

# NEW CASES AND BILLS THAT EFFECT OUR WORK

DECEMBER 2019  
MARK JUHAS, LASC

## LEGISLATION



## AB 2694 (FC 6300, 6326, 6340)

- AN EX-PARTE DVTRO CANNOT BE DENIED SOLELY BECAUSE THE OTHER PARTY WAS NOT PROVIDED WITH NOTICE.
- ALLOWS AN ALTERNATIVE METHOD OF SERVICE DESIGNED TO GIVE REASONABLE NOTICE IF THE COURT DETERMINES THAT, AFTER DILIGENT EFFORT, THE PETITIONER HAS BEEN UNABLE TO ACCOMPLISH PERSONAL SERVICE, AND THAT THERE IS REASON TO BELIEVE THAT THE RESTRAINED PARTY IS EVADING SERVICE.

## <sup>4</sup> RECORDING DV PC 633.5

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A party to a confidential communication can record a communication for the purpose of obtaining evidence reasonably believed to relate to domestic violence, which admissible in a prosecution against the perpetrator for domestic violence.

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A victim of domestic violence who is seeking a domestic violence restraining order can record communications made by the perpetrator for the exclusive purpose and use of providing the evidence to the court.

<sup>5</sup> PRIVACY OF MINORS F.C. 6301.5 (DV) OR CCP 527.6 (CH)

Minor or minor's guardian can petition the court to keep confidential:

Name

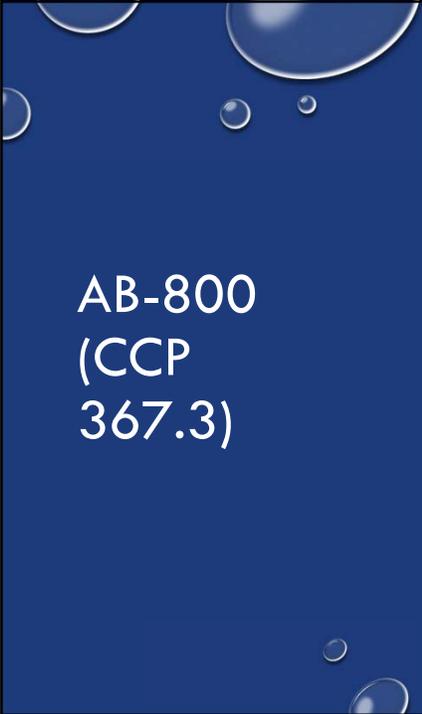
Address

Circumstances surrounding the protective order

PRIVACY OF MINORS  
EFFECTIVE 1/1/19

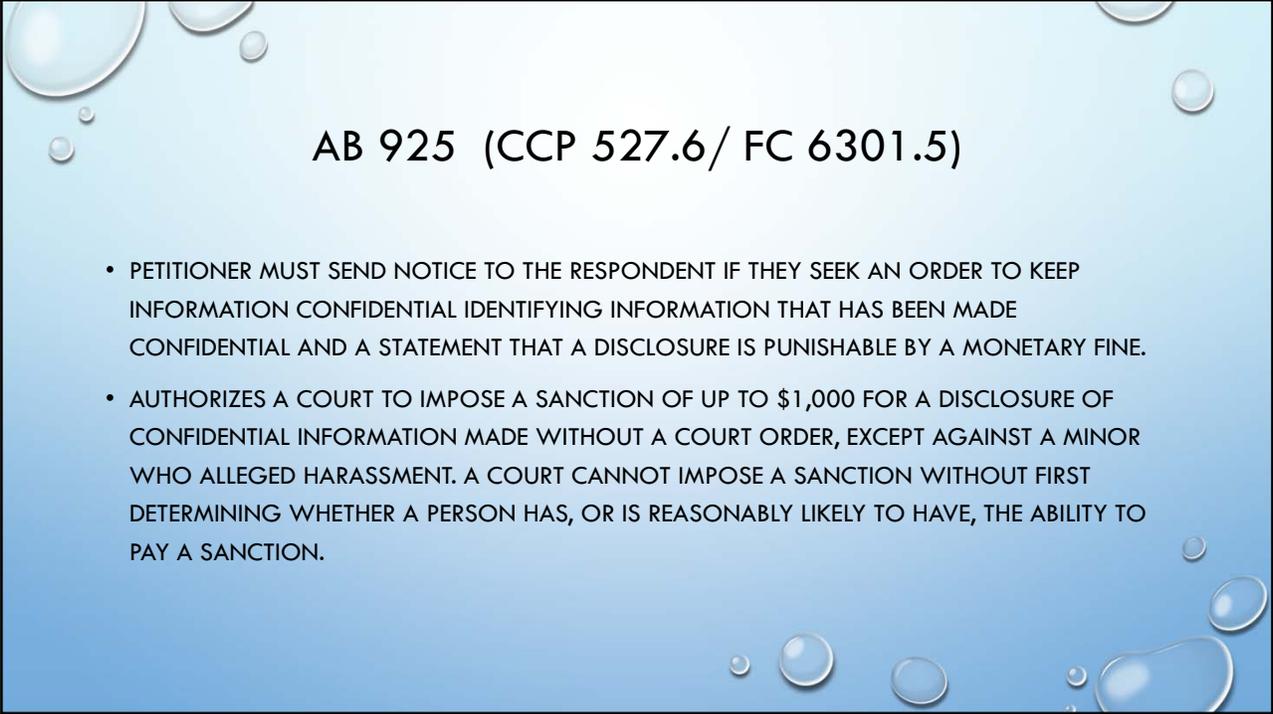
- RULES 3.1161 (CH)
- RULE 5.382 (DV)
- CH/DV FORMS (IDENTICAL):
  - 160-REQUEST
  - 165-ORDER
  - 170-NOTICE OF ORDER
  - 175-COVER SHEET FOR SUBSEQUENT FILINGS
  - REVISIONS TO 109





