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# Restraining Orders: The Basics

By Louis V. Kosnett

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**R**ESTRAINING ORDER CASES INVOLVE ONE party, the petitioner, asking the court to issue an injunction against another party, the respondent. An injunction, as defined by Black's Law Dictionary (10th Ed.) is "a court order commanding or preventing an action."

In effect, the petitioner requesting a restraining order is asking the court to command or prevent an action by the respondent. That action could be not speaking to the petitioner—whether in person, on the phone, or by electronic communication—or not approaching within a certain distance of the petitioner's home or work, for example.

Further, a petitioner may also ask that any injunction issued by the court apply to other members of her household, even if they are not a party.<sup>1</sup>

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### **Civil Harassment Restraining Orders**

Civil Harassment Restraining Orders (CHRO) may be issued pursuant to Code of Civil Procedure (C.C.P.) §527.6, which provides in subsection (a)(1) that a person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section. Section (b) defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose."

The course of conduct "must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."

As written, the language is broad, and covers a wide range of behaviors by the respondent. Harassment can be physical violence, a threat of physical violence, or any course of conduct that "seriously alarms, annoys, or harasses the [petitioner]."

In addition, the behavior by the respondent must be that which would cause a "reasonable person" to suffer substantial emotional distress. Civil harassment orders are typically not issued for behavior by the respondent that is offensive only to an overly sensitive petitioner; however, if the respondent is aware of such sensitivity, and intentionally exploits it, then that may be considered harassment.

Further, the conduct must actually cause substantial emotional distress to the petitioner. As outrageous as the respondent's conduct may have been, no order can be issued if the conduct does not actually cause emotional distress to the petitioner. For example, if the petitioner was not aware of such behavior at the time that it was being performed, then there is a good argument that the petitioner has not met this required element under the statute.

In addition to the relationship between the parties, one of the distinguishing features of civil harassment restraining orders is the high burden of proof that the petitioner must meet for an order to issue after the hearing. The petitioner must prove all the elements of harassment by clear and convincing evidence.<sup>2</sup> While there is no set definition of what this burden of proof entails, it is generally seen as greater than a preponderance of the evidence (such as in civil trials), and less than beyond a reasonable doubt (as in criminal trials). California courts have defined the standard of "clear and convincing" as requiring a finding of high probability.<sup>3</sup>

A petitioner in a civil harassment restraining order case must therefore be prepared to satisfy a high burden of proof in order to convince a judge to issue the order.

Common civil harassment situations may be disputes involving landlord and tenant, employer and employee, neighbors, or non-romantic roommates.

### **Domestic Violence Restraining Orders**

The other most commonly filed restraining order petition is the Domestic Violence Restraining Order (DVRO). The law pertaining to DVROs is codified in California Family Code (Fam. Code) §6200, et seq., known as the Domestic Violence Prevention Act (DVPA).

Unlike the relationship between the parties in civil harassment petitions, the petitioner and respondent in a DVRO proceeding must have a close personal relationship with each other. The respondent in a DVRO must be associated with the petitioner in one of the following ways:



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