Case-Annotated Compendium of California Domestic Violence Laws
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INTRODUCTION

This document is only informational and **is NOT legal advice**. For legal questions, contact an attorney.

This **Case-Annotated Compendium of California Domestic Violence Laws** is a list of some of the most important **civil cases** (including family law), with descriptions of their most significant holdings and a list of the statutes, rules, and regulations used or affected by the case. Since some cases were decided, laws may have changed, including being renumbered; we have done our best to use only the current versions of the laws relied upon by the appellate courts. This document does **not cover** criminal cases (except for one), federal court cases, or dependency cases not involving DV. FVAP will strive to continually update this document as more published case law dealing with DV develops from California state courts. However, please note that laws can change quickly, and FVAP is a small nonprofit with limited staff. **Reliance on this document is not an adequate substitute for legal research.**

The list is categorized by the area of law, and some cases touch on multiple areas of law. Each entry also notes the specific statutes and laws that are being explained in the opinion. Most statutes covered are part of the Domestic Violence Prevention Act (DVPA; Fam. Code, § 6200 et seq.). The statutes and rules below are hyperlinked (colored blue and underlined) to access a webpage, and cases are hyperlinked for download. To access a hyperlink, you may need to press and hold "Ctrl" on your keyboard before clicking. The Table of Contents is also hyperlinked to the specific sections in this document. "§" means "section," and "et seq." means "and the following." Many marital and dependency cases begin with the phrase "*In re*," which is Latin for "In the matter of."

We want this Annotated Compendium to, in part, supplement the annual Compendium of DV-related Laws, an annually updated free list of about 600 DV-related laws in California put together by FVAP and the California Partnership to End Domestic Violence. Note that statutes and constitutional provisions can be found for free online—as can California Rules of Court, federal laws and regulations, and local court rules.

FVAP has free online resources that provide information and tips on many of the laws and cases covered in this document. **The resources include trainings, toolkits, and sample court documents you can use.**

Who We Are: Family Violence Appellate Project (FVAP) is a California and Washington state non-profit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts.

Our Mission: By holding courts accountable for the safety and well-being of survivors, we're making sure the law does what it's supposed to—keep families safe. Our goal is to empower survivors through the court system, ensuring they and their children can live free from abuse.

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I. What Is "Abuse" Under the DVPA?

A. Introduction

"Abuse is not limited to the actual infliction of physical injury or assault." (Fam. Code, § 6203, subd. (b).) **"Abuse" is defined broadly** under Family Code section 6203, subdivision (a) to mean any of the following:

> "(1) To intentionally or recklessly cause or attempt to cause bodily injury.
> (2) Sexual assault.
> (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
> (4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320 [provided below]."

Broadly speaking, when a trial court orders someone to not do something in Family Code section 6320, it is "enjoining" them. An "injunction" is basically a court order to not do something. (See Code Civ. Proc., § 525.)

Family Code section 6320, subdivision (a), in turn, provides that a trial court

> "may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members."

Family Code section 6320, subdivision (b) provides, in relevant part, that a trial court

> "may order the respondent to stay away from the [petitioner's, respondent's, or child's] animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal."

Family Code section 6320, subdivision (c) defines disturbing the peace further:

> "disturbing the peace of the other party" refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. This conduct may be committed directly or indirectly, including through the use of a third party, and by any method or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies. This conduct includes, but is not limited to, coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

(1) Isolating the other party from friends, relatives, or other sources of support.

(2) Depriving the other party of basic necessities.

(3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.

(4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

Pursuant to subdivision (a)(4) of section 6203 of the Family Code, then, any of the acts listed above in Family Code section 6320, subdivision (a), (b) or (c), could be "abuse" under the DVPA. The cases provided below provide some examples of cases interpreting the various definitions of "abuse." Only one so far, a criminal case (*People v. Kovacich* (below)), has applied subdivision (b) of section 6320 of the Family Code, abuse against animals.

B. Cases

***In re Marriage of Ankola* (2020) 53 Cal.App.5th 369**
Husband stalked wife by moving into an apartment directly across from hers. He also repeatedly failed to stop contacting wife despite numerous requests from wife and her attorney. The court of appeal held that this behavior constituted harassment, unwanted contact, and disturbing the peace, which are forms of abuse under the DVPA.
Statutes used or affected: Family Code sections 6344 and 2210 et seq.

Nicole G. v. Braithwaite (2020) 49 Cal.App.5th 990
This is the first citable opinion discussing what constitutes a threat of future physical or emotional harm. The appellate court found further harm would have come to Nicole G. if she resumed living in the shared property without the move-out order based on past acts of domestic violence and stalking by Braithwaite. These acts include following her, tracking her movements and showing up where she was, using her phone to listen into her conversations, repeatedly calling her, and sending her messages conveying she was being tracked and followed.
Statutes used or affected: Family Code sections 6340, 6321, 6324

***Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558**
The trial court did not abuse its discretion by denying a restraining order, determining that Shane's punch to the refrigerator was venting his frustration in a physical way but was not trying to injure Jennifer and did not communicate a threat or an effort to hurt her. Evidence supported that the punch to the refrigerator was not an intentional or reckless act that causes or attempts to cause bodily injury and did not place appellant in reasonable apprehension of imminent serious bodily injury.

The case also upholds the following principles: 1) rape trauma syndrome evidence is admissible to rebut the inference that an alleged rape did not take place due to conduct portrayed as inconsistent with the victim having been raped; 2) physical force and violence are not necessary for nonconsensual intercourse to constitute rape.

Statutes used or affected: Family Code sections 6200 et seq., 6211, 6220, 6300, 6320, 6340 Code of Civil Procedure section 527.6

Curcio v. Pels (2020) 47 Cal.App.5th 1

Pels' single private Facebook post accusing Curcio of abuse, and warning others to be careful when hiring her, did not rise to the level of destroying Curcio's mental or emotional calm which would be disturbing her peace, a type of abuse. The post was private, not distributed to any third parties and was not directed to or sent to Curcio. The trial court also improperly shifted the burden to Pels to prove there was not abuse when the burden of proof is only on the person seeking the restraining order to prove abuse by a preponderance of the evidence. The trial court abused its discretion by adding another year to length of restraining order based on finding that Pels was not taking responsibility when the evidence did not support the finding.
Statutes referenced: Family Code sections 6200 et seq., 6203, 6220, 6300, 6320; California Constitution, article VI, section 21, Penal Code section 166, 273.6.

McCord v. Smith (2020) 51 Cal.App.5th 358

In this case, McCord repeatedly showed up at Smith's home and work uninvited, texted and called nonstop, and made threats in order to force Smith to speak with him. The court found that McCord's statements and actions were a means of exercising control and dominion over Smith and that those actions were sufficient to disturb her peace, as well as stalking, threatening and harassing and so were abuse. The decision also clarifies that "abuse" can include coercive controlling behaviors that do not involve physical harm or threats of physical harm, for instance, the appellate court found that McCord sending a photo of Smith's nursing license to her was part of "an overall series of actions… that threatened Smith's peace of mind." The Court confirmed that DVPA abuse does not require "profanity," "shouting," or explicit "threats." And the Court reaffirmed that in deciding a DVPA request, "the trial court considers whether the totality of the circumstances supports the issuance of the DVRO."
Statutes used or affected: Family Code sections 6301 and 6320

_N.T. v. H.T._ (2019) 34 Cal.App.5th 595

In *N.T. v. H.T.,* the parties agreed to a 4-month extension of the TRO associated with mother's *first* DVRO request. The TRO included orders not to harass, stalk, disturb mother's peace, and no contact except for brief and peaceful contact required for visitation. Before the TRO expired, mother filed a *second* DVRO request, which was only based on allegations that father violated the TRO on multiple occasions and that he was using visitation exchanges to try to coerce her back into the relationship. Among other things, she alleged that 1) father repeatedly refused to give her their child during visitation exchanges unless she interacted with him; 2) father followed her after a visitation exchange, questioning who she was with; 3) father entered her apartment complex that was a confidential address; 4) father gave her a spiritually abusive letter, stating she was "dirty," "filthy," and needed to be cleansed for her sins; 5) father took their child before the scheduled visitation exchange time and from a location other than the agreed-upon location; and 6) father stated "his lord" told him he didn't need to follow the restraining order. Mother also asserted that the violations made her feel afraid. The trial court denied the second DVRO request, stating that violating a TRO is not "in and of itself domestic abuse" under the DVPA and that the violations were "technical." The appellate court disagreed, holding that a violation of a TRO independently qualifies as abuse under Family Code section 6203(a)(4): "abuse means…engaging in behavior that has been or could be [prohibited]." In so doing, the appellate court acknowledged that father had engaged in many actions prohibited under the TRO, which he did not deny, but rather minimized or attempted to justify by explaining his desire to reunite with mother and spend more time with their child. The appellate court also held that, even

absent a TRO, the underlying actions would have constituted abuse under Family Code section 6320.
Statutes used or affected: Family Code sections 6203, 6320, and 6345

***Rybolt v. Riley* (2018) 20 Cal.App.5th 864**
This opinion has at least four significant holdings. First, "abuse" under the DVPA can include one parent's pretextual use of a child's extracurricular activities as a way to harass, intimidate, manipulate, and control the other parent. Second, trial courts should take this abuse into consideration when fashioning safe parenting plans. Third, when considering a request for a renewal of a DVRO when the survivor's fear is of future nonphysical abuse, trial courts should look at the restrained party's overall career to determine what "burdens" might be placed on their employment prospects. And fourth, in the parties' parenting plan, "attend" and "extracurricular activities" are not vague or overbroad.
Statutes used or affected: Family Code sections 6203, 6320, and 6345

***Hogue v. Hogue* (2017) 16 Cal.App.5th 833**
If an out-of-state person commits an act of DV against someone who is in California (here, threats of suicide via social media or electronic communications), the California court has personal jurisdiction over the abusive out-of-state party and can therefore issue a DVRO against them. The appellate court explained that the DVPA is a "special regulation," meaning the Legislature has declared the effects of DV as warranting special jurisdiction over people who commit acts of abuse against people in California. Sending a mock suicide video can be abuse under the DVPA.
Statutes used or affected: Family Code section 6320; Code of Civil Procedure section 418.10

***In re Marriage of G.* (2017) 11 Cal.App.5th 773**
In determining whether someone acted as an abuser, or a primary or dominant aggressor for mutual DVRO purposes, common law self-defense principles are implied into the DVPA. That is, acts of legitimate self-defense are not "abuse" under the DVPA.
Statutes used or affected: Family Code sections 6203 and 6305

***Phillips v. Campbell* (2016) 2 Cal.App.5th 844**
The appellate court reaffirmed that abuse under the DVPA need not be physical, and that harassing conduct is not protected speech under the First Amendment of the U.S. Constitution.
Statutes used or affected: Family Code sections 6203, 6211, 6210, 6301, and 6320

***Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816**
The opinion clarifies that controlling and coercive behavior, which can be emotionally injurious, can be "abuse" under the DVPA. In this case, Menjivar exhibited controlling behavior, calling multiple times in a day, accusing Rodriguez of cheating, and taking actions to isolate Rodriguez from contact with others. Menjivar enrolled in three of her four college classes, and, during the one in which he was not enrolled, caused Rodriguez to keep a telephone call open during the class, so that he could monitor whether she was socializing with others; he also kept a line open with her when she was at home, monitoring her activities. Menjivar told Rodriguez he had sliced open the neck of her teddy bear because that was what he wanted to do to her. In that same month, Rodriguez was diagnosed with subchorionic hemorrhage and a cyst, and advised to limit strenuous activity and stress. Despite being aware of this diagnosis, Menjivar practiced martial arts in close proximity to Rodriguez, despite her requests to stop, played with a knife close to her face, and threatened to beat her with a studded belt. The testimony revealed further incidents of pushing, punching, and erratic driving, causing Rodriguez to be terrified. Menjivar threatened that, if Rodriguez called the police, he would assert that she had abused him.

Rodriguez again stopped seeing Menjivar, but he continued his actions, threatening her over social media. His friends also posted threats on social media. Moreover, the length of time since the last act of abuse occurred has never been a basis to deny a DVRO.
Statutes used or affected: Family Code sections 6203, 6300, and 6320

***Sabato v. Brooks* (2015) 242 Cal.App.4th 715**
The appellate court affirmed a three-year DVRO because unwanted and harassing contacts, even without allegations of threats or violence, are sufficient to issue a DVRO. The opinion notes the abuser's failure to file opposition papers in compliance with the local rules of court was a valid basis for the trial court to decline to consider them.
Statutes used or affected: Family Code sections 6203 and 6320; Government Code section 68070

***Altafulla v. Ervin* (2015) 238 Cal.App.4th 571**
"Disturbing the peace" under the DVPA includes alarming, annoying, or harassing behavior intended to cause substantial emotional distress. In this case, the abuse included the abuser sharing the petitioner's personal information, including an alleged affair, with coworkers, friends, and family. Factual accuracy of the statements is not relevant to whether they are abusive. This opinion also clarified that a party can request, at the hearing, that the duration of a DVRO be different from what they requested on their DV-100 petition. And the court upheld the constitutionality of the DVPA.
Statutes used or affected: Family Code sections 6203, 6320, 6345, and 6389

***In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416**
Physical abuse is not necessary to issue a DVRO. Disclosing intimate details of someone's life, even if the information is legally obtained, can constitute abuse under the DVPA. Speech constituting abuse is not protected by the First Amendment of the U.S. Constitution.
Statutes used or affected: Family Code sections 6203, 6218, and 6320

***Gou v Xiao* (2014) 228 Cal.App.4th 812**
Parents can seek a DVRO based on abuse against their children. Under the DVPA, abuse of a party's child can constitute abuse of the party requesting a restraining order because it places the party in reasonable apprehension of imminent serious bodily injury to the child and disturbs the party's peace.
Statutes used or affected: Family Code sections 6203, 6220, 6300, and 6320

***Nevarez v. Tonna* (2014) 227 Cal.App.4th 774**
The trial court is only required to find a past act of abuse to issue a DVRO, and need not find a likelihood of future abuse—notwithstanding any implications from the stated legislative purpose of the DVPA. Abuser's actions constituted abuse because he caused bodily injury and fear thereof, attacked and struck the victim, disturbed her peace, and harassed her.
Statutes used or affected: Family Code sections 6203, 6220, 6300, and 6320

***Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140**
This is the first case interpreting "disturbing the peace" under the DVPA in the context of a non-marital relationship. Here, the abuse involved telephonic, digital, and in-person contact that impacted the abuse survivor's sense of safety and security. The case applied the same definition of "disturbing the peace" as established in *In re Marriage of Nadkarni* (above).
Statutes used or affected: Family Code sections 6203, 6211, and 6320

***People v. Kovacich* (2011) 201 Cal.App.4th 863**
This criminal case mostly involved issues that have little to no bearing on civil or family law matters. However, this case importantly held that an abuser kicking (and killing) the family dog can be abuse, under the DVPA, of the survivor and their children. Moreover, the opinion explained that harming a family pet is a risk factor for future harm against the family.
Statutes used or affected: Family Code sections 6203, 6211, and 6320

***S.M. v. E.P.* (2010) 184 Cal.App.4th 1249**
Father's mere "badgering" of Mother was not "abuse" under the DVPA. The appellate court also explained the trial court could not issue a DVRO without also triggering the rebuttable presumption against awarding custody to an abuser under Family Code section 3044.
Statutes used or affected: Family Code sections 3044, 6203, 6300, and 6320

***In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483**
This case defines "disturbing the peace" under the DVPA as the destruction of the survivor's mental or emotional calm, using the plain meaning of the statutory text and the Legislature's intent. Publicly disclosing another's email may disturb that person's peace and thus be abusive. The appellate court also discussed the trial court's requirement to search criminal records of respondent before hearing, and the timing required for a hearing after a TRO is granted. This case also held DVRO proceedings are entitled to calendar preference in court, which means they should be heard soon, before other cases.
Statutes used or affected: Family Code sections 242, 244, 6200, 6203, 6306, and 6320

***Nakamura v. Parker* (2007) 156 Cal.App.4th 327**
Wife's DVRO request was facially adequate in showing that Husband had abused her in multiple ways, including disturbing her peace and harassing, stalking, striking, and threatening her. The trial court also failed to adequately consider whether rejecting the temporary restraining order would have jeopardized Wife's safety.
Statutes used or affected: Family Code sections 241, 6203, 6320, and 6340
California Rules of Court used or affected: Rule 3.1202

***Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818**
Former Wife obtained a DVRO against Former Husband. Her evidence was her own affidavit which she testified was true. Former Husband appealed, arguing there was not substantial (sufficient) evidence of abuse to uphold a restraining order against him. The appellate court held that the findings of DV were substantially supported by the evidence affirming the rule of law that one witness's testimony, even if they are a party, can be substantial evidence.
Statutes used or affected: Family Code sections 3044, 3170, 6203, and 6320

II. Issuing DV Restraining Orders

A. Introduction

Family Code section 6300 governs ex parte temporary restraining orders, and provides that:

> "An order may be issued under this part, with or without notice, to restrain any person for the purpose specified in Section 6220, if an affidavit or testimony and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The

> court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order."

Family Code section 6320, quoted in section I(A) above, further allows the trial court to issue an ex parte restraining order, to enjoin the respondent from committing certain acts. And Family Code section 6340, subdivision (a) allows a trial court to make the same orders, and others, following notice to the respondent and a hearing. These orders can initially last for up to five years, and can be renewed for five years or permanently (discussed in section IV below). (Fam. Code, § 6345, subd. (a).)

Only people in certain relationships may obtain a domestic violence restraining order (DVRO). Family Code section 6211 defines "domestic violence" to mean:

> "[A]buse perpetrated against any of the following persons:
> "(a) A spouse or former spouse.
> "(b) A cohabitant or former cohabitant, as defined in Section 6209.
> "(c) A person with whom the respondent is having or has had a dating or engagement relationship. ['Dating relationship' is defined in section 6210.]
> "(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
> "(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
> "(f) Any other person related by consanguinity or affinity within the second degree. ['Affinity' is defined in section 6205.]"

The cases provided below discuss how trial courts can issue ex parte temporary restraining orders (TROs), and restraining orders after hearings, as well as some interpretations of different types of relationships that qualify for a DVRO.

DVRO petitioners can request an abuser be ordered to move-out of a shared dwelling. It requires a showing that, "physical or emotional harm would otherwise result" to the petitioner or their dependent. Family Code §§6321, 6340(c). Courts can also issue an order allowing the petitioner temporary "use, possession and control" of real property. Family Code §6324.

B. Cases – When is it appropriate to issue a restraining order and what can it do

***J.M. v. W.T.* (2020) 46 Cal.App.5th 1136**

The petitioner, J.M., filed a request for a DVRO against his dating partner based on a history of abuse during their relationship. While protected by a TRO, J.M. asked the court for a continuance five days prior to the scheduled DVPA hearing – because he had a major surgery the day before the hearing, and because he was not yet able to serve the respondent. The trial court denied the request for a continuance, and dismissed the DVRO request with prejudice. The appellate court held that the trial court abused its discretion because petitioner showed good cause for a continuance and requested the continuance in a timely manner. It also held

that good cause was not limited to the inability to serve the other party, indicated by the Legislative intent of amendments to Family Code 245.
Statutes used or affected: Family Code 245

***Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990**
See section I(B) above.
Nicole G. is also the first case analyzing orders for property control. The appellate court found Nicole G.'s decision to move out of the shared property to escape additional abuse before ending her relationship with Braithwaite, and before filing a DVRO request, did not prevent the court from awarding her temporary use, possession and control of the property. The court of appeal also explained that even though the parties had a separate lawsuit about who owned the condominium, the trial court still had authority to grant Nicole the property control orders.

***Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558**
See section I(B) above.

***Curcio v. Pels* (2020) 47 Cal.App.5th 1**
See section I(B) above.

Lugo v. Corona (2019) 35 Cal.App.5th 865
The trial court denies Wife's request for a DVRO against Husband because there is a 3-year Criminal Protective Order (CPO) protecting Wife from Husband. On appeal, appellate court reverses, holding that CPOs and DVROs can coexist, so the existence of a CPO does do not prevent a court from issuing a DVRO.
Statues used or affected: Family Code sections 6220, 6227, 6300, 6301 and 6383, Penal Code section 136.2

***Herriott v. Herriott* (2019) 33 Cal.App.5th 212**
In Herriott, a divorced, elderly couple who lived in the same apartment building, which was owned by the husband, each requested restraining orders against the other. Husband filed an Elder Abuse Restraining Order (EARO) against wife, and wife filed a domestic violence restraining order (DVRO) against husband. Husband alleged that wife harassed him, blocked him from going into his apartment on several occasions, and engaged in litigation and financial abuse. Husband further requested that wife move out of the apartment building. Wife alleged that husband harassed her on multiple occasions, including slamming her iron gate, yelling embarrassing things to her for other tenants to hear, and painting the stairs outside her unit without first notifying her. Their daughter also testified that husband did not talk "so kindly" about wife and yelled things to wife such as "Why don't you move out? Go back to Poland." The trial court granted both requests but denied husband's move-out request. The appellate court affirmed the trial court's denial of the move-out request and the issuance of the DVRO against husband. Interpreting the EARO's move-out statute, Welfare and Institutions code section 15657.03(h), the appellate court held that the trial courts only have jurisdiction to issue move-out orders from an apartment unit, not the entire apartment building. The appellate court also held that, when a DVRO and EARO are issued at the same time, trial courts need not make detailed findings of fact under Family Code section 6305, because the two orders are authorized under two different statutory schemes, i.e., DVROs are issued under the Family Code, whereas EAROs are issued under the Welfare and Institutions Code.
Statues affected: Family Code section 6320; Welfare and Institutions Code section 15657.03; Family Code section 6305.

***Molinaro v. Molinaro* (2019) 33 Cal.App.5th 824**
In *Molinaro,* a parent challenged a part of a domestic violence restraining order that stated the parent was not allowed to 'post anything about the case on Facebook.' That parent had made negative comments about the other parent in his posts, but most of the posts talked about the divorce generally. Importantly, there was no evidence that these posts were directed at, or shown to, the children in the case. The appellate court ruled that stopping the parent from posting anything on Facebook about the case was too broad of an order. The order violated the parent's right to free speech under the California Constitution. The appellate court, however, also recognized that 1) trial courts may make orders that a parent may not post about a case or the other parent when the posts are directed to or exposed to the children; and 2) trial courts may make orders that a parent may not post speech that is abuse. Therefore, if the speech could qualify as abuse under Family Code sections 6302 and 6320, then that speech may be restrained.
Statutes used or affected: Family Code section 6320

Tanguilig v. Valdez (2019) 36 Cal.App. 5th 514
Tanguilig defines, for the first time, what is "good cause" for adding a family or household member to a protective order. Although this case involved an elder abuse restraining order, the law about adding other protected parties onto a restraining order is the same in both the elder abuse and Domestic Violence Prevention Act statutes. Since the statutes are very similar, courts often look to case law on one kind of restraining order when there is no case law on point. For example, in 2018, the appeals court in the case of *In re Marriage of Davila & Mejia* looked to the elder abuse case of *Gdwoski v Gdowski* for what standard of proof applies when a petitioner alleges an act of abuse occurred. ((2018) 29 Cal. App. 5th 220, 226.) There is no case law about what is "good cause" to protect a family or household member in a domestic violence restraining order, so it is appropriate to refer to this elder abuse case for guidance on this issue when asking a court to protect someone on a domestic violence restraining order.
Statues used or affected: Welfare and Institutions Code section 15657.03 (b)(4)(A); Family Code section 6320(a).

***In re Marriage of Davila and Mejia* (2018) 29 Cal.App.5th 220**
Trial court issued a DVRO against husband based on wife's testimony regarding specific incidents of abuse that were not included in her written request for DVRO. Husband appealed, arguing it was improper for the trial court to consider wife's testimony about specific incidents of abuse because the incidents had not been included in wife's written DVRO request. The appellate court held it was proper for the trial court to consider wife's oral testimony about the incidents of abuse, even though the incidents were not specifically included in the petition. In reaching this conclusion, the appellate court noted that the Domestic Violence Prevention Act (DVPA) only requires "notice and a hearing" to issue a DVRO, and that the general statements in wife's request were sufficient to have placed husband on notice that wife's request was based on a threat of physical violence. Moreover, the appellate court noted that, in response to wife's specific testimony, husband could have sought relief by requesting a continuance to prepare to respond to the testimony.
Statutes used or affected: Family Code section 6320

***Hogue v. Hogue* (2017) 16 Cal.App.5th 833**
See section I(B) above.

***In re Marriage of G.* (2017) 11 Cal.App.5th 773**
See section I(B) above.

In re Marriage of Fregoso and Hernandex (2016) 5 Cal.App.5th 698
This is the first case to clarify that a restraining order after hearing may be properly issued even if there is a brief period of reconciliation between the two parties after a temporary restraining order (TRO) is issued. The case also explains that the testimony of one witness, even the person requesting a restraining order, can be sufficient evidence to support a DVRO. The protected party in this case testified that the reconciliation was "part of their six-year repeated cycle of violence, gifts, forgiveness, sex, and then repeated acts of violence," and thus her explanation was consistent with the trial court's decision to issue the restraining order.
Statutes used or affected: Family Code sections 6203 and 6300

***Nevarez v. Tonna* (2014) 227 Cal.App.4th 774**
See section I(B) above.

***Quintana v. Guijosa* (2010) 107 Cal.App.4th 1077**
The trial court abused its discretion when it denied Wife's petition for a restraining order against Husband. This was because the trial court's denial was based on Wife's statement that their children were in Mexico, and the judge's belief that she had abandoned them and should return to Mexico to be with her children. The appellate court found these facts to be irrelevant to the purpose of the DVPA.
Statutes used or affected: Family Code sections 6203, 6220, and 6300

***Nakamura v. Parker* (2007) 156 Cal.App.4th 327**
See section I(B) above.

***Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818**
See section I(B) above.

***Ross v. Figueroa* (2006) 139 Cal.App.4th 856**
Where a restraining order was issued without notice to the respondent (the abuser), he was entitled to a continuance as a matter of right. Indeed, a respondent is entitled to one continuance "as a matter of course," and the trial court may grant additional continuances at either party's request upon a showing of "good cause." Continuances in DVPA proceedings are now generally handled under Family Code section 245 and California Rules of Court, rule 3.1332.
Statutes used or affected: Family Code sections 243 **(former)**, 245, 6300, and 6303
California Rules of Court used or affected: Rule 3.1332

C. Who Can Apply for a Restraining Order

As explained above, Family Code section 6211 defines who can apply for a domestic violence restraining order. Some of these relationships are very easy to understand, such as "a spouse or former spouse." Others are less clear, for instance, "any other person related by consanguinity or affinity within the second degree" means related by blood or marriage directly (e.g. spouse, child, parent) or separated by "two degrees" (e.g. parent-in-law, grandchild, grandparent, aunt/uncle). Some definitions require courts to explain more about what they mean. The cases below help to do that.

Phillips v. Campbell (2016) 2 Cal.App.5th 844
See section I(B) above.
This is the first case to discuss what constitutes a "dating relationship" under the DVPA, which is one of the qualifying relationships that allows a person to request a DVRO. The appellate court found that where the parties were "more than mere friends" and the evidence showed "frequent intimate associations primarily characterized by the expectation of affection"—often via text messages—there was a dating relationship. Therefore one of the parties can file for a protective order under the DVPA.
Statutes used or affected: Family Code sections 6203, 6211, 6210, 6301, and 6320

Hauck v. Riehl (2014) 224 Cal.App.4th 695
This case involved a minor, Child; Mother and Stepfather, with whom she lived; and Father. During a visitation exchange, Father and Stepfather argued, and Father petitioned for a DVRO against Stepfather, asking Child to be included as a protected party. The trial court found that although Father and Stepfather did not have a qualifying relationship for a DVRO, under Family Code section 6211, they had a sufficient connection through Child, and so granted the requested five-year DVRO. The appellate court disagreed and reversed, explaining that while Father could have applied for a DVRO on behalf of Child (although not successfully, since there were no allegations of abuse against Child), that is not the same as Father requesting a DVRO for himself and asking for the Child to be included on his. Father instead should have tried applying for a civil harassment order (CHO), which is governed by Code of Civil Procedure section 527.6.
Statutes used or affected: Family Code sections 6203, 6205, and 6211; Code of Civil Procedure section 527.6

O'Kane v. Irvine (1996) 47 Cal.App.4th 207
Two roommates were subleasing different rooms in the same house, had not met each other previously, and otherwise had no personal relationship with each other. Thus, the appellate court held they were not "cohabitants" within the meaning of the DVPA. For this conclusion, the appellate court looked to, among other things, the purpose of the DVPA.
Statutes used or affected: Family Code sections 6209, 6211, and 6220

III. Mutual Restraining Orders

A. Introduction

Family Code section 6305 applies when two parties request restraining orders against each other (mutual restraining orders), and neither party's request has already been heard. To issue a mutual restraining order, **the court and both parties must do certain things**. **First**, both parties must file their own petitions for restraining orders (Judicial Council Form DV-100), with written evidence of abuse, and personally appear at the hearing. (Fam. Code, § 6305, subd. (a)(1).) Filing a response (Form DV-120) to someone's petition is not itself sufficient to present written evidence of abuse. (Fam. Code, § 6305, subd. (a)(1).) **Second**, the court must make "detailed findings of fact indicating that both parties acted as a primary aggressor and that neither party acted primarily in self-defense." (Fam. Code, § 6305, subd. (a)(2).) To do so, the court must consider the four-factor analysis of who is the "dominant aggressor" in Penal Code section 836, subdivision (c)(3). (Fam. Code, § 6305, subd. (b).)

