

# CONTRA COSTA LAWYER

Volume 37, Number 4 | July 2024

**The Restraining  
Order Issue**



# A 30-Year Track Record You Can Trust



*Judicate West is proud to feature our Northern California neutrals.*



Hon. David W. Abbott, Ret.



Melissa Blair Aliotti, Esq.



Alan R. Berkowitz, Esq.



Sarah F. Burke, Esq.



Hon. David de Alba, Ret.



Douglas deVries, Esq.



Rachel K. Ehrlich, Esq.



Susan G. Feder, Esq.



Rebecca Grey, Esq.



Jeffrey A. Harper, Esq.



Hon. Judy Hersher, Ret.



Hon. Russell L. Hom, Ret.



Robert Jacobs, Esq.



Diana B. Kruze, Esq.



Hon. Kendall J. Newman, Ret.



Robert J. O'Hair, Esq.



Jeffery Owensby, Esq.



David L. Perrault, Esq.



David Sarnoff, Esq.



Daniel I. Spector, Esq.



Hon. Donald J. Sullivan, Ret.



Lauren E. Tate, Esq.



Bradley S. Thomas, Esq.



Peter Thompson, Esq.



Hon. Emily E. Vasquez, Ret.



Russ J. Wunderli, Esq.

Learn More About  
Our Experienced Neutrals



JudicateWest.com  
(510) 463-8731

**2024 BOARD OF DIRECTORS**

**David Pearson** President  
**Sutter Selleck** President-Elect  
**Michael Pierson** Secretary  
**Patanisha Davis Pierson** Treasurer  
**David Erb** Past President

Punita Bhasin Jonathan Lee  
 Ariel Brownell Lee Terry Leoni  
 Dean Christopherson Ericka McKenna  
 Ann Harding Battin Dorian Peters  
 Ray Robinson

**CCCBA EXECUTIVE DIRECTOR**

**Jody Iorns** | 925.370.2548 | jiorns@cccba.org  
 CCCBA main office 925.686.6900 | www.cccba.org

**Barbara Arsedo** Carole Lucido  
 LRIS & Moderate Means Director Communications Director  
**Jennifer Comages** Sarah Marin  
 Membership Director Sections & Events Manager  
**Noemi Espinoza** Sara Chakri  
 Finance & Operations Manager Development &  
 Education Manager  
**Drew Iorns**  
 Admin. & Operations Specialist

**CONTRA COSTA LAWYER**

**CO-EDITORS EDITORIAL BOARD**  
 Lorraine Walsh Alice Cheng

Corrine Bielejeski Rachel Margolis  
 Chapman

**BOARD LIAISON**  
 Ray Robinson Dorian Peters

**COURT LIAISON** Marta Vanegas  
 Kate Bieker James Wu

**DESIGN**  
 Carole Lucido  
 925.370.2542

**ADVERTISING**  
 Carole Lucido  
 925.370.2542

The Contra Costa Lawyer (ISSN 1063-4444) is published six times in 2024 by the Contra Costa County Bar Association (CCCBA), 2300 Clayton Road, Suite 520, Concord, CA 94520. Annual subscription of \$25 is included in the membership dues. Periodical postage paid at Concord, CA and additional mailing offices. POSTMASTER: send address change to the Contra Costa Lawyer, 2300 Clayton Road, Suite 520, Concord, CA 94520. The Lawyer welcomes and encourages articles and letters from readers. Please send them to [contracostalawyer@cccba.org](mailto:contracostalawyer@cccba.org). The CCCBA reserves the right to edit articles and letters sent in for publication. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the CCCBA or the Board of Directors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

# CONTRA COSTA LAWYER

Volume 37, Number 4 – July 2024

The official publication of the Contra Costa County Bar Association



## FEATURES

**INSIDE: Restraining Orders: Everything You Need to Know,**  
 by Alice P. Cheng and Rachel Margolis Chapman . . . . . 4

**The Nuts and Bolts of Restraining Orders,**  
 by Rachel Margolis Chapman . . . . . 6

**Family Code Section 6309: Key points, practice tips and resources,**  
 by Hon. Anita Santos (Ret.) . . . . . 10

**Safeguarding California’s Elderly and Dependent Adults through  
 Protective Proceedings and Protective Orders,**  
 by Alyssa Daatio . . . . . 14

**Do I Need All That Protection: Intersection Between the Penal and  
 Family Codes,** by Danielle Jones . . . . . 18

**MCLE SELF STUDY: Electronic Harassment and California Restraining  
 Orders: A Guide for Contra Costa Attorneys,** by Jo-Anna Nieves. 23

**Lawyers as Part of the Solution,** by Nat Oleas and Sharon Sobotta,  
 Family Justice Center . . . . . 27

## NEWS & UPDATES

17 . . . PHOTOS: Judicial Induction of Judge Melissa O’Connell

20 . . PHOTOS: Celebrating Juneteenth

22 . . New 2024 Deposition Series: Learning by Doing

26 . . Cause Related Marketing

30 . . Classified Advertising

30 . . Advertiser Index

INSIDE

# Restraining Orders

## Everything You Need to Know

by Alice P. Cheng and Rachel Margolis Chapman



The July 2024 issue highlights the different types of civil restraining orders available in California. Though many practitioners are familiar with Domestic Violence Restraining Orders (DVROs) and Civil Harassment Restraining Orders (CHROs), the magazine’s Editorial Board also wished to bring attention to the other types of restraining orders available to our clients and community. We were able to acquire filing statistics from the Superior Court in Contra Costa County pertaining to the various types of restraining orders. As the data below shows, DVROs are the most frequently requested, encompassing nearly 70 percent of all the types, with CHROs encompassing 26 percent. Unfortunately, statistics are not maintained for the disposition across case types.

The Editorial Board also hopes that this issue will provide Contra Costa County attorneys with information on how to help their clients and members of our community, when situations arise where a restraining order may be an appropriate remedy. First, Rachel Margolis Chapman has prepared a chart of the types of civil restraining orders available, who may ask for it, elements/definition, burden of proof to be met, duration, authorizing statutes, and how to obtain them in Contra Costa. This chart is a keeper! We encourage you to save it in your files.

Restraining Orders Filed in Contra Costa County						
	2020	2021	2022	2023	Through 4/24/24	Total
Domestic Violence	2,712	3,211	3,024	2,746	543	12,236
Civil Harassment	988	1,074	1,166	1,096	317	4,641
Elder and Dependent Adult Abuse	140	170	162	118	32	622
Gun Violence	4	9	10	6	3	32
Workplace Violence	29	44	63	77	20	233
Private Postsecondary School Violence	-	-	-	-	-	-
<b>Total</b>	<b>3,873</b>	<b>4,508</b>	<b>4,425</b>	<b>4,043</b>	<b>915</b>	<b>17,764</b>

The Contra Costa Family Justice Center (FJC) is a one-stop shop serving families affected by domestic violence, sexual assault, child abuse, elder abuse and human trafficking. If you know someone who is a victim of interpersonal violence and they are unsure of what to do, you can start by having them contact a navigator at the FJC. Natalie Oleas, the Central Center’s Director, and a client, Sharon Sobotta, share Sharon’s experience with domestic violence and how the FJC helped her in her time of need. Of note, the FJC is seeking donations and volunteers from our legal community, and would love to hear from you.

Judge Anita Santos (Ret.), now a neutral with ADR Services, Inc., provides a quick primer on the new Family Code section 6309, effective January 2024. Her article discusses the legislative intent, the discretion that the court retains to control the proceedings and includes key points, practice tips and resources.

Criminal defense and restraining order attorney Jo-Anna Nieves discusses electronic harassment and special issues that arise, such as venue and jurisdiction. How has the law kept up with our increasingly mobile society, where data is more available than ever? ▶

Trusts and estates litigation attorney Alyssa Daatio explains the tools available to protect elderly and dependent adults, which include conservatorships and remedies against abuse, neglect, isolation, or exploitation.

Finally, criminal defense and family law attorney, Danielle Jones highlights the differences between criminal protective orders and domestic violence restraining orders and potential consequences or tactics that may be applicable.

While gun violence and workplace violence restraining orders are not specifically covered by articles in this issue, it is important to know of their existence as a possible remedy to seek, should the unthinkable arise. The 2014 Isla Vista shooting, resulting in the deaths of six people and injury of 14 others near the UC Santa Barbara campus, helped prompt the passage of the Gun Violence Restraining Order law. Friends and family had feared the shooter was dangerous, but law enforcement was unable to remove firearms from his possession. California became the first state to pass a law authorizing such a restraining order in 2014.<sup>1</sup>

Workplace violence restraining order is another area of law that continues to develop. Currently, employers are only able to seek protection to protect against violence, threats of violence or stalking. Effective January 1, 2025, employers will also be able to seek protection for an employee being harassed by an individual. In the past, the harassed individual could only pursue a restraining order on their own. "Harassment" is defined as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." The course of conduct must "be that which would cause a reasonable person to

suffer substantial emotional distress, and must actually cause substantial emotional distress." The courts may not issue restraining orders for actions "that are constitutionally protected, protected by the National Labor Relations Act ... or otherwise protected by Section 527.3 or any other provision of law." As of July 1, 2024, most employers must also establish, implement, and maintain an effective workplace violence prevention plan.<sup>2</sup>

Restraining orders are a rich area of law in which many practitioners engage. Even if you are not among those ranks, it behooves you to have a working knowledge of the information contained in this issue. We hope that you will find it educational and useful.

