

The background features abstract, overlapping green geometric shapes in various shades, creating a modern and professional look. The shapes are primarily triangles and polygons, some with thin white outlines, set against a white background.

Domestic Violence Restraining Orders in CA Courts

Complex Legal Issues

November 20, 2019

Agenda

- ▶ Introductions: Amy (CWLC) and Sarah (LACLJ)
- ▶ Domestic Violence in California
- ▶ Domestic Violence Restraining Orders - Overview
- ▶ Procedure for Requesting a Domestic Violence Restraining Order
- ▶ Conducting Discovery
- ▶ Introducing Evidence
- ▶ Implicit Bias
- ▶ Preserving Appeals

Domestic Violence in California

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What is Domestic Violence?

- ▶ Abuse between spouses, co-habitants, dating partners, co-parents
 - ▶ Current or former
- ▶ **What is abuse?**
 - ▶ Bodily injury, sexual assault, imminent apprehension of injury to self or others
 - ▶ Also **harassing**, attacking, stalking and threatening
 - ▶ And disturbing someone's peace, which can include a broad range of behaviors including via social media
- ▶ Need not show that abuse resulted in **actual physical injury**

Who is affected by domestic violence?

- ▶ 1 in 3 women and 1 in 4 men nationally
 - ▶ 4,939,000 women and 4290 men who have experienced domestic violence
- ▶ Females between 18-34 experience the highest rates of intimate partner violence
 - ▶ 8.3% of teens have experienced physical dating violence
- ▶ Domestic violence calls are the **largest** category of calls received by police departments
- ▶ Higher rates of domestic violence among partners with financial strain
- ▶ Children who witness domestic violence are caught in cycle of abuse

What does domestic violence lead to?

- ▶ Half of all murders of women are connected to domestic violence
 - ▶ One third of all female homicide victims are 18-29 years old
- ▶ From 2003-2008, 142 women were murdered in their workplace by former or current partners
 - ▶ 22% of workplace homicides
- ▶ Higher rates of depression
- ▶ Complications with *pregnancy and birth*
- ▶ **Monetary** effects on victims and community

DOMESTIC VIOLENCE RESTRAINING ORDERS - Statistics

- ▶ Makes victims *feel safer*
 - ▶ 77% of women felt safer after
- ▶ Actually keeps victims safer
 - ▶ Most DVROs are not violated
- ▶ **Penalties** for violation
 - ▶ Can include up to 3 years in state prison
 - ▶ Also fines, restitution, counseling, etc.

Who seeks DVROs?

▶ Women

- ▶ **72%** of people seeking DVROs are women

▶ Pro Per

- ▶ DV survivors are often **unrepresented** by attorneys at the trial level
- ▶ **70-80%** of family court litigants are unrepresented

▶ Monolingual Spanish speakers

- ▶ Often lack access to representation
- ▶ **Financial** disparities



DVROs

▶ Duration

- ▶ Emergency : 3-7 days (from peace officer)
- ▶ Temporary (Ex Parte): no more than 21 days, or with good cause, 25 days, not renewable w/out hearing
- ▶ Post-hearing protective orders: up to 5 years, renewable

▶ Violation

- ▶ Jail: up to 1 year
- ▶ Fine: up to \$1,000

▶ Court may issue DVRO in **other proceedings**

- ▶ Parentage, dissolution of marriage, legal separation
- ▶ and in juvenile court actions

Procedure for Requesting A Restraining Order

Steps to Request a Restraining Order

▶ Forms:

- ▶ Request (DV-100), TRO (DV-110), Confidentiality (CLETS-001), and Notice (DV-109)
- ▶ If you have children: you can request custody visitation orders
 - ▶ Forms DV-105 or DV-140
- ▶ If married or domestic partner: you can request spousal/partner support
 - ▶ Forms FL-150 or FL-155

▶ Service

- ▶ Generally 5 days before the hearing
- ▶ Personal service required

▶ Hearing

- ▶ Hearing will be scheduled once forms (5 copies) are made and distributed

CONDUCTING DISCOVERY

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General Discovery Considerations

▶ Is Discovery Allowed?

- ▶ Yes: the Code of Civil Procedure (which authorizes discovery) governs because the Family Code doesn't have specific discovery rules.

- ▶ No:

- ▶ DVRO is a streamlined process intended to produce quick result

- ▶ Discovery is not allowed in the Civil Harassment Restraining Order context

▶ Is Discovery being used as a weapon against the Victim?

- ▶ Consider a protective order or a Motion to Quash

▶ Balancing discovery with swift resolution for the Victim.

