University of Baltimore School of Law

Family Law Clinic

Court Watch Report

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Demographics and Overview

As part of a Community Education Project, five students from the University of Baltimore Family Law Clinic conducted a Domestic Violence Court Watch. The Court Watch was created and run by the students in an attempt to compile data which could be used to identify potential issues within the system and provide a basis for making recommendations to improve the system. In addition to this Demographics and Overview, the following areas are covered in this Report: Service, Safety, and Courtroom Procedure.

The Court Watch began on September 19, 2011 and ended on October 14, 2011 and took place at the Eastside District Court Building located at 1400 East North Avenue in Baltimore, Maryland. The monitors observed both morning and afternoon dockets, but in some instances were unable to track all of the petitions on the docket because large dockets were divided among numerous courtrooms. Altogether, the monitors observed 17 dockets and 15 judges. *See Diagrams 5 and 6.* The monitors observed court for four weeks, at the same time every week, and often went in pairs.

In this time period the monitors were able to observe hearings involving 369 petitions for protection from abuse. Of these 369 petitions, 158 were for Protective Orders, 110 were for Peace Orders and 101 were undeterminable. *See Diagram 7.* The reason for the large amount of undeterminable petitions can be attributed to one of three factors: 1) the court did not announce whether petitioner was or was not a Person Eligible for Relief (PEFR)[1], 2) a TPO was reissued without any questioning of the petitioner (other than "there was no service, would you like to have another week to see if service can be effectuated?") or 3) monitor error on the worksheet.

[1] The determination of a PEFR is the difference between a Peace Order and a Protective Order. A Protective Order is available only to a PEFR, while a Peace Order is not available to a PEFR. This determination of whether the Petitioner is a PEFR therefore allows the courts to grant varying relief to a petitioner that may not be available under the other statute. Additionally, the time period for a Peace Order is up to 6 months, while a Protective Order may be entered for up to a year.

102 petitions were dismissed by the court during the Court Watch. Over half (57) of these 102 petitions were dismissed because the petitioner failed to appear for the FPO. Obviously, the reasons for the failure to appear are unknown to the monitors. Another 22 dismissals were attributed to a finding of fact that there was insufficient evidence to grant the Order. Nine dismissals were per petitioner's request. The remaining 16 dismissals are for other reasons. *See Diagram 8.*

A Final Order was granted in 35 cases. 13 orders were granted after the respondent consented to the entry of the Final Order. 22 were entered as a result of a finding of fact on the merits. *See Diagram 8.*

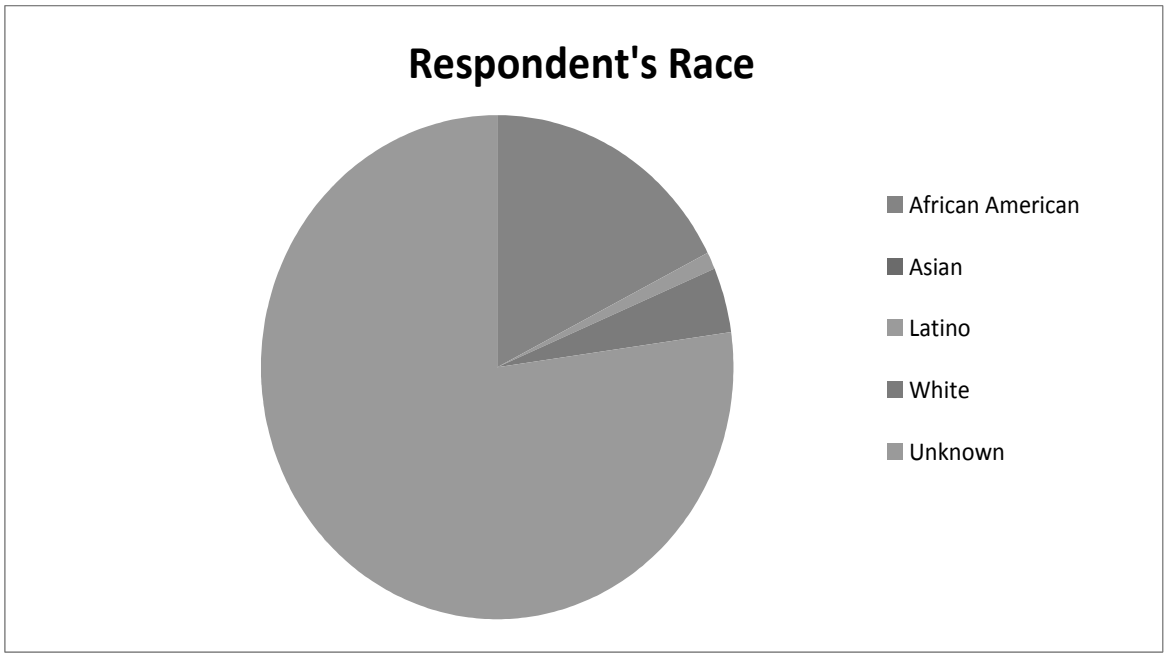
222 Temporary Orders were issued. This number includes 119 known reissues because service was unsuccessful. *See Diagram 8.* Of the remaining 103, it is believed that some were reissued as a result of lack of service. However, due to issues with the monitoring form and data collection, the exact number of reissued TPOs is not available, and therefore reissued TPOs are included in the issued TPO data.