1. Tomsich, E.A., Pear, V.A., Schleimer, J.P. et al. *The origins of California's gun violence restraining order law: a case study using Kingdon's multiple streams framework.* BMC Public Health 23, 1275 (2023). <https://doi.org/10.1186/s12889-023-16043-6>

2. Sen. Bill No. 553 (2023-2024 Reg. Sess.)

**Alice P. Cheng**, Managing Attorney at Candelaria LLP, is a Certified Family Law Specialist who handles family law litigation throughout the Bay Area. She also advises clients in mediation, acts as minor's counsel, and as parenting coordinator and referee. She serves as President Elect of the CCCBA's Family Law Section Board and is a member of this magazine's Editorial Board. She is also the immediate past president of Alameda County Bar Association and on the Earl Warren American Inn of Court Executive Board.

**Rachel Margolis Chapman** practices criminal defense and recently joined Mirador Law (formerly Bonjour, Thorman, Burns & Dahm) as a Trial Attorney. She is a proud "Double Trojan," having earned both her undergraduate degree and law degree from the University of Southern California. Rachel is an active member of the Conflict Program, and currently serves on the Criminal Section Board, the Women's Section Board, and the Editorial Board of the Contra Costa County Bar Association.

**We Take the Calls, You Get the Clients**

**CCCBA LAWYER REFERRAL & INFORMATION SERVICE**

Serving Contra Costa County since 1978

**Let's Build Your Practice Together**

Each year we receive over 9,000 calls through our Lawyer Referral & Information line from potential clients seeking referral to an attorney. Registered attorneys receive referrals on a rotating basis for panels they choose.

**Contra Costa County Bar Association**

Register today on our website, or call Barbara Arsedo or Jennifer Comages to sign up. 925-686-6900

# The Nuts and Bolts of Restraining Orders

by Rachel Margolis Chapman

- Domestic Violence
- Civil Harassment
- Elder and Dependent Adult Abuse
- Gun Violence
- Workplace Violence
- Private Postsecondary School Violence

The following charts were prepared using information compiled from the California Courts online Self-Help Guide, (maintained by the Judicial Branch of California), the Contra Costa County Court website, Judicial Council forms, and this author’s independent legal research to fill in the gaps. Many practitioners

are unaware of the differing civil restraining orders that are available, and that may be relevant to their practice. Reference these charts to quickly learn the nuts and bolts of each type of civil restraining order, including how to obtain each order in Contra Costa County.

## Domestic Violence Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Spouse or former spouse; cohabitant or former cohabitant as defined in Fam. Code 6209; a person with a past or present dating relationship; a person with whom the respondent has had a child; any other person related by consanguinity or affinity within the second degree (blood relatives, in-laws, and step-relationships)	Only need to prove a past act of abuse (likelihood of future harm is not required), as defined by the DVPA. Abuse can be spoken, written, physical, sexual, or emotional; it includes threats to harm you or your family, stalking, harassment, destroying personal property, repeated contact, and “disturbing the peace” (“to destroy someone’s mental or emotional calm”; includes coercive control)	Preponderance of the evidence	Up to 5 years; may be renewed for 5+ additional years or permanently.	DVPA (Fam. Code § 6200 et. Seq.)	<p>All DVRO requests may be submitted as a PDF to <a href="mailto:familylawemergency@contracosta.courts.ca.gov">familylawemergency@contracosta.courts.ca.gov</a>.</p> <p>If Petitioner lives in West County, is not married to Respondent, and does not have children with Respondent, then you may submit your request to the George D. Carroll Courthouse, 100 37th St, Richmond, in person or drop box from 8 am to 4 pm, or via mail.</p> <p>If Petitioner lives in East County, is not married to Respondent, and does not have children with Respondent, then you may submit your request to the Richard E. Arnason Justice Center, 1000 Center Dr., Pittsburg, in person or drop box from 8 am to 4 pm, or via mail.</p> <p>All other cases (involving shared children or married parties, or residents of Central County) must be submitted at Spinetta Family Law Center, 751 Pine St., Martinez, in person or drop box from 8 am to 4 pm, or via mail.</p>

# Civil Harassment Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Anyone, including neighbors or other unrelated persons	The moving party must prove: (1) an ongoing "course of conduct" which involves following, stalking, or harassment (in person, by phone, or email), (2) a credible threat of violence which would cause apprehension in a reasonable person, and, (3) that said conduct actually caused the person seeking protection to suffer substantial emotional distress.	Clear and convincing evidence	Up to 5 years; may be renewed for 5 additional years.	CCP § 527.6	Wakefield Taylor Courthouse, Dept. 57, Room 102 725 Court St., Martinez  Mon – Fri between 9 am and 10:30 am

Continued on page 8 



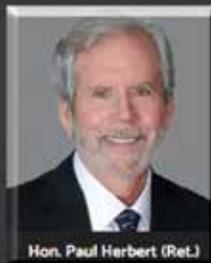
ADR Services, Inc. Proudly Introduces  
the Newest Neutrals to our Distinguished Panel



Steven S. Abern, Esq.



Hon. Evelio M. Grillo (Ret.)



Hon. Paul Herbert (Ret.)



Hon. Leslie G. Landau (Ret.)



Peter J. Linn, Esq.



Hon. Victoria Wood (Ret.)

For information and scheduling, please contact Joanna Barron at [Joanna@adrservices.com](mailto:Joanna@adrservices.com)

(415) 772-0900

# Gun Violence Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Law enforcement officer or agency; immediate family member or anyone who regularly lives with them or lived with them in the last 6 months; employer; employee if regular contact and worked together at least 1 year and has their employer's permission; employee or teacher of school attended in the last 6 months with permission from school administration or staff supervisor	<p>Can stop someone from having, owning, or buying any firearms, firearm parts, ammunition, or magazines</p> <p>Must prove: (1) the subject poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine, and (2) a GVRO is necessary because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the subject</p>	Clear and convincing evidence	Up to 5 years; may be renewed for up to 5 additional years.	PC § 18175	<p>Wakefield Taylor Courthouse, Dept. 57, Room 102 725 Court St., Martinez</p> <p>Mon – Fri between 9 am and 10:30 am</p> <p>May also be submitted by email as a PDF to <a href="mailto:civilgunviolence@contracosta.ca.gov">civilgunviolence@contracosta.ca.gov</a></p>

# Elder & Dependent Adult Abuse Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Someone who is 65 or older or a dependent adult can ask for protection for themselves; others can ask for an RO to protect an elder or dependent adult if they are their conservator or trustee, their attorney or guardian ad litem, or a representative of the county adult protective services agency	Can stop someone who is abusing or neglecting an elderly or dependent adult; abuse can be emotional, physical, or financial.	Preponderance of the evidence	Up to 5 years; may be renewed for 5 additional years or permanently.	W&I § 15657.03	<p>Wakefield Taylor Courthouse, Dept. 57, Room 102 725 Court St., Martinez</p> <p>Mon – Fri between 9 am and 10:30 am</p>

# Workplace Violence Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Only an employer	An employer can get an RO against a person who has been violent, threatened violence, or stalked 1 or more employees	Clear and convincing evidence	Up to 3 years; may be renewed for up to 3 additional years.	CCP § 527.8	Wakefield Taylor Courthouse, Dept. 57, Room 102 725 Court St., Martinez  Mon – Fri between 9 am and 10:30 am

# Private Postsecondary School Violence Restraining Orders

Who Can Ask for it?	Elements/ Definitions	Burden of proof	Duration	Authorizing Statutes	How to Obtain in Contra Costa County
Only a chief administration officer (principal, president, or highest-ranking official), or a school safety officer from a private postsecondary educational institution	Can be granted against someone who has been violent or made a credible threat of violence against 1 or more students; requires the threat be for act that would likely take place on campus	Clear and convincing evidence	Up to 3 years; may be renewed for up to 3 additional years.	CCP § 527.85	Wakefield Taylor Courthouse, Dept. 57, Room 102 725 Court St., Martinez  Mon – Fri between 9 am and 10:30 am



# Family Code Section 6309: Key points, practice tips, and resources

by Hon. Anita Santos (Ret.), Assisted by AI Co-Pilot



# LITIGATION ABUSE

The California Legislature recently enacted Family Code Section 6309, under the Domestic Violence Prevention Act (DVPA).

After declaring DV is an “urgent public safety and public health crisis,” citing statistics and studies, the legislature enacted Family Code Section 6309<sup>1</sup> to remedy what it described as “litigation abuse.” The legislature reasoned that domestic violence survivors who seek protection often face ongoing abuse in the form of litigation abuse.

It defined “litigation abuse as the use of legal or bureaucratic procedures by abusive partners to continue to attack, harass, intimidate, coercively control, or maintain contact with their former partners through the litigation system” [FC § 6309(a)] and concluded that “this can lead to severe consequences for survivors, including economic hardship and psychological harm.”

Section 6309 introduces the concept of **pre-hearing discovery** to streamline any domestic violence restraining order discovery, “intended to expedite the adjudication of requests for restraining orders and prevent abusive litigation tactics.”

