

NYC CIVIL COURT COMMUNITY SEMINAR SERIES

Do You Need an Order of Protection?

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MR. JOHN CAIRNS: Good afternoon. My name is John Cairns. That's spelled C-A-I-R-N-S, like the terrier. I'm not a terrier, however. I'm here representing the Honorable Fern Fisher, who is the Deputy Chief Administrative Judge for the New York City Courts, as well as the Director for the Access to Justice for the State of New York. That's why we're representing to you today, to reach out to you and try to give you some information that may be helpful to you. It helps to understand what domestic violence is, first of all. I know that the flyer said an order of protection. The reason you get an order of protection is because there is some type of violence going on in a relationship, and therefore you have to know what domestic violence is, first of all. In New York State there is no one law that addresses domestic violence. The

Family Court Act does. The Criminal Court Act does. The Penal Law does. The Domestic Relations Law does, and the Social Services Law also refers to it. So there's no single law, which makes it difficult to apply all of the laws and rules that govern domestic violence. Again, what is domestic violence? First of all it is a crime against an individual, a human being. It can include physical harm, psychological harm, abuse—emotionally abusive, economic abuse and sexual abuse. In addition to the violence, the batterers can use threats, intimidation. It's all about power. That's what we learn in Family Court in dealing with domestic violence. It's one party exercising power over another, whether it's physical or psychological. Stalking, which may take place from a distance, is also a form of domestic violence. Some terms used in connection

with domestic violence are harassment, stalking, menacing, battering, relationship abuse, intimate partner violence—we'll get to that later on—and elder abuse. The flyer said what is an order of protection? An order of protection is two pieces of paper, not made out of Kevlar, not bulletproof, not knife-proof, not harm-proof. But they represent what the law has prescribed as behavior for a party, and that's the most important part of it, is that you have to proceed through the judicial system in order to obtain that piece of paper that affords you, the victim of violence, some type of protection. As I said, the order directs a behavior towards someone, generally limiting that behavior. A party comes to the court—which court, we'll get to in a second—and the judge hears the case, either with the parties before them or with one of the parties, and that's

called an inquest. You can do that—we'll talk about that also. And the judge will prescribe the behavior that one of the parties has to obey, and then sometimes both parties. It can exclude a party from a home. It can keep them away from their children. It can affect visitation and custody rights. A party may be required to relinquish weapons. Most people think, well, you have a gun in the house, but there are others who collect weapons, and there may be an impact economically from having to relinquish those weapons. And there may be other conditions that the court decides to put into the order that are specific to particular parties. The next question on your flyer said where can I get an order of protection? This can be the most difficult part. In New York State you can get an order of protection in a Family Court or a Criminal Court here in the city. When I started in the court

system a long time ago it was only Family Court where family came to get an order of protection. In Criminal Court it was a crime, and it was brought under a very different plane. But in Family Court—back then that was the only place you could get it. In 1994, because of the increase in violence against partners, the level of violence against partners, they permitted the filing to take place in Criminal Court as well as Family Court. But at that time it was a one-or-the-other decision. I either proceed in Family or I proceed in Criminal. That later was changed to afford concurrent jurisdiction for the parties, meaning that the party can proceed in Family Court, in Criminal Court, or in both courts. Why you would proceed through one or the other we'll get to also. Normally when I have a PowerPoint there's a question that comes up and says where should I file? There's

no answer on my PowerPoint because we cannot answer that for you. That decision is yours most of the time. It may not be all of the time, depending on the level of the violence and the incident that caused you to seek recourse from the court. What is the difference? There are two places you can go, as I said, Family Court or Criminal Court. What is the difference? My background is Family Court. I will speak to you more about that. But in Criminal Court there's a very different approach to how this happens. Generally there's an arrest. Someone calls the police. So and so did this to me. I'm hurt, I'm bleeding, I'm injured. Something is going on terribly bad. The police are called. And a police officer on the street, in dealing with domestic violence, is in a very precarious situation. He or she does not know the relationships between these parties. They

will be hearing information which may be conflicting. They don't know what's true. They're not the judge. They're not hearing the case. So a police officer on the street will generally make the arrest, ask the party where do you want to go, Family Court or Criminal Court? Or if the severity of the abuse is such that the officer says no, I'm taking this to Criminal Court; I want the DA to look at this. There are domestic violence officers in the police precincts who are trained to handle these types of situations and to question what's going on. So if you're brought to Criminal Court, generally there's an arrest and the DA, the Assistant DA, then takes over. It's one of the issues that we had to deal with in Family Court, where people went to—were given the choice of where to file. If you go to Criminal Court it is not your case; it is the District Attorney's case.