AB-800  
(CCP  
367.3)

IF A PARTY IS A PARTICIPANT IN THE ADDRESS CONFIDENTIALITY PROGRAM TO PROCEED USING A PSEUDONYM AND TO EXCLUDE OR REDACT OTHER IDENTIFYING CHARACTERISTICS OF THE PERSON FROM ALL PLEADINGS AND DOCUMENTS FILED IN THE ACTION. PARTIES TO THE ACTION WOULD BE REQUIRED TO USE THE PSEUDONYM AT PROCEEDINGS OPEN TO THE PUBLIC AND TO EXCLUDE AND REDACT OTHER IDENTIFYING CHARACTERISTICS OF THE PLAINTIFF FROM DOCUMENTS FILED WITH THE COURT.



AB 925 (CCP 527.6/ FC 6301.5)

- PETITIONER MUST SEND NOTICE TO THE RESPONDENT IF THEY SEEK AN ORDER TO KEEP INFORMATION CONFIDENTIAL IDENTIFYING INFORMATION THAT HAS BEEN MADE CONFIDENTIAL AND A STATEMENT THAT A DISCLOSURE IS PUNISHABLE BY A MONETARY FINE.
- AUTHORIZES A COURT TO IMPOSE A SANCTION OF UP TO \$1,000 FOR A DISCLOSURE OF CONFIDENTIAL INFORMATION MADE WITHOUT A COURT ORDER, EXCEPT AGAINST A MINOR WHO ALLEGED HARASSMENT. A COURT CANNOT IMPOSE A SANCTION WITHOUT FIRST DETERMINING WHETHER A PERSON HAS, OR IS REASONABLY LIKELY TO HAVE, THE ABILITY TO PAY A SANCTION.

## CLETS F C 6380 (NON-CODIFIED)

THE LEGISLATURE HAS BECOME AWARE OF A PRACTICE IN PROCEEDINGS RELATING TO RESTRAINING ORDERS WHEREBY THE PARTIES SEEK TO HAVE THE COURT ENTER A STIPULATED PROTECTIVE ORDER THAT WOULD NOT BE TRANSMITTED TO THE CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM, ALSO KNOWN AS CLETS, WHEN THE LAW OTHERWISE REQUIRES ITS TRANSMITTAL. THESE PROPOSED STIPULATED ORDERS ARE SOMETIMES COLLOQUIALLY REFERRED TO AS A "NON-CLETS RESTRAINING ORDER."

IT IS THE INTENT OF THE LEGISLATURE IN ENACTING THIS MEASURE TO CLARIFY THAT ALL PROTECTIVE ORDERS SUBJECT TO TRANSMITTAL TO CLETS ARE REQUIRED TO BE SO TRANSMITTED.

