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# The Integrated Domestic Violence Court

Gerald Lebovits



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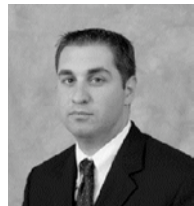
### Part 3 of The Series on Practice in Staten Island

## THE INTEGRATED DOMESTIC VIOLENCE COURT



**By: Hon. Gerald Lebovits and  
Michael V. Gervasi, Esq.**

*Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, and an adjunct professor at St. John's University School of Law.*



*Michael V. Gervasi is an associate at Russo, Scamardella & D'Amato, P.C., practicing primarily in commercial and personal-injury litigation.*

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### I. Domestic Violence Resolution

This article describes the Staten Island Integrated Domestic Violence (IDV) Part with the intent of familiarizing the bar with this innovative court's goals and work.

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**Domenick A. Barone**

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Tel. (718) 351-1600

Fax (718) 980-2098

Email: domenickb@verizon.net

In 1996 New York experimented with a specialized court devoted to domestic-violence issues when it launched the Brooklyn Felony Domestic Violence Court.<sup>1</sup> Following the success of that experience,<sup>2</sup> and recognizing that "the recidivism rate for violent crimes between intimates is two and one-half times that for stranger crimes,"<sup>3</sup> Judith S. Kaye, New York State's then-Chief Judge, announced the creation of the state's Integrated Domestic Violence Court in her 2001 State of the Judiciary Address. The IDV Court, called the IDV Part, is one New York State's "problem-solving courts."

New York's problem-solving courts currently include Domestic Violence Courts, Drug Treatment Courts, Mental Health Courts, Sex Offense Courts, Youthful Offender Domestic Violence Courts, and Community Courts. In contrast to traditional courts, "[p]roblem-solving courts . . . attempt to reach beyond the immediate dispute to the underlying issue, and then to involve community agencies and others in resolving it so that the same people need not return to court time and again with the same problem."<sup>4</sup> IDV courts "serve families by allowing a single judge to hear multiple case types — criminal, family and matrimonial — which relate to one family where the underlying issue is domestic violence."<sup>5</sup> IDV courts significantly reduce the problems and inefficiency inherent in requiring persons involved in domestic violence, whether victims or perpetrators, to make multiple appearances before different courts and judges.



Premised on the "one family—one judge" concept, IDV courts allow a single judge to hear multiple cases involving the same family or household if domestic violence is an underlying issue. IDV courts aim to ensure offender accountability, promote informed judicial decision-making, increase consistency in court orders, decrease the number of court appearances, and provide enhanced social services with victim advocates for victims and families dealing with domestic violence.<sup>6</sup>

As of January 6, 2009, according to the New York State Office of Court Administration, IDV courts have adjudicated "over 77,162 cases and served over 14,843 families" statewide since their inception in 2001.<sup>7</sup> New York's IDV courts are "a model for domestic violence courts throughout the country."<sup>8</sup>

Richmond County's first IDV Part became operational in 2003. Justice Robert J. Gigante, now Surrogate Gigante, presided. Today, Justice Catherine M. DiDomenico, a Family Court judge serving in Supreme Court, presides over Richmond County's IDV Part, which is consolidated with Matrimonial Part 11, one of two Richmond County matrimonial parts. The IDV Part is open on Mondays and Tuesday during normal court hours. The Part also holds hearings on Wednesdays. Tara Martenson, Esq., is the Part's Principal Law Clerk, and Jeanine Martelle is the IDV Resource Coordinator.

