

Navigating Domestic Violence Findings in California Family Law

When a client is served with a temporary restraining order (TRO) in reference to a domestic violence finding, the clock starts immediately. A TRO may immediately limit contact, change living arrangements and affect the person's custody of their children. It is an attorney's role to assess the allegations quickly, prepare for the upcoming hearing and lay out their client's pathways, including how early decisions can shape the case long after the TRO is adjudicated and/or expires.

Many clients enter the process focused on disproving the allegation(s). They may insist that no "violence" occurred, particularly when the case involves allegations of text message communications, monitoring, controlling behavior or other nonphysical conduct. But [California's Domestic Violence Prevention Act](#) (DVPA) defines abuse far more broadly than physical harm. Conduct that does not match a client's everyday understanding of domestic violence may still support a restraining order and, if a qualifying finding is made, trigger significant custody consequences.

The strategy also changes as the case progresses. Before the domestic violence restraining order (DVRO) hearing, the focus may be on evaluating the evidence and considering whether a negotiated resolution is possible. After a domestic violence finding, the focus shifts to strict compliance, appropriate remedial work and addressing the [Family Code § 3044](#) custody presumption. What begins as a restraining order matter can become a long-term exercise in rebuilding the record for the client who is managing the perceived shroud of a domestic violence finding in seeking a different custody arrangement.

This paper outlines the key legal stakes, the strategic framework for navigating the moment a TRO is served and the concrete considerations attorneys should make at the outset of representation, not months down the road when the damage is harder to undo.

The Expanded Definition of Abuse

DVPA defines abuse broadly — well beyond physical harm. Under the DVPA, abuse includes coercive control, disturbing the peace, stalking, harassment and behavior that destroys another person's emotional calm. In [*Parris J. v. Christopher U.*](#), the Second District Court of Appeal rejected the argument that “disturbing the peace” must be evaluated under an objective reasonable-person standard. The relevant question is whether the conduct destroyed the mental or emotional calm of the party seeking protection.

Physical violence (pushing, grabbing or choking) has always been the most straightforward basis for a restraining order. But cases now regularly involve nonphysical conduct, including repeated text messages, intimidating communication patterns, showing up uninvited at a workplace or a child's event, and patterns of conduct the other party experiences as controlling and/or disruptive.

Appellate decisions have reinforced the breadth of that framework. In [*Hatley v. Southard*](#), the Fourth District Court of Appeal held that attempts to control or monitor a spouse's finances, economic resources, movements and access to communications may constitute abuse under the DVPA. *Parris J. v. Christopher U.* similarly confirmed that conduct need not involve physical violence to support a DVRO.

On the other hand, [Family Code § 6340](#) requires a court that denies a DVPA petition to provide a brief statement of its reasons in writing or on the record. A decision stating only “denied” is insufficient.



For attorneys, this means treating any DV allegation as carrying meaningful legal risk, regardless of whether the underlying conduct matches a client's intuitive sense of how domestic violence is defined. Managing that client expectation from the very first meeting is critical.

Fight It or Work Around It?

Why the Latter Should be Considered

When a client faces a credible DV allegation, practitioners should present two clear options with honest assessments of each.

The first path is to contest the allegation and litigate the issue at a restraining order hearing. That path is a legitimate choice, but its costs and risks are significant. Under [Family Code § 6344](#), if the DVRO is granted, the petitioner is entitled to mandatory attorney's fees upon request. The respondent can only recover fees if the court finds the petition was frivolous or brought in bad faith — a threshold that is rarely met, particularly when the court already granted a TRO.

When the case involves strong documentary evidence, such as text messages, photographs or video, counsel should carefully assess whether contesting the request is likely to improve the result or primarily increase the client's fee exposure.

The second path is to pursue a negotiated resolution and begin preparing the client for the custody proceedings that may follow. This approach does not require admitting guilt, but it recognizes that compliance and record-building may better protect the client's long-term interests than continuing to battle the allegations. The goal is to avoid a contested DVRO hearing where there is no control over the outcome. Strategic steps include defining the alleged behavior, beginning remediation efforts immediately and preserving credibility for upcoming custody proceedings.

