

Confidentiality and Conflict of Interest Policies

Creating a Survivor, Goal-Centered Conflict of Interest Policy

The goal as a domestic violence service provider is to serve **victims/survivors** of domestic violence and to empower them to make choices that will increase their safety and well-being. Domestic violence service providers also must endeavor to **not** offer services to perpetrators of domestic violence that are designed for and intended for survivors of domestic violence. Not only is the mission of domestic violence service providers to serve victims, but funding is provided strictly for only serving domestic violence victims/survivors. So it is essential that programs are not providing services funded and designed for victims/survivors to serve abusers. Unfortunately, distinguishing a perpetrator from a victim is not always an easy thing to do. Some abusers are incredibly manipulative, both of their intimate partner and of the system that exists to keep their abused partner safe. Sometimes an abuser will contact a domestic violence program in order to attempt to get there first, or to claim this agency as his/her own to try to create a conflict of interest for the true victim/survivor of domestic violence. Alternatively, an abuser may be incorrectly identified as the “victim” at a domestic violence scene and referred to services by law enforcement.

NCCADV believes it is important that domestic violence programs develop nuanced policies to meet the goals of serving true survivors of domestic violence while still adhering to the requirements of maintaining confidentiality of anyone served by the program. While operating with a victim-centered policy is more complicated than a “first come, first served” one, we believe that it better serves the empowerment based advocacy and philosophy that we strive to achieve in assisting victims/survivors. Abusers can take advantage of oversimplified policies and utilize them for their own power and control mechanisms; this further abuses survivors and isolates them from the services intended to aid them in escaping abusive partners. Therefore, this guidance is designed to assist programs in thinking more complexly about how to create conflict of interest policies that are survivor-centered and goal-centered, and do not allow abusers to cut off services to survivors simply by “getting there first.” This best practice guidance aims to address what programs should do when an abuser seeks services or has received services prior to the program’s realization that the individual was actually the abuser, and how programs can then serve the true survivor and still ensure confidentiality in compliance with VAWA and FVPSA.

Conflict of Interest Check and Protocol

It is important to keep documentation of every client that receives services from the domestic violence program. Ideally, the program should document the survivor’s identifying information as well as their corresponding abuser’s identifying information. (Note: If the domestic violence service provider houses a Batterer Intervention Program, please refer to NC Council for Women’s guidelines re: keeping separate files in locked cabinets and no comingling of records). When potential participants seek services, a quick conflict of interest check should be conducted to check for conflicts between

current clients, former clients, legal services, or non-legal services provided by the program. This protocol should be followed as soon as is feasible in every intake situation, with the exception of hotline phone calls where further services will not be requested, emergency situations, and providing information available to the general public.

Different Types of Conflicts

Two Potential Participants – The goal of all domestic violence service providers is to serve **survivors**. Therefore when both members of a couple present for services, it is very important that the domestic violence program try to identify which individual is the survivor in order to serve the survivor and not the abuser. Clearly domestic violence services, with the exception of Batterer Intervention Programs (BIPs), are meant for survivors. There are numerous problems that arise when domestic violence service providers inadvertently serve the abuser including, but not limited to:

- a) Re-victimization of the true victim/survivor to see the domestic violence program providing services to the abuser
- b) Concern that advocate's presence/appearance on behalf of abuser will assist/weigh in abuser's favor against the true victim/survivor
- c) Potential safety concerns for true victim/survivor if s/he presents at agency when abuser is there
- d) Potential safety concerns for other victims/survivors being served by domestic violence program or program staff
- e) Challenging conflicts of interest for domestic violence program staff to navigate once realizing that the abuser is not the true victim/survivor, which in turn can create safety issues during the termination process
- f) Discourages true victim/survivor from seeking assistance from the domestic violence service provider and further adds to true victim's/survivor's feelings of hopelessness and isolation

The best practice in such a situation is to use the screening process to try and determine which party is the true survivor. Please review the section on screening for further information. Once the domestic violence service provider has made this determination, you should let the ineligible participant know. Please review the information on termination or refusing services below for further information.

Potential Participant and Current Participant – If a potential client is presenting for services and you realize they are the survivor and the current participant is not, then you have a few options.

As to the current participant— once you have determined that they are truly the abuser— you should terminate services, since your domestic violence survivor services are not for abusers. Please review the information below regarding termination of services.

Regarding serving the true survivor who has presented as a potential participant after the domestic violence service provider has been serving the abuser, there are multiple factors that the program should consider, including:

- a) The program's goal of providing services to true victims/survivors
- b) The safety of the victim/survivor
- c) VAWA/FVPSA confidentiality guidelines that require the domestic violence service provider to keep the information of the abuser who the provider has been serving confidential

The domestic violence program should consider all of these factors when making a case-by-case decision about whether to serve the potential participant. The program may choose to accept the potential participant and ensure confidentiality of both the true survivor and the current abuser-client by ensuring that a different advocate work with the potential participant than the advocate that worked with the current abuser-client. In this way the program ensures that the true survivor will receive victim services and the confidentiality guidelines can be met. Their files should be kept separate and the two advocates who served them should not talk about their cases or share any information.

