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A reason to reflect on protection orders

October is National Domestic Violence Awareness Month. The Ray Rice scandal, which has permeated the media for weeks, reminds us that domestic violence occurs at all economic and social levels.

An elevator video captured the violence of Baltimore Ravens running back Ray Rice toward his then-fiancee Janay Palmer. However, most domestic violence situations are not caught on tape and flashed in the court of public opinion. Without the video of Rice, would anyone have believed that he physically assaulted Palmer to the point of unconsciousness?

Domestic violence is often hidden, and when a victim courageously reaches the courtroom to obtain an order of protection, the judge may ultimately be faced with the "he said, she said" dilemma of competing testimony.

When assisting a victim in a divorce proceeding or independently in domestic violence court, there are typically two critical steps to the process. First, obtaining the emergency, ex parte order of protection, which remains in effect for 14 to 21 days. Second, the plenary order of protection, which can remain in effect for the entirety of the divorce process or for up to two years in an independent proceeding.

These orders also may be extended beyond the initial two years if good cause is shown. Successfully obtaining these orders for your client ultimately depends on three crucial criteria: The compelling affidavit and testimony of the victim, substantiating evidence and the credibility of the victim, abuser and other witnesses.

The first step in obtaining the

order of protection is helping the client complete an affidavit, which will be attached to the petition for order of protection. The affidavit should accurately set forth the facts and history of the abuse, including dates or time periods of the occurrences, details and types of the abuse, the history of the relationship and the effects — both physical and emotional — on the victim and any protected persons (such as children).

While there is urgency in getting an emergency order of protection, completing the affidavit with accuracy and detail is also important, as the affidavit will likely be scrutinized by the abuser's counsel in an effort to later defend, and attempt to defeat, the request for a plenary order of protection. Any misstated fact, missing data or innocent error likely will be used to call into question the veracity of the victim.

Thus, the first step in working with a victim is to sensitively interview the victim for the needed information, which then

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becomes the framework for the affidavit. Often, it takes multiple discussions with the victim, and multiple rewrites of the document, before the affidavit is complete and accurate.

As the attorney for the victim, when interviewing the client, the attorney should focus on the possible evidence available to present at the emergency and plenary hearing on the order of

MODERN FAMILY



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protection. Today, prevalent forms of evidence include text messages, e-mail, photographs, videos and voicemail messages as well as medical records, police reports and damaged objects from an altercation.

Third-party witnesses also may surface such as the responding police officer, the

plenary order of protection, the victim's attorney should have the evidence and the witnesses prepared. Even if there are no witnesses to call other than the victim and possibly the abuser, the victim should be prepared by the attorney to testify in conformity with the affidavit. If the victim offers factual information that deviates from the details of the affidavit, the victim's credibility may suffer.

The physical evidence, however, may be more convincing than the competing testimony of the victim and the abuser, who likely have very different stories to tell. The judge will want to see such things as the harassing or voluminous e-mails and text messages, the photographs of bruises and cuts, the cellphone that was thrown against a wall, the voicemail message of contrition and more. The abuser's attorney will have a more difficult time explaining away tangible evidence properly offered at the hearing.

In the end, if every domestic violence victim had an elevator video recording available for their court proceeding, obtaining an order of protection would be an uncomplicated task. But the smoking gun video often does not exist. Instead, the skill and preparedness of the lawyer, the detailed affidavit, the credibility of the victim and the third-party testimony and tangible evidence presented determine the outcome.

In honor of National Domestic Violence Month, let's hope that every person who has been abused by a spouse or significant other and comes to court for protection gets the proper legal help and care they need in our system.