To put it mildly, there are concerns about the potential for revictimization through discovery abuse, while others believe that Section 6309 protects against such risks. The law aims to strike a balance between preventing litigation abuse and ensuring each party has the necessary information for their case.

Family Code Section 6309(c)(1) provides that the court may grant a request for discovery only upon a showing of good cause. The court’s interpretation and application of the “good cause” requirement is the obvious point of contention and potential legal challenge. Section 6309 requires the court to consider several factors, including the importance and relevance of the information sought, the likelihood of obtaining the information through other methods, the potential delay in the hearing, and the potential for inducing trauma.

### Key points of Family Code § 6309:

1. Limited civil discovery is permissible in DVPA proceedings. [FC § 6309(e) & (f)]
2. Discovery is not “of right” but may be permitted “only for good cause shown.”<sup>2</sup>
3. A party may seek such discovery at the evidentiary hearing, but not before, and can be requested orally or in writing.<sup>3</sup>
4. The court has vast discretion whether to permit such discovery and the terms and conditions under which it may be pursued.<sup>4</sup>

5. Nothing in Section 6309 precludes or inhibits counsel from meeting and conferring in advance of the hearing about discovery nor to agreeing to permit such discovery.
6. Among the tools available to the court is to start the hearing, receive a portion of the evidence (e.g., the Petitioner’s case in chief) and then suspend the hearing for a short duration to permit appropriate discovery.<sup>5</sup>
7. If granted, the discovery is limited to the “least intrusive methods and the minimum number of items reasonably necessary to secure the requested information.”<sup>6</sup>
8. The abuse survivor (the language used in the code) is entitled to a copy of the police report.<sup>7</sup>

### Types of Discovery that May be Permitted by the Court:

1. **Interrogatories:** In the context of a domestic violence case, interrogatories are likely to ask the respondent to list all instances of alleged abuse or to explain their relationship with the petitioner.
2. **Requests for Admission:** The requestor might ask the respondent to admit that they sent threatening text messages on a specific date.
3. **Requests for Production of Documents:** In a domestic violence case, this could include medical records, police reports, or text message histories.
4. **Depositions:** One party may depose the other to gather more information about the alleged abuse.

Continued on page 12 ►

# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

+



**Contra Costa County  
Bar Association**

“I love LawPay! I’m not sure why I waited so long to get it set up.”

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



**22% increase in cash flow with online payments**



**Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**



**62% of bills sent online are paid in 24 hours**

YOUR FIRM LOGO HERE

---

**Trust Payment  
IOLTA Deposit**

New Case Reference

\*\*\*\* \* 9995      \*\*\*

**TOTAL: \$1,500.00**

**VISA**



**AM  
EX**



POWERED BY  
**LAWPAY**

eCheck

**DISCOVER**

**PAY ATTORNEY**

**PAYMENT  
RECEIVED**



Get started at  
**lawpay.com/cccba**  
**866-730-4140**

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.

# Family Code Section 6309

Continued from page 12

5. **Financial Discovery:** Reminder, if support is requested as part of the DVPA action, limited financial discovery is already required (the FL-150 and requisite attachments).

Remember, the stated goal of prehearing discovery under FC § 6309 is to expedite the adjudication of requests for restraining orders and prevent abusive litigation tactics.

## Tips and Strategies:

1. Meet and confer regarding discovery!
2. Prepare a detailed and concise discovery plan/opposition—individualized and fact specific that includes an offer of proof supporting the request.
3. Attach proposed, customized discovery that is precise and targeted - do not use boilerplate forms or language.
4. If a deposition is sought, explain why written discovery requests are insufficient and outline the areas of inquiry, proposing the least intrusive means (e.g., virtual forum, time limit).
5. Articulate how you will minimize the delay needed to obtain the discovery.

## California DVPA Resources:

1. **Judges Guide to Domestic Violence Restraining Orders (2023)**<sup>8</sup> This guide provides a comprehensive overview of restraining orders, including those under the DVPA. It covers everything from the definition of abuse to jurisdiction and venue considerations.

2. **Case-Annotated Compendium of California Domestic Violence Laws (2023)**<sup>9</sup> This compendium provides an annually updated list of about 600 DV-related laws in California, including case annotations.

3. Judge Lawrence P. Riff, Los Angeles County Superior Court, **A New DVRO Law Allows Limited Civil Discovery but with Careful Checks and Balances (2024)** *Daily Journal*<sup>10</sup>

This article provides a comprehensive discussion on the practical aspects of Family Code Section 6309.

Setting aside the debate regarding the intent versus the result of this legislation, it is here and we are bound to implement our best practices. Let's do so!

1. <https://casetext.com/statute/california-codes/california-family-code/division-10-prevention-of-domestic-violence/part-4-protective-orders-and-other-domestic-violence-prevention-orders/chapter-1-general-provisions/>

[section-6309-domestic-violence-restraining-orders-prehearing-discovery](https://www.courts.ca.gov/documents/DVRO-benchguide.pdf)

2. [FC § 6309 (c)(1)]
3. [FC § 6309(c)]
4. [FC § 6309(d)]
5. [FC § 6309(e)]
6. [FC § 6309(f)]
7. [FC § 6309(g)]
8. <https://www.courts.ca.gov/documents/DVRO-benchguide.pdf>
9. <https://foaplav.org/wp-content/uploads/2023/09/2023-Case-Annotated-Final-1.pdf>
10. <https://www.dailyjournal.com/articles/376516-a-new-dvro-law-allows-limited-civil-discovery-but-with-careful-checks-and-balances>



**Hon. Anita Santos (Ret.)**  
joined ADR Services, Inc. as a neutral after 10 years in the judiciary as a Commissioner, then Judge in Contra Costa County, presiding over diverse family law cases including domestic violence matters.

Prior to her elevation, she was a sole practitioner in an active and successful family law practice. Case Manager: [katyteam@adrservices.com](mailto:katyteam@adrservices.com)

**Have a Case that Can Benefit from Mediation, but the Client Can't Afford it?**

**We Can Help**

~~CONFLICT~~  
MEDIATION



Our **new Moderate Means Mediation Service** was designed to help meet the gap in the need for mediation at affordable rates.

Our highly trained mediators address issues in many areas of civil law to include but not limited to:

- real estate/unlawful detainers
- construction defects
- insurance claims
- tort injury
- money disputes
- probate
- and much more

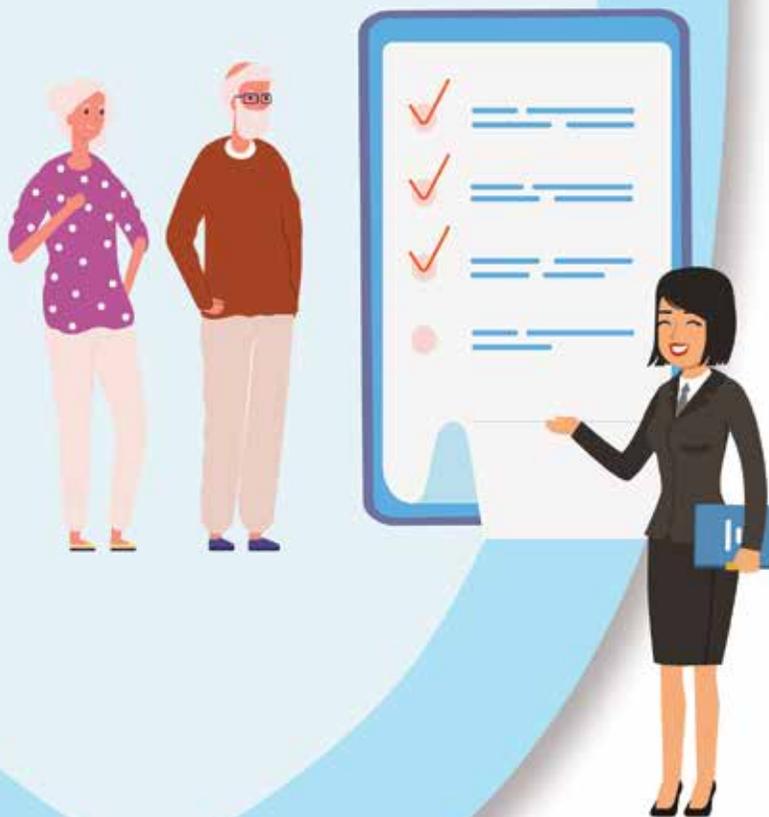
**The CONGRESS of Neutrals**

**(925) 937-3008**

**3478 Buskirk Ave., Suite 1000, Pleasant Hill, CA 94523**  
[www.congressofneutrals.org](http://www.congressofneutrals.org) | [contact@congressofneutrals.org](mailto:contact@congressofneutrals.org)

# Safeguarding California's Elderly and Dependent Adults Through Protective Proceedings and Protective Orders: Conservatorships, Elder Abuse, and Dependent Adult Restraining Orders

By Alyssa Daatio



As legal practitioners, we are often faced with representing or safeguarding the rights of vulnerable communities. With the state's aging population, instances of exploitation of vulnerable adults have steadily increased. To combat this, protective proceedings such as conservatorships and restraining orders are helpful tools to protect elderly and dependent adults from abuse and exploitation.