Using Discovery to Strengthen Your Case

- ▶ Collecting free or low cost supporting documents
 - ▶ Free police report for victim must be provided w/in 5 days (FC 6228)
 - ▶ Medical records are often free or low cost
 - ▶ FOIA records and 911 calls are often low cost options
 - ▶ Social media, text messages and call logs (carrier dependent)
- ▶ Witness Subpoenas are your friend
 - ▶ Most witness subpoenas don't need to be served too far in advance
 - ▶ Neutral percipient witnesses: Police officers, medical professionals, social workers
 - ▶ Ask if the government official will waive fees to testify
- ▶ Consider formal discovery requests: Interrogatories, Discovery Requests, Requests for Admission, depositions.
 - ▶ Balance with likely delay / Retaliatory Requests

INTRODUCING EVIDENCE

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What is Evidence?

- ▶ Evidence is broadly defined
 - ▶ “Testimony, writings, material objects, or other things presented to the sense that are offered to prove the existence or non-existence of a fact.” EC 140
- ▶ Evidence includes:
 - ▶ Testimony
 - ▶ Testimony alone can be the basis of a DVRO (FC 6300)
 - ▶ But best practice to collect and present other supporting evidence
 - ▶ Document (text message, police report, medical record)
 - ▶ Tangible thing (e.g. photo, video, broken object)
- ▶ Balancing discovery with swift resolution for the Victim.

Introducing & Admitting Evidence

- ▶ Don't hide the ball - share potential exhibits ASAP or risk a continuance
- ▶ Introducing Evidence
 - ▶ Lay the foundation:
 - ▶ Identify and label the document (e.g. Petitioner's Exhibit 1)
 - ▶ Ask questions to establish what the document is and that the Court can rely on it.
- ▶ Admitting Evidence:
 - ▶ Don't forget to move the exhibit into evidence

Special Evidence Rules

- ▶ Introducing Videos or Recordings
 - ▶ Is there two party consent?
 - ▶ Voicemail vs. phone call
 - ▶ Video recording vs. audio recording
 - ▶ Does the recording fall in one of the exceptions around two party consent?
 - ▶ Record to collect evidence of DV for court. PC 633.6
 - ▶ Related to the commission of certain serious crimes. PC 633.5
 - ▶ Provide a transcription (CRC 2.1040)
- ▶ Impeachment Evidence:
 - ▶ Good way to introduce evidence that is otherwise inadmissible. EC 780(i)
 - ▶ Don't need to provide in advance
- ▶ Government and Business Records Exception to Hearsay
 - ▶ Government Records Exception - EC 1280 - to introduce police reports
 - ▶ Business Records Exception - EC 1271 - with custodian affidavit

IMPLICIT BIAS

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The Problem of Implicit Bias

- ▶ Complex relationships involved in domestic violence cases
- ▶ Judges often approach these cases with unfair **assumptions**
 - ▶ Conscious and unconscious
 - ▶ “widespread gender bias in the courts”
- ▶ Due Process issues: litigants must have a meaningful opportunity to be heard
 - ▶ California Code of Judicial Ethics canon 3B(8)
- ▶ Safeguards in place are not enough
 - ▶ Bench officers are expected to play a more **active role** in factual development
 - ▶ Self-represented litigants
- ▶ Mendez case: example
 - ▶ Court refused to look at documentary evidence - photographs
 - ▶ Court refused to consider text messages from defendant

Recommended Solutions

- ▶ Trial courts in domestic violence cases must take an “*active role in developing the facts.*”
 - ▶ *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1500
- ▶ To ensure courts focus on relevant factors (and not bias), a court’s Statement of Reasons should include
 - ▶ Which *acts of abuse* were and were not found to constitute abuse
 - ▶ How the court *weighed the totality of the circumstances* in making its decision
 - ▶ Why the court decided that a restraining order *should not be issued under the statute*
- ▶ Courts should apply precedent and training on domestic violence when conducting hearings on ROs

PRESERVING APPEALS

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Appeals

- ▶ You can appeal any time you think a judge made an error
- ▶ Appealing does not automatically stay lower court decision
- ▶ Preserve your record!
 - ▶ General rule is objections not made are waived
 - ▶ If there is a denial, ask the judge the basis of that denial
 - ▶ Request a Statement of Decision
 - ▶ Before the court begins to delivery its decision (for shorter hearings)
 - ▶ For up to 10 days after decision (for longer hearings)

Resources

- ▶ California Women's Law Center
 - ▶ (323) 951-1041
 - ▶ cwlc@cwlc.org
 - ▶ www.cwlc.org

- ▶ Los Angeles Center for Law and Justice
 - ▶ (323) 980-3500
 - ▶ info@laclj.org
 - ▶ www.laclj.org