The below cases provide additional guidance for trial courts dealing with petitions for mutual restraining orders, and one example where the appellate court found the mutual restraining order statute did not apply.

B. Cases

In re Marriage of Everard (2020) 47 Cal. App. 5th 109

Appellant challenged a mutual restraining order issued against him. The appellate court held that the trial court's statements were sufficient "findings of fact" required for determining whether someone is a primary aggressor in a mutual restraining order case. Detailed findings is understood as factual findings or analysis for a reviewing court to assess the factual or legal basis for the trial court's decision. The record contained testimony about multiple acts of domestic violence by appellant, including occasions where he used his size and weight to hold her against her will and choke her with his hands and/or forearm. It conducted a "careful evaluation" of evidence prior to issuing a mutual restraining order, and the opinion gives a detailed history of the reasons for requiring detailed findings of fact under the law. The opinion also discusses the requirement that courts look at the Penal Code section on "dominant aggressor" to analyze "primary aggressor" under the DVPA. It restates the finding in *Conness v. Satram* (see below) that requiring detailed findings of fact helps ensure that a mutual order is the product of the careful evaluation of a thorough record and not simply the result of capitulation or the court deciding that a mutual order is a quick and easy response to joint claims of abuse.
Statutes referenced: Family Code § 6200 et seq; § 6203, subd. (a)(3) & (4); § 6211, subds. (a) & (e); § 6220; § 6300; § 6305; § 6306. Evidence Code §115; § 1220; § 1280. Penal Code § 836 subdivision (c)(3). Public Utilities Code § 21676, subdivision (b). Code of Civil Procedure § 632.

***Melissa G. v. Raymond M.* (2018) 27 Cal.App.5th 360**

Father alleged that, among other physical abuse, Mother bit his arm and punched him in the face during a child visitation exchange, and he submitted a police report and pictures of his injuries to support these allegations. Mother alleged Father was lying and harassing her by calling her through a blocked number. Another incident involved Mother's friend who pushed her phone close to Father's face and called him racial epithets during a custody exchange, and Father admitted he knocked the phone out of the friend's hand when she would not stop. The trial court granted each party's request for a restraining order against the other party, but did not make the detailed findings of fact that are required to issue a mutual restraining order under Family Code section 6305(a)(2). The appellate court held that these detailed factual findings under Family Code section 6305 are required regardless of whether the requests for restraining orders stem from a single incident or separate incidents. The appellate court further instructed that trial courts must make detailed findings of fact in the context of the history of domestic violence between the parties to ensure that a survivor's act of defense is not viewed in isolation as an act of aggression justifying restraint.
Statutes used or affected: Family Code section 6305

***Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11**

Trial courts may issue mutual DVROs only if both parties have filed their own DVRO petitions, and only if the court makes detailed findings of fact as required by Family Code section 6305. One party's conviction for a DV crime, by itself, does not excuse the trial court from making the required detailed findings of fact about both parties being a primary or dominant aggressor who

was not acting in self-defense. Thus, the appellate court here reversed the DVRO against one party, and sent the case back to the trial court.
Statutes used or affected: Family Code sections 6302, 6305, and 6345

***J.J. v. M.F.* (2014) 223 Cal.App.4th 968**
This case defined "primary aggressor" for the first time in the context of mutual restraining orders: a trial court must look at the larger context of the parties' relationship. Here, Abuser had pushed Survivor out of a car, pushed her through a glass door, and sent her threatening text messages. When Abuser was returning their child's jacket, he strangled Survivor, dragged her, and caused her bodily injury. The court entered mutual restraining orders, finding that Survivor had also been a primary aggressor by repeatedly phoning Abuser about the jacket in a harassing fashion, and pushing him away when he approached and tried to snatch their son. The appellate court said it was wrong to enter a mutual restraining order because (1) calling to get their son's only jacket was done in good faith and not harassment, and (2) Survivor did not act *primarily* as an aggressor when she pushed Abuser away, especially in light of the history of abuse.
Statutes used or affected: Family Code sections 6300, 6305, and 6320

***Monterroso v. Moran* (2006) 135 Cal.App.4th 732**
This case establishes that a trial court may **not** enter mutual restraining orders unless it has done the required analysis and has made detailed findings of fact as to the primary or dominant aggressor and self-defense.
Statute used or affected: Family Code section 6305

***Conness v. Satram* (2004) 122 Cal.App.4th 197**
Analyzing an older version of the statute governing mutual DVROs, the appellate court held that when two parties, on different dates, separately apply for and receive restraining orders under the DVPA, with hearings held on different dates, the second application is not a request for a mutual order subject to additional procedural requirements under Family Code section 6305. A mutual restraining order is considered one order, and must be granted from one hearing.
Statutes used or affected: Family Code section 6305

IV. Renewing DV Restraining Orders

A. Introduction

Family Code section 6345, subdivision (a) allows a court to renew "the personal conduct, stay-away, and residence exclusion orders contained in" a DV restraining order "either for five years or permanently, without a showing of any further abuse since the issuance of the original order." "The request for renewal may be brought at any time within the three months before the expiration of the orders." (Fam. Code, § 6345, subd. (a).) Other orders that may have been included in the DV restraining order, such as for custody and visitation or child or spousal support, cannot be renewed under this statute and are instead "governed by the law relating to those specific subjects." (Fam. Code, § 6345, subd. (b).) But until a court changes a custody or visitation order that was made as part of a DVRO proceeding, the custody and visitation order is still in effect, even if the restraining order expires. (Fam. Code, § 6340, subd. (a).)

The cases below establish and describe the standard a trial court must use when overseeing a contested renewal hearing. A renewal should not be granted just because a petitioner requests it. Essentially, the petitioner must prove an objectively "reasonable apprehension of future abuse." "Apprehension" essentially means "fear." Evidence may include the abuse that was the basis for the initial restraining order, and any violations. "Objectively" means the court must find the petitioner's fear of future abuse to be reasonable; in other words, would someone in the same situation have a reasonable fear of future abuse? The petitioner's fear can be of future physical and/or emotional abuse and does not have to be fear of the same kind of abuse that led to a restraining order. If the petitioner shows fear of future physical abuse, the court cannot consider the "burdens" of a renewed restraining order on the respondent. If, however, the fear is only of future nonphysical abuse, the court should consider the actual, not hypothetical, "burdens" on the respondent. Moreover, the court should consider whether circumstances of the parties' lives have changed such that future abuse would be likely.

B. Cases

***In re Marriage of Martindale and Ochoa* (2018) 30 Cal.App.5th 54**
Mother applied for a renewal of her three-year DVRO against Father. The trial court denied Mother's request for renewal, finding that Mother had not shown a 'reasonable apprehension' of future abuse. On appeal, the appellate court affirmed the denial of Mother's request to renew, holding that courts are not required to accept the truth of every piece of evidence presented in support of the original order when considering whether to renew a DVRO. Thus, while a restrained party is collaterally estopped from challenging the sufficiency of the evidence to support the issuance of the original DVRO, and courts are prohibited from considering new evidence regarding the underlying incidents in a DVRO renewal hearing, a trial court is not required to renew a DVRO based on the truthfulness of the evidence presented at the original hearing resulting in the issuance of the initial DVRO.
Statutes used or affected: Family Code section 6345; Evidence Code section 771

***Rybolt v. Riley* (2018) 20 Cal.App.5th 864**
See section I(B) above.

***Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208**
The appellate court clarified that all domestic violence restraining orders (DVROs or JVROs) should be treated the same for renewal purposes, and that a DVRO issued by a juvenile court should be considered to have been "issued" under the DVPA for the purpose of renewal. This decision also confirms that the Family Code and the Welfare and Institutions Code can work together, and should be applied broadly to give effect to the Legislature's intent of providing the best possible protections for all California DV survivors.
Statutes used or affected: Family Code sections 6301 and 6345; Welfare and Institutions Code sections 213.5 and 362.4

***Garcia v. Escobar* (2017) 17 Cal.App.5th 267**
After a juvenile court case is dismissed, domestic violence restraining orders issued by the juvenile court (sometimes called DVROs or JVROs) can be renewed by the family court, in the same way that family courts' DVROs are renewed pursuant to the DVPA.
Statutes used or affected: Family Code sections 6218, 6221, 6320, 6340, and 6345; Welfare and Institutions Code sections 213.5, 304, and 362.4
California Rules of Court used or affected: Rules 5.620 and 5.630

***De la Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389**
In this case, the DVRO was based on physical and emotional abuse. In requesting a renewal, the survivor requested that her children also be protected parties and cited documented child abuse as the basis for her "reasonable fear of future abuse." The trial court denied the requested renewal. The appellate court reversed, holding that fear of future abuse need not be the same type of abuse as was the basis for DVRO, and the abuser's behavior disturbed the survivor's peace. Plus, the petitioner showed a reasonable apprehension of future abuse. Child abuse is relevant to whether the children should be protected parties on a DVRO, which requires only "good cause" to include them. The concurring opinion summarizes social science studies on the overlap between child abuse and intimate partner abuse.
Statutes used or affected: Family Code sections 6203, 6220, 6320, 6340, and 6345

***Cueto v. Dozier* (2015) 241 Cal.App.4th 550**
The appellate court held the trial court was wrong in finding the petitioner did not have a "reasonable apprehension of future abuse," and therefore erred when it denied her request to renew the DVRO. This error was in part because the underlying DVRO was precipitated by a "violent incident," there was "evidence of a long and troubling history of physical abuse," and circumstances had not changed such that the likelihood of future abuse had diminished.
Statutes used or affected: Family Code sections 6203, 6320, and 6345

***Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457**
The appellate court held the absence of abuse when the DVRO was in place does not support a denial of renewing that DVRO. Further, to obtain renewal, the petitioner need not show fear of future physical abuse—fear of any abuse is sufficient.
Statutes used or affected: Family Code sections 6320 and 6345

***Lister v. Bowen* (2013) 215 Cal.App.4th 319**
The appellate court held that any violation of a restraining order, including a non-violent violation, is very serious and gives significant support for renewal of a restraining order. This case also discussed the "burdens" of a renewed DVRO on the restrained party.
Statutes used or affected: Family Code sections 6203 and 6345

***Avalos v. Perez* (2011) 196 Cal.App.4th 773**
A trial court can only renew a DVRO for five years or permanently. A trial court cannot renew a DVRO for any other amount of time, including, as here, for three years only.
Statute used or affected: Family Code section 6345

***Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275**
This case established the standard for renewing a DVRO. A petitioner is not entitled to a renewal merely upon request, if it is contested by the restrained party. The petitioner does not need to show new abuse happened since the DVRO was issued, because to hold otherwise would mean the order was ineffective. The petitioner need only show, more likely than not, that they have a "reasonable apprehension" of future abuse. This does not mean the court must find it is more likely than not future abuse will occur if the DVRO is not renewed. This only means the **evidence demonstrates it is more likely than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and reasonable**. The future abuse can be physical or nonphysical. The court must consider the facts underlying the initial DVRO (which cannot be challenged by the restrained party), and any significant changes in the parties' lives. For instance, have the parties moved on with their lives such that the opportunity and likelihood of future abuse has diminished? When considering renewing a DVRO based on fear of future *nonphysical* abuse, the court may consider the "burdens" the renewed DVRO

would impose on the restrained party, such as the gun prohibition. The appellate court also held a trial court cannot issue a DVRO without the gun prohibition in Family Code section 6389.
Statutes used or affected: Family Code sections 6203, 6218, 6320, 6345, and 6389

V. Modifying and Terminating Domestic Violence and Civil Harassment Restraining Orders

A. Introduction

Family Code section 6345, subdivision (d) provides that any party may request a DV restraining order (DVRO) be terminated or modified before it expires, subject to certain notice requirements provided in subdivision (b) of section 1005 of the Code of Civil Procedure (or service on the Secretary of State if the petitioner is in the Safe at Home Program (Gov. Code, § 6205 et seq.)). To modify or terminate a DVRO—which is an "injunction" (Code Civ. Proc., § 525)—the person making such a request must show (1) "that there has been a material change in the facts" since the initial restraining order was issued, (2) "that the law upon which the injunction . . . was granted has changed," (3) "or that the ends of justice would be served by the modification or dissolution." (Code Civ. Proc., § 533.) The only published case that has so far decided this issue in the DVPA context is provided below.

Modification and termination of civil harassment restraining orders (CHOs) operate similarly to DVROs. (Code Civ. Proc., § 527.6, subd. (j)(3).) In addition to the three grounds available for modifying or terminating a DVRO, the only published case on this issue for CHOs has decided there could be additional grounds, such as "no reasonable probability of future harassment," proven by a preponderance of the evidence.

