



Ruth Anne Robbins
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New Jersey Assembly, Judiciary Committee

Dear Chairwoman Quijano and Honorable Members of the Committee,

On behalf of myself and the law students in the Rutgers Law School Legislative and Policy Drafting course I am submitting this written statement in support of AJR 115, which would establish a Domestic Violence and Legal Access Task Force.

Impoverished residents involved in the New Jersey domestic violence restraining order hearing system should have a legal right to state-appointed attorneys as a requirement of equal access to a fair trial.

Hearings are governed by the Prevention of Domestic Violence Act of 1991.¹ Final Restraining Order (FRO) hearings are civil actions conducted in the Family Part of the Superior Court as bench trials and occur seven to ten days after the plaintiff files a complaint.² The complaint performs double duty—at once providing notice to the defendant and acting as a request to the court for the protection of a temporary restraining order (TRO).³ The courts are always open for these matters. Depending on the day and time, a TRO may be issued at the time the application is filed, as determined by a superior court hearing officer, superior court judge, or municipal judge. The abbreviated time between the entry of a TRO and the scheduled hearing for an FRO is designed deliberately for speed, which in turn provides maximum safety to the plaintiff. It is also intended to be equitable to the defendant, as quick summary dispositions theoretically offset the potential disruption caused by the TRO. Entry of a TRO limits the defendant's ability to access the family home, contact family members, access personal property (the defendant will typically have a few minutes, escorted, to collect some personal belongings), and possess firearms—including any service weapons needed for employment purposes, e.g., police officer.⁴

¹ N.J. STAT. ANN. §§ 2C:25-17 to -35 (West 2015). *See also*, Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 MICH. ST. L. REV. 1359 (2015) (from which parts of this statement are adapted).

² § 2C:25-29.

³ § 2C:25-28.

⁴ § 2C:25-28(f)-(j).

But, despite the initial notion that the New Jersey Legislature had created a simple method that allowed matters to be handled by the parties themselves, asking indigent parties to navigate the system without the benefit of a right to state-appointed counsel has become increasingly problematic. The trial procedure of the final restraining order hearing has evolved in its legal and procedural complexity. At the trial to determine whether the TRO restraining order should be converted to a FRO, parties are expected to collect and bring any physical or documentary evidence they may have without the benefit of formal discovery,⁵ to authenticate any of the evidence as necessary, to issue subpoenas for witnesses to appear in advance of the hearing,⁶ and to provide proper notice of any amendments to the complaint or motions. During the hearing itself, the unrepresented parties solicit testimony, cross-examine, object, and argue their cases in any closing statements—all of which is subject to the full body of the New Jersey Rules of Evidence.

The legal tests and standards trial courts must apply are no longer as simple as imagined when the Legislature first enacted the law. The complexity has increased over time since. By way of illustration, approximately 200 published cases discuss issues related to just the entry of restraining orders.⁷ As the New Jersey Supreme Court recognized in 2011, constitutional due process and notice considerations apply in these cases just as in any other.⁸ The cases also require parties to present or refute evidence about a history of domestic violence and to argue that the history is related or not to the predicate acts of violence.⁹ Last, the parties must engage in an inferential analysis of whether the plaintiff “needs” a restraining order.¹⁰ What serves as an excellent and manageable learning challenge for third-year law students in a clinic setting often may be overwhelming to unrepresented parties who have little or no familiarity with legal proceedings.

The risk factors in these matters are very real for both parties. The plaintiff has made a calculated gamble of exposure and possible financial and community pressures by

⁵ N.J. CT. R. 5:5-1 (West 2015).

⁶ N.J. CT. R. 1:9-1 to -2.

⁷ Per a search done for cases that cited the section of the statute governing the entry of a Final Restraining Order. N.J. STAT. ANN. §§ 2C:25-19, 28, 29.

⁸ See *J.D. v. M.D.F.*, 25 A.3d 1045, 1057 (N.J. 2011) (citing *H.E.S. v. J.C.S.*, 815 A.2d 405, 412-13 (N.J. 2003)).

⁹ See *Cesare v. Cesare*, 713 A.2d 390, 395 (N.J. 1998).

