Case-Annotated Compendium of California Domestic Violence Laws 2026

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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 unless they are relevant to analyzing civil domestic violence cases, federal court cases, or dependency cases 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 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.
>
> (5) Engaging in reproductive coercion, which consists of control over the reproductive autonomy of another through force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes."

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

R.R. v. C.R. (2026) 117 Cal.App.5th 1262

R.R. sought a DVRO against his child's mother, C.R. In his request, R.R. stated C.R. was stalking him. According to R.R., C.R. sat in her car outside of his house late at night, repeatedly rang his doorbell, refused to leave his house, and followed him when he was driving on the highway. At the hearing, C.R. admitted she went to R.R.'s house many times, refused to leave, and followed him on one occasion. The trial court described C.R.'s behavior as obsessive but denied R.R.'s request for a DVRO. The court ruled C.R.'s actions was not abuse because they were not meant to threaten or intimidate R.R.

R.R. appealed the decision. The Court of Appeal disagreed with the trial court and ordered the trial court to enter the DVRO. The Court of Appeal explained that R.R. did not need to show that C.R. intended to threaten or intimidate him to show abuse. The court also explained that R.R. did not need to show that future abuse was likely.
Statues used or affected: Family Code sections 6300, 6203, 6301, 6320

***Michael K. v. Cho* (2025) 113 Cal.App.5th 1**

In this case, Survivor S.J. K. hired Attorney Cho to represent her in her divorce and DVRO proceedings against her estranged Husband, Michael K. Survivor used a joint credit card to pay her fees. Husband contested the charges with the credit card company. Attorney told the company why the charges were valid, and reiterated to the credit card company the allegations of abuse Survivor had made against Husband.

Husband then sued Attorney for her statements to the credit card company, claiming libel (written defamation) (Civ. Code, §§ 44, 45), negligence, and intentional infliction of emotional distress. Attorney filed an anti-SLAPP motion to strike Husband's complaint, arguing Attorney's statements related to the litigation and so were protected by the statute. Attorney also arguing Husband's litigation would not prevail on the merits. The trial court denied Attorney's anti-SLAPP motion, and Attorney appealed.

The Court of Appeal reversed. The court held that Attorney's statements "arose from" a judicial proceeding because the statements were made in relation to Survivor's ability to pay Attorney's fees for the divorce and DVRO litigation. (See Code Civ. Proc., § 425.16.) Notably, the court also confirms, "Depriving a spouse of funds required for basic necessities qualifies as abuse under the" DVPA. (Fam. Code, § 6320.) In the unpublished part of the opinion, the court also concluded that Husband "failed to demonstrate any probability of prevailing" on his claims.

Statutes used or affected: Civil Code sections 44, 45 and 47; Code of Civil Procedure section 425.16; Family Code Sections 2030, 2040 and 6320

***X.K. v. M.C.* (2025) 112 Cal.App.5th 1287**

In this case, M.C., a U.S. citizen, subjected ex-wife and mother of their child, X.K., an emigrant, to years of physical, sexual, and emotional abuse, including coercive control—both in the U.S. and abroad in China. X.K. sought a DVRO against M.C. based on this abuse. The trial court denied X.K.'s request after a hearing, noting its belief that the case was more about custody and visitation issues rather than a DVRO, and its question of whether it had the power to consider abuse that occurred in another country. The appellate court reversed and remanded for a new hearing. The appellate court explained that abuse is still abuse, even if it occurs or is alleged during a custody or visitation matter, and abuse in other countries must still be considered under the "totality of the circumstances" analysis. (See Fam. Code, §§ 6301, subd. (d), 6320, subd. (c).)
Statutes used or affected: Family Code sections 6203, 6220, 6221, 6300, 6301, 6320 and 6320.5

***Bassi v. Bassi* (2024) 101 Cal.App.5th 1080**

In this case, during divorce proceedings, Robert asked for a DVRO against his wife, Susan, because she sent unwanted, harassing, and disturbing emails to Robert. Robert's business associates and customers were often copied on the emails resulting in harm to Robert's business and life. Susan attempted to dismiss the DVRO request early with an anti-SLAPP motion, arguing her emails were protected speech and litigation correspondence because she intended to file a lawsuit against Robert. The trial court denied Susan's anti-SLAPP motion; and the Court of Appeal affirmed. (Code Civ. Proc., § 425.16.)

This case has a few holdings that are quite important: (1) Survivors don't have to ask the person who is being abusive to stop the abuse before they can get a DVRO; (2) Behavior that seems like a "mere annoyance" when it is considered in isolation may actually be abuse when the parties' history is considered; (3) Any type of abuse –such as unwanted contacts, harassment, or disturbing the peace–can be enough for a DVRO, even if only one form of abuse was used against the survivor; (4) Abuse is abuse, even without threats or violence; (5) *Curcio v. Pels*, discussed in Section I(B)in , should be used in a very limited way, when trying to say conduct isn't abuse; (6) the anti-SLAPP law couldn't prevent the DVRO request here because the few messages that involved litigation were sufficiently abusive, as a prima facie matter, so they were not covered by the law; and (7) the litigation privilege (Civ. Code, § 47) couldn't be used to prevent the DVRO request here because many of the emails were not lawsuit-related and were sufficiently abusive, as a prima facie matter.

Statutes used or affected: Family Code sections 6300, 6301, 6320; Code of Civil Procedure section 425.16; Civil Code section 47

Hatley v. Southard (2023) 94 Cal.App.5th 579

In this case, the trial court denied Hatley's DVRO request against her estranged husband Southard because the court thought her "allegations of a pattern of control and isolation" by Southard, which included "limiting her access to money, communication, and transportation[,] did not fall within the statutory definition of domestic violence or abuse." The Court of Appeal reversed, explaining the allegations were abuse and could support a DVRO. Hatley also alleged other forms of abuse, including physical abuse, but the opinion's discussion largely focuses on the alleged harassment, disturbing the peace, and coercive control. The Court also concluded the trial court erred in not allowing Hatley to testify to Southard's sexual abuse, because Hatley had adequately pled and put Southard on notice of those allegations in one of her supplemental declarations, as discussed in *In re Marriage of Davila & Mejia*, *post*. Further, the Court held the trial court erred by not addressing Hatley's request for spousal support, which the court has to rule on even if it denies the DVRO request, applying *In re Marriage of J.Q. & T.B.*, *post*.
Statutes used or affected: Family Code sections 6203, 6211, 6300, 6320, 6341; Code of Civil Procedure section 631.8

Jan F. v. Natalie F. (2023) 96 Cal.App.5th 583

Natalie sought a DVRO against her children's father, Jan. In her request, Natalie provided evidence that Jan, in a short time frame, made multiple calls for police welfare checks when Natalie had custody of the children. Natalie stated that Jan provided false information to the police and the welfare checks were intended to harass her. The family court denied Natalie's DVRO request because it did not believe Jan's actions were abuse under the DVPA and did not want to restrain Jan from contacting the police in the future because he might have sincere concerns about the children's welfare.

The Court of Appeal disagreed, explaining that calls to law enforcement for welfare checks can be abuse under the DVPA if the calls are not made for a legitimate reason. To determine if calls to the police for welfare checks are legitimate or intended to harass someone, the Court considered several factors – such as the frequency and timing of the calls to the police, and whether a parent immediately contacts law enforcement instead of first contacting the other parent to check on the children's welfare.

Also, the Court held that Jan had no First Amendment right to call the police to conduct welfare checks if his calls were without a legitimate basis and for the purpose of harassing Natalie. If done to harass her, making law enforcement calls was abuse

under the DVPA and abuse is not protected speech. The Court sent the case back to family court for an evidentiary hearing so Jan could offer evidence *if* he had legitimate concerns when he made multiple requests for police welfare checks.
Statutes used of affected: Family Code section 6300, 6203, 6320

***Parris J. v. Christopher U.* (2023) 96 Cal.App.5th 108**
In this case, Parris got a five-year DVRO against her former husband Christopher, and an award of $200,000 attorney's fees under the DVPA. The trial court also denied Christopher's two requests for a Statement of Decision. The Court of Appeal affirmed, concluding the trial court correctly found the evidence showed Christopher had abused Parris in many ways, including financial abuse, threats, coercive control, harassment, and disturbing the peace. Plus, Christopher violated Parris's TRO by sending disparaging letters to her new employer, trying to get her fired. Further, the Court concluded Christopher's Statement of Decision requests were improperly made, so properly denied. And since the Court was affirming the DVRO, there was no basis to reverse Parris's attorney's fees award.

Importantly, this case has some relatively novel holdings and conclusions. First, this is one of the first cases to discuss "coercive control" in a context without physical abuse—here Christopher monitored and controlled Parris's movements and communications, ran up her debt, and threatened to destroy her property. Second, this case explains courts should focus on *the survivor's* perspective and experience- not a "reasonable person" or "objective" standard- when analyzing "disturbing the peace of the other party" and "harassment" under the DVPA.

Third, this is the first case to explain that having a large life insurance policy on someone's life can "disturb the peace" of that person. Given the extensive abuse in this case it was proper for the trial court to find that his benefitting from an insurance policy on her life "disturbed Parris's peace" under the law. Fourth, this is the first case to explain that the trial court could legally order a person who is abusive (Christopher) to change the beneficiary of that insurance policy on the survivor's (Parris's) life.
Statutes used or affected: Family Code sections 6203, 6218, 6220, 6320, 6322, 6324, 6340, 6344, 6360; Code of Civil Procedure sections 632, 634

***Vinson v. Kinsey* (2023) 93 Cal.App.5th 1166**
Mother asked for a Domestic Violence Restraining Order (DVRO) against Father in April 2020, after more than a decade of physical and verbal abuse by Father. While they were not dating anymore, Mother and Father had ongoing contact because they had children together. In Mother's request, the most recent incident of abuse was in March 2020 when Father took Mother to the grocery store to buy food for the kids. Father

became “irate,” “began threatening to beat [her] face in,” and said he would kill her. Mother submitted as evidence pages of text messages showing Father’s many threats to harm or kill her. She also submitted sworn statements from family and friends describing incidents of Kinsey physically injuring and verbally attacking Vinson. They described Father punching holes in the wall of Mother’s home. The trial court denied Mother’s request for the DVRO. The trial court found that Mother did not “act like” Father’s threats of violence were real threats because she continued to have contact with him, even driving him to the grocery store in March despite his past behavior. The trial court also said Mother waited too long to file her request. She filed about 5 weeks after the most recent incident. The trial court said this suggested that Mother was “not particularly concerned” about Father’s threats. The trial court cited unspecific “issues of credibility” as another reason for denying Mother’s DVRO request.

The Court of Appeal disagreed and sent the case back to the trial court with instructions to have a new hearing. The Court said a person requesting a DVRO does not have to be afraid of actual physical injury. DVROs only require the person asking for protection to show that the other person more likely than not committed an act of abuse. Father’s threats were abuse. The trial court was wrong to require Mother to show she was afraid and to say that Mother could only show her fear by acting in certain ways, including having no contact with Father. The trial court was also wrong to find that Mother’s ongoing contact with Father meant she was not believable when she said she feared Father because all women exposed to violence do not react to abuse in the same way. Here, there was clear evidence that Father threatened to harm Mother. The fact that she was communicating with Father did not make Father’s threats less serious, mean that they were not abuse or that Mother was not afraid Father would hurt her. Finally, the Court said that the trial court’s focus on the timing of Mother’s filing of the DVRO request following the most recent incident of abuse was too narrow and ignored “the parties’ overall history over the course of a decade-long relationship and the recognized difficulty of leaving an abusive relationship.”

The opinion also talks about the trial court’s failure to look at other pieces of evidence, including the text messages and other documents which showed Kinsey’s history of “physical abuse, verbal abuse and destruction of property.” The Court of Appeal said it was “difficult to see” how the trial court considered the totality of the circumstances which it must do by law.

The opinion also explains that a declaration included with a request for a DVRO is admitted as evidence unless there is an objection by the other side.
Statutes used or affected: Family Code section 6320, 6203, 6301

People v. Fuentes (2023) 87 Cal.App.5th 1286

Though this criminal case has a lot of language not relevant for family law, there are some parts that may be useful. Defendant was convicted of physically abusing a cohabitant while the cohabitant was pregnant with Defendant's child. Defendant was placed on probation and restrained by a Criminal Protective Order (CPO) but was allowed to have peaceful contact with the victim-cohabitant. Defendant was arrested for violating the CPO and his probation after he yelled at the victim for ten minutes, withheld phone and internet access, and kept money from her. The victim changed her story, from when she reported to the police, to when she testified in court. Still, the trial court found Defendant guilty of violating both the CPO and his probation because of his "less than peaceful" contact with the victim. Defendant appealed, arguing the "peaceful contact" condition of his probation and CPO were unconstitutionally vague, and there was no substantial evidence to support the trial court finding.

The Court of Appeal affirmed, holding that the challenged parts of his probation condition and CPO were not vague. The Court used the DVPA definition of "disturbing the peace" (Fam. Code, § 6320, subd. (a)) because this was a DV case: "Read as a whole, the prohibited conduct includes both overt violence and non-violent conduct that threatens, intimidates or otherwise disturbs the victim's ability to go about her life." The Court also provided, for the first time, a definition of "harassment" under the DVPA (Fam. Code, § 6320, subd. (a)): "'to annoy persistently' or 'to create an unpleasant or hostile situation for, especially by uninvited and unwelcome verbal or physical conduct.'" Finally, the Court found substantial evidence to support the conviction: while the victim tried to minimize the incident in her testimony at the hearing, the trial court could correctly rely more on her statements to the police, which were more severe, because the court found her to be "terrified" and "the textbook definition of a domestic violence victim."
Statutes used or affected: Family Code sections 6203, 6211, and 6320; Penal Code sections 136.2 and 273.5

People v. Mani (2022) 74 Cal.App.5th 343

Defendant's brother had a restraining order against him. While the restraining order was in effect, Defendant broke into the residence where his mother and brother lived and ran up the stairs holding a knife. Defendant was charged with residential burglary and violating the restraining order. At trial, the trial court admitted prior uncharged acts of domestic violence committed by the defendant. The jury found the defendant guilty of residential burglary and violating the restraining order. On appeal, the defendant argued that burglary–based on an intent to steal theory–was not a domestic violence offense and that his prior acts of domestic violence should not have been heard by the jury. The appellate court found that the defendant's prior uncharged conduct constituted domestic

violence under the Family Code definition of abuse; and, thus, were properly admitted under Evidence Code section 1109. Additionally, although the crime of burglary with intent to steal was not on its face a crime of domestic violence, under certain facts, it could qualify as a domestic violence offense. Here, the defendant breaking into the family home and staying on the property was an offense involving domestic violence because it constituted harassment and disturbing the peace, which was abuse under the Family Code.
Statutes used or affected: Evidence Code sections 1109, 1101, 352; Family Code section 6211, 6320

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[1] 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, 6344
California Rules of Court used or affected: California Rules of Court, rule 3.1702(c)

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

[1] In a criminal case, People v. Agnelli (2021) 68 Cal.App.5th Supp. 1, the defendant was convicted under Penal Code section 637.7, subdivision (a), for placing an electronic device on a car he co-owned with his wife and tracked her with it. The wife, the primary driver of the car, did not agree to the device. The defendant appealed his conviction because Penal Code section 637.7, subdivision (b) creates an exception to this crime when "the registered owner. . . has consented," but the law is unclear where one co-owner, like the defendant agrees to the device being used, but the other, the wife, does not. The appellate division of the superior court found the law's language to be too vague to convict someone who is a co-owner of the car and consents to the tracking device. This case is footnoted here to highlight that **it applies to criminal cases**. **Thus, placing a tracking device on co-owned property may constitute abuse under the DVPA and Family Code.**

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 used or affected: 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 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

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. The survivor requested her DVRO be renewed because the restrained party contacted her in violation of the DVRO and physically abused the parties' children. The survivor requested that her children also be protected parties because of the child abuse. The trial court denied the DVRO renewal request, stating that abuse had to be actual violence or the threat of violence. The appellate court reversed, holding that abuse did not have to be physical violence to create a reasonable apprehension of future abuse, the abuser's behavior disturbed the survivor's peace, and the survivor showed a reasonable apprehension of future abuse. The appellate court also noted that 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

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 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

***People v. Brown* (2001) 96 Cal.App.4th Supp. 1**

The jury convicted Brown of vandalism based on evidence that he threatened to kill his wife and hit her car with a shovel. Brown was sentenced to probation, which required him to complete a 12-month domestic violence counseling program, pay a $200 domestic violence fine, and pay $1,500 to a domestic violence shelter. Brown appealed,

arguing that Penal Code section 1203.097–which mandates the $200 fine and domestic violence counseling when the victim fits the definition in Family Code section 6211–did not apply in his case because his car, not his wife, was the victim. The appellate court disagreed. The appellate court found, citing to Family Code sections 6203 and 6320, that Brown vandalizing the car was an act of domestic violence which triggered the mandatory probationary terms. Finally, the appellate court held that, even if the terms weren't required, the court had the discretion to issue them.
Statutes used or affected: Penal Code sections 594 and 1203.097(a), Family Code sections 6203, 6211, and 6320

II. Issuing DV Restraining Orders

A. Introduction

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

> "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 or more 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

1) When is it Appropriate to Issue a Restraining Order and What Can it Do

R.R. v. C.R. (2026) 117 Cal.App.5th 1262
See section I(B) above.

