



CASE ALERT

New Case Explains that Trial Courts Must Weigh Interests Before Continuing a Domestic Violence Restraining Order (DVRO) Hearing On 5th Amendment Grounds

Irvine v. Irvine (2026)

How Could This Case Help Your Clients?

This case could help your client by ensuring their DVRO hearing is not unfairly continued whenever a respondent claims their 5th Amendment¹ right against self-incrimination.

The Opinion creates a process judges must use if a DVRO respondent requests a continuance based on 5th Amendment concerns. First, the court must decide if there actually is a concern that the respondent will be forced to incriminate themselves. For many DVRO requests, the abuse is not also a crime, so the 5th Amendment doesn't apply.

If there is a legitimate 5th Amendment concern, then the court must weigh 5 factors to decide if a continuance is appropriate:

1. The respondent's 5th Amendment right against self-incrimination and how the respondent would be burdened if the hearing was not continued
2. The petitioner's interest in proceeding and whether delaying the hearing would be unfair to the petitioner – for example, the petitioner's witnesses are already at court and the witnesses may not be able to come back on another day
3. The court's interest in efficiently managing court resources
4. The interests of nonparties - such as additional protected parties who need protection or children who need custody and support orders
5. The Domestic Violence Prevention Act's (DVPA's) purpose of quickly resolving DVRO proceedings

If these factors do not weigh in favor of the request to continue then the hearing must go forward that day. The Court of Appeal explained, the fact someone is charged with a crime "cannot give him a blank check to block" non-criminal cases about the same facts, justice may require allowing the restraining order case to go forward.

Summary of the Case

Eric requested a domestic violence restraining order (DVRO) against his ex-spouse Tiare, who sent hundreds of texts and emails over a short period of time to Eric and the person he was dating. Eric received a temporary restraining order (TRO) that protected both him and the person he was dating. Tiare then broke into Eric's yard and physically attacked Eric. Tiare was arrested and a Criminal Protective Order (CPO) was issued to protect Eric. Despite the CPO and TRO, Tiare went to Eric's home and continued to contact him.

¹ The 5th Amendment is the constitutional right not to be compelled to testify against yourself in a criminal case.

At the first hearing on the DVRO Tiare received a continuance under Family Code section 245(a), which gives a continuance to anyone who hasn't filed a response yet. Two more hearings were scheduled. At each hearing Tiare requested and received a continuance. The matter was re-scheduled for a fourth time, approximately 4 months after the initial hearing date. At the 4th hearing Tiare requested another continuance raising 5th Amendment concerns because of a pending criminal case based on her TRO and CPO violations. The request was denied. The hearing went forward, Tiare did not testify, and the DVRO was granted.

Tiare appealed, claiming the trial court abused its discretion when it failed to continue the DVRO hearing because she had an open criminal case involving some of the same facts as the DVRO. The Court of Appeal upheld the trial court's ruling explaining that the 5th Amendment does not mean all civil (non-criminal) litigation must be continued because the civil case alleges all or some of the same facts as in a criminal case. Instead, courts must decide whether the 5th Amendment concern is legitimate and, if so, use the test described above to decide whether to continue the case.

PRACTICE TIPS

If the opposing party requests to continue a DVRO hearing based on 5th amendment grounds.

- Use this case to explain that the judge must weigh the 5 interests before granting or denying the requested continuance.
- **When the court weighs the respondent's interests.** Use this case to explain that respondents can defend against the DVRO without self-incriminating testimony. For example, the respondent can cross-examine witnesses, offer other witnesses or evidence, or argue the petitioner has not met their burden. The respondent may also request immunity, which would allow them to testify without fear of self-incrimination.
- **When the court weighs the petitioner's interest.** Use this case to explain that continuances require a survivor to repeatedly face their abuser, which is traumatic and stressful. Explain any specific difficulties your client has such as finding childcare or taking time off work. These may be reasons to deny a continuance.
- **When the court weighs the nonparties' interest.** Use this case to explain the burdens continuances place on nonparties. For example, explain the safety concerns for additional parties your client wants to be protected by their restraining order and the burden on witnesses making multiple trips to court. These may be reasons to deny a continuance.
- **When the court weighs the purpose of the DVPA.** Use this case to explain how repeatedly continuing DVRO hearings undermines the legislative purpose of preventing further acts of abuse and deciding restraining order requests quickly.

For questions or clarifications, email or call Family Violence Appellate Project at info@fvaplaw.org or (510) 380-6243. Thank you!