



## Model Memorandum of Points and Authorities in Support of Hearing and Denial of Continuances: Instruction Sheet

Sometimes Respondents (individuals whom the Domestic Violence Restraining Order is against) ask the court to continue, or delay, the hearing date for the restraining order because of a criminal case. The person requesting the restraining order (the “Petitioner”) might not want the hearing continued because it is hard for them to come back to court – just to have the case continued again– for various reasons. Some reasons a Petitioner might not want the hearing continued include the trauma of seeing the Respondent many times at court, the cost of taking time off from work, and the difficulty of finding childcare. The attached model memorandum can be used to ask the court to not continue the case and to hold a hearing on the request for a restraining order.

This model Memorandum of Points and Authorities (MPA) may be used by the petitioner to object (oppose) when the court is considering granting (giving) the respondent one or more continuances so that the restraining order hearing takes place after the criminal matter is completed. This is sometimes referred to as “trailing” the criminal matter. The petitioner can use the MPA to ask that the judge stop continuing the case and hold the hearing on the long-term restraining order right away.

The MPA argues that having the hearing on the petitioner’s request for a long-term restraining order is not going to have a “prejudicial” or harmful effect on the respondent’s criminal case. In legal matters, “prejudice” means that it will have a potentially bad impact on someone’s rights. Since the respondent will not be harmed by having the hearing on the long-term restraining order, there is no reason to make the petitioner wait until the criminal case is finished. On the other hand, the longer the hearing is continued, the longer the petitioner must wait for a protective order that they need.

To use this MPA, the petitioner should simply fill in the information highlighted in yellow. The highlighted places are mostly about the parties’ information, case information, and the various dates of hearings that have been scheduled and continued. Make sure that the petitioner changes the highlighted sections to state what happened in their case.

Once the information has been filled in for the individual, file it with the court to request that the hearing not be continued any further.

For questions, contact FVAP at [info@fvaplaw.org](mailto:info@fvaplaw.org) or call the office at (510) 858-7358

Petitioner: [REDACTED]

Address line 1 [REDACTED]

Address line 2 [REDACTED]

Phone: [REDACTED]

email: [REDACTED]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF [REDACTED]

[REDACTED] )  
 )  
Petitioner-Plaintiff, )  
 )  
v. )  
 )  
[REDACTED] )  
 )  
Respondent-Defendant )  
\_\_\_\_\_ )

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
HEARING AND DENIAL OF  
CONTINUANCES

CASE NUMBER: [REDACTED]

**I. Introduction**

A hearing was held on (date) [REDACTED] where a continuance was granted until (date) [REDACTED], pursuant to respondent's request. The basis for the continuance was the respondent's Fifth Amendment Right against self-incrimination. The respondent provided no specific basis for delaying the hearing other than the fact that a criminal case is ongoing.

Petitioner requests that no further continuances be granted and the Domestic Violence Prevention Act (DVPA) hearing proceed on the merits as scheduled on (date) [REDACTED].

## II. Argument

### A. The Respondent Has No Constitutional Right Against Self-Incrimination in a DVPA Case

The Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings. (*Federal Sav. & Loan Ins. Corp. v. Molinaro* (9th Cir. 1989) 889 F.2d 899, 902.) A civil defendant does not have the absolute right to invoke the privilege against self-incrimination. (*Fuller v. Superior Court* (2001) 87 Cal.App.4th 299, 305-306; *In re Marriage of Sachs* (2002) 95 Cal.App.4th 1144, 1155-1156.) Instead, the court must conduct a particularized inquiry to decide whether the privilege is well founded for each specific area that the questioning party seeks to explore. (*Fisher v. Gibson*, (2001) 90 Cal.App.4th 275, 285.) Only after the party claiming the privilege objects with specificity to the information sought can the court decide whether the privilege may be invoked. (*Id.*)

Petitioner objects to the respondent's invocation of a blanket privilege against self-incrimination. Evidence offered in support of petitioner's domestic violence restraining order (DVRO) is freely accessible and/or already in the possession of detectives and the District Attorney. Therefore, there is no particularized harm associated with proceeding with the present case.

