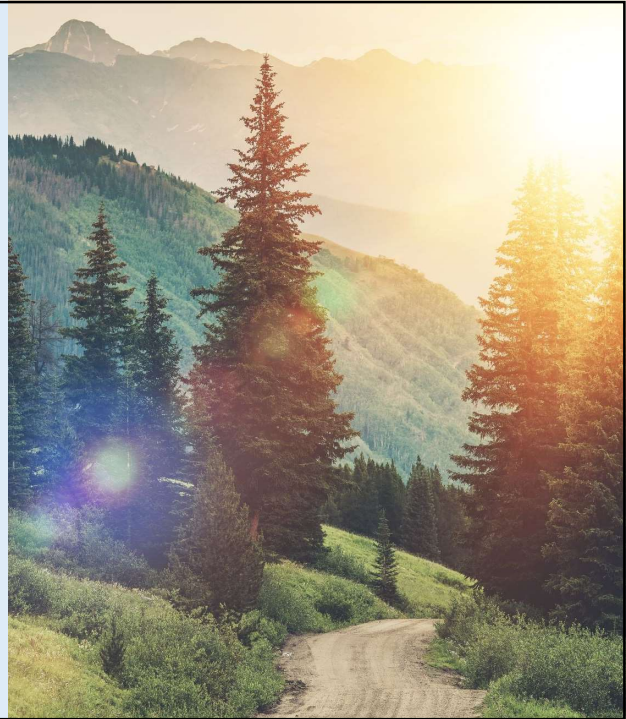


## Elder Abuse Restraining Orders

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CONTRA COSTA  
SENIOR LEGAL SERVICES

We provide free legal  
services exclusively to  
Contra Costa County  
residents age 60 and over

### Legal Services

- Elder abuse
- Preservation of housing (tenant's rights, eviction defense)
- Consumer issues (debt, scams, etc.)
- Advance planning (advance healthcare directives, powers of attorney)
- Public benefits issues (SSI, SSA, SSDI, Medi-Cal, Medicare, etc.)

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## Key acronyms:

- **EARO** – Elder Abuse Restraining Order
- **DVRO** – Domestic Violence Restraining Order
- **CHRO** – Civil Harassment Restraining Order
- **TRO** – Temporary Restraining Order
- **RO** – Restraining Order
- **EADACPA** – Elder Abuse and Dependent Adult Civil Protection Act

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## Types of Restraining Orders

- Elder Abuse and Dependent Adult Restraining Order
- Domestic Violence Restraining Order
  - Requires a special relationship between the parties
- Civil Harassment Restraining Order
  - For parties who do not have a close relationship like a neighbor or roommate
- Criminal Protective Order
- Emergency Protective Order

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A large orange circle with the text "Risk factors for elder abuse" inside it.

### Risk factors for elder abuse

- Social isolation
- Loneliness
- Embarrassment
- Desire for independence
- Mental and physical impairments
  - Dementia

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### Who experiences elder abuse?

- Seniors across all socio-economic groups, cultures, and races
- Women are 66% more likely to be affected
- Elders who lack capacity
- In almost 60% of elder abuse and neglect incidents, the abuser is a family member

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Elder Abuse in the time of COVID

- Older adults may be at high risk for abuse because of measures to protect them from COVID-19
  - Social isolation
  - Financial hardship
  - Heightened reliance on family caregivers
  - Increased stress in the household
  - Risk of neglect as caregivers have less contact with seniors
  - Increased burdens on caregivers

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## Key Statute

**Elder Abuse and Dependent  
Adult Civil Protection Act**  
Welfare and Institutions Code  
sections 15600-15675

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## Elder Abuse Restraining Orders

### Who qualifies?

- 65 years or older
- Dependent adult



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## What is a dependent adult?

(a) Means a person, regardless of whether the person lives independently, **between the ages of 18 and 64 years** who resides in this state and who has **physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights**, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

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## What is a dependent adult?

(b) “Dependent Adult” includes **any person between the ages of 18 and 64 years** who is **admitted as an inpatient to a 24-hour health facility**, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

Must **need assistance with many activities of daily living** (i.e. cooking, bathing, toileting, banking, paying bills...). Estate of Shinkle (2002) 97 Cal.App.4<sup>th</sup> 990.