## Conservatorships

The very nature of a conservatorship is to provide protection and support for individuals who are unable to protect their own interests due to incapacity, whether it be due to old age, illness, or disability. A conservator can be appointed for an individual who is substantially unable to provide for his or her personal needs like physical health, food, clothing, or shelter, to meet their financial needs, or to resist undue influence or fraud.

The court may appoint a conservator of the person to make decisions regarding the conservatee's personal care and a conservator of the estate to manage their financial affairs. The conservator is tasked with ensuring the conservatee's welfare and managing their finances in their best interests. A petitioner must also demonstrate that there are no less restrictive alternatives available through showing various attempts to assist the incapacitated individual by other means, whether formally or informally.

Often times, conservatorships start when a family member or friend learns or witnesses an elderly or dependent adult falling victim to various financial scams or exploitation, in addition to other physical abuse or neglect. When those circumstances are present, there can be a need for both a conservatorship and an elder or dependent adult abuse restraining order. ▶

## Elder or Dependent Adult Abuse Restraining Orders

Elder Abuse or Dependent Adult Restraining Orders are governed by the Welfare and Institutions Code. Like conservatorships, these orders are also used to protect older or dependent adults from abuse, neglect, or exploitation. Elder or dependent adult abuse encompasses physical abuse, neglect, financial abuse, abandonment, and other forms of mistreatment. Elder or dependent adult abuse restraining orders can be sought to address any of these forms of abuse, providing immediate relief and protection for vulnerable individuals. These protections can also extend to additional family members or household members.

Under the Welfare and Institutions Code, an Elder is an adult sixty-five (65) years of age or older. A dependent adult is an adult between the ages of eighteen (18) to sixty-four (64) who has a physical or mental limitation that restricts their ability to carry out normal activities.

“Abuse” encompasses physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or mental suffering, the deprivation by a care custodian of goods and services that are necessary to avoid harm or suffering, or financial abuse.

The elder or dependent adult can file a petition for a protective order. Alternatively, a petition may be brought on behalf of the elder or dependent adult. Currently, the Welfare and Institutions Code states the following individuals can bring a petition on behalf of an elder or dependent adult: (1) a conservator of the person and/or estate (2) trustee (3) agent acting under the authority of a valid power of attorney, (4) a court-appointed guardian ad litem, or (5) another person legally recognized to seek such relief.

## Common Examples of Elder Abuse or Dependent Adult Abuse

1. **Physical Abuse:** Inflicting physical harm, such as hitting, kicking, or restraining the elder or dependent adult.
2. **Neglect:** Failing to provide adequate food, shelter, medical care, or assistance with personal hygiene. This can also include mismanagement of necessary medications.
3. **Financial Abuse/Exploitation:** Misusing or stealing money, property, or assets for personal gain. This can also include convincing an elderly or dependent adult to participate in certain transactions, such as transferring title to property.
4. **Emotional Abuse:** Subjecting the elder to verbal insults, threats, intimidation, or other forms of psychological harm.
5. **Abandonment:** Deserting the elderly or dependent adult without providing necessary care or support, leaving them vulnerable and isolated.

## Types of Orders

1. **Stay-Away Orders**  
Stay-away orders will require the restrained person to stay a specific distance away from the protected individual, the protected individual’s home, workplace, or vehicle.
2. **Move Out Orders**  
Move-Out Orders, also known as “residence exclusion orders” will require the restrained person to move out of the elder or dependent adult’s place of residence. Move-Out Orders will not be issued in situations where there is only financial abuse, without the presence of physical or emotional abuse. Evidence must be presented that

the elder or the dependent adult has the right to possession of the premises, that they will suffer physical or emotional harm if the other person does not leave, and that the other person assaulted or threatened the elder or dependent adult. The court cannot order the other person to move out if they are on the title or lease with other people besides the elder or dependent adult.

3. **Personal Conduct Orders**  
Personal Conduct Orders order the restrained individual to not engage in the following activities: physical abuse, financial abuse, attack, molest, threaten, hit, harass, or destroy the personal property of the restrained individual. Additionally, this can include no contact orders to prevent the restrained individual from contacting the protected individual in any way.

## Conclusion

Conservatorships and Elder or Dependent Adult Abuse Restraining Orders serve as vital tools in safeguarding California’s elderly and dependent adults from abuse. Conservatorships offer essential support for those unable to protect their interests due to incapacity, ensuring decisions regarding personal care and finances are made in their best interests.

Similarly, Elder or Dependent Adult Abuse Restraining Orders provide immediate protection from various forms of mistreatment, including physical, emotional, and financial abuse, through legal recourse. These orders enforce necessary boundaries and prohibit abusive behavior, effectively protecting vulnerable members of the community.

As legal practitioners, it is essential to recognize the significance of these tools in upholding the dignity and

[Continued on page 16](#) ►

---

## Safeguarding California's Elderly and Dependent Adults

---

Continued from page 15

---

rights of our clients. In continuing to employ these strategies, we affirm our commitment to advocating for the well-being of all members of our community.



*Alyssa V. Daatio is an Attorney at Candelaria LLP, where she practices in all areas of Trusts and Estates, including estate planning, trust administration, probate administrations, conservatorships, and guardianships. She has also been a CEB Update Author for California's Conservatorship Practice since 2021.*

## Make 2024 Your Year of Engagement with CCCBA

In this CCCBA's 90th Anniversary year, CCCBA is welcoming members interested in volunteering on:

- Membership and Social Committee
- Diversity, Equity & Inclusion Committee
- Food From the Bar Committee & Comedy Night
- CCCBA's Lawyer Referral & Information Service - We can generate leads for you!

Questions? Visit the CCCBA website and search for CCCBA committees, or for the Lawyer Referral Service, call Barbara Arsedo, LRIS & Moderate Means Director at (925) 370-2544. Engage with us today! We are looking for you!



BARR & YOUNG  
ATTORNEYS

Is pleased to announce the promotion of  
**Graham D. Douds as the newest partner**  
and the renaming of our firm

**B&D** | **Barr & Douds**  
ATTORNEYS

318-C Diablo Road • Danville, CA 94526-3443

**(925) 314-9999**

[www.BarrDouds.com](http://www.BarrDouds.com)

# The Induction of Judge Melissa O'Connell

On Friday, April 26, Judge Melissa O'Connell had her official induction ceremony before the superior court sitting en banc and her family and friends. In the photos below: Her three children helped her don her judicial robe; Judge Colleen Gleason administered the Oath of Office; and CCCBA Board President David Pearson presented her with the gavel. A reception followed the ceremony. Congratulations and welcome to the bench Judge O'Connell.



**PRACTICAL.**  
**PRINCIPLED.**  
**PASSIONATE.**

- Trust and Estate Litigation
- Conservatorships
- Fiduciary Representation

- Joseph Morrill, Founder
- G. Jeff Coons, Partner
- Ariana M. Flynn, Attorney
- Peter A. Singh, Attorney
- Mia Polo, Attorney
- Vahishta Falahati, Of Counsel

201 N. Civic Dr., Suite 230  
Walnut Creek, CA 94596

P: 925-322-8615  
F: 925-357-3151



**MORRILL LAW**  
Trust and Estate Litigation

Morrill.Law

# Do I Need All That Protection?

## Intersection Between the Penal and Family Codes

By: Danielle Jones

### The Difference

A common conundrum among parties to a family law dispute is whether they need to file an application for a Domestic Violence Restraining Order (DVRO) if they have already received a Criminal Protective Order (CPO). The answer depends on what protection you need.

A CPO is an order that is issued by the criminal courts, usually following allegations of a crime of violence against the person – not just domestic violence. It is the most restrictive restraining order issued by the courts and is an enforceable order. As opposed to an oral “stay away order,” it is authorized by the California Penal Code and issued upon request by a victim or the prosecuting agency. If the CPO is issued pending trial or plea, there is no termination date and it remains in effect unless the court makes an affirmative finding that it is terminated. If the CPO is issued upon conviction, the order will state on its face the expiration date -- which could be up to ten years (Pen. Code § 136.2(i)). A CPO covers more general issues (no contact, stay away, etc.) whereas a DVRO can provide orders for issues specific to family court – for example, a DVRO provides protection with respect to debts, custody, and property, which are commonly requested and not expressly covered in a CPO.

A DVRO is issued following a hearing or sometimes a stipulation between the parties. This is also an enforceable order. In granting a DVRO after hearing, the court can only issue protection for up to five years. However, a party can request to renew their DVRO at any time within three months before the expiration of their order; if renewed, the judge would extend the DVRO at least five years, and can even make it permanent (one that never expires without further court order). Family Code § 6345(a) was amended effective January 1, 2024 to give the court discretion to extend a renewal for any length of time beyond five years. Many people attempt to get creative and stipulate to a “no-HAM” family court order (meaning an order not to abuse by harassing, annoying or molesting) similar to a DVRO. These “no-HAM” orders are an attempt to get the benefits of a restraining order without entering the order in CLETS – the California Law Enforcement Telecommunications System. However, the law expressly prohibits the court from signing such orders.

### Consequences in Real Time

As indicated above, a CPO is issued by the criminal court, so it is not automatically part of the family law court file, unless a party makes such request and/or attaches it to their pleading, or enters it as an exhibit. A DVRO is an order made by the family court. As such, when a court issues a DVRO, it is thereby making a finding that one party perpetrated domestic violence. This is critical when child custody and visitation are at issue in the case because it triggers a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. (Fam. Code § 3044.) However, it is a rebuttable presumption, and the code expressly states what the court may consider in determining whether the presumption has been rebutted.