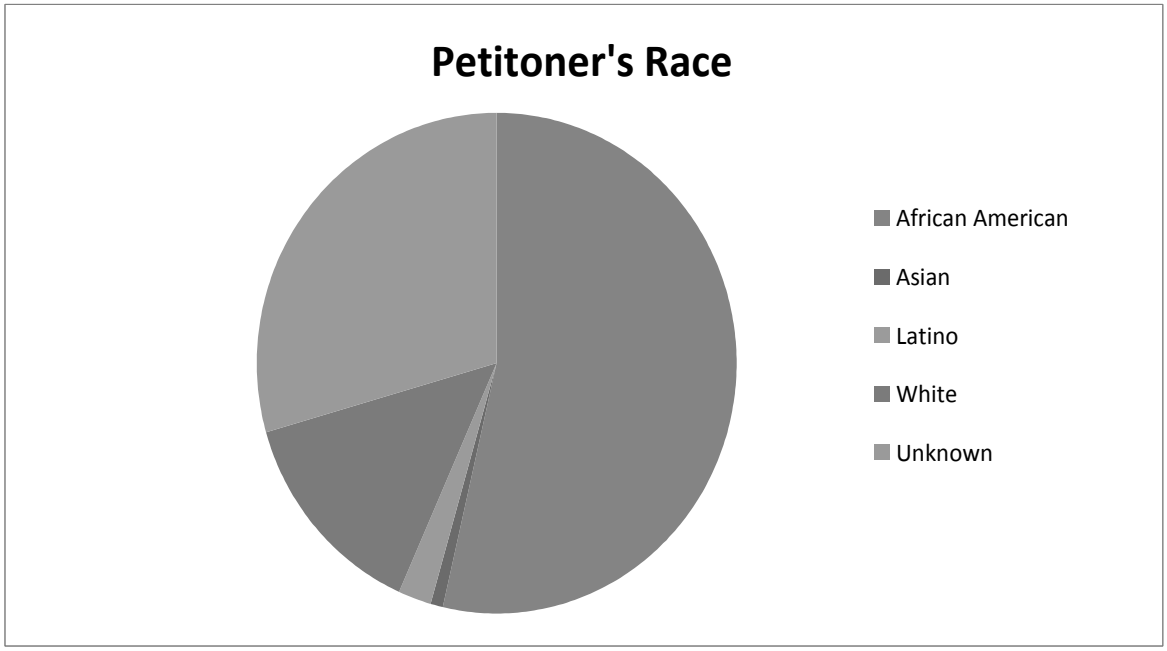
Representation was another category the monitors took note of during the Court Watch. The petitioner was represented by an attorney 23 times; at least 8 were attorneys from the House of Ruth. The respondent was represented 5 times. Two of the 369 petitions involved representation on both sides.

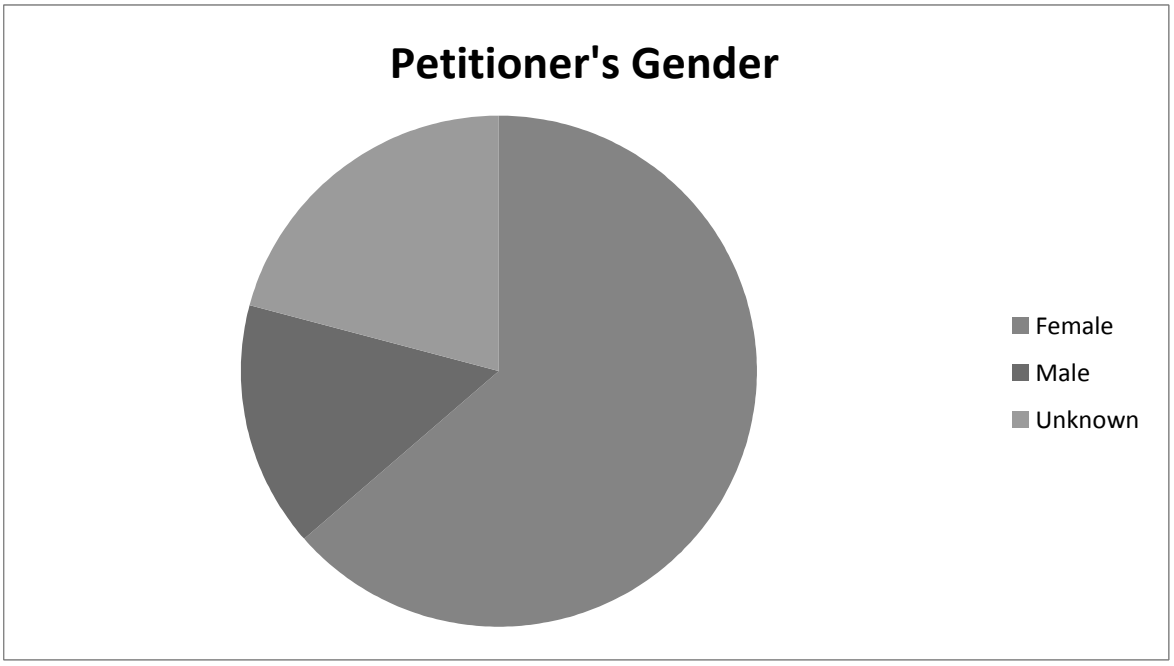
Additionally, the Court Watch collected race and gender information to the extent possible. Females were by far the largest group of petitioners, accounting for 235 of the 369. *See Diagram 3.* Males accounted for only 57 of the petitioners, and in 77 cases, the petitioner's gender was unknown, due to either a failure to appear or a waiver of appearance. *See Diagram 4.* 170 respondents were male while only 74 were female; 125 were unknown. The largest race

