

THE EDGE



LSSM
PROVIDING QUALITY LEGAL AID

LSSM Offers to Serve as Outside Counsel for the Unbiased Representation of Victims In the Course of Criminal Prosecutions of Their Abusers

The Victims' Law Firm

Legal Services of Southern Missouri

By J. Kendall Seal and Tara Forrester

As a public interest, not-for-profit law firm, Legal Services of Southern Missouri (LSSM) can provide unbiased legal representation for victims of domestic violence, sexual assault and stalking in the criminal cases against their abusers. The unbiased representation of victims in criminal court is not available through defense counsel, prosecuting attorneys or victim advocates. In an era of budget cuts and larger caseloads, LSSM is willing to provide the criminal courts with a new and more effective response to domestic violence, sexual assault and stalking. We hope that this partnership will enhance victim rights and safety through the criminal prosecution process; by clarifying the attorney-client relationship for all parties and providing a more ethical and individualized system response.

Legal Services throughout Missouri currently enhance victim rights and safety by providing holistic services through safety planning, civil orders of protection and victim-witness representation and support. At LSSM, our Domestic and Sexual Violence Unit handles each case according to the *American Bar Association's Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking*. Victims receive more than representation with a civil order of protection. They receive a safety plan, a lethality assessment and a legal needs assessment, which frequently leads to further civil legal assistance. Often times, legal representation of victims includes representation for purposes of their role as a victim-witness in a state or federal prosecution. These services enhance victim rights, safety and prosecutorial cooperation.

Legal representation in criminal court for victims of domestic violence, sexual assault and stalking clarifies the attorney-client relationship and reinforces the boundaries for communication with the victim. The boundaries for ethical defense counsel communication with the victim appear to be blurred. For example, in *State ex rel. Horn v. Ray*, a writ of prohibition was filed against the Honorable Thomas Ray to block defense counsel from representing both the defendant and his alleged victim in the State's prosecution of the defendant for second-degree domestic assault. This case highlights the cat and mouse game that is frequently played during domestic assault, sexual assault and stalking prosecutions by defendants and defense counsel, which diminishes victims' rights and safety, circumvents offender accountability and undermines system integrity.

LSSM's DSV Unit : Launched in 2004, the Legal Services of Southern Missouri (LSSM) Domestic and Sexual Violence Unit provides services to adult and child victims of abuse, sexual assault, stalking and human trafficking in a 19 county region in southern Missouri. During 2009, the Domestic and Sexual Violence Unit had its highest courtroom advocacy rate.

Our primary focus is safety planning, securing orders of protection and victim-witness representation. Other services may include, but are not limited to, dissolutions of marriage, guardianship and immigration. LSSM may assist victims with other legal matters related to victimization. It is our mission to help families and individuals rebuild their lives and become self-sustaining, contributing citizens in our communities. Visit our website at www.lsosm.org.

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We hear of defense counsel encouraging the use of spousal privilege and recruiting other defense counsel to “represent” victims of domestic violence, sexual assault and stalking. This practice raises the issue of whether or not the motivation for representation of victims is biased. How can a profession, much less the system, be respected when its members behave in this manner? Are legal ethics, moreover victim safety, a mere afterthought of the game?

Ethical allegations may also be made against other court personnel. Certain rights of indigent, special needs, limited English proficiency and other marginalized communities have the potential to be manipulated or overlooked, due to the highly specialized nature of these cases. Threats such as deportation and child endangerment or false reporting prosecution may cross ethical boundaries contrary to the pursuit of justice in the criminal courts. These tactics may keep victims from coming forward or protecting themselves and their children. Threats may serve the counter-intuitive purpose of decreasing victim-witness cooperation in pending and future cases, as well as diminishing respect for the courts and the legal profession in general.

Finally, a more individualized system response is a more ethical approach. An individual system response ultimately enhances the prosecutors’ administration of justice and offender accountability. By inserting legal counsel on behalf of the victim-witness, defense counsel is blocked from encouraging the use of spousal privilege and recruiting other defense counsel to “represent” victims of domestic violence, sexual assault and stalking.

