

## **NAVIGATING THE COMPLEX WATERS OF RESTRAINING ORDERS, CUSTODY, AND VISITATION**

The purpose of the Domestic Violence Prevention Act (DVPA) embodied in Family Code §§ 6200-et seq.(FC) is to prevent domestic violence and provide for separation for a period sufficient to enable parties to seek a resolution of the causes of the violence (Fam. Code§6200). The court need not believe there is possibility of future abuse to grant the restraining order (RO).

In order to obtain a Temporary Restraining Order (TRO), the allegations have to establish a “reasonable proof of past act(s) of abuse (FC§6300). In order to prove the case at the hearing, the burden of proof is “preponderance of evidence” (Evidence Code §115).

The requirements of establishing abuse are: 1) intentionally or recklessly causing/attempting to cause great bodily injury; 2) sexual assault; 3) placing the person in reasonable apprehension of imminent serious bodily injury to that person or another, or 4) behavior that has been or could be enjoined: molest, attack, strike, stalk, threaten, sexually assault, batter, credibly impersonate another, falsely personate, harass, telephone (including but not limited to annoying telephone calls), destroy personal property, contact directly/indirectly by mail or otherwise, come within specified distance and disturb the peace.

The required relationship is one of: spouse or former spouse, cohabitant/former cohabitant, current or former dating/ engagement partner, party with whom person has child(ren); child of party or child subject to paternity action, or consanguinity or affinity to the 2<sup>nd</sup> degree.

Mutual restraining orders are usually not allowed unless 1) both parties personally appear, 2) both present written evidence of abuse (respondent must file DVPA request, and 3) court makes detailed findings of fact that both acted primarily as aggressors and neither acted primarily in self- defense.

An ex parte TRO can include: personal conduct orders, no contact/stay away, pets: care, stay away, personal conduct toward pet; residence exclusion; other restraints necessary to effectuate court's orders; prohibit getting address; firearms/ammunition disposal; temporary custody and visitation; temporary property use/possession, debt payment; prohibit insurance changes; parentage by stipulation.

After the hearing on the restraining order, the court can in and Order After Hearing (OAH) impose all ex parte orders; residence exclusion; child support; spousal support; restitution to petitioner for loss of earnings and out of pocket costs, including medical care and temporary housing; to respondent for out of pocket costs as result of ex- parte (one party appears) order found to be insufficient at hearing; by respondent to agency for cost of services to petitioner; batterers' intervention program; attorney's fees and costs.

The court must conduct a hearing within 21 days or 25 days with good cause. The ex parte orders are re-issued until the date of the hearing. Child support obligations survive even if there is a stipulation to drop the TRO.

The OAH can be no more than for 5 years for the protective orders, firearms, custody/support/visitation orders survive expiration of the RO. If the order is silent, then the period is three years.

An ex-parte TRO must be served on personally on respondent at least 5 days before the hearing. The response must be served on petitioner at least two days before the hearing. Request for renewal of a restraining order requires personal service five days prior to the hearing.

Respondent can obtain one continuance upon request for reasonable time to respond. Petitioner is usually not entitled to a continuance unless response was served fewer than two days prior to the hearing.

Any requests for termination or modification of the existing restraining orders prior to the expiration date, the protected party must be served at least 16 days prior to the hearing. Parties may waive notice.

Restraining orders can last five years or permanently as long as the request is filed 3 months prior the expiration of order, without showing of further abuse since issuance of the original order.