The District Attorney will make the decisions on what charges to file, depending on their possibility of success or failure, what took place in the incident itself. At any time after the commencement of that action, that DA can withdraw that action; for us in Family Court leaving many parties frustrated because then they would come back to us and say I need help. That's not to fault Criminal Court. It's just—that's the way the law is there. The purpose of Family Court orders of protection and why we have the order and what we use it for, what you come to court for, is—and in Family Court when you come into court you will be interviewed by a clerk. You may see some advocacy group, Safe Horizons or some other group, who will interview you, find out the issue, the issues, and make a determination as to what information to give you, how to help you through the

court system. In Family Court you do not need an attorney. There are no fees in the Family Court. You can come into the Family Court. You can file your petition, and we have clerks in the Family Court who are trained to sit down, interview the parties, gather information, and file the petition. They must file the petition. Section 216C of the Family Court Act says a clerk cannot prohibit anyone from filing a petition. So if someone is injured or is threatened in any manner, they come to court; the clerk must file the petition. That petition then goes to a judge or a referee in Family Court, and that judge or referee will make the determination as to whether or not it fits all of the proper categories for filing a petition and whether or not it will be under the jurisdiction of the Family Court judge or referee. In Criminal Court the real psychological difference—in Criminal Court

the procedure is brought on to basically punish someone in some manner for an act that they committed against another person. In the partnership relationship—whether it's spouse, former spouse, child in common, intimate partner—there is a crime that has been committed. In New York State when you commit a crime, there is a prescribed punishment for that crime. It may not be jail, although it can be jail and does occur in jail, result in jail time for people. But it may be a restriction on their behavior, as I indicated to you earlier. In Family Court we are—we see our role as affording protection for the party to get the violence to stop. That's the purpose of the order. Many times that's the result. Family Court history, for those who work in Family Court will tell you that many people come to court to file for an order or protection, get a temporary order of

protection on the day of filing. They will see a judge, or the following day they will see a judge. Once they obtain the temporary order of protection and serve it on the other party, many times that's sufficient to modify the behavior, and we don't see about 30 percent of those people come back to court. We hope that's what happened; that they were able to get the protection that they came to court for. But in the event that it doesn't, the case will go on and the party will have to follow the conditions of that order. In Family Court it is a civil proceeding; it is not a criminal proceeding. Criminal Court obviously is a criminal proceeding. The parties that can file—who can file in the court? I think that was the other question, the third question on the flyer, who can file. The obvious parties are husband and wife. That's the one that we probably see the

most. Former husbands and wives, former spouses, people with children in common, members of the same family or household. And in the legal terms they are described as consanguinity, which is blood. If I have my brother, sister, mother, father, and I mentioned elder abuse before. Or affinity, and that is through marriage or some other relationship, and that's a big change in the law. The big change in the law has been in the past few years intimate partner relationships. The legislature passed the law allowing intimate partners to file. Sadly there's no clear definition of who or what an intimate partner is. I'm old enough to think that when I hear the word intimate I'm thinking of a sexual relationship. It does not have to be a sexual relationship. It is how the parties see or perceive that relationship to be. Co-workers is a good example. Many people spend—most people

spend—more time with their co-workers than they do with a spouse or a legitimate partner. Is that intimate? Could be. But those are the decisions and the difficulties that the judges have to face in describing—and I said before a clerk can never ever try to believe that he or she knows what an intimate relationship is. That clerk must file the petition based on the fact that the party is here. It will then go to that judge or referee, and he or she will make the decision as to whether or not this belongs in the court, and it's creating a great deal of difficulty for many of the judges. It is still not clear. In Family Court you proceed by filing a petition. I indicated to you before that you come and you will speak to a clerk. The clerk will go through—the clerk will ask you some information. The very basics certainly are your name and address, but you must

