



Beyond Orders of Protection: Continuing Legal Support for Survivors of Domestic Abuse

January 31, 2017

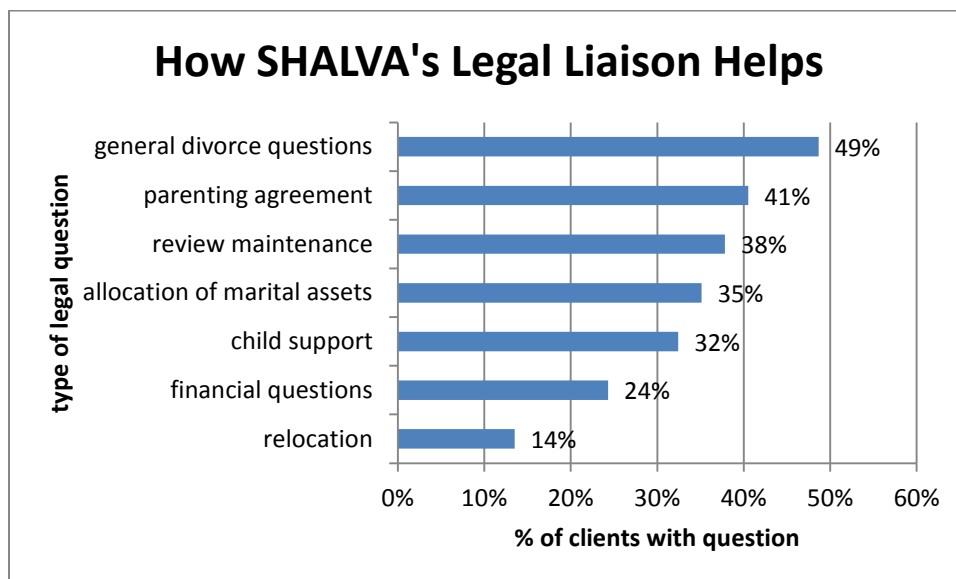


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SHALVA supports Jewish women experiencing and healing from domestic abuse. We seek to better serve the needs of survivors of domestic abuse through innovative initiatives, such as our Legal Liaison program. This program provides current SHALVA clients access to an experienced family law attorney (the “In House Legal Liaison”) who can answer questions and help them prepare for the divorce process. There is also an Outreach and Education Legal Liaison who provides education, information and referrals. The SHALVA Legal Liaison program was utilized by 37 clients from September 1, 2015 to December 31, 2016. We have reviewed the case notes of these clients to determine the most common legal issues presented to the SHALVA Legal Liaison. We also reviewed this information to anticipate the current and future legal needs of SHALVA’s clients. We should note that this report does not analyze the legal issues of all SHALVA clients during the time period, just the clients who utilized the Legal Liaison Program.

Once safety concerns are met, SHALVA clients generally have the same issues that people face in most divorces. The difference for SHALVA clients, as with all survivors of domestic abuse, is that the abusive spouses¹ or former spouses continue to use the legal process to control them, making it virtually impossible for them to achieve a fair result in their litigation. As shown in Chart #1, the most common area of our discussion with clients was divorce in general. Most of our clients were perplexed by the legal process. SHALVA clients going through divorce or post decree litigation stated that the legal process was expensive, unfair, and unnecessarily prolonged.