**SB 495  
(FC3011)**

PROHIBITS THE COURT FROM CONSIDERING THE SEX, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION OF A PARENT, LEGAL GUARDIAN, OR RELATIVE IN DETERMINING THE BEST INTERESTS OF A CHILD FOR THE PURPOSE OF GRANTING CUSTODY.

## AB 164 (PC 29825)

- CURRENT LAW PROVIDES THAT A PERSON WHO PURCHASES OR RECEIVES A FIREARM, ATTEMPTS TO PURCHASE OR RECEIVE A FIREARM, OR OWNS OR POSSESSES A FIREARM KNOWING THAT THE PERSON IS PROHIBITED FROM DOING SO BY A TEMPORARY RESTRAINING ORDER, AN INJUNCTION, OR A PROTECTIVE ORDER, IS GUILTY OF A CRIME.
- THIS BILL ADDS ANY PERSON WHO IS PROHIBITED FROM PURCHASING OR POSSESSING A FIREARM IN ANY JURISDICTION BY A VALID ORDER ISSUED BY AN OUT-OF-STATE JURISDICTION THAT IS SIMILAR OR EQUIVALENT TO A TEMPORARY RESTRAINING ORDER, INJUNCTION, OR PROTECTIVE ORDER ISSUED IN THIS STATE, AND WHICH INCLUDES A PROHIBITION FROM OWNING OR POSSESSING A FIREARM.

## AB 12 (PC 18109, 18120, AMONG OTHERS) EFFECTIVE 9/1/2020

- A LAW ENFORCEMENT OFFICER MAY FILE A PETITION FOR A GUN VIOLENCE RESTRAINING ORDER IN THE NAME OF THE LAW ENFORCEMENT AGENCY IN WHICH THE OFFICER IS EMPLOYED.
- THE DURATION OF THE GUN VIOLENCE RESTRAINING ORDER AND THE RENEWAL OF THE GUN VIOLENCE RESTRAINING ORDER FROM ONE YEAR TO A PERIOD OF TIME BETWEEN ONE TO 5 YEARS. A COURT, IN DETERMINING THE DURATION OF THE GUN VIOLENCE RESTRAINING ORDER, MUST CONSIDER THE LENGTH OF TIME THAT THE THREAT OF PERSONAL INJURY IS LIKELY TO CONTINUE, AND TO ISSUE THE ORDER BASED ON THAT DETERMINATION.
- A PERSON SUBJECT TO A GUN VIOLENCE RESTRAINING ORDER MAY SUBMIT ONE WRITTEN REQUEST PER YEAR FOR A HEARING TO TERMINATE THE RESTRAINING ORDER.

## QUICK LEGISLATIVE TAKES

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Ab-339 (PC 18108) Requires enforcement agencies to develop and adopt written policies and standards regarding the use of GVRO's.

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AB-1396 (WIC 15657.03) Can order EARO abuser to counseling or anger management for physical abuse or acts of deprivation of goods or services.

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AB-61 ( PC 18150,18170 and 18190) (9/1/2020) adds employer, co-worker, some teachers and employee as persons allowed to seek a GVRO



## APPELLATE OPINIONS



IN RE C.M.  
(2019) 38  
CAL APP  
5<sup>TH</sup> 101

FAMILY CODE 3044 DOES  
NOT APPLY IN DEPENDENCY  
CASES.



LUGO VS.  
CORONA  
(2019) 35  
CAL APP  
5<sup>TH</sup> 865

CAN GET A DVRO EVEN  
WITH A CPO

IRMO ANKOLA (2019) 36 CAL  
APP 5<sup>TH</sup> 560

- MUST MAKE A WRITTEN REQUEST BEFORE ISSUING A MUTUAL DVRO
- MUST USE MANDATORY FORMS
- WRITTEN RESPONSE TO DVRO IS NOT A WRITTEN REQUEST



MELISSA G.  
VS.  
RAYMOND M.  
(2018) 27  
CAL APP 5<sup>TH</sup>  
360

- MARCH 8, 2017 DAD FILES DVRO
- MAY 4, 2017 MOM FILES DVRO
- COURT HEARS BOTH TOGETHER MAY 23, 2017
- FC 6305
  - BOTH PARTIES APPEAR, PROVIDE WRITTEN EVIDENCE OF DV
  - DETAILED FINDINGS THAT BOTH ARE PRIMARY AGGRESSORS, AND NO SELF DEFENSE

## MUTUAL ORDER

- IF DVRO REQUESTS ARE HEARD TOGETHER, MUST MAKE DETAILED FINDINGS PER 6305
- MELISSA G.