B. Cases

***Yost v. Forestiere* (2020) 51 Cal.App.5th 509**
Grandfather asked the trial court to modify a CHO against him, protecting his Granddaughter and her Mother, to remove Granddaughter as a protected party or at least allow him to attend family functions when Granddaughter was there with her Father. The CHO protected Granddaughter because Grandfather had threatened to abduct her in the past. The trial court denied his request, concluding the change in a separate child custody case, where Father was granted joint physical custody of Granddaughter, was not relevant. The Court of Appeal reversed and remanded, concluding CHO modifications are discretionary and should be granted if the moving party can prove, by a preponderance of the evidence, that the challenged terms are no longer necessary to serve the CHO's purpose, i.e., to prevent further harassment, by comparing the current circumstances to those at the time the CHO was initially granted. In this case, the Court found the change in the child custody order to be relevant to Grandfather's CHO modification request, as the abduction risk may be lower now that Grandfather's son has joint custody. The Court further held the three grounds provided in Code of Civil Procedure section 533 may be sufficient to support modification, but none is necessary, thus expressly disagreeing with *Loeffler v. Medina*, *below*. The Court also briefly discussed the legislative history and purpose behind the CHO statute, Code of Civil Procedure section 527.6, and noted certain distinctive procedures for this expedited process, including the allowance of hearsay evidence.

Statutes used or affected: Code of Civil Procedure sections 527.6 and 533; Evidence Code sections 115 and 210

***Loeffler v. Medina* (2009) 174 Cal.App.4th 1495**
Former boyfriend moved to terminate a DVRO against him, and the appellate court upheld the trial court's denial of his motion. The appellate court also affirmed the award of attorney's fees to the protected party, former girlfriend, as the prevailing party. The legal standard to use when a request is made to terminate a DVRO is whether there has been a material change in the facts upon which the order was granted, the law has changed, or the ends of justice would be served. This is the general standard for terminating an injunction under Code of Civil Procedure section 533. This appellate court explained that a DVRO is a type of injunction because it orders the restrained party to not do certain things. Moreover, courts hearing DVPA matters should generally follow the rules applicable to all civil cases (in the Code of Civil Procedure), unless the Family Code provides otherwise.
Statutes used or affected: Family Code sections 210, 6344, and 6345; Code of Civil Procedure sections 525 and 533

VI. Attorney Fees and Costs in DVPA Proceedings

A. Introduction

Whether at trial or on appeal, the prevailing party has a right to recover costs, which may include attorney fees when a contract or law says so. (Code Civ. Proc., §§ 1021, 1033.5.) If the law does not define "prevailing party," the court must consider, on a practical level, how much each party achieved its litigation goals. (*Galan v. Wolfriver Holding Corp*. (2000) 80 Cal.App.4th 1124; *Sharif v. Mehusa, Inc.* (2015) 241 Cal.App.4th 185; *Varney Entertainment Group, Inc. v. Avon Plastics, Inc.* (2021) 61 Cal.App.5th 222.) Unless the parties agree or the court orders otherwise, a request for attorney fees and costs at trial must be brought within the deadline for filing a notice of appeal, and for attorney fees and costs on appeal, within the deadline for filing a memorandum of costs. (Cal. Rules of Court, rule 3.1702.) Pro bono attorneys, whether for- or nonprofit, may seek attorneys fees. (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668; *Beverly Hills Properties v. Marcolino* (1990) 221 Cal.App.3d Supp.7; *In re Marriage of Ward* (1992) 3 Cal.App.4th 618; *Flannery v. Prentice* (2001) 26 Cal.4th 572.) Limited scope attorneys may do so as well. (Cal. Rules of Court, rule 5.425.)

In family law, the court must first find the party ordered to pay attorney fees and costs is at least reasonably likely to be able to pay (Fam. Code, § 270), and the party requesting attorney fees and costs usually must serve and file a completed Income and Expense declaration (Judicial Council Form FL-150). (Cal. Rules of Court, rule 5.427.) Attorney fees and costs can be awarded to (1) level the playing field on a need-based basis (e.g., Fam. Code, §§ 2030 [dissolution, nullification, separation, and post-judgment], 3121 [exclusive custody], 3557 [child or spousal support], 7605 [Uniform Parentage Act (UPA)]), (2) punish (e.g., Code Civ. Proc., §§ 128.5 [bad faith actions or tactics, "frivolous or solely intended [for] unnecessary delay"], 128.7 [pleading lacks proper factual or legal bases]; Fam. Code, § 271 [party frustrates settlement or cooperation]), or (3) compensate a prevailing party for the expense of litigating the case (e.g., Fam. Code, §§ 3652 [modifying, terminating, or setting aside child or spousal support], 6344 [Domestic Violence Prevention Act (DVPA)]).

Family Code section 6344, subdivision (a) provides in full: "After notice and a hearing, the court may issue an order for the payment of attorney's fees and costs of the prevailing party." The "prevailing party" can be the one who prevailed in any action brought under the DVPA, and can be the one who started the action or is responding to someone's petition. The request for attorney fees and costs can be made for the first time at the hearing, even if the party did not include the request in their initial petition (such as the Form DV-100). The two cases below address these issues.

Family Code section 6344, subdivision (b) also provides that "the court shall, if appropriate based on the parties' respective abilities to pay [including their incomes and expenses], order that the respondent pay [a successful] petitioner's attorney's fees and costs for commencing and maintaining the proceeding." This subdivision has not yet been discussed in a published case, but essentially allows a DVPA petitioner to ask the court to order the respondent to pay the petitioner's attorney fees and costs, whether or not they prevail.

B. Cases

1. DVPA Cases

***Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160**
A party is not barred from requesting attorney fees where the request was not made in the initial restraining order application (DV-100 petition). That is, the party can request attorney fees and costs at the hearing. Moreover, just because an order is made on something other than a Judicial Council Form does not, by itself, mean the order cannot be enforced.
Statutes used or affected: Family Code sections 211, 6220, 6221, 6226, and 6344; Government Code section 68518
California Rules of Court used or affected: Rules 1.31 and 5.7

***Loeffler v. Medina* (2009) 174 Cal.App.4th 1495**
See section V(B) above.

VII. Custody and Visitation

A. Introduction

Trial courts generally have broad discretion when considering what custody and visitation arrangements would be in a child's "best interest" (Fam. Code, § 3011), with a primary focus on "the health, safety, and welfare of children" (Fam. Code, § 3020, subd. (a)). There are certain preferences for how a court should grant custody. (Fam. Code, §§ 3040 & 3080.) And there is a rebuttable presumption against awarding sole or joint legal or physical custody to an abuser. (Fam. Code, § 3044.) A court may modify a final custody order only after finding changed circumstances showing the change is in the child's best interest.

A DV restraining order (DVRO) petitioner can request custody and visitation orders if they have a parent-child relationship. (Fam. Code, § 6323 [temporary orders]; Fam. Code, § 6340, subd. (a) [orders after notice and a hearing].) If there are interstate issues with custody and visitation, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) may apply. (See Fam. Code, § 3400 et seq.) If there are international issues, the Hague Convention on the Civil Aspects of International Child Abduction, implemented in the U.S. by the International Child Abduction Remedies Act, may apply. (See Hague Convention, October 25, 1980, T.I.A.S. No.

11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed.Reg. 10494 (Mar. 26, 1986)); 42 U.S.C. § 11601 et seq.)

The cases below provide some detail explaining these various provisions. **Note that custody and visitation cases are very fact-dependent—especially those under the UCCJEA or Hague Convention—and there are many published cases besides those covered here.**

B. Cases

1. General Standards for Custody and Visitation Proceedings

***Marriage of C.T. and R.B.* (2019) 33 Cal.App.5th 87**
C.T. and R.B. were the parents of a minor child who was born in California and lived there since birth. In 2011, R.B. moved out of state. While the parents had joint legal custody, and C.T. had primary physical custody, there was ongoing conflict on these issues between the parents. In particular, there were issues with C.T.'s compliance with the custody and visitation orders. There were no allegations of domestic violence, but both parents had accused the other parent of child abuse. here were no findings of abuse. R.B. filed a motion for primary physical custody and that child should move to live with him. The motion is different from a traditional move away request where a parent is seeking sole custody or has yet to move. The trial court granted R.B.'s request. The trial court found that C.T. had disobeyed the custody and visitation orders many times. The trial court said that C.T. was unlikely to comply with court orders and to share the child. C.T. appealed. The Court of Appeal reversed the trial court order. The Court of Appeal said that while C.T. had not complied with custody and visitation orders, R.B. was still required to show that it would not be a detriment for the child to move and that the move was in the child's best interests, using the required factors to analyze move away cases. Specifically the Court said that while it took C.T.'s violations of the court orders seriously, custody orders should focus on the best interest of the child and not on penalizing the parent who violated the orders. In a footnote, the Court noted that R.B. had violated child support orders and said that while that is not a basis for making a custody order, child support orders are also orders made in the best interest of the child and R.B. was unwilling to comply.
Statutes used or affected: Family Code section 3042

***In re Marriage of Brown and Yana* (2006) 37 Cal.4th 947**
In this case, Mother was awarded sole legal and physical custody of Child. Mother then asked the court for permission to move with Child, which Father opposed. The trial court granted Mother's request, and the appellate court reversed because Father did not have a hearing. The California Supreme Court reinstituted the trial court's order because the noncustodial parent does not have a right to a hearing on either their opposition to the custodial parent's move-away request, or their request for modification of custody. A parent with sole legal and physical custody does not have an absolute right to move with their child; a trial court may find it would be against the child's welfare. The parent without custody may seek a change in the custody order because the custodial parent's desire to relocate can be a "change in circumstance."
Statutes used or affected: Family Code sections 3006, 3007, 3011, 3020, 3040, 3170, 3185, and 7501

***In re Marriage of LaMusga* (2004) 32 Cal.4th 1072**
The trial court did not abuse its discretion in ordering physical custody to Father, at least during the school year, if Mother relocated. This case, not directly about DV, confirms the standard for a "move away" request in custody proceedings. That is, the noncustodial parent must first show that the proposed relocation would cause detriment to the children. If detriment is shown, the

trial court must determine whether changing custody is in the "best interest" of the children, including the impact of the move on the children's relationship with the noncustodial parent.
Statutes used or affected: Family Code sections 3004, 3007, 3020, 3040, and 7501

***Montenegro v. Diaz* (2001) 26 Cal.4th 249**
This case holds that **a stipulated custody order is a final custody order**—for purposes of the changed circumstance rule (see *Burchard v. Garay* above)—**only if the parents clearly and affirmatively intended the stipulation to be final and not temporary**. A stipulated custody order is one agreed to by the parties but not issued as an order by the trial court. If the parties' agreement was only temporary, when the trial court later makes a final custody order it should use the "best interest" of the child standard. The California Supreme Court explained that trial courts should encourage parents to mediate and resolve custody disputes outside of court.
Statutes used or affected: Family Code sections 3011, 3020, 3040, 3061, 3087, 3162, 3185, and 3186

***In re Marriage of Burgess* (1996) 13 Cal.4th 25**
This case establishes the standard for "move away" requests in custody and visitation proceedings. Initially, trial courts must look to the "best interest of the child," and a parent wanting to move does not have to show it is "necessary." After a final custody order has been issued, if the parent with sole physical custody wants to relocate, they need not show the move is "necessary," but need only show changed circumstances for modifying visitation. The trial court can deny the request to move if it would be detrimental to the child's rights or welfare. (The Legislature later amended Family Code section 7501 to codify this case's holding.)
Statutes used or affected: Family Code sections 3003, 3007, 3011, 3020, 3024, 3040, 3042, 3083, 3085, and 7501

***Burchard v. Garay* (1986) 42 Cal.3d 531**
This case notes that generally when a trial court makes an initial custody determination, it is looking at the child's best interest. The opinion clarifies that a party seeking to modify a previous court-issued custody order must demonstrate changed circumstances to support such modification. In this particular case, the trial court was correct to apply only the "best interest of the child" test because there was no prior custody order. The trial court, however, erred by giving undue weight to the parents' relative economic positions (Mother had to place Child in daycare while she worked outside the home, while Father's new wife could quit her job and look after Child while Father worked), as that factor is better suited for child support determinations. And the trial court erred by not giving enough weight to the importance of continuity and stability in custody arrangements. Note this case was decided before the creation of the Family Code, although the statutes used are now part of the Family Code.
Statutes used or affected: Family Code sections 3011, 3020, and 3040

2. Family Code Section 3044
For free resources on using Family Code section 3044, please see FVAP's website.

***S.Y. v. Superior Court* (2018) 29 Cal.App.5th 324**
The family court found that Father physically abused Mother in August 2016, triggering the rebuttable presumption against awarding custody to a parent who has perpetrated domestic abuse under Family Code section 3044. However, the trial court awarded joint legal and physical custody, finding the presumption rebutted because, in its view: 1) Mother withheld the child from Father for a period of three months after he strangled her and kicked her out of the house in August 2016, and 2) Father was more fluent in English. The appellate court held it was improper for the trial court to consider English language fluency when making a determination of

custody or when rebutting the section 3044 presumption. It explained that, like using the factors of race, religious belief, sexual orientation, single-parent status, and economic position, a trial court cannot consider English language fluency in considering a child's best interest when making a custody determination. Yet, it also noted that language fluency might be relevant when there has been a factual finding that lack of fluency is likely to or has resulted in detriment to the child's best interest, providing the following example: a parent repeatedly doses a child incorrectly with medications due to their inability to read the directions.

The appellate court held this error was harmless, however, because there was substantial evidence in the record to demonstrate that father rebutted the section 3044 presumption, for instance, the child was comfortable with Father and Father was attentive to and acted appropriately with child. The appellate court also noted the following: 1) relying upon whether a parent "withheld" the child is not the same as relying upon which parent is more likely to facilitate "frequent and continuing" contact; and 2) it was not an abuse of discretion to order Father to attend a 12-week domestic violence treatment program, instead of a 52-week batterer's intervention program, because he was not on probation. Section 3044 only references Penal Code section 1203.097(c), which does not expressly refer to a 52-week program; rather the 52-week program is referenced under Penal Code section 1203.097(a)(6), which addresses individuals who are on probation.
Statutes used or affected: Family Code sections 3011, 3044, Penal Code section 1203.097.

Jaime G. v. H.L. (2018) 25 Cal.App.5th 794
Under California law there is a presumption against awarding *any* custody to a domestic abuser. This means the court must give the survivor sole legal and physical custody, unless the abuser shows the presumption has been overcome, or "rebutted." When deciding whether the presumption has been rebutted, the court must consider 7-factors which are designed to help the trial court consider the effects of domestic violence and whether it will reoccur. The presumption and rebuttal factors are found in California Family Code section 3044. The 7 rebuttal factors are: best interest of the child(ren), successful completion of a batterer's intervention program, successful completion of alcohol or drug counseling – if appropriate, successful completion of a parenting class – if appropriate, whether the perpetrator is on probation or parole and complying with the terms and conditions, whether the perpetrator is under a restraining order and has complied with the terms and conditions, and whether the perpetrator has committed any further acts of domestic violence.

