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PERSPECTIVE

Shared kids and DVROs can put parties in a precarious position

By Lisa Helfand Meyer and Eric W. Meyer

A protected party will likely feel an immense wave of relief if that party's application for Domestic Violence Restraining Orders (DVROs) is granted. The judge heard and validated her/his concerns, which resulted in restraining orders that will be transmitted to the California Law Enforcement Telecommunications System. However, when the protected party and restrained party share children together, they are placed in a precarious position where they must somehow navigate parenthood together, notwithstanding the restraining orders in effect.

When a California court grants an application for DVROs, the orders will be set forth in the DV-130 (Order of Protection) form. The form will contain, among other information, personal conduct and stayaway orders. While the restrained party may be ordered to stay at least 100 yards away from the protected party and their children if the children are included as additional protected parties, the court can order exceptions to personal conduct and stayaway orders.

The form exception language includes "brief and peaceful contact with the [protected] person, and peaceful contact with [protected] children, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise." Additional exceptions may include the restrained party being permitted to jointly attend public events involving the children, such as doctors' appointments and school and sporting events.

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Courts are often liberal about allowing a restrained party to attend public events involving the children, even if the protected party will be present. This does leave opportunity for encounters in empty lobbies and parking lots.

Even when the Family Code Section 3044 presumption is invoked, and the court finds "an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interests of the child," that finding is not synonymous with no contact between parent and child. Visitation of a child differs from joint custody, and thus, a court may and often does order visitation between a restrained parent and the child. To the extent possible, courts want to rehabilitate restrained parties and continue to promote their relationship with their children.

The court often accompanies visitation orders with mechanisms of protection for the child, which may include supervised visitation by a professional monitor, drug and alcohol testing, and/or enrollment and attendance in a 52-week batterer's intervention program.

The DV-140 (Child Custody and Visitation Order) form is filed concurrently with the DV-130 form. This form will contain the specific custody and visitation orders, including if the visitation or custodial exchanges are supervised and if there are travel and abduction restrictions ordered.

A protected party will often have difficulty comprehending the court's expectation for him/her to regularly communicate with the same person who was just found to have perpetrated abuse. The protected party will also have to accept the restrained parent being awarded court-ordered visitation with their child. Even final custody orders are not final under the dictionary definition. A protected party will have to learn to co-parent with a perpetrator of abuse and accept that, with a showing of progress and change, the court will very likely increase the restrain party's visitation with the child and vacate the professional monitoring requirement. In fact, when it comes to custody, rehabilitation and normalizing the parent-child relationship is the goal. The increase in visitation time may and often does occur while the DVROs are still in effect.

The communication between the protected and restrained parties will likely be limited to regarding their children's health, education, and welfare, as well as logistical communications regarding exchanges and visitation. The communications will likely be conducted

through Our Family Wizard or Talking Parents, applications intended to reduce conflict. Unfortunately, no matter the vessel, an abusive person will use even the limited opportunities to communicate with the protected party to continue to harass and exert control.

For a protected party the best way to manage continuing communication with the restrained party is to not be roped into conflict. Share information relating to the child, but be factual and brief. The restrained party may attempt to use these communications to paint their version of the facts, which leads to the protected party feeling they need to "right-the- record" and fight back with the truth. I advise clients to refrain from submitting to that urge. If the harassing communications continue, the protected party can contact law enforcement and report a violation of the restraining orders, based on the communications not fitting into the "brief and peaceful exception." Otherwise, the protected party can seek more stringent orders limiting communications from the court, with the harassing communications as evidence.

However, protected parties can harm themselves with continuing custody issues if they withdraw and refuse to communicate with the restrained party regarding their children. Even if the court grants a protected party sole legal custody of the children involved, there is still an obligation to share information relating to the children. A court expects regular communication between parents regarding their children and a restraining order is not a basis to ignore emails and fail to provide information relating to important milestones in the children's lives.

Courts are often liberal about allowing a restrained party to attend public events involving the children, even if the protected party will be present. This does leave opportunity for encounters in empty lobbies and parking lots. Common sense advice for protected parties is the best advice — be aware of your surroundings and try not to put yourself in a situation where you will be alone. But also — remember the restrained party has the same right to be there as you do. The event should be about the child and that's where the focus of both parents should be.

There is a stigma associated with a DVRO. Sometimes the stigma is earned, other times it is not. The standard of preponderance of the evidence is a substantially lower standard than the beyond the reasonable doubt standard necessary for a criminal conviction. Decisions relating to the issuance of DVROs are not made by twelve peers, but one judge, and different judges may come to very different conclusions.

For a restrained party, a finding of domestic violence is not a finding that one is a bad person who should lose custodial rights. Rather, it is recognition that on at least one occasion, abuse was perpetrated. Restrained parties can earn back the trust of the court, the trust of the other parent, and most importantly, the trust of the impacted children. One can demonstrate rehabilitation by taking court-ordered therapy seriously, by recognizing faults and working to overcome them, by committing to sobriety (if applicable), and by demonstrating to the professional monitor that he/she is a capable and loving parent. Professional monitors often testify on behalf of restraining parties' parenting skills. A DVRO is not a death sentence to joint custody, it is more akin to a parole period for custodial issues. The restrained party is empowered to change the dynamic and I counsel clients in that position to take full advantage of that opportunity. ■

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