

**TYPES OF EVIDENCE TO CONSIDER GATHERING DURING DISCOVERY
BASED UPON THE ISSUE PRESENTED**

By: Laura Martinez

Abuse

- Make sure you have statutes handy as well as other statutory authority (not discovery but you'll need these for easy reference).
- Testimony of witnesses who may have heard or seen abusive behaviors or the result of the abuse (subpoenas).
- Photographs of the victim, torn clothing, scene, property destruction (subpoena/duces tecum of the keeper of the photo).
- Medical records (subpoena duces tecum or request for production of documents).
- Counseling/mental health records if you are waiving the privilege (subpoena duces tecum or request for production of documents).
- 911 tapes (subpoena/duces tecum).
- Expert testimony (subpoena; note that you should not call the advocate who is working with the client as that would waive any protection of those records).

Custody

- Witness testimony that client is a good parent (family member, teachers, friends, day care providers) (subpoenas).
- Witness testimony that opposing party is not a good parent (subpoenas)
- Reports from child care providers/teachers (subpoenas)
- Report cards (subpoenas)
- Documents evidencing your client's involvement in children's school activities (subpoena duces tecum).
- Documents evidencing children's religious training (reports from Sunday School (subpoena duces tecum).
- Photographs of the home where the child has been residing, bedroom, play area, pets (subpoena).
- Child's medical records (subpoena).
- Testimony of child's counselor (subpoena).
- DHS reports (subpoena).
- Verification of substance abuse or other treatment if relevant (subpoena duces tecum or request for production of documents).
- Evidence of abuse as set forth in preceding section.
- Expert testimony of the affects that domestic violence has on children (subpoena and judicial notice of any legislative findings that domestic violence is harmful to children).

Support and Property

- Defendant's financial statements (request for production of documents and interrogatories).
- Defendant's income verification (request for production of documents).
- Documentation of defendant's expenses (request for production of documents and interrogatories).
- Rent/mortgage info (request for production of documents and interrogatories).
- Utilities (request for production of documents and interrogatories).
- Telephone (request for production of documents and interrogatories).
- Medical expenses (request for production of documents and interrogatories).
- Counseling/treatment expenses (request for production of documents and interrogatories).
- Child care expenses (request for production of documents and interrogatories).
- Car payments (request for production of documents and interrogatories).
- Gas or other transportation costs (request for production of documents and interrogatories).
- Insurance payments (car, home, health) (request for production of documents and interrogatories).
- School tuition (request for production of documents and interrogatories).
- Extracurricular activities (request for production of documents and interrogatories).
- Credit card or other loan payments (request for production of documents and interrogatories).
- Expert testimony regarding how domestic violence has diminished your client's capacity to work or obtain education (subpoena).
- Documentation regarding expenses related to abuse (medical bills, counseling, lost employment via subpoena duces tecum).
- Defendant's work records and income tax returns (request for production of documents and interrogatories).
- Assets of retirement and investments (request for production of documents and interrogatories).
- Look for other sources of income- look at canceled checks for the last few years and compare to income (request for production of documents and interrogatories).
- Self-employment records (request for production of documents and interrogatories).
- Records, testimony or other evidence of gifts or loans from family members (request for production of documents and interrogatories, subpoenas).
- Defendant's living expenses (request for production of documents and interrogatories).

4910 Massachusetts Ave NW, Suite 16 Lower Level, Washington, DC 20016. T: 202.274.4457

This training is supported by Grant No. 2011-TA-AX-K002 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings conclusions, and recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Immigration Issues

- Marriage certificate.
- Marriage license.
- Wedding pictures.
- Family event photos.
- Birth certificates for children.
- Love letters.
- Letters to victim's family by spouse.
- Affidavits from person who knew abuser and spouse as married.
- Police, medical and court documents related to relationship.
- Abuser listed as emergency contact.
- Insurance policies with spouse as beneficiary.
- Mail that came to address with both names on it.
- Joint bank account.
- Joint application for loans.
- Deeds/leases indicating joint property.

Discovery Considerations When There is a Criminal Case Pending

- Do you want discovery to proceed in the civil case when there is a criminal case pending?
- What might be the advantages of proceeding with discovery?
- Has counsel in the criminal matter filed an appearance in the civil matter?
- What happens when criminal counsel appears at deposition of your client?
- What do you do if you do not want discovery to proceed in while a criminal matter is pending?
- When your client is the criminal defendant?
- When your client is the complaining witness?
- Preemptive Strikes
- Motions to Stay