Jaime G. v. H.L. reversed a trial court order rebutting the presumption and granting joint legal custody and majority physical custody to a domestic abuser. At trial, H.L. proved that she suffered years of physical and emotional abuse at the hands of her ex-husband, Jaime G. The trial court granted H.L. a two-year restraining order. But with respect to custody over the couple's seven-year-old son, the trial court found Jaime G. to be the "more suitable parent" and awarded him joint custody and nearly 90% of the parenting time. To rebut the presumption, the court relied on the fact that the child went to school regularly when living with father who paid rent and worked full-time. On the other hand, the child had "a high absence rate" when living with mother who was unemployed, did not know who owned the home she lived in with her boyfriend, moved around a lot, and had no transportation. The trial court found it was in the child's best interest to be with father the majority of the time.

This case is like many where the trial court looks only at the first of the seven rebuttal factors, "best interest of the child," to rebut the presumption against granting custody to abusers. **This case makes clear that the trial court cannot stop there – it must look at all 7 factors.**

The opinion in *Jaime G.* establishes that **a trial court cannot award any type of custody to a domestic abuser without first making findings in writing or on the record (orally) about each of the seven-factors.** In coming to this decision, the Court of Appeal relied on the fact that the Legislature enacted the 7-factor test because too many trial courts were awarding custody to domestic abusers, and failing to take into account the effects of domestic violence and whether it would reoccur. Thus, § 3044 serves as a "mandatory checklist" that "require[s] family courts to give due weight to the issue of domestic violence." The Court of Appeal held that a trial court must complete the § 3044 checklist on the record, even if misconduct by counsel requires the trial court to prematurely terminate a hearing.

This is a significant victory for domestic abuse survivors because it helps ensure that trial courts will fully consider past and future domestic abuse when making custody determinations. In 2018 the California legislature confirmed this interpretation of section 3044 by enacting AB 2044 which specifically states that section 3044 is "to be read consistently with Jamie G." and creates a checklist for trial courts.
Statutes used or affected: Family Code sections 3044, 3011, 6203, 6300, and 6320

***Jason P. v. Danielle S.* (2017) 9 Cal.App.5th 1000**
The trial court did not abuse its discretion in not considering all of the listed factors for rebutting the Family Code section 3044 presumption against awarding custody to an adjudicated abuser, but it did err in awarding joint custody based on a future condition that the abuser would complete counseling sessions. When considering whether to rebut the presumption, trial courts can only consider evidence currently before it. The trial court also did not abuse its discretion in finding Father, a sperm donor, to be a presumed parent based on his and Mother's conduct.
Statutes used or affected: Family Code sections 3011, 3020, 3040, 3041, 3044, 7611, and 7613

***Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655**
After years of violent abuse from her former husband (Father), the trial court granted Mother a DVRO, but at the same time granted a 50% timeshare of her children to Father. This circumvented the presumption against awarding joint custody to an abuser by calling this arrangement "sole custody" to the victim with "visitation" to the abuser. The appellate court held that a 50/50 timeshare order is necessarily a joint custody order, so a trial court cannot award such a timeshare without applying the presumption. The appellate court clarified the rebuttable presumption under Family Code section 3044 remains in effect for five years, even if the DVRO has expired. This is also the first published opinion to hold that, when there is a finding of abuse, a trial court must state, in writing or on the record, the reasons for its determination that a parent has overcome the rebuttable presumption.
Statutes used or affected: Family Code sections 3004, 3007, 3011, 3020, 3021, 3031, 3040, 3044, and 3100

***Ellis v. Lyons* (2016) 2 Cal.App.5th 404**
This is the first published case to clarify that an out-of-state court's finding of DV triggers the rebuttable presumption against granting custody to an abuser under Family Code section 3044. The case also holds that a trial court cannot rely on a preference that both parents have "frequent and continuing contact" with their children to rebut this presumption.
Statutes used or affected: Family Code sections 3040 and 3044

***In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487**
Family Code section 3044 establishes a rebuttable presumption that it would be detrimental to the children's best interest to award joint or sole legal or physical custody to a parent who has committed domestic abuse against the other parent in the past five years. Here, the trial court

abused its discretion by awarding joint legal custody to Father, who had a finding of abuse against him. The presumption applies where there has been a finding of abuse, even if a request for restraining order has been denied. The appellate court also clarified that a DVRO will not be automatically granted just because a court has found DV occurred.
Statutes used or affected: Family Code sections 3044, 6220, and 6300

***Christina L. v. Chauncey B.* (2014) 229 Cal.App.4th 731**
The trial court was obligated to apply the rebuttable presumption against awarding custody of the children to the abuser under Family Code section 3044, where there was a recent DVRO against the abuser.
Statutes used or affected: Family Code sections 3011, 3020, and 3044

***F.T. v. L.J.* (2011) 194 Cal.App.4th 1**
The trial court was required to consider Mother's act of DV, together with all other relevant factors, in determining whether it was in child's best interests to grant Father's motion to move away with child or to change the established custody arrangement. Moreover, the trial court must apply the rebuttable presumption against awarding custody to an abuser under Family Code section 3044, after a finding of DV has been made in the previous five years. Further, there is a rebuttable presumption that a parent with sole physical custody of a child is allowed to move with the child, but this applies only when the custody arrangement is made by a court order or by a stipulation (agreement) between the parties showing a clear intent for the order to be final (see *Montenegro v. Diaz* in section VII(B)(1) above).
Statutes used or affected: Family Code sections 3011, 3040, 3044, 6203, 6211, and 7501

S.M. v. E.P. (2010) 184 Cal.App.4th 1249
Father's mere "badgering" of Mother was not "abuse" under the DVPA. The appellate court also explained the trial court could not issue a DVRO without also triggering the rebuttable presumption against awarding custody to an abuser under Family Code section 3044.
Statutes used or affected: Family Code sections 3044, 6203, 6300, and 6320

***Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047**
The trial court abused its discretion in applying the wrong legal standard for evaluating Mother's move-away request, as the custody order attached to the DVRO was not a final custody determination. That is, the trial court wrongly used the "changed circumstances" test instead of the "best interest" test. The appellate court noted that, while there is a rebuttable presumption against awarding custody to an adjudicated abuser under Family Code section 3044, the paramount concern is always the "best interest" of the child.
Statutes used or affected: Family Code sections 3011, 3020, 3040, and 3044

***Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818**
See section I(B) above.

3. Custody and Visitation in DVPA Proceedings

For free resources on parentage and the DVPA, please see FVAP's website.

***In re Marriage of Fernandez-Abin* (2011) 191 Cal.App.4th 1015**
This case clarifies the Uniform Child Custody and Jurisdiction and Enforcement Act (UCCJEA) (see section VII(B)(4) below) applies to custody orders made in a DVRO proceeding, when there is out-of-state court that has already exercised jurisdiction over the children.
Statutes used or affected: Family Code sections 3402, 3405, 3421, 3424, and 3443

***Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413**
The trial court abused its discretion by failing to consider custody and visitation orders the petitioner requested in her DVPA petition. The opinion confirmed the trial court can make such orders, and when doing so must consider whether failure to enter orders would jeopardize safety of petitioner and children for whom orders are sought.
Statutes used or affected: Family Code sections 6323, 6340, and 6341

***Barkaloff v. Woodward* (1996) 47 Cal.App.4th 393**
A trial court generally has broad discretion to grant visitation rights, even to nonparents. Courts hearing DVPA matters can make temporary and permanent custody and visitation orders, depending on the parent-child relationship with the petitioner. (In this case, the appellate court decided courts hearing DVPA matters can only do so for married parties, but that holding has since been overturned by statute.) The appellate court also held the alleged father had failed to establish a parent-child relationship.
Statutes used or affected: Family Code sections 3021, 3100, 6323, 6340, 7601, 7610, 7611, and 7612

4. Uniform Child Custody and Jurisdiction and Enforcement Act (UCCJEA)

***Keisha W. v. Marvin M.* (2014) 229 Cal.App.4th 581**
The trial court had jurisdiction to modify another state's custody order on behalf of Mother, a survivor of DV who had fled from abuse in that state. This was because, under the UCCJEA, California was the "home state" of the child within 6 months of the DVRO and custody proceeding filed by Mother.
Statutes used or affected: Family Code sections 3402, 3421, 3423, 3426, and 3428

***In re Marriage of Fernandez-Abin* (2011) 191 Cal.App.4th 1015**
See section VII(B)(3) above.

5. Hague Convention on the Civil Aspects of International Child Abduction

***Noergaard v. Noergaard* (2015) 244 Cal.App.4th 76**
Mother took Daughter from Denmark to the U.S., fleeing Father's abuse. The trial court granted Father's request to return Daughter to Denmark without giving Mother an opportunity to present evidence of Father's history of spousal and child abuse, including death threats. The appellate court reversed, finding the trial court erred by not allowing Mother to present her evidence of abuse.
Statutes used or affected: Hague Convention, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed.Reg. 10494 (Mar. 26, 1986)); 42 U.S.C. § 11601 et seq.

***Maurizio R. v. L.C.* (2011) 201 Cal.App.4th 616**
Mother took Son from Italy to the U.S., fleeing Father's abuse. The trial court denied Father's request to return Son to Italy because (1) returning the child to Italy ("repatriation") without Mother would pose a grave risk to Son's psychological health, and (2) Father had failed to successfully satisfy certain conditions (called "undertakings") to address those risks. The appellate court upheld the findings of grave risk but concluded the trial court erred by imposing certain conditions on Father that impermissibly required Mother's cooperation. This opinion clarifies that return of the child to their country of origin (here, Italy) is generally the overriding concern in Hague Convention proceedings.
Statutes used or affected: Hague Convention, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed.Reg. 10494 (Mar. 26, 1986)); 42 U.S.C. § 11601 et seq.

VIII. Spousal Support and Other Financial Support

A. Introduction

A trial court can order temporary (Fam. Code, § 3600) or permanent (Fam. Code, § 4320) spousal support in a dissolution, separation, or custody proceeding, and in doing so must consider certain factors, including a history of DV.(See Fam. Code, § 4320, subd. (i); see also Fam. Code, § 4330 et seq.)

There is also a rebuttable presumption against awarding support to a spouse who has been convicted of a DV crime within the last five years.(Fam. Code, § 4325.) And a trial court may not award support to a spouse convicted in the last five years of committing a violent sexual felony (Fam. Code, § 4324.5), or attempted or solicited murder (Fam. Code, § 4324), against the other spouse. A permanent award of spousal support can be later modified or terminated based on changed circumstances, and in making that determination, the trial court must look at the same factors as it did when making the initial award. Immigrant spouses may also be entitled to other forms of financial support by their sponsoring U.S. citizen or Lawful Permanent Resident spouse. The cases below, among others, discuss these provisions in greater depth.

B. Cases

1. Spousal Support

In re Marriage of Brewster & Clevenger (2020) 45 Cal.App.5th 481
In a marital dissolution proceeding, appellate court affirmed an order denying Clevenger's request for spousal support because she had been convicted for acts of domestic violence – stalking, vandalism and unauthorized entry- against Brewster. Family Code § 4325 contains a rebuttable presumption that the victim of a convicted abuser does not have to pay spousal support. The presumption may be rebutted with "documented evidence" that convicted spouse was a DV victim. Trial court found that Clevenger's convictions triggered the rebuttable presumption against spousal support. To rebut the presumption, Clevenger testified about incidents she claimed were DV by Brewster, but the trial court held she failed to present "documented evidence" of abuse. The appellate court held "documented evidence" means "the convicted spouse must present written evidence in the form of a 'writing' within the meaning of Evidence Code Section 250 proving by a preponderance his or her history as a victim of domestic violence in the relationship."

Statutes used or affected: Family Code sections 4320, 4325, 6211, 6320, Code of Civil Procedure section 632; Evidence Code sections 250, 451, 452, 453 and 459, Penal Code sections 646.9, 13700; Internal Revenue Code section 71.