Particular to relationships involving parents, easily overlooked is the section on the CPO that provides for an exception to the restrictions - adherence to the family, juvenile or probate court’s orders for the safe exchange of children and court-ordered visitation. If such an order already exists, then it can be incorporated by reference, or the court may check the box that incorporates any order issued after the date the CPO is signed. There is no justifiable excuse to violate a CPO, so it is absolutely critical to review the order before leaving court to ensure one of the two boxes is checked, otherwise you will have to bring a motion to modify the CPO.

If the criminal court issues a CPO for a crime of domestic violence, that can be used as a basis for the family court to make a finding of domestic violence, but the proper steps must be taken. It would be prudent to advise a client to seek family law counsel to do so.

### Can You Record the Restrained Party?

This question has become increasingly prevalent as we grow as a more technologically advanced society because everything is recorded. Fight at school? Already distributed on the socials. Home security? Camera in every room, at every angle. Isn’t California a dual consent state? What that means is both parties to a conversation that either party expects to be confidential must know and consent to being recorded during the conversation.

So, what does confidential mean? Look at the circumstances surrounding the conversation: does either party have a reasonable expectation that the conversation could be overheard or recorded? Are they in public?

What is consent? Look at the express words of the parties, or if no direct

words are spoken, then examine their conduct and behavior after learning that the other party was recording. Did they keep talking?

Does the restraining order allow the protected party to record an otherwise confidential conversation? Is the recording being made to preserve evidence of the abuse for which the protected party is seeking protection? Is the recording being made to document a crime expressly enumerated in Penal Code 633.5? These are all exceptions to the otherwise required dual consent. If no exception exists, then a secretly recorded conversation may violate the Penal Code or may have limited use as evidence in a legal proceeding.

### Novel Issue: What About Collateral Estoppel/Res Judicata, between the CPO and DVRO?

Collateral Estoppel/Res Judicata, or “issue preclusion,” prevents the same issue from being litigated multiple times. Specifically, where a jury finds that the defendant committed specific domestic violence acts, can that issue be relitigated in family court in the context of DVRO proceedings? While there is a long-established rule that denies preclusion in a civil proceeding for a prior acquittal in a criminal proceeding, there appears to be no clear-cut answer to this question, and not much case law on the issue – pun intended.

Collateral estoppel should apply (i) after there is a final adjudication, (ii) of an identical issue, (iii) actually litigated and necessarily decided in the first suit, and (iv) asserted against the same party (or someone in privity with that party). It will apply even if, in the second suit, there is a different cause of action raised. Once determined that all four elements are satisfied, the court must then determine whether it would be contrary to

Continued on page 20 ▶

## Intersection Between Penal and Family Codes

Continued from page 19

the public policy of the doctrine to apply same.

Suppose you have a situation where a jury has found a defendant guilty of domestic violence. The victim then requests a DVRO as well. Should the family court allow DVRO litigation to proceed?

Assuming all four elements of collateral estoppel are satisfied, which they often would be, there are a variety of reasons why a party

would want to raise this issue, and why a family court would allow it – a desire not to be stuck in unnecessary litigation, waste time, or incur potentially exorbitant costs and attorney’s fees (on both sides). However, as previously discussed, a DVRO can include terms that a CPO cannot, such as payment of debts and child custody. Thus, while the issue of a past act of abuse may be dispositive in many cases by a conviction for domestic violence, it does not determine all issues before a judge presiding over a DVRO matter.



Lastly, but certainly not least, regardless of whether a party obtains a CPO, DVRO, or both, one fact remains true regardless of the order (or orders) in place: they are enforceable, and any violation of such orders can result in criminal charges and jail time. The DVRO forms have had a lot of updates over recent years; read the fine print so you can carefully advise your clients!

*Danielle A. Jones is an attorney at Hendrix-Smith & Jones, APC, practicing family law, criminal defense, and minors’ counsel in Contra Costa and Solano counties. Her firm has offices in Martinez and Danville. Contact her at (925) 725-2252; email [dani@hsjlaw.com](mailto:dani@hsjlaw.com)*

# CELEBRATING JUNETEENTH



Thank you to the organizers of this event pictured above, Tanya Brown, Judge Ayana Young and attorney and Brentwood City Councilwoman Pa’tanisha Pierson. CCCBA’s first Juneteenth celebration was a tremendous success and a day of profound significance in our nation’s history, celebrating freedom and resilience. Be sure to join us next year for even more festivities!



Tanya Brown with Big Al Lopez



West African dancers from Bronze Girl Productions.



Neil Giles and Commissioner Jill Lifter



**LAWYERS'  
MUTUAL**  
INSURANCE COMPANY

# A CORNERSTONE FOR NEW LAWYERS: STRONG START PROGRAM

**Year one policy premium only \$500.**

Our Strong Start Program is an easy to apply for program designed to provide coverage to solo practitioners who have been licensed for thirty six months or less.

Lawyers' Mutual leverages our strength and experience to support you, eliminating some of the risk associated with starting a new practice.

Key points about the Strong Start Program\*:

- Limits of liability \$100,000 per claim / \$300,000 in the aggregate.
- Cyber coverage endorsement at no charge.
- \$50,000 Claims Expense Allowance outside limits included.
- 20% discount for members of five consecutive years in the Strong Start Program converting to our Standard rating system.
- Financing available over nine monthly installments.

Become a member now for instant free access to the following benefits:



Lawyer-to-Lawyer hotline



Legal Research System



Continuing Legal Education

Protect your practice. Protect your clients. Protect your future.

[www.lawyersmutual.com](http://www.lawyersmutual.com)

*\*Terms and conditions apply.*

*Our strength is your insurance*



# Depositions 2024 - Learning by Doing

This multi-part series will allow you to practice taking depositions, with feedback from seasoned veterans. The series will cover everything from mastering the admonitions, to advanced matters, such as taking the depositions of the expert witness.

This practicum will feature lectures followed by the opportunity for you to conduct actual mock depositions in the presence of very experienced attorneys. You will be provided feedback tailored specifically to your questioning and approach. Registrations will be limited to ensure individualized attention.

## PROGRAM DETAILS:

- **LECTURES** via Zoom | REGISTER [www.cccba.org/attorney-events](http://www.cccba.org/attorney-events)
- **PRACTICUM** in person, *space is limited*. To attend Practicum, you must have attended the Lecture | REGISTER by contacting Sarah Marin [smarin@cccba.org](mailto:smarin@cccba.org)

## PRICING:

- **ALL 3 Lectures and Practicums:** \$450 members / \$625 nonmembers (*must be taken together*)
- **Individual Lecture PLUS corresponding Practicum:** \$175 members / \$225 nonmembers (*must be taken together*)
- **Lectures only:** \$55 members / \$75 nonmembers

1

**August 6  
LECTURE**

5:30 pm - 7:00 pm  
*1 hour General MCLE credit*

**August 20  
PRACTICUM**

5:30 pm - 7:30 pm  
*1.5 hours General MCLE credit*

Learn the important basics that are a part of EVERY deposition an attorney will take. Topics include: deposition notices (what to include and how to go over it with the deponent); timing of deponents; preparing an outline; introductory matters to incorporate in your questioning; specific questions to use; and, exhausting a witness' knowledge.

2

**August 27  
LECTURE**

5:30 pm - 7:00 pm  
*1 hour General MCLE credit*

**September 10  
PRACTICUM**

5:30 pm - 7:30 pm  
*1.5 hours General MCLE credit*

This session will provide a deeper dive into foundational aspects of depositions. The lecture will include topics such as: defending a deposition; use of exhibits; making objections and dealing with them when made by opposing counsel; and locking in admissions.

3

**September 17  
LECTURE**

5:30 pm - 7:00 pm  
*1 hour General MCLE credit*

**October 1  
PRACTICUM**

5:30 pm - 7:30 pm  
*1.5 hours General MCLE credit*

We will look at taking depositions at the very highest level. You will learn to be a master of the art and science of taking a deposition. The lecture will include topics such as deposing the corporate representative and deposing an expert witness.

**Questions?** Contact Sarah Marin, CCCBA Section and Events Manager, [smarin@cccba.org](mailto:smarin@cccba.org) or (925) 849-8849

*The Contra Costa County Bar Association certifies that this activity has been approved for 1 to 1.5 hours of General MCLE credit per session by the State Bar of California, Provider #393.*

# Electronic Harassment and California Restraining Orders: A Guide for Contra Costa County Attorneys

by Jo-Anna Nieves



The digital revolution has fundamentally reshaped human interaction. While the internet offers undeniable benefits for communication and social connection, it has also opened a Pandora's box of novel harassment tactics. Today, unwanted advances and malicious behavior can transcend physical boundaries, manifesting as a barrage of harassing emails, defamatory social media posts, and even online impersonation. These acts of electronic harassment can have profound consequences for victims, causing emotional distress, reputational damage, and a pervasive sense of insecurity.

For attorneys practicing in Contra Costa County, understanding the legal landscape of electronic harassment and civil restraining orders is paramount.

