

# **INTIMATE PARTNER SEXUAL ABUSE: ADJUDICATING THIS HIDDEN DIMENSION OF DOMESTIC VIOLENCE CASES**

## ***Civil Family: Case Study***

**Lisa Hanover v. Philip Hanover**

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**\*A project of Legal Momentum in cooperation with the National Association of Women Judges**

## **Intimate Partner Sexual Abuse:**

### **CIVIL CASE STUDY**

#### **LISA HANOVER v. PHILLIP HANOVER**

**You are the intake judge in the Protective Orders Part of Family Court. A woman appears before you seeking a temporary order of protection based on the following petition:**

STATE FAMILY COURT  
COUNTY OF SMITH

Lisa Hanover (Petitioner) v. Philip Hanover (Respondent)

TO THE FAMILY COURT:

The undersigned Petitioner respectfully shows that:

1. Petitioner resides at **14 Periwinkle Drive, County of Smith**, and is the **spouse** of Respondent.
2. Respondent resides at **14 Periwinkle Drive, County of Smith**.
3. On or about the **5th day of November, 2007**, at **14 Periwinkle Drive**, the Respondent committed an act or acts which constitute (aggravated harassment in the second degree) (harassment in the first degree)(harassment in the second degree)(menacing in the second degree)(menacing in the third degree) (reckless endangerment) (assault in the second degree) (assault in the third degree) (attempted assault) (stalking in the first degree)(stalking in the second degree)(stalking in the third degree)(stalking in the fourth degree) toward **LISA HANOVER**, who is a **spouse** of said Respondent in that the Respondent:

Arrived home from work at two a.m. intoxicated, and pulled Petitioner from her bed, where she was sleeping. Respondent told her that she needed to come with him now to watch a new movie. Petitioner believed from prior incidents with respondent that the movie would show explicit sex. Petitioner declined to accompany him. He slapped her across the cheek, loosening a tooth and causing bleeding inside the mouth. Respondent then pushed the Petitioner back on to the bed and bit her ear, causing lacerations and pain.

The next morning Petitioner stated to Respondent that she was in pain and that she was tiring of his violent conduct. Respondent replied that if Petitioner tried to tell anyone, he would “tell everyone the filthy things you did to me,” that “no judge would let a whore

like you keep the children” and that the family “would be better off dead than broken.”

4. The following are the names, ages and relationships to the Petitioner and/or Respondent of each and every child in the family household:

- a) Name of child: **Christina**  
Age 6 Relationship to Petitioner and Respondent: **daughter**
- b) Name of child: **Sam**  
Age 3 Relationship to Petitioner and Respondent: **son**

5. The following aggravating circumstances, if any, are present in this case

["Aggravating circumstances" shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against petitioner by the respondent, a history of repeated violations of orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household]:

**Respondent threatened to kill himself, petitioner and their children.**

6. (Upon information and belief) The following criminal, matrimonial or Family Court proceeding(s) involving the respondent (has) (have) been filed [indicate the court, date and status]:

**None.**

7. Indicate whether a previous application has been made to any court or judge for the relief requested herein and, if so, the relief, if any, granted and the date of such relief.

**None.**

8. (Upon information and belief) Respondent is licensed or has a license application pending to carry, possess, repair, sell or otherwise dispose of the following firearms [if known, specify type of firearms, type of license(s), date of issuance of license(s) and expiration date(s), whether license has been suspended or revoked and, if so, the date of such action and, if not currently licensed, whether license application is pending]:

**Respondent is licensed to possess a hunting rifle.**

9. (Upon information and belief) Respondent is in possession of the following licensed and unlicensed firearms [specify number and type of firearms and whether licensed or unlicensed, if known]:

**Respondent has a hunting rifle.**

10.

- a) (Upon information and belief), Respondent has been convicted of the following violent felony offenses [specify conviction charge and year of conviction, if known]:

**None.**

- b) (Upon information and belief), Respondent has previously been found to have willfully failed to obey an order of protection and such willful failure involved (infliction of serious physical injury) (use or threatened use of a deadly weapon or dangerous instrument) (and)(behavior constituting a violent felony offense), as follows [specify finding or conviction and year, if known; delete inapplicable provision(s)]:

**N/A**

- c) (Upon information and belief) The following facts and circumstances create a substantial risk that Respondent may use or threaten to use a firearm unlawfully against Petitioner or members of Petitioner's family or household:

**Respondent stated that the family would be “better off dead than broken.”**

WHEREFORE, Petitioner prays

- a) that the Respondent be adjudged to have committed the family offense(s) alleged;
- b) that the Court enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act;
- c) that the Court enter a temporary order of custody to petitioner;
- d) and for such other and further relief as to the Court seems just and proper.