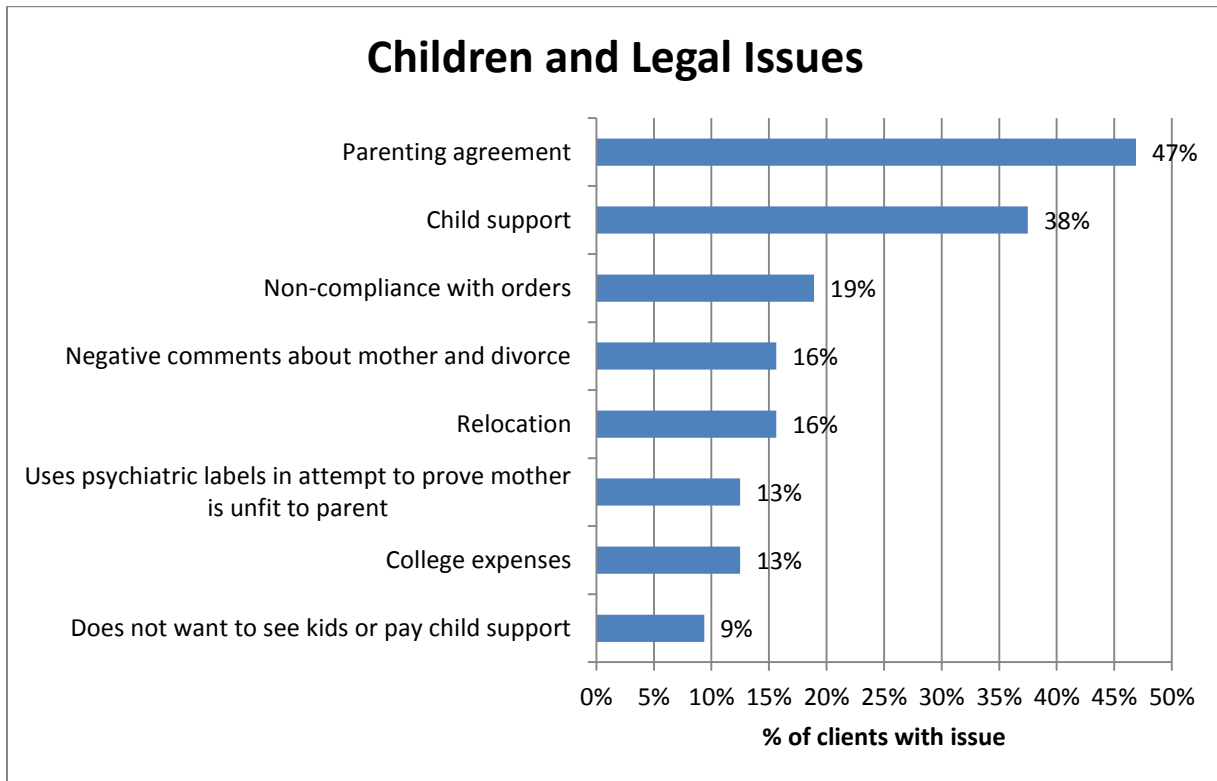


A general trend is the intersection of raising children and finances, as we see that parenting agreements (41%), review of maintenance (38%), allocation of marital assets (35%), and child support (32%) are all addressed by the Legal Liaison in approximately the same number of cases.

¹ 95% of reported domestic abuse victims are women. For the purpose of this report, we refer to the perpetrator of abuse as he, and our clients as she, but that’s not to say that men are not abused.

Child Related Issues

The most frequent questions posed by SHALVA clients who have children and are facing divorce involve the parenting agreement and child support. Parenting agreements and child support comprise a significant amount of time for the Legal Liaison and SHALVA's clients. The chart below shows the types of issues that specifically relate to parenting and the children.



Parenting Agreements

An emerging trend in 2016, when the revised Illinois statute on divorce went into effect, was the courts' tendency to use 50/50 parenting time as a default setting. Under Section 602.7(b) of the amended Illinois Marriage and Dissolution of Marriage Act (the "IMDMA"), "...It is presumed both parents are fit and the court shall not place any restrictions on parenting time...unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health".

Section 602.7(b) also contains further provisions for limiting parenting time when the spouse has abused a spouse in the children's presence:

"...In determining the child's best interests for purposes of allocating parenting time, the court shall consider all relevant factors, including, without limitation, the following...
(14) the occurrence of abuse against the child or other member of the child's household"

In many of the cases we reviewed, where the spouses are abusers, the courts still awarded the father 50% of parenting time and awarded the parties joint decision-making power about the children, despite the fact that evidence was presented that the mother and father could not be effective co-parents. All of our clients experience some form of domestic abuse, but our evaluation did not reveal any cases in which the legal system acknowledged the rights of children to be in a safe, stable environment. The courts have the authority to adjust the 50/50 parenting time, and if the environment created at the mother's home can serve as the children's "home base," the best interest of the children may be served by less parenting time with father. Sadly, many clients felt they had no choice but to accept 50/50 parenting time because they did not want to or could not afford to prolong the legal battle.