If the domestic violence program is so small that this is not possible, then the potential participant may have to be referred to another agency or out-of-county domestic violence service provider. In addition, the safety of the true survivor should be considered regarding when services to her/him can begin. Services likely shouldn't begin until after services to the current abuser-client are terminated. In addition, the domestic violence service provider cannot disclose to the true survivor that the program had been serving the abuser, as that would violate VAWA/FVPSA. Alternatively, the domestic violence program may feel that it is safer for the potential participant to go to a community partner or a different domestic violence program. However, please refer to the information below on refusal of services. Even if you are refusing services to a survivor, you cannot disclose that you are serving the abuser by mistake. Regardless of which option you choose, you should terminate services to the participant you have determined to be an abuser.

Termination or Refusal of Services

Initial Refusal of Services

When an individual requests your survivor services and you are able to determine at the outset that the individual does not qualify because the individual is an abuser, you should inform the individual that you are unable to provide them services and refer them to other appropriate community resources. It is NCCADV's recommendation that you not try to offer abusers a false explanation for why you are refusing them services, and that you not confront abusers that you are denying services on the basis of their abusive behavior. Rather, you should state to them as simply and straightforwardly as possible that you are unable to offer them services, but that you can provide them with a list of other resources in the community. NCCADV recommends that you create a document

with a standard list of community resources, including the local batterer intervention program if one is available, and provide the abuser with the entire list of resources. This list might include local mental health agencies, substance abuse agencies, batterer intervention programs, homeless shelters and other programs, and should be given to each person that you must deny services to. This list should *not* include other domestic violence service providers, since in most circumstances you are denying services because you believe the individual is an abuser. If for some reason you are denying services to a true survivor, then you can let the survivor know of other domestic violence service providers separately.

Due to the VAWA and FVPSA confidentiality guidelines, under no circumstance can you disclose to this individual that you are serving or have served at any time their current/former intimate partner. Therefore it is NCCADV's recommendation to not offer an explanation for the denial of services, because to attempt to do so would be difficult to do without violating confidentiality. NCCADV also recommends that the domestic violence service provider clearly document the abuser's attempt to receive services and the reason for the denial in the program's internal files so that if the abuser attempts to file a grievance against the program, that the reason for the denial is clearly documented.

Termination of Ongoing Services

When terminating services is required because you have discovered that a participant is actually an abuser, then similar to the guidelines for refusing services at the outset, you should provide a generic explanation to the abuser-participant. You should inform the abuser that you can no longer provide them services or that your services are no longer appropriate or suited to their needs. Again, due to the VAWA and FVPSA confidentiality guidelines, under no circumstance can you disclose to this individual that you are serving or have served at any time their current/former intimate partner. You should clearly document the reason for the termination in the domestic violence service provider's internal files so that if the abuser attempts to file a grievance against the program, the reason for the termination is clearly documented.

If at any point you feel unsafe providing such a refusal or termination explanation to the abuser, you should make sure someone else is with you when you inform a potential/current participant that your organization cannot provide services. If you are in a room with a door, make sure that you sit closest to the door so that you are closest to the exit should the situation require it. Additionally, where the circumstances allow it, you should inform a supervisor before refusing/terminating services. You should also be prepared to refer the individual to your supervisor or Executive Director for follow-up. However, you should provide the individual with a phone number to follow up rather than take that individual to your supervisor or Executive Director in person while they are upset.

Again, always remember to **document** the exact reason why someone was terminated or refused services. If a complaint is ever lodged against the program, you will need to

be able to show that there is a specific legal reason you refused services that is unrelated to this person being a member of a “protected class” or related to a discriminatory reason.

Screening

In order to prevent abusers from being mistakenly served in victims’ programs, screenings should be standard practice for domestic violence service providers as part of intake procedures. It is critically important, however, that when conducting intake interviews that you are careful not to re-victimize someone. This means that it is very important to utilize active listening and to ask questions in an empathetic manner so as to get enough information to truly understand the dynamics of a potential participant’s relationship. Further, screening could be considered more of a process that takes place through conversations, where an advocate asks open-ended questions and follow-up questions in a very supportive way while listening for the dynamics of domestic violence.

You need to listen for power and control dynamics, but make sure that you’re focusing on motivation and intent, not just tactics. Listen and ask questions about whether the behavior is a pattern. Try and assess whose life is narrowing: in other words, who is having their resources and support system taken away. Along these lines, try to determine who is making decisions in a relationship and what the dynamics are to making decisions. We know isolating a victim is a tactic that abusers use; cutting off a victim’s support system makes them less likely to seek help, so this is an important thing to listen for. Accountability is another aspect to listen for, though this can be tricky. Victims are often more likely to take responsibility or blame themselves for an incident than abusers, who often see themselves as victims. A more obvious indicator may be fear, but because it’s more obvious, it’s important to tread carefully. Abusers trying to manipulate the system know that demonstrating fear is an effective strategy. When listening for these things, you can certainly ask for the context you need to determine how these dynamics are operating. While screening is important, as advocates we still begin with a “start by believing” approach and need to ensure that our questions intended to screen out abusers do not re-victimize true survivors