



## **CASE ALERT**

A Petitioner Can Testify to Specific Incidents of Abuse at a DVRO Hearing When Their DVRO Request Includes General Allegations of Abuse

Family Violence Appellate Project and 11 organizations successfully sought publication of an important California case, *In re Marriage of Davila and Mejia*, 29 Cal.App.5th 220 (2018).

### **How Could This Case Help Your Clients?**

This case may help if your client wants to testify to specific incidents of abuse at a domestic violence restraining order (DVRO) hearing that were not detailed in their written DVRO request.

Because many survivors are self-represented, burdened by the trauma of abuse or other stressors, unfamiliar with the judicial system, or reluctant to disclose all details of abuse to a stranger-advocate assisting them with a DVRO request, general allegations of abuse may only be included in a DVRO petition. This case should make it easier for these clients to testify in court to specific instances of the abuse that were not included in the written petition requesting a DVRO. However, the opinion also suggests that a respondent can request, and likely obtain, a continuance to prepare a response to specific allegations that were not included in the initial request.

Here, testimony was allowed as to specific instances of the type of abuse generally alleged in the DVRO request. A petitioner (or a respondent) likely could not, under this case, testify to specific incidents when no general allegations of that type of abuse have been noticed in the pleadings.

### **Summary of the Case**

*In re Marriage of Davila and Mejia* (2018) \_\_ Cal.App.5th \_\_ (Case No. B279874) is the first published opinion to hold that general allegations of abuse in a written request for a DVRO may constitute sufficient notice to permit testimony about specific incidents of abuse.

In this case, husband appealed a DVRO issued against him that protected wife. In her DVRO request, wife alleged, among other things, that husband had threatened to physically harm her and that she feared for her safety, but she did not detail any specific incidents of physical threats or abuse in her petition. At the DVRO hearing, wife testified about three incidents where husband held a gun to her head and threatened to kill her, which husband denied. In granting wife's DVRO request, the trial court noted that wife was credible and that wife's request stated that husband "threatened to physically harm [her]," and when she

was asked about the threat at the hearing, the wife “recounted that husband held a gun to her head on three occasions.”

On appeal, husband argued that it was improper for the trial court to consider wife’s testimony that he held a gun to her head, because the incidents had not been mentioned in wife’s written DVRO request. The appellate court held that it was proper for the trial court to consider wife’s oral testimony about the gun incidents, 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 (see Fam. Code, § 6345(a)), 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.

In its order that the case should be published, the appellate court added the following useful summarizing language to the opinion: “The Domestic Violence Prevention Act (DVPA) . . . does not impose on a victim of domestic abuse a pleading obligation that he or she describe all individual actions taken by the alleged abuser in the DVRO request in order later to testify about those acts at the hearing, as long as the alleged abuser is placed on notice of the general allegations.”

#### **PRACTICE TIPS**

1. If possible, include incidents of specific abuse and be as detailed as possible in a DVRO request (DV-100), to minimize continuances and delays.
2. Include, at minimum, general allegations of the type(s) of abuse (e.g., physical, verbal, threats, etc.) in the DV-100.
3. If you are representing a survivor whose abuser is requesting a DVRO:
  - a. Object if the opposing party attempts to testify to incidents that do not correspond to general allegations in their pleadings.
  - b. Request a continuance, if necessary, to prepare a response to any testimony about specific allegations not included in the opposing party’s pleadings. After making the objection, the trial court must determine whether the general allegations in the request provided sufficient notice.
4. Remember that Family Code sections 240 (c), 245 (a), and 245(b) entitle a respondent in a DVRO matter to a continuance to respond to the request, which may be requested at the hearing. Thereafter, continuances can be granted for good cause.

For questions or clarifications, contact Family Violence Appellate Project: [info@fvaplaw.org](mailto:info@fvaplaw.org) or (510) 858-7358. Thank you!