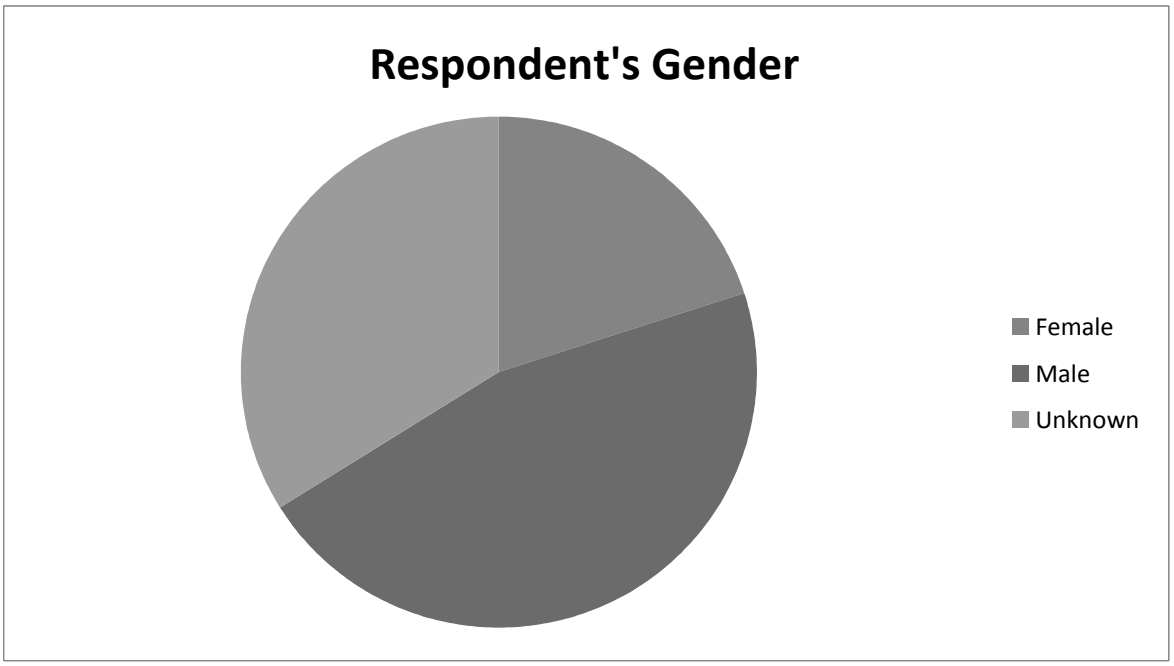
category for both petitioner and respondent was African-American. Respondents' race was unknown in 285 petitions, either because the hearing was ex parte, lack of service meant the respondent was not in court, or respondent failed to appear. *See Diagrams 1 and 2*.

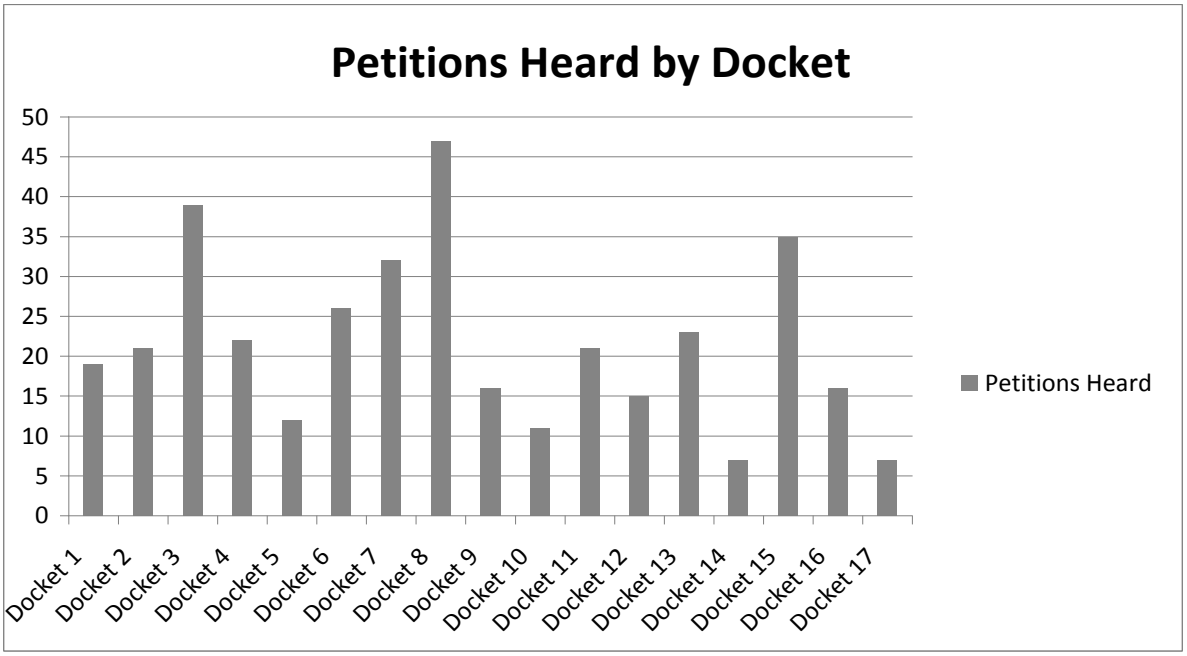
Other data collected by the monitors is subjective. It includes whether one or both parties were "lectured" by the judge, whether the petitioner seemed satisfied with the disposition of the case, and whether the petitioner was treated respectfully by the judge.