Attorneys should explain to clients that a DVRO, as issued, is not necessarily permanent and is not intended to be punitive. The DVPA's stated purpose under [Family Code § 6220](#) is to seek resolution of the causes of the violence. That language matters — in court arguments, in pleadings and in the narrative attorneys build on behalf of their clients.



Crafting a Strong Stipulation Strategy



Extending the TRO

Seeking a continuation of the TRO by three to six months allows time for remediation without the permanence of a DVRO. The stipulation should include clear, defined language specifying the alleged conduct, establishing that violations will trigger a new hearing and confirming that the protected party remains fully protected during the period. The restrained party should be advised to comply not just with the letter but with the spirit of every provision. Even a technical violation — driving within the proscribed distance of the protected party's home, for example — will virtually guarantee that the DVRO is issued.



Defining the Conduct

One of the most important and underused tools in drafting the agreement is to consider specifically defining the conduct the order addresses. If the allegations involve a pattern of late-night texts, a client should be willing to acknowledge that pattern and share what they are doing to address it. By creating firm guardrails, the client can demonstrate their genuine efforts of introspection to the court, establishing a baseline against which escalated or new allegations in future hearings may be assessed.

If new allegations arise in later custody proceedings that were never mentioned at the outset, an attorney can argue that those claims appear tactical rather than protective.



Drafting Language to Protect Both Parties

Counsel should also be cautious about what any stipulation does — and does not — accomplish with respect to future proceedings. Specifically, practitioners should flag for clients the unresolved risk around whether a stipulated dismissal of DVRO allegations forecloses those same facts from being raised in subsequent custody and visitation proceedings. The law on this point is unsettled.

Experienced practitioners have raised concerns that even "dismissed with prejudice" language in a DVRO agreement may not bar those same facts from being raised in subsequent custody litigation. No published California appellate decision has definitively resolved this question. Until it is, the safer course is to advise clients that a negotiated DVRO dismissal is unlikely to prevent the underlying facts from resurfacing in custody proceedings.

Structure strategy accordingly, rather than assuming the stipulation provides broader protection than it may actually deliver.

Family Code § 3044: What It Requires and How to Advise Clients

Once a domestic violence finding has been made, California law assumes that giving that parent sole or joint custody would not be in the child's best interests. That assumption generally applies for five years. It can be overcome, but a parent must show more than a good relationship with the child or that time has passed. Attorneys should therefore prepare clients for the possibility that, at least initially, they may not receive the custody arrangement they want, including a 50-50 custody arrangement, unless they can rebut the presumption under [§ 3044](#).

There is a light at the end of the tunnel. A parent can overcome the assumption by meeting the list of requirements under [Family Code § 3020](#). The offending parent must demonstrate:

- Completion of a batterers' intervention program (BIP), if ordered
- Full compliance with all court orders
- Completion of substance abuse counseling, if applicable
- Completion of parenting classes, if applicable
- Compliance with probation or parole, if applicable
- Compliance with the restraining order
- No subsequent acts of domestic violence

Common Mistakes That Undermine § 3044 Compliance

Several patterns repeatedly result in reversed custody orders on appeal. These include:

- **Treating the § 3044 determination as optional.** Courts must address the presumption in every case where a DV finding exists. If the client has a § 3044 finding against them, verify that the court has made express findings on the record.
- **Drafting vague custody and visitation orders.** Orders that fail to specify the exact time, place and manner of custody exchanges create enforcement problems and give the other party room to escalate conflict. Every order should specify pickup and drop-off logistics in detail.
- **Relying on nonstatutory rebuttal factors.** Courts cannot consider factors outside assessing the child's best interest and the seven factors in § 3044 when evaluating whether the presumption has been overcome. Arguments grounded solely on the parent-child relationship, economic stability, or parenting ability will not satisfy the statutory burden.
- **Conditioning custody modification on future events.** Courts cannot make custody orders contingent on things that have not yet happened. This is a reversible error. Counsel should be aware of this limit when negotiating milestone-based custody arrangements.



Building the Compliance Record From Day One

With these mistakes in mind, the most durable strategy in post-finding custody proceedings is to document compliance thoroughly. Courts and evaluators alike respond to specific evidence over generalities: “My client has been punctual at every exchange” is far weaker than a log showing 14 consecutive on-time, incident-free exchanges.

