

**THWART ABUSIVE VISITORS!
BEST PRACTICES FOR
SERVING AND PROTECTING
YOUR CLIENTS AND STAFF**

AGING SERVICES OF MINNESOTA
2012 INSTITUTE
FEBRUARY 10, 2012

Robert F. Rodè, Esq.
Rebecca K. Coffin, Esq.
Voigt, Rodè & Boxeth, LLC
rrode@vrb-law.com
rcoffin@vrb-law.com
(651) 209-6161

WHAT IS HARASSMENT?

- Know when it happens.
- Don't doubt yourself - trust me, you are not overly sensitive.

MINN.STAT. § 609.748 SUBD. 1 (A)

Harassment is:
■ a single incident of physical or sexual assault;
OR
■ repeated incidents of intrusive or unwanted acts, words, or gestures that have substantial adverse effect or are intended to have a substantial adverse effect on the:
- Safety;
OR
- Security;
OR
- Privacy
of another, regardless of the relationship between the actor and the intended target.

MINN.STAT. § 609.748 SUBD. 1 (A)

Harassment is:

To constitute harassment, actions do not have to involve obscenity or vulgarity. Welsh v. Johnson, 508 N.W.2d 212 (Minn.Ct.App. 1993).

The Court may issue a restraining order if it finds that there are reasonable grounds to believe aggressor has engaged in harassment. Witchell v. Witchell, 606 N.W.2d 730 (Minn.Ct.App. 2000); Davidson v. Webb, 535 N.W.2d 822 (Minn.Ct.App. 1995).

MINN.STAT. § 609.748 SUBD. 1 (A)

Harassment is:

- All that is required is more than a single intrusive or unwanted act, word or gesture. Davidson v. Webb, 535 N.W.2d 822 (Minn.Ct.App. 1995)
- The Court will consider the effect of the intrusive or unwanted act, word or gesture on a reasonable individual, even if the intended victim shows resilience to the harasser's ongoing conduct. Kuch v. Mathison (Minn.Ct.App. July 20, 2004) (unpublished.)
- The Court may also consider the likelihood of reoccurrence when determining if an act falls under Minn.Stat. § 609.748. Davidson v. Webb, 535 N.W.2d 822 (Minn.Ct.App. 1995).

THREATENING VS. NON-THREATENING

- Depends on how you interpret the situation.
- Examples:
 - Threats on voicemail while playing funeral music
 - Pop music interpretation
 - Waiting in parking lots or taking pictures
 - Filling voicemail boxes or multiple faxes
 - Name calling and profanity used in a threatening manner.
 - Invisible dogs
 - This is the "Kevorkian Clinic"
 - "I won't describe to you just all the various ways its taking a nasty turn. I think you'll be figuring that out for yourself in the very near future."
 - "Uh, this is going to get real messy, okay."
 - "You and your client will be repaid. Or I should say, you will pay. Good Day."
 - "Watch for me at lunch some day buddy, okay, you watch for me. I'll see you at lunch, okay."
 - Church "shopping"
 - Supermarket stalking

HARASSMENT TOWARDS STAFF

- Language and Verbal Threats
 - Family members or other visitors

- Behavior
 - Physical Actions to Staff, Building, other Residents

- Staff Responses
 - Setting clear expectations

WHY IS IT IMPORTANT TO KNOW THIS?

- Protect your clients, who by their very nature are vulnerable adults.
- Protect your staff.
- Balancing Rights:
 - Right to freedom from maltreatment.
 - Right to appropriate health care.
 - Right to information about services.
 - Right to refuse services.
 - Right to communicate privately with persons.
 - Right to visitors.

WHAT SHOULD YOU DO?

Communicate, communicate, communicate!

Document, document, document!

Negotiate, negotiate, negotiate!

Crisis Management Plan

CRISIS MANAGEMENT PLAN

Crisis Management Team

- Know the Players: you, them, law enforcement and other community resources.

- Create a Crisis Management Plan with your Team.
 - Define Harassment and other intolerable behaviors
 - Set clear expectations for staff to respond
 - Create plan for emergency situations

WHAT IF NOTHING WORKS?

- Behavior Contract?

- Trespass Order?

- Harassment Restraining Order?

BEHAVIOR CONTRACTS

- What are they?
 - Contract between your facility and the "perpetrator" that prohibits the harassing behavior

- When should you use them?
 - Continued harassment
 - Nothing changing

- What do they mean?
 - Implications for facility and perpetrator
 - Legal Implications
 - Sets forth clear expectations
 - "Cooling" effect

HOW DO I OBTAIN A TRESPASS ORDER?

- Gather your facts.
- Not available everywhere and it depends on the city/municipality.
- Call your local law enforcement.

HOW DO I OBTAIN A HARASSMENT RESTRAINING ORDER?

- Gather your facts.
- Be reasonable and accommodating.
- File a petition and supporting affidavit(s).
- Order for relief (temporary?).
- Service issues.
- Hearing Date.
- Prepare your witnesses.
- Mediation?
- Discovery?
- Trial.
- "Permanent" Order.

COURT ISSUES

- Judges are not in favor of granting harassment restraining orders in favor of housing and service providers.
 - Do not step into family relationships or be received as the "villain" keeping family and friends away from loved ones.
- Judges continue to make harassment restraining orders harder to obtain.
- Judges sometimes confuse harassment restraining orders with criminal penalties (e.g., 5th Degree Assault, disorderly conduct, etc...) So be prepared to *respectfully* educate them.

WHAT HAPPENS NOW?

- Protect your clients.
- Protect yourself and your staff.
- Cool-down period.
- Establish ground rules.
- Setting the tone.
- Peace and quiet.
- Legal consequences.

POP QUIZ

- **Case Scenario One:**
Client's Husband repeatedly makes inappropriate comments to female staff and has tried at least twice to kiss staff on the cheek after they delivered Client's medications to her. Staff has informed Husband this is not appropriate and told him to stop, but he won't.
 - Is it Harassment?
 - What should you do?
- **Case Scenario Two:**
Resident's daughter, who is upset Dad is in a nursing home, calls Resident at least 5 times a day. You don't know what is said, but after each call Resident is agitated, won't eat, and sometimes cries. Daughter also calls staff and yells (sometimes swears) at them for keeping Resident.
 - Is it Harassment?
 - What should you do?

**THWART ABUSIVE VISITORS!
BEST PRACTICES FOR
SERVING AND PROTECTING
YOUR CLIENTS AND STAFF**

AGING SERVICES OF MINNESOTA
2012 INSTITUTE
FEBRUARY 10, 2012

Robert F. Rodè, Esq.
Rebecca K. Coffin, Esq.
Voigt, Rodè & Boxeth, LLC
rrode@vrb-law.com
rcoffin@vrb-law.com
(651) 209-6161
