

# NJ Judges Ignore Rights

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On the outside chance that anyone subscribing to this list has never before seen or heard of this, below is the infamous April 1995 NJ Law Journal article about training new municipal court judges to issue domestic violence temporary restraining orders. We have never heard of any subsequent changes in municipal court training. I also thought you might be interested in the current status of each of the individuals quoted in the article:

Richard Russell -- Still a divorce lawyer with a sole practice based in Ocean City NJ, where he is also still the presiding judge of municipal court. As recently as January 2009 he was a member of the NJ supreme court family practice committee.

Graham Ross -- Probably now retired or deceased. As recently as Spring 2006 was still assignment judge in Somerset County.

Nancy Kessler -- No information.

Philip Gruccio -- Former assignment judge for Atlantic and Cape May counties. Former appellate judge, based in Atlantic City. Now retired and serving as a private mediator. A true gentleman when I met him in the 1990s for an emergency appeal.

Robert Penza -- Retired as a family court judge, but apparently still a divorce lawyer with Walder, Hayden & Brogan in Roseland NJ. Listed in a NJ Law Journal supplement under "Alternative Dispute Resolution."

Melanie Griffin -- Retired. Former positions: NJ Coalition Against Sexual Assault, harassment compliance director at Rutgers University, lawyer for EEOC Commission, Executive Director of NJ Commission on Sex Discrimination in the Statutes. Obviously completely fair and unbiased.

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## New Jersey Law Journal

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**HEADLINE:** N.J. Judges Told To Ignore Rights In Abuse TROs

**BYLINE:** By Russ Bleemer

## **BODY:**

On Friday, at a training session at the Hughes Justice Complex in Trenton, novice municipal judges were given the "scared straight" version of dealing with requests for temporary restraining orders in domestic violence cases.

The recommendation: Issue the order, or else.

Failing to issue temporary restraining order in domestic violence cases, the judges are told, will turn them into fodder for headlines.

They're also instructed not to worry about the constitution.

The state law carries a strong presumption in favor of granting emergency TROs for alleged domestic violence victims, the new judges were told at the seminar run by the Administrative Office of the Courts. Public sentiment, mostly due to the O.J. Simpson case, runs even stronger.

The judges' training is rife with hyperbole apparently designed to shock the newcomers. It sets down a rigid procedure, one that the trainers say is the judges' only choice under a tough 1991 domestic violence law and its decade-old predecessor.

Since the Legislature has made domestic violence a top priority, municipal court judges are instructed that they can do their part by issuing temporary restraining orders pronto.

"Throw him out on the street," said trainer and municipal court judge Richard Russell at a similar seminar a year ago, 'give him the clothes on his back, and tell him, 'See ya' around.'"

This napalm approach to implementing the domestic violence statute has some state judges talking. No one disputes the presumption in the law of granting a TRO, and there have been no serious court challenges to the statute's ex parte provisions.

The strident teaching, however, doesn't always sit well with some judges, even those who characterize the instruction as deliberate verbal flares directed at a worthy goal.

"[It's] one of the most inflammatory things I have ever heard," says one municipal court judge, who asked not to be identified, about a presentation held last year. "We're supposed to have the courage to make the right decisions, not do what is 'safe.'"

At the same time, even former and current municipal and Superior Court judges who have words of admiration for the candor of trainers Russell, Somerset County Superior Court Judge Graham Ross and Nancy Kessler, chief of juvenile and family services for the AOC. One municipal court judge says that while the statements reflect an incorrect approach, "I wouldn't be real keen to inhibit the trainers at these sessions from exhibiting their honest opinions."

For their part, Russell and Kessler say they are doing what the law says they should do -- protecting victims, which in turn can save lives. Ross didn't return telephone calls about the training. He, Russell and Kessler were scheduled to conduct Friday's program for new judges, a program Kessler says the trio has conducted for judges at least five times since the law was passed.

The law, N.J.S.A. 2C:25-17 et seq., requires judges to be trained on the issue of domestic violence, a requirement that women's rights advocates say is unique. The TRO provisions also were reemphasized three years ago, encouraging the use of such orders after a municipal court judge hears from one complainant.