Petitoner's Race
African American
Asian
Latino
White
Unknown


Petitioner's Gender
Female
Male
Unknown


Respondent's Gender
Female
Male
Unknown


Petitions Heard by Docket
50
45
40
35
30
25
20
15
10
5
0
Docket 1
Docket 2
Docket 3
Docket 4
Docket 5
Docket 6
Docket 7
Docket 8
Docket 9
Docket 10
Docket 11
Docket 12
Docket 13
Docket 14
Docket 15
Docket 16
Docket 17
Petitions Heard

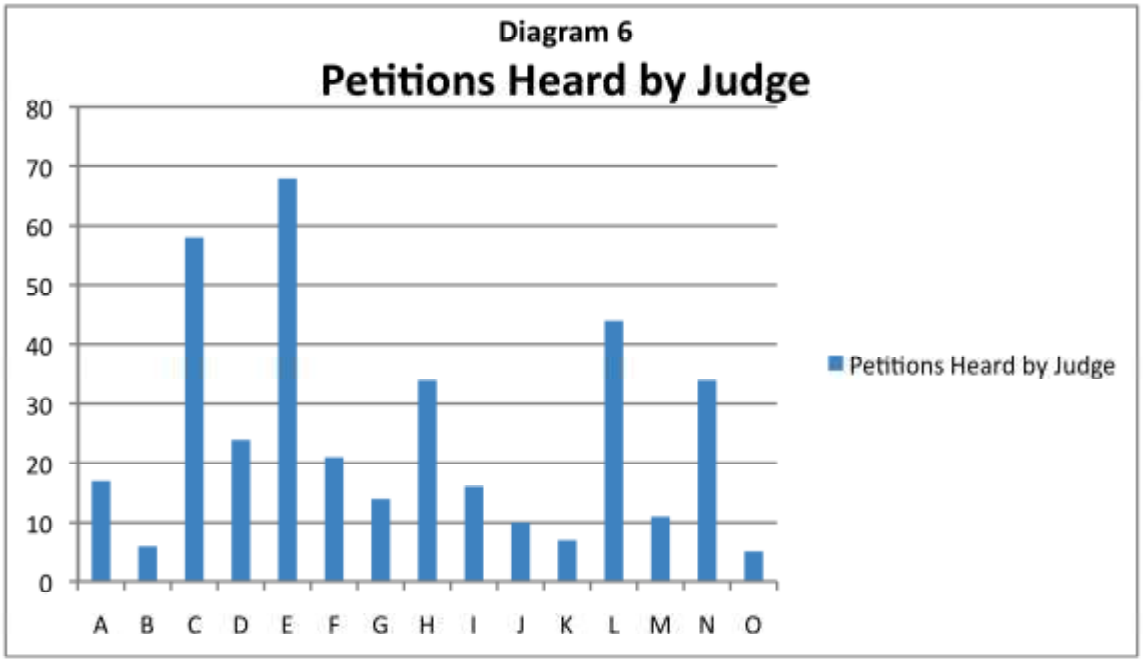
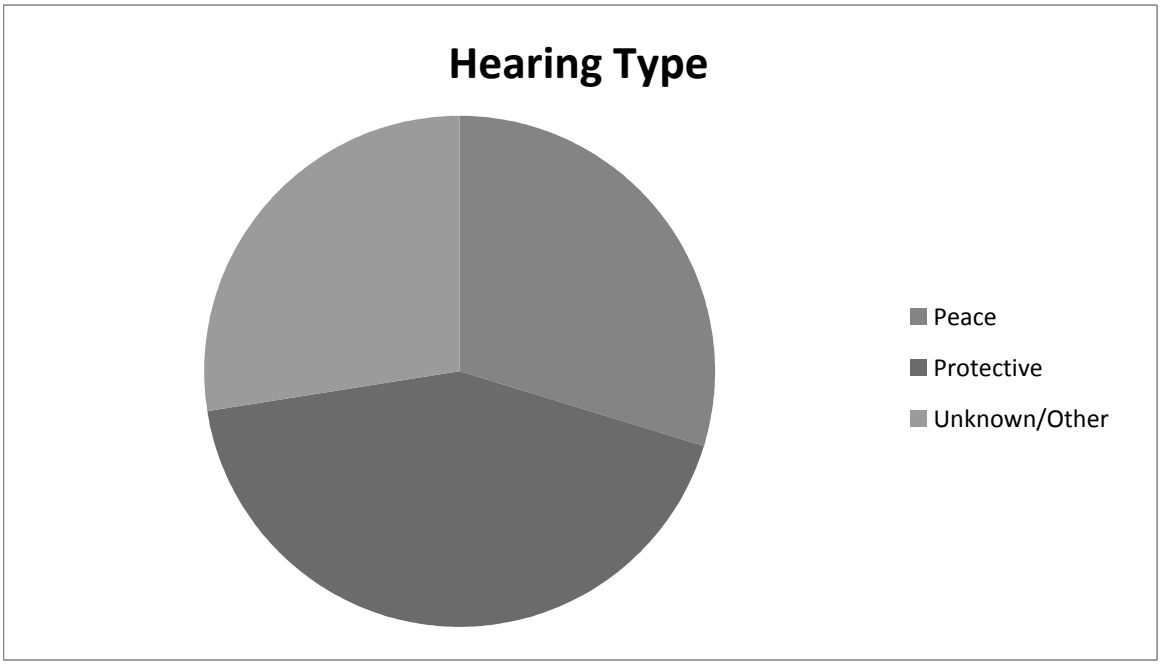


Diagram 6
Petitions Heard by Judge
80
70
60
50
40
30
20
10
0
A B C D E F G H I J K L M N O
Petitions Heard by Judge