## Statutory Framework for Defining Harassment

California Code of Civil Procedure section 527.6 provides the statutory framework for civil harassment restraining orders. For electronic harassment to qualify under this section, it must fall within the legal definition of harassment. This definition encompasses a wide range of behaviors, including:

[Continued on page 24](#) ►

# Electronic Harassment

Continued from page 23

- **Unwanted contact:** This includes a continuous bombardment of emails, text messages, or social media messages despite clear requests to stop.
- **Threats:** Electronic communication can be used to convey threats of violence, property damage, or reputational harm. These threats, even if veiled, can cause significant distress and fear.
- **Stalking:** The Internet offers avenues for online stalking, including monitoring someone's social media activity, tracking someone's actions online, hacking into the target's devices.
- **Impersonation:** Creating fake

online profiles to pose as or to defame someone constitutes an actionable form of electronic harassment.

- **Doxing:** This practice involves publicly revealing private or identifying information about someone online, often with the intent to cause them harm.

Similarly, Family Code section 6320 enjoins harassment and any of the above behavior by a respondent may support an application for a domestic violence restraining order.

Attorneys have ethical obligations to their clients, including competence in their representation. Electronic harassment often intersects with various areas of law, such as family law, criminal law and privacy law. In today's digital age, competence includes understanding the implications of electronic harassment and being able to effectively address it within the legal system.

## Williams v. Superior Court: Clarifying Venue for Electronic Harassment

*Williams v. Superior Court* (2021) 71 Cal.App.5th 101 sheds light on venue for electronic harassment cases. Here, the plaintiff sought a civil harassment restraining order in Contra Costa County against a non-resident defendant who engaged in electronic harassment via phone calls and emails. Plaintiff alleged that the harassment caused emotional distress and physical ailments. The issue arose when the defendant challenged the venue, arguing that the filing should occur in her county of residence (Alameda County) and not in Contra Costa.

Plaintiff maintained that the conduct was an injury to person under the general venue statute in CCP section 395 and the Judicial Council forms (CH-100) provided a venue checkbox option that stated "I was harassed by the person [against whom an order is sought] in this county." The trial court maintained that the Judicial Council knowingly provided the venue checkbox as it did because it thought its words conveyed a correct basis for venue.

The Court of Appeal clarified that venue is generally proper only in the county of the defendant's residence and the right to have it tried elsewhere is an exception the Plaintiff must demonstrate – such as injury to person or personal property. The court held that the Plaintiff's allegations that the electronic harassment caused physical ailments was not a claim for "injury to person" because the claim of physical injury had no definite *situs* – depending where he read the offensive emails or listened to the harassing phone calls, he could have claimed any county is where the injury occurred, which is an insufficient basis to establish *situs* of injury to person. The Defendant was entitled to move her matter to Alameda County.

**THE BRAY LAW FIRM LLP**

| TRUST AND ESTATE ADMINISTRATION AND LITIGATION | PROBATE

| CONSERVATORSHIP ESTABLISHMENT AND ADMINISTRATION

| FIDUCIARY REPRESENTATION AND COURT ACCOUNTINGS

| ESTATE PLANNING

FREE CASE EVALUATIONS FOR REFERRING ATTORNEYS

OLIVER W. BRAY\* | MANAGING PARTNER  
MONA NIA | PARTNER  
LUCILE K. CAIN | ASSOCIATE

736 FERRY STREET | MARTINEZ, CA 94553  
WWW.BRAYATTORNEYS.COM  
**925.228.2550**

\*CERTIFIED SPECIALIST IN ESTATE PLANNING, TRUST AND PROBATE LAW – STATE BAR OF CALIFORNIA BOARD OF LEGAL SPECIALIZATION

OVER 35 YEARS IN PRACTICE

## **Hogue v. Hogue: Expanding Jurisdiction for Electronic Harassment under the DVPA**

Comparatively, *Hogue v. Hogue* (2017) 16 Cal App 5th 833, a domestic violence restraining order matter, established a crucial precedent for victims of electronic harassment that disturbs their peace as defined by the Domestic Violence Prevention Act (“DVPA”). *Hogue* involved a woman (Plaintiff) who sought a restraining order against her estranged husband (Defendant) residing in Georgia. The harassment centered around acts of physical abuse that occurred in Georgia and a video of a simulated suicide sent to Plaintiff after she moved back to California. The Defendant challenged the California court’s jurisdiction due to his non-residency.

The Court of Appeal had to assess whether Defendant’s conduct, occurring outside of California, caused effects within California that were of an exceptional nature subject to specific regulation in the state. The Court of Appeal ultimately determined that the sheer existence of the Domestic Violence Prevention Act indicated that California found conduct related thereto subject to special regulation and, the act of purposefully sending a video of a mock suicide to Plaintiff in California, is indisputably conduct that would disturb Plaintiff’s peace of mind within the meaning of the DVPA. (See also *In re: Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483.)

California has a strong interest in protecting its residents from abuses. Electronic communication sent from out of state to someone within the state, that would otherwise trigger a violation of the DVPA, would fall under jurisdictional purview of California. Where the effects of the harassment are felt in California and specifically regulated, the state has

a legitimate interest in ensuring the safety of its residents.

However, note that such an extension of personal jurisdiction may not be provided to other types of restraining orders, and requires the court to engage in a fact-intensive analysis to determine whether the exercise of jurisdiction over Respondent would be constitutional. In *ViaView v. Retzlaff* (2016) 1 Cal.App.5th 198, 216, in an action by a website operator in California seeking a workplace violence restraining order against a critic of a website, the court found that evidence that the critic, who resided in Texas, posted defamatory threats on website and on social media platforms was not sufficient to create the minimum contacts necessary to establish specific personal jurisdiction. The rationale was that there was no evidence that threats were aimed at a California audience, that significant number of California residents saw them, or that social media platforms were targeted to California.

## **Practical Guidance for Attorneys Representing Victims of Electronic Harassment**

Electronic harassment, although prevalent and persisting, has sparked nuanced rulings concerning jurisdiction and venue that must remain top of mind for those petitioning for and defending against restraining order requests. It is crucial for attorneys representing victims of electronic harassment seeking civil harassment restraining orders to equip themselves with the right tools and strategies. Here are some key considerations:

- **Jurisdiction and Venue:** Understanding the jurisdictional and venue rules and filing in the appropriate forum will preserve client, attorney, and judicial resources.

- **Client Interview and Assessment:** Meet with Client to gather information about the electronic harassment they experienced. Document the nature of the harassment, including specific incidents, manner of delivery, methods used by the perpetrator, and any resulting harm or emotional distress.
- **Evidence Gathering:** Work with client to collect evidence of the electronic harassment, including emails, text messages, social media posts, online comments and any other relevant communications. Ensure that the evidence is properly preserved and documented to maintain its integrity for use in court. Additionally, it may be necessary to issue subpoenas to social media platforms or other agencies to obtain user information or electronically stored evidence.
- **Documentation and Timeline:** Create a detailed timeline of the electronic harassment incidents, including dates, times and descriptions of each incident. Organize supporting documentation, such as screenshots or printed copies of harassing messages, to corroborate the timeline.
- **Expert Witnesses:** In some cases, it may be beneficial to consult with expert witnesses, such as forensic computer analysts to provide expertise on technical aspects of the electronic harassment.
- **Legal Strategy:** Develop a legal strategy tailored to the specific circumstances of the case, considering the client’s goals, available legal remedies, and potential challenges or defenses raised by the opposing party.
- **Drafting Legal Documents:** Prepare all necessary legal documents, including petitions for

Continued on page 26 ►

## Electronic Harassment

Continued from page 25

restraining orders, declarations, witness and exhibit lists and any other pleadings required to litigate the matter at hearing. Ensure that documents are properly served on the opposing party.

- **Mediation:** Explain to client the options available for resolving the matter without litigation, convey offers received by the opposing side, and remind client that they are under no obligation to accept any offer but that mediation is an option for early resolution of the matter.
- **Court Proceedings:** Represent client in court hearings related to placing the terms of settlement on the record or litigating the matter at trial, presenting evidence, making legal arguments, and advocating for client's rights.

- **Follow-Up and Enforcement:** After obtaining a court order or resolution in the case, ensure that Client understands their rights and responsibilities under the order. Ensure that the order is properly served in compliance with the court's final orders, and explain to client remedies available if an order after hearing is violated.

Throughout the process, maintain clear communication with the client, keep them informed of developments in the case, and provide guidance and support as needed. Additionally, stay updated on changes in relevant laws or legal precedents that may impact the case. Your attention to the changing legal landscape can make or break your client's matter.

*Jo-Anna Nieves formed the Nieves Law Firm, APC in order to help those*



*accused of crimes navigate the complex and challenging criminal justice system. Jo-Anna has been named a Super Lawyers Rising Star every year since 2016 and her firm has been recognized as one of the fastest growing law firms in the nation by Law Firm 500.*

*Most recently her firm was named one of the fastest growing privately held companies in the nation by Inc. 5000. She attributes her firm's success to her genuine commitment to helping people thrive in difficult situations. She and her team can be reached at 510-879-7549 or [info@thenieveslawfirm.com](mailto:info@thenieveslawfirm.com).*

## Cause Related Marketing

Cause-related marketing (CRM) is a mutually beneficial partnership between a for-profit business and a nonprofit organization. The goal of CRM is to promote the business's sales while also supporting a cause that's important to the company.

