

Integrating Procedural Justice in Domestic Violence Cases

Research shows that when litigants and defendants perceive the justice system to be fair, they are more likely to comply with court orders and engage in future law-abiding behavior. This fact sheet describes this concept – called “procedural justice” – and offers a few simple strategies for courts and domestic violence stakeholders to enhance procedural justice and improve outcomes for both victims and defendants.

What is Procedural Justice?

Procedural justice refers to the perceived fairness of justice procedures and interpersonal treatment of litigants, victims, and defendants. The critical dimensions of procedural justice include:

Voice: Litigants feel they have an opportunity to be heard.

Respect: Litigants feel they are treated with dignity and respect by judges, attorneys, and court staff.

Trust/neutralty: Litigants perceive that the decision-making process is unbiased and trustworthy.

Understanding: Litigants understand their rights and the case process and what is expected of them in order to comply with court orders.

Helpfulness: Litigants perceive that court actors have a genuine interest in their needs and their personal situation.

Why Does Procedural Justice Matter?

Research has been conducted in a range of settings – such as criminal, family, and small claims courts – and has found that:

The court experience is more influential than the actual case outcome. In contrast to *distributive justice*, which

refers to the favorability of the case outcome (i.e., whether a litigant “won” or “lost” the case), procedural justice can have a greater influence on litigants’ view of their court experience regardless of the actual case outcome.ⁱ

Procedural justice can increase compliance with court orders, improve public trust, and reduce recidivism. Litigants who believe the court process to be fair are more likely to comply with court orders, to perceive the courts as legitimate, and to engage in future law-abiding behavior.ⁱⁱ

All courtroom actors influence perceptions of fairness. The treatment of litigants by all court actors – including security staff, clerks, bench officers, defense attorneys, prosecutors, and the judge – contributes to the overall perception of fairness.

Minnesota: Family Court Fairness Study

The [Minnesota Family Court Fairness Study](#) found that domestic violence litigants who received a full explanation from a judicial officer reported fair treatment and were more likely to comply with court orders, even if the outcome was unfavorable.

[http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_\(2004\).pdf](http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_(2004).pdf)

Why is Integrating Procedural Justice Important in Domestic Violence Cases?

While procedural justice has been tested across courts and case types, it is particularly critical in matters involving domestic violence for the following reasons:

Safety. Given the risk of future violence and lethality for victims of domestic violence, it is crucial that victims see the courts as an access point for protection. If the courts are perceived as legitimate and trustworthy, victims are more likely to access help and request protective orders. Compliance with these protective orders will also increase if litigants perceive the process to be fair.

Trauma. The court experience can be anxiety-provoking for anyone, but victims of domestic violence, in particular, experience high rates of trauma and can be easily triggered by disrespectful court staff or feelings of hopelessness over the litigation process.

Self-Representation. Many domestic violence litigants are self-represented and lack information about the court process, how to present their case, or what information is admissible. It is not uncommon for those without counsel to leave court without understanding how to access resources to ensure their safety – such as obtaining a protective order – or, for litigants, what is expected of them to ensure compliance with a court order.

Accountability. While all courts strive to hold litigants accountable, it is especially important in domestic violence cases to protect victims by encouraging litigants to comply with orders of protection, respect court outcomes, and understand what is expected of them.

How Do We Incorporate Procedural Justice in Domestic Violence Cases?

There are many simple, no-cost reforms that court and community stakeholders can implement to enhance perceptions of fairness throughout the courthouse. The following practical tips incorporate all five dimensions of

procedural justice. This is not an exhaustive list of practices; rather, it is a snapshot of strategies and interactions that infuse procedural justice throughout the case flow process – from the victim’s attempt to access the court, to their final case disposition and exit from the court – to enhance litigant compliance, victim safety, and overall domestic violence case outcomes.

1. *Train stakeholders.* Train all court staff on procedural justice, domestic violence, and cultural responsiveness. Trainings should be attended by all applicable stakeholders including the judge, clerks, court officers, interpreters, defense, prosecution, child welfare and probation to improve the overall case process and courthouse culture.
2. *Increase access.* Domestic violence victims will be more likely to seek help from the justice system if it is accessible and feels safe. Conduct outreach to local domestic violence agencies and service providers to inform the public about both criminal and civil court processes, court locations, procedures, and possible resources. Create tip sheets and brochures in multiple languages for victims on what to do and where to go for help. Provide a safe and separate waiting area for victims and children. Ensure that there is clear and accurate signage throughout the courthouse.

California: Fact Sheets

To help self-represented litigants, the California Courts developed and posted a series of [factsheets](#) for individuals thinking about filing a domestic violence protective order as well as those with an order filed against them. The factsheets use plain language and illustrate the protective order process, including relevant court forms, related family law issues, and interaction with law enforcement and other agencies.

