out of courtrooms after hearings are over.
- **Waiting for evidentiary hearings:** Parties should be sent back down to the waiting rooms if their evidentiary hearing is delayed.
- **Waiting rooms:** Waiting rooms should be open and staffed in the afternoons to address lengthy calendars and scheduled evidentiary hearings.

### Safety outside the courthouse

- **Petitioner requested dismissals:**
  - **Identification:** Judicial officers, their staff, or deputies should request picture identification to ensure that the person requesting the dismissal is the petitioner.
  - **Asking about threats:** Judicial officers should inquire about the petitioner's safety and whether the respondent or anyone else has threatened her.
  - **Amending the order:** Judicial officers should suggest amending the order so it allows contact but prohibits domestic abuse.
  - **No contact orders:** Judicial officers should look up whether the respondent has a criminal no contact order with the petitioner. If yes, they should explain that even if the OFP is lifted, the criminal no contact order remains in place.
  - **Addressing child-related contact:** Judicial officers should give more options to petitioners requesting dismissal due to difficulties arranging visitation, such as providing a more detailed parenting time plan or amending the order to allow contact but prohibit domestic abuse.
- **Responding to violations of the *ex parte* order:** Judicial officers should always respond to suggestions or admissions that the *ex parte* order has been violated, especially if a final order is issued.
- **Firearms prohibition:** Judicial officers should tell all respondents receiving orders against them about the firearms prohibition. At minimum, the firearms prohibition should be explained to respondents in cases where the allegations included abuse with firearms.
- **Gun housing:** The Hennepin County Family Violence Coordinating Council should continue to pursue housing for confiscated guns. A systemic method of enforcement will give the firearms prohibition teeth and judicial officers more confidence to talk about it.

### Children in OFPs

- **Safety first:** If the respondent is awarded temporary visitation with children-in-common, the safety of the petitioner and children should be the primary consideration.
- **Parenting time details:** If the respondent is given temporary visitation with any children, the judicial officer should help parties come up with specific guidelines for communicating about and exchanging of children in order to minimize the possibility of contact. Judicial officers should ask the petitioner how these issues can be resolved in a way that feels comfortable to her and then work through any problems the respondent has with the arrangement.

- **Unadjudicated dads:** Unadjudicated respondent-fathers should not receive parenting time unless it is brought up by one of the parties at the hearing and the petitioner agrees to allow it. In this circumstance, the OFP should have clear language reflecting that the parenting time is the result of the petitioner's agreement and not ordered by the court.

## **Appendix A** **The Minnesota Domestic Abuse Statute**

In Minnesota, domestic abuse is defined as the following between family or household members:

- Physical harm, bodily injury, and assault including hitting, kicking, pushing, stabbing, and strangulation;
- The infliction of fear of imminent physical harm, bodily injury, or assault;
- Terroristic threats, such as threats to commit a crime of violence, bomb threats, or brandishing a firearm;
- Criminal sexual conduct such as forced sexual contact or any other form of sexual contact with a minor;
- Interference with an emergency call.

“Family or household members” include spouses and former spouses, parents and children, persons related by blood, persons who have a child or expected child in common, persons currently or formerly involved in a significant romantic or sexual relationship and persons who share a household.

A link to the complete domestic abuse statute can be found at the WATCH website [www.watchmn.org](http://www.watchmn.org).

## Appendix B

### Volunteer Profiles<sup>8</sup>

Volunteer I is a family advocate at a battered women's shelter. She is a student at the University of Minnesota majoring in psychology, French, and art. She has also worked as a college counselor for disadvantaged youth. After completing monitoring for the OFP project, she wrote: "The victim is not the cause of the violence, and should not be blamed for it. We have an obligation in our society to be fair. We have an obligation to the victim of domestic violence to prevent the injustices of his or her personal life from also becoming an injustice of our judicial system."

Volunteer II is a registered nurse. Her prior volunteer experience includes five years as a reading buddy at an elementary school. She writes, "As a woman in this society, I feel a deep concern and commitment to the issues of violence and child abuse/neglect."

Volunteer III is a domestic abuse advocate. During the study, she was a student completing her undergraduate degree in criminal justice and psychology. As a leader in her sorority, she initiated many community service projects. She has worked in the Freeborn County Crime Victims' Crisis Center.

Volunteer IV is a student majoring in Spanish and psychology at the University of Minnesota. She has also volunteered at a nursing home, a hospital, and her church.

Volunteer V is a television and film producer. As a University of Wisconsin graduate, she majored in communications and English. She has also worked with a program for troubled teens. After completing monitoring for the OFP project, she said, "One of the first problems which was clearly apparent was the extreme difference in how each judge or referee would run his or her courtroom... This made me wonder if the judges and referees speak to one another or share stories ... it did not appear to be the case. I often left the courtrooms with feelings of frustration. Certain judges and referees would listen to petitioners' stories of threats, assaults, verbal and physical abuse by the respondents and feel the evidence was lacking to grant the OFP."

Volunteer VI is an assistant teacher at a program that helps single moms transition to independence. While volunteering for the OFP project, she was a student majoring in women's and gender studies. She is proficient in Spanish.

Volunteer VII is a former probation officer. She has an undergraduate degree in psychology from the College of St. Catherine and a master's degree in social work from the University of Minnesota. She has worked for the American Red Cross and as a Peace Corps volunteer in Poland.

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<sup>8</sup> The remaining two monitors were Priya Outar, WATCH Court Monitoring Coordinator and Marna Anderson, WATCH Executive Director.

