

Civil Lawsuits and Safety Planning for Stalking Victims

By Seema Zeya, Esq.

Deciding whether to file a civil lawsuit against a stalker can be a very difficult and complex decision for a stalking victim. On the one hand, suing their stalker can help victims regain a sense of control over their lives and hold stalkers accountable for their behavior. In some cases, bringing a civil tort claim also may be the only way to obtain legal redress because criminal prosecution may not have been possible or successful. On the other hand, pursuing civil tort remedies may result in victims losing their privacy. It may also cost them money for litigation expenses and lost time from work, and force them to relive very painful memories related to their victimization.

Many victims do not realize that during the discovery phase of civil litigation, both the plaintiff and the defendant are entitled to compel each other to produce documents and evidence, answer questions, and testify at pretrial proceedings. Having to face a stalker in a pretrial meeting or in court can be a very frightening prospect for a victim. Another unsettling prospect is that the stalker may counterclaim against the victim as a form of intimidation or retribution. Even worse, some stalkers may attempt to physically retaliate against their victims for suing them in civil court. In such instances, victims may decide not to take legal action at all because of the risks attached, and instead may face no other choice but to go into hiding.

Risk Assessment and Safety Planning

Pursuing a civil tort claim against a stalker is not only about achieving justice by winning a monetary judgment on behalf of the victim, but more importantly, it is about securing the victim's safety. Therefore, attorneys must make victim safety a top priority and help their clients assess risks and realities that may place them in further danger.

Safety planning involves evaluating what is happening around a victim and examining options that will negatively and positively impact the victim's safety. More specifically, it is a tool designed to give a victim a specific plan to use if the stalking or threats of violence begin to escalate. Safety planning can help a victim devise a plan to leave an abusive partner and remain inaccessible to the stalker. **Since safety plans can be quite complex, it is helpful to enlist the assistance of a trained advocate who can help victims determine which options will enhance their safety the most.** The majority of input on the specific plan needs to come from the victims themselves since they are the most knowledgeable about the situation and the stalker's conduct. Plans must be tailored to meet the individual circumstances of each victim.

In short, safety planning is critical for stalking victims since the likelihood of violence escalates when a stalking victim leaves the stalker (if they are former intimate partners) or seeks legal interventions.¹ Victims need to know in advance where to

go and what to do in emergency situations. Done properly, safety planning not only can help keep stalking victims safe, it can enhance their self-esteem and provide resources to assist victims in regaining control over their lives.

Practical Tips for Safety Planning

Practitioners should be prepared to assist stalking victims in assessing danger and developing comprehensive safety plans that encompass a broad range of survival strategies. Beginning with the first client meeting, the attorney needs to show patience, compassion, and sensitivity toward clients who may find it difficult to talk openly about traumatic events relating to their stalking victimization. The attorney should also stress that the client's safety is the top priority.

Stalking victims must understand that they should never underestimate their stalkers or the potential for danger. For example, any implied or direct threat, whether made in person, by phone, regular mail, or e-mail, needs to be taken seriously. Clients should be advised to call the police to report each incident of stalking; to keep a behavior log documenting any sightings or contact including the date, time, location, circumstances, and names of any witnesses; and to preserve all evidence.

Assessing Danger

While it is difficult to predict precisely how a stalker will react to a lawsuit or behave in the future, the following are

warning signs that may indicate the stalker is very dangerous:

- threats of homicide or suicide
- history of attempted homicide or suicide
- access to weapons such as firearms
- history of physical or sexual violence toward the victim or others
- depression or rage toward the victim because she left the stalker who is a former intimate partner
- obsession or fixation on the victim.²

Before a lawsuit is filed, the client should be asked about these factors as well as any escalation of the stalking or other patterns of abusive activity. At this stage, an attorney should enlist the assistance of a trained advocate who can help the client evaluate the situation. Assuming the client decides to proceed with a suit, the attorney and advocate should begin the safety planning process immediately and assist the client in developing a plan that is appropriate to the client's needs.