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Petitioner

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Signature of Attorney, if any

\_\_\_\_\_  
Attorney's Name (Print or Type)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney's Address and Telephone Number

**Q1.**

**Are any of the allegations in the petition indicative of the possibility of intimate partner sexual abuse? If so, please list and explain why.**

**[Choose all that apply]**

- **Pornography**
- **Awakening petitioner to view pornography**
- **Intoxication**
- **Assaulting her in bed**
- **Tearing her clothing**
- **Threatening welfare of family**
- **Denigrating petitioner's sexual morality**
- **Striking petitioner**
- **Biting her ear**

**Q2.**

**Possible temporary directives might include:**

**[Choose all that apply]**

- **Stay-away order in favor of Lisa Hanover**
- **Order directing Philip Hanover to vacate the home**
- **Order directing Child Protective Services to investigate home and remove children if there is domestic violence**
- **Order directing Philip Hanover to turn over hunting rifle to local police precinct**
- **Order setting forth visitation schedule until Philip Hanover has opportunity to file petition**
- **Referral of Lisa Hanover to victim advocacy service**
- **Appointment of law guardian to represent children**

- **Order of temporary child support**
- **Referral to District Attorney**
- **Referral to Police Department**

**Q3.**

**What concerns might there be for the children in this home?**

**[Choose all that apply]**

- **Exposure to pornography**
- **Sexual abuse**
- **Witnessing domestic violence**
- **Parental alienation syndrome**
- **Exposure to substance abuse**
- **Neglect**
- **Emotional abuse**
- **Presence of gun**
- **Risk of lethality**

After a hearing, you find that the respondent has committed extensive intimate partner sexual abuser as part of his ongoing domestic abuse of petitioner.

A probation report describes Mr. Hanover as the product of a severely dysfunctional home, with an absent, alcoholic father and a mother who struggled with bipolar disorder, diagnosed only when Mr. Hanover was in high school. He initially found stability, community, and great comfort in the parish church connected with the parochial school he attended. He served as an acolyte and was active in the youth group; unfortunately, the parish priest whom he revered ultimately molested him, over a period of five years. He exposed Mr. Hanover to increasingly degrading and violent sexual assaults throughout his adolescence. The abuse stopped only after Mr. Hanover was hospitalized following a suicide attempt during his junior year in high school. The only person he has confided in about the abuse, until this time, is his wife. He has struggled with poor self-esteem, depression, suicidal thoughts, and periodic alcoholic binges for many years. He has never sought help for these issues.

You issue a permanent order of protection directing the respondent to stay away from Ms. Hanover and her children. At this time, you deny respondent's application for visitation. As a condition of probation, you direct him to attend the New Attitudes for a New Age ("NA-NA") program for batterers, with the duration and intensity of his attendance to be determined by program staff. He is to report to court every three weeks for a control appearance.

**Q4.**

**What features should NA-NA offer in order to provide meaningful assistance to Mr. Hanover and increase the possibility that he can address the complex issues presented by his history and his offending?**

**What steps could the court take to enhance the intervention programs available within the community?**

## **Intimate Partner Sexual Abuse:**

### **DISCUSSION GUIDE FOR FACULTY**

#### **LISA HANOVER V. PHILIP HANOVER**

Use a flip chart to list participants' responses. Below is the complete list and answers to the "why" question. If participants do not identify all these points, Faculty should add them.

#### **Q1.**

Are any of the allegations in the petition indicative of the possibility of intimate partner sexual abuse? If so, please list and explain why.

[Choose all that apply]

- **Pornography**
  - Is frequently a component of intimate partner sexual abuse. Its use can include forced watching, reenactment, and filming of acts for later (or contemporaneous) publication on the Internet.
- **Awakening petitioner to view pornography**
  - Signals that her participation is not voluntary. Interruption of sleep to meet demands is one way in which an abuser may assert control.
- **Intoxication**
  - Generally increases risk to the victim. More than half of those abusers who killed their intimate partners were alcoholics. [Campbell Study]
- **Assaulting her in bed**
  - Places the assault in an intimate context, in the most common place for sexual relations to occur, and therefore has overtones that suggest a sexual attack.
- **Tearing her clothing**
  - May indicate that he was disrobing her in order to abuse her sexually.
- **Threatening welfare of family**
  - Suggests increased risk to the safety of the petitioner and her children.
- **Denigrating petitioner's sexual morality**
  - Shows that sexual matters are part of the landscape of abuse in the home.
- **Striking petitioner**
  - Shows willingness to engage in physical violence to coerce compliance with his sexual demands.
- **Biting her ear**
  - Suggests that she was restrained in some way that enabled him to exert this sort of intimate attack upon her, and that his body was positioned extremely close to hers in a manner not typical of a physical assault.