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## What is a dependent adult?

- “While the definition of ‘dependent adult’ is not limited to persons living in such facilities, it reasonably should extend only to persons whose disabilities and needs are comparable to persons who are compelled to live in nursing homes and other health care facilities.” (Unpublished) Jay v. Kubly (2008) (San Francisco County Super. Ct.) WL 77572.
- “Allegations that pretrial detainee...was mentally ill and psychotic, and that he had mental limitations that restricted his ability to carry out normal activities or to protect his rights, were insufficient to plead that detainee was a dependent adult.” Cabral v. County of Glenn (2009) 624 F.Supp.2d 1184.

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## Burden of Proof

- EARO – preponderance of the evidence
  - In Bookout v. Nielsen the court rejected the argument that the heightened clear and convincing standard applicable in civil harassment cases should be applied to claims under W&IC §15657.03. (2007) 155 Cal.App.4<sup>th</sup> 1131, 1138.
- DVRO – preponderance of the evidence
- CHRO – clear and convincing evidence

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## What is required to get an EARO?

Welfare & Institutions Code, §15657.03(c):

- An order may be issued, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, with reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

“Reasonable proof of past acts” can be provided by way of declaration in the request (EA-100), and by testimony in court.

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## What is required to get an EARO?

### No threat of future harm required

- Any protective order issued under EADACPA may be issued based on evidence of past abuse, without any particularized showing that wrongful acts will continue or be repeated. *Gdowski v. Gdowski* (2009) 175 Cal.App.4<sup>th</sup> 128, 137.

### No special relationship necessary

- “The Elder Abuse Act authorizes a trial court to issue a restraining order against any individual who has engaged in abusive conduct, as defined by statute, toward a person age 65 or older, regardless of the relationship between the alleged abuser and victim.” *Darrin v. Miller* (2019) 32 Cal.App. 5<sup>th</sup> 450, 452.

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## Types of Abuse

### Physical Abuse

- Inappropriate restraint
- Deprivation of food/water
- Medication misuse: over-medicating or administering drugs for a purpose not authorized by a physician (e.g., as punishment or restraint)

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## Types of Abuse

- Sexual abuse
- Mental or emotional abuse
  - Includes harassment and intimidation that causes emotional distress or fear
- Neglect or abandonment
- Isolation

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## Types of Abuse

### Deprivation of care



- Deprivation of care by a care custodian or caregiver of services or goods needed to avoid harm and suffering
- You may need to prove caregiver
- The statute defines care custodian broadly as people who work in a huge range of facilities or agencies or as other people who care for elders or dependent adults

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## Types of Abuse

### Financial Abuse



When a person takes, secretes, appropriates, obtains, or retains the property of an elder/dependent adult for a wrongful use, or with intent to defraud – or assists in any of the above – if the person knew or should have known that his conduct is likely to be harmful to the elder/dependent adult

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## Types of Abuse

- Abduction
- Other treatment that results in physical harm, pain or mental suffering

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## Signs of Elder Abuse

- Stops participating in activities the elder once enjoyed
- Looks messy or unkempt
- Trouble sleeping
- Unexplained weight loss
- Becomes withdrawn or acts agitated or violent
- Displays signs of trauma, such as rocking back and forth
- Has unexplained bruises, burns, cuts, scars

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## Signs of Elder Abuse

- Broken eyeglasses/frames, shows other signs of punishment or restraint
- Develops bed sores or other preventable condition
- Lacks medical aides (glasses, hearing aid, medication)
- Hazardous, unclean, or unsafe living conditions
- Receives eviction notice for unpaid rent, notice of late mortgage, or home eviction
- Shows signs of insufficient care or unpaid bills despite adequate financial resources

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## WHO COMMITS ELDER ABUSE?

- Family members
  - Adult children
- Caregivers
- “Friends”
- Financial advisors or lawyers
- Strangers
- Scam artists

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## Elder Abuse in Contra Costa County

- **During 2019-2020**
  - 5423 elder abuse allegations were made to APS
  - Financial exploitation was the second most common allegation, with 1168 allegations
  - Neglect was the third most common allegation, with 606 allegations
  - Psychological/mental abuse was the fourth most common allegation, with 545 allegations made

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## Who can seek an EARO?

