

## SAN MATEO COUNTY – DVPA HEARING SCRIPT

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This is the Domestic Violence Prevention Calendar of the San Mateo Superior Court. Before we get started, the court would like to explain the law of restraining orders and what will happen here today.

When the court refers to the **Petitioner** or the **Protected Person**, that means the person who is asking for the restraining order to limit the other person's conduct. When the court refers to the **Respondent** or the **Restrained Person**, that means the person whose conduct is limited by the restraining order.

### TYPES OF RESTRAINING ORDERS

The common restraining orders granted by this court are:

#### **Personal Conduct / No Contact Orders:**

These orders prohibit the restrained person from *communicating* with the protected party, or from *committing certain acts* against the protected party.

The restrained person may not harass, attack, strike, threaten, assault, hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate, or block movements of the protected person. This means no pushing, shoving, throwing things, swearing at, or insulting the protected person.

If the restraining order says no contact, this means the restrained person can have *no direct contact* with the protected person – no phone calls, no text messages, no mail or email, and no internet contact through Facebook or other social media. It also means *no indirect contact* through friends or relatives, or using others to send messages.

#### **Stay-Away Orders:**

These orders prohibit the restrained person from being physically near the protected party. The typical distance is 100 yards, or about the length of one football field. The stay-away order can also include the protected person's home, car, job, school, child care, or other locations.

#### **Move-Out Orders:**

These orders prohibit the restrained person from living in the home they previously shared with the protected party.

#### **Other Orders:**

Today, the court may also issue temporary orders regarding custody, visitation, child support, and possession of property. However, it may also be necessary for you to file another lawsuit, such as a petition for divorce or for paternity, in order to obtain permanent orders regarding these matters.

### DURATION

If the court is convinced that there has been domestic violence as defined by the law, it may issue permanent restraining orders that may last up to five years from today's date.

## RESTRICTIONS ON RESTRAINED PERSONS

If the court issues a restraining order against you today, the following laws apply to you:

### Firearms:

You cannot own, possess, purchase, or receive a firearm or ammunition while the restraining order is in effect. You must immediately surrender any firearms you currently own or possess.<sup>1</sup>

### Penalties for Violation:

*It is a crime to violate a restraining order.* Each violation is punishable by up to one year in jail, a fine of up to \$1,000, or both. Each violation is treated as a separate offense. For example, if you are ordered to not telephone someone, one telephone call is one crime, two calls are two crimes, etc. You can be arrested, prosecuted, and sent to jail for violating the restraining order in any way.<sup>2</sup>

### Courtroom Conduct:

If the court has already issued a temporary restraining order against you, *the order remains in effect while you are in the courtroom.* Do not speak to the protected person, or make faces or gestures to them in the courtroom or hallway, or outside the courthouse. If you do, you may be in violation of the temporary restraining order and you can be arrested.

## CUSTODY AND VISITATION

Domestic violence hurts children. Under **Family Code Section 3044**, if you and the protected person have children together, the issuance of a restraining order may prevent you from having legal or physical custody of your children unless the court finds that it is in the children's best interest. The issuance of a restraining order may also be grounds for the court to restrict when and how often you see your child, and whether your visitation needs to be supervised.

The court may be referring your case to **Family Court Services** so that a Child Custody Recommending Counselor can help you mediate and reach an agreement on custody and visitation. Sometimes, with the help of a Counselor, you and the other parent will be able to decide what kind of parenting plan is best for your children. If you cannot agree, the Counselor will make recommendations and the court will make the final decision.

## RIGHTS OF RESTRAINED AND PROTECTED PERSONS

### Pending Criminal Cases:

If you are the defendant in a pending criminal case arising from the same set of facts as today's case, you have a **Fifth Amendment** right against self-incrimination. This means you have the right not to say anything in this case that can be used against you in your criminal case. When the court calls your case, please let the court know immediately if there are related criminal charges pending.

### Continuances:

If you are the respondent and today is your first hearing, you are entitled to one continuance for a reasonable period of time. This means that you will come back to court on another day. If you do not have an attorney and want more time to hire one, it is the policy of this court to grant one continuance for that purpose.

If you are the petitioner and the respondent has filed but did not serve you with their response at least two days ago, you are entitled to one continuance.

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<sup>1</sup> Family Code § 6304.

<sup>2</sup> Family Code § 6304.

If a continuance is granted, the temporary restraining orders may be extended until the next hearing date.

### FINAL INSTRUCTIONS

When the court calls your case, please step forward to the table. The petitioner, the person who is asking for a restraining order, will stand at the table on the left of the courtroom. The respondent, the person whose conduct is limited by a restraining order, will stand on the right.

The court has a few rules you must follow. This is a formal court hearing. The court reporter's job is to make an official record of today's proceedings. Every word said in court needs to be recorded so it is very important that everyone be heard clearly. Please do not interrupt or talk over one another. If more than one person talks at a time, the court reporter cannot write down what you are saying. If you talk too fast or speak too quietly, the court may ask you to slow down or speak up.

#### ***Elkins/Reifler:***

The cases on today's calendar are each scheduled to be heard in twenty minutes or less. The court has read all of the papers timely filed with the court, so there is no need to repeat what you have already written.

Under the law, you have the right to offer additional testimony and witnesses. If you wish to exercise this right, you must tell the court as soon as your case is called. Your case will then either be rescheduled for another day when there is more time to hear your testimony and/or witnesses, or it will be put over to the end of today's calendar if time allows.

If you do not tell the court that you wish to exercise this right, then it is implied that you have agreed to proceed based on the papers you have filed. The court will then exercise its discretion (under a case called *Reifler*) to receive only that additional live testimony that it deems necessary in order to make an informed decision in your case.

#### **Commissioners:**

Your case today will be heard by a Court Commissioner. If you object to your case being heard by a Court Commissioner, you must immediately state your objection when your case is called. If you do not state your objection before the hearing, then you will be deemed to have agreed to a Court Commissioner acting as a Temporary Judge in your case.

#### **After the Hearing:**

If you are granted an order today, it is very important that it be put in writing. Your orders will not be enforceable unless they are written and filed with the court. If you do not have an attorney, there are representatives from the **Family Law Facilitator's Office** in the courtroom today who will help prepare your orders. The court will sign the orders and a clerk will file them. *Please do not leave the courtroom without a copy of your order.*