



Model Memorandum of Points and Authorities in Support of Hearing and Denial of Continuances

Sometimes respondents (individuals whom the Domestic Violence Restraining Order is against) ask the court to continue the hearing on the long-term restraining order because they have a pending criminal case against them. The petitioner (individual asking the court for a Domestic Violence Restraining Order) might not want the hearing continued because it is hard from them to constantly 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.

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 resolved. On the other hand, the longer the hearing is continued, the longer the petitioner must wait for a protective order that he/she/they need(s).

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

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@fvapl.org or call the office at (510) 858-7358.

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Last updated 04/25/24. This resource uses California statutes and cases only.

3 Petitioner: [redacted]
4 Address line 1
5 Address line 2
6 Phone: [redacted]
7 email: [redacted]
8
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **FOR THE COUNTY OF [redacted]**
13

14
15 [redacted])
16)
17 Petitioner-Plaintiff,)
18)
19 v.)
20)
21 [redacted])
22)
23)
24 Respondent-Defendant)
25 _____)

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

CASE NUMBER: [redacted]

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29 **I. Introduction**

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

34 Petitioner requests that no further continuances be granted and the Domestic Violence
35 Prevention Act (DVPA) hearing proceed on the merits as scheduled on [redacted] (date).
36

37 **II. Argument**

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

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

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

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

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

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

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

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

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

76 **C. The Respondent Is Not Unfairly Prejudiced by Proceeding with the Hearing**

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

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

94 **D. Continued Delay Is a Waste of Judicial Resources**

95 Efficient use of judicial resources and the convenience of the court in the management of its
96 cases should be considered when determining whether to hear or delay the case. (*Keating v. Office of*
97 *Thrift Supervision* (9th cir.1995) 45 F.3d 322, 324-325.) “A defendant may not bring a civil action to a
98 halt simply by invoking the privilege against self-incrimination.” (*Ojye v. Fox* (2012) 211 Cal.App.4th
99 1036, 1055.)

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

106 Here, the court and the petitioner have an interest in preventing undue delay, especially
107 where there is no resultant prejudice or injury to the respondent. On balance, proceeding
108 expeditiously with the DVPA hearing is in the best interest of justice.

109
110 CONCLUSION

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

113
114 Dated: _____

Signed: _____

115 (Name)

116 Petitioner
117
118