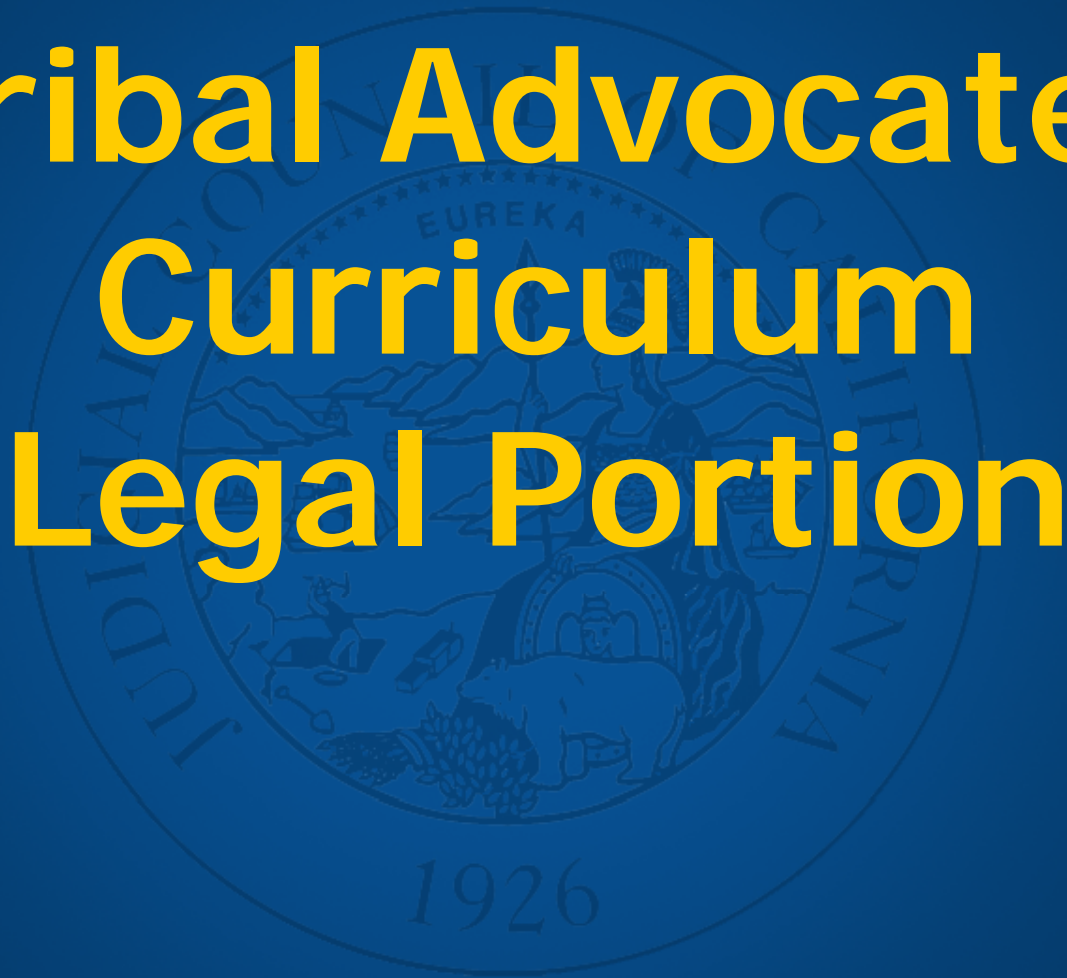


# Tribal Advocates Curriculum Legal Portion



# Topics

- Overview of the Legal System in CA
- Roles in State Court
- Confidentiality
- Types of Restraining Orders
- How to Request a Restraining Order
- How to Respond to a Restraining Order



# Overview of the Legal System in CA



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# Overview of the Legal System

- Objectives/Teaching Points
  - Identify types of cases where domestic violence issues are raised
  - Be familiar with the differences in these types of cases.
  - Understand that what happens in one court can affect the case in another court.



# Civil Versus Criminal

- Civil
  - Private Parties
  - Money or Injunctive Relief
  - Protective Order is a Type of Injunction
  - Person seeking a RO is a party to the lawsuit and therefore has more control over what happens in the case
- Criminal
  - Attorneys
  - Role of Victim is Witness



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# Multiple Proceedings

- Family Court (dissolution, custody, visitation, support)
- Juvenile Court (abuse and neglect)
- Criminal Court



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# Table Exercise: Match Facts to Court



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# What happens in one court affects the other

- If there is a Criminal case against an abuser, the Family Court may (but is not required to) delay making a “permanent” restraining order until the criminal case is finished to avoid any 5th Amendment concerns.





