

ATTACHMENT EH-2

This is the attachment marked "**EH-2**" referred to in the witness statement of Judge Eugene Michael Hyman dated 5 August 2015.

DVWM SPEECH – D75 – SRB – Rev 11/5/13

Good morning. Welcome to Department 75. This is the Family Court Domestic Violence Restraining Order Calendar. Before we get started, I want to explain a little bit about the law of restraining orders and what will happen here today.

When I refer to the **Restrained Person** I mean the person who is facing the restraining order and whose conduct will be limited by the restraining order. When I refer to the **Protected Person** I mean the person who wants the restraining order and who is asking to limit the other person's conduct.

TYPES OF RESTRAINING ORDERS

There are **three types** of restraining orders.

The first type of restraining order is a restraint on **personal conduct**, often called a **peaceful contact order**. This is where the court orders the restrained person to not do certain things, such as harass, attack, strike, threaten, assault, hit, follow, stalk, molest, damage or destroy personal property, disturb the peace, keep under surveillance or block the movements of the protected person. This also includes no pushing, shoving, throwing things, swearing at or insulting the protected person. A peaceful conduct order allows the protected person and restrained person to be together if that is what the protected person wants.

The second type of restraining order is a **no-contact order**. This is where the court orders the restrained person to have no contact with the protected person. This means **no direct contact**, no phone calls, no text messages, no mail or email, and no internet contact such as Face Book. It also means **no indirect contact** through friends or relatives, or using others to send messages. A

no-contact order means the restrained person cannot be with the protected person.

The third type of restraining order is a **stay-away order**. This is where the court orders the restrained person to stay a certain distance away from the protected person. The typical distance is 300 yards, or about the length of three football fields. The stay-away order can include the protected person's home, car, job, school, child care, or other location.

The Court may order one or more of these types of orders against the restrained person if there is enough evidence to do so.

In addition to these orders, the protected person can request a **move-out order**, which requires the restrained person to move out of the family home. The court can also make **child custody and visitation orders**, **child support orders**, and **possession of pet orders**.

RESTRICTIONS ON RESTRAINED PERSONS:

If the court has issued a temporary restraining order against you, or if I issue a restraining order against you today, you are the Restrained Person and the following laws apply to you.

You cannot have or use any **guns or ammunition** while a restraining order is in effect.¹ It is both a state and a federal crime to have a gun or ammunition while you are under a restraining order.

You must immediately **surrender** to law enforcement, **store or sell** to a licensed gun dealer, any guns or ammunition, and file a proof with the court.² If the Court has information that you have

¹ Family Code § 6304.

² Family Code § 6389.

guns or ammunition, then I will require you to return to court in a few days to show proof of surrender or sale.

It is a **crime to violate a restraining order**, and you can be arrested. For instance, if the order says you cannot contact the protected person, but you send them a text message, that is one crime, punishable by up to one year in county jail and a \$1,000 fine. Each contact in violation of the restraining order is a separate law violation and is punishable by another year in jail and another \$1,000 fine.

As a reminder, if the court has already issued a temporary restraining order against you, **the order remains in effect while you are here in the courtroom.**

The Court recognizes you cannot be 300 yards away from the Protected Person in the courtroom, but please understand, if you walk over to the protected person, or speak to the protected person, or mouth words to them, or make faces or gestures to them across the courtroom or hallway, or try to pass a note, then you may be in violation of the temporary restraining order and a deputy can arrest you and take you to jail. Do not send friends or family members over to talk to the protected person, because that is also a violation of the order.

If you wait until after the hearing and communicate with the protected person in the **lobby** outside the courtroom, or on the **courthouse steps**, or in a nearby **parking lot**, then you violate the order and can be arrested. After the court hearing, the restrained person must leave the court house and the area near the court house.

RIGHTS OF BOTH RESTRAINED AND PROTECTED PERSONS

Both the Restrained person and the Protected person have **due process rights**. They are (1) the right to receive notice of all hearings,(2) the right to talk to the judge (3) the right to present evidence and witnesses,and (4) the right to ask questions of witnesses.

You also have the right to a lawyer, but we do not provide a lawyer for you. If you want information about **free or low cost legal services**, please ask my deputy for a referral list.

PROOF OF SERVICE

The law requires that before the Court can go forward with a restraining order, the restrained person has to be told about the hearing through something called **personal service**.