- Elder or dependent adult
- Conservator or a trustee of the elder or dependent adult
- Attorney-in-fact of an elder or dependent adult who acts within the authority of a power of attorney
- Person appointed as a guardian ad litem for the elder or dependent adult
- Another person authorized to seek the relief

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## Who can seek an EARO?

### Adult protective services (APS) if:

- The elder or dependent adult suffered abuse and has an impaired ability to appreciate/understand the circumstances that place the elder or dependent adult at risk of harm
- The elder or dependent adult provided written authorization to a county APS agency to act on that person's behalf

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## What can an EARO do for a client?

### Personal Conduct Orders

Orders not to:

- Contact, either directly or indirectly
- Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person

### Stay Away Orders

Stay a certain distance away from:

- The elder or dependent adult
- Other protected persons
- The home, job/workplace, or vehicle of the elder or dependent adult
- Other (can be religious building, other family's home...)

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## What can an EARO do for a client?

### Move-Out Order

Ask the court to order the restrained person to move out of a particular residence

### Requirements

- The restrained person assaulted the protected person in the residence  
AND
- The protected person has a right to live in the residence

“We believe a court is empowered to order the restrained party to stay away and/or move out from the protected party’s abode/residence/dwelling.” *Herriott v. Herriott* (2019) 33 Cal.App.5<sup>th</sup> 212, 226.

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# What can an EARO do for a client?

## Move-Out Order

### Considerations

- Sometimes clients get EARO but judge does not grant move-out order
- Difficult to get move-out order for verbal abuse only or minor abuse
- Consider discussion of eviction as alternative to EARO with move-out order
- Easier to get if there is physical abuse, threat of injury, or some other type of violent behavior; harder to get for verbal abuse alone

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## What can an EARO do for a client?

- Grant possession and protection of animals
- Additional orders that the client wants



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## Disadvantages of an EARO



- Cannot recover money (though attorney's fees are available)
- Order for Counseling or Anger Management
  - Challenge of enforcement

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## EARO Forms



- EA-100: *Request for Elder or Dependent Adult Abuse Restraining Orders*
- EA-109: *Notice of Court Hearing*
- EA-110: *Temporary Restraining Order*
- EA-120: *Response to Request*
- EA-120-INFO: *Response Info Form*
- EA-130: *Elder of Dependent Adult Abuse Restraining Order After Hearing*

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## Restraining Order Process

### Step 1: Request TRO:

- Requesting Party submits *Request for EARO* to Judge for review in Department 57 (Martinez).
- Judge denies/grants *TRO* & schedules hearing date (3 weeks).
- No fees to file.

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## Restraining Order Process

### Step 2: Personal Service:

- Requesting Party must have the Responding Party personally served by someone 18 years or older with a copy of *TRO* & *Response to TRO* at **least 5 days** before the hearing.
- Server must fill out & sign *Proof of Service*. Requesting Party must file *Proof of Service* before the hearing
  - Sheriff will serve for free, has their own Proof of Service, and will enforce moveout orders
  - Service can be an issue
- Responding Party may file a *Response*.

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# Restraining Order Process

## Step 3: Hearing:

- Judge can proceed with RO hearing only if personal service was completed.
- Order can be up to five years.
- Respondent is entitled to one continuance.
- EA-130: *Restraining Order After Hearing*

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## Restraining Order Process



### Step 3: Hearing (continued...):

- If personal service was not yet completed, Judge will continue hearing and reissue TRO upon request.
- If Requesting Party is a no-show for the hearing, TRO expires that day.

### Burden of Proof:

Preponderance of the evidence

(Tipping of the scales / more likely than not)

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## Renewal

- Can be requested within the 3 months before date of expiration (calendar it!)
- No showing of new abuse necessary
- Orders can be made for five years or permanently.
- Once it has expired, no renewal is possible! A new application must be supported with evidence of new abuse or ongoing risk.