Another concern is that the survivor could actually receive less than 50% parenting time, or in the worst case no parenting time at all. Abusers in 13% of the cases reviewed attempted to use mental health conditions or psychiatric labels placed upon the survivor to reduce a survivor's parenting time by claiming she is unfit to parent. Several SHALVA clients have commented that they feel they must prove they are good parents in the face of these accusations, while the abuser is not held to the same standard. In these cases the abuser is using the threat of a decrease in parenting time as a further tool of abuse.

Child Support

The financial issues of parenting are discussed with the Legal Liaison in the context of both child support (38%) and college expenses (13%). Abusive spouses in SHALVA cases often times fight for 50/50 parenting time, not because they desire to nurture their children, but because the new statute allows the payer of child support, who is generally the abuser, to reduce his support obligation when he has his children 50% of the time (reported in 9% of cases).

In reality, the amount of parenting time does not measurably affect the cost of raising the child. Each parent has fixed costs for items such as housing, transportation, utilities, and insurance. These costs remain the same whether the children are present or not. Even though many of our clients earn only a fraction of what their spouses do, they are often required to pay 50% of child care, extracurricular activities, and uncovered medical expenses, either by judicial order or because they could not afford to litigate the issue.

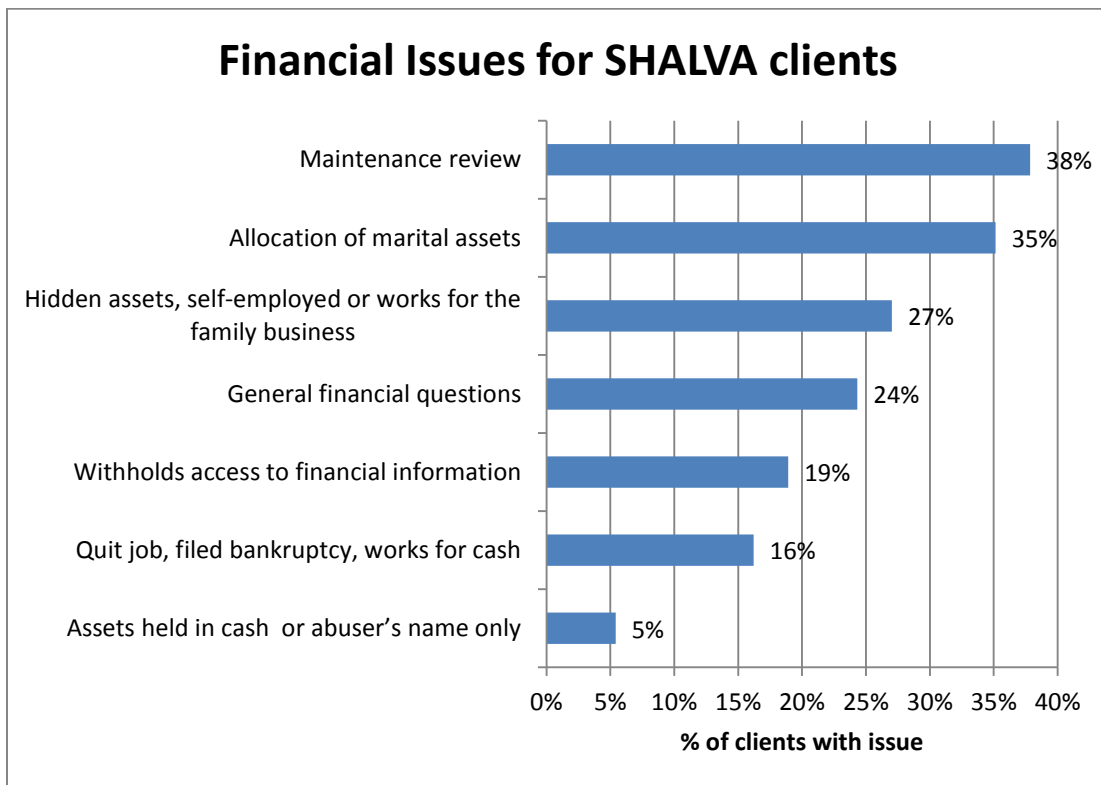
Abuse of Parenting Responsibilities

We found in our review of SHALVA cases that abusive ex-spouses nearly always continued to exercise power over our clients by refusing to cooperate in issues regarding the children post decree. Of the 37 cases analyzed for this report, 32 clients had children and all of the clients reported some issue involving parenting with an abusive spouse. For example, 19% of SHALVA Legal Liaison clients reported noncompliance with court orders, and 16% of clients reported their former spouses made negative comments about them during parenting time. Abusers agreed to parenting responsibilities in court and even acknowledged that the activities were beneficial. Failure to perform parenting responsibilities became a further source of abuse. Specific examples of noncompliance with court orders include abusers refusing to take the children to extra-curricular activities and religious education classes during their parenting

time; conflict over religious holidays; and refusal to take the children to therapy. Clients have even reported their abusive partners refused to allow their children to go to therapy. In one case, the abuser demanded that our client finish all the children’s homework with them before she took them to his house for parenting time. The father alleged that helping with homework disrupted his right to do only entertaining activities with the children during his parenting time.

Financial Concerns