***In re Marriage M.P. & M.C.* (2025) 116 Cal.App.5th 1096**
In this case, Wife requested a DVRO against Husband. To support her request, Wife submitted a declaration stating that Wife's child told her Husband had sexually abused the child.

At the evidentiary hearing, Wife testified about what the child told her about Husband's sexual abuse. The child did not testify. After hearing the evidence, the trial court granted DVRO against Husband, finding that Husband's acts disturbed Wife's peace.

The husband appealed. One of the arguments Husband made on appeal was that the trial court made a mistake by relying on the child's statements because the child did not testify in court. He claimed that the statements were hearsay and should not have been used as proof of the abuse.

The Court of Appeal explained that the child's out-of-court statements were being admitted for their truth because, to issue the order against Husband, the court had to find that Husband committed an act of abuse. The Court then determined that the child's out-of- court statement was admissible to prove the abuse because the "child dependency hearsay exception" applied to DVRO cases. Under the child dependency hearsay exception, a child's out-of-court statement that describes abuse may be admitted for their truth. This is because it is difficult to prove child sexual abuse cases because there may be no physical evidence, children may have difficulty explaining what happened, and they may be afraid to testify. These same problems exists in domestic violence cases involving children, especially when the accused person is a parent or close family member. Also, the DVPA, like dependency proceedings, purpose is to protect minors.

Before child's out of court statement can be used, three requirements must be met to show the statements are "reliable." First, when and how the statement was made, what it says, and the situation it was made in must all show that it can be trusted. Second, the child must either be available for cross-examination or there must be other evidence corroborating the statement. Third, the opposing party must receive adequate notice that the statements will be used in court.

The Court of Appeal also reviewed whether the trial court could rely on criminal charges filed against Husband as proof of the abuse. The court ruled that criminal charges alone cannot be used to prove abuse occurred. While courts may consider past criminal convictions in certain situation, they may not treat pending criminal charges as evidence that abuse actually occurred.
Statues used or effected: Evidence Code sections 1250, 1360; Family Code sections 6220, 6300, 6306

_X.K. v. M.C._ (2025) 112 Cal.App.5th 1287
See section I(B) above.

In re Marriage of A.M. & R.Y. (2025) 110 Cal.App.5th 1115
In this case, the trial court denied a facially adequate request for a domestic violence temporary restraining order (TRO). The Court of Appeal ultimately reversed this determination and remanded for reconsideration of the TRO request. The Court said that, since they are injunctions, granting or denying a TRO is directly appealable. (Code Civ. Proc., § 904.1, subd. (a)(6).) The Court also found that the survivor's TRO request was facially sufficient because it alleged sexual abuse, unwanted contact, some

physical abuse, verbal and emotional abuse, and violating an agreement on child visitation. (Fam. Code, §§ 6203, 6320.)

The Court decided, however, that even with a facially sufficient DVRO request, a trial court can still deny a TRO if the court "conclude[s] that the circumstances do not warrant ex parte relief pending a noticed hearing." In doing so, the Court disagreed with *Nakamura v. Parker*, *supra*, explaining that a trial court cannot defer ruling on a TRO request (Fam. Code, § 6326) even if the trial court doesn't think the survivor's safety would be jeopardized until a hearing can be held.

If the trial court denies a facially adequate TRO request, the trial court must state its reasons (and reasons won't be implied on appeal) that "reflect consideration of the fundamental purpose of the DVPA to prevent recurring acts of abuse." (Fam. Code, § 6220.) The Court noted the trial court "should carefully consider the seriousness and recency of the past abuse, whether it was an isolated incident or pattern, the likelihood of recurrence, the nature of the parties' relationship, the immediacy and seriousness of any threat, any changed circumstances, and any other relevant factors."

The Court further noted that a TRO can't be denied just because the abuse alleged "may have arisen in the context of a family law dispute."

In sum, the Court's major holding on TRO denials is: "a trial court has discretion to deny a DVTRO to a petitioner who has made a prima facie showing of past abuse if it reasonably concludes based on the totality of circumstances that a DVTRO is not necessary to protect the petitioner or others for whom the petitioner is seeking protection from further acts of abuse pending the noticed hearing."
Statutes used or affected: Family Code sections 242, 245, 6203, 6211, 6220, 6301, 6320, 6320.5, 6326, 6327 and 6340

***K.T. v. E.S.* (2025) 109 Cal.App.5th 1114**

Survivor K.T. got a three-year DVRO against E.S. after years of physical, sexual, and other forms of abuse, such as coercive control, which often occurred in front of their children. The trial court refused to include the children as protected parties on K.T.'s DVRO because, although recognizing that they were traumatized by witnessing E.S. abuse K.T., the court found the children were not physically or sexually abused. The Court of Appeal reversed, concluding the trial court failed to apply the correct legal standard of "good cause" to determine whether the children should be added as protected parties. The Court of Appeal also found the trial court failed to find "good cause" based on the undisputed evidence in the record of the children's peace being disturbed by witnessing E.S.'s abuse of K.T. The Court relied, in part, on the broad

protective purposes of the DVPA and the legislative findings and social science FVAP and amici cited in their briefs. As a result, the Court of Appeal has sent the case back to the trial court with instructions to modify K.T.'s DVRO to include the children as protected parties.
Statutes used or affected: Family Code sections 6203, 6211, 6218, 6220, 6300, 6301, 6320, 6321, 6322 and 6340; Welfare & Institutions Code section 15657.03

***Bassi v. Bassi* (2024) 101 Cal.App.5th 1080**
See section I(B) above.

***BR.C. v. BE.C.* (2024) 101 Cal.App.5th 259**
Wife was granted a DVRO against Husband based on a history of verbal abuse, harassment, and threats. Part of Wife's evidence at the DVRO hearing, were three recordings Husband appealed, arguing that the trial court should not have admitted the recordings because he did not know he was being recorded. Husband also argued that there was not sufficient evidence for the entry of the DVRO. Finding that Penal Code section 633.6, subdivision (b) allows a survivor to secretly record evidence of abuse to use later in a DVRO hearing, the appellate court affirmed the trial court decision. The appellate court also noted that the law allows a survivor to use recordings that were made even before they filed their DVRO request. The court also affirmed the DVRO based on enough evidence of abuse in the record.
Statutes used or affected: Penal Code section 633.6; Family Code section 2022

***Hatley v. Southard* (2023) 94 Cal.App.5th 579**
See section I(B) above.

***Jan F. v. Natalie F.* (2023) 96 Cal.App.5th 583**
See section I(B) above.

***Parris J. v. Christopher U.* (2023) 96 Cal.App.5th 108**
See section I(B) above.

***Rivera v. Hillard* (2023) 89 Cal.App.5th 964**
The trial court issued mutual restraining orders against Wife and Husband. The trial court also scheduled a hearing on restitution because it found that Wife had obtained a temporary order excluding Husband from his residence by falsely representing that she had a right to the home and, while living there, Wife damaged or took a lot of Husband's property. After the restitution hearing, the trial court ordered Wife to return certain property to Husband and to pay Husband restitution for out-of-pocket loses related to the abuse.

Wife sought to appeal both the mutual restraining order and the restitution order. The Court of Appeal first found that Wife's appeal of the restraining order was untimely. In doing so, it rejected Wife's argument that the restraining order "was not final for the purposes of appeal until restitution was finally determined." Rather, the Court of Appeal noted that the restraining order dealt with a different issue than restitution—whether the wife committed abuse—and that the restraining order was an injunction directly appealable under Code of Civil Procedure section 901.4, subdivision (a)(6). That the subsequent restitution order addressed a related issue—whether husband should be compensated for wife's abuse—did not "extend the time to appeal the separately appealable, earlier [restraining order]." Because wife untimely appealed from the restraining order issued against her, the appellate court held that she could not challenge that order.

Second, the appellate court held that it was proper for the trial court to grant restitution under Family Code section 6342, subdivision (a)(1) because it found wife "violated the DVPA by taking money and personal property from husband's residence" and that husband's losses were "incurred as a direct result of the abuse." Examining the statutory language, legislative intent, and policies underlying the DVPA, the appellate court liberally construed the text of subdivision (a)(1) of section 6432 which allows trial courts to award restitution for "loss of earnings and out-of-pocket expenses . . . incurred as a direct result of the abuse." Here, the appellate court explained that "out of pocket expenses" can include property damage and loss resulting from the restrained party's abuse.
Statutes used of affected: Code of Civ. Proc. section 904.1; Fam. Code section 6342

Vinson v. Kinsey **(2023) 93 Cal.App.5th 1166**
See section I(B) above.

In re Marriage of F.M. v. M.M. **(2021) 65 Cal.App.5th 106**
This case reversed the trial court's denial of F.M.'s request for a domestic violence restraining order. The appellate court found that threats on a person's life, demeaning a person in front of their children with vulgar and degrading language, physically beating a person, and seeking to exercise control over a person by taking away their phone, are all actionable forms of abuse under the DVPA. Additionally, the appellate court noted three errors that the trial court made. First, the trial court refused to hear evidence of abuse committed after F.M. filed her request for a DVRO. The appellate court held that trial courts must consider this evidence and that post-filing abuse is especially relevant where a TRO has been issued. Second, the trial court denied F.M.'s DVRO request because her testimony lacked specificity and corroboration. The appellate court, however, noted that the DVPA does not impose a heightened standard for specificity,

nor does it contain a corroboration requirement. In fact, trial courts may issue a DVRO based solely on the affidavit or testimony of the person seeking a restraining order. Finally, the trial court–after stating that the parties needed to stay away from each other and that F.M. could be protected from abuse simply by moving out–denied F.M.'s DVRO request because she no longer lived with the opposing party. The appellate court disagreed with the trial court, holding that physical separation alone cannot substitute for the protections afforded by a restraining order. The appellate court further noted that the trial courts use of separation was particularly inappropriate given that the parties still had to coparent, making further interaction between them unavoidable.
Statutes used or affected: Family Code sections 6200 et seq, 6203 subd.(a), 6211 subds. (a) & (c), 6220, 6300, 6301 subds. (b) & (c), 6320, 6340 subd.(a)(1); Evidence Code sections 210, 351
California Rules of Court used or affected: Rule 8.278(a)(5)

In re S.G. (2021) 71 Cal.App.5th 654

Mother filed a DVRO petition against Father which was heard by the juvenile dependency court. After a hearing, the juvenile court denied the permanent DVRO request. Mother appealed. Before the appeal was heard, the juvenile court ended its jurisdiction in the dependency case. Father, therefore, argued that mother's appeal was moot because the juvenile court no longer had jurisdiction. Noting that reviewing courts have the power to modify, affirm, or reverse a judgment or to direct a new trial, the appellate court found that these powers do not depend on the juvenile court retaining jurisdiction of the case. Rather, the juvenile court is reinvested with jurisdiction of the case when there has been a decision on appeal. The jurisdiction, however, is limited to the juvenile court correcting errors found by the appellate court.
Statutes used or affected: Code of Civil Procedure sections 43, 906, Welfare and Institutions Code section 213.5

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. During oral argument, Nicole also argued she was entitled to attorney fees and costs. The appellate court found that, as a prevailing party, she may file a motion for attorney fees on appeal pursuant to California Rules of Court, rule 3.1702(c), and Family Code section 6344.

***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

***In re Marriage of Ankola* (2019) 36 Cal.App.5th 560**
Wife got a five-year DVRO against Husband in 2017. The next day, Husband filed for his own DVRO, and Wife filed a response. After a hearing in 2018, the trial court gave both parties DVROs and Husband appealed. The appellate court reversed Wife's second DVRO against Husband because she hadn't filed another DVRO request, as required by Family Code section 6305(a)(1). The appellate court also found that there was nothing in the record to indicate that the trial court intended to modify Wife's first DVRO. Even if the trial court had intended to modify Wife's first DVRO, the appellate court noted that the trial court would not have had "jurisdiction" or power to change Wife's first DVRO, under Code of Civil Procedure section 916, subdivision (a), because Husband had appealed Wife's first DVRO, the appeal was still pending, and the appeal "stayed" or paused that DVRO case.
Statutes used or affected: Family Code section 6305; Code of Civil Procedure section 916, subd. (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 Hernandez* (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.

***Moore v. Bedard* (2013) 213 Cal.App.4th 1206**
On July 31, 2006, Moore filed a request for a domestic violence restraining order. As part of her request, Moore requested child support. The parties later entered a stipulation where the parties agreed to a child support amount and dissolved the temporary restraining order. In 2009, the Department of Child Support became the payee of the child support instead of Moore. In 2011, Bedard filed a request to modify child support. The trial court dismissed the support action because it believed that the trial court did not have jurisdiction to make a child support order because the restraining order had been dismissed. The Department of Child Support appealed, arguing that "[i]f the court makes any order for custody, visitation, or support, the order shall survive the termination of a protection order." The Court of Appeal agreed with the Department of Child Support and overturned the trial court's decision. Noting that the trial court had jurisdiction to make child support orders, the Court of Appeal found that this jurisdiction survived the "'dissolution' of the temporary restraining order."
Statutes used of affected: Family Code section 200, 290, 6218, 6320, 6321, 6322, 6340

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.

2) *What or Whom Should or Should Not Be Included as Part of the Restraining Order*

Zachary H. v. Teri A. (2023) 96 Cal.App.5th1136
The trial court granted a DVRO protecting a son from his mother's abuse. The mother appealed claiming Family Code section 6389, which prohibits a restrained party from possessing firearms, violated the Second Amendment because of the recent U.S. Supreme Court opinion, *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 142 S.Ct. 2111 (Bruen). In *Bruen*, the Court held New York's public-carry gun licensing scheme violated the Second Amendment because "it prevent[ed] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." The *Zachary H.* court held Family Code section 6389 does not violate a restrained party's Second Amendment right to possess firearms for self-protection. *Bruen* only extends to "law-abiding citizens," which does not include "individuals subject to domestic violence restraining orders," like the mother in this case.

Nor does section 6389 violate the equal protection clause by allowing law enforcement officers to use a firearm while on duty. These two groups of individuals are not similarly situated for the purposes of the firearm prohibition: one group is a "narrow class of individuals[] for whom firearms are a necessary part of their employment," and the other group comprises individuals who "generally desire a firearm to protect themselves." Moreover, treating law enforcement differently than others is rationally related to the legitimate public purpose of reducing domestic violence "by prohibiting those who have committed acts of domestic violence from having ready access to a firearm." The

"especially narrow" exception balances the government's interest with the economic interests of a restrained party to continue being employed.
Statutes used or affected: Family Code section 6389

***M.S. v. A.S.* (2022) 76 Cal.App.5th 1139** -
The trial court granted Mother a three-year domestic violence restraining order (DVRO) and included the parties' children as protected parties. On appeal, Father only challenged the order to include the children as protected parties. Section 6320(a) requires only a showing of "good cause" for the inclusion of family members or household members in a DVRO. To determine whether there is good cause, courts consider the totality of the circumstances. Although not necessary to include children as a protected party, one factor courts may consider is whether failure to issue such an order may jeopardize the safety and well-being of the children. Here, the appellate court held there was substantial evidence of good cause to support including the children in the DVRO. Evidence included Father enlisting the children in stalking and secretly gathering information on Mother and her male friend and Father committing physical violence against the children. Inclusion of children in the DVRO, then, was appropriate to prevent future attempts by Father to physically abuse the children or use them to harass, stalk, or otherwise spy on Mother and any man she might choose to see.
Statutes used or affected: Family Code section 6320(a).

***J.H. v. G.H.* (2021) 63 Cal.App.5th 633**
Mother got a two-year DVRO against Father after he physically, sexually, and verbally abused her, at times in front of their two children. The trial court denied Mother's request to include the children as protected parties on her DVRO because Father posed no current threat to the children, much time had passed since the abuse, and the court wanted Father to repair his relationship with the children. In this opinion, the appellate court held that trial courts may include family or household members as protected parties on a DVRO by finding "good cause." What is "good cause" depends on the case. When deciding if "good cause" exists, the trial court must look at the "totality of the circumstances," including the safety of the child(ren) and the person requesting the DVRO. While trial courts may include people on a DVRO even without safety concerns, here the appellate court said the trial court's reasons for not including the children on Mother's DVRO were reasonable.
Statutes used or affected: Family Code sections 6220, 6300(a), 6301(c), 6320, and 6340

***Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990**
See sections I(B) and II(B)(1) above.

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).