In fact, according to an informal opinion from the Missouri Legal Ethics Counsel, which serves as counsel to the Missouri Supreme Court Advisory Committee, for legal counsel to continue to communicate directly and through third parties with a represented party is a violation of Missouri Supreme Court Rule 4-4.2. The rule states, “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

By partnering with prosecuting attorneys for the unbiased representation of victims, LSSM hopes to enhance victim rights and safety; clarify the attorney-client relationship for concerned parties and provide a more ethical and individualized system response. The Victims’ Law Firm is open for business and ready to work with you. Please call Mr. Seal or Ms. Forrester at (417) 881 1397

or tjforrester@lsosm.org.



About the Authors:

J. KENDALL SEAL is an attorney at Legal Services of Southern Missouri (LSSM) who advocates on behalf of adult and child victims of domestic violence, sexual assault and human trafficking. As the only attorney in the Domestic and Sexual Violence Unit, Kendall works with state and federal law enforcement, prosecutors and victim advocates across a 19 county region. Kendall speaks to community groups, attorneys and media outlets regarding domestic violence, cyberstalking and human trafficking. In 2010, Kendall was appointed to the Missouri Bar Leadership Academy and testified in front of Missouri Attorney General Chris Koster’s Task Force on Domestic Violence. Kendall looks forward to working with Rep. Jeff Grisamore on the working group to address human trafficking in Missouri.



TARA FORRESTER is a paralegal and victim advocate at LSSM. Prior to joining Legal Services, Tara worked at the Greene County Prosecutors Office in the Person's Unit. Tara is the Chairperson of the Violence Free Families Coalition in Greene County. The coalitions goal is to identify community needs and ensure the availability and accessibility of a network of interventions that provide safety, healing, treatment, education and support for victims, both adult and children, of domestic violence. In 2010, Tara presented her work with victims of domestic violence at the 9th Annual International Conference for Person-Centered and Experiential Psychotherapy and Counseling in Rome, Italy. The Domestic and Sexual Violence Unit continues to look for opportunities to increase awareness of domestic and sexual violence, teen dating violence and human trafficking.

More Training Opportunities Coming Soon!

With the research and information provided by MCADSV and grant funding, the Missouri Office of Prosecution Services (MOPS) Domestic and Sexual Violence has created an “Advanced Prosecution Resource Development Program” that will enhance the current and existing MOPS Family Violence Prosecution Resource Program. This will allow for specific advanced trainings and skill development for Missouri’s prosecutors, law enforcement and allied professionals. The Advanced Program will conduct a minimum of 20 regional trainings in 5 different regions of the State of Missouri on the following topics: 1) special strategies in cultural competency; 2) the investigation and prosecution of stalking; 3) the investigation and prosecution of sexual assault; and 4) the investigation and prosecution of dating violence.

Meet the Newest Member of the MOPS Team

As part of the Advanced Program, MOPS has hired Aaron McClintic as a legal assistant to work with the current MOPS Family Violence Resource Prosecutor, currently funded through Missouri General Revenue, in accomplishing these tasks. A native of Northeast Missouri, Aaron earned his law degree in 2009 from the University of Missouri – Columbia. During law school, Aaron earned a Certificate in Alternative Dispute Resolution, and completed internships with the Missouri Department of Natural Resources, MFA, Inc., and the Monroe County Prosecuting Attorney’s Office.

Aaron will also enhance the current Family Violence Resource Program by assisting the Resource Prosecutor in providing additional research, training, and curriculum development. He will also help to oversee the planning, execution and evaluations of the additional trainings, and assist the Family Violence Resource Prosecutor in providing technical assistance and one-on-one training to prosecutors, criminal justice agencies and allied professionals throughout Missouri.



We look forward to your ideas and suggestions on how to best advance our current program. Also, please let us know if you are interested in hosting a regional training in your jurisdiction.