The other major legal issue for SHALVA Legal Liaison clients is the financial component of divorce. Maintenance was a major concern to SHALVA clients (38%) because few of them understood the family finances or had the ability to be financially self-sufficient. Most clients had at least a Bachelor’s Degree, but they had not worked in their field for many years, or they held low-paying part-time jobs. In over 60% of the cases, clients had young children. This presented additional challenges to finding full-time employment with a salary that would cover child care costs and sustain the clients’ financial needs.



The majority of our clients had medium to long-term marriages, so they were entitled to maintenance, and all but one client’s case was covered by the new statutory formula for maintenance, since household earnings were less than \$250,000 annually. Under section 504 of the IMDMA

“The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.”

Using this formula in calculating maintenance, a large disparity between the incomes of the parties should produce a larger award of maintenance. Many of our clients have worked in the home for many years or work part-time, so their incomes are far less than their spouses'. However, the courts have routinely imputed income to our clients, based on an assumption of what the women would earn if she worked full-time. This has occurred even if the parties agreed that she would stay at home for the children or the spouse wanted to keep the wife at home so he could control her. Conversely, the abusers succeeded in making their income appear as small as possible, and the lawyers who represented our clients were not able to impute income, or convince a judge to use an income average, because such efforts would involve protracted litigation.

SHALVA clients who receive maintenance may also be penalized in the calculation of child support, since child support is based on the spouse's net income. Under the law, the court must calculate the spouse's net income by deducting, not just the expected items, such as taxes, social security, and healthcare premiums, but also the amount of maintenance the wife receives. Ironically, we have not seen one case in which the judge imputed income to a spouse who was clearly misrepresenting his earnings or net worth. The same kind of problems occurred when our clients tried to get maintenance extended upon review.

SHALVA clients were also concerned about division of assets and had a difficult time grasping the concept of marital vs. non-marital property (35%). Discussions of the allocation of marital assets with the Legal Liaison involved mainly the family residence and retirement funds. Routinely, our clients wanted to keep the marital residence for themselves, even when they had no minor children. Unfortunately, our clients usually lacked the resources to buy out the abuser's interest, and when the parties had to sell the marital residence many disputes arose. This leads to one of the greatest practical challenges for SHALVA clients, which is housing and the threat of homelessness.

Younger SHALVA clients were not as concerned as older clients were about retirement accounts. Qualified Orders, necessary to divide employment related retirement accounts, presented yet another legal hurdle to our clients because they had to pay additional attorney's fees.