***In re Marriage of Swain* (2018) 21 Cal.App.5th 830**
In a case not involving DV, Husband sought to terminate spousal support he had been ordered to pay Wife. Wife submitted an income and expense declaration, but did not appear at the hearing on Husband's motion. The trial court relied on Wife's declaration to refuse Husband's request. The appellate court reversed because the trial court could not consider Wife's declaration as evidence in ruling on a motion to modify a family law judgment because she did not appear for cross-examination, and there was otherwise no stipulation or good cause. Moreover, Husband showed changed circumstances because Wife was receiving some of his retirement pension, and Wife otherwise did not show a continuing need for spousal support. The appellate court also held the hearsay exception in Code of Civil Procedure section 2009 does not apply to a party's motion to modify a family law judgment where the opposing party wants to exclude the declaration because they are unable to cross-examine the declarant.
Statutes used or affected: Family Code sections 210, 217, and 4320; Code of Civil Procedure section 2009
California Rules of Court used or affected: Rules 5.92 and 5.113

***In re Marriage of Schu* (2016) 6 Cal.App.5th 470**
Although California has a general "no fault" policy when it comes to divorce, fault, including allegations of abuse, is appropriate to consider when awarding spousal support. Here, Wife committed DV against her children when she forcibly cut Daughter's hair, and when she provided Son with so much alcohol he vomited. Wife also committed DV by disturbing the children's and Husband's peace, in part by molesting one of Son's friends for many years.
Statutes used or affected: Family Code sections 2335 and 4320

***In re Marriage of Kelkar* (2014) 229 Cal.App.4th 833**
The statutory presumption against awarding spousal support from a DV survivor (here, Husband) to their abuser (Fam. Code, § 4325) can be triggered by a conviction that pre-dates the legislative enactment of the statutory presumption. Moreover, a victim is not equitably estopped, or otherwise prevented, from relying on the presumption just because the victim previously stipulated (agreed) to supporting the abuser. The appellate court also held the trial court must generally consider acts and effects of DV, whether or not resulting in criminal convictions, when making any award for spousal support.
Statutes used or affected: Family Code sections 4320, 4325, and 6211

***In re Marriage of J.Q. and T.B.* (2014) 223 Cal.App.4th 687**
Relying on the purpose of the DVPA, spousal support, and related provisions, the appellate court held spousal support can be awarded to Wife, the survivor, in a DVPA action before a finding of DV has been made, so long as notice and a hearing have been provided on the spousal support issue. Plus, the trial court may award temporary use of the family dwelling to either party during the DVPA proceeding, and order that party to pay the other's living expenses.
Statutes used or affected: Family Code sections 6220, 6341, 6342, 6343, and 6344

***In re Marriage of Freitas* (2012) 182 Cal.App.4th 330**
The trial court did not abuse its discretion in terminating spousal support from Wife to Husband, a convicted abuser. Wife did not have to show a change of circumstances in order to obtain termination of spousal support, because the trial court's order made clear it would not have

awarded the husband any support if it had properly considered the rebuttable presumption against awarding spousal support to convicted abusers under Family Code section 4325. The decision also notes the Legislature has mandated that courts consider DV in awarding temporary support, singling out this critical factor.
Statutes used or affected: Family Code sections 3600, 4320, and 4325

***In re Marriage of MacManus* (2010) 182 Cal.App.4th 330**
The trial court could consider a history of DV when reallocating to past temporary spousal support an amount previously distributed from the spouse's trust account as child support. The appellate court explained that a trial court must consider the factors in Family Code section 4320 when making a permanent spousal support award, but may make any award of temporary support based on need and ability to pay. The consideration for temporary spousal support may take into account DV, even if that is otherwise considered "fault." The opinion also discussed the legislative history of the DV factor in section 4320.
Statutes used or affected: Family Code sections 3600, 4320, and 4325

***In re Marriage of Cauley* (2006) 138 Cal.App.4th 1100**
The appellate court held that a non-modifiable spousal support provision in the parties' settlement agreement was unenforceable as violating the state's public policy against DV, especially in light of the rebuttable presumption against awarding spousal support to a convicted abuser under Family Code section 4325. The appellate court explained that victims of abuse (here, Husband) should not finance their own abuse. When applying the rebuttable presumption under Family Code section 4325, the trial court need not consider the general factors in Family Code section 4320 when awarding spousal support.
Statutes used or affected: Family Code sections 3591, 4320, and 4325

2. Other Financial Support

***In re Marriage of Kumar* (2017) 13 Cal.App.5th 1072**
The appellate court relied on federal immigration law and state contract law, and referred briefly to the California statutory scheme for spousal support. This case ensures the rights of California immigrants (here, Wife) who are brought to the United States by a family member, such as a spouse, who legally promises to financially support them for 10 years through a federal immigration form, I-864 Affidavit of Support. After Husband was arrested for DV against Wife, and the parties stipulated to a DVRO, Wife sought enforcement of the I-864 affidavit, which the trial court declined to enforce because Wife had not been seeking work. The appellate court reversed, holding an immigrant spouse is under no duty to mitigate their damages by seeking full-time work. It also held California's spousal support system did not preclude a spouse from seeking to enforce the affidavit. The appellate court also noted that an immigrant spouse is not obligated to file a separate civil action for breach of contract, but rather may seek to enforce the I-864 affidavit in family court.
Statutes used or affected: Family Code section 4300 et seq.; 8 U.S.C. § 1183a,
Federal regulations used or affected: 8 C.F.R. § 213a.2

***In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509**
In a case in which the trial court found Wife repeatedly struck Husband, berated him, and threatened to isolate him from Children, Wife appealed from the trial court's ruling that a transmutation document giving her more money was unenforceable because the court found Husband had signed the document under duress by Wife. The appellate court affirmed, concluding Husband had signed the contract under duress and undue influence. The appellate

court also noted Husband did not need to rescind the agreement earlier because of the duress, and noted the trial court's statement of decision was adequate.
Statutes used or affected: Family Code section 721; Evidence Code section 115; Civil Code sections 1569, 1691, and 1693; Code of Civil Procedure sections 632 and 634

IX. DV as a Tort

A. Introduction

A "tort" is basically **a civil wrong**. Torts may arise when someone physically or nonphysical injures someone else or their property, or, in some cases, someone close to them. Whether something is also criminalized is not relevant to whether it is a tort, and vice versa. If a particular wrong is recognized as a tort, then the wronged or injured person may be able to **sue the person who caused that harm**, in order to seek money (called "damages" in court). Some wrongs may be torts and crimes, and just because someone is or is not criminally prosecuted does not necessarily mean they cannot also be civilly sued in tort.

Torts can be defined **by statute or by the "common law."** The "common law" is law recognized by the California Supreme Court or Court of Appeal in published cases, but not necessarily specifically listed in a statute. Because tort cases can take a long time, are often complex and involve difficult legal issues for those representing themselves, and are an overlooked or unknown remedy for many survivors wanting to hold their abusers accountable and seeking money from them, DV survivors often do not sue their abusers for the wrongs (torts) committed against them. But they can.

Civil Code section 1708.6, subdivision (a) allows a DV survivor (called the plaintiff) to sue an abuser for money, if they can prove two things: (1) the abuser (called the defendant) "abused" them within the meaning of Penal Code section 13700, subdivision (a); and (2) they are in a qualifying relationship under Penal Code section 13700, subdivision (b) (former or current spouse or cohabitant).[1] The survivor must bring the action **within three years** from the last act of DV, or from the time they discovered an injury resulted from DV. (Code Civ. Proc, § 340.15.) In the lawsuit, the survivor may seek money for DV acts that occurred more than three years ago, so long as there was a continuing course of conduct on the part of the abuser. And a survivor may bring a tort lawsuit even if a family court has already passed on the DV allegations when determining spousal support awards.

The below cases discuss these provisions.

[1] A survivor may also sue for other torts, including, but not limited to, gender violence (Civ. Code, § 52.4), civil rights violations (e.g., Civ. Code, §§ 51 & 51.7) assault (common law tort), battery (same), and intentional or negligent infliction of emotional distress (same). Other torts may have other statutes of limitations. (See, e.g., Code Civ. Proc., § 335.1 [two year statute of limitation for assault, battery, or injurious neglect].)

B. Cases

***Boblitt v. Boblitt* (2010) 190 Cal.App.4th 603**
The first trial court presided over the parties' divorce proceeding and, since it had to consider allegations of DV when awarding spousal support, found Husband had not committed DV as Wife described. While Wife was appealing that order, she filed a (second) tort lawsuit, suing Husband for the DV and intentional infliction of emotional distress he committed against her. The second trial court dismissed the case on Husband's motion, concluding Wife was barred from "relitigating" the DV allegations after the first court had already addressed them when awarding spousal support.

Wife appealed, and the appellate court found the trial court erred in at least two ways under legal theories called res judicata and collateral estoppel. First, Wife was not barred from bringing the tort action because the divorce judgment was not yet "final," since Wife's appeal in that case was still pending when the second trial court dismissed her tort lawsuit. Second, Wife was not barred because the purpose of awarding spousal support is to provide the support, if circumstances justify granting it, while the purpose of a tort lawsuit is to assert the right to be free from personal injury. Thus, Wife could pursue her tort claims against Husband.
Statutes used or affected: Family Code sections 271, 2030, 4320, and 6211; Civil Code section 1708.6; Evidence Code section 452

***Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444**
Two years after filing for divorce, Wife sued Husband in tort for injuries related to the DV he committed against her during their 13-year marriage. On Husband's motion, the trial court excluded all evidence of DV that occurred more than three years before Wife filed the tort lawsuit, due to the statute of limitations. Wife challenged that order by writ, and the appellate court held that she could recover for acts occurring prior to three years before she filed, so long as she proved a continuing course of abusive conduct. The appellate court also noted that although Wife did not specifically allege the tort of DV under Civil Code section 1708.6, her allegations of battery, assault, and intentional infliction of emotional distress met the definition of abuse under the DVPA.
Statutes used or affected: Civil Code sections 51.7, 52.1, and 1708.6; Code of Civil Procedure sections 335.1 and 340.15; Family Code sections 6203, 6211, and 6320

X. Juvenile Dependency

A. Introduction

Juvenile courts are trial courts that preside over dependency and delinquency cases. When a child is being, or at risk of being, abused or neglected by a parent or guardian, the local county department of child welfare (DCSF or CPS) may bring a court case in the juvenile court. This first type of case is called a "juvenile dependency case" and deals with children who have been abused, neglected, and/or abandoned. The laws governing dependency cases are discussed below.

The second type of case occurs when a child (a minor under the age of 18) is being charged with a "status offense" (like truancy, curfew violations, etc.), or with violating a criminal statute. That case, which is also brought in the juvenile court, is called a "delinquency case." When a

minor is charged with a crime, the resulting delinquency case is similar to an adult criminal trial, albeit with important differences. Delinquency cases are not discussed in this compendium.

What is the difference between a "juvenile court" and a "family court?" Both juvenile and family courts are "superior courts," and can be in the same courthouse or courtroom, and presided over by the same judges and commissioners. The differences come from the statutes and powers a judge can use in a given type of case—whether a dependency case, or a family law case. Dependency cases are governed by one set of state laws, the Welfare and Institutions Code. Family cases are governed by all applicable state laws, including especially the Family Code and the Code of Civil Procedure. While a juvenile court exercises "limited jurisdiction arising under juvenile law," and is limited by the Welfare and Institutions Code, a family court is the superior court "performing one of its general duties," not a special court with limited jurisdiction. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 200-201.)

Moreover, "[t]he two courts have separate purposes." (*Chantal S.*, *supra*, 13 Cal.4th at p. 202.) Family courts are meant to allow parents to resolve "private issues relating to the custody and visitation with children," and in proceedings under the Family Code, parents are generally presumed to be fit and capable of raising their children, pursuant to Family Code section 3061. (*Chantal S.*, at p. 202.) In dependency cases in juvenile courts, though, the purpose is to allow the government to restrict parents' behavior and, when necessary, remove children from unsafe homes.(*Chantal S.*, at p. 202.) So, while both family and juvenile courts want to make orders in the children's "best interest," the provisions governing custody under the Family Code apply only to family law proceedings, not dependency proceedings in juvenile court. (*Chantal S.*, at p. 202.)

Police officers and DCSF social workers may take a child at immediate risk of harm into temporary protective custody. (Welf. & Inst. Code, § 305 et seq.) If the county welfare agency files a petition with the juvenile court to detain a child who is being abused or neglected, or at risk of the same, the agency or court must provide notice to certain persons, including the parents. (Welf. & Inst. Code, § 290.1 et seq.) At the initial or detention hearing, the juvenile court will determine whether there is a prima facie case of abuse or neglect or risk thereof, and decide whether to detain the children in in-home placement with a parent or, instead, in out-of-home relative or foster care. At the jurisdictional hearing, the juvenile court will then declare a minor child to be a dependent if it finds the child falls within a provision in section 300. The county welfare agency often alleges that DV survivors have "failed to protect" their children from abusers or from exposure to abuse. (See Welf. & Inst. Code, § 300, subd. (b)(1).)

At the dispositional hearing, the court will determine whether there is a substantial danger to the child's physical health or emotional well-being were the child to be returned home, and whether there are any reasonable means by which the child's health could be protected if the child remains at home. If not, the court will order the child removed from the physical custody of the parent or parents, and placed in foster care. While a dependency case is pending, county welfare agencies are generally required to provide reasonable services to parents and children to remedy the problems bringing the family into the dependency system, and must attempt, except in special circumstances, to reunify the family. (Welf. & Inst. Code, §§ 202 & 360 et seq.) But if the juvenile courts finds that the parents have not made significant progress, the court can, among other things, and terminate parental rights. (Welf. & Inst. Code, § 366.26.)

Welfare and Institutions Code Section 388 allows a parent to petition to change, or set aside, any previous juvenile court order if the parent shows new evidence or a change of circumstances that is in the child's best interests. Where reunification services have been

terminated, there is a rebuttable presumption that foster care is in the child's best interests due to their need for permanency and stability. When determining whether the presumption has been rebutted, the court must consider (1) the seriousness and potential continuation of the problem that led to the dependency, (2) strength of the bonds between the children to parent and caretakers, and (3) nature of the changed circumstances and why the change was not made sooner.

The below cases discuss these provisions.

Children in dependency proceedings will be represented by minors' counsel—attorneys who are appointed by a system set up between the state, the county, and the court. (Welf. & Inst. Code, § 317, subds. (c)-(h).) Minors' counsel representing the child also act as guardians ad litem for their child clients, meaning they make legal decisions for the child clients for the proceedings. (Welf. & Inst. Code, § 317, subd. (e)(1).) Parents and guardians also have the right to be represented by counsel during at least some of these proceedings at trial and, for low-income parents, on appeal. (Welf. & Inst. Code, §§ 317, subd. (a)-(b) & 353; *Lassiter v. Department of Social Services* (1981) 452 U.S. 18 [due process affords parents the right to appointed counsel during some trial level dependency proceedings]; *Chantal S.*, *supra* [poor parents have right to appointed counsel on appeal].)

Note that dependency cases are very fact-dependent, and there are many published cases beyond what is provided below, including many involving DV. The below cases are mainly about how DV survivors are often accused of failing to protect their children from being exposed to abuse, whether directly or indirectly, or about restraining orders issued by the juvenile court to protect children and/or protective parents.