This means that somebody other than Protected Person who is over the age of 18 has to hand-deliver the Court papers to Restrained Party, and then that person who delivers the papers needs to complete a Proof of Service form. The Proof of Service form tells the Court who the papers were delivered to, what papers were delivered, when the papers were delivered, where the papers were delivered, and who delivered the papers.

If the Restrained person has not been personally served, the Court will continue the case to give the Protected Person another opportunity to have the court papers served. The temporary order will remain in effect until the next court dates.

RIGHTS OF RESTRAINED PERSONS

The person facing a restraining order, also has some additional rights.

If today is your first hearing, you have the right to request **one continuance**.³ A continuance means you will come back to court on another day. You should request a continuance if you want to file a written response to the temporary restraining order, or if you want to consult a lawyer, or if you want to bring witnesses to tell me what happened.

You also have the **right to have a hearing today**⁴ if time permits. This means the Court will listen to both sides and make a decision. If we have the hearing today, you won't need to come back to court for the restraining order, though you may need to come back to discuss other issues such as visitation, child support and parentage.

You may not want to have a hearing today if you have a criminal case pending, because anything you say here in family court can be used against you in your criminal case. In your criminal case, you have a **Fifth Amendment right against self-incrimination**, which means you have the right not to say anything which can be used against you.

If you want to assert your right to remain silent, then today you should request a **continuance** to give you time to finish your criminal case. This does not mean you can delay your hearing here in family court forever, but it means I will give you a reasonable time to finish your criminal case.

³ Family Code § 243(d).

⁴ *Ross v. Figueroa* (2006) 139 Cal.App.4th 856.

If you and the protected person have a child together, and that applies to most cases on calendar today, then I must tell you about **Family Code section 3044**. This law says that if the Court grants a restraining order against you, then you cannot have or share custody of your child unless the Court finds it is in your child's best interest. In most cases I will let you see your child, **BUT** it means that I may restrict **when** you see your child, or **how** you see your child, and I may decide your visits must be temporarily **supervised**.

You can **overcome** this law when you show the Court you have completed your domestic violence class, or other classes the Court ordered you to do, and by showing it is in your child's best interest for you to share custody.

We have **copies** of this law available for you to take in English and Spanish when you come forward for your hearing.

The reason this law exists is because **domestic violence hurts children** of all ages and stages. Many children who are exposed to domestic violence, whether they **see** it, or **hear** it, or see the **results**, will suffer short term and long term emotional damage. Research studies tell us that even babies who are exposed to domestic violence can be harmed.

We also know that children who are repeatedly exposed to DV are at **higher risk** for suffering mental illness, becoming drug addicted, dropping out of school, going to jail, being unemployed, and becoming homeless.

Further, boys and girls who grow up in violent homes, whether they see their fathers hitting their mothers, or they see their mothers hitting their fathers, or they see their parents hitting each other, **these children often grow up to become** adults who use

violence to hurt others, or they become adults who expect to be hurt by others.

For these reasons the law protects children from parents who commit domestic violence.

FINAL INSTRUCTIONS

When I call your case, please step forward to the table. The person who wants a restraining order is the petitioner, and will stand at the table by the computer with the sign “**Petitioner.**” The person who faces a restraining order is the respondent, and will stand near my deputy at the table with the sign “**Respondent.**”

I will ask each of you some questions to get started. If you have any papers you want to show me, please bring them with you. If you are the Petitioner, please have your **proof of service** ready to show me.

We have a few rules you must follow. This is a formal court hearing. My court reporter will record what we all say. I want to hear from both of you. Please **do not interrupt** one another, do not talk over one another, or do not interrupt me. If more than one person talks at a time, then I cannot hear what you are saying, and my court reporter cannot write down what you are saying.

Before we finish your hearing I will give you the opportunity to **ask questions.**

Also, if I **put up my hand**, that means please stop talking. That is because I want to keep us on track so I can make the best decision.

After your hearing, all protected persons will remain in the courtroom until we provide you with a copy of your restraining order. **All restrained persons will write their name and address on an envelope** my deputy will give you so we can mail you a copy of the restraining order.

Finally, we are fortunate here in Santa Clara County to have a number of people here to help you. We have **domestic violence support people** here in court – seated in the jury box-- to help both protected persons and restrained persons. Support people: please raise your hands. *If you want to talk to a support person before I call your case, you can walk over near the door and ask to talk with a support person.

Also, we have a representative from **First Five**. First Five is an organization that connects your family to free services to help improve your child's health and behavior. The only requirement is that you have at least one child under the age of six living in your home. First Five specialist: please raise your hand.