<http://www.courts.ca.gov/selfhelp-domesticviolence.htm>

3. *Improve interactions.* Perceptions of fairness begin the moment domestic violence litigants enter the courthouse. Practice effective communication by introducing yourself, making eye contact, and avoiding multitasking (such as looking down at a cell phone) while speaking to litigants. Keep in mind that some litigants may not be comfortable making eye contact because of cultural differences, feelings of shame, or past trauma, so avoid requesting that a litigant look at you during the interaction. Ensure that all security measures are conducted with respect.
4. *Ensure understanding.* The justice system can be intimidating for anyone. Domestic violence litigants, in particular, are likely to feel anxious and uncertain, and language barriers can exacerbate confusion. Take the time to explain the process and what to expect. Use plain language and minimize the use of legal jargon when creating forms and signs. Offer information desks and targeted legal assistance to help self-represented litigants access resources and fill out forms. Ensure that all brochures and forms are easy-to-read and available in your jurisdiction's major languages, and provide interpretation services for victims with limited English proficiency. If the case is disposed of, judges should explain (in plain language) how the decision was made and what is expected of them going forward.

Oregon: Court Navigator

Multnomah County Circuit Court (OR) employs a Court Navigator to identify self-represented litigants experiencing domestic violence, refer them to additional services and resources, and provide information about the court process and family law forms in order to mitigate confusion about their case.

5. *Give litigants a voice.* When domestic violence litigants are invited to share their perspective, they are more likely to comply with court orders and follow up with assistance that is offered. Ask open-ended questions, whether

directly or through an attorney, to give litigants an opportunity to tell their side of the story and to ensure they understand what is happening. Use questions that invite more than a simple “yes” or “no” response. Also, provide opportunities for litigants to comment on their experiences and provide feedback through comment boxes or surveys. Most importantly, ensure that litigants with limited English proficiency have access to interpretation services.

6. *Demonstrate neutrality.* Many domestic violence litigants may have little faith in the justice system and may perceive the system to be biased or corrupt. When asking questions, explain the reason for needing the information. Avoid showing preferences towards certain parties (such as prosecutors over defense attorneys), and do not make jokes that might be misinterpreted by litigants or perceived as derogatory. Participate in training to enhance your cultural sensitivity and gain awareness of implicit bias.

New York: Family Justice Center

Family Justice Centers across the country facilitate a “one-stop shop” for domestic violence survivors by housing prosecutors, civil legal aid attorneys, law enforcement, advocates, counselors, clergy, and additional service providers. [The Brooklyn Family Justice Center](#) offers programming for children and assistance for adult victims, such as legal services, risk assessment, and safety planning.

7. *Promote helpfulness.* Justice system stakeholders are uniquely positioned to be the first to encounter domestic violence victims. Use this opportunity to offer help by partnering with local victim advocate and social service providers, especially those serving domestic violence victims, to establish linkages for victims in need of services. Ensure that court staff are familiar with available resources and are able to make referrals when appropriate.

For more information or to request training and technical assistance, visit:

<http://www.courtinnovation.org/topic/domestic-violence>

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Resources

1. Why Procedural Justice Matters
<http://www.courtinnovation.org/research/why-procedural-justice-matters-tom-r-tyler-community-justice-2012-0>
2. The Multi-Site Adult Drug Court Evaluation
<http://www.courtinnovation.org/multi-site-adult-drug-court-evaluation>
3. Family Court Fairness Study
[http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_\(2004\).pdf](http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_(2004).pdf)
4. Litigant Perspective in an Integrated Domestic Violence Court: The Case of Yonkers, New York
http://www.courtinnovation.org/sites/default/files/documents/Yonkers_IDV.pdf
5. Procedural Justice: Practical Tips for Courts
http://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf
6. Procedural Fairness in California: Initiatives, Challenges, and Recommendations
http://www.courtinnovation.org/sites/default/files/documents/Procedural_Fairness_CA.pdf

Endnotes

- i. Tyler, T.R. and Huo, Y.J. (2002). *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York, NY: Russell-Sage Foundation.
- ii. Rossman, S.B., Roman, K.K., Zweig, J.M., Rempel, M., and Lindquist, C.H. *The Multi-Site Adult Drug Court Evaluation*. Washington, DC: The Urban Institute; Lee, C.G., Cheesman, F., Rottman, D., Swaner, R., Lambson, S.H., Rempel, M., Curtis, R. (2013). *A Comprehensive Evaluation of the Red Hook Community Justice Center: A Community Court Grows in Brooklyn*. Williamsburg, VA: National Center for State Courts; Tyler and Huo (2002), Op Cit.
- iii. Frazer, M.S. (2006). *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*. New York, NY: Center for Court Innovation; Picard-Fritsche, S. (2011). *Litigant Perspectives in an Integrated Domestic Violence Court: The Case of Yonkers, New York*. New York, NY: Center for Court Innovation.

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