For example, if your firm is committed to diversity in the legal profession, there are opportunities to sponsor CCCBA programs and events organized by the DEI committee. If your firm would like to be associated with women in the legal profession, you can sponsor events put on by the Women's Section.

Now that CCCBA's new sister 501C3 nonprofit, Contra Costa Justice For All, has launched, there are some outstanding opportunities to sponsor programs that relate to specific causes that you want your law firm to stand for.

CCCBA Executive Director Jody Iorns has put together sponsorship opportunities for the rest of 2024. Contact her for more information and begin to differentiate your law firm in a socially meaningful way! Contact Jody at [Jiorns@cccba.org](mailto:Jiorns@cccba.org) or (925) 370-2548.

### MCLE Credit

Earn one hour of General MCLE credit by answering the questions on the Self-Study MCLE test, available using the QR code or link below. Send your answers, along with a check (\$30 per credit hour for CCCBA members / \$45 per credit hour for non-members), to the address on the test form. Certificates are dated as the day the form is received.



[https://www.cccba.org/flyer/2024/MCLE\\_test\\_electronic-harassment\\_Jo-Anna-Nieves](https://www.cccba.org/flyer/2024/MCLE_test_electronic-harassment_Jo-Anna-Nieves)

# Family Justice Center – Lawyers For Family Justice

## *Lawyers as Part of the Solution*

by Nat Oleas and Sharon Sobotta



FAMILY  
JUSTICE  
CENTER

SAFETY  
HEALING  
COMMUNITY

Richmont • Concord  
Antioch • Solano

As part of her day job, Sharon teaches people about the cycle of interpersonal violence, the four stages of relationship violence where: (1) tension builds (2) an incident happens, (3) there's a beautiful, often euphoric honeymoon stage, followed by a period of calm, before the next tension builds leading to another incident, and (4) you're back to square one. "It will be sunshine for a day or two, as long as you don't let your light shine too bright, avoid asking too many questions, bite your tongue when you're tempted to speak about something that bothers you, and then you'll work your way through that same cycle again."

Sharon found herself in a trainwreck of a relationship with "Jay" while in grad school as she interned at a women's center in Minnesota and was surrounded by abundant resources. Rather than speak up and risk harming her ex's reputation, she stayed quiet and gave up friendships to avoid making him jealous. When he got a job in the East Bay, she applied for one that she hoped not to get – ironically as an advocate in a Center for Women & Gender Equity – only to get the job. Jay promised things would be better. They weren't. When Sharon had a sprawling bruise on her arm after being hit by a saucer Jay threw at her, she didn't seek medical attention because she didn't want to admit what happened or implicate her ex on the questionnaire where they'd ask if anyone was hurting her. She covered her bruises up, forced a smile and went to work. She remembers feeling the way a drug counselor might feel while helping clients reach sobriety while secretly using on the side. It took nearly two years to make it out of that relationship, but unlike the average of two women a week that

are killed by their partners, she was one of the lucky ones.

"When I became a mother and recognized the southward spiral of dynamics between my children's father and me, I knew I had to do the right thing for the sake of my kids – leave. It wasn't a straightforward decision, nor was it a linear one. Not knowing where to turn, I swallowed all my pride and went to the Contra Costa Family Justice Center, a resource that I had shared with students and people in the community while never imagining it was for me," said Sharon. Through the Family Justice Center, Sharon was able to hire a "low bono" attorney with the Lawyers for Family Justice program to fight against the abuse she had endured. She continues to help and inspire other people to stop the cycle of violence.

The Family Justice Center is an invaluable one-stop center for families affected by domestic violence, sexual assault, elder abuse, child abuse, and human trafficking. In 2024, the Family Justice Center served 4,963 survivors of interpersonal violence. The Center has four regional offices in Richmond, Concord, Antioch, and Fairfield. Legal assistance is the most highly sought-after service the Family Justice Center offers; however, it is a challenge to find pro bono and "low bono" legal assistance for clients within Contra Costa and Solano Counties. Thanks to the Contra Costa County Bar Association, the Lawyers for Family Justice program was established in 2016 with seven incubator attorneys. Recognizing the substantial need, Lawyers for Family Justice was created to fill the

[Continued on page 28](#) ▶

# Lawyers for Family Justice

Continued from page 27

legal services gap for practice areas focusing on family, immigration, and civil law. Since 2016, the Lawyers for Family Justice program has developed into a robust legal program within the Family Justice Center including incubator attorneys, law school and undergraduate interns, restraining order training for volunteers, and three staff attorneys (by Fall 2024).

Over the past few years, the need for restraining order assistance has grown significantly. The Family Justice Center recognized this growing need and began working with legal interns from local law schools; 2L and 3L students were trained by licensed attorneys in how to fill out and file domestic violence restraining order requests and dedicated at least six internship hours a week to helping clients. Magdalena Kochanski - the center's supervising attorney experienced in family law - provides mentorship and training for incubator attorneys and interns.

The need for restraining order assistance has only grown since the pandemic. Recognizing this need, Ms. Kochanski reached out to Diablo Valley College and, with support of a local adjunct professor, Michael Kasin, they created DVC's first-ever restraining order course and clinic. Open to the community, the eight-week course trains students around the ins and outs of domestic violence restraining orders. In the last few weeks of the class, students assist Family Justice Center clients fill out and file their restraining order requests.

The Family Justice Center was also able to hire its first staff attorney,

Emma Fuller. Ms. Fuller offers pro bono representation for family law and domestic violence cases. In Fall 2024, the Family Justice Center anticipates hiring two additional staff attorneys to help clients of the center.

Legal help is one of many services the center offers. The Family Justice Center works in partnership with over 70 on-site partner agencies to connect survivors of interpersonal violence to as many resources as possible within Contra Costa and Solano Counties. We are always looking for attorney volunteers, incubator lawyers for family justice, as well as students and interns willing to learn and help our clients. If you're licensed in California and have not met your pro bono requirements or would like to learn about domestic violence restraining orders, please contact us.

For more information about the Family Justice Center, the Lawyers for Family Justice or to apply to the program, please visit [www.cocofamilyjustice.org/lawyers](http://www.cocofamilyjustice.org/lawyers). If you have been inspired by the work of the Family Justice Center, please consider attending our annual fundraising gala or donating at [www.cocofamilyjustice.org](http://www.cocofamilyjustice.org).



*Natalie Oleas is the Central Center Director (Concord location) with the Contra Costa Family Justice Center. A California native, she has worked as a survivor advocate for over 15 years. She graduated from Northeastern University School of Law where her studies centered around victim advocacy, criminal procedure and civil rights. She is proud to*



*be the coordinator for multiple county collaborative efforts to help prevent and reduce interpersonal violence within our community.*

*Sharon K. Sobotta is a writer, a journalist, an advocate, an educator, a mom and a doula. Sharon contributes to a number of outlets including East Bay Express, Lamorinda Weekly, KPFA, City Pages, the Rumpus and Civil Eats and serves as the director of the Center*

*for Women & Gender Equity at Saint Mary's College of California. Sharon believes in the transformative possibilities of stories in simultaneously touching minds and hearts. Because she believes that children like hers, who live in one-parent homes and have witnessed interpersonal violence, she is working on the middle grade book tentatively called, **Hope is What We Do**. To contribute to the project or learn more, visit <http://spot.fund/v611ssp> Sharon is available to speak, conduct educational, story sharing or writing workshops. She can be reached at [sharonksobotta@gmail.com](mailto:sharonksobotta@gmail.com)*

*The Family Justice Center serves families affected by domestic violence, sexual assault, child abuse, elder abuse and human trafficking.*

*Find them online at [www.cocofamilyjustice.org](http://www.cocofamilyjustice.org) or call them in Richmond at (510) 974-7200; in Concord at (925) 521-6366; in Antioch at (925) 281-0970 or Solano at (707) 784-7635.*

*Career and volunteer opportunities are available now!*

# CALENDAR

## UPCOMING EVENTS | OVERVIEW

The Contra Costa County Bar Association certifies that the MCLE activities listed on pages 29 and 30 have been approved for the specific MCLE credit indicated, by the State Bar of California, Provider #393.