## II. The IDV Part's Jurisdiction

Section 41.1 of the Rules of the Chief Judge confers on the Chief Administrator of the Courts the authority to create IDV courts in the state.<sup>9</sup> The Rules of the Chief Administrator authorize the Chief Administrator to establish, by administrative order, an IDV Part in any county's Supreme Court.<sup>10</sup> The IDV Part is a unit of the Supreme Court.<sup>11</sup> The Supreme Court's subject-matter jurisdiction as New York's court of general jurisdiction includes cases in law and equity, ranging from the important and complicated to the simple and insignificant.<sup>12</sup> As units of the Supreme Court, the IDV Parts inherit Supreme Court's unlimited and unqualified jurisdiction and, therefore, possess the jurisdiction necessary to adjudicate the array of criminal, matrimonial, and family matters that come before it. Under this unlimited jurisdiction, the IDV Part is "vested with the broad power to transfer cases to itself."<sup>13</sup>

A case transferred to the IDV Part keeps its unique character. The substantive laws, evidentiary burdens of proof, and procedural rules applicable to family, criminal, and matrimonial actions in the court of origin continue to apply in the IDV Part.

## III. IDV Eligibility

The IDV Parts "are devoted to the hearing and determination, in a single forum, of cases that are simultaneously pending in the courts if one of them is a domestic violence case in a criminal court and the other is a case in Supreme or Family Court."<sup>14</sup> Section 141.1 of the Rules of the Chief Administrator designates IDV-eligible cases as "a domestic violence case commenced in a criminal court and a case commenced in Supreme or Family Court that involves a party or witness in the domestic violence case."<sup>15</sup> The section also designates as IDV-eligible "any case in criminal court, Family Court or Supreme Court where there is simultaneously pending in the county another case in any other of these courts having a common party or in which a disposition may affect the interests of a party to the first case."<sup>16</sup> At its core, the Chief Administrator's Rules identifies "IDV-eligible" cases as cases in which common participants are compelled to participate in different proceedings before different courts in relation to domestic violence.

Each case "retains its own identity, although all of the cases are heard by the same Supreme Court Justice," the IDV judge.<sup>17</sup> The District Attorney's Office represents the People in prosecuting criminal matters before the IDV Part; and defendants can retain private counsel, or the court will assign counsel. Regarding Family Court issues before the IDV Part, the petitioner and respondent may retain private counsel or appear *pro se*. The court, however, may assign any party counsel in the interest of justice and will appoint counsel for the indigent when a party has the

right to counsel. The court will assign a law guardian from The Children's Law Center or the 18B Panel when child or the party is entitled to one. Parties may appear by counsel or *pro se* in matrimonial issues before the Part.

Section 141.3 of the Rules of the Chief Administrator instructs courts to establish procedures "to insure that cases pending before it are identified as IDV-eligible at the earliest possible time."<sup>18</sup> In Richmond County, IDV-eligible cases are identified either by another court's alerting the IDV Part of potentially eligible cases or by the IDV Part's detecting on its own potentially eligible cases as it monitors Criminal Court, Supreme Court, and Family Court filings. The IDV Part cross-references Criminal Court, Supreme Court, and Family Court electronic databases to discover persons involved in varying court cases because of domestic issues.

Once the IDV Part identifies an eligible case, the Richmond County's IDV personnel and the judge evaluate the case to determine whether adjudication in the Part is beneficial. Although it is

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impossible to provide an exhaustive list of the factors the IDV Part uses to accept or reject cases, the Part's primary concern is to accept cases in which IDV consolidation is in the family's best interest. Other factors in its case-by-case analysis include the nature of the domestic-violence allegations; the litigants' relationship; the litigants' respective familial and criminal history; the progression of the various, related cases; whether IDV adjudication might expedite resolution; whether IDV adjudication will reduce inconsistent court orders relating to the litigants; and the availability of extra-judicial resources like counseling and therapy services to advance the Part's goal of remedying the underlying issue to prevent future conflict within the family rather than merely adjudicating the controversy.<sup>19</sup>

The IDV Part's presiding justice has discretion to a transfer a case into the IDV Part or to permit a case to continue in its court of origin.<sup>20</sup> There is no transfer to the IDV part "as of right." At least one court has determined, moreover, that "a motion is not the appropriate procedural vehicle for seeking a transfer of an IDV eligible case to the IDV Part." An attorney who wants the IDV Part to transfer a Criminal Court or Family Court case to the IDV Part may alert the IDV Part that the case is IDV eligible by sending written correspondence to the IDV Part clerk.<sup>22</sup>

## IV. Conclusion

Richmond County's IDV Part, like the many IDV Parts statewide, is specially equipped to resolve the particular issues associated with domestic violence. The Part provides streamlined adjudication before one judge of multiple family matters, including

domestic violence, while simultaneously working to prevent future conflicts within the family.