Hearing Type
Peace
Protective
Unknown/Other

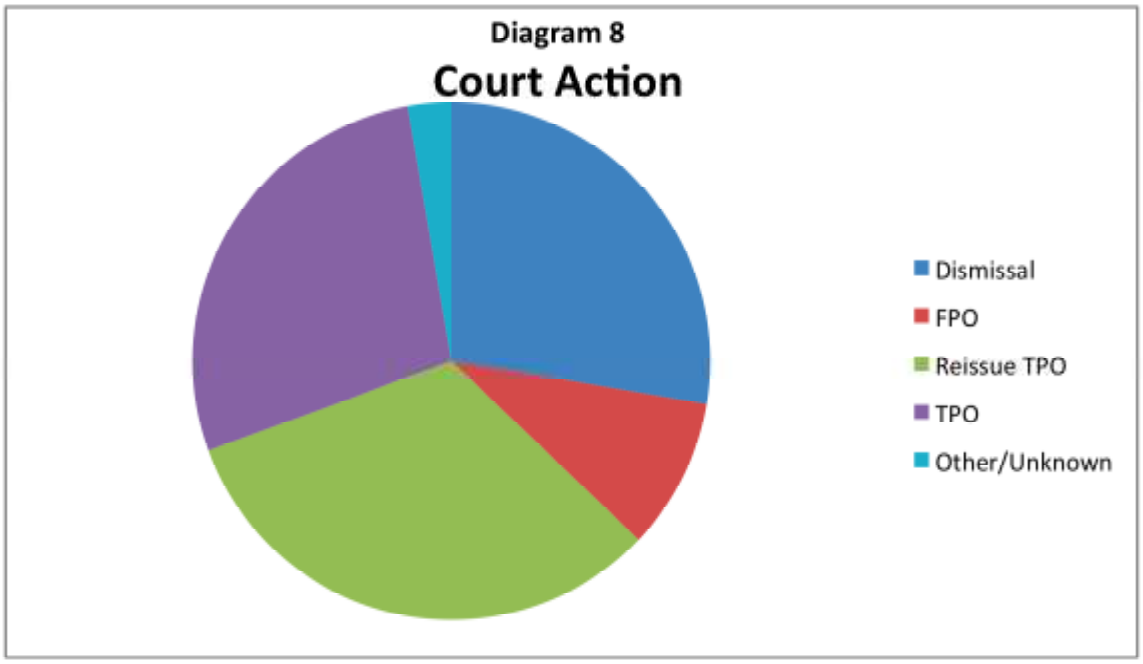
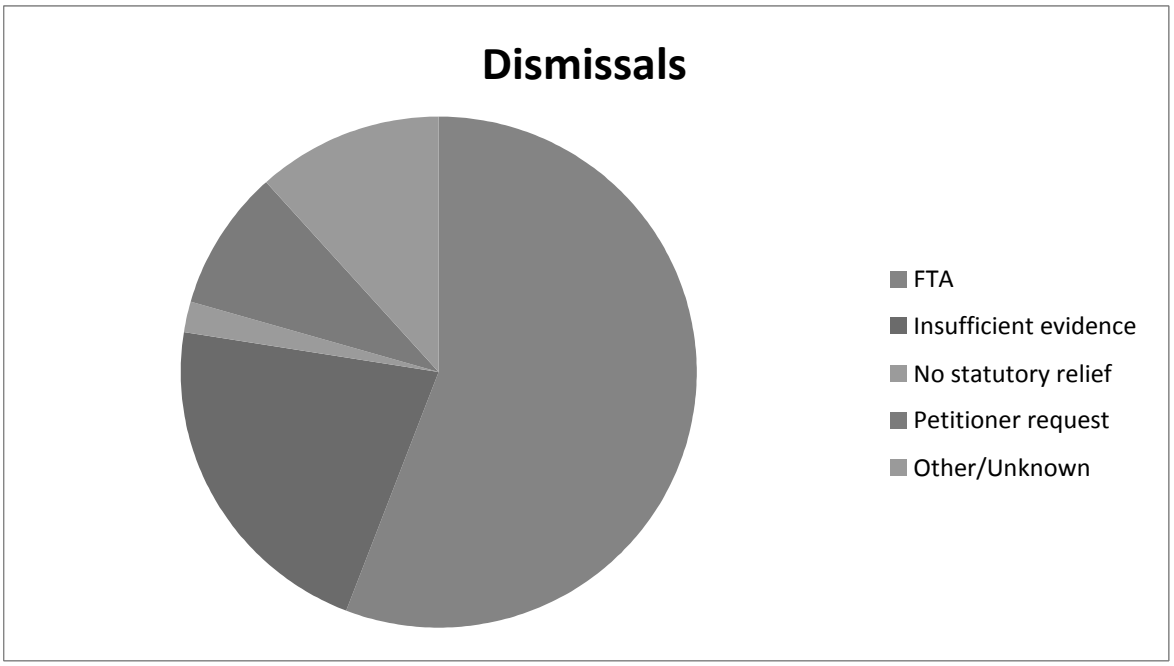


Diagram 8
Court Action
Dismissal
FPO
Reissue TPO
TPO
Other/Unknown


Dismissals
FTA
Insufficient evidence
No statutory relief
Petitioner request
Other/Unknown

Service

Lack of service of the Temporary Protective Order upon the respondent was one of the biggest problems that Court Watch observed. Court Watch found that thirty-two percent of the cases observed had no service at the time of the scheduled Final Protective Order hearing. While even thirty-two percent may seem high, it does not take into account the cases dismissed due to the frustration of going to court after weeks of no service, petitioners who were unable to take off time from work anymore, or those who for one reason or another were no longer able to come to court. These cases ended in dismissal for the petitioner's failure to appear, and were not coded as cases in which service had failed, which would increase the percentage of cases in which service was not effectuated.

Without service, petitioners were left with the options of either dismissing their petitions or trying again the next week, hoping that service would be effectuated in the interim. If petitioners were lucky, they were told about the VINE program, which allows the petitioner to sign up for a waiver of appearance, pending service of her temporary protective order. Additionally, if petitioners had legal representation by the House of Ruth, their attorneys were allowed to come to court in their stead. Most petitioners, however, were not given these options; many were frustrated by the lack of service, and some ultimately abandoned the effort to secure an order.