## NO MUTUAL ORDER

- DVRO REQUESTS HEARD AT DIFFERENT HEARINGS, NO REQUIREMENT FOR APPLICATION OF FC 6305
- CONNESS VS. SATRAM (2004) 122 CAL APP 4<sup>TH</sup> 197

## IN RE BRUNO M (2018) 28 CAL APP 5<sup>TH</sup> 990

- SIGNIFICANT HISTORY OF DV BETWEEN MOM AND DAD
- COURT ADDS CHILDREN AS PROTECTED PERSONS
- DAD NEVER HIT THEM, INAPPROPRIATE PROTECTED PERSONS
- DAD'S ABUSE OF MOM "DISTURBED THE CHILDREN'S PEACE"
- WIC 213.5 (A)

IRMO DAVILA/MEJIA (2019) 29 CAL APP 5<sup>TH</sup> 220



- MOM FAILS TO MAKE SPECIFIC ALLEGATION THAT DAD HELD GUN TO HER HEAD IN THE MOVING DVRO REQUEST
- SHE STATED THAT HE THREATENED TO PHYSICALLY HARM HER
- DAD ON NOTICE OF HER BASES OF PHYSICAL THREAT
- GENERAL NOTICE ENOUGH, DAD HAD MEANINGFUL OPPORTUNITY TO REFUTE

N.T. VS H.T  
(2019) 34  
CAL APP  
5<sup>TH</sup> 595

- DVTRO IN PLACE
- DAD VIOLATES THE DVTRO; T/C DENIES DVRO BECAUSE VIOLATIONS WERE “TECHNICAL”
- WERE NOT TECHNICAL, DISTURBED THE PEACE, WOULD HAVE FORMED A BASIS FOR DVRO STANDING ALONE

MARTINDALE  
VS. OCHOA  
(2018)  
30 CAL APP  
5<sup>TH</sup> 54

- RENEWAL DENIED; MOM LACKED REASONABLE APPREHENSION OF FUTURE ABUSE
- NOT SUBJECTIVE FEAR, BUT A REASONABLE BELIEF
- THE FACTS UNDERLYING THE ISSUANCE OF THE INITIAL DVRO ARE NOT ALONE SUFFICIENT TO MEET THE BURDEN OF PROOF, THE COURT CAN USE ADDITIONAL FACTS FROM THE HEARING ON THE RENEWAL.

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S.Y. VS. SUPERIOR COURT(2018)  
29 CAL APP 5<sup>TH</sup> 324

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JAMIE G. vs.  
H.L. (2018)  
25 CAL APP  
5TH 794

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A white Facebook 'f' logo is centered on the left side, appearing to be viewed through a jagged, dark blue hole in a light blue background with water droplets.

MOLINARO VS.  
MOLINARO (2019)  
33 CAL APP 5<sup>TH</sup>  
824

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27  
**HERRIOTT VS.  
HERRIOTT  
(2019) 33  
CAL APP 5TH  
212**

**•DVRO AND EARO ARE  
DIFFERENT REQUESTS**

**•“DWELLING” DEFINED**



**CASES TO  
KEEP IN MIND**

**RYBOLT VS.  
RILEY (2018)  
20 CAL APP  
5<sup>TH</sup> 864**

- MOM GRANTED DVRO AGAINST DAD
- STANDARD REMAINS REASONABLE APPREHENSION OF FUTURE ABUSE:
- “MORE PROBABLE THAN NOT THAT THERE IS A SUFFICIENT RISK OF FUTURE ABUSE TO FIND THE PROTECTED PARTY’S APPREHENSION IS GENUINE AND REASONABLE LISTER V BOWEN (2013) 215 CAL APP 4<sup>TH</sup> 319

**L.G. VS. M.B. (2018)  
25 CAL APP 5<sup>TH</sup>  
211**

- LITIGATION  
PRIVILEGE  
LIMITATIONS





ANKA V. YEAGER (2019) 31 CAL APP 5TH 1115  
SANCTIONS FOR DISCLOSURE OF CONFIDENTIAL CHILD  
CUSTODY EVALUATION REPORT

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DARRIN VS.  
MILLER (2019)  
32 CAL APP  
5TH 450

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QUESTIONS