***De la Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389**

See section I(B) above.

3) *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.

***M.A. v. B.F.* (2024) 99 Cal.App.5th 599**

This is the second case to discuss "a dating relationship" under the DVPA, after *Phillips v. Campbell*. This is a DV tort case but it uses the DVPA definition of "dating relationship" so would apply to DVRO cases as well. In this case, the trial court found the parties were not in a "dating relationship" because they were just "friends with benefits" with "brief, sporadic sexual hook ups" over 19 months "lacking the emotional and privacy aspects or the emotional and affectional involvement that mark frequent, intimate associations." The majority of the Court of Appeal, by a vote of 2-1, affirmed, concluding that the specific record supported the trial court's decision, which was owed deference. The dissent disagreed and would have reversed the trial court's decision

because the parties' relationship, while "nontraditional," still involved "frequent, intimate associations" with sexual involvement and "contact through text messages," showing "the victim's trust and vulnerability" with the person abusing them.
Statutes used or affected: Family Code section 6210, 6211; Civil Code sections 1708.5, 1708.6

A.F. v. Jeffrey F. (2023) 90 Cal.App.5th 671
This is the second case between the same parties. (See *A.F. v. Jeffrey F.* from 2022.) While the first case was pending on appeal, A.F. turned 12 and the trial court did not appoint a new guardian ad litem for her. Instead, the court appointed a Minor's Counsel for A.F. "in anticipation of changes to the custody and visitation arrangement that could result from the outcome" of A.F.'s DVRO request against Father. The Court of Appeal reversed because appointing Minor's Counsel "is improper in a DV matter where a minor seeks" a DVRO.

The Court also held: the trial court had subject matter jurisdiction to act in the DVRO matter while the first appeal was pending; the trial court did not err in voiding A.F.'s agreement with her independent counsel because she "lacked competency to select her attorney independently"; the court erred in prohibiting the attorney from being A.F.'s counsel since the attorney does not need to meet the Minor's Counsel requirements; and the court erred (harmlessly) by not providing proper notice to A.F. before interviewing her.
Statutes used or affected: Family Code sections 3011, 3020, 3040, 3100, 3150, 3151, 6229, 6500, 6601 and 6602; Code of Civil Procedure sections 372, 374, 916; Civil Code section 1550; Welfare and Institutions Code sections 317, 318, 349
California Rules of Court used or affected: Rules 5.240, 5.241, 5.242
Rules of Professional Conduct used or affected: Rule 1.8.6

***A.F. v. Jeffrey F.* (2022) 79 Cal. App. 5th 737**
Minor filed for a domestic violence restraining order (DVRO) against Father. Mother and Father were previously married and at one time Mother had a DVRO protecting her from Father. Attorney for Minor was the same attorney who had previously represented Mother in the dissolution case. The trial court granted Father's motion to disqualify Attorney because it found that it was a conflict of interest for Attorney to represent both Mother and Minor at the same time. The appellate court reversed finding that substantial evidence did not support the court conclusion that the attorney simultaneously represented both Mother and Minor. The appellate court also determined that did not have enough information to decide whether Attorney should be disqualified for successive representation of Mother and Minor. As part of its ruling the appellate court reaffirmed the rights of minors to request their own DVRO against a parent even if there has been or is

an ongoing custody case. The reviewing court further noted that an attorney representing a child has a duty to zealously advocate for the wishes of their client. In contrast, a court appointed Minor's Counsel has a duty to advocate for what it determines is the best interest of the child.
Statues used or affected: Family Code sections 3151(a), 6200 et seq, 6211(f), 6301(a), 6301.5, 6323 and 7635; Code of Civil Procedure sections 128(a)(5), 372(a), 372(b)(2), 373; State Bar Rules of Professional Conduct Rule 1.6(a), 1.7(a), 1.7(b), 1.9(a) & cmts. 1-3 (c)(1) & (2); Evidence Code section 452(d); Business and Professions Code section 6068(e)(1)
California Rules of Court used or affected: Rules 5.242 (i) & (j)

***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

4) Issuing Restraining Orders, and Continuances

***In re Marriage of G.E. & I.D.* (2026) 121 Cal.App.5th 1103**

After three hearing dates, during which Wife presented extensive evidence of Husband's alleged abuse—including physical abuse and threats to deport Wife to the parties' home country—the trial court did not decide whether Wife had established abuse warranting a DVRO. Instead, on the final hearing date, Husband's attorney orally moved to dismiss under Code of Civil Procedure section 533. The court dismissed Wife's DVRO petition and terminated the existing DVTRO, stating that neither side had completed its case within the time allotted by the court.

The Court of Appeal reversed, holding that section 533 did not authorize dismissal of an unresolved DVRO request. Section 533 permits a court to modify or dissolve an existing injunction or temporary restraining order, but it does not authorize a court to summarily deny an unadjudicated request for a DVRO. The trial court's inherent authority to manage litigation also did not permit the dismissal here. Although courts may impose reasonable time limits, exclude cumulative evidence, and otherwise regulate proceedings, the trial court went further by dismissing the entire DVRO action without deciding the merits. The Court of Appeal explained that summary dismissal was not warranted, particularly where lesser alternatives were available. It also stressed that docket-management concerns and judicial efficiency cannot override the strong policy favoring decisions on the merits, especially in DVRO proceedings given the DVPA's broad protective purpose. The trial court therefore erred by "exalt[ing] expediency over justice" rather than deciding whether Wife had established abuse.

The Court of Appeal also held that the trial court erred by dissolving the DVTRO under Code of Civil Procedure section 533 because Wife did not receive advance notice that termination of the temporary order would be considered. Husband made the request orally on the final day of the hearing, and the court ruled shortly thereafter. The Court of Appeal held that these "surprise developments" deprived Wife of a meaningful opportunity to marshal evidence and prepare a reasoned opposition to termination of the DVTRO. Because section 533 permits modification or dissolution of an injunction or temporary restraining order only "on notice," the trial court abused its discretion by terminating the DVTRO without providing Wife advance notice and a meaningful opportunity to respond.

Statutes used or affected: Family Code sections 245, 6200 et seq., 6203, 6220, 6300, 6309, 6320, 6326, 6327; Code of Civil Procedure section 533.

***In re Marriage M.P. & M.C.* (2025) 116 Cal.App.5th 1096**
See section II(B)(1) above.

***In re Marriage of A.M. & R.Y.* (2025) 110 Cal.App.5th 1115**
See section II(B)(1) above.

***Bailey v. Murray* (2024) 102 Cal.App.5th 677**
Bailey requested a DVRO against Murray because Murray had sexually assaulted her in January 2021, continued to contact her once she ended the relationship, and in February 2023, Murray blocked Bailey's car in her church's parking lot until she agreed to go with him. He then took Bailey to his house, tried to sexually assault her again, and kept Bailey from leaving.

At the hearing on the DVRO, Bailey was not represented, and Murray had an attorney. During Bailey's direct testimony, the trial court asked her some questions including what led her to file her request for a DVRO. While Bailey's DVRO request did not include the January 2021 incident, Bailey testified about it at the hearing. Bailey also said Murray had shown up to her church after the TRO issued. The trial court admitted the evidence about the January 2021 assault.

The trial court told Murray it had received the standard criminal history report, and it showed Murray was the registered owner of a gun. The court gave Murray the DV-800 Form to complete, informing him he had one day to file the form to show he had turned the gun over or he would be in violation of the TRO. Murray turned in an incomplete form that did not show the time and date when he turned his gun over to a licensed gun dealer. When the trial court told him his form was incomplete and gave Murray a chance to correct it, he did not. Instead, Murray claimed he had a Fifth Amendment right to not answer questions about the location of the gun. Murray then tried to say he never owned the gun but would not answer questions.

The trial court granted Bailey's DVRO and Murray appealed arguing that his due process rights had been violated because 1) the trial court was not neutral when it was asking Bailey questions, 2) Bailey should not have been allowed to testify about the January 2021 incident because it was not in her DVRO request, and 3) he was not allowed to argue against the trial court's conclusion that he owned a firearm based on the report.

The Court of Appeal disagreed with Murray and affirmed the trial court's decision to grant the DVRO. The Court of Appeal found that the trial court could ask "general, open-ended questions" to get the important facts from Bailey as a self-represented party and

to clarify "confusing and incomplete testimony." Noting that the DVPA does not require survivors to put every incident of abuse in their DVRO petition if they gave the other party notice "of the general allegations," the Court of Appeal found that the trial court did not make a mistake in letting Bailey testify to the 2021 incident. Finally, the Court of Appeal found that the trial court could rely on the criminal record report to find Murray owned a gun and he violated the TRO by not turning it over. The trial court properly gave Murray the DV-800 form and gave Murray and his attorney opportunity to complete and correct the form, but they chose not to and it was Murray's choice not to challenge the finding he owned a firearm registered to him or he had not properly turned it over.
Statutes used or affected: Fam. Code sections 6200 et seq., 6211, 6203

***Cardona v. Soto* (2024) 105 Cal.App.5th 141**

In this case, Soto requested a restraining order against Cardona for herself and the parties' daughter. At the hearing, both parties were self-represented. Daughter testified but the testimony occurred in chambers outside the presence of both Soto and Cardona and without a court reporter. After hearing daughter's testimony, the trial court stated that it "was not going to talk to" the parties about what the trial court learned from the daughter except to say the trial court heard an audio recording daughter had taken of the incident where Cardona assaulted his current wife and it was "pretty awful." The trial issued a one-year restraining order for Soto and the daughter. Cardona appealed, arguing "his was denied due process when the trial court held an unreported, in-chambers interview of daughter."

Noting due process rights were heightened in this case because they concerned parental rights, the reviewing court also found Cardona was denied due process. Though the Court noted a minor's testimony can be taken outside the presence of the parties, it found the trial court here failed to "apprise Cardona of" his daughter's testimony or provide him with a meaningful opportunity to respond to the testimony. The case provides examples of safeguards that trial courts can implement, such as having a court reporter present in chambers during a minor's testimony, to ensure parties may respond to the evidence.

Although the DVRO had expired by the time the appellate court made its decision, the appellate court still decided the issue, finding it was not "moot" (a legal term meaning the appellate court cannot do anything from a practical point of view, even if legal mistakes were made). The appellate court said the appeal was not moot because the DVRO, though expired, still had a finding of DV that triggered the Family Code section 3044 presumption. (See section VIII(B)(2) for more information on Fam. Code, § 3044.)

Statutes used or affected: Family Code sections 6200 et. seq., 3044, 3042, Welfare and Institution Code sections 350(b), California Rules of Court, rule 5.250(e)(3)(D)

***N.M. v. W.K.*(2024) 100 Cal.App.5th 978**

In this case, the Court decided two legal issues related to continuances, which are decisions about rescheduling a hearing on a DVRO request. First, the Court of Appeal found that a DVRO respondent's right to a continuance under Family Code section 245, subdivision (a), does not apply when the respondent has already responded to the request. Second, the Court noted that, under the facts of the case, denying the restrained party's request for a continuance was okay because he still got a fair hearing where he was able to fully present his case.
Statutes used or affected: Family Code sections 243 and 245.

***In re Marriage of D.S. & A.S.* (2023) 87 Cal.App.5th 926**

A.S. filed a request for a DVRO against D.S. stating she and the minor children had suffered abuse. Instead of submitting a written declaration describing the abuse, A.S. attached several typed pages which appeared to be a transcript of interactions between A.S., D.S., and the children. A.S. also alleged D.S. had threatened to use a gun on himself twice in the past.

A.S. later filed an amended request for a DVRO. A.S. alleged D.S. owned over 10 registered and unregistered guns, D.S. drive while intoxicated with the children in the car, and she had videos of D.S. verbally and emotionally abusing the children and A.S. D.S. filed a response, denying the abuse.

Both A.S. and D.S. represented themselves at the hearing. The trial court did not swear the parties as witnesses nor take testimony from them. It also did not address objections, such as hearsay objections, raised in D.S.'S response to A.S.'s DVRO request nor make any inquiries of D.S. regarding A.S.'s allegations.

The trial court issued a 3-year DVRO against D.S. D.S. appealed, arguing that the trial court denied him due process by issuing a DVRO based solely on declarations without receiving live testimony.

The Court of Appeal found that, although a court may issue a restraining order based solely on the declaration of the parties, due process requires that litigants have the right to be heard in a meaningful manner. Here, the trial court did not provide D.S. meaningful opportunity to be heard. The trial court failed to inquire into the reasons D.S. objected to A.S.'s DVRO request, received no testimony, made no effort to question the

parties to determine their credibility, and did not allow the parties to cross-examine disputed issues.

The Court of Appeal further reiterated that judges must take a more active role in developing the facts of a DVRO case when litigants are self-represented.
Statues used or affected: Family Code sections 271, 6300, 6340

***Malinowski v. Martin* (2023) 93 Cal.App.5th 681**
Wife filed for dissolution of marriage from Husband. While the case was pending, Wife filed a request for a domestic violence restraining order (DVRO). The trial court issued a temporary restraining order, which included the parties' minor children as protected parties and "no-contact" and "stay away" provisions. The trial court later modified the temporary DVRO to allow Husband contact with the parties' children that was consistent with a previously entered visitation order in the dissolution case. Mother appealed, arguing that the trial court should not have modified or changed the temporary DVRO because there was not a noticed evidentiary hearing or a showing of changed circumstances required by Code of Civil Procedure section 533. The Court of Appeal disagreed with Mother because a "court may modify or terminate a temporary restraining order" if it grants a continuance. In some cases, the trial court may still need to hold a hearing on the modification request. In this case a noticed hearing was not necessary because Mother had received notice based on arguments made in review hearings and the visitation order was already in effect in the dissolution case when Father asked the court to modify the temporary restraining order. For these reasons, the trial court had discretion to modify the temporary DVRO without a hearing.
Statues used or effected: Code of Civil Procedure section 533, Family Code section 245, 210

***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

***Goals for Autism v. Rosas* (2021) 65 Cal.App.5th 1041**

Goals for Autism (Goals) requested a workplace restraining order against Rosas after Rosas harassed and threatened Goals' employee. Before the hearing on the restraining order, Rosas filed his opposition to the restraining order and requested a continuance. At the hearing, which neither Rosas nor his counsel attended, the court denied the continuance and granted Goals a workplace restraining order. Rosas appealed and the appellate court affirmed the trial court's decision. The appellate court found Rosa did not qualify for the mandatory continuance under Code of Civil Procedure section 527.8(o), because Rosas had submitted an opposition to the petition, and the purpose of the mandatory continuance is to give time to respond to the petition. In making this determination the Court of Appeal looked to *Ross v. Figueroa* a DVPA case construing a nearly identical provision of the family code. ((2006) 139 Cal.App.4th 846 [discussing continuances under Family Code].)
Statutes used or affected: Code of Civil Procedure section 527.8
California Rules of Court used or affected: Rule 3.1160

***In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483**

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

5) Personal Service & Respondent's Right to Appear 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 of a restraining order request may be other than personal, if the petitioner, after due diligent

efforts, has been unable to serve the other party, there is reason to believe that the restrained party is evading service, and the court allows alternative service. (Fam. Code, § 6340, subd. (2)(A)). Service for modifying or terminating a DVRO may also be other than personal, if the trial court so orders. (Fam. Code, § 6345, subd. (d).)

J.S. v. D.A. *(2026) 118 Cal.App.5th 891*

The Court of Appeal reversed a five-year DVRO, holding the trial court abused its discretion by failing to ensure the incarcerated respondent's meaningful access to the courts. The petitioner sought a DVRO alleging prior physical abuse that resulted in respondent's incarceration, as well as ongoing abusive communications from prison. After being served, the respondent opposed the request, sought a continuance, and asked the court to order the Department of Corrections and Rehabilitation to facilitate his telephonic appearance at the evidentiary hearing. Although the hearing was continued once, the trial court never addressed that request, conducted no custody check, and proceeded in respondent's absence to issue the DVRO. The appellate court held that indigent inmates facing bona fide civil proceedings that threaten their interests have a constitutional right to meaningful access to the courts, which may be satisfied through various means, including but not limited to remote appearance. Because the record showed the respondent was incarcerated and had requested to appear telephonically, the trial court was required to assess the inmate's indigency, determine whether his personal or property interests were implicated, and consider measures to ensure his meaningful participation in the DVRO proceeding. Its failure to do so was reversible error. The matter was remanded for a new hearing, with the TRO to remain in effect until at least 30 days after issuance of the remittitur. Neither party recovered costs on appeal.
Statutes used or affected: Penal Code section 1567; Family Code sections 242 and 245
Rule of court used or affected: Rule 8.278(a)(5)

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

C. **Juvenile Court Domestic Violence Restraining Order Cases**

In re A.P. (2024) 103 Cal.App.5th 1137

Survivor Lidia P. requested a DVRO from the juvenile court against the father of her children. Despite finding the father had committed multiple acts of domestic violence against Lidia, the trial court denied the DVRO request. The court of appeal overturned the denial holding the fact the parties no longer live together is not a proper basis to deny a restraining order. The court of appeal also noted that orally telling the parties to "stay away from each other" is not a substitute for a restraining order.