In many cases there was difficulty in service because the petitioner did not know the respondent's location. In some cases the respondents left the residence where they had been living after the incident upon which the petition was based. There were times that petitioners did not know respondents' whereabouts because the respondent's lifestyle was unstable or the respondent had purposely fled the area. Court Watch often observed judges asking petitioners if

there was another location where the sheriffs could attempt to serve the respondent, but most petitioners did not have additional information. The petitioner's mounting frustration was often visible and usually resulted in the petitioner eventually dismissing the case.

Another problem that petitioners often mentioned to judges was that respondents were evading service. Petitioners often believed that the respondent knew about the protective order but was either not answering the door or staying away from the residence during the hours they believed the sheriffs would come. Judges generally had no suggestions for petitioners with this issue, which was very frustrating for petitioners, many of whom were obviously frightened. Some judges asked the petitioner if there was another place to serve the respondent, but most judges only gave petitioners the option of dismissing the case or coming back the next week. Very little was done to comfort or assist the petitioner.

Difficulty with service was not always due to the respondent's movement. Court Watch observed cases where the court did not know the respondent had been incarcerated. There were some cases where the respondent had been incarcerated since the incident that led to the filing of the petition for a protective order. When the petitioner told the Judge that the respondent was incarcerated, Court Watch saw judges who looked confused and looked to their court clerk to confirm. Even then, the petitioner was told that he or she would have to come back in yet another week to allow time for a writ to be issued to bring the respondent to court.

Even when a writ was issued there were cases where the respondent was not brought to court. Judges often displayed very little empathy for the petitioners in this situation, and petitioners were again given the option of coming back to court or dismissing the action, even though they were not at fault for the respondent's failure to be in court.

There were also instances where the respondent was served, but the verification paperwork had not been received by the court. Court Watch witnessed a case where a petitioner had been told by the serving police officer that the respondent was served, but the paperwork never arrived at the court. The judge told the petitioner service had not been effectuated. The petitioner explained what he had been told by the police officer, and the judge allowed the case to be held while the petitioner tracked down the serving officer and asked the officer to come to court to verify that the respondent had been served. The officer appeared and verified that he had served the respondent, and the case was able to go forward. This petitioner was lucky that the officer had time to come in to court; most petitioners would not be able to identify and locate the officers responsible for service and persuade them to come in, even if the judges gave them the opportunity to do so.

In other cases petitioners were told that the respondents had been served or respondents appeared in court and said they had been served, even when the court had no record of it. This particular service problem could be avoided if the processing of paperwork was more reliable. It is very likely that the court dismisses cases in which the respondents have been served.

It is also difficult to determine exactly where the trouble in service lies within a case. Court Watch observed that there is no mechanism for a petitioner to find out if the sheriff has received the service packet, if the police have attempted service but were unsuccessful, or if there has been service but the paperwork has not been filed with the court. Even the most diligent and persistent of petitioners may not be able to determine whether service has been effectuated after calling the Clerk's Office, Sheriff, District Police stations, and possibly others, to determine where the trouble in service is. There is also a wide discrepancy in the willingness to assist and answers given by the employees of these offices and law enforcement. For example, Court

Watch found that a records office which had a 24-hour phone line never seemed to answer their calls. Calling the same sheriff's office multiple times about a service question resulted in different answers depending upon who answered the phone.

Court Watch also observed that judges' attitudes varied considerably when dealing with service issues. Some judges tolerated petitioners' questions about how to get the respondent served, while others were stern and showed no sympathy for the petitioner's trouble. Petitioners who received sympathy or understanding from a judge appeared far less frustrated and upset by their service difficulties and far more willing to come back the next week. There were numerous instances when judges visibly lost patience with the petitioners' questions and requests for help with service. Court Watch often saw those petitioners leave the court frustrated. There are judges, too, who seemed frustrated by lack of service, and they did their best to answer the petitioners' questions, even when the answers were not the ones the petitioner wanted to hear.

Service: Conclusion and Recommendations

The failure to achieve service has extremely harsh consequences for petitioners. The majority of the problems listed above could be addressed by the court, such as verifying whether proof of service has been filed with the court or whether respondents are in jail. An online database or centralized phone number indicating when service was made upon respondent would be extremely useful and have minimal operational costs. A phone line or online database would also be effective in informing petitioners where difficulty in effectuating service is. At the very least, an increase in empathy from judges would go a long way towards calming petitioners and reinforcing the idea that the justice system is a viable route to receiving protection from their abusers.

Victim Safety at the Courthouse: Before, During and After the Hearing

Victims of domestic violence view the court as a source of protection. However, they are exposed to their abusers in a problematic way during the process of requesting a protective order. Victims are vulnerable to their abusers before, during, and after the hearing.

UB Family Law Clinic Court Watch identified the following components of a protective order experience in which the victim is put in a potentially dangerous situation: when a victim must wait in the hallway for the courtroom to open, without bailiff protection; when the respondent confronts the petitioner directly during the hearing; when a victim must wait for copies of the protective or peace order in or near the clerk's office, and the abuser is sent to the same office just moments later, without ensuring that the victim has already left the building.

Before the courtrooms are opened, all parties must wait in the hallway together. Bailiffs are present but not paying attention, and bailiffs are unable to identify which parties may be adverse. Waiting together means that petitioners may be physically close to their abusers. Petitioners may be susceptible to pressure, coercion and intimidation by the respondents during that time.

During the hearing, many victims and abusers speak with/confront one another instead of speaking only to the judge. However, bailiffs and judges observed during the Court Watch did an excellent job recognizing such situations and immediately informing the parties that they were not permitted to speak to one another, but rather only to the judge. Both judges and bailiffs encouraged the parties to face forward to ensure that the parties were not tempted to speak directly to one another.