**Q2.**

**Possible temporary directives might include:**

**[Choose all that apply]**

- **Stay-away order in favor of Lisa Hanover**
  - Existence of an order of protection requires the police to arrest upon violation of the terms of the order, and the offender may face additional charges of criminal contempt of an order. Under the Federal Violence Against Women Act such orders must be given full faith and credit in all 50 states, provided that procedural standards have been complied with (18 U.S.C. § 2265). An order of protection is an important shield for a domestic violence victim.
- **Order directing Philip Hanover to vacate the home**
  - The explicit threats against Ms. Hanover indicate that her efforts to separate from Mr. Hanover have greatly increased the risk to her and to her children. An order expressly excluding him from the home will help a police officer understand who has the right to be in the home if responding to a call for assistance, as well as send a clear message to Mr. Hanover that he must stay away.
- **Order directing Child Protective Services to investigate home and remove children if there is domestic violence**
  - Such a response can be traumatizing to children and deter mothers from seeking essential help. The better course is to ensure that the court has done everything in its power to ensure that the abuser will not come near or harass the victim and her children, and to ensure that the victim has the support she needs to attain independence and safety.
- **Order directing Philip Hanover to turn over hunting rifle to local police precinct**
  - Directing surrender of firearms is an important, simple step that the court can take to enhance greatly a victim's safety. The court is empowered to order such surrender pursuant to the federal Violence Against Women Act, 18 U.S.C. § 922(g)(8)).
- **Order setting forth visitation schedule until Philip Hanover has opportunity to file petition**
  - The threats made by Mr. Hanover, stating that the family would be "better off dead than broken," indicate an extremely high level of risk to Mrs. Hanover and to the children. Visitation exchanges are a frequent moment for conflict and even familicide. The court should adopt a "tiered" approach and begin with the most conservative rulings permissible until the family's situation has been clarified or stabilized.
- **Referral of Lisa Hanover to victim advocacy service**
  - A Domestic Violence Agency can provide petitioner with or refer her to multiple sources of support, including (depending on the scope of the agency) counseling, safety planning, legal advice, and temporary

confidential shelter if needed.

- **Appointment of law guardian to represent children**
  - While a law guardian who is well-trained in the dynamics of domestic violence and intimate partner sexual assault, and how children respond to its occurrence in the family, can be helpful to the court in understanding the child's needs, a law guardian who is not familiar with these issues may further cloud the issues and provide unhelpful assessments.
- **Order of temporary child support**
  - Economic dependence on the abuser is perhaps the most common reason why a victim may find it very difficult to separate. Ensuring that the victim is able to care for her children while seeking safety enhances the chances that she will succeed.
- **Referral to District Attorney**
  - While Ms. Hanover may want to consider prosecuting her husband for the sexual assault, in most jurisdictions she has the right to elect whether to proceed criminally or civilly. That decision can be a complex one, and may include assessment of risk factors that are not before the court. While it is important for Ms. Hanover to be aware of all of her options, it would be best if she could reach her decisions with the aid of a confidential victim advocate. In the absence of such a resource, the *District Attorney's Office* may be able to provide counseling, advice on legal options, and assistance in understanding the severity of Mr. Hanover's conduct without compelling her to proceed in a manner that she may conclude is contrary to her interests and welfare.
- **Referral to Police Department**
  - The *Police Department* may provide assistance with service of orders of protection, and may have a neighborhood watch program for domestic violence victims that would provide petitioner with enhanced police support. If your local law enforcement agency does not have such programs, the court can encourage adoption of such approaches.

**Q3.**

**What concerns might there be for the children in this home?**

**[Choose all that apply]**

- **Exposure to pornography**
  - Can be detrimental to healthy sexual development in children, and even if the materials in question are lawful, a parent must be admonished to secure these in a place that is inaccessible to any child in the home.
- **Sexual abuse**
  - Sexual abuse of a mother is associated with increased risk of sexual abuse of a child.
- **Witnessing domestic violence**
  - Can affect children adversely, but such harm should not be presumed. In some jurisdictions, overly cautious intervention by child protective

services agencies has led to unnecessary, and traumatic, removal of children from homes where a mother reported domestic violence. The focus should instead be placed on supporting the abused parent in her efforts to free the family from the abusive conduct. Victims of abuse in the home will be reluctant in the extreme to seek help from the judicial system if they know that losing custody of their children may be the end result.

- **Parental alienation syndrome**
  - As a “syndrome” is frequently asserted by a non-custodial parent in an effort to explain a child’s resistance to visitation. As a “syndrome,” it has been completely discredited. It is important that a court hearing competing allegations of this type make every effort to understand the actual dynamic of the family, and what forces may be at play, rather than resort to “expert” opinions.
- **Exposure to substance abuse**
- **Neglect**
  - Is a legal determination. While it is likely that a parent focused on surviving domestic abuse has fewer resources available for children in the home, that is not necessarily the case. A court must be very circumspect in concluding that children are not cared for because there is domestic violence in the home.
- **Emotional abuse**
  - Similarly may or may not be affecting children in the home. These are individual factual determinations that must be assessed by the court hearing the matter.
- **Presence of gun**
- **Risk of lethality**

After a hearing, you find that the respondent has committed extensive intimate partner sexual abuser as part of his ongoing domestic abuse of petitioner.