The opinion confirms several important principles from the Domestic Violence Prevention Act (Fam. Code §6200 et. seq.) also apply to DVROs sought under the Welfare and Institutions Code. First, that violations of a temporary restraining order are abuse. Second, that physical separation of the parties because they no longer live together is not a basis to deny the protections of a DVRO. Third, trial courts may not issue non-CLETS stay away orders instead of a restraining order, and must issue a CLETS order on Judicial Council forms in compliance with Welfare and Institutions Code section 213.5. And fourth, an admonishment of a party to "stay away" from the other party shows there are concerns about future abuse occurring and such an admonishment is not a sufficient substitute for a DVRO.
Statutes used or affected: Welfare & Inst Code sections 300 and 213.5, subds. (a), (c)(5), (d), (h), & (j); Cal. Rules of Court, rule 5.630(a); Family Code sections 6200, 6203 subd. (a)(4), 6300, 6308, 6340.

In re B.H. (2024) 103 Cal.App.5th 469

Mother's six children were declared dependents of the juvenile court under Welfare and Institutions Code section 300 (b)(1) based upon a "failure to protect." The trial court determined it had jurisdiction over the children because it found true the allegation that Mother has a history of engaging in domestic violence. It also amended the Department of Children and Family Services petition to state Mother had a history of mental health issues even though "the court found no evidence Mother currently had any mental health problems." The Court of Appeal reversed the trial court's findings relating to four of the children.

Mother married Father H. in 2019 but separated in April 2023 after an incident of domestic violence where Father H. destroyed property in the house and pushed Mother. In June 2023, Father H. was arrested for driving under the influence of alcohol with their two minor children in the car. Despite Mother telling the social worker she would not allow Father H. to drive the children, she allowed him to do so the next day. When Father H. was late returning the children, Mother contacted him and he sounded intoxicated. Mother, "went looking for" him and saw him driving. When Father H. was stopped at a stoplight, Mother approached him and "when it seemed to [M]other that

[F]ather H. was about to drive off, she hit him the face and got the keys out of the ignition." Here, the department alleged both parents engaged in domestic violence, Father H. had a history of alcohol abuse, and mother had "ongoing mental health problems."

Mother had also been married to Father M., but they divorced in 2016. The parties shared two minor children. In 2015, Father M. was incarcerated for a domestic violence incident against Mother. Here, the department alleged Father M. had engaged in domestic violence and Mother had "ongoing mental health problems."

The Court of Appeal allowed Mother to challenge the domestic violence jurisdictional allegations sustained against Father M., because those allegations directly affected Mother's parental rights. The Court of Appeal separately noted that because the parents had "coexisted without incident" since their 2016 divorce, there was no ongoing risk of domestic violence to support removal of the children from the survivor's custody.

Importantly, this is the first case to state that having a protective order, such as a DVRO, is not sufficient evidence of ongoing domestic violence to support dependency jurisdiction. The Court of Appeal also found that Mother had responded "with appropriate and effective action to protect both herself and the children" in previous incidents of domestic violence by Fathers H. and M., which weighed against a finding of dependency jurisdiction.

This is also the first case to clarify that a "colloquial, non-expert evaluation" of a parent's mental health issues should not be the basis for allegations in a dependency petition. The Court of Appeal found that Father M.'s assertion that Mother was "crazy" and Father H.'s claim that Mother was "bi-polar" were not evidence of Mother having a diagnosed mental health issue. The Court of Appeal also emphasized the need for a nexus of harm to the children, as "harm may not be presumed from the mere fact of a parent's mental illness." Statutes used or affected: Family Code sections 6211, 6300, 6301, 6320; Welfare and Institutions Code sections 213.5, 300 (b)(1), 348, 355, 362; Code of Civil Procedure section 430.80

III. Mutual Restraining Orders

A. Introduction

Family Code section 6305 applies when two parties request restraining orders against each other (mutual restraining orders). 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

R.M. v. A.G. (2026) 121 Cal.App.5th 384
In this consolidated appeal, A.G., appealed both the trial court's denial of her request for a domestic violence restraining order (DVRO) against her former boyfriend, R.M., and its grant of R.M.'s request for one against her. The parties dated for more than a year and both alleged abuse occurred during and after the end of their relationship. R.M. filed for a DVRO alleging A.G. alleging had abused him, including physical abuse and repeatedly attempting to contact him after they broke up. A.G. filed her own request. Her allegations included numerous instances of physical and sexual abuse, harassment, violating her privacy, encouraging her to commit suicide, and damaging her professional reputation.

At the hearing on both requests, the court allowed only limited testimony and refused to hear testimony about abuse before the relationship ended. R.M. alleged A.G. had attempted to contact R.M. over a thousand times after they broke up. A.G. alleged R.M. had made numerous harmful and explicit social media posts about A.G after separation. A.G. also alleged R.M. contacted A.G.'s witness and A.G.'s mother and told A.G.'s mother private information. In response, the court suggested A.G. should stop looking at R.M.'s social media. The court granted R.M.'s request for a DVRO because of A.G.'s attempts to contact R.M. after their relationship ended and denied A.G.'s request finding R.M. had not "contacted" A.G. since they broke up.

The Court of Appeal reversed saying the trial court erred by failing to consider R.M.'s indirect contacts such as his social media posts, communications with A.G.'s family and friends, and disclosure of private information to others could be abuse. The Court rejected R.M.'s arguments that the standard for Civil Harassment Restraining Orders

applied and that the trial court found A.G. was not credible. The Court said A.G. had provided substantial evidence that R.M. was indirectly communicating with her in ways that disturbed her peace. Abuse under the DVPA is not limited to direct contact but includes indirect contact including through any means, including through use of another person or through electronic technologies. The Court said that even if it could be implied that there was a credibility finding, the trial court misunderstood the legal standard and so abused its discretion.

The Court of Appeal also held that courts must consider evidence of abuse from the parties' entire relationship and evaluate the totality of the circumstances, not just abuse after separation. The Court reversed both A.G.'s denied DVRO and the DVRO granted to R.M. because in mutual DVRO cases the trial court must consider all the relevant conduct by both parties before issuing any restraining order. The opinion reaffirms the language in Family Code 6305. It notes that a court may still deny a DVRO, even if in isolation conduct could support one, if the court determines per Family Code section 6305 that the party was not a primary aggressor or acted primarily in self-defense.

Statutes used or affected: Family Code sections 6203, 6220, 6300, 6301, 6305, and 6320 (including relevant Penal Code sections within 528.5; 529; 653m); Civil Code of Procedure section 527.6, Penal Code section 836

In re Marriage of Hoch (2026) 119 Cal.App.5th 80
This case explains the "primary aggressor" analysis in the context of mutual restraining orders where there is no physical abuse and addresses religious abuse. The trial court found both Michael and Marcie were the primary aggressors, issuing mutual restraining orders. Michael and Marcie practiced the same religion, but disagreed on how it should be practiced. The court found Michael was a primary aggressor because he tracked and monitored Marcie's accounts and devices, monitored Marcie's whereabouts through a phone app and used his understanding of their religion to control Marcie. The court found Michael engaged in coercive control. Marcie was also found to be a primary aggressor because she entered their former family residence against Michael's wishes while he was not home and took items, found and looked into Michael's new car, and attended a barbeque near another home the family owned while she was restrained by a temporary restraining order, although she fled when he appeared.

The appellate court reversed the trial court's finding that Marcie was a primary aggressor holding trial courts must: (1) consider the parties' respective acts of domestic violence in concert and weigh them against the other, (2) consider the history of domestic violence between the parties, and (3) consider the intent of the law to protect victims from continuing abuse. Applying this standard and comparing the allegations of abuse between the parties, the appellate court found the evidence did not support a

finding that Marcie was a primary aggressor. Marcie's acts were "discrete" and "isolated" while Michael's involved serious repeated conduct over a period of several months. Therefore, the trial court errored when it issued mutual restraining orders.

Additionally, Michael appealed arguing the DVRO was issued in error because he could not be restrained for exercising his religion. The appellate court ruled that even though Michael believed he was validly exercising his religious beliefs, he was not free to impose his understanding of their religious beliefs onto Marcie.
Statutes used or affected: Family Code sections 6203, 6301, 6305, and 6320; Penal Code section 836.

***Salmon v. Salmon* (2022) 85 Cal.App.5th 1047**

In this case, Wife and Husband both filed DVRO requests against each other, and Husband made a request for sole custody. The trial court granted Wife's request and denied Husband's. Husband appealed only the denial of his request. The Court of Appeal held that Family Code section 6305 applies even when two competing requests allege different incidents of abuse, when the requests are filed on different dates, and when one party's request is filed after the other already got a DVRO after a noticed hearing. Although not necessary for its decision, the Court also expressly disagreed with the holding in *Conness v. Satram* (below). The Court determined that if one party already has a DVRO and the restrained party then files their own request, the trial court must give the protected party notice of potential modification or termination of their DVRO. Here, the Court held Husband was properly found to be the primary aggressor and thus properly restrained by Wife's DVRO.

The Court further concluded that the child custody order also challenged by Husband on appeal was properly made. Even though the trial court found Wife and Husband both committed abuse, the court made more findings against Husband, such as he did not protect the children from Wife's abuse. The Court noted that the trial court could properly refer child abuse issues to a local child welfare services agency to do an investigation.
Statutes used or affected: Family Code sections 3027, 3044, 6300, 6305, 6340, 6345; Penal Code section 836

***K.L. v. R.H.* (2021) 70 Cal.App.5th 965**

In this mutual restraining order case, the trial court erred by issuing mutual restraining orders without evaluating the evidence using the required factors under Penal Code section 836 subd. (c)(3). Here, K.L. severely physically, sexually, and emotionally abused R.H. during the relationship. After their relationship ended, K.L. still abused R.H., including strangling and sexually assaulting her, and refusing to return the child

after visitation. Based on this abuse, the trial court granted R.H. a restraining order against K.L. But K.L. also got a restraining order against R.H., because R.H. had called K.L. a name on the Talking Parents App and had threatened him after K.L. threatened her. R.H. challenged the restraining order against her.

The Court of Appeal held that there should not be a restraining order against R.H. The Court of Appeal noted that the trial court should not have looked at each request for a restraining order individually. Instead, the trial court should have look at both parties' restraining order requests together to decide who was the dominant or significant aggressor. To decide this question, the court must analyze the factors under Penal Code section 836 subd. (c)(3).

The appellate court also found that the trial court erred by relying on R.H.'s prior criminal convictions to issue the mutual restraining orders. Contrary to the trial court's findings, the convictions were not felony convictions or a misdemeanor conviction involving violence and so were not in the categories permitted to be consider under Family Code section 6306 subd.(b).

Finally, the opinion reversed the joint custody orders of the trial court but noted that, because the case was in dependency proceedings, the trial court could not make new orders. The opinion ordered the trial court to apply Family Code 3044 if, after the dependency case resolved, a request for custody was made in family court. In a footnote, the appellate court encourages the trial court to keep in mind the danger of implicit bias affecting the judiciary's perception of victims of domestic abuse.
Statutes used of affected: Family Code sections 3044, 6203, 6220, 6300 et seq., 6305 subd.(a)(2), 6306, 6320, 6340; Penal Code sections 273a, 273.5 subd.(a), 667.5 subd.(c), 836 subd.(c)(3), 1192.7 subd.(c); Civil Code of Procedure sections 904.1 subds. (a)(1),(2),and (6); Welfare & Institutions Code section 302 subd.(c)

***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 used or affected: Family Code sections 6200 et seq; 6203, 6211, 6220, 6300, 6305 and 6306, Evidence Code sections 115, 1220 and 1280, Penal Code section 836 Public Utilities Code section 21676; Code of Civil Procedure section 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. 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, M.F. and J.J. filed restraining orders against one another. M.F. had pushed J.J. out of a car, pushed her through a glass door, and sent her threatening text messages. Also, when M.F. was returning their child's jacket, he strangled J.J., dragged her, and caused her bodily injury. The court entered mutual restraining orders, finding that J.J. had also been a primary aggressor by repeatedly phoning M.F. 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) J.J. calling to get their son's only jacket was done in good faith and not harassment, and (2) J.J. did not act *primarily* as an aggressor when she pushed M.F. 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 more years, or permanently, at the discretion of the court, 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. If a request to renew is not opposed, the petitioner is entitled to a renewal upon request. However, if a request to renew is opposed, the petitioner must prove an objectively "reasonable apprehension of future abuse." "Apprehension" essentially means "fear" or "concern." 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

***Hart v. Hart* (2025) 115 Cal.App.5th 571**

In this case the trial court renewed a DVRO for only 9 months. The protected party appealed arguing that a five-year period was the minimum allowed by the DVPA. Finding that the trial court does not have discretion under Family Code section 6345 to renew a DVRO for a period of less than 5 years, the Court of Appeal agreed. Noting that the plain language of the DVPA states that a DVRO "may be renewed…either for five or more years, or permanently", the Court of Appeal reversed the order and instructed the trial court to issue a five-year renewal.

Statues used or affected: Family Code sections 6300, 6345

***Navarro v. Cervera* (2025) 108 Cal.App.5th 229**

This case strengthens the law for renewing DVROs. (Fam. Code, § 6345, subd. (a).) In this case, Cervera abused Navarro by, among other things, breaking into her home, waiting outside her workplace, and trying to enter her car with a large knife with plans to

kill her. Navarro got a DVRO against Cervera. Cervera later violated the DVRO by sending Navarro an email and text message, stating that she loved Navarro and did not care if she went to jail

Navarro sought to renew the DVRO. The trial court denied the renewal request at a contested hearing after finding Navarro's fear of future abuse was genuine and credible, but not "reasonable." The Court of Appeal reversed and remanded with instructions to grant the renewal, noting all relevant factors (see *Ritchie*, *supra*) supported the renewal, including the severe and significant underlying abuse of stalking and attempted murder and Cervera's violations of the DVRO. The Court of Appeal also noted that Cervera's explanation that side-effects from her medication caused her to stalk Navarro was not supported by the evidence in the record.
Statutes used or affected: Family Code sections 6203, 6320, 6345

_G.G. v. G.S._ (2024) 102 Cal.App.5th 413
G.G. got a two-year DVRO against her former cohabitant and father of their children, G.S., for his abuse of her that included blocking her, recording her, harassing her, taking her phone, and stalking her on over 70 occasions. The trial court denied G.G.'s request to renew her DVRO, noting that G.S. had not violated the restraining order. The appellate court reversed, for two key reasons. First, the abuse that led to G.G.'s original DVRO was severe, even if not significant physical abuse. The underlying abuse itself, then, supported renewing the DVRO. Second, DVRO renewal could be warranted here, even if G.S. had not violated the order. Significantly, the opinion focuses on the dangerousness, risks, and severity of stalking abuse, and the significant impacts it can have on survivors.
Statutes used or affected: Family Code sections 6203, 6320, 6345

Michael M. v. Robin J. (2023) 92 Cal.App.5th 170
Mother sought renewal of a three-year DVRO against Father. Prior to obtaining the DVRO, Father physically and verbally abused Mother, including while Mother was holding their infant child. Months after the DVRO was granted, Father strangled and held a knife to Mother's throat in the presence of their children. Father also sent a threatening text to Mother days before the hearing on the DVRO renewal. The trial court, however, denied Mother's request to renew the DVRO. The trial court found that Mother's fear of future abuse was not reasonable because there had been no recent incidents of violence. The court also determined that the threatening text "really [wasn't] a violation." The trial court instead concluded that Mother had filed the DVRO renewal request to retaliate against Father for filing for custody. And although the court found that Mother's fear of future abuse was not credible, it warned Father not to commit future abuse.