Many of the judges attempted to use a staggered exit technique when dismissing the petitioner and the respondent. Victims are dismissed first, and they are instructed to go to the

clerk's office to await a copy of the protective order. However, it usually takes the clerk's office between twenty and forty minutes to receive the file and prepare the order. Typically, bailiffs waited about fifteen minutes after dismissing the petitioner to dismiss the respondent, and it appeared that bailiffs had no communication with the Clerk's Office before allowing the respondent to leave. Hence, often the petitioner is still awaiting her protective order when the respondent comes to the Clerk's Office. Frequently, the waiting area outside of the Clerk's Office is empty, and there is no bailiff present to offer protection to petitioners. Due to the lack of communication between the courtroom and Clerk's Office, this staggered exit technique, which is intended to minimize conflict and safeguard petitioners, often proves futile.

In one case, the petitioner was dismissed and waited at the Clerk's Office for a copy of her order. There was a mistake in the order, however, and the petitioner had to continue to wait outside of the Clerk's Office for her corrected order. Meanwhile, because there was no communication between the Clerk's Office and the courtroom, the bailiff dismissed the respondent to pick up his copy of the order. The petitioner, her attorney, and the respondent were the only people waiting outside of the clerk's office. The petitioner returned to the courtroom to await her copy of the order, instead of sitting in close proximity to her abuser.

Safety: Conclusion and Recommendations

To minimize contact between the petitioner and the respondent prior to the courtroom opening, there should be a designated safe waiting area in which petitioners may sit, separate from the respondents with a bailiff present.

To make the staggered exit technique more effective, the court should create a line of communication between the courtroom bailiff and the Clerk's Office, so that the Respondent is not dismissed from the courtroom until bailiffs confirm that the victim has received her order and

left the building. This would ensure that the abuser does not have an opportunity to make contact with the victim at the courthouse after the protective order has been entered.

Courtroom Procedure

Numerous aspects of the handling of protective order proceedings were problematic. First, evidentiary rulings (what was admitted and how it was admitted) were inconsistent and, often times, in violation of the rules of evidence. Second, it was rare to hear a judge state whether and how the statutory elements of a peace or protective order were satisfied, leaving the respondent unaware of why an order was entered and creating an unclear record. When the judges are unfamiliar with or unsure of the law, they sometimes neglect to refer to the statute. Finally, at times, both petitioners and respondents encountered poor treatment and coarse remarks by courtroom personnel.

Rulings in protective and peace order hearings are typically based solely on testimony. Often times that testimony is primarily hearsay. In some cases, petitioners want to show the judge text messages and pictures or have them listen to voicemails. Court Watch found that the vast majority of the litigants were pro se and therefore not familiar with the rules of evidence. This creates a problem for the judges. Is it the judge's role to keep out evidence that would clearly be objected to by an attorney?

Each judge handled evidentiary questions differently. In one final protective order hearing, both parties represented themselves. During the respondent's testimony, the judge repeatedly stopped her and explained that she could not say the things she was saying, as it was all hearsay. After about ten interruptions, the respondent grew frustrated and exclaimed, "Then what can I say?" At this point the judge was also visibly frustrated and did not respond to the respondent's question. Most other judges simply listened to the hearsay. Judges rarely cited to the evidence they considered in making their rulings. Therefore, it is difficult to know whether or

not judges based rulings on inadmissible hearsay or if they sorted through the evidence and considered only what was admissible.

On numerous occasions, petitioners wanted to show the judge text messages that they claimed were from the respondent. More often than not, the judges viewed the text messages. Sometimes the judge inquired as to how they could be sure that this was even the respondent's number and/or whether the petitioner purposely deleted some of the text conversation. But for the most part, judges simply viewed the messages without any inquiry.

How should judges handle evidentiary issues? Should the rules of evidence be relaxed in protective and peace order proceedings? In places like Baltimore City, where the majority of litigants are pro se, is it the judge's job to ask questions in order to lay a proper foundation and then determine whether or not to consider the evidence? It is very clearly difficult to hold pro se parties accountable for complying with the rules of evidence, but there are costs to relaxing those rules as well.

The only procedural concern that each judge consistently and adequately addressed was the possibility that testimony given by parties could, and likely would, be used in a criminal proceeding pending against them. Each judge explained to the parties, and made sure that respondents understood, the potential consequences of giving testimony and/or the judge entering an order with findings of fact. Judges were clearly concerned about protecting parties' 5th Amendment right against self-incrimination.

Another common issue throughout Court Watch was the apparent lack of concern for keeping the record clear as to what facts supported which statutory elements, constituting either reasonable grounds for temporary orders or clear and convincing evidence for final orders. In some truly unfortunate cases, the judge neglected to even inquire as to the relationship between

the parties, thereby leaving the record unclear as to whether the petitioner was a person eligible for relief pursuant to Md. Fam Law § 4-501(l).

The Court Watch form contained a section titled "Abuse," which included the acts that constituted abuse pursuant to Md. Fam Law § 4-501(b). On many of the forms, this section was not filled out, as the judge did not make clear upon which grounds he or she was granting the order. Furthermore, even on forms where the abuse section was filled out, it was often because the observers determined on their own the qualifying act of abuse.

Perhaps, in some cases, the judge neglected to make the record clear because he or she was not entirely sure that they made the right decision. For instance, one judge specifically said that he was reluctant to grant the final order because the petitioner offered very little evidence. The judge granted the order nonetheless, but did not state the grounds upon which he did, in fact, find clear and convincing evidence to grant a final protective order.

Keeping the record clear should be of the utmost importance to each and every judge. Just as a criminal defendant has the right to understand the charges against him, so too should the respondent in a civil protective order hearing have the right to understand why he or she is there and upon what grounds the judge entered an order. The relief granted in a protective or peace order can amount to a significant loss of liberty for the respondent. It is therefore important to provide respondents with a clear record for both their individual understanding and in the case of an appeal.