**July 15** | Wellness Committee

**Nourish & Unwind:**  
A Wellness Lunch  
(In Person)

11:45 am – 1:00 pm | Taco Daddy's, 621  
Las Juntas St., Martinez

**July 19** | Port Chicago Taskforce

**Port Chicago Taskforce  
Workshop** (In Person)

1:00 pm – 3:00 pm | Concord Hilton,  
1970 Diamond Blvd., Concord | Free but  
donations are welcome

**July 27** | Senior Section

**4th Annual Wine Tasting  
Event for the Senior Section**  
(In Person)

Noon – 3:00 pm | Concannon Winery, 4590  
Tesla Rd. Livermore | \$35 for members of  
the Senior Section, \$50 CCCBA members,  
\$75 nonmembers

**August 3** | Wellness Committee

**Twilight Hike at Point Pinole**  
(In Person)

5:30 pm – 7:30 pm | Point Pinole Regional  
Shoreline, 3000 Atlas Rd., Richmond |  
Details to be announced

**August 6** | CCCBA

**Depositions – Learning by  
Doing - LECTURE Part 1**  
(Webinar)  
5:30 pm – 7:00 pm | 1 hour General  
MCLE credit | \$55 CCCBA members, \$75  
nonmembers

**August 8** | Estate Planning & Probate  
Section

**EPP Section Social at Five  
Suns Brewing** (In Person)

5:00 pm – 7:00 pm | Five Suns Brewing,  
626 Main St., Martinez | Free for EPP  
Section members, \$20 CCCBA members,  
\$35 nonmembers

**Sponsored by:** Kurniadi Realty

**August 13** | CCCBA

**Civility Matters with the  
ABOTA Foundation** (Webinar)  
**Speakers:** Hon. Christopher Bowen |  
Wilma Gray | Andrew Schwartz  
Noon – 1:15 pm | 1 hour Civility MCLE  
credit | \$15 CCCBA members,  
\$25 nonmembers

**August 18** | CCCBA & ACBA

**Battle of the Bay  
A's v. Giants** (In Person)

12:30 pm - 5:30 pm | Oakland Coliseum,  
7000 Coliseum Way, Oakland | \$120 ticket  
| Includes food and drinks | Limited to 25  
tickets

**Sponsored by:** Lawyers Mutual | Premiere  
Bail Bonds | Judicate West

**August 20** | CCCBA

**Depositions – Learning by  
Doing - PRACTICUM Part 1**  
(In Person)

This in-person practicum requires enroll-  
ment in the August 6 lecture.  
5:30 pm – 7:00 pm | 1 hour General MCLE  
credit |

For more information on this series, see  
page 22.

**August 22** | CCCBA & ACBA

**Mocktail Mix & Mingle with  
ACBA and CCCBA** (In Person)

5:00 pm – 7:00 pm | Location TBD | Free for  
CCCBA members, \$30 nonmembers

More information TBA

**August 24** | CCCBA, Women's  
Section

**4th Annual Family Fun Day**

(In Person)  
11:30 am – 4:00 pm | Pleasant Hill Park,  
147 Gregory Lane, Pleasant Hill | Free for all  
| Sponsorship Opportunities available now.  
Contact Pamela Ross or Jody Iorns

**Sponsored by:** Pamela Ross Legal  
Services, P.C.

**August 27** | CCCBA

**Depositions – Learning by  
Doing - LECTURE Part 2**  
(Webinar)

See page 22 for details.

For more information on these programs, please contact Sarah Marin

CCCBA Section and Events Manager at [smarin@cccba.org](mailto:smarin@cccba.org) or (925) 849-8849 or check the calendar [www.cccbba.org/attorney-events](http://www.cccbba.org/attorney-events)

# CLASSIFIEDS

## 2 OFFICE SPACES AVAILABLE

Where: 3445 Golden Gate Way, Lafayette

Law firm since 1955.

Details: Creekside setting with ample free parking, excellent law library, easy access to intercity jogging trail. Reasonable rent.

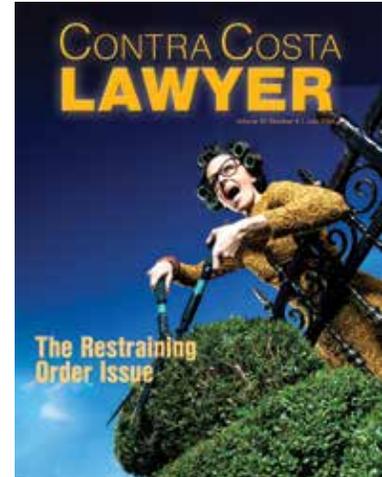
Interested? Call Stan Pedder or MacKenzie Bush at (925) 283-6816.

## ADVERTISING SPACE AVAILABLE

Did you know that you can run classified ads in Contra Costa Lawyer and also on the CCCBA website? Classified ads run on the CCCBA website for 30 days. Members pay just \$75 per month for online classified ads that can include photos or graphics. For information, please contact Carole Lucido, CCCBA Communications Director at (925) 370-2542 or [clucido@cccba.org](mailto:clucido@cccba.org).

## Advertising Opportunities

### Contra Costa Lawyer Magazine - Print and Online



The Contra Costa Lawyer is the official publication of the Contra Costa County Bar Association. It is published every other month for an audience of more than 1,500 attorneys, judges and court officials, law libraries and public officials involved with the administration of justice in Contra Costa County and has a readership of approximately 4,500 online.

Both the print and online editions of Contra Costa Lawyer have won awards of excellence from the National Association of Bar Executives.

Cost effective display and classified advertising opportunities are available in the print magazine. Online ads are available on the CCCBA's website: [www.cccbba.org](http://www.cccbba.org).

View and download the complete media kit at [www.cccbba.org/flyer/2024/cccba-adkit-2024.pdf](http://www.cccbba.org/flyer/2024/cccba-adkit-2024.pdf)

Contact CCCBA Communications Director Carole Lucido if you have questions, [clucido@cccba.org](mailto:clucido@cccba.org) or (925) 370-2542.

### August 29 | CCCBA

#### Minority Bar Coalition and CCCBA Social (In Person)

5:30 pm – 7:30 pm | Details coming soon

### September 10 | CCCBA

#### Depositions – Learning by Doing - PRACTICUM Part 2 (In Person)

5:30 pm – 7:00 pm | See page 22 for details.

### September 17 | CCCBA

#### Depositions – Learning by Doing - LECTURE Part 3 (Webinar)

5:30 pm – 7:00 pm | See page 22 for details.

### October 1 | CCCBA

#### Depositions – Learning by Doing - PRACTICUM Part 3 (In Person)

5:30 pm – 7:30 pm | See page 22 for details.

## Advertiser Index

Acrisure . . . . .	31
ADR Services . . . . .	7
Barr & Douds Attorneys . . . . .	16
The Bray Law Firm . . . . .	24
Casper Meadows Schwartz & Cook . . . . .	32
Congress of Neutrals . . . . .	13
Judicate West . . . . .	2
LawPay . . . . .	12
Lawyers Mutual . . . . .	21
Morrill Law Firm . . . . .	17

# Lawyers Advocate Program **CALL NOW!**

You could **SAVE** up to **37% OR MORE** (925) 365-3200  
on your Lawyers Professional Liability Insurance

The word is out, insurance rates are skyrocketing in California for attorneys and fewer and fewer companies are offering affordable coverage. Certain carriers have completely stopped writing, others have left the state and some are implementing huge rate increases. HOWEVER.....

The **Lawyers Advocate Program** was specifically created to provide affordable, complete coverage to Law Firms. This is due to the highly regarded underwriting expertise behind this program and unsurpassed customer service.

Don't wait for your insurance broker to deliver the bad news. To find out how you can save money and get in on an exclusive program designed especially for Law Firms, please call us at (925) 365-3200 for an immediate response. You'll deal directly with an expert in Lawyers Professional Liability Insurance who can usually deliver terms in a 24-hour period, sometimes even hours.



1. E-mail me your application for a quick quote at [RCummings@Acrisure.com](mailto:RCummings@Acrisure.com)
2. Fax the over this application to 855-618-3637
3. Call me personally for more information at 925-365-3200



If your policy renews **AFTER** October 2024, please just email this page with your renewal date to: [RCummings@Acrisure.com](mailto:RCummings@Acrisure.com) and we will contact you again in time to get your quote. **Otherwise, call NOW 925-365-3200!**

Firm: \_\_\_\_\_

Renewal Date: \_\_\_\_\_

Carrier: \_\_\_\_\_

## SAVE UP TO 37% OR MORE!

### OUR CLIENTS SAY IT BEST:

“

“If a law firm is looking for a competent insurance agent to quote competitive rates on professional/malpractice and cyber liability insurance...call Ryan. No other insurance broker has taken time to explain how and why a cyber or ransomware attack could impact my firm.

- Dublin, CA Law Firm

“Ryan Cummings did an amazing job saving our Family, Estate, and Bankruptcy law firm nearly \$6000.00 on our malpractice and cyber insurance policy premiums. In addition to saving us money.

- Walnut Creek, CA Law Firm

”



Ryan Cummings,  
Agency Principal

Lawyers  
Professional  
Liability Insurance  
is my specialty!

This program is **LIMITED** to Law Firms located in California ..  
**NO EXCEPTIONS**

### Coverage and Benefits may INCLUDE:

- Protection against computer DOWNTIME .. which affects your billable hours !
- FULL PRIOR ACTS coverage for qualifying attorneys
- \*\*\*5-7 Minute phone call to see IF you qualify\*\*\*\*
- Claims free discount
- Loss only deductible
- Multi-Year Extended Reporting Period
- Part time attorney discounts
- All areas of your practice may be eligible
- 24-hour claim reporting
- FREE information on how you can protect your income from IT breaches

 **ACRISURE**

(925) 365-3200

## CALL NOW!

Lic 0K07568

 **Contra Costa County  
Bar Association**

2300 Clayton Road, Suite 520  
Concord, CA 94520  
www.cccbba.org

**CASPER MEADOWS  
SCHWARTZ & COOK**  
BAY AREA INJURY ATTORNEYS



**EXPERIENCE  
YOU TRUST**  
— RESULTS —  
YOU DESERVE

2121 North California Blvd, Suite 1020, Walnut Creek, CA 94596  
[cmslaw.com](http://cmslaw.com) • 925.947.1147