# What happens in one court affects the other

- A party in a family law restraining order case may wish to hold off on making a declaration in that case if there is a criminal case against them.



# What happens in one court affects the other

- A victim with a CPO may need a DVRO to address issues like custody or property control.
- An abuser who is arrested for violating a DVRO may face deportation or removal in immigration proceedings.



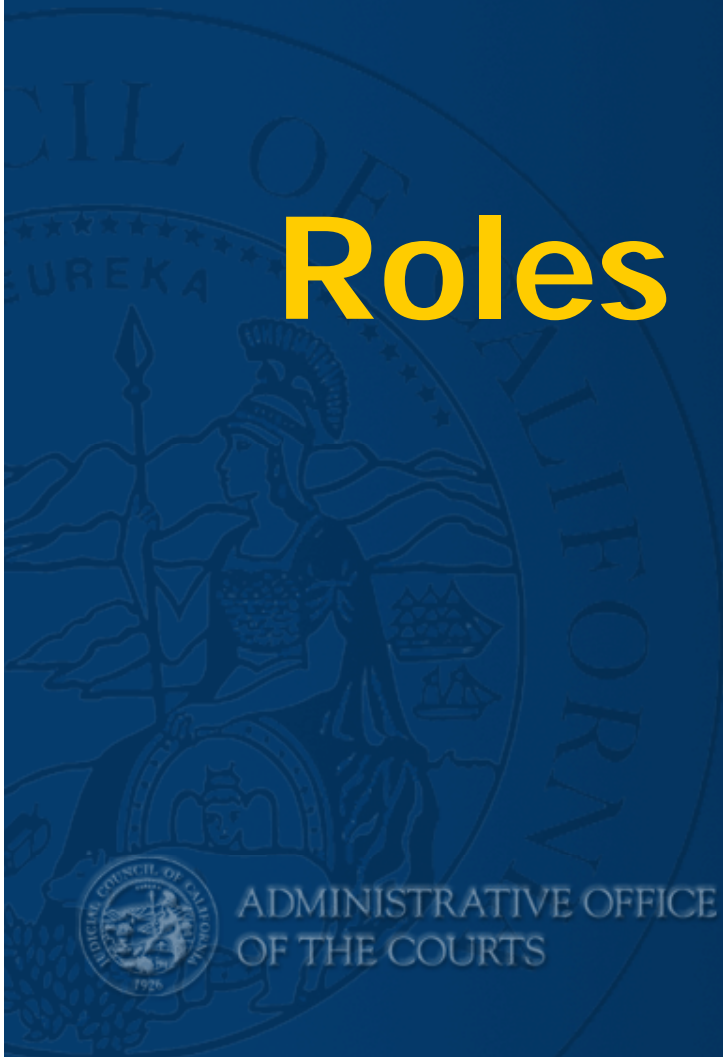
# What happens in one court affects the other

- If there is an open Juvenile Court case, the Family Court cannot make custody orders.
- If the parties have an existing dissolution or paternity case, the restraining order request may be filed in that case or later consolidated.