¹⁰ See *J.D.*, 25 A.3d at 1062 (citing *Silver v. Silver*, 903 A.2d 446, 456 (N.J. Super. Ct. App. Div. 2006)).

filing the action. The plaintiff bears the burden of proving the case in the action.¹¹ If the plaintiff loses, he or she faces the possibility of returning home to that defendant, after the plaintiff has publicly announced the abuse, and after subjecting the defendant to eviction, expense, and potential stigma. For the plaintiff, the hearing itself poses some high-stakes hazards. By succeeding, she or he will secure some protections to live independently and safely, with the promise of assistance of heightened police intervention. By losing, she or he will be at the most vulnerable point—at the mercy of a defendant who has just succeeded.

The entrance of an FRO leaves a defendant subject to twenty different types of permanent relief—twenty different consequences—that the court may order.¹² Many of those twenty types of consequences will have already happened upon the entry of a TRO—such as the seizure of any weapons and the defendant’s ejection from the home shared with the plaintiff, with only a short time under police escort to collect some personal belongings.¹³ Further, with the entry of an FRO, the Act, in two places, attaches a stigmatizing phrase for the defendant, branding that person as an “attacker.”¹⁴ The courts have also referred to these defendants as “batterers.”¹⁵ By law, the stigmatizing label of “attacker” is made permanent by entry into the Domestic Violence Registry along with the defendant’s fingerprints.¹⁶ Other examples of consequences that attach at the time of the FRO include monetary fines, more permanent custody or support provisions, the possibility of mandatory psychological evaluations, and the possibility of mandatory counseling.¹⁷

By way of illustration, this abbreviated time frame and hearing structure is an excellent learning vehicle for seasoned third-year law students who wish to participate in a trial-practice clinic as part of a capstone experience.¹⁸ The fact that there are so many

¹¹ See N.J. STAT. ANN. § 2C:25-29(a). The evidentiary standard makes the burden of proof on the plaintiff abundantly clear, “the standard for proving the allegations in the complaint shall be by a preponderance of the evidence.” *Id.*

¹² See § 2C:25-29b.(1)-(12), (14)-(18); § 2C:25-29.4; § 2C:25-29.1; § 2C:25-30.

¹³ § 2C:25-28(j), (k). These consequences, broadly speaking, range on limitations on liberty, monetary consequences, loss of right to occupy a residence, possess a weapon, or see one’s children. Direct parallels were drawn in the amicus brief.

¹⁴ §§ 2C:25-21, 23.

¹⁵ See, e.g., *D.N. v. K.M.*, 83 A.3d 825, 829 (N.J. 2014); *Wildoner v. Borough of Ramsey*, 744 A.2d 1146, 1158 (N.J. 2000).

¹⁶ § 2C:25-34.

¹⁷ § 2C:25-29(b).

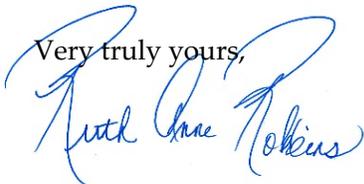
¹⁸ N.J. CT. R. 1:21-3(b) (West 2015).

domestic violence clinics at law schools underscores the idea that legal training is needed for these cases. Students in those clinics understand that they are engaging in what is a weighty time commitment. In one semester—fourteen weeks—the students are expected to learn the area of law and the basics of the dynamics of abuse, to learn courtroom techniques if they do not already know them, to prepare a case for a bench trial in a time-pressured situation, to handle ancillary matters such as custody and support, and ultimately to represent a client during a difficult time in the client’s life. Students find the experience to be intense and challenging but achievable. But they also have two years of law school education when they enter this clinic. And, critically, they have the support and mentoring of a supervising clinical professor—a licensed attorney—with expertise in the area. That professor-attorney is in court with the students at all times. All of this stands in stark contrast with what New Jersey is asking of unrepresented parties who will not have the same legal training or support.

Creating a right to a state appointed attorney in domestic proceedings is a complex legal issue. The residents of New Jersey deserve to have a team of experts to study and advise this legislature about possible pathways. AJR 115 would convene that team.

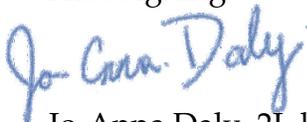
Thank you for considering AJR 115.

Very truly yours,



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Also signing:



Jo-Anna Daly, 2L law student



Bridget Devlin, 3L law student



Sara Gray, 3L law student