RESTRAINING ORDERS

THE SERIOUS TRUTH BEHIND THE LAW

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CONTENTS

***Abstract**: This article is a review of California Code of Civil Procedures § 527.6 and § 527.8, which define civil harassment restraining orders, and a call to remedy inequities and frequently exploited loopholes in the statutes' application. Specifically, the article addresses the lack of due process in ex parte judgments, the lack of financial-need verification that encourages capricious filings, the lack of a mechanism to expunge dismissed orders from public records, and the admission of hearsay evidence in § 527.6 and § 527.8 hearings. Note: Although rape and domestic violence are enormous issues for the courts and many of the forms and procedures for obtaining a restraining order in those instances are similar, this article deals only with civil harassment restraining orders.*

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2 INTRODUCTION

The popular press constantly references "restraining orders," a term bandied about and trivialized by Hollywood and other media. Very few people, however, actually know what a restraining order is, what it does, and the serious long-term effects it can have on a person's life.

California Code of Civil Procedure § 527.6 states, "A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section." In simple terms, a restraining order is a court-imposed "prior restraint" in which the government tells someone they can be sent to jail if they say or do the things the court has prohibited. This "prior restraint" is imposed by the state through the court when someone files a petition seeking a restraining order and the court agrees it is warranted. Every state has its own set of definitions and parameters. In California, the ramifications of such an order—whether a temporary order or permanent injunction—are life altering.

The two parties in any § 527.6 case are the Petitioner and the Respondent; i.e., the Petitioner requests a permanent restraining order injunction against the Respondent. A restraining order negatively impacts the options a Respondent has as to how they live. Even if the order is imposed for a limited amount of time, as described in the statute, it nevertheless immediately goes into the California Law Enforcement Telecommunications System (CLETS) through the California Restraining and Protective Order System (CARPOS) and remains there for five years, even if the permanent injunction is denied and the record is moved to inactive files.

This record of a person's untrustworthiness and instability can result in myriad inconveniences, such as when one is returning to the USA from a foreign country or even simply stopped for a traffic violation. The way one is treated could be affected by the officer knowing the person could be a problem because a judge has found they are a danger. This record can also result in far more serious life consequences, such as inhibiting one's right to own or possess a firearm, or impacting one's ability to get a job. Regardless of CLETS policy, once an allegation becomes part of the public record, it becomes easily and permanently accessible online.

The petition, which includes a request for immediate relief in the form of a Temporary Restraining Order (TRO), is one-sided, with the Petitioner offering little or no evidence to warrant the consequences other than what they say has happened. The TRO expires on the date of the hearing if the Petitioner doesn't show, subject to an extension or

reissue for cause such as the inability to serve the Respondent, or the petition is denied. In either case, the record is amended accordingly, but not expunged from the inactive files for half a decade.

As a practicing attorney for almost five decades and a Judge pro tem for almost six years, I believe it is time to correct this inequitable and unjust reality.

2.1 HISTORICAL CONTEXT

In 1978, prompted by law enforcement overwhelmed with ongoing complaints about threats, harassment, stalking, and neighbor disputes coupled with innumerable cases of violence, threats of continuing violence, and harassment, California passed § 527.6 of the California Code of Civil Procedure to address said problems and minimize law-enforcement involvement. Enacted "to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution,"[1] the quickly drafted statute encompasses not only physical and verbal behavior, but various modes of communication, including harassment by making annoying telephone calls, as described in § 653(m) of the Penal Code.

A § 527.6 petition for a restraining order, however, is "not an ordinary civil action."[2] Indeed, although restraining orders are injunctions, they are distinguishable from injunctions sought in typical civil litigations for the reasons enumerated hereafter.

> *Section § 527.6 requires the claimed speech or conduct must be for 'no legitimate purpose.'*[3]
>
> *Speech that constitutes 'harassment' within the meaning of § 527.6 is not constitutionally protected and may be restrained.*[4]

If the speech or conduct revolves around a legitimate purpose, the Petition for a restraining order must be denied.

> *An injunction can only apply to harassment as defined by the statute. Conduct which serves a legitimate purpose is outside the definition of 'harassment' and*

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[1] *Schraer v. Berkeley Property Owners Association* (1989) 207 Cal.App.3d 719, 730-731 (255 Cal.Rptr. 453)

[2] *Siam v. Kizilbash* (2005) 230 Cal.App.4th 1563, 31 Cal.Rptr.3d 368

[3] *Diamond View Ltd. v. Paul Herz* (1986) 180 Cal.App.3d 612, 225 Cal.Rptr. 651

[4] *Huntingdon Life Sciences, Inc., et al. v. Stop Huntingdon Animal Cruelty, USA* (2009) 129 Cal.App.4th 1228, (29 Cal.Rptr.3d 521)

> *cannot be enjoined pursuant to the summary procedures of § 527.6, even if such conduct might ultimately be enjoinable according to normal injunctive procedures after full development of the facts and law. Legitimacy of purpose negates harassment.*[5]

Accordingly, depending on the degree of credible or perceived threat, the Petitioner's purpose may well be better served by suing in civil court than by petitioning for a restraining order.

2.2 THE WHO AND WHAT OF RESTRAINING ORDER CASES

Only a natural person—a living, breathing human being as opposed to a corporate entity—can obtain or be subject to a permanent restraining order injunction (RO). Further, an order can only be issued against an individual, not against a group.