B. Cases

In re I.B. (2020) 53 Cal.App.5th 133
Two very young children, I.B. and A.B., were removed from their parents' custody due to ongoing domestic violence and unsanitary living conditions. While engaging in reunification services, Mother, who was legally blind, remained involved with Father, who continued to physically and emotionally abuse her. At the 18-month review hearing, the juvenile court terminated reunification services as they determined that both parents made only minimal progress. At the permanency hearing over one year later, the trial court heard both parents' Section 388 petitions to modify the prior order, and granted Mother's petition seeking return of I.B., concluding that she had demonstrated a change in circumstances and that I.B. returning to her care was in the child's best interests. The appellate court found that Mother presented substantial evidence to support the trial court's changed circumstances finding pursuant to Section 388, because Mother demonstrated great progress in separating herself from Father, which the court highlighted was a particularly difficult task. The appellate court acknowledged that the path to independence does not look the same for all survivors, and cannot be measured solely by looking at the amount of time the parties have separated. The appellate court also noted Mother's high level of motivation to achieve personal goals through therapy, even after the court terminated services. She left not only her abusive relationship with Father, but also left other toxic relationships in her life and developed a caring network of friends. The appellate court was unconcerned that Mother did not successfully obtain a restraining order against Father, noting that taking legal action is not necessarily an indicator of success. Although she completed numerous programs through the reunification case plan including parenting classes, a domestic violence program, and mentorship programs –the court noted that completing the

plan itself is not evidence of changed circumstances. The court also questioned the wisdom of joint therapy being a requirement of reunification services in cases like this.
Statutes used or affected: Welfare and Institutions Code Section 388

In re J.M. (2020) 50 Cal.App.5th 833
This case provides trial courts with clear guidance on how to evaluate whether a section 388 presumption (that foster care is in the child's best interests) is rebutted by a domestic violence survivor who has completed reunification services. The appellate court is clear that evidence of a parent being slow to break free from the cycle of domestic abuse, stay away from the abuser, or engage in domestic violence and other services does not mean the survivor parent cannot overcome the section 388 presumption.
Statutes used or affected: Welfare and Institutions Code Section 388

In re C.M. (2019) 38 Cal.App.5th 101
Child protective services opened a dependency case for minor C.M. who lived with Parent A and her boyfriend. The petition alleged that both Parent A and her boyfriend had committed domestic violence. The court ordered Parent A to take a 52 week batterers intervention program. The Court released C.M. to the custody of Parent B and gave him sole legal and physical custody. Parent A filed a motion to get custody back. The dependency court ordered joint legal custody for both parents. Parent B argued that the dependency court was wrong to order joint legal custody with Parent A when there were allegations of domestic violence. Parent B said that the court should have applied the Family Code 3044 rebuttable presumption against ordering joint or sole custody to a parent where there is a finding of domestic violence. The Court of Appeals agreed with the trial court and said that dependency courts follow the Welfare and Institutions Code not the Family Code so the 3044 presumption does not apply in dependency cases. The Court said the dependency system is different and has different purposes. The Court said that the dependency court is better able to make a determination about custody in these cases without any presumptions.
Statutes discussed or affected: Welfare & Institutions Code sections 213.5, 300(a), 300(b), 362.4, 388; Family Code sections 3044, 6323

***In Bruno M. et al.* (2018) 28 Cal.App.5th 990**
The Court of Appeal upheld the issuance of a restraining order in dependency court which included the parties' two children as protected parties. On appeal, Father argued the children should not be protected parties because he had not directly abused them. However, the evidence presented at the trial level showed that the children had experienced trauma and were negatively affected by witnessing Father abusing their mother and seeing the aftermath of abuse. The appellate court found that Father's abuse of the children's mother constituted disturbing the peace under the Welfare and Institutions Code, and was sufficient to make them protected parties. The Court also found that Father's threats to take the children to another country placed the children in danger, and further justified the issuance of a restraining order including the children as protected parties.
Statutes used or affected: Welfare and Institutions Code section 213.5

***J.H. v. Superior Court* (2018) 20 Cal.App.5th 530**
Father sought extraordinary writ review of the juvenile court's order terminating his reunification services and setting the matter for a permanency plan hearing. The trial court properly found there was not a substantial probability Father's daughters would be returned to his custody in the next six months because he minimally complied with his case plan, was hostile to the social workers and court, and denied he needed to address his history of DV and anger issues. The appellate court also held Father's due process rights were not violated when the trial court did

not allow him to cross-examine the social worker who had authored a report, when that worker had left the agency before the hearing and her supervisor, an expert witness at the trial, instead testified on the report, which was admittedly largely hearsay.
Statutes used or affected: Welfare and Institutions Code sections 281, 300, 358, 366.21, and 366.26

***In re C.M.* (2017) 15 Cal.App.5th 376**
The juvenile court issued a restraining order prohibiting Child's stepfather from having any contact with Child. The court further directed DCSF to immediately remove Child from Mother's care if there was any evidence that the restraining order was violated, that is, that Stepfather had contact with Child. Mother appealed and the appellate court reversed. It was error for the juvenile court to issue this conditional removal order. Any removal, including temporary detention, of a child must be based on a timely assessment of imminent risk to the child.
Statutes used or affected: Welfare and Institutions Code sections 213.5, 290.1, 300, 305, 306, 309, 361, and 387
California Rules of Court used or affected: Rules 5.620 and 5.630

***In re R.T.* (2017) 3 Cal.5th 622**
A child can be the subject of a dependency proceeding in juvenile court if their parent fails, or is unable, to protect or adequately supervise them. (Welf. & Inst. Code, § 300.) Some courts had thought this could only happen when the parent was unfit or at fault. In this case, the California Supreme Court corrected that view, and held that a parent need not be at fault or blameworthy for their failure or inability to adequately supervise or protect their child. Note this case involved a teenager who consistently ran away and acted aggressively, but did not involve intimate partner violence or child abuse. The Court also explained that a minor can be brought within the juvenile court because of both dependency and delinquency, which is called "dual status."
Statutes used or affected: Welfare and Institutions Code sections 241, 300, 300.2, 601, and 602

***In re Michael S.* (2016) 3 Cal.App.5th 977**
A juvenile court has the power to remove an offending or abusive parent from the home, allowing the Child to remain at home with the other parent. A juvenile court may also remove the Child from the custody of the offending parent, while allowing the Child to remain at home with the other parent. The statutory requirement that the juvenile court must consider removing the offending parent from the home as an alternative to removing Child from the parent (Welf. & Inst. Code, § 361) does not preclude the court from doing both with regard to Father, who had abused Mother and Child, while maintaining Mother's custody of Child.
Statutes used or affected: Welfare and Institutions Code sections 300 and 361

***In re M.M.* (2015) 240 Cal.App.4th 703**
Where both parents minimized and denied prior incidents of DV and its effects on Child, the juvenile court properly asserted dependency jurisdiction. The appellate court also reaffirmed that a juvenile court proceeding is a "child custody proceeding" under the UCCJEA (see sections VII(A) and VII(B)(4) above), and further held that repeated statements from the "home state"—outside of California (here, Japan)—refusing to even discuss the case is the same as declining jurisdiction over the case and agreeing California has jurisdiction.
Statutes used or affected: Welfare and Institutions Code sections 300 and 361; Family Code sections 3402, 3421, 3424, 3427, and 3428

***In re Jonathan B.* (2015) 235 Cal.App.4th 115**
Mother, a DV survivor, can (and should) take actions, like reporting the abuse to the police and getting a restraining order, after her Children witnessed abuse. Because Mother had taken

these protective actions and because it was not foreseeable that Father would assault Mother during a custody exchange when there had been no DV incidents for the last five years, Mother had not "failed to protect" Children from the abuser, Father.
Statutes used or affected: Welfare and Institutions Code section 300

***In re M.W.* (2015) 238 Cal.App.4th 1444**
Mother did not "fail to protect" her children from their abusive father when she declined a protective order during a DV incident that had occurred seven years earlier. Obtaining an emergency protective order (EPO) is "an advisable but not mandatory course of action." Even if Mother had sought a protective order, she would not necessarily have received Father's background check, so she did not "fail to protect" her children from Father where Mother did not know that Father was a registered sex offender. Note that Mother conceded the juvenile court had jurisdiction over her children because of her substance abuse, and that the county had filed an amended petition against Mother.
Statutes used or affected: Welfare and Institutions Code sections 300 and 342; Family Code section 6256

***In re N.L.* (2015) 236 Cal.App.4th 1460**
The juvenile court erred by listing Child as a protected party in Father's juvenile court-issued DVRO against Mother, because Child's safety was not at risk if she were not included on the restraining order. There was no evidence Mother had engaged in any abusive or violent conduct against Father in front of Child, or had abused her in any way. Indeed, the Department reported Mother's interactions with Child during their visits was favorable. In support of including Child as a protected party, Father had alleged that Mother continued to contact Child's school and threatened to remove Child from school, but the appellate court noted Mother could do that because she could decide Child's educational rights at that time.
Statutes used or affected: Welfare and Institutions Code sections 213.5 and 300
California Rules of Court used or affected: Rule 5.650

***In re C.Q.* (2013) 219 Cal.App.4th 355**
The juvenile court erred by listing the parents' minor daughters as protected parties in Mother's juvenile court-issued restraining order against Father, because the children's safety was not at risk, nor was Father stalking or otherwise disturbing them. When the parents' 12 year old daughter stepped in between them when Father was abusing Mother, Father walked away. The children were not afraid of their father, they wanted visitation with him, and the monitored visitation has been positive. Under Welfare and Institutions Code 213.5 children may only be protected parties on a juvenile restraining order if failure to issue the order might jeopardize their safety.
Statutes used or affected: Welfare and Institutions Code sections 213.5 and 300

***In re T.V.* (2013) 217 Cal.App.4th 126**
Mother had a history of abusing drugs, and Father physically abused Mother, leading to multiple criminal convictions for spousal abuse. Father's DV against Mother often occurred when Child was in the house and in front of Child. The juvenile court found Child to be at risk of being harmed, and took jurisdiction over the Child as a dependent of the court, based on these facts. The appellate court affirmed when Father appealed, explaining, "A parent's past conduct is a good predictor of future behavior."
Statutes used or affected: Welfare and Institutions Code sections 300, 300.2, 332, and 361

***In re E.B.* (2010) 184 Cal.App.4th 568**
Mother lived with Children in a DV shelter; Father was a registered sex offender and child molester. Father sexually abused Daughter, and verbally and physically abused Mother and Son; Mother had an alcohol abuse issue. The juvenile court eventually found Children to be at risk of being neglected or harmed by both parents, and both appealed. The appellate court affirmed the findings against Mother because there was enough evidence of her alcohol abuse problem, and because she had a "record of returning to Father despite being abused by him." The appellate court also affirmed the findings against Father since he was a registered sex offender.
Statutes used or affected: Welfare and Institutions Code sections 300, 300.2, 335.1, and 355

***In re Heather A.* (1996) 52 Cal.App.4th 183**
Father physically and verbally abused Mother multiple times, and at least once in front of Children and other times when they were present in the home. Father had a history of DV with other women. The juvenile court found the children were at risk of being harmed or neglected, assumed jurisdiction over the children, removed them from Father's care, and placed them in foster care. The appellate court affirmed, explaining that DV can be harmful to children through exposure (secondary abuse) and possible abuse against them.
Statutes used or affected: Welfare and Institutions Code sections 300, 355, and 361

XI. Special Immigrant Juvenile Status

A. Introduction

Special immigrant juvenile status (SIJS) provides immigration relief to abused, neglected, or abandoned children living undocumented in the United States. 8 U.S.C. § 1101(a)(27)(J). In order to apply for SIJS, the minor child must obtain certain findings in juvenile court, including findings that the minor is not able to reunify with one or both parents due to abuse, neglect, or abandonment. 8 U.S.C. § 1101(a)(27)(J)(i), Cal. Civ. Proc. § 155. Juvenile courts have been defined broadly to include dependency, delinquency, probate, and family courts. Cal. Civ. Proc. § 155. Once a state court issues SIJ findings, the minor may petition the United States Citizenship and Immigration Services for SIJS. 8. C.F.R. § 204.11. Once a SIJS petition is approved, the minor may apply to become a lawful permanent resident.

The case below provides California family courts with additional guidance for issuing SIJS findings.

B. Cases

***Bianka M. v. Superior Court of Los Angeles County* (2018) 5 Cal.5th 1004**
Bianka, a citizen of Honduras, entered the United States unaccompanied without authorization at the age of ten. Bianka filed a parentage action in family court and named her mother, who was living in the United States, as the sole respondent. Bianka asserted that her father, who lived in Honduras, was physically abusive to her mother, abandoned her before her birth, and that there were no relatives in Honduras to take care of her. Bianka requested that the court place her in the sole custody of her mother and issue Special Immigrant Juvenile (SIJ) findings. Bianka provided adequate notice of the proceedings to her father in Honduras who did not take any steps to participate in the proceedings.

The family court declined to make a finding that Bianka was abandoned by her father without Bianka establishing the court's personal jurisdiction over her father in Honduras and joining him as a party to the action. On appeal, the appellate court upheld the trial court's decision. It also noted that trial court findings in an uncontested custody action would not have been helpful to Bianka in obtaining SIJ classification because her primary motivation underlying the action was immigration-related.

The California Supreme Court reversed the appellate decision, determining that joinder of Bianka's father was not required for the trial court to make relevant SIJ findings. It concluded that if the action were dismissed for nonjoinder, the prejudice to Bianka would outweigh the prejudice to her father and conflict with Congress's intent to provide immigration relief to abandoned, neglected, or abused children. Lastly, the Court instructed that courts may not decline to issue SIJ findings based on the court's belief that the child's primary motivation in filing the action was to obtain immigration relief.
Statutes used or affected: California Civil Procedure sections 155, 389
California Rules of Court used or affected: Rules 5.24, 5.130
Federal statutes used or affected: 8 U.S.C. § 1101(a)(27)(J)

XII. Other Cases

This miscellaneous section includes the law about personal service in DVPA proceedings, the anti-SLAPP statute in DV cases, *cy pres* awards, and the right to a court reporter in civil cases.

A. Personal Service on the Respondent in DVPA Proceedings

"Personal service" generally means delivering, in-person, legal notice to a party in a case, usually consisting of a copy of the complaint (Form DV-100 and any attached declaration, forms, and exhibits) and a summons to appear in court (Form DV-109, usually along with the temporary restraining order, DV-110, if granted). The server cannot be the petitioner, or anyone who is named as a protected party on the DVRO. The party doing the service must also have the server complete and sign, and the party must then file, a Proof of Service (Form DV-200). If the opposing party does not receive proper notice of the petition, the court may dismiss the case. Note that service for modifying or terminating a DVRO may be other than personal, if the trial court so orders. (Fam. Code, § 6345, subd. (d).)