The Court of Appeal disagreed with the trial court and ordered the renewal of Mother's DVRO. The opinion confirmed that a DVRO renewal request does not require the person requesting renewal to show recent abuse or a violation of the DVRO. Renewal only requires someone to show a reasonable apprehension of future abuse. The opinion also confirmed that, when deciding whether Mother's fear of future abuse was genuine and reasonable, the trial court should not have disregarded violations of the DVRO simply because they were not recent or not violent. Here, there had been a serious violation of the DVRO two years before the renewal request. Furthermore, the text Father sent Mother days before the hearing was a clear violation of the DVRO and the trial court did not have discretion to dismiss it as not "really" a violation. The decision additionally noted the trial court's warning to Father to not commit future abuse showed that Mother's fear of future abuse was reasonable.

The opinion also, for the first time, stated that a retaliatory or angry motive for filing a DVRO renewal request does not negate a reasonable apprehension of future abuse. Here, even if Mother had a retaliatory motive for requesting the DVRO renewal, she could also have a genuine fear of future abuse because "anger and fear are not mutually exclusive." And, on this record, Mother showed "compelling evidence" of reasonable apprehension of future abuse.
Statutes used of affected: Family Code sections 6203, 6320, 6345

***Ashby v. Ashby* (2021) 68 Cal.App.5th 491**

Wife was granted a DVRO after incidents of physical, emotional, and financial abuse. Before her DVRO expired, Wife asked the court to renew the DVRO. After Wife testified that Husband had refused to pay court-ordered fees, engaged in electronic stalking, and refused to follow the child visitation order, the trial court renewed Wife's DVRO for five years. Husband appealed the trial court's decision to renew. Husband argued that the trial court failed to evaluate the current circumstances in relation to the DVRO. The appellate court disagreed and held that judges should consider the facts and evidence that led to the initial DVRO when deciding whether it should be renewed. While a violation of a DVRO is not needed for renewal, the court should consider electronic stalking and financial abuse when making its decision. Likewise, courts should consider "spiteful litigation tactics" when deciding whether to renew a DVRO.
Statutes used or affected: Family Code section 6345

***In re Marriage of Brubaker & Strum* (2021) 73 Cal.App.5th 525**

A survivor applied for renewal of a her DVRO. At the renewal hearing, the trial court granted the restrained party's request to exclude evidence about the restrained parties' conduct. The trial court excluded this evidence because, in a separate dissolution

hearing, the court had conducted a Family Code 3044 analysis and determined that the acts were not domestic violence. The trial court denied the renewal request. The appellate court reversed, holding that the trial court erred by excluding the evidence. The Court of Appeal found that the issues the court was hearing and deciding in the dissolution case were different than the DVRO renewal case. In the dissolution case, the issue the court was deciding was whether Husband rebutted the presumption under 3044 for deciding custody. In contrast, the issue the trial court was deciding in the DVRO renewal case was whether Wife had a reasonable fear of future abuse. The appellate court also reiterated that evidence of acts of domestic violence after the original DVRO was put in place or violations of DVRO are not required to renew a DVRO. This type of evidence, however, may help a court decide if the petitioner has a reasonable fear of future abuse. The Court of Appeal further noted that, even if a trial court describes abuse as "situational" at the time it issues the original DVRO, the standard to renew that DVRO is the same as any other; to renew a restraining order a person only has to prove a reasonable fear of future abuse.
Statutes used or affected: Family Code sections 3044, 6200 et seq., 6211 subd.(a), 6220, 6300 subd.(a), 6345

***In re Marriage of Carlisle* (2021) 60 Cal.App.5th 244**
Wife was granted a two-year DVRO against her Husband, which Husband appealed. While the appeal was pending, Wife sought renewal of the DVRO. The trial court renewed her DVRO for five years, which Husband also appealed. The appellate court noted that trial courts generally have the power to extend injunctions of limited duration pending an appeal if doing so would "serve the ends of justice." Based on this, the appellate court held that the lower court had jurisdiction to renew the DVRO while the appeal of the original DVRO was still pending. (*Husband's appeal of the original DVRO was ultimately unsuccessful.)* The appeals court did not decide the question of whether a trial court could modify a DVRO while an appeal was pending.
Statutes used or affected: Code of Civil Procedure section 904.1(a)(6); Family Code section 6345

***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 & 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 & 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**
See section I(B) above.

***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. The case further noted the trial court can and should consider an abusive party's litigation conduct to decide whether to renew a DVRO. Finally, the case also held that a DVRO is not unconstitutionally overboard by violating the First Amendment right of association.
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. **Family Code section 6345 has been amended to allow the trial court to renew a DVRO for five years **or more** or permanently. When Avalos was decided the court was limited to renewing a restraining order for either 5 years or permanently.
Statute used or affected: Family Code sections 6345

***Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275**
This case established the standard for renewing a DVRO. If a request to renew is not opposed, the petitioner is entitled to a renewal upon request. However, if a request to renew is opposed, the petitioner must prove an objectively "reasonable apprehension of future abuse." 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.)

Code of Civil Procedure section 533 does not apply when a trial court merely continues a temporary DVRO. Section 533 governs the modification or dissolution of an existing injunction or temporary restraining order and requires notice to the parties. Before modifying or terminating a DVTRO under section 533, the protected party must receive advance notice that such relief is being considered and a meaningful opportunity to marshal evidence and prepare a reasoned opposition.

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

***In re Marriage of G.E. & I.D.* (2026) 121 Cal.App.5th 1103**
See section II(B)(4) above.

***Malinowski v. Martin* (2023) 93 Cal.App.5th 681**
See section II(B)(4) above.

Olson v. Doe (2022) 12 Cal.5th 669 (2022)

Doe and Olsen owned condominium units in the same building and worked together. Doe filed a civil harassment restraining order (CHRO) against Olson claiming that Olson sexually assaulted and harassed her. At the hearing on Doe's CHRO request, the trial court ordered the parties to attend mediation. At mediation, the parties reached an agreement. Their agreement included a clause that the parties would "not disparage one another." It also included a provision that Doe's CHRO was dismissed without prejudice. After the mediation agreement was entered, Doe filed an administrative complaint and a civil complaint against Olson. Olson counter-sued Doe, claiming that she breached the mediation contract because she had disparaged him by filing these lawsuits. Doe filed an anti-SLAPP motion arguing that her conduct was protected by litigation privilege. The trial court agreed with Doe and Olson appealed. On appeal, the Court of Appeal held that Doe's administrative complaint was protected litigation but the civil lawsuit was not. Doe appealed to the California Supreme Court. Noting that CCP section 527.6 provides that "a petitioner" is "not preclude[d] from using other existing civil remedies," the Court found that the non-disparagement clause did not apply to Doe's right to sue in civil court. The Court further noted that the non-disparagement clause needed to be understood in connection with the entire mediation agreement. *Statutes used or affected:* Code of Civil Procedure sections 527.6 and 425.16; Civil Code section 47

***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. DVRO & Firearms

A. Introduction

People restrained by a domestic violence restraining order (DVRO) are generally prohibited from buying, owning, possessing, or trying to get a firearm or gun. (Fam. Code, § 6389; 18 U.S.C. § 922(g)(8).) Under California law , they are also prohibited from buying, owning, possessing, or trying to get ammunition, body armor, and firearm parts (which include parts of a gun like receivers or frames). (Fam. Code, § 6389; Pen. Code, §§ 16150 et seq., 16288, 31360.)

Before the DVRO hearing, the court must conduct a check to see if the, among other things, the restrained party owns or possesses a firearm. (Fam. Code, § 6306; see *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 981-982.) If the court issues a DVRO, it has certain obligations to ensure the restrained party has no prohibited items or, if they have prohibited items, they turn them over to proper authority within a certain period of time. (Fam. Code, §§ 6322.5, 6389.)

The cases below explain that this automatic firearms prohibition generally cannot be removed from a DVRO, except that under California law, the court may grant an

exemption for the restrained party to have a gun for and during employment, if certain strict requirements are met. (Fam. Code, § 6389, subd. (h).) The cases below also explain how these automatic prohibitions do not violate various provisions of the state and federal constitutions.

B. Cases

***United States v. Rahimi* (2024) 602 U.S. 680**
Rahimi was in a dating relationship with the mother of their child, C.M., and was restrained by an agreed-upon DVRO issued in Texas that included a finding that Rahimi was "a credible threat" to C.M. and the child's physical safety. Rahimi later threatened a different woman with a gun and was suspected to be involved with additional shootings. Because Rahimi committed acts of fire-arms related violence after agreeing to a DVRO which prohibited him from possessing firearms and ammunition, the U.S. government indicted him with possessing a firearm in violation of 18 U.S.C. § 922(g)(8). The District Court (federal trial court) denied Rahimi's motion to dismiss the indictment. The 5th Circuit Court of Appeals then reversed, holding that 18 U.S.C. § 922(g)(8) violates the Second Amendment to the U.S. Constitution.

The U.S. Supreme Court reversed the 5th Circuit's ruling, concluding that someone who is found to be a "credible threat to the physical safety of an intimate partner" can have their "right to bear arms" limited without violating the Second Amendment.
Statutes used or affected: Family Code section 6389

***Zachary H. v. Teri A.* (2023) 96 Cal.App.5th 1136**
See section II(B)(2) above.

***Altafulla v. Ervin* (2015) 238 Cal.App.4th 571**
See section I(B) above.

***Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275**
See section I(B) above.

VII. Attorney Fees and Costs in Some Family Law Cases

A. Introduction

Whether at trial or on appeal, the prevailing party has a right to recover costs, which may include attorney's 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's fees and costs at trial must be brought within the deadline for filing a notice of appeal, and for attorney's 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 attorney's 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's fees and costs is at least reasonably likely to be able to pay (Fam. Code, § 270; see *id.*, § 6344, subd. (c)). The request for attorney's 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 filing (such as the Form DV-100 or DV-120).

Usually, the party requesting attorney's fees and costs must serve and file a completed Income and Expense declaration (Judicial Council Form FL-150). (Cal. Rules of Court, rule 5.427.) However, those seeking attorney's fees under only the Domestic Violence Prevention Act (DVPA), do *not* need to submit this Income and Expense Declaration.

Generally in family law, attorney's fees and costs can be awarded for one or more of the following reasons: **(1) to 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) to 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) to 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 [DVPA]).

In 2022, FVAP sponsored Assembly Bill 2369, which amended Family Code section 6344 to make it easier for petitioners to recover attorney's fees, and harder for respondents. FVAP's website has more information and free resources about how the law has changed.

Family Code section 6344, subdivision (a) now provides in full: "After notice and a hearing, a court, upon request, shall issue an order for the payment of attorney's fees and costs for a prevailing petitioner." Family Code section 6344, subdivision (b) now provides in full: "After notice and a hearing, the court, upon request, may issue an order for the payment of attorney's fees and costs for a prevailing respondent only if the respondent establishes by a preponderance of the evidence that the petition or request is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay."

B. Cases

***Dragones v. Calkins* (2024) 98 Cal.App.5th 1075**

This is the first case to discuss the attorney's fees statute in the DVPA after it was amended by 2022's Assembly Bill 2369, which went into effect on January 1, 2023. "The new statute makes it easier for a prevailing petitioner to obtain fees, and harder for a prevailing respondent to obtain fees." In this case, the trial court granted Dragones a DVRO against Calkins in 2022. In 2023, Dragones asked the court for DVPA attorney's fees. Applying the new version of the statute, the trial court granted attorney fees. Calkins appealed and the Court of Appeal affirmed. The Court explained that the new version of the statute applies retroactively because that is how family laws generally work. Plus, the statutory change was procedural so the new version applies to any pending fees request. Finally, the Court concluded the trial court did not need to consider Dragones's ability to pay, only Calkins's, and the amount Calkins had to pay ($6,000) was reasonable.
Statutes used or affected: Family Code sections 4, 270, 6344

***Parris J. v. Christopher U.* (2023) 96 Cal.App.5th 108**

See section I(B) above.

***In re Marriage of Knox* (2022) 83 Cal.App.5th 15**

This case does not involve domestic violence but may be useful for any survivor of abuse wanting temporary attorney's fees in a divorce or separation case, per Family Code section 2030. In this divorce case, Wife asked for temporary attorney's fees, but the trial court kept delaying ruling on her request. The trial court eventually held a trial but did not rule on Wife's request, which effectively denied it. Wife then lost on a key issue at trial—whether a home was transmuted to be community property or was still Husband's separate property—because she was representing herself and did not know to admit a vital piece of evidence. Wife appealed and the Court of Appeal reversed and remanded, holding the trial court must rule on a request for temporary attorney's fees under this law, with "reasonable promptness." In this case the Court of Appeal also

gives good language for how trial courts should and can help self-represented litigants with presenting their case.
Statutes used or affected: Family Code sections 12, 852, 2030, 2031 and 2032
California Rule of court used or affected: Rule 5.427

***In re Marriage of Erndt & Terhorst* (2021) 59 Cal.App.5th 898**
In this case, Wife refused to sign a stipulation that granted Husband survivor benefits of the community property portion of Wife's retirement plan. Husband requested, among other things, that he be awarded attorney fees and costs under Family Code section 271. Although Husband was an attorney, he made this request as a self-represented litigant. The trial court awarded Husband $980 in attorney's fees under Family Code section 271. Reversing the order, the appellate court held that an award of attorney's fees to self-represented attorneys is not permitted under Family Code section 271. In reaching its decision, the appellate court noted that the plain language of section 271 states "attorney fees and costs." The appellate court also analogized to other cases under Code of Civil Procedure section 128.7, where the courts have held that self-represented attorneys could not obtain "attorney's fees" because the attorney chose to litigate themselves instead of hiring an attorney to represent them.
Statutes used or affected: Family Code section 271; Code Civil Procedure section 128.7

***Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990**
See sections I(B) and II(B)(1) above.

***Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160**
A party is not barred from requesting attorney's fees where the request was not made in the initial restraining order application (DV-100 petition). That is, the party can request attorney's 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

***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's 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.

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

VIII. Vexatious Litigant

A. Introduction

If a person has done any of the following they can be declared a "vexatious litigant," under Code of Civil Procedure section 391 et seq:

1. Filed at least 5 civil lawsuits (not in small claims court) without a lawyer in the last 7 years and either i) lost in court or ii) for no good reason, took more than two years to finish the case.

2. They repeatedly attempted to relitigate or relitigated the same issues without an attorney. Repeatedly means more than two times.

3. They repeatedly filed meritless pleadings without an attorney.

4. They were previously declared a vexatious litigant. This applies when a person has previously been declared a vexatious litigant by any state or federal court in any case based on the same or similar facts, transactions, or occurrence.

5. They begin or maintain a civil action against a protected party when they are restrained by a DVRO and the DVRO is still in effect And the action is 1) meritless and 2) harasses or intimidates the protected party.

The court may find a party to be a vexatious litigant on its own motion with a notice and a hearing. (*In re Luckett* (1991) 232 Cal.App.3d 107, 108-109). If a party wants to request that the other party be declared a vexatious litigant, they must file a noted motion for a hearing. (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 225)

After the court declares a party a vexatious litigant, the court can enter a prefiling order prohibiting that party from filing any new litigation without a lawyer without the court's permission. (CCP 391.7) Prefiling orders can be made on the court's own motion or the motion of the other party. (CCP 391.7) Moreover, the court can order a party in a pending case "to furnish security . . . [on] the ground . . . that the [party]" has no reasonable probability of prevailing. (CCP 391.1)

B. Cases

***In re Marriage of Kouvabina & Veltman* (2025) 115 Cal.App.5th 293**
Though Kouvabina was an attorney she represented herself in her dissolution matter. From about 2020-2025, Kouvabina filed 11 appeals and writs with the Court of Appeal. Kouvabina lost nine of those matters, leading the Court of Appeal to order her to show why she should not be declared a vexatious litigant. The court noted that, in the prior seven years, she had—while self-represented— started, prosecuted, or maintained at least five litigations that were decided against her.

Kouvabina argued that appeals were not "litigations" within the meaning of Code of Civil Procedure section 391, the vexatious litigation statute. The Court of Appeal disagreed, finding that both appeals and writs qualify as "litigations" under the statute.

Kouvabina next argued her appeals were not litigation because she was defending herself against the other parties' filings in the trial court – that is, she was the defendant in the trial court proceedings. The Court of Appeal again disagreed, explaining that there is nothing in text of section 391 excludes a defendant's appeal from the definition of "litigation."