Another prominent legal problem related to finances for our clients was that spouses were able to hide assets (27%), so the clients did not receive the child support, maintenance, or property distributions to which they were legally entitled. Many of our clients came from marriages in which the abuser was the major source of family income. SHALVA clients were, more often than not, uneducated about the financial affairs of their spouses, and their abusers were recalcitrant in disclosing financial information. This phenomenon was especially true when the

abuser owned a business or worked in a family business. Our clients were frustrated because their abusers would not cooperate in the discovery process and were not held accountable by the court. SHALVA clients could not afford to hire a forensic accountant or engage in the kind of protracted litigation necessary to unearth hidden funds. An examination of tax returns for self-employed abusers yielded predictably inaccurate results of earnings. Our analysis showed that abusers would quit working, file bankruptcy or work for cash to decrease income and pay less in maintenance (16%).

Other Legal Issues

The Lawyers

In general, our clients' lack of funds to hire an attorney was the main reason they were unable to achieve financial parity with their abusers in a divorce. When domestic abuse exists in a marriage, the divorce will be high conflict as the abuser will use the legal system to continue a pattern of power and control over their spouse. Often, the abuser was able to afford a high powered family law firm to represent him or the abuser was an attorney and self-represented. This led to a situation where lawyers for the SHALVA client sometimes had to explain that they had no choice but to accept an unfavorable settlement because the lawyers could not continue to work without payment.

Most of our clients had difficulty paying attorney's fees. The lawyers sometimes billed sporadically, so the clients were caught off guard when they received an invoice for a large amount of money at the end of a case.

The Legal Liaison Program addresses these issues by assisting SHALVA clients in finding attorneys who understand the complexities of domestic abuse and who will discuss legal fees at the beginning of the client's representation. Some attorneys take these cases pro bono or for a reduced fee. Nine SHALVA clients received attorney referrals from the Legal Liaison program, and 5 of those are currently represented by those attorneys. Two cases have been completed within this time frame.

It should be noted that not all clients use our referral program. Many come to us already represented by outside counsel, and the In House Legal Liaison often spends time explaining how the representation process works. Our goal is to help SHALVA clients form realistic expectations of the process and be prepared for their meetings with outside counsel.

Mediation

Most SHALVA clients find mediation a vehicle for further abuse and expense. Mediation is mandated by Illinois law if parties appear at their first court date without an agreed upon Allocation of Parenting Responsibilities Judgment. Although domestic abuse is considered one

of those instances where mediation is not appropriate, judges and attorneys still sometimes suggest mediation. While mediation may be cheaper than litigation, expecting mediation to produce a fair agreement allocating parental responsibilities when there is domestic abuse is unrealistic. Only one of our clients found that mediation moved her case forward, but the case moved forward mainly because our client was coerced to accept all of the abuser's proposals.

What are the SHALVA Legal Liaisons doing to improve the justice system for survivors of domestic abuse? We do several things and plan to do more.

The In House Legal Liaison educates our clients about the legal system so they know what to expect.

The In House Legal Liaison talks to the client's outside counsel to explain our client's history of abuse and what that means for the case. There is also assistance provided by the In House Legal Liaison to prepare pro se cases when appropriate.

The In House Legal Liaison is available to answer legal questions for the client throughout her case. We hope that this effort will result in peace of mind and reduced attorney's fees for the client.

The Legal Liaisons create and present Continuing Legal Education programs to the legal community which increase attorneys' understanding of domestic abuse to better assist their clients.

The Outreach Legal Liaison recruits lawyers to represent our clients. These lawyers are sometimes asked to make financial concessions for our clients, or even take a case pro bono.

The Outreach Legal Liaison makes connections within the legal community and with organizations that help abused women.

In 2017, we will

Make more connections within the legal aid community to help our clients who financially qualify for services.

Educate more lawyers, judges, child representatives, evaluators, and mediators about the forms of domestic abuse and its effect on families.

Publicize our mission in legal journals and educate lawyers about practices under the new statute that undermine fair treatment of abused women by the legal system.

Educate abused women before they divorce to prepare financially for the outcome.

Help to defray some legal fees that clients would normally incur.