



Dealing with Domestic Violence during a Divorce

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practice tips

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BEFORE THE INK DRIES on a retainer agreement, a family law practitioner should advise clients on what to do if they become embroiled in domestic violence with the opposing party. The attorney should also have a strategic plan for advising clients on what to do should domestic violence occur.

First, the attorney may advise a new client that if violence erupts, he or she should remove himself or herself from the location and call the police immediately, as the failure to make a timely report can lead to complications in prosecuting a claim. Clients should also be counseled against engaging in activities that may be deemed aggressive, such as keeping the children in violation of an agreement or forcibly taking them from the other parent, even if the other parent is in violation of a court's orders. Clients should also be advised against placing themselves in vulnerable situations. In a contentious case, it is usually sound advice to instruct the client to refrain from meeting with the other party where there are no witnesses.

It is also important to educate clients on the potential consequences of domestic violence that go beyond the emotional and physical injuries to the victim and children. For the perpetrator, a conviction entails the possibility of incarceration, fines, court-ordered counseling or classes; loss of employment and future employment opportunities; loss of liberty associated with a restraining order; loss of immigration status; and loss of child custody rights.¹ The consequences do not end there. Courts also consider domestic violence when deciding a support award and division of joint property. A victim of domestic violence may choose to sue the perpetrator in civil court and may receive damages greater than half of the community estate.²

If violence occurs, family law attorneys should clear their calendars and meet with the client as soon as practicable afterward to help make critical decisions, such as whether or to retain a criminal defense attorney or obtain a domestic violence restraining order (DVRO). The first step in getting a DVRO is to make a request for a temporary restraining order (TRO), which requires the filing of an ex parte motion with or without notice.³ The moving papers for a DVRO include the following Judicial Council forms: Request for Domestic Violence Restraining Order (DV-100), Notice of Court Hearing (DV-109), and Temporary Restraining Order (DV-110). In Los Angeles County, an additional form, Civil Case Cover Sheet Addendum and Statement of Location (LACIV-109) needs to be completed unless the parties already have an open unrelated matter in family court, such as a pending dissolution of marriage.

The forms are largely self-explanatory, but attention should be given to the client's needs. For example, if the case involves child custody, an additional form (DV-108) will have to be completed. Likewise, a separate form (DV-150) is required if the client requests the opposing party have only monitored visitation with the children. In all cases

in which the client is seeking financial relief, such as child support, spousal support, and attorney's fees, an Income and Expense Declaration (FL-150) needs to be filed with the moving papers. It is best to consult with the client while completing the forms.

Attorneys should take care in writing the client victim's declaration. The judicial officer who reads the request for a TRO makes his or her decision based on the evidence in the declaration. To support the declaration, the attorney should attach exhibits as corroborating evidence, such as photographs of the victim's injuries and text and e-mail messages. The client's declaration should highlight the most

The court does not need a DVRO in order to allow the victim to record phone calls with the restrained party and to make the restrained party participate in domestic violence classes.

recent incidents first and then chronicle any past domestic violence.

The filing procedure is straightforward. Rather than filing the request with the filing window, the moving papers are handed directly to the clerk in the department in which the case will be heard. The judge will usually review the documents in chambers and either grant or deny the request without hearing argument. If the request is granted, the court will direct the clerk to schedule an evidentiary hearing for a permanent restraining order within approximately three weeks. After the TRO is issued, the sheriff enters it into the California Law Enforcement Telecommunications System (CLETS). Once this happens, law enforcement will have 24-hour access to the terms of the order. Nevertheless, the client should file a copy of the TRO with the local police (along with the proof of service) and the children's school. Clients should also keep a copy on their person at all times, as it is possible there will be a mistake made in entering the TRO into CLETS.

On occasion a client will obtain a TRO on his or her own and then ask for help with the evidentiary hearing. In these cases, the client's moving papers should be scrutinized, as they are likely to contain errors. Discovering the client's mistakes in advance of the hearing gives counsel time to correct them. If the client failed to request attorney's fees, for example, counsel will need to file a separate motion. Furthermore, in the weeks before the hearing, it is imperative to gather witnesses and prepare the client's testimony. Evidence that corroborates the client's version of the event is most valuable, as in most cases the court will not issue the restraining order after hearing only

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