Kouvabina also argued that her appeals of child and spousal support orders were not "litigations" because the family court retains ongoing jurisdiction over these issues and the orders are therefore never final. The Court again disagreed, explaining "her appeal from a specific order has been finally determined adversely to her — within the meaning of section 391(b)(1) — once she has lost and all 'avenues for direct review (appeal) have been exhausted or the time for appeal has expired.' "

Finally, the Court of Appeal reiterated that the vexatious litigant statue applies to family law proceedings, including dissolution of marriage cases.
Statues used or affected: Code of Civil Procedure sections 391, 391.7, 391.8

IX. 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

***In re Marriage of C.D. and G.D.* (2023) 95 Cal.App.5th 433**
Mother had sole legal custody of the minor children. Father filed a request for an order that Mother enroll the minor children in public school. The trial court granted Father's request and Mother appealed. The Court of Appeal found that the trial court abused its discretion when it granted Father's request for an order directing Mother to enroll the minor children in public school. The Court of Appeal held Father had no rights or responsibilities concerning the children's education because Mother had sole legal

custody. Father, thus, had to obtain joint legal custody by showing a significant change in circumstance. Because Father did not show a significant change in circumstance that would have warranted a change to the parties' existing custody order, the trial court abused its discretion by granting Father's request.
Statues used or affected: Family Code section 3003, 3006

***Johnston-Rossi v. Rossi* (2023) 88 Cal.App.5th 1081**
Mother got a domestic violence restraining order against Father in April 2015. The trial court order allowed Mother to relocate, ordered that the minor children reside with Mother, and gave Father visitation during the minor children's school breaks and some holidays. Mother relocated again in 2020, resulting in both Mother and Father asking for modifications to the parenting plan. After hearing, the trial court ordered that Father could enroll himself and the minor children in a week-long program "such as Family Bridges or Turning Point." About a month later, Father filed another request, asking the trial to modify the parenting plan to allow Father and the minor children to attend the in-person portion of the Family Bridges program and the required post-aftercare. This would mean that the minor children would attend a 4 day in-person program with Father and then there would be a minimum of 90 days of "aftercare." This aftercare period required that the minor children reside with Father and have absolutely no contact with Mother. The trial court granted Father's request. Mother appealed. Finding that "nothing in the record supports the court's finding that this significant disruption to the children's established living arrangement was in their best interest," the Court of Appeal held that the trial court abused its discretion in modifying the parenting plan.
Statues used or affected: Family Code sections 3011 and 217

***Salmon v. Salmon* (2022) 85 Cal.App.5th 1047**
See section III(B) above

***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. There 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* below)—**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.

***In re Marriage of Jessica & Sammer Z.* (2026) 123 Cal.App.5th**

In this case, Mother appealed a joint custody order because the trial court had previously found Father committed domestic violence against a different partner within the last five years. The trial court did not think it had to apply the Family Code section 3044 presumption against Father in the custody proceeding with Mother because it had found Father rebutted the presumption in the custody proceeding between Father and the different partner, involving a different child. The Court of Appeal reversed.

The Court explained that the legal rule of issue preclusion (also called collateral estoppel) did not apply because Mother and Father's custody proceeding had different people and interests compared to Father's custody proceeding with the different partner. If the 3044 presumption applies against a parent, it applies in every custody proceeding with that parent until and unless it is rebutted in each proceeding. Rebuttal as to one child with one parent is not the same issue as rebuttal as to another child with another parent. In essence, the presumption is unique to each child the abusive parent seeks custody of, and unique to each other parent the abusive parent litigates custody against. Finally, the Court also explained that the trial court's failure to apply the presumption was prejudicial error because the court did not make the requisite findings under subdivision (f) of Family Code section 3044, and the court mistakenly relied in part on the preference for frequent and continuing contact found in sections 3020 and 3040.

This case also discusses issues related to appealability, sealing court records, the disentitlement doctrine, forfeiture, prejudice, and judicial bias.

Statutes used or affected: Fam. Code, §§ 3011, 3020, 3040, & 3044

***In re Marriage of J.G. & K.G.* (2025) 110 Cal.App.5th 1214**

In this case, in 2021 the trial court found that Father had abused Mother in 2019, and ordered the parties to share joint custody, noting the parties had agreed to this before. In 2023, a second judge denied Mother's request to modify custody, finding that Father had rebutted the Family Code section 3044 presumption. The second judge also noted that Mother had agreed to joint custody before. The Court of Appeal reversed, concluding that neither judge had analyzed the mandatory rebuttal factors in section 3044, so neither had properly found the presumption rebutted. Even if the parties want

to reach an agreement on custody, the court must still independently determine the child's best interest and whether the section 3044 presumption has been rebutted. Parties cannot stipulate around section 3044 or stipulate that it has been rebutted without the court also making the mandatory findings.
Statutes used or affected: Family Code sections 3011, 3020, 3044

Cardona v. Soto (2024) 105 Cal.App.5th 141
See section II(B)(4) above.

_C.C. v. D.V._ (2024) 105 Cal.App.5th 101
In this case, the Court said for the first time in a published opinion that the Family Code section 3044 rebuttable presumption applies when the parties stipulate to a DVRO.

In January 2022, survivor C.C. asked the court for a DVRO against D.V. after years of his emotional and verbal abuse, including sending unwanted sexual pictures and degrading messages. D.V. also sexual abused C.C., including groping her at custody exchanges. At a DVRO hearing in April 2023, the parties agreed to enter a DVRO protecting C.C. against D.V. for one year. The stipulated DVRO did not address custody.

C.C. then asked the court to modify custody, and at a custody hearing in July 2023, the court maintained joint custody without addressing Family Code section 3044. C.C. appealed from both the April 2023 and July 2023 orders.

The Court of Appeal affirmed the April 2023 order, saying the trial court did not need to address custody at that hearing, because the parties had already agreed to have it decided separately. But the Court reversed the July 2023 order, because the trial court failed to apply Family Code section 3044. The Court of Appeal expressly held that a stipulated DVRO is a finding of abuse that triggers section 3044. In reversing, the Court importantly explained that Family Code section 3044 applies to both legal and physical custody (Fam. Code, § 3000 et seq. [defining legal and physical custody]), and the statutory presumption can be rebutted as to one form of custody and not the other.
Statutes used or affected: Fam. Code, §§ 3000 et seq., 3044

In re Marriage of Destiny and Justin C. (2023) 87 Cal.App.5th 763
Although Mother filed a petition for dissolution (divorce) in 2015, a hearing on custody was not heard until 2021. During the custody hearing, both Mother and Father testified that each had engaged in domestic violence during the relationship. Though the trial court found that both parties committed acts of domestic violence during the relationship, it ruled that the section 3044 presumption against awarding sole or shared

custody to someone who committed abuse did not apply. The trial court determined section 3044 did not apply because the domestic violence had not occurred within 5 years from when the trial court was making the custody determination. Mother appealed, arguing that trial court should have considered any domestic abuse that occurred within the five years prior to her filing her dissolution petition. The Court of Appeal disagreed with Mother and affirmed the trial court. The Court of Appeal held that the language "previous five years" in section 3044 refers to whether domestic violence occurred *within the five years before a custody ruling* not five years from the date when someone filed the petition for dissolution or custody.
Statues used or affected: Family Code section 3044, 3011

***In re Marriage of Willis v. Costa-Willis* (2023) 93 Cal.App.5th 595**
Mother got a domestic violence restraining order against Father. At the hearing, the trial court sua sponte (on its own) granted Mother sole legal and physical custody of the minor child even though Mother did not check the box to indicate that she wanted the court to change custody in her restraining order request, request that the restraining order protect the minor child, mention custody in her declaration, or request a modification of custody at the hearing. Despite granting Mother sole custody the trial court maintained the parties' custody order, which gave both parents about equal parenting time. Mother appealed, arguing that the trial court should have modified the parties' parenting because section 3044 applied as there was a finding of abuse against Father. The Court of Appeal disagreed with Mother, finding that the presumption under section 3044 only applies when a party is seeking custody or a modification of custody. Because neither Mother nor Father asked for a change in custody, the rebuttable presumption under section 3044 did not arise in this case.
Statutes used or affected: Family Code section 3044

***In re Marriage of C.D. and G.D.* (2023) 95 Cal.App.5th 378**
Mother and Father stipulated to the court appointing a private child custody evaluator to make recommendations for a parenting plan that provided for the best interest of the children. The evaluator made it clear that he was not doing an evaluation of sexual abuse allegations under Family Code section 3118. Neither Father nor Mother requested an evaluation under 3118. At the custody hearing, Mother presented evidence that the minor children had been sexually abused by Father. Finding that Father abused the minor children and touched them in a sexual manner, the trial court granted Mother full custody, ordered no visitation with Father, and entered a restraining order against Father. Father appealed, arguing that only an evaluation conducted under Family Code section 3118 could provide the evidentiary basis for the trial court to find that Father abused the minor children. The Court of Appeal affirmed the trial court, finding that 1) Father stipulated that a section 3118 evaluation was not necessary so he

"invited any error" and 2) the trial court could make a finding of sexual abuse even without a 3118 evaluation by considering all of the evidence presented to the court.
Statues used or affected: Family Code sections 3020, 3011, 3118, 3044

***Abdelqader v. Abraham* (2022)76 Cal.App.5th 186**
The Court of Appeal held that the trial court erred in failing to state its reasons, on the record or in writing, that the section 3044 presumption against awarding custody to Father was rebutted. Here, it was undisputed that the trial court found section 3044 applied due to Father's abuse in 2018. Thus, it was mandatory for the trial court to make specific findings in writing or on the record why, as to each factor, the trial court found the section 3044 presumption rebutted. Additionally, the harmless error rule and the doctrine of implied findings did not relieve the trial court of its obligation under subdivision (h) of section 3044.
**Note that, when citing this case, it contains published and unpublished portions. This summary pertains only to the published portion of the case.*
Statutes used or affected: Family Code section 3044.

***City and Co. of San Francisco v. H.H.* (2022) 76 Cal.App.5th 521**
Mother got a domestic violence restraining order against Father after she alleged Father physically abused her and kept their young son from her. The family court gave Mother sole legal and physical custody but left in place a visitation schedule where Father had three days a week and Mother four. Because of the amount of time to Father, the court's order actually gave the parties' joint physical custody. Mother asked the family court to provide its legal and factual basis for its custody decision (also known as a Statement of Decision), but the family court refused. The appellate court held that the joint physical custody order violated Family Code section 3044(b), because the family court failed to explain, in writing or on the record, how Father overcame the rebuttable presumption by going through each of the factors enumerated under subdivision (b). For the first time, the appellate court also held that family courts must provide a Statement of Decision when properly requested in matters involving Family Code section 3044.
Statutes used or affected: Family Code sections 3044 and 3022.3; Code of Civil Procedure section 632

***Noble v. Superior Court of Merced County* (2021) 71 Cal.App.5th 567**
Even though Wife had a ten-year domestic violence restraining order (DVRO) against Husband in Utah because he threatened her with physical injury, the trial court ordered joint custody of the minor children. Wife appealed, arguing that the trial court should have applied the Family Code 3044 presumption. The appellate court found that the section 3044 presumption applies if there is evidence that another state issued a DVRO against a party in the past five years and the court finds that the other state's definition

of "abuse" fits within California's abuse definition. If there is evidence of abuse, trial courts must apply the section 3044 presumption before making any custody decisions, even if the custody order is only temporary. Trial courts must also tell parties about the section 3044 presumption before sending them to child custody mediation and the court must make a record of how they told the parties about the presumption.
Statutes used or affected: Family Code Section 3044

***S.Y v. Superior Court* (2018) 29 Cal.App5th 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 parent who committed domestic abuse. This means the court must give the survivor sole legal and physical custody, unless the abusive parent 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 the parent who committed domestic abuse. 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 a parent who is abusive. **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 person who committed domestic abuse without first making findings in writing or on the record (orally) about <u>each</u> 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 parents who commit domestic abuse, 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 abusive parent by calling this arrangement "sole custody" to the victim with "visitation" to the against the other parent. 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 a parent who committed abuse

against the other parent in the past five years 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 parent that committed abuse against the other parent under Family Code section 3044, where there was a recent DVRO against the abusive parent.
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 a parent that committed domestic abuse against the other parent 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 a parent who committed abuse against the other parent under Family Code section 3044.
Statutes used or affected: Family Code sections 3044, 6203, 6300, and 6320

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

3. Custody Evaluations

***Peterson v. Thompson* (2023) 89 Cal.App.5th 988**
In 2013 a child custody evaluation was done after a child welfare referral was made against Mother. The evaluator recommended individual therapy and supervised visitation. For the next several years, Mother attended therapy and supervised visitation. Mother was paying child support, cost of the supervised visitation, and trying to repay her share of the monies owed to the child custody evaluator. In 2015, Mother filed for bankruptcy and in 2016 she filed a request to reinstate joint legal and physical custody.

At the hearing on Mother's 2016 custody request, the trial court ordered the parties to get an updated child custody evaluation. Mother repeatedly objected to this order because she could not afford to pay the evaluator any more money. The trial court, however, ordered the evaluation and that Mother pay part of the cost. Mother appealed. Noting that the Legislature has made it clear that the court must consider a party's ability to pay when assigning costs, such as child custody evaluations, the Court of Appeal overturned the trial court. The Court of Appeal held that when a trial court orders a child custody evaluation, the court must 1) decide if the evaluator should receive any compensation, 2) determine a reasonable amount of compensation, 3) state who must bear the costs of and what portion of the cost, and 4) consider someone's income, expenses, and ability to pay.
Statues used or affected: Evidence Code sections 730, 731; Cal. Rules of Court, rule 5.220(d)(1)(D); Family Code sections 270, 271, 2030, 2032, 3111, 3112

***In re Marriage of C.D. and G.D.* (2023) 95 Cal.App.5th 378**
See section IX(B)(2)

4. Minor's Counsel Role

A. Introduction

Courts can appoint attorneys called Minor's Counsel to represent the "best interests" of the child in a custody or visitation case, if the court finds that doing so would be in the child's best interest and the appointed attorney meets the requirements of California Rules of Court, rules 5.240, 5.241, and 5.242. (Fam. Code, § 3150 et seq.) Since issues of DV have to be decided before custody and visitation (*id.*, § 3044, subd. (g)), Minor's Counsel should not be allowed to participate in DVRO hearings, including giving opinion, argument, or evidence on whether abuse occurred, unless and until custody and visitation are at issue. Minor's Counsel is different from a minor's independently hired attorney, as discussed in the three below cases.

B. Cases

***A.F. v. Jeffrey F.* (2023) 90 Cal.App.5th 671**
See section II(B)(3) above

***A.F. v. Jeffrey F.* (2022)79 Cal. App. 5th 737**
See section II(B)(3) above

***Ramsden v. Peterson* (2022) 76 Cal.App.5th 339**
This opinion explains "there are divergent views on whether" Minor's Counsel can make "recommendations" in custody and visitation cases. This Court holds Minor's Counsel can indeed make "recommendations" "regarding custody, visitation, and other issues relevant to their client's interests." In this case, the trial court granted Mother's request to move, over Father's objection, to Illinois with their daughter. The Court of Appeal affirmed, concluding the trial court properly allowed Minor's Counsel to give their recommendation, properly admitted evidence asserted to be hearsay, and properly applied the correct legal standards for the move-away request.
Statutes used or affected: Family Code sections 3150, 3151; Evidence Code section 730

5. Custody and Visitation in DVPA Proceedings

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

***In re Marriage M.P. & M.C.* (2025) 116 Cal.App.5th 1096**
See section II(B)(1) above.

C.C. v. D.V. (2024) 105 Cal.App.5th 101

In this case, the Court said for the first time in a published opinion that the Family Code section 3044 rebuttable presumption applies when the parties stipulate to a DVRO.

In January 2022, survivor C.C. asked the court for a DVRO against D.V. after years of his emotional and verbal abuse, including sending unwanted sexual pictures and degrading messages. D.V. also sexual abused C.C., including groping her at custody exchanges. At a DVRO hearing in April 2023, the parties agreed to enter a DVRO protecting C.C. against D.V. for one year. The stipulated DVRO did not address custody.

C.C. then asked the court to modify custody, and at a custody hearing in July 2023, the court maintained joint custody without addressing Family Code section 3044. C.C. appealed from both the April 2023 and July 2023 orders.