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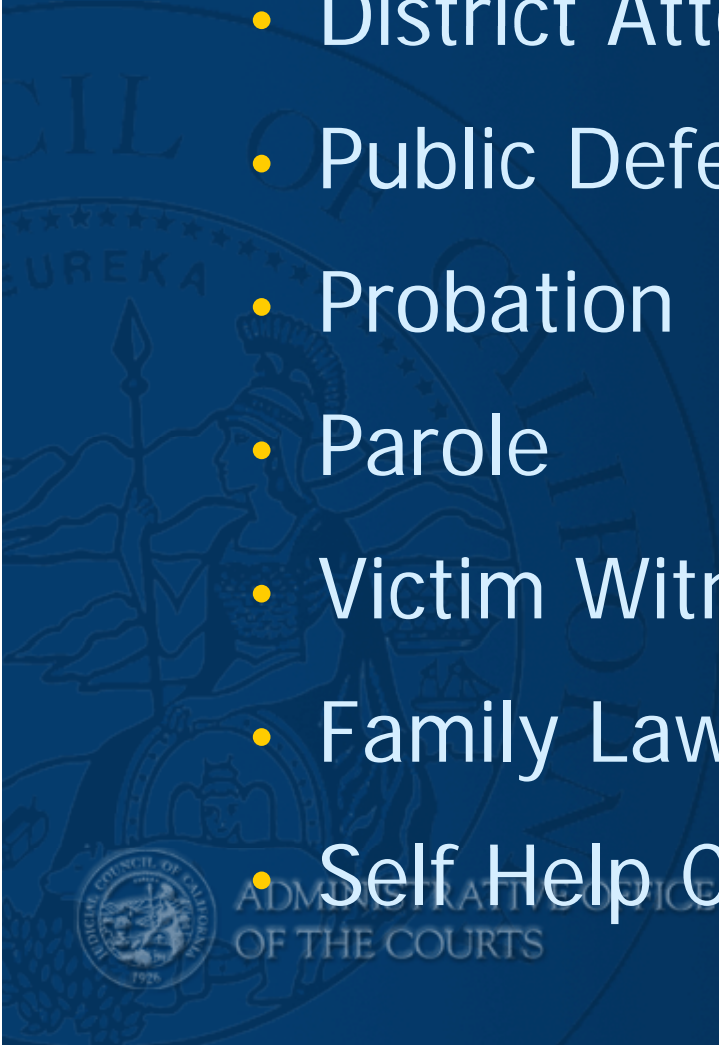
# Roles in State Court



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# Roles

- Law Enforcement
- District Attorney
- Public Defender
- Probation
- Parole
- Victim Witness
- Family Law Facilitator
- Self Help Center Staff



# Law Enforcement

- Investigation and the police report
- Preserving evidence for trial
- Enforcement of protective orders



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# District Attorney

- Presses charges
- Drops charges
- Prosecutes the case
- Must give the victim an opportunity for input



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# Public Defender

- Court-appointed
- Represents defendant
- Does not represent the victim in the civil case



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# Probation

- Makes sentencing recommendations
  - Programs to help the defendant take responsibility for the violence
  - Restricted contact between the defendant and the victim
- Monitors defendant's compliance with court orders



# Parole

- Decides whether the parolee can live with or have contact with the victim
- Can serve restraining order on defendant
- Investigates parole violations (for example violation of RO)



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# Victim Witness

- Be familiar with local victim witness services and staff
- Connect victim to these services
- Victim Witness Assistance Center
  - Helps emergency services, counseling, restitution, claims and compensation, victim impact statements, case status/disposition information, etc.
  - Has access to criminal computer databases

# Family Law Facilitator

- Be familiar with local family law facilitator
- Connect litigant to these services when appropriate
- Help with
  - Establishing parentage and
  - Getting, changing, or enforcing child, spousal, or partner support orders



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# Self Help Centers

- Be familiar with local self help center services and staff
- Connect litigant to these services when appropriate
- Help with
  - Family law, probate matters, and other civil cases– landlord/tenant, civil harassment, consumer issues, and small claims



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# Self Help Centers

- Website
  - <http://www.courts.ca.gov/selfhelp-abuse.htm>
- Locating center in your county
  - <http://www.courts.ca.gov/9521.htm>



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**Confidentiality**



# What is confidentiality?

- Assurance that access to one's information will be strictly controlled
- Most common privileged relationships that require that communications be kept confidential:
  - Priest-Penitent
  - Lawyer-Client
  - Psychologist-Patient
  - Licensed Social Worker-Client
  - Doctor-Patient



# The Basic Rule

- Most domestic violence programs adhere to this basic rule:

*A client's information is not shared outside the agency unless the client gives the agency permission to do so.*



# Why is Confidentiality Important?

- May be the key to someone reaching out for help.
- Fosters trust.
- Can avert potential threat to safety or life.



# What does it protect?

- **Communications** between “holder” of the privilege and the person to whom the information was given
- Who is the “holder” of the privilege?
- Only “holder” of privilege can waive disclosure unless the law otherwise states



# Privilege

- Statements and conversations made under circumstances of assured confidentiality which must not be disclosed.
- Public policy reason for privilege: one should be able to speak freely to certain persons
- Legal effects
  - Cannot be forced to testify or reveal confidential information to law enforcement or courts
  - Breaking confidentiality can lead to being sued
  - May be “waived” by holder of privilege (the person who communicated the confidential information, not the person who heard it)



# Ways to Waive

- Expressly: Victim tells the advocate "Please tell the prosecutor x,y,z that we discussed."
- Because of actions of the holder:
  - Someone else hears the communication
  - Putting it "into issue" such as calling a witness or introducing evidence

# Informed Consent

- Discuss how the information might be used
- Give information about the consequences of signing a release of information
- Only the holder of the privilege decides—
  - first whether to share with the advocate and
  - Second whether to give permission to the advocate to further share the information



# Permission to Disclose

- You are not breaking confidentiality if you have permission to disclose
- When advocating with law enforcement or other agencies be sure you clearly understand what permission you have to disclose
- Use a written form that:
  - Lists what specific information you can disclose;
  - Says to whom it can be disclosed;
  - Is signed by the client/service participant;
  - Includes an expiration date; and
  - Gives notice that s/he can rescind permission at any time.