Family Code section 245(a) entitles the respondent in a DVPA case to "one continuance for a reasonable period, *to respond to the petition.*" (Italics added.) Respondent has had well over a month to prepare for the hearing on (date). Moreover, any resources expended or defenses raised by the respondent in the DVPA case only serve to benefit him/her/them in the criminal case.

The Constitutional provision against self-incrimination is "an option of refusal and not a prohibition of inquiry." (*In re Application of Lemon* (1936) 15 Cal.App.2d 82, 89.) Were it otherwise, any suspect would be sacrosanct, and witnesses most likely to know the facts could refuse to aid in the investigation of the crime. (*Id.*)

### B. Petitioner Has an Interest in Prompt Resolution of the Case

Courts must consider the interests of the plaintiff in civil litigation where the defendant is exposed to parallel criminal prosecution. (*Fuller v. Superior Court* (2001) 87 Cal.App.4th 299, 306.) Plaintiffs are entitled to an expeditious and fair resolution of their civil claims without being

68 subjected to unwarranted surprise or delay. (*Id.*) This is consistent with the clear statutory mandate  
69 of the Family Code, which requires that a hearing on the request for a long-term domestic violence  
70 restraining order be held promptly “[w]ithin 21 days, or, if good cause appears to the court, 25 days  
71 from the date that a temporary restraining order is granted or denied” (Cal. Fam. Code sec 242(a).)

72 The petitioner in the present case has been exposed to months/years of abuse from the  
73 respondent, which is documented in his/her/their declaration and associated submissions.  
74 He/she/they has/have shown the courage to extricate himself/herself/themselves from the abusive  
75 relationship and has a strong interest in permanent and expeditious disentanglement from the  
76 respondent. By continuing the case, the petitioner is being forced to face his/her/their abuser  
77 multiple times over an extended period of time, which only serves to perpetuate the trauma while  
78 providing no concomitant safeguard to the respondent.

### 79 C. The Respondent Is Not Unfairly Prejudiced by Proceeding with the Hearing

80 Just as the respondent is free to selectively testify or offer evidence in the DVPA hearing,  
81 he/she/they is/are also free to stay silent or submit nothing. The consequence of failing to mount a  
82 defense in a DVPA hearing against documented evidence of domestic violence is unclear. However,  
83 assuming *arguendo* that the respondent does desire to raise rebuttal evidence in the DVPA case, it is  
84 unclear how that evidence would not also be beneficial to his/her/their criminal case (i.e., how  
85 he/she/they would be criminally prejudiced). Finally, even if there were a scenario where the  
86 restraining order would be denied but for the defendant’s introduction of criminally detrimental  
87 evidence, the respondent still would not be deprived of any substantial right or property.

88 The purpose of DVPA proceedings is not to punish respondents, but to prevent future  
89 domestic abuse and to provide for a separation between the parties. The petitioner in a restraining  
90 order case is unlike other civil litigants because of the risk of physical and psychological harm. Thus,  
91 the court should be even more protective of petitioner’s rights in this DVPA case than it would with  
92 ordinary civil plaintiffs. While the respondent suffers no real injury from proceeding with the  
93 present case in parallel with his/her/their criminal case, the petitioner is being denied something real  
94 and immediate. She/he/they is/are being denied closure and forced to repeatedly face her/his/their  
95 abuser in dissidence with the underlying purpose of a DVPA restraining order, which is to put  
96 separation between the parties.

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The current criminal case could go on for an extended period of time and there is always a potential for future criminal investigation and/or charges. Consequently, if the court grants continuances in this DVPA action without requiring any showing of particularized harm, there is the potential that the present case could go on for a significant amount of time, resulting in further continuances, additional docketing, courtroom time, and rescheduling. This is a waste of judicial resources.

In view of the foregoing, it is requested that the DVPA hearing proceed as planned on (date).

Signed: \_\_\_\_\_

Petitioner