The Court of Appeal affirmed the April 2023 order, saying the trial court did not need to address custody at that hearing, because the parties had already agreed to have it decided separately. But the Court reversed the July 2023 order, because the trial court failed to apply Family Code section 3044. The Court of Appeal expressly held that a stipulated DVRO is a finding of abuse that triggers section 3044. In reversing, the Court importantly explained that Family Code section 3044 applies to both legal and physical custody (Fam. Code, § 3000 et seq. [defining legal and physical custody]), and the statutory presumption can be rebutted as to one form of custody and not the other.
Statutes used or affected: Family Code sections 3000 et seq., 3044

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 VIII(B)(5) 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 that trial courts can make such orders, and when doing so the court must consider whether failure to enter orders would jeopardize the 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

6. Sanctions

***Shenefield v. Shenefield* (2022) 75 Cal.App.5th 619**
Father filed a request for order seeking joint custody of the minor children. In Father's declaration he quoted and referenced contents from a confidential court ordered psychological evaluation that was done during Mother's previous marital dissolution. Father had an attorney; and neither Father nor his attorney were parties in the prior dissolution case. Mother opposed and sought sanctions against Father and Father's attorney under Family Code 3111 and 3025.5. The trial court ordered sanctions against both Father and his attorney. Father's attorney appealed, contending that attorneys could not be sanctioned under 3111. On appeal, the Court of Appeal affirmed the trial court, determining that attorney could be sanctioned under 3011 for unlawful disclosure of custody evaluation reports.
Statutes used or affected: Family Code sections 3111, 3025.5; Evidence Code 730; Code of Civil Procedure section 473, 128.7, 128.5; Rules of Court 1.6(15), 5.14

7.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 IX(B)(5) above.

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

Golan v. Saada (2022) 142 S.Ct. 1880

Golan, a citizen of the United States, married Saada, an Italian citizen. They had one child together and lived in Italy. Saada was physically and verbally abusive to Golan, including pushing, slapping, and grabbing her; insulting her in front of others, and threatening to kill her. Golan flew to the United States with their child, and instead of returning to Italy, moved into a domestic violence shelter. Saada filed a petition under the Hague Convention seeking the child's return to Italy. The District Court concluded that Italy was the child's residence and that Golan wrongfully kept the child in the United States in violation of Saada's rights of custody. The District Court, however, also held that returning the child to Italy would expose him to grave risk of harm because Saada was violent in front of the child. The District Court further noted that Saada "had demonstrated no 'capacity to change his behavior.'" Despite this finding the court ordered the child's return to Italy because Second Circuit precedent obligated the court to "'examine the full range of options that might make possible the safe return of a child to the home country'" before it could deny the return "'on the ground that a grave risk of harm exists.'" The court required "ameliorative measures" to be proposed by the parties to enable the child's safe return to Italy. These measures included Saada beginning therapy and Saada staying away from Golan. Ultimately, the court concluded that the "measures, combined with the fact that [the parties] lived apart would 'reduce the occasions for violence,' thereby ameliorating the grave risk to [the child] sufficiently to require his return."

On appeal the Second Circuit found that the District Court's measures were insufficient to mitigate the risk to the child. It, thus, vacated the order and remanded the case for the District Court to determine whether there were alternative ameliorative measures that could be enforced by the District Court or were supported by "guarantees of performance."
The District Court later determined that there were ameliorative measures to mitigate the risk to the child because the parties had obtained a protection order in Italy and the Italian court ordered that Italian social service agency oversee Saada's therapy and parenting classes and ordered supervised visitation. Galan appealed and the Second Circuit affirmed.

On appeal, the Supreme Court noted that the Hague Convention does not forbid or require consideration of ameliorative measures. Based on this textual analysis, the Court concluded that courts have "discretion whether to consider ameliorative measures that could ensure the child's safe return." Thus, courts can decide not to consider ameliorative measures that are not raised by the parties, are unworkable, prolong the

proceedings, or cause the court to make custody determinations. The Court also found that the Second Circuit's instruction to order return of a child "'if at all possible'" elevated return above protecting children's and parent's interest. The Court, thus, vacated the order and sent it back to the District Court to determine whether the "measures are adequate to order return."
Statutes used or affected: Hague Convention on Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed.Reg. 10494 (Mar. 26, 1986)); International Child Abduction Remedies Act (ICARA), 22 U.S.C. section 9001 *et seq*.

***Colchester v. Lazaro* (2021) 16 F.4th 712 [9th Circuit]**

Survivor fled with her daughter from Spain to the United States after the Spanish court awarded sole custody to the abusive parent, despite evidence of spousal and child abuse. The other parent started Hague Convention proceedings in Washington state to force the child to return to Spain. The survivor raised an Article 13(b) defense of grave risk of harm. The trial court prevented the survivor from conducting any discovery without discussion or reasons. The appellate court held that the trial court abused its discretion when it refused to allow any discovery. The appellate court noted that there should be a balance between deciding Hague Convention cases quickly and allowing a parent to gather evidence in support of their defense. In particular, the appellate court found that the trial court should not have denied the survivor's request for an in-depth psychological examination, where there were specific allegations of abuse. The appellate court, therefore, vacated the order and sent it back for appointment of a psychologist and a new trial. Vacating the order was also necessary because the trial court failed to make its own separate findings of fact necessary to support its order to return the child to Spain, including findings on whether the other parent's abuse and involvement with drugs would undermine any plan for the child to safely return to Spain (also called "ameliorative measures" or "undertakings").
Statutes used or affected: Hague Convention on Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 (reprinted at 51 Fed.Reg. 10494 (Mar. 26, 1986)), Convention Articles: article 13b; Federal Rules of Civil Procedure, rule 26 subd. (f); rule 52; United States Code sections 42 U.S.C. section 11601 et seq., 22 U.S.C. 9001 et seq, 22 U.S.C. section 9003 subds.(e)(2)(A) & (g), 28 U.S.C. section 1291

***In re Marriage of Emile D.L.M. & Carolos C.* (2021) 64 Cal.App.5th 876**

Mother, an American citizen, refused to return her children to their father in Chile following a vacation in California. Mother claimed there were repeated incidents of domestic violence and emotional abuse by Father, sometimes committed in the presence of the children. Father filed a petition for the return of the children to Chile

pursuant to the Hague Convention. The trial court concluded that Mother established by clear and convincing evidence that return of the children to their Father's custody in Chile presented a grave risk to their physical and psychological well-being. Father appealed, arguing that the trial court erred by not adequately considering ameliorative measures that might allow for the children's return to Chile. Father provided evidence at trial that Chilean laws punish acts of domestic violence as ameliorative measures that would protect the children. The appellate court held that the trial court properly found that the ameliorative measures proposed by Father would be ineffective here because Father refused to acknowledge his excessive drinking or his acts of domestic violence against Mother, and repeated incidents of him driving while intoxicated.
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.

***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.

X. 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 Traweek* (2026) 122 Cal.App.5th 1036**
Scott and Candice married in 2003 and had two children during their marriage. During the marriage Candice took care of the home and their two children and Scott's income supported the family. In 2020 Candice was arrested and then pled guilty for domestic violence. In May 2021 Candice filed a petition for dissolution of marriage. In June 2021 Scott obtained a DVRO against Candice based on the 2020 actions. The judge hearing the restraining order found Candice rebutted Family Code section 3044 and awarded Candiace joint custody of the kids. In the 2023 trial about child custody, child support, spousal support, assets, debts and attorney fees Candice testified that during their marriage Scott controlled her access to money, hiding money and taking it away, and engaged in other in abusive behaviors such as yelling and limiting her access to mail. Candice also testified that she had pleaded guilty to domestic violence to avoid having her children testify and because she and Scott had reconciled. At trial the court reviewed evidence that showed shortly after the DVRO was issued, Scott continued to contact Candice, meeting up with her and sending her flirty texts exclaiming his love for her. The trial court found Candice rebutted Family Code section 4325 presumption – the presumption against awarding spousal support to a spouse convicted of domestic violence against the other spouse. The trial court also found the Family Code section 4230 factors warranted long-term support and awarded Candice 6 years of spousal support.

Scott appealed arguing section 4320 factors are not meant to apply when there is a presumption against spousal support under section 4325, and that the presumption must be rebutted based on factors independent from section 4320. The Court of Appeal upheld the trial court decision finding the trial court carefully weighed the evidence and acted within its discretion in rebutting section 4325. The Court explained that because section 4325 (b) directs trial courts to consider "any other factors the court deems just and equitable, as conditions for rebutting" section 4325, the trial court was permitted to consider the relevant factors set out in section 4320 when rebutting the presumption against spousal support. The Court further explained that because trial court concluded Candice rebutted the section 4325 presumption, the trial could consider section 4320 factors when determining the spousal support.
Statutes used or affected: Family Code sections 4320, 4325

***Hatley v. Southard* (2023) 94 Cal.App.5th 579**

See section I(B) above.

***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 person convicted of domestic abuse 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 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 the person who committed abuse against them (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 abusive partner. 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) 209 Cal.App.4th 1059**

The trial court did not abuse its discretion in terminating spousal support from Wife to Husband, a person convicted of domestic abuse. 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 persons convicted of domestic abuse 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 person convicted of domestic abuse 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**

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 domestic violence 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

XI. 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, involve difficult legal issues for those representing themselves, and

are an overlooked or unknown remedy for many survivors wanting to hold the person who abused them accountable and seek money from them, DV survivors often do not sue the person who abused them 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 the person who abused them for money, if they can prove two things: (1) the abusive person (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).[2] 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 person committing the abuse. 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.

B. Cases

***Quintero v. Weinkauf* (2022) 77 Cal. App. 5th 1**

Quintero filed a civil lawsuit against Weinkauf for the tort actions of stalking, assault, intentional infliction of emotional distress (IIED), and domestic violence. The complaint alleged that, after the parties ended their romantic relationship, Weinkauf shot arrows and discharged a firearm through the windows of Quintero's business. The complaint also alleged that Weinkauf committed these acts in disguise, but that Quintero was eventually able to identify him. The jury found in favor of Quintero on the stalking, IIED, and domestic violence charge. Weinkauf appealed. One of Weinkauf's arguments on appeal was that there was no evidence at trial from which jury could find "exigent circumstances" existed to excuse the requirement for the stalking claim that Quintero had to, on at least one occasion, clearly demand that Weinkauf stop his behavior.

The reviewing court found the jury could have reasonably determined that Quintero had demanded that Weinkauf stop his conduct because Quintero told Weinkauf that "'somebody was shooting crossbow arrows through [her] window' and 'it needed to stop.'"

[2] 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].)

The appellate court also noted that Quintero did not need to demand that Weinkauf stop his conduct because there were "exigent circumstances" in her case. "Exigent circumstances" means that it would be too difficult or dangerous for Quintero to tell the person stalking her – in this case Weinkauf–to stop his behavior. The court concluded that the jury could have found exigent circumstances because Weinkauf was firing deadly weapons at Quintero's office building.
**This opinion contains published and unpublished text. The summary provided is part of the published text.*
Statutes used or affected: Penal Code section 646.9, Civil Code Code section 1708.7(a)(3)(A).

***Doe v. Damron*, 70 Cal.App.5th 684 (2021)**

Wife and Husband lived in Georgia. While travelling in California, Husband assaulted and injured Wife on two separate occasions. He was criminally convicted in California for one incident. Wife filed a tort action against Husband for domestic violence, sexual battery, and gender violence in California. Husband argued that a court in California exercising personal jurisdiction over him was unfair because he lacked a sufficient connection with California and because it would be too burdensome. The Court of Appeals disagreed. First, the court held that the trial court in California may exercise personal jurisdiction over Husband. The court reasoned that the requirements of specific jurisdiction are met when a tort claim is based on the actions of a defendant who traveled to a state and, while there, injured the plaintiff–even if the alleged tort occurred during a single, brief visit. Second, while Husband contended that "California has no interest in adjudicating alleged domestic violence allegations where the entire domestic relationship was in Georgia," the court held that California has an interest in regulating tortious conduct in California, and that the state's interest extends to non-resident victims. Finally, the Court held that Husband failed to show that it would be inconvenient and burdensome, noting that both parties live in Georgia, both have retained counsel in California, and that, while husband identified witnesses and documents in Georgia, wife had identified at least 9 witnesses in California who had information about the assault.
Statutes used or affected: Civil Code sections 1708.6, 1708.5, 52.4; Code Civil Procedure section 410.10

***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

XII. 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, 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 their 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 B.H.* (2024) 103 Cal.App.5th 469**

Mother appealed orders finding all of her children to be dependents of the juvenile court under Welfare and Institutions Code Section 300. The juvenile court assumed dependency jurisdiction over some of the minor children based on Father M. engaging in acts of domestic violence in the past. Noting that past incidents of domestic violence cannot support a jurisdiction finding of abuse unless "there is evidence that the abuse is ongoing likely to continue," the Court of Appeal held that there was not substantial evidence to support the trial court finding the children to be dependent based on Father M. engaging in domestic violence. Additionally, the fact that Mother had a restraining order against Father H. was not evidence that there was an on-going domestic abuse to support a dependency petition. The Court of Appeal also noted that opinions about Mother's mental health that were not supported by evidence and were made by an abusive parent were not sufficient to support a finding of dependency based on mental health.

Statutes used or affected: Welfare & Institutions Code Section 300

***In re A.P.* (2024) 103 Cal.App.5th 1137**

On December 27, 2022, the Department of Children and Family Services (DCFS) filed a petition with the court alleging that the parties' children were at substantial risk of harm because of, among other things, domestic violence between Mother and Father. The next day Mother filed a request for a restraining order in the juvenile court and a TRO was issued. Father violated the TRO several times by contacting Mother. Though the trial court found Father committed domestic violence against Mother, it denied Mother's request for a restraining order because the parties lived separately. When it denied the request, the juvenile court told the parties to stay away from each other. Mother appealed.

Noting that a court may not deny a restraining order just because the parties are no longer live together, the Court of Appeal reversed the juvenile court order denying Mother's restraining order request. The Court also noted that the juvenile court's admonishment to the parties to stay away from each other was not a proper substitute for a restraining order.

Statutes used or affected: Welfare &Institutions Code Sections 300 and 213.5; Family Code Sections 6300 and 6203

***In re J.M. (*2023) 89 Cal.App.5th 95**

The minor children were removed from the parents' custody after the juvenile court found that the parents' ongoing conflict caused a substantial risk of harm to the children. The juvenile court later terminated jurisdiction, entering an exit order granting shared legal custody to the parents but sole physical custody to Mother. Father appealed, arguing that the juvenile court should not have terminated its jurisdiction and should not have removed the children from his custody. Noting the juvenile court must look at the best interest of the children when making exist orders, the Court of Appeal affirmed the trial court order. The reviewing court found that the trial court does not need to make a finding that 1) there would be a substantial danger to the physical health, safety, protection or physical or emotional well-being of the minor child if they were returned home and 2) there is no reasonable means that the child can be protected without removing them from their parent because this standard "does not apply to custody and visitation determinations made at a section Welfare & Institution Code section 364 review hearing concurrent with the termination of juvenile court jurisdiction."
Statutes used or effected: Welfare & Institutions Code sections 300, 361, 364, and 362.4

***In re Cole L.* (2021) 70 Cal.App.5th 591**

Police observed scratch marks on both the mother and the father when the police responded to a domestic call for yelling and banging. Although the minor children were asleep during the altercation between the mother and the father, the Department of Children and Family Services filed a dependency petition to remove the minor children from their parents. Finding that there was a long history of abuse between the parents, the juvenile court sustained the dependency petition. On appeal, the court held that domestic violence between the parents, without more, does not support a finding that the parents intentionally inflicted serious physical harm on the children or that there was a substantial risk such harm would occur. Likewise, the appellate court determined that substantial evidence did not support the finding that the parents had failed to protect their children from a substantial risk of serious physical harm. Factors the appellate court considered in determining that the dependency petition should not have been sustained included: the physical altercation between the two parents occurred outside the presence of their children; at the time of the hearing, the parents had not had any contact with one another for nine months and there had been no further incidents of domestic violence, and; there was no evidence in the record that there had been multiple acts of domestic violence over an extended period.
Statutes used or affected: Welfare & Institutions Code Section 300

In re I.R. (2021) 61 Cal.App.5th 510

Following the removal of I.R. from the father, both I.R. and the father appealed. The Court of Appeal held that the record did not support removal because the only basis for potential danger to I.R. in the father's care was a history of domestic violence between the father and the mother. This history included one incident of domestic violence in I.R.'s presence, which involved the father slapping the mother across the face. The appellate court noted that the father's history of domestic violence against the mother did not support removal because there was no evidence that the father had ever been violent outside of his relationship with the mother, that the father was a "generally violent and abusive person," or that there would be future incidents of domestic violence between the parties because the father had been staying away from the mother and both parties lived with family members who could help facilitate custody exchanges. This case also held that the trial court did not abuse its discretion by not imposing more extensive drug testing requirements on the mother. The appellate court found that there was no link between any current drug use by the mother and the incidences of domestic violence with the father or that the mother's drug use placed her children at risk.
Statutes used or affected: Welfare & Institutions Code sections 361 and 362

In re Ma V. (2021) 64 Cal.App.5th 11

The Court of Appeal held there was insufficient evidence to sustain dependency jurisdiction and remove Mother's three children from her where Mother had experienced domestic violence but had ended the relationship. In this case, there was no substantial risk of harm or neglect to the children because, 10 months prior to the removal hearings, Mother and her boyfriend had broken up, he had left the family home, and Mother had ended her relationship with him. Significantly, the appellate court observed that there is "a recent, and troubling trend" of mothers being punished as victims of domestic violence (e.g., children are removed from mothers even after they have distanced themselves from abusive relationships), and that society's preconceptions often negatively impact the credibility of survivors who present on the stand. Specifically, the court stated that society expects survivors to be "sweet, kind, demure, blameless, frightened, and helpless," and not "a multi-faceted women who may or may not experience fear and anger." The appellate court stated that more should be done to guard against such preconceptions.
Statutes used or affected: Welfare & Institutions Code sections 300 and 355

In re Solomon B. (2021) 71 Cal.App.5th 69

Mother fled due to Father's domestic violence, leaving two sons behind. A year later, the Department of Children and Family Services (DCFS) received a report that Father had been leaving the children alone in the motel they were living in and failing to provide adequate food and medical care. DCFS informed Mother about the situation and

obtained an expedited order to remove the children from both parents. After hearing about the DCFS case Mother returned. The juvenile court, however, refused to place the children with Mother, stating that doing so would be detrimental to the children's welfare under WIC Section 361.2. To deny placement with a nonoffending, noncustodial parent, the juvenile court must find that the placement would be detrimental to the health, safety, or well-being of the child through clear and convincing evidence. The appeal court determined that Mother's "abandonment" of the children was not sufficient to support a finding of detriment, noting that when Mother fled she believed that Father's abusive conduct towards her would not extend to their children.
Statutes used or affected: Welfare & Institutions Code sections 300 and 361.2

***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 & 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 & 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 also 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, 362.4 and 388; Family Code sections 3044 and 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 & 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 & 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 & 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 & 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 & 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 VIII(A) and VIII(B)(5) 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 & 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 Father, who committed abuse against Mother.