A probation report describes Mr. Hanover as the product of a severely dysfunctional home, with an absent, alcoholic father and a mother who struggled with bipolar disorder, diagnosed only when Mr. Hanover was in high school. He initially found stability, community, and great comfort in the parish church connected with the parochial school he attended. He served as an acolyte and was active in the youth group; unfortunately, the parish priest whom he revered ultimately molested him, over a period of five years. He exposed Mr. Hanover to increasingly degrading and violent sexual assaults throughout his adolescence. The abuse stopped only after Mr. Hanover was hospitalized following a suicide attempt during his junior year in high school. The only person he has confided in about the abuse, until this time, is his wife. He has struggled with poor self-esteem, depression, suicidal thoughts, and periodic alcoholic binges for many years. He has never sought help for these issues.

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**Q4.**

**What features should NA-NA offer in order to provide meaningful assistance to Mr. Hanover and increase the possibility that he can address the complex issues presented by his history and his offending?**

Courts must take particular care to ensure that a proposed batterer intervention program includes sexual abuse and assault as part of its curriculum, and to supplement the program with judicial monitoring. A model batterer intervention program always presents material on intimate partner sexual assault for all program participants during educational or training portions of its program, then requires participants to recognize and divulge their own past sexually abusive behaviors and take responsibility for them.

In assessing whether a particular batterer intervention program adequately addresses intimate partner sexual assault, courts should be alert to questions such as:

- What kind of training does the staff have specific to sex offenders and intimate partner sexual assault?
- Does the program deal with intimate partner sexual assault even if it is not formally a part the model on which the program is based?
- Does the program conduct any type of sexual behavior assessment?
- Do staff adequately differentiate between "types" of offenders?
- Do staff receive reliable information from the victim about the batterer's sexual behavior?

If, during treatment, staff become aware that the batterer perpetrated sexual abuse not discovered during the domestic abuse forensic assessment, or that the batterer's sex offending was more severe than the initial assessment determined, that information should be channeled back to both the judge and the initial domestic abuse and/or sex offender assessment team. The staff, together with the sex offender assessment team, can then make a joint recommendation to the judge about how the batterer's treatment should be modified, given the new information.

**What steps could the court take to enhance the intervention programs available within the community?**

Judges can do much to encourage those who provide, supervise and issue credentials for offender treatment services to address intimate partner sexual assault:

- Judges in specialized domestic violence courts who regularly convene the stakeholders in these cases to discuss systemic issues in case processing can include the service providers in these meetings, and make clear to all concerned that treatment programs must be up to par on this topic.
- Judges appointed to serve on multidisciplinary domestic violence coalitions charged with improving case management, such as the commissions in Iowa, can encourage a coordinated response to intimate partner sexual assault from the justice system and the community.
- In individual cases, judges can direct the prosecutor or defense counsel to contact the intervention/treatment program proposed for an intimate partner sexual assault offender to determine whether, and specifically how, it addresses this issue. If the court deems the program inadequate, a more adequate program can be sought. When service providers realize that failure to fully address intimate partner sexual assault is affecting their bottom line, they will update their programs.
- In circumstances where the Department of Corrections or Probation has a standing contract with certain service providers, judges can educate the contracting departments about why it is essential that service providers specifically address intimate partner sexual assault. The contracting agencies can encourage — and at the time of contract renewal require — that the programs be brought up to par in this regard.
- Judges can often educate legislators about the need for state-wide standards that require batterer intervention programs to address fully the issue of intimate partner sexual assault. Some states have a Code of Judicial Conduct that authorizes a judge to "engage in activities to improve the law, the legal system, and the administration of justice" by appearing before legislative bodies and testifying at hearings on reform (*See, e.g., IOWA CODE OF JUDICIAL CONDUCT, CANON 4: [PDF](#)*). The ABA Model Code of Judicial Conduct adopted in 2007 similarly allows judges to voluntarily appear at a public hearing or consult with an executive or legislative body "in connection with matters concerning the law, the legal system or the administration of justice." (*MODEL CODE OF JUDICIAL CONDUCT, Canon 3, Rule 3.2, 2007: [PDF](#)*.)
- Most state codes of judicial conduct provide that a judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice. Judges in these states can encourage and participate in continuing judicial and legal education and community education about intimate partner sexual assault, the fact that it is against the law, and how the justice system handles these cases, including their disposition and what programs for batterers and sex offenders should provide in this regard.