-- Call us at (573) 751 0619 or email
aaron.mcclintic@ago.mo.gov

Save the Date:

May 4, 5, 6, 2011

Missouri Office of Prosecution Services

5th Annual Conference

On

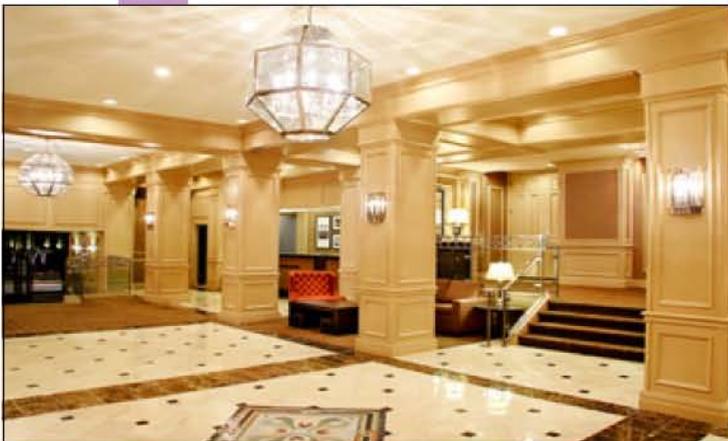
Domestic & Sexual Violence



Working Together
Changing the World

Sheraton Plaza Hotel

Clayton, Missouri



Workshop Topics Include:
(Tentative)

Victim Rapport Techniques, Safety Plans, Lethality & Risk Assessments
What Every One of Us Should Know:

The DNA Case in Court

Pretrial Supervision:
Judicial Solutions in Making the Most of Existing Tools, Rule 33 & Beyond

The Weight of the World on Our Shoulders:
Professional Preservation Techniques in Surviving the Grindstone

Systems Responses to Sexting
Achieving Teen Safety & Accountability

Meeting Mental Health Defenses

Identification & Assessment of DV & Sex Offender Characteristics:
Practical Applications

Achieving Meaningful Accountability
Working with Probation & Parole in Family & Sexual Violence Cases

Order of Protection Violations
Where do we go from here?

Special Victim Investigation & Prosecution Ethics

Lessons Learned: A Serial Rapist Case Analysis
And More!

We anticipate approximately 20 hours POST & CLE accreditation for this Conference.

The Early Registration Rate will be \$100. This amount includes parking each day, lunch on Wednesday and Thursday and breakfast on Thursday and Friday. Early Registration ends April 15, 2011. To register for the conference, go to:
<http://events.constantcontact.com/register/event?llr=va9mnbeab&oeidk=a07e33sblky59832c2f>

Sleeping room rate: \$102.57. This amount includes complimentary Internet access. To make sleeping room reservations, go to:
<http://www.starwoodmeeting.com/StarGroupsWeb/MPView.go?id=1010046545&mp=true&rep=0>

Or call: 1888 337 1395

Absent Witness' Statement to Prosecutor Allowed:

Defendant's Letter and Mother's Conversations with Witness Proved Forfeiture By Wrongdoing

State of Illinois v. Willie Hampton

Appellate Court of Illinois, First District, Sixth Division

December 17, 2010

Defendant appeals the trial court's ruling on a hearing for forfeiture by wrongdoing after a co-Defendant's written statement was used to convict him of sexual assault. The Defendant's Sixth Amendment Right to Confrontation was denied due to the Defendant's part in causing the co-Defendant's absence in testifying. The State entered into evidence a letter that the Defendant wrote to the co-Defendant, while in prison, instructing him to plead the Fifth Amendment against Self-Incrimination. Additionally, the State introduced recorded prison phone conversations between the co-defendant and the Defendant's mother that indicated the Defendant and his mother were working together to instruct the co-defendant to plead the Fifth Amendment.

The co-Defendant testified that it was his decision alone to plead the Fifth Amendment at the Defendant's trial, and denied that the Defendant or his mother encouraged him not to testify. On appeal, the Defendant contends that the State failed to establish he forfeited his right to confront the co-Defendant based on phone conversations between the co-Defendant and his mother that did not rebut the co-Defendant's testimony that: (1) he decided to take the Fifth before speaking to the Defendant's mother; (2) the co-Defendant initiated the calls; (3) Defendant did not know of the calls; and (4) his mother's discussions with the co-Defendant did not constitute wrongdoing.