Protection Orders

Attorneys should make certain that stalking victim clients have obtained a civil protection order before a civil lawsuit is initiated so that if the stalker attempts to contact, harass, or threaten the victim, the police can intervene. Clients should keep the order with them at all times and deliver copies to others in the community such as local police departments, employers, and schools. If victims travel across state lines, they should carry a copy of the order because the order can be enforced nationwide pursuant to the federal full faith and credit law.³

Refusal to Disclose Identifying Information

Throughout the course of the litigation, the attorney should try to make sure that the stalking victim's contact and identifying information is not revealed, since disclosure to opposing counsel and the stalker may seriously impact the victim's safety. The plaintiff's attorney should object under Federal Rule of Civil Procedure 26 (or its local equivalent), and if necessary, move for a discovery protective order so that the victim does not have to reveal home address, work address, home telephone number, work telephone number, e-

STALKING RESOURCE CENTER

In July of this year, the National Center for Victims of Crime launched its Stalking Resource Center. The mission of this groundbreaking project is two-fold: to raise national awareness of stalking and to support multidisciplinary responses to stalking in local jurisdictions throughout the country. The project consists of four components: an Information Clearinghouse, a Practitioners' Network, a Peer-to-Peer Exchange, and Training.

Information Clearinghouse

To educate practitioners and to forge a shared, national understanding of stalking, the Stalking Resource Center will establish an information clearinghouse that will include a variety of resources. Examples of the types of materials that will be collected, developed, and disseminated, are:

1. statistics on the prevalence of stalking;
2. practitioner-specific educational tools;
3. compilations of state and federal legislation and protection order statutes;
4. case law digests of civil and criminal cases;
5. multidisciplinary training curricula;
6. promising practices and innovative strategies; and
7. model protocols, forms, and procedures.

Practitioners' Network

To support interest in local stalking responses and to foster effective multidisciplinary work, the Center will assemble a network of local practitioners representing diverse communities throughout the country. These local "points-of-contact" will receive all project-related materials and will identify emerging issues and promising practices in


the field. Members also will share and exchange information to enhance their skills and efforts.

Peer-to-Peer Exchange

To facilitate ongoing working relationships and partnerships between leading experts on stalking and local jurisdictions that are developing multidisciplinary stalking responses, the Stalking Resource Center, in collaboration with a team of "expert" practitioners, will sponsor a series of problem-solving site consultations. The peer-to-peer exchange will match appropriate experts with specific on-site technical assistance requests. Targeted support will be offered to local jurisdictions to address both short-term and long-term challenges.

Training

To identify technical assistance needs and to showcase promising practices, the Stalking Resource Center will host a national conference for members of the Practitioners' Network. Project staff also will be available to participate in training events sponsored by other national technical assistance providers as well as practitioners at the local and state level.

The National Center for Victims of Crime created the Stalking Resource Center with support from the Violence Against Women Office of the U.S. Department of Justice. 

For more information on the Stalking Resource Center or to request technical assistance and training, contact Seema Zeya, senior project director, or Vanessa Chirgwin, project coordinator, at (703) 276-2880.

mail address, and social security number.

Safety Precautions

Since the primary objective should be to keep the client safe at all times, the stalking victim should be advised to take some of the following safety precautions at home, work, court, and in public. (Note: This is not an exhaustive list, but rather a sampling of some commonly recommended strategies.)

At HOME:

- Change locks and add deadbolts.
- Install a wide angle peep hole in all

primary doors.

- Trim the shrubbery near the house and keep the fuse box locked.
- Keep flashlights with working batteries.
- Install fire detectors, security alarms, and outside lights.
- Get a dog for added protection.
- Purchase rope ladders to be used to escape from second-story windows.
- Obtain a private, unlisted phone number.
- Identify all visitors before opening doors.
- Instruct the phone company to block incoming calls from certain numbers.

- Use an answering machine or caller-ID when receiving phone calls to collect evidence of harassment, stalking, or protection order violations.

- Use caller-ID blocking if it is necessary to call the stalker or someone who might intentionally or inadvertently reveal the victim's phone number to the stalker.

- Obtain a cellular phone which is preprogrammed to 911 or the number of a safe friend or relative and keep it in an accessible hiding place.

- Never open an unusual package, box, or device found on the property, but instead call the police and ask them to examine it.

- Give a picture of the stalker to neighbors, if possible, and ask them to call the police if they see the stalker nearby.

- Keep a bag packed and hidden in a safe place in case there is a need for a quick escape (the bag should contain money for phone calls, transportation, and one month's expenses; clothing; diapers; court documents; passports; identification; birth certificates; school and medical records; necessary medications; credit cards; checkbooks; work permits; green cards; mortgage/lease payments; insurance papers; bank books; telephone/address books; car/house keys; and ownership documents for house/car).