Even before a DVRO hearing is scheduled, practitioners should advise clients to begin remediation steps immediately, typically at their first consultation. Clients should not wait for a court order or the outcome of the DVRO hearing to start therapy, enroll in parenting classes and begin BIP/domestic violence classes. The reason is practical: The BIP alone takes 52 weeks to complete (although there are shorter programs not labeled as a BIP that also address domestic violence) and § 3044 is triggered any time a DV finding is made. When a finding is likely, every week of delay can add a week to the back end of the custody timeline.

By enrolling in individual therapy, clients become proactive in building their own record with documentation of behavioral reflection. Therapy also provides the client with coping mechanisms that reduce the risk of conduct that could violate the DVRO or give rise to new allegations. Parenting classes can help show the client’s active engagement with the child’s well-being, while proactively enrolling in BIP without an order signals authenticity.

It should be noted that rebuttal is not simply a checklist for the accused to complete. Without showing genuine engagement and authentically communicating what they have taken away from their efforts, the client’s lack of effort could be exposed during cross-examination, undermining their credibility.



Creating a Persuasive Argument

It is important to keep in mind that the intent of the DVPA is to prevent abuse, create a sufficient period of separation and allow the parties to seek resolution of the causes of violence. Repeatedly arguing that the result is unfair is unlikely to move the case forward. It also suggests that the client has not meaningfully addressed the behavior at issue or demonstrated improvement.

The stronger approach is to give the court a legally supportable basis for finding that the client's progress and proposed custody arrangement are consistent with California law and the child's best interests. That begins with a well-organized record. Counsel should connect each document, program and example of changed conduct to the applicable § 3044 requirement. Relevant code sections and case authority should then give the court a clear legal basis for granting the requested relief.

The argument should be organized around safety, compliance and rehabilitation.

SAFETY

Safety asks what measures protect the other party and the child. Depending on the case, that may include neutral exchange locations, precise pickup and drop-off procedures, limited communication channels, third-party involvement or other measures designed to reduce conflict.

COMPLIANCE

Compliance asks whether the client has followed every order without exception. Counsel should demonstrate compliance through records rather than broad assurances.

REHABILITATION

Rehabilitation asks whether the client has identified the causes and effects of the conduct and demonstrated meaningful behavioral change. Completing a program is important, but the client should also be able to explain what was learned, how it has been applied and why the change benefits the child.

The resulting argument should be that the client understands the court's concerns, has complied fully, has addressed the behavior and can now demonstrate that the requested custody arrangement is consistent with the child's safety and best interests.

Practitioners should always ask the court to state its reasoning on the record for all § 3044 determinations. Legal errors in this area are reviewed de novo on appeal. If the reasoning is not on the record, it cannot be meaningfully reviewed. Requesting express findings is a simple, low-cost practice that protects appellate options at every stage.

Post-Finding Checklist

Translating these principles into immediate practice means adjusting intake processes and client communication habits now, not after the first contested hearing. Attorneys should:

- At intake, explain both paths — contest or stipulate — with honest assessments of cost, risk and realistic outcomes. Put the fee exposure discussion in writing.
- Begin appropriate remedial work immediately. Therapy, parenting classes and/or BIP enrollment should begin at the first consultation, regardless of whether the DVRO has been issued or whether those steps have been ordered.
- In any stipulation, define the alleged conduct specifically. Narrow and specific language clarifies the scope of the agreement and establishes a credible baseline for future proceedings.
- Build a § 3044 compliance map for every case. Chart the presumption, identify which rebuttal factors apply and track completion milestones from the start of representation.
- Draft custody and visitation orders with exact terms for time, place and manner of exchanges. Vague orders are a liability.
- Request express § 3044 findings on the record in every case. Do not assume the court will address it without prompting.
- Set realistic timeline expectations at intake. From TRO to a meaningful custody modification, clients should understand they are likely looking at a minimum of six months to a year. Being clear about that timeline from the outset helps preserve trust and prevents clients from mistaking delay for inaction.

A domestic violence finding in California may immediately narrow a client's options, but it does not eliminate the opportunity for effective advocacy. By focusing on precise orders, documented compliance, meaningful rehabilitation and the child's individual needs, attorneys can build a stronger record for each stage that follows.

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