# Are Communications with Tribal Advocates Privileged? (Evidence Code 1037.1)

- Domestic Violence Counselor
  - Employed by domestic violence service organization
  - Completed 40 hour mandated domestic violence training
- Working for a Domestic Violence Service Organization
  - Non-governmental organization
  - Providing shelter, programs, or services to victims of domestic violence and their children





# Not All Victim-Witness Programs

- Many victim-witness programs are covered by the statutory definition
- But Not victim witness advocates working for prosecutor or law enforcement agency
  - Under the Indian Civil Rights Act, the Constitution and case law: victim witnesses are part of the prosecution-law enforcement team and have duty to disclose to defendant in a criminal case.



# Your Agency's Policies

- Should be in writing.
- Cover confidentiality.
- Cover disclosure.
- Cover what information to record.
- Cover safeguarding information and files.
- Include information on whether the victim-witness program in your county is part of the prosecution team.



# Types of Restraining Orders



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# Introduction

- Types of protective or restraining orders (ROs)
- What the court can order the person to be restrained NOT to do
- Limits of protective orders
- Accessing self-help website and centers for more information



# General Types of ROs

- Emergency Protective Order
- Domestic Violence Restraining Order (DVRO)
  - Temporary Restraining Order (TRO)
  - OAH (“permanent” RO)
- Juvenile Restraining Order
- Criminal Protective Order

# Other Civil Restraining Orders

- Workplace Violence
- Civil Harassment
- Elder and Dependent Adult Abuse
- Private Postsecondary Educational Institution



# Protection Orders- ordering the restrained person NOT to:

- Enter your property
- Assault, attack, beat, or wound you
- Threaten to kill or physically harm you
- Remove your children from you if you have legal custody



# Protection Orders- ordering the restrained person NOT to:

- Interfere with your place of employment
- Interfere with your efforts to remove your children or personal property
- Contact you by phone, mail
- Purchase or possess a gun



# Limits of Protective Orders

- A restraining order is only one piece of a safety plan.
- Sometimes not enforced or prosecuted.
- Provide or give referrals for safety planning and counseling.
- Give out the local county hotline number.



# Emergency Protective Order

- Issued by law enforcement
- Upon verbal order by judge on call 24/7
- Good for up to 7 calendar days



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# What is a DVRO

- Purpose: to allow victims to quickly get orders which can keep them safe and stable while they decide their next steps
- Not intended to be an order resolving all disputes between the parties



# DVRO- Temporary RO

- Preliminary restraining order.
- Good for 21 days - until service and Court hearing.



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# DVRO- Order After Hearing (ROAH)

- Good for up to 5 years.
- Renewable before expiration.



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# Judge in DVPA case cannot make orders of:

- Dissolution of marriage
- Property division
- Determination of parentage



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# Juvenile Restraining Order

- Court can issue TRO and ROAH
- Court can issue orders to protect
  - Child who is subject of petition
  - Other children in the household
  - Parent/legal guardian
  - Current caregiver of child even if this person isn't living with the child



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# Criminal Protective Order

- Court can issue any time during the criminal case
- Orders remain in effect for case (including probation)
- Types of protections





# Exercise: What Kind of California Protective Order am I?



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# How to Help Get a Domestic Violence Restraining Order



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# How to Help Get a Domestic Violence Restraining Order

- Step-by-step Process
- Effective Assistance With Preparation of the Declaration



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# Step-By-Step Process

- Get the request
- Fill out the forms
- File completed forms and get a hearing date
- Service of Process: Serving the forms
- Rights of the Person to be Restrained
- Court hearing
- Finishing and filing the ROAH
- Enforcing the order

# The Declaration

- Most important evidence in the case
- Sworn statement under penalty of perjury



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# Declaration must show facts of:

- Two requirements for DVPA order:
  - Abuse
  - Domestic Relationship
- Extra requirement for same day TRO
  - Emergency
- Extra facts required for other orders:
  - Custody orders
  - Property or restitutions orders



# Definition of Abuse (section 6203)

- Intentionally or recklessly to cause or attempt to cause bodily injury or sexual assault.
- To place a person in reasonable apprehension of serious bodily injury.
- To engage in behavior prohibited by Family Code section 6320: molest, attack, strike threaten, assault, batter, harass, destroy personal property, disturb the peace



# Domestic Relationship

- Spouse or ex-spouse
- Cohabitant or former cohabitant (must live together in 'family-like' relationship)
- Dating or engagement relationship
- Child in common
- Related by blood, marriage, or adoption to second degree (parents, grandparents, siblings, children)





# Advocate's Role- Declaration

- Explain the purpose of the declaration;
- Explain the legal definition of abuse;
- Ask specific questions;
- Identify the relevant facts to this definition;
- Help the litigant tell their story in their own words;
  - Using only relevant facts;
  - Organizing those facts; and
  - Presenting them in the declaration



# Elements of a Good Declaration

- Breaks down recent abuse incidents
- Detailed and specific description of the abuse giving dates
- History of violence
- Information about other related cases or involving the children



# Outline of a Good Declaration

- Introduction- facts about the case
- Timeline with descriptions- reverse chronological order of incidents of abuse- start with most recent and go back in time
- Summary paragraph- describes context/history of abuse
- Requests for other orders- describes reason for requested orders, like custody etc
- Conclusion



# Organization of a Good Declaration

- 1<sup>st</sup> Paragraph: Introductory Facts
  - Names of parties
  - Relationship
  - When broken up or moved out
  - Names, ages of children
  - Other important facts (for example, person to be restrained is a minor, is alcoholic and drinks every day...)



# Organization Continued

- 2<sup>nd</sup> Paragraph: Most Recent Incident of Abuse
  - Not necessarily the worst, shows why RO is necessary NOW
  - Specific and detailed facts
  - Give dates or approximate dates
  - Test: will the judge be able to picture what happened from the description?



# Organization Continued

- 3<sup>rd</sup> Paragraph: Next most recent incident of abuse....till get to very first incident (Be very specific and detailed)
- 4<sup>th</sup> Paragraph: Describe in general terms the history of abuse



# Organization Continued

- 5<sup>th</sup> Paragraph (if applicable):  
Describe reasons for other orders being requested.  
Describe specifically, with details the circumstances.
- Conclusion



# Tips in Helping Someone Write the Declaration

- Give information about the legal process to the litigant
  - Sworn statement can waive 5<sup>th</sup> amendment
  - Sworn statement can be used in Juvenile Court
  - Repeat legal definition of abuse
  - Describe the difference between conclusions and facts
  - Reminders about accuracy
- Make sure the litigant reviews the declaration at every step in the writing of it
  - To make sure all the facts contained in the declaration are accurate and in the litigant's voice.





# Writing Tips

- Don't use conclusory words like:
  - He calls me constantly
  - He attacked or harassed me
- Don't use legal language
- Don't take down verbatim everything the litigant says/only relevant facts

# Declarations do not stand alone- the advocate's role

- Explain the legal process (step-by-step)
- Provide safety planning and refer to appropriate services



# How to Respond to A Restraining Order



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# Giving Information to the Responding Party

- Domestic violence is a crime
- Possible criminal case
- Not following the restraining order can result in arrest, an order to pay a fine or jail



# Giving Information to the Responding Party

- Anything RP says in court (including the written answer), can be used against RP in a criminal case.
- Right under the 5th Amendment not to give any information which could be his or her in a criminal case.



# Giving Information to the Responding Party

- Explaining his or her options.
- Explaining how to completed the Answer if RP chooses this option.
- Explaining how to mail the Answer if the protected person's address is not confidential.



# Giving Information to the Responding Party

- Refer to the Self-Help Center or the Family Law Facilitator for information on how to fill out the Income and Expense Declaration [FL-150] if the protected person has asked for child or spousal support.



# RP's Options

- Do nothing. The judge may make orders against the RP
- Go to the hearing and exercise 5th amendment right.
- Go to the hearing and talk to the Judge.
- Answer in writing and go to the hearing.





# The Answer: Form DV-120

- One or two parts:
  - Answer Form
  - Written Statement



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# Assisting the RP with completing and serving the Answer

- Step by Step Process in Completing the Answer
- How to Serve the Answer by Mail



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