- Prepare an emergency evacuation plan and brief household members on the procedures.

- Know how to get to the local domestic violence shelter or the home of a safe friend or relative.

At WORK:

- Inform supervisors, human resources personnel, or employee counselors about the situation.

- Provide a picture of the stalker and a copy of any protection orders to security, superiors, and reception area staff.

- Ask co-workers to call the police immediately if the stalker appears.

- Request that all visitors and packages pass through central reception.

- Ask a receptionist or co-worker to screen calls.

- Save any voice mail and e-mail messages received from the stalker.

- Ask about flexible or alternate work hours and relocation of work space to a more secure area.

- Request a parking space close to the building.

- Ask for an escort to the parking lot or to the bus.

In COURT:

- If the stalker is nearby, wait in a safe place such as next to a security guard or bailiff.

- Avoid sitting close to the stalker in the courtroom.

- Always make sure that other people are between the victim and the stalker.

- Avoid speaking directly to the stalker.

- Ask for an escort to and from court.

- If the stalker follows the victim, call the police or drive to the nearest police station and report the incident.

In PUBLIC:

- Travel in groups or with a friend, if possible.

- Have protection order and emergency phone numbers on person at all times.

- Avoid walking or jogging alone at night.

- Always park in well-lit areas.

- Alter daily routines by changing transportation routes or timing (including picking up children from school).

- Do not drive directly home if followed.

- Drive to a local police station, fire department, or busy shopping center if followed and honk the car horn to attract attention.

Counseling

Stalking can be psychologically devastating for victims as they become more concerned about their personal safety. In fact, thirty percent of female stalking victims and twenty percent of male victims reported that they needed to seek psychological counseling as a result of their vic-

timization.⁴ Practitioners should encourage their clients to work with a trained victim advocate, counselor, or therapist during the pendency of the civil case since the victim may feel emotionally overwhelmed. In particular, if victims have to face stalkers in open court and testify about their victimization, it is critical that they be psychologically prepared for such an experience. It is imperative that practitioners understand the mental health needs of stalking victims and assist their clients in accessing appropriate services.

Conclusion

Civil lawsuits can hold stalkers accountable and can help victims achieve justice and regain a sense of control over their lives. However, safety planning must be an integral part of the process in order for the action to be truly beneficial to the victim. Practitioners should recognize the importance of assessing risks and dangers, and should be willing to assist their clients in developing comprehensive plans that will keep them safe throughout the course of the case. **W**

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1. See Lenore Walker and J. Reid Meloy, *Stalking and Domestic Violence, in The Psychology of Stalking: Clinical and Forensic Perspectives* (J. Reid Meloy, ed., Academic Press, 1998) at 141; Judith McFarlane, *Stalking and Intimate Partner Femicide, in Homicide Studies* (Sage Publications, 1999) Vol. 3/No. 4 at 310.

2. Barbara Hart, *Assessing Whether Batterers Will Kill, in Seeking Justice: Legal Advocacy Principles and Practice*, Pennsylvania Coalition Against Domestic Violence, Sec. VI, at 1 (1992).

3. 18 U.S.C. § 2265.

4. Patricia Tjaden & Nancy Thoennes, U.S. Dept't of Justice & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the Violence Against Women Survey 11* (1998).

Additional Resources About Stalking and Safety Planning

Am. Bar Ass'n, Comm'n on Domestic Violence, *The Impact of Domestic Violence on Your Legal Practice* (1996).

Am. Bar Ass'n, Section on Family Law, Marital and Parental Torts: A Guide to Causes of Action, Arguments, and Damages (1990).

Am. Bar Ass'n, Tort and Ins. Practice Section & Comm'n on Domestic Violence, *Domestic Violence Safety Tips* (1998).

Linden Gross, *Surviving a Stalker: Everything You Need to Know to Keep Yourself Safe* (2000).

Barbara J. Hart & L.K. Hamberger, *Point/Counterpoint: Lethality and Dangerousness Assessments, Violence Update* (1990).

Fredrica L. Lehrman, *Domestic Violence Practice and Procedure* (1996).

Privacy Rights Clearinghouse, *Fact Sheet No. 14, Are You Being Stalked? Tips for Protection* (1994).

Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the Violence Against Women Survey* (1998).