Sometimes, the judge did not seem to know the law. In one hearing, the judge was unsure about what constituted living together for 90 days within the past year. On another occasion, the judge nearly dismissed a temporary order that came before him after an interim order had been ordered a few days previously. The judge did not understand that service was not required

between an interim order and a temporary order and that a hearing for a temporary order proceeds ex parte. Instead of looking up the rules, the judge looked to the courtroom clerk and the bailiffs for answers.

The Family Law Article clearly states that in temporary orders the judge may "award temporary custody of a minor child of the person eligible for relief and the respondent." (MD Fam Law § 4-505 (2)(vii)). This plainly means that a judge may award temporary custody only of a child in common between the petitioner and the respondent. Nevertheless, in a temporary protective order hearing between two sisters, the judge ordered temporary custody of the respondent's child to the petitioner. The judge certainly should have looked at the statute before granting custody of the respondent's child to a third party.[2]

The last procedural issue concerns how courtroom personnel, especially judges, treated the parties, primarily petitioners. The decision to file for a protective order is surely a difficult one and often involves people in extremely vulnerable situations. Judges and other courtroom personnel should treat the parties with respect and sensitivity. Court Watch members, unfortunately, observed too many hearings in which the parties were not treated with respect at all.

Petitioners were often cut off in the middle of their stories or reprimanded for telling the judge things that didn't necessarily pertain to what the judge needed to hear to make a decision. One judge repeatedly implied that he did not believe those petitioners who chose not to call the police during or immediately after whatever abuse the petitioner experienced. Some judges made jokes in response to a party's testimony. For example, in one hearing the petitioner explained that she knew the respondent sent a message from a computer because she was able to look up

[2] This case was not included in the Court Watch data, as it was observed by a Rule 16 attorney, not within the Court Watch program.

the IP address. The judge said, "You went all CSI on her." In another hearing, the abuse occurred in Las Vegas. After entering the final protective order the judge said, "I guess what happens in Vegas doesn't always stay in Vegas."[3]

It is hard to believe that a judge would make such comments with malicious intent. It seems that the judges are simply trying to lighten the mood. Unfortunately, these hearings are emotional and often scary for petitioners and the lack of sensitivity from the bench is disheartening.

Dealing with persons with disabilities is another area in which courtroom personnel lack sensitivity. One afternoon, a deaf petitioner came in for a protective order against a man with whom she had a romantic relationship. During her hearing, she became extremely upset and expressed herself through her body language and hand motions. Instead of understanding the difficulty of this woman's situation, the courtroom clerk and bailiffs were visibly and audibly laughing at her.

Sometimes, the judge refused to listen to how petitioners wanted to proceed with their cases. For instance, one woman was adamant about not going through with the final protective order. She came to court on the date of the final hearing and informed the judge that she did not want to go forward. The judge then asked if the woman had spoken to a House of Ruth attorney. The petitioner stated that she had spoken with a House of Ruth attorney and that she still did not want to go forward with the case. Instead of respecting the petitioner's decision, the judge forced the petitioner to speak with a House of Ruth attorney again before dismissing her case. The implication was that the petitioner could not be trusted to make a rational decision about the proceeding. The decision to file for a protective order is not an easy one. Protective orders can

[3] This case was not included in the Court Watch data, as it was observed by a Rule 16 attorney, not within the Court Watch program.

profoundly affect peoples' lives and families. It should not be the judge's place to decide whether or not a petitioner follows through with the final order. In the end, the case was dropped. However, the petitioner was clearly embarrassed and unhappy.

Courtroom Procedure: Conclusion and Recommendations

One possible way to help keep the record clear and minimize confusion among pro so litigants may be to explain the protective order proceedings and rules at the beginning of each docket. Many judges do begin the docket with an explanation of the proceedings; this should be standard procedure.

As students, Court Watch does not feel comfortable making recommendations regarding the handling of evidentiary issues. The dynamics of the Domestic Violence docket in Baltimore City are unusual, as the majority of litigants are pro se. Although the protective order process is designed to be friendly to pro se litigants, pro se litigants are simply not familiar with the formal rules of evidence, thus leaving evidentiary questions in the judges' hands. For this reason, the judge is in a unique position to appreciate the difficulties in regards to evidentiary issues. Therefore, Court Watch believes that the judges themselves should discuss whether to strictly adhere to the rules of evidence or to relax them due to the pro se nature of so many of these proceedings. In making this decision, judges should specifically consider the consequences of relaxing the rules of evidence around the introduction of text messages, photos, and e-mails. Regardless of the decisions made, all rules should be uniform and apply consistently throughout the Domestic Violence dockets.

Conclusion

Family Law Clinic Court Watch saw 369 petitions over the course of one month. Based on the observations, Court Watch created this report to share the experience and make recommendations based upon what was observed. Court Watch's biggest concern is the difficulty petitioners face in discovering where the problem in effectuating service lies. Court Watch recommends that a centralized resource be implemented for petitioners to use to determine if service has been effectuated, and if not, why. The second major concern noted in this report is the safety of petitioners in the courthouse before, during, and after protective order proceedings. Recommendations have been made, such as separating petitioners and respondents, which would require minimal effort and cost, but would ensure petitioner safety at the courthouse. Lastly, clear evidentiary rules are critical in maintaining a pro se friendly courtroom. Therefore, uniform and consistent rules should be applied in all Domestic Violence proceedings.

Court Watch recognizes the difficulties of conducting legal proceedings in which there are rarely trained advocates.. Nevertheless, it is crucial that the courts recognize the hurdles pro se litigants routinely encounter both before and during protective order proceedings. The identification of the most common issues, as outlined in this report, is the first step towards improving the Domestic Violence Court. Court Watch hopes that this report will spark discussion about how to improve the system.