know the date and time of when incidents occurred. The court will ask you that. That's very important for the court to know. So when you come, bring that information with you. Certainly if there's a threat or a perceived threat, you can still come to court. You can still file the petition, and the judge or referee will question you and make a determination as to whether or not that warrants an order of protection. As I mentioned before, in Criminal Court you don't need that consanguinity or affinity relationship, that blood or marriage relationship. The reason I mention that here is because that's very important. I mentioned before who files that petition or who files the action; it's the ADA. The party who's going to be seeking the order of protection is simply a witness in that case, and that's what she or he will be called as, a witness; not the party

pushing the action. Some of the charges that can be filed include disorderly conduct, harassment I and II, aggravated harassment—which elevates things for you—menacing, reckless endangerment, criminal mischief, stalking, attempted assault, sexual misconduct, sexual abuse, and even forcible touching. Where can you file? Here in New York County, Family Court is across the street at 60 Lafayette Street. If you go into the building there you will be directed by a court officer to the fourth floor where you will meet and have the opportunity to speak to perhaps some of the agencies that are there to help, Safe Horizons. The clerks will process your paperwork there and send you in to see the judge or the referee that day or the following morning. Family Court is open Monday through Friday, 9:00 a.m. to 5:00 p.m. And on Tuesdays and Wednesday in New York County, there is a night court

between 5:00 p.m. and 8:00 p.m. I mentioned before that the party will come in, the petition will be filed, and that party will appear before the judge or the referee by him or herself. That's called ex parte. The judge can issue the temporary order based on the allegations of the petition. The party will be given the order. They will be instructed on how to serve the order on the other party, given a return date. Come back to court. Police can serve the paperwork; a New York City Sheriff can serve the paperwork. The party should not, cannot serve the paperwork. That's not something that's permitted. For obvious reasons it would lead to a more dangerous situation. Once the papers are served, you come back for a hearing and the court will make a determination as to whether or not the order should be made permanent. If the order is made permanent it will be in

effect for two years in Family Court, up to five years in Criminal Court. The order will contain whatever provisions, as I mentioned before, the judge or referee deems are necessary. What's very important to understand is aggravated circumstances. I mentioned it before. What's very important is if you violate a Family Court order, you go to Criminal Court; you don't come back to Family Court. So whether you avoided having a criminal charge filed against you in the first place, now you have lost that opportunity. You will now be—you will now have a Criminal Court record. So in addition to being on the domestic violence registry, which was a result of the action being filed in Family Court in the first place, now you will have a Criminal Court record. Violation of the order results in immediate arrest. You are violating an order of the court. That is contempt of

court. You can get away with growing up and not doing what your parents tell you or your siblings tell you. But if you don't do what the court tells you or prescribes, you are now in violation of the judge's order and considered in contempt. If I were a judge or a referee, I know that that would kind of tick me off, and that's how they will deal with you. They will be upset, and they will deal with you harshly enough. There are many other aspects of domestic violence that affect people around town; not just spouses or protection, but if you take immigration status, for instance; very difficult. If you have an undocumented immigrant, who are entitled to file and entitled to the same protections, there becomes another power play there—I mentioned power in the beginning—because now there's the threat of being exposed as being undocumented. With that comes many

other economic as well as other restrictions on the person's behavior. Safety is very important. Where does the victim of domestic violence go? One of the threats of power is the place to live, financial power. If I can't go out on my own because I can't afford it, how am I supposed to avoid this type of abuse? In New York City there are safe-zone housings available to parties that you can apply for and get. Police should be helping the citizen, the victim of the violence, get to some form of safe housing. I believe it's available for 90 days with 70-day extensions in some cases, 75-day extensions, to keep the party and the children, if there are children involved, safe. Lease terminations are also very, very important. If a party is the victim of abuse they may be caught in a situation where there is a lease that the party has signed for, that they want that

separation. Again the law allowed for that lease to be terminated, but it must be stated in the court order of protection that that is what the court is directing. I mentioned, again, some of the housing for domestic violence; the shelters, New York City housing, Section 8 transfer, which is available, and eviction. For the victims of violence, it's important that they know there is some relief there, both in the court and outside the court, to protect them, to protect their children, and to return them to a safe place where they can feel independence.

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