Under N.J.S.A. 2C:25-28, municipal court judges assigned to cover for their Superior Court counterparts at nights and on weekends and holidays can issue an ex parte TRO, which is subject to a hearing within 10 days in the Superior Court's family part. The "when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought."

The TRO may prohibit the defendant from returning to the scene of the alleged act, strip the defendant of firearms or weapons, and provide "any other appropriate relief." The law also says that the emergency relief "shall be granted for good cause shown."

### **Dating Relationships Included**

The training, however, stresses the Legislature's urgency in passing the law, which last year was amended again to extend possible domestic violence situations to dating relationships. The trainers encourage the judges to focus on the legislative findings, which, in emphasizing rapid law enforcement response, state "that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants."

This, said Kessler at a training session last year, is justification for an approach advocated by Russell: Talk to the complainant, talk to the reporting officer, issue the TRO, and let the family court sort it out later.

On a tape of the April 1994 session obtained by the *Law Journal*, Kessler told the judges that "in that legislative findings section, people are told to interpret this law broadly in order to maximize protection for the victim. So if anybody ever came back at you and said, 'Gee, that's a real reach in terms of probable cause,' you have a legislatively mandated response which is, 'I erred on the side of caution for the victim.'"

Kessler was reacting to a question that arose during Russell's presentation. "The statute says we should apply just cause in issuing the order," an unidentified, new municipal judge said, adding, "You seem to be saying to grant every order."

Russell quickly replied, "Yeah, that's what I seem to be saying."

Russell, a municipal court judge in Ocean City and Woodbine, as well as a partner in Ocean City's Loveland, Garrett, Russell & Young, answered the question at last year's seminar after he had spoken for some time on the middle-of-the-night procedures the new judges would have to follow.

At the outset, Russell said that he was on the bench when the original domestic violence act was enacted in 1982 "and that just blew up all of my learning, all my understanding, all my concept of constitutional protections and I had to acclimate myself to a whole new ball game.

"If I had one message to give you today, it is that your job is not to weigh the parties' rights as you might be inclined to do as having been private practitioners," Russell told the judges. "Your job is not to become concerned about all the constitutional rights of the man that you're violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back and tell him, 'See ya' around.' Your job is to be a wall that is thrown between the two people that are fighting each other and that's how you can rationalize it. Because that's what the statute says. The statute says that there is something called domestic violence and it says that it is an evil in our society."

Not all judges agree with Russell's approach. Philip Gruccio, a former trial and Appellate Division judge, says that even orders based on ex parte requests require hearings, to a certain extent. "It involves a certain amount of judicial discretion," he says.

Robert Penza, who retired last year after serving as a family court judge in Morris County for two years, agrees. "I could just never rubber stamp a complaint," says Penza. "A judge has got to judge."

Gruccio, who says he is familiar with the work of Russell and Ross on the bench and that both are top notch judges, strongly disagrees with the approach. "My view is that you just can't say, 'Forget about the defendant's rights.' You can't say that. It is wrong to say that. It is wrong to train people that constitutional rights aren't important."

Gruccio, a professor at Widener University Law School in Wilmington, Del., and director of its judicial administration program, concludes "I think what has happened is, for emphasis purposes, somebody has lost their way."

### **Catering to Popular Objectives**

Siting judges interviewed for this article readily agree with Gruccio. Says one: "The constitution is being ignored in order to satisfy a particular legislative objective. And if the judiciary should feel that it is obliged to close its eyes to constitutional considerations in order to assist the Legislature in attaining a currently popular objective, it will have prostituted itself and abrogated its responsibility to maintain its independence and its primary responsibility of upholding the constitution."

One municipal court judge who has heard the AOC lecture says, "This is throwing people out of their homes in the middle of the night," adding, "We have an obligation under our oath of office to be fair, not to be safe."

A problem that arises by such wholesale approvals of TROs, judges say, is that word spreads, and litigants can try to use them as a club. Kessler couldn't provide statistics on the number of TROs that are later dismissed by the family court, but she says that the number is "significant." She adds that more than 58,000 TROs and amended TROs were issued by New Jersey courts last year, with about 60 percent of the complaints originating in municipal courts.