#### Endnotes

1. See Judith S. Kaye, State of Judiciary 2001, at 5-6, available at [www.nycourts.gov/admin/stateofjudiciary/soj2001.pdf](http://www.nycourts.gov/admin/stateofjudiciary/soj2001.pdf) (2001) (last visited Mar. 11, 2009) (2001 Judiciary Address).
2. See *People v. Allen*, 9 Misc. 3d 235, 237 n.\*, 800 N.Y.S.2d 896, 897 n.1 (Sup. Ct. Bronx County 2005).
3. 2001 Judiciary Address, *supra* note 1, at 5.
4. *Id.* at 4.
5. [www.nycourts.gov/courts/problem\\_solving/idv/home](http://www.nycourts.gov/courts/problem_solving/idv/home) (last visited Mar. 11, 2009).
6. For a discussion of the IDV Part's resources and goals, see Lee H. Elkins & Jane Fosbinder, 1 N.Y. Law of Domestic Violence §§ 1:13 & 1:6.
7. [www.nycourts.gov/courts/problem\\_solving/idv/home](http://www.nycourts.gov/courts/problem_solving/idv/home) (last visited Mar. 11, 2009).
8. Donald E. Shelton, The Current State of Domestic Violence Courts in the United States 9 (2007).
9. See 22 N.Y.C.R.R. 141.1.
10. *Id.* R. 141.2.
11. *People v. Dikshiteyn*, 54 A.D.3d 349, 350, 861 N.Y.S.2d 597, 598 (2d Dep't 2008) (*citing* 22 N.Y.C.R.R. 200.2(b)).
12. N.Y. Const. Art. VI, § 7(b); see *People v. Turza*, 193 Misc. 2d 432, 434-35, 751 N.Y.S.2d 351, 354 (Sup. Ct. Suffolk County 2002) (*quoting* *Nestor v. McDowell*, 81 N.Y.2d 410, 415, 599 N.Y.S.2d 507 (1993) & *Maresca v. Cuomo*, 64 N.Y.2d 242, 252, 485 N.Y.S.2d 724, 728 (1984).
13. *Turza*, 193 Misc. 2d at 435, 751 N.Y.S.2d at 354 (*citing* N.Y. Const. Art. VI, § 19(a)).
14. *I.R. v. J.R.*, 20 Misc. 3d 1103(A), 867 N.Y.S.2d 17, 2008 Slip Op. 51209(U) (Fam. Ct. Orange County 2008); see also 22 N.Y.C.R.R. 141.1.
15. 22 N.Y.C.R.R. 141.1(b).
16. *Id.* R. 141.1(b)(1).
17. *Mirelle F. v. Renol F.*, 4 Misc. 3d 1011(A), 791 N.Y.S.2d 870, 2004 N.Y. Slip Op. 50848(U) (Sup. Ct. Queens County 2004).
18. 22 N.Y.C.R.R. 141.3.
19. See [www.courts.state.ny.us/ip/domesticviolence/goals](http://www.courts.state.ny.us/ip/domesticviolence/goals) (last visited Mar. 11, 2009).
20. 22 N.Y.C.R.R. 141.4(a)(2).
21. *J.E. v. S.E.*, 2007 N.Y. Misc. Lexis 1005, N.Y. L.J., Mar. 19, 2007, at 20, col. 3 (Fam. Ct. Orange County 2007).
22. *Id.* ("There is nothing in the court rules or Planning Document which prevents a litigant or his or her attorney from notifying the court by letter of a possible IDV eligible case.").

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TEL 718.442.7004 FAX 718.442.9086

CONTACT GARY W. JOHNSON, ESQ.

OR LESLIE M. LANGWORTHY, ESQ.

718-442-7004