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## Settling an EARO Case



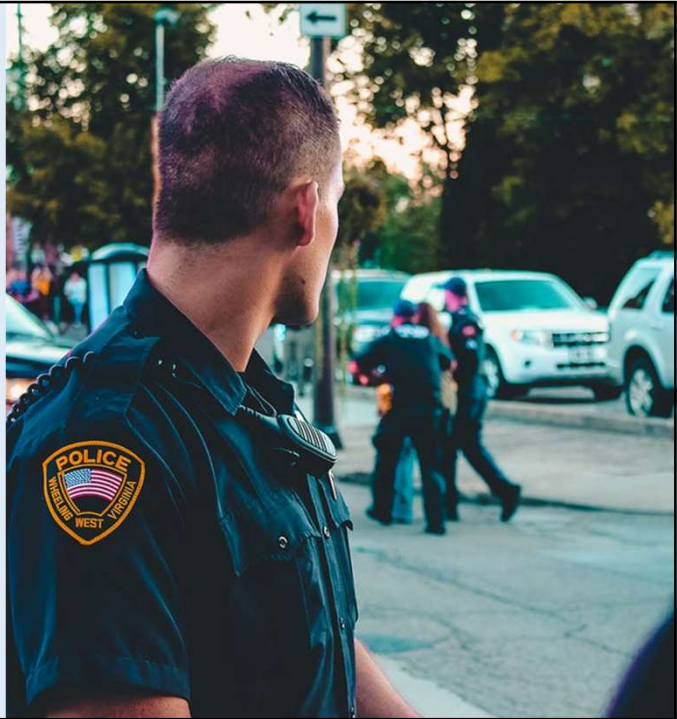
### Considerations

- Restrained party may not be in a position to settle (mental illness, substance use disorder, disengaged)
- Client may be frightened of going to court
- For cases involving physical violence settlement is often not appropriate

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## Additional Considerations

- Abandoned property
  - Refer to California Civil Code §§ 1980-1991
- Enforcement challenges
  - Police enforce elder abuse and dependent adult restraining orders
  - Concerns about police and safety



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## Local Tips for EARO Cases

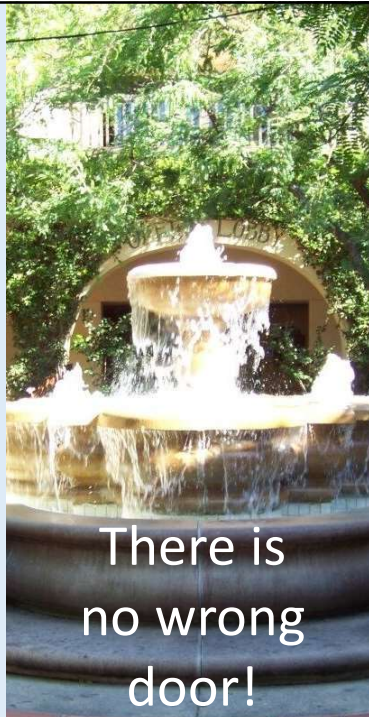
- Be prepared for varying styles for hearing. Different judges have different preferences and levels of knowledge of elder abuse.
  - Some judges want a lot of testimony, some will accept what is written in the declaration.
  - Some judges are more concerned about evidence rules than others.
- Elder Abuse Restraining Orders are almost always heard at the same time as Civil Harassment Restraining Orders, which have a higher burden of proof (clear and convincing). Make sure the judge knows the elder abuse standard and definition.
- Try to prep your client as much as possible, because it's often the case that no other evidence is available beyond their testimony.

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## Additional Tips

- Restrained parties usually appear pro per
- Restrained parties sometimes do not appear
- For clients with disabilities, request that those clients appear by phone
- Judges want to see that recent abuse has occurred
  - At my organization we focus on elder abuse that has happened in the past 3 months

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## Contra Costa Elder Abuse Prevention Project

- |                                      |                                      |
|--------------------------------------|--------------------------------------|
| • Family Justice Center              | • Contra Costa Behavioral Health     |
| • Contra Costa Senior Legal Services | • Senior Peer Counseling             |
| • District Attorney                  | • Ombudsman Services of Contra Costa |
| • STAND!                             | • Meals on Wheels Diablo Region      |
| • Adult Protective Services          |                                      |

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