While some municipal court judges acknowledge that the domestic violence law can create injustices -- one calls it "probably the most abused piece of legislation that comes to my mind" -- there are counterpoints. Melanie Griffin, executive director of the Commission to Study Sex Discrimination in the Statutes, a legislative commission that drafted much of the 1991 law, says that for every individual who files a false report, "there are 100 women who don't come in at all and stay there and get beaten."

Judges who have seen the training presentation say that if anyone objects, they keep it to themselves. Russell says that sometimes "those with no background express disbelief, until we explain the intent of the legislation."

Moreover, Russell says there is nothing wrong with the teaching approach. Abuse victims, he says, may apply and relinquish TROs repeatedly before they finally do something about breaking away. Once they do so, he says, the Legislature's prevention goal has been met.

Russell continues: "So when you say to me, am I doing something wrong telling these judges they have to ignore the constitutional protections most people have, I don't think so. The Legislature described the problem and how to address it, [and] I am doing my job properly by teaching other judges to follow the legislative mandate."

Russell disputes that the TRO training removes judicial discretion where it is needed. On the tape, Russell and Kessler emphasize that first, the judge must decide whether the domestic violence statute grants jurisdiction over the complainant and the defendant. Russell said last week that he was updating Friday's lecture to include the 1994 expansion of the domestic violence statute to situations in which the complainant was dating the accused or alleges that the accused is a stalker. The judge also has to speak to the party or review the written material and make a decision whether to proceed. "The judge has to be guided by instinct," Russell explains, before he or she can go ahead with the TRO.

Says one municipal court judge who also has conducted training and asked not to be named: "I would say,

"If there is any doubt in your mind about want to do, you should issue the restraining order." The judge adds, "I would never approach the topic by saying, 'Look, these people are stripped of their constitutional rights.'"

### **Making Headlines**

Much of the seminar's rhetoric alludes to actions that keep the judges out of the headlines, which are mentioned in the taped seminar repeatedly. Near the beginning of his presentation, Judge Graham Ross, reacting to Russell, says that dealing with domestic violence "is not something that we can take a shortcut on. Forgetting about reading your name in the paper -- and that certainly is very troubling, I don't want to read my name -- but that's really secondary.

"The bottom line is we're trying to protect the victim," Ross continues. "We don't want the victim hurt. We don't want the victim killed. So yes, you don't want your name in the paper, but you'd feel worse than that if the victim was dead. So yeah, your name will be in the paper . . . if you've done something wrong. And I've said that to my municipal court judges. If you don't follow the law after I told you what to do, I will guarantee that you will be headlines. That's not a threat. That's an absolute promise on my part. This is serious stuff."

The AOC's Kessler says the media references are a training technique, and judges aren't influenced by public opinion polls. The focus, she says, follows the statute's emphasis on protecting victims by dealing with the dynamics of domestic violence and the importance of intervention. "When there is a discussion about headlines," she says, "it tends to be more in recognition of what they already are aware of and concerned about."

One former judge agrees that judges don't work wearing blinders, but says that if worries about bad publicity affect their work, "it defrauds the system." A current municipal court judge who has been through the training on domestic violence says, "We have to stand back from the hysteria and the newspapers and all and do what's right."

But most others disagreed. The "approach isn't bad because it's got a shock value," says retired judge Robert Penza.

A current municipal court judge liked the realism of the media references. "A newspaper headline can be death to a municipal court judge's career," says the long-time jurist, "and the prospect of an unfavorable newspaper headline is a frightening one." The judge added, however, that attention-getting devices must not be confused with legal principles.

And the judge paid the overall approach a backhanded compliment frequently repeated in some form among the former and current judges contacted for this article. Referring to Russell, the judge declared: "What he said is valuable because he is expressing the state of affairs. He should be commended for his candor, although I must say I find his view-point to be anathema."

**GRAPHIC:** Picture, **USING DISCRETION:** Former Appellate Division Judge Philip Gruccio, above, disagrees with training that instructs judges to disregard the constitution when considering emergency restraining orders in domestic violence cases.

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