***Caldwell v. Coppola* (1990) 219 Cal.App.3d 859**
The court of appeal held that a named protected party in a DVRO, whether the petitioner or an added household or family member, cannot validly effect personal service on the respondent. Without valid service, the trial court does not have personal jurisdiction over the respondent, and any order or judgment issued thereafter is void. Note this case was decided before the Family Code was created, but its holding remains valid.
Statutes used or affected: Code of Civil Procedure section 414.10; Family Code sections 6209, 6211, 6220, and 6345

B. Anti-SLAPP Statute and DV

Division Four of the First District Court of Appeal recently explained:

> "A SLAPP suit—a strategic lawsuit against publication participation—seeks to chill rights to free speech or petition by dragging the speaker or petitioner through the litigation process, without genuine expectation of success in the suit. The Legislature enacted [Code of Civil Procedure] section 425.16 to provide a summary disposition procedure for SLAPP claims. Toward this end, section 425.16 authorizes courts, upon motion by anyone who claims to be the target of a SLAPP suit, to probe the basis for any cause of action allegedly arising from protected communicative activities, and to strike it if the claimant cannot show minimal merit."

(*Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 591-592.)

***L.G. v. M.B.* (2018) 25 Cal.App.5th 211**
Wife filed a request for a Domestic Violence Restraining Order (DVRO) against her Husband in her pending divorce case. Wife alleged financial and emotional abuse perpetrated through a third party. The third party then filed a separate defamation action against Wife, claiming the anti-SLAPP statute did not apply to such actions because of an exception under Civil Code section 47(b), called the "divorce proviso." Wife argued the divorce proviso did not apply because (1) a DVPA petition is a subsidiary family law motion; or alternatively, (2) the granting of Wife's temporary restraining orders in the DVRO action or final civil harassment orders entered against the third party constitute "interim adverse judgments" that negate the divorce proviso's proof of bad faith requirement. However, the Court of Appeal disagreed with Wife's arguments, affirming the denial of Wife's anti-SLAPP motion, and holding that there is no anti-SLAPP protection for statements about third parties that are made in DVPA petitions filed in connection with family law actions.
Statutes used or affected: Civil Code section 47; Code of Civil Procedure sections 425.16, 527.6; Family Code section 6300

***Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240**
Ex-boyfriend, a famous professional athlete, made statements in public about Ex-girlfriend's cosmetic surgery and abortion. Ex-girlfriend then sued, in tort, physically and verbally abusive Ex-boyfriend for, among other things, invasion of privacy, defamation, and intentional and negligent infliction of emotional distress—all common law torts. Ex-boyfriend moved to strike five of the causes of action under the anti-SLAPP statute, and the trial court denied the motion because although the allegedly wrongful activities were protected by the statute, Ex-girlfriend had shown a likelihood of prevailing on the merits. Ex-boyfriend appealed, and the appellate court affirmed in part and reversed in part.

First, the appellate court agreed the causes of action arose from protected activity because the allegedly damaging statements made by Ex-boyfriend were made in a public forum or concerned issues of public interest. Second, the appellate court held the statements about cosmetic surgery and abortion were too newsworthy to support tort liability for invasion of privacy, although the sonogram photograph and medical report were not. Third, the appellate court held the statements about the abortion did not expose Ex-girlfriend to reputational injury (needed for defamation), and those about the cosmetic surgery could not support a claim for defamation because Ex-girlfriend had not shown enough evidence for reputational injury.

Fourth, the appellate court held the statements at issue were not so intolerable to support the claim for intentional infliction of emotional distress. However, this last claim also arose from verbal and physical abuse Ex-boyfriend committed against Ex-girlfriend, and those allegations were not impacted by this holding.
Statutes used or affected: Code of Civil Procedure section 425.16; Civil Code section 45

***S.A. v. Maiden* (2014) 229 Cal.App.4th 27**
Husband sued Wife for malicious prosecution, abuse of process, and intentional infliction of emotional distress after she withdrew her petition for a DVRO against him. After the trial court dismissed his suit, Husband appealed. The appellate court held that a withdrawn DVRO petition is protected by the anti-SLAPP statute and that the respondent cannot later sue for malicious prosecution, for four reasons. First, malicious prosecutions are generally not allowed for unsuccessful or withdrawn family law motions, including DVRO petitions. Second, family courts can impose sanctions and attorney fees for frivolous or malicious motions and DVRO requests. "Third, if malicious prosecution actions were permitted against persons who request DVPA restraining orders, there would be a 'chilling effect' on the ability of victims of domestic violence and other abuse to obtain protective relief under the DVPA." Fourth, allowing malicious prosecution liability on attorneys representing DV survivors in DVRO proceedings would increase the attorneys' malpractice insurance cost.

The appellate court also held that the Husband failed to show an abuse of process, and was barred from pursuing the intentional infliction of emotional distress claim due to the litigation privilege in Civil Code section 47, subdivision (b).
Statutes used or affected: Code of Civil Procedure section 425.16; Family Code sections 271, 6200, 6211, 6220, 6300, 6320, and 6344; Civil Code section 47

C. Cy Pres Awards

As explained in *The Consumer Trust Fund: A Cy Pres Solution to Undistributed Funds in Consumer Class Actions*:

> "In solving the problem of undistributed funds, courts have sometimes resorted to the cy pres doctrine, adapted from the law of trusts. The term "cy pres" is derived from the Norman French expression *cy pres comme possible*, which means "'as near as possible.'" Traditionally, the cy pres doctrine has been applied to preserve testamentary charitable gifts that otherwise would fail: if a charitable gift can no longer be carried out as the testator intended, the doctrine allows the "next best" use of the funds to satisfy the testator's intent "as near as possible." In the class action context, cy pres mechanisms have become both useful and controversial means of distributing benefits to the "next best" class when injured class members, for whatever reason, cannot be compensated individually."

(DeJarlais, *The Consumer Trust Fund: A Cy Pres Solution To Undistributed Funds in Consumer Class Actions* (1987) 38 Hastings L.J. 729, 730.)

***In re Easysaver Rewards Litigation* (2018) 906 F.3d 747**
An objecting class member challenged the district court's approval of a class action settlement resolving claims which provided that defendant corporations enrolled consumers in a membership rewards program without their consent and mishandled their billing information.

According to the settlement agreement, defendants were to pay $3.5 million in settlement administration costs, and to refund class members' enrollment fees; any remaining fees were to be awarded to three *cy pres* beneficiaries for a position or program related to internet privacy or internet data security. The settlement also provided that each class member would be given a monetary credit that could be used to purchase products from the defendants, and provided that counsel for the class would receive $8.7 million in attorney's fees.

On appeal, the Ninth Circuit Court of Appeals found in favor of the class objector with respect to the attorney fee award, holding that defendants' monetary credits to consumers were indeed coupons, and thus, the settlement agreement failed to comply with the Class Action Fairness Act. With respect to the *cy pres* award, the Ninth Circuit affirmed the district court's ruling, holding that it was reasonable for the district court to approve the use of a *cy pres* distribution. The Ninth Circuit further held that it was not an abuse of discretion for the district court to approve these *particular cy pres* beneficiaries, given the court's broad discretionary powers in shaping *cy pres* awards, and the requirement that *cy pres* award recipients be selected based on the objectives of the underlying statutes and the interests of the silent class members—which was met here.
Statutes used or affected: 28 U.S.C. § 1712; Federal Rule of Civil Procedure rule 23(e)(2)

D. The Right to a Court Reporter

A court reporter creates an official verbatim record of court proceedings, which means that a court reporter transcribes every spoken word in a court proceeding into written form to produce a transcript. A transcript of trial court proceedings is crucial to an appeal because it allows the appellate court to accurately review for any errors committed at the trial level. Without this type of verbatim transcript from a trial court proceeding, an appeal is often doomed.

The case below provides that low-income litigants with a granted fee waiver have a right to a free official court reporter in order to preserve equal access to the appellate process.

***Jameson v. Desta* (2018) 5 Cal.5th 594**
A prisoner sued a prison doctor for medical malpractice. Although the prisoner was granted a fee waiver, he was not provided with a court reporter at trial, and could not afford to hire a private court reporter. San Diego County had eliminated court reporters in most civil cases due to budget cuts. When the prisoner appealed the trial court's decision, the Court of Appeal determined that it could not analyze some of the prisoner's arguments because there was no record of what happened during the trial, so it ruled in favor of the doctor. The prisoner appealed to the California Supreme Court.

The California Supreme Court ruled in favor of the prisoner, striking down San Diego's policy that eliminated court reporters from civil cases because the policy did not have an exception for low-income litigants who had received fee waivers. The Court held that court reporters play a crucial role in protecting people's legal rights by providing them with a verbatim record of their trial court proceedings, and that failing to provide a verbatim record denies low-income litigants equal access to the appellate process. Additionally, the Court further stated that a "settled" or "agreed statement," which are alternatives to a verbatim transcript, are insufficient to provide the litigant with a verbatim record, and thus, do not eliminate the need for a court reporter.
Statues used or affected: Government Code sections 68086, 68630, 68631; Code of Civil Procedure sections 269, 639, 645.1
California Rules of Court used or affected: Rules 2.956, 3.55

E. Sanctions

In re Marriage of George & Deamon (2019) 35 Cal.App.5th 476
In a dissolution (divorce) case, the parties had agreed on a settlement and the settlement was read in front of the family court trial judge. The trial judge ordered Deamon's attorney to prepare a judgment based on the settlement. Deamon's attorney had to sent it to George for approval before submitting it to the court. George received the judgement but raised issues and was not willing to sign the judgement. Deamon's attorney filed a motion for the trial court to approve the judgment and to request sanctions against George under Family Code § 271. This section allows the court to award sanctions (usually an order to pay money) against a party who frustrates the policy of the law encouraging settlement of cases. Deamon's attorney filed declarations that discussed the attempts they had made to get George to cooperate. At the hearing on sanctions, Deamon did not appear in person or by telephone, but only through an attorney. Deamon lived overseas. George objected to the fact that Deamon was not there in person. The trial court ordered George to pay $10,000 in sanctions. George appealed the order arguing that Family Code section 271 required Deamon to appear in person and give live testimony. In addition, George argued that the trial court should not have considered the declarations because they were not admitted into evidence. The Court of Appeal agreed with the trial court. The Court of Appeal said that there was no rule requiring a person represented by an attorney to appear in person or by telephone for a sanctions hearing. Per the court opinion, George should have filed and served a Notice to Appear if she had wanted Deamon to appear for cross-examination. The court said that George also did not clearly tell the trial court that she wanted to call Deamon as a witness or request a continuance. If she had, the trial court would have had to find that there was "good cause" to refuse to receive live testimony in order to allow Deamon not to appear. The court also ruled that it was not required for the declarations to be formally admitted into evidence under § 271 because the motion was being decided on the written papers and no one had taken the proper steps to present live testimony.
Statutes discussed or affected: Family Code Section 271, Civil Code of Procedure Section 664.6, 2009

F. Nullification of Marriage

In re Marriage of Ankola (2020)
See sec. I.B. above
The court also held that the standard of proof for an annulment of marriage based on an allegation of fraud is clear and convincing evidence. The fraud must go to the very essence of the marital relationship. Here, even though there were immigration visa considerations that may have played some role in the parties' decision to marry, husband did not prove by clear and convincing evidence that his consent to marry was obtained by fraud.
Statutes discussed or affected: Family Code section 2210

***In re Marriage Goodwin-Mitchell and Mitchell* (2019) 40 Cal. App. 5th 232**
Goodwin-Mitchell filed for a nullity (annulment) against Mitchell alleging that Mitchell had committed fraud because he married her only to get a green card. Goodwin-Mitchell applied for a 2-year conditional green card for Mitchell and he moved to the United States. Within month of his arrival, he was arrested for domestic violence against his wife and she obtained a temporary restraining order. While he was in jail, Goodwin-Mitchell discovered written evidence that Mitchell was telling people he was just waiting to get his papers and then would leave. The trial court heard evidence that Mitchell was having an affair and soliciting prostitutes and using the

parties' home for his activities. After the domestic violence and discovering this evidence, Goodwin-Mitchell continued to live with Mitchell for another eight months. To get the annulment Goodwin-Mitchell had to prove by clear and convincing evidence that Mitchell had intended green card fraud at the time of marriage. The trial court granted the annulment and Mitchell appealed. He argued that the trial court should not have granted the annulment because Goodwin-Mitchell and he continued to live together for eight months after she discovered this evidence. The Court of Appeal agreed because Family Code § 2210(d) specifies a marriage can be annulled based on fraud, unless the spouse continues with full knowledge to freely live with the fraudulent spouse after discovering the fraud. Here Goodwin-Mitchell had evidence that Mitchell was going to leave her after getting his papers and that he was unfaithful, but continued to live with Mitchell as her spouse for another 8 months. The Court of Appeal said that they had no choice but to uphold the current law even if they believe the policy behind it is outdated, but that is the role of the Legislature.
Statutes discussed or affected: Family Code section 2210

G. Housing Protections

***Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990**
See section I(B) above.

***DHI Cherry Glen Assoc. v Gutierrez* (2019) 46 Cal.App.5th Supp. 1**
Domestic violence survivor was evicted from her project-based section 8 housing after being served a Notice to Pay Rent, without a notice of occupancy rights as required under Violence Against Women Act (VAWA). Survivor appealed and the Appellate Division of the Superior Court reversed, holding that VAWA notices are required by law when serving tenants residing in VAWA covered units any notice of eviction. Therefore, because the survivor was not served a VAWA notice with the Notice to Pay Rent, the notice served on the survivor could not support an action for unlawful detainer.
Statutes used or affected: Code of Civil Procedure 1161, 24 CFR 5.2005

H. Impeaching Witness Credibility

***People v. Villa* (2020) 55 Cal.App.5th 1042**
This is a criminal case whose relevant sections discuss what evidence an abuser can use to challenge the credibility of their victim-witness who testifies against the abuser; presumably this analysis would apply to civil and family law matters. In this case, the defendant was convicted of multiple crimes after physically abusing the victim in their car, and driving intoxicated and recklessly, while their infant child was in the backseat. At trial, the court denied the defendant's request to admit evidence of the victim's application for a U Visa, a federal form of temporary relief available for undocumented immigrants who are victims of certain crimes, including domestic violence, and willing to help in the criminal investigation or prosecution. The Court of Appeal affirmed, concluding, while the U Visa application evidence could have been relevant to prove bias or motive for the victim to lie, its probative value was outweighed in this case by consumption of time and the risk of confusing the jury, particularly since the victim's trial testimony materially matched her preliminary hearing testimony (prior to her learning of the U Visa), other evidence of his abuse was overwhelming, and the risk was high the jury may have been prejudiced against the victim.
Statutes used or affected: Evidence Code sections 210, 351.4, 352, 402, and 780; 8 U.S.C. section 1101(a)(15)(U); 8 C.F.R. section 214.14