Volunteer VIII is a former advertising executive and current WATCH board member. After studying advertising and journalism at the University of Minnesota, she worked for fifteen years in business and advertising.

Volunteer IX is a paralegal and a licensed foster parent. She has also volunteered as a Big Sister and for the Domestic Abuse Project. She said, "I became interested in the OFP project because I had long sensed that these hearings were often invisible to everyone except the parties. More often than not, the parties did not have lawyers, and usually attended alone, or with an advocate... For the most part, I found that while judges and magistrates conduct their hearings differently, they all treated the parties fairly and respectfully. WATCH's study was directed toward identifying areas where improvement could be made, and I believe it was successful in that regard. I hope that all court personnel are receptive to the suggestions/criticisms/opinions contained within to make a good process even better."

Volunteer X is a retired public educator. He has a master's degree in counseling and has worked as both a teacher and principal. He also volunteers for the Council for Crime and Justice.

Volunteer XI is a full-time faculty member at the University of Minnesota. In addition to her assignment in her primary academic department, she is also a faculty fellow at the Law School. She writes, "I watch because I feel that public presence in the courtroom is essential to ensure that the rights of women and children are consistently addressed and protected. I believe that even the best judge cannot know all that happens in her or his courtroom, let alone the courtrooms of others. I became involved in the OFP project because I think that while the courts have made much progress in handling OFPs...much is yet to be done to provide consistent care. During this project, I discovered the great inconsistencies that occur in OFP hearings... I believe that too often the petitioner is pressured to have contact with the respondent about issues involving parenting time; thus, a petitioner may be forced to have telephone or email contact even though she or he prefers not to have that contact."

Volunteer XII is a student majoring in gender studies and sociology. She has volunteered at the Rape and Domestic Abuse Center in her hometown.

Volunteer XIII is a retired businessman and *guardian ad litem*. He has a master's degree in business administration.

Volunteer XIV is a recent graduate of the College of St. Catherine, where she majored in philosophy. She is proficient in American Sign Language and has also volunteered in an eldercare home.

## Appendix C

### Thumbs up<sup>9</sup>

The judicial officer confronted the respondent about a comment he made when he was served, “That’s not gonna save her ass.” The respondent said he was not referring to the petitioner, and the judicial officer told him not to say things like that no matter whom he is talking about.

The petitioner was married to the respondent and they had two children. The petitioner had two prior orders dismissed against the respondent, but was present for this initial hearing. The respondent was not present. The judicial officer told the petitioner, “At some point in your life, you’re going to make a decision about this relationship. Repeat domestic assault leads to bad things ... You need to address the central question of continuing a relationship with this man.”

The petitioner testified that the respondent had beaten her. The respondent said he had beaten her to keep her from driving drunk. The judicial officer pointed out that there were many other ways he could have dealt with the situation.

### Thumbs down

The WATCH volunteer noted that this case was dismissed over an hour after the hearing was scheduled due to the petitioner’s absence. An hour after the dismissal, the petitioner went to the courtroom and asked about the status of her case. She said that she was in the waiting room when the respondent was called, but that she was not called. When told of the dismissal, the volunteer wrote that the petitioner became angry and stormed out saying that she would file in St. Paul when she moved there in a week.

Both parties petitioned for an OFP on behalf of their child in common, and both were granted temporary sole custody. The judge signing the second *ex parte* order was responsible for vacating the first custody order before issuing another, but did not. The child, whose primary parent was his mother, was with his father at the time of the hearing.

The respondent was absent from the scheduled extension hearing and the order was issued by default. The judicial officer realized that an old form directing the respondent to the Government Center instead of the Family Justice Center had been used to prepare the *ex parte* order. While the judicial officer continued the case and temporarily extended the order, the delay caused the petitioner inconvenience and frustration.

One judicial officer occasionally warns petitioners that an OFP is a shield and not a sword. As she told one petitioner, “It’s a terrible thing to call police if he doesn’t violate to get him in trouble because you’re mad at him. If you call on Friday, he’s in jail all weekend. It needs to be a material violation.”

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<sup>9</sup> Again, judicial officers are presumed female to preserve anonymity.

The judicial officer issued the order against the respondent, a police officer. The respondent was told that he could obtain property at the home of the petitioner if accompanied by a police officer. The order was not explained. The judicial officer did not address the possible conflict of interest for the respondent if he had to ask a colleague to assist him.

The petitioner alleged that the respondent, her current husband from whom she was separated, broke into her home repeatedly and stole her things. The WATCH volunteer noted that, instead of solely discussing the allegations in the petition, the judicial officer took the opportunity to “scold” the petitioner for introducing the child-in-common to her new boyfriend. The judicial officer further recommended that the respondent discuss the introduction of new partners with the petitioner. The order was not issued as the judicial officer did not think that the burglaries met the definition of domestic abuse according to the statute.

The petitioner was present, but the respondent was not. As the judicial officer was preparing the order, she asked the petitioner whether she was aware of the respondent’s criminal history of domestic assault. The judicial officer asked why the petitioner had not left the relationship before and told her that her actions did not make sense.

The respondent threatened to “beat [petitioner’s] ass,” beat her son, and blow her house up. The judicial officer dismissed the order stating that the statute did not support issuing an OFP. The judicial officer told the respondent, “This woman is really worried about her life. I believe you need to stay away from her.”

The judicial officer interrupted the respondent during his testimony and asked how long it would take to tell his story. Several minutes later, after the respondent completed his testimony, the judicial officer said, “You could have told me that in two sentences. I need to know if you were abusive.”