Statutes used or affected: Welfare & 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 & Institutions Code section 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 & Institutions Code section 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 & 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

XIII. 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 SIJS 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

In re Scarlett V. (2021) 72 Cal.App.5th 495

The Court of Appeal ruled it was an error for a juvenile court to deny a request for Special Immigrant Juvenile Status (SIJS) findings by saying the findings were discretionary. Scarlett was born in Honduras, and her family moved to the United States in 2015. In 2019, the Department of Children and Family Services (DCFS) received a referral claiming that Scarlett's father had attacked her mother. Interviews conducted by DCFS revealed that there had been other incidents of domestic violence, and Scarlett told a social worker that her father sometimes hit both her and her sister, and that she was afraid of him. DCFS filed a petition under Welfare and Institutions Code 300, and Scarlett was declared a dependent of the court. She was removed from her father and released to her mother. In 2021, Scarlett filed a request with the juvenile court for SIJS findings. At the hearing, the juvenile court denied Scarlett's request for SIJS findings, saying it was "discretionary and the court decided not to" grant her request. On appeal, the court held that the juvenile court erred by denying Scarlett's request. The court noted that the California Supreme Court has held that superior courts "shall" issue an order containing SIJS findings if there is evidence to support them. Therefore, the court held that the juvenile court in this case had to, at a minimum, consider the evidence submitted by Scarlett and make a finding as to whether the evidence supported SIJS findings. Further, if the evidence did support the findings, the court must enter an order.
Statues used of affected: Welfare and Institutions Code sections 300 and 361 subd. (c)(1); Code of Civil Procedure section 155.
Federal statutes affected: 8 U.S.C. § 1101(a)(27)(J)(i)-(ii), §§1255(a) & (h), and §1427(a)

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: Code of Civil Procedure sections 155 and 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)

XIV. Other Cases

This miscellaneous section includes the law about personal service in DVPA proceedings, the anti-SLAPP statute in DV cases, the right to a court reporter in civil cases, sanctions, nullification of marriage, housing protections, impeaching witness credibility, liability and mandated reporters, Marsy's Law, and Elder Abuse Restraining Orders.

A. Anti-SLAPP (Litigation Privilege) 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.)

***Michael K. v. Janice Cho* (2025) 113 Cal.App.5th 1**
See section I(B) above.

***Shenefield v. Kovtun* (2024) 106 Cal.App.5th 925**
Kovtun, the attorney for the restrained party under both a DVRO and CPO, told Jennifer, the protected party under the orders, that she had to attend a meeting at Kotvun's office or Kovtun would file a request for full custody of the parties' daughter on behalf of her client that would result in the child being removed from Jennifer's care. Jennifer attended the meeting and during the meeting both the restrained party and Kovtun emotionally abused her. Kovtun screamed at Jennifer, called her a bad parent, and said she would hit the Jennifer if she were in the restrained parties' position. Jennifer recorded some of the meeting and filed a police report.

Jennifer sued Kovtun for her conduct during the meeting. As her defense, Kovtun argued that "she was just advocating" for her client so she could not be held liable for her conduct under the litigation privilege. The trial court disagreed, finding that Kovtun "knowingly facilitated and then actively engaged in a contentious meeting between a victim of domestic violence and her abusive husband while criminal and civil protection orders were in place" and that Kovtun "participated in the abuse herself." The trial court also found that Kovtun "'threaten[ed] baseless litigation without 'good faith.'" Kovtun appealed.

Noting that it could infer from the trial court's findings that Kovtun was not seriously, and in good faith, considering an imminent lawsuit to resolve the parties' custody dispute, the appellate court agreed with the trial court that the litigation privilege did not apply to Kovtun's communications.
Statues used or effected: Civil Code section 47(b), Code of Civil Procedure section 340.6.

***Bassi v. Bassi* (2024) 101 Cal.App.5th 1080**
See section I(B) above.

***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, Ex-boyfriend, who was physically and verbally abusive, 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. The trial court denied Ex-boyfriend's 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**

See section VII(B)
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

B. Civil Rights

***David v. Kaulukukui* (9th Cir. 2022) 38 F.4th 792**

Here, there was a custody order in place that prohibited Father from having contact with the parties' child due to domestic violence. Even though a police officer knew about this custody order, the officer helped father obtain a TRO, which included the parties' child. Both the police officer and father failed to inform the court about the custody order or to include it in the paperwork. Based on the filing, a trial court granted the TRO. Father then used the TRO to have child welfare services and the police remove the child, without notice, from school and keep the child from all contact with Mother for 21 days. Mother, on behalf of herself and her child, filed a federal civil rights action under § 1983 against various agencies and individuals, including the police officer, claiming that Mother and child were denied their constitutional right to familial association. The police officer filed for dismissal arguing she was protected by qualified immunity. Qualified immunity is the idea that police officers and other government agents cannot be sued for actions that are part of their job. The trial court held that the officer was not covered by qualified immunity because of her actions. The police officer appealed the decision. Finding that the police officer was not entitled to immunity because she engaged in judicial deception by helping to prepare a petition that had material and deliberate misleading and deceptive information, the appellate court affirmed the trial court's decision. Additionally, the officer could not claim immunity from claims based on wrongful removal of the child when there was no reason to believe the child was at risk and there was enough time to obtain a proper court order before taking the child without notice.

C. Evidence

***Malinowski v. Martin* (2024) 104 Cal.App.5th 559**

Malinowski sought to add the parties' minor children onto her existing DVRO. As part of her evidence, Malinowski had footage from a dash cam of the custody exchanges. The trial court excluded this evidence, finding that it recorded Martin's confidential communication with the children in violation of the Penal Code section 632, the Privacy Act, because Martin had a reasonable expectation of not being recorded or heard at the supervised exchanges. "The Privacy Acts bars the recording of 'confidential communication' without the consent of all parties to the communication." The trial court

also denied Malinowski's request to add the minor children to the DVRO. Malinowski appealed.

In the published portion of the opinion, the appellate court found that communications made during court-ordered supervised custodial exchanges were not confidential communications under the Privacy Act. Because the supervisor's role was to monitor and document statements made during the exchange, Martin could not reasonably expect that his comments made during the exchange were confidential. Moreover, because the exchanges occurred in a public place -and often caused bystanders to look because of the commotion cause during the exchange – parties would reasonably expect that their conversations were being overheard or recorded. The trial court, thus, erred in excluding the video footage.

Notably, the appellate court did not find that the dash cam recordings fell under the domestic violence exceptions to the Privacy Act. Because the DVRO did not prohibit Martin from having contact with the children, the DVRO did not give Malinowski permission to record Martin's "confidential communications" with the children. Moreover, Malinowski showed no facts from the period of time that she started recording the exchanges that showed a "good faith, objectively reasonable belief that recoding the exchanges would be in the best interest of the children."
Statues used or effected: Penal Code sections 630, 632, 633.5, 633.6

D. Housing

***Elmassian v. Flores* (2021) 69 Cal.App.5th Supp. 1**
Landlord filed an unlawful detainer complaint against tenant alleging nuisance. Tenant raised an affirmative defense under Code of Civil Procedure section 1161.3(a) that the eviction was based upon acts of domestic violence. The trial court issued a directed verdict preventing the jury from considering the domestic violence defense. Consequently, the jury ruled in the landlord's favor and tenant was evicted.

The appellate court found that the trial court should not have prevented the tenant from raising the defense. First, the opinion stated that a tenant can raise a domestic violence defense even if the landlord's notice includes non-domestic violence grounds for eviction. Second, the appellate court explained that a police report that does not name the perpetrator of abuse and is based only on a survivor's statements meets the documentation requirement for the defense under Code of Civil Procedure section

1161.3(a)(1)(B). Finally, the appellate court held that substantial evidence supported the defense.
Statutes used or affected: Code of Civil Procedure sections 1161, 1161.3; Civil Code sections 1942.5, 3479; Family Code sections 6203(a)(4), 6211, 6320(a); L.A. Mun. Code section 151.09(A)(3)

***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 C.F.R. section 5.2005

E. Impeaching Witness Credibility

***Cardona v. Soto* (2024) 105 Cal.App.5th 141**
See section II(B)(4) above.

***People v. Villa* (2020) 55 Cal.App.5th 1042**
This is a criminal case whose relevant sections discuss what evidence person charged with domestic abuse can use to challenge the credibility of their victim-witness who testifies against them; 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

F. Liability of Mandated Reporters

***Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113**
After Doe was sexually abused by her teacher, she sued Lawndale Elementary School District (District) for negligence and breach of the mandatory duty to report suspected abuse under the Child Abuse and Neglect Reporting Act (CANRA). The District moved for summary judgment on both claims, and the trial court granted the motion. The appellate court reversed the trial court's summary judgment regarding the negligence claim because there were triable issues on whether the District took *reasonable* measures to protect Doe from abuse by school employees. For the CANRA claim, the appellate court upheld the trial court ruling because Doe did not prove that it was "objectively reasonable for a mandated reporter to suspect abuse based on the facts the reporter *actually knew*."
Statutes used or affected: Penal Code sections 11164 et seq (CANRA), 11165.1(a)–(b), 11165.12, 11165.7, 11166, 11166.3(a) and 11167(a); Code of Civil Procedure sections 340.1, 437c; Government Code section 815(a)

G. Marsy's Law

***Slaih v. Superior Court of Riverside County* (2022) 77 Cal.App.5th 26**
This is the first case to analyze whether Marsy's Law applies to civil proceedings. After Wife filed for divorce, Husband was arrested for stalking and making criminal threats to Wife. In the divorce action, Husband filed a motion to compel Wife's deposition. The trial court denied Husband's motion because it believed that Wife was protected from participating in a deposition due to protections provided in the Victims' Bill of Rights Act (also known as Marsy's Law). Husband then filed a writ petition. Because Marsy's Law allows survivors to refuse a deposition specifically in a criminal proceeding, the issue for the reviewing court was whether the right to refuse a deposition also applies in a civil marriage dissolution action between two parties who are also separately and simultaneously involved in a criminal case. Noting that Marsy's Law only makes references to criminal proceedings and that it was enacted in response to the negative interactions that a murder victim's family had with the criminal justice system, the court

of appeal held that the protections afforded to survivors in Marsy's Law apply only to criminal proceedings.
Statutes used or affected: California Constitution Article I, section 28, subdivision (b)(5), Code of Civil Procedure section 2025.410.

H. Nullification of Marriage

***In re Marriage of Ankola* (2020)**
See section 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

I. Right to a Verbatim (word-for-word) Record

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 a written format from which they can produce a transcript later on. An official electronic recording of a proceeding can also create a verbatim record of the court proceedings. 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. A survivor can request a free court reporter by filing a fee waiver request (FW-001) and a reporter request (FW-020). If a court cannot provide a court reporter, and a party to the case cannot afford to pay for a private court reporter, then if asked, the court must use electronic recording to make the record.

***Family Violence Appellate Project (FVAP) et al. v. Superior Courts of California, et al.* (2026) 20 Cal.5th 564**

In this case, the California Supreme Court declared that all California courts have a mandatory duty to provide a verbatim (word-for-word) record of all court proceedings. If the court cannot provide a court reporter, and a party to the case cannot afford to pay for a private court reporter, then the court must use electronic recording to make the record. And, in limited civil cases, such as evictions, the court should use electronic recording regardless of whether either party can pay for a private court reporter.
This case applies to "all" proceedings in court, not just hearings and trials. Courts should not put parties through a formal fee waiver process before providing a free court reporter or electronic recording. The process to decide if someone cannot pay for a private court reporter should be flexible and easy. It is expected that many more people will be eligible for a free record than for fee waivers, because the cost of a private court reporter is high.

Courts may not continue matters just because a free court reporter is not available, instead they should just use electronic recording.
Statutes affected: Gov't Code § 69957(a)

***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 and 68631; Code of Civil Procedure sections 269, 639 and 645.1
California Rules of Court used or affected: Rules 2.956 and 3.55

J. Sanctions

***Featherstone v. Martinez* (2022) 86 Cal. App. 5th 775**
In a child custody case, the trial court, on its own, ordered money sanctions against Parent and their attorney. The appellate court overturned both trial court orders. First, the reviewing court found that the trial court abused its discretion when it determined that Parent's actions met the definition for sanctions under Family Code 271. Under Section 271 the court may order sanctions against a party when their "conduct" frustrates the policy of the family law to promote cooperation and settlement. Here, the trial court abused its discretion in deciding that Parent repeating requests she made in her early declaration; requesting that the child's video calls with the other parent happen on communications platform; filing of a proposed judgment with mistakes; filing a Code of Civil Procedure Section 170.1 motion seeking disqualification of the trial court judge; and objecting to perceived bias were sanctionable. The appellate court noted that even though the trial court said it would not consider the information raised in the bias objection, it did anyway: "[O]ne cannot read this appellate record without coming away with the impression that the family court was just miffed about being accused of bias." Second, noting that Family Code Section 217 only allows sanctions against a "party" not their attorney, the reviewing court found the trial court also abused its discretion when is sanctioned the attorney.
Statutes used or affected: Family Code sections 271 and 3040; Code of Civil Procedure sections 128.5(c), 128.7(c)(2), 170.1, 177.5.

***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 send 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

K. Venue (Place of Trial)

Venue means the county a case should be heard in. (Code Civ. Proc., § 395.) Under the DVPA, the proper venue is any county in California. (Fam. Code, § 6301, subd. (a).)

Although Family Code section 6301 talks about where a DVRO request can be filed, it means the proper venue for a DVRO request. This reading is supported by a case that held a similar provision in another law means proper venue. (Brown v. Superior Court (1984) 37 Cal.3d 477 [construing former Gov. Code, § 12965, subd. (b), now current Gov. Code, § 12965, subd. (a)(4), part of the Fair Employment and Housing Act (FEHA)].) The legislative history behind Family Code section 6301, subdivision (a) also supports this reading. (See legislative history of SB 554 from 2024.)

Although any county in California can be a proper place to hear a DVRO request, a court may still change venue to another county based on one of the grounds listed in the venue laws, including that another county is more convenient and the ends of justice would be served. (Code Civ. Proc., §§ 397, subds. (b)-(e) & 397.5.)

In addition, it is important to remember that venue is different from jurisdiction. (Code Civ. Proc., § 396b.) Venue is an affirmative defense the respondent waives if they don't raise a timely request to transfer, which they must do within the time to respond to the DVRO request. (Ibid.) Any court can issue a TRO or DVRO, even if another county may be a better venue, and the order is still valid whether or not venue is changed. (Williams v. Superior Court (2021) 71 Cal.App.5th 101, 115.)

An order granting or denying a request to change venue is not appealable but must be challenged by a writ petition to the Court of Appeal. (Code Civ. Proc., § 400.)

Finally, keep in mind that if venue makes in-person attendance difficult for the party, attorney, support person, or witness, they may appear remotely for no fee (Fam. Code, § 6308) and file electronically for no fee (Fam. Code, §§ 6306.5 & 6307).