The appeals court held that to invoke the doctrine of forfeiture by wrongdoing, the State must prove by a **preponderance of the evidence** at a hearing in the trial court that the Defendant intended by his actions to procure the witness's absence. The court found that the letter, and common plan or scheme between the Defendant and his mother, clearly established a preponderance of the evidence that the Defendant engaged in conduct intended to render the co-Defendant unavailable to testify against him at trial. The appeals court rejected the Defendant's contention that the State was required to show that he *actually* caused the co-Defendant's unavailability. The court held that a Defendant's joint effort with a witness to secure the latter's unavailability, regardless of whether the witness already decided on his own not to testify, may be sufficient to support a finding of forfeiture by wrongdoing. **The appeals court went on to hold that the State proved what it needed to: that the Defendant engaged in conduct *intending* to render the co-Defendant unavailable to testify at the Defendant's trial.**

Lessons Learned: *When the witness is later unavailable for any reason, the witness' prior statements may be used against defendant when we can prove that Defendant intentionally contributed to the unavailability. This is great case for motivating us to look for evidence of Defendant's interference with our witnesses.*

What kinds of evidence of Defendant's interference have you seen?

- 1) jail calls & letters
- 2) defendant or victim statements to 3rd party witnesses
- 3) victim or witness statements to advocates, LE, prosecution staff
- 4) defendant or family or associates' stalking/ harassing behavior
- 5) defendant's prior history of threats, harassment or coercion

We would greatly appreciate any other ideas for this kind of evidence collection.

Upcoming MOPS FSV Training Events:

January 19, 2011

Behind the Net Incorporating Technology Into MDT Investigations Webinar

February 10, 2011

The Child Abuse Investigation: A Seasoned Prosecutor's Perspective Webinar

February 16, 2011

The Investigation & Prosecution of Domestic Violence Cases, Poplar Bluff, MO

February 16, 2011

Determining the Dominant Aggressor in Domestic Violence Cases, Poplar Bluff

March 2, 2011

The Investigation & Prosecution of Domestic Violence Cases, Tarkio, MO

March 2, 2011

Determining the Dominant Aggressor in Domestic Violence Cases, Tarkio, MO

March 8, 2011

The Investigation & Prosecution of Domestic Violence Cases, Rolla, MO

March 8, 2011

Determining the Dominant Aggressor in Domestic Violence Cases, Rolla, MO

March 23, 2011

The Investigation of Intimate Partner Sexual Assault Webinar (*tentative*)

March 30, 2011

A Law Enforcement Perspective: The Lethality Assessment Project Webinar

May 4 to 6, 2011

MOPS 5th Annual Conference on Domestic & Sexual Violence, Clayton, MO

Check out our website for additions and updates to this list.

www.w.mops.mo.gov



**Missouri's
Family & Sexual Violence
Prosecution Resource Program**

Contact:
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or aaronmcclintic@ago.mo.gov

**THE OFFICE OF
PROSECUTION
SERVICES**

*Effective Prosecution &
Homicide Prevention*

Visit us on the web
at
www.mops.mo.gov

• Join the Family & Sexual Violence Prosecution Resource
• Yahoo! Group & receive:

• 1) First notice of trainings, including our regional trainings,
• annual conferences and the MOPS webinar series, related to
• family violence & sexual assault investigation & prosecu-
• tion.

• 2) Helpful articles, case summaries, information & other
• documents

• 3) A statewide network of interested prosecutors, law en-
• forcement & other experts at your fingertips

• To request an invitation, send a request, contact information & a
• description of your agency to:

• catherine.vannier@ago.mo.gov

• aaronmcclintic@ago.mo.gov

• You may also go directly to the link at:

Please help us make better resources for you by letting us know what you would like to see in this periodical or on our family violence section of our updated website. We are here to help you be successful & effective in your prosecution efforts.

Section 56.750 states, "It shall be the purpose of the Missouri Office of Prosecution Services to assist the prosecuting attorneys throughout the state in their efforts against criminal activity in the state."

**The MOPS Family & Sexual Violence
Prosecution Resource Program Goals:**

- Enhance victim safety
- Enhance offender accountability
- Develop and enhance coordinated community efforts to stop the violence