In response to a decision limiting relief to individuals (*Diamond View v. Herz*), California Code of Civil Procedure § 527.8 was enacted in 1994. Basically identical to § 527.6, it provides relief for employers dealing with workplace violence and sets forth terms for handling work-related situations. Further, it requires employers to provide a safe and secure workplace and specifically limits the acts to be enjoined to "unlawful violence," or "a credible threat of violence." An employer may take reasonable steps to seek relief on the behalf of any employee "credibly threatened."

Thus, any individual or employer can petition the court to issue a permanent restraining order injunction against a person they perceive to be displaying threatening behavior, whether or not the Respondent openly targets or specifically intends malice toward the individual.

2.3 IS INTENT NECESSARY?

Intent is required in certain crimes. Is intent to harass a requirement of restraining orders?

Surprisingly, no.

Intent is not significant as long as the Petitioner reasonably–this is the key word–has a fear that the threat is real, whether the Respondent means it or not.

2.4 HOW THE PROCESS WORKS

The court has two choices when ruling on a petition for a permanent restraining order injunction:

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[5] *U.S.S.-Posco v. Edwards* (2003) 111 Cal.App.4th 436, 4 Cal.Rptr.3d 54

- Issue a Temporary Restraining Order (TRO) and set a hearing date for the permanent restraining order injunction
- Reject the petition for a TRO and set the matter for a hearing date for a permanent restraining injunction

Because granting a TRO triggers a public-disclosure requirement, a careful review of the allegations should be made, and they should be granted sparingly and only when immediate relief is clearly necessary to prevent serious consequences.

The Notice of Court Hearing (CH-109) can be served by anyone over the age of 18. Most often, local law enforcement personally serves it. Proof of service is necessary to ensure due process. That hearing must be conducted not more than twenty-one days later, subject to an extension pursuant to Section § 527.6. If not served, the order can be re-issued (CH-116), or the TRO expires and is dissolved as a matter of law.

Yet it remains on the Respondent's record.

3 TEMPORARY RESTRAINING ORDER (TRO)

To obtain a standard permanent injunction as part of an ongoing lawsuit, the Petitioner must prove by clear and convincing admissible evidence that they are entitled to such extraordinary relief. That is not the case with a TRO.

To obtain a TRO the Petitioner completes a six-page form (CH-100 Request for Civil Harassment Restraining Orders) and checks Box 11 (Immediate Orders), which asks the court to make the requested restraints effective instantly prior to and until the hearing without notice to the Respondent. The form also includes notice of the hearing date whether the TRO is granted or not.

The petition is heavily weighted toward the Petitioner: no physical evidence, witness statements, legal representation, or police reports are required. Most are primarily recitations of "facts" the Petitioner claims are true. The CH-100 is reviewed in chambers unless an issue compels the judge to ask for clarification in open court.

The court must weigh whether the Petitioner is subject to "great and irreparable harm" if the immediate order, or TRO, is not granted. This is a fundamental condition to issuance of the TRO. If the court accepts the Petitioner's statements of perceived threat or harassment, the Respondent is given forms CH-100 Request for Civil Harassment Restraining Order, CH-109 Notice of Court Hearing, and CH-110 Temporary Restraining Order. If the TRO is denied, the Respondent is given forms CH-100 and CH-109.

3.1.1 Reality Check

The Respondent rarely appears in connection with the request for a TRO because, as stated above, they do not know about it. The Petitioner invariably checks Box 11 (Immediate Orders) on the CH-100, claiming fear for their life or safety. They also check Box 13 No Fee for Filing or Service, making the service process free, and sign form FAM 018 Declaration of Ex Parte Notice, thereby causing the TRO to be issued without any notice to the Respondent.

Not to belabor the point, but unless the facts really call safety into mind— harassment or stalking—the judge reviewing the Petition should reject the TRO application and require both notice to the Respondent and payment of the process-service fee should the Petitioner want law enforcement to serve the notice. Checking a box is not enough; the fee should only be waived when circumstances justify it.

If, in fact, the Petitioner were actually required to pay the $430 filing fee and give ex parte notice—i.e., if they did not have the option to simply check a box on a few forms to dodge due process and financial responsibility—I suspect the number of frivolous and malicious CH-100 petitions would be significantly reduced.

3.1.2 How the Decision is Made

Threat is defined in court discussions as verbal, written, implied by a pattern [course] of conduct, or a combination of verbal or written statements and conduct, made with the intent and the apparent ability to carry out the threat, so as to cause the person who is the target to reasonably "fear for his or her safety, or the safety of his or her immediate family."[6]

A course of conduct is a pattern of behavior "composed of a series of acts over a period of time, however short, evidencing a continuity of purpose."[7] This can include following or stalking an individual or engaging in harassing communications, which includes but is not limited to, "the use of public or private mails, interoffice mail, unreasonable texts, fax or computer email."[8]

This requirement is vital to both the TRO and permanent restraining order injunction decision. In a majority of cases, the conduct complained about in the CH-100 petition has a better legal remedy for securing financial damages: i.e., civil court. Nuisance issues

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[6] *Franklin v. Monadnock Co.* (2007) 151 Cal.App.4th 252, 59 Cal.Rptr.3d 692

[7] *Schraer v. Berkeley* (1989) 207 Cal.App.3d 723, 255 Cal.Rptr. 453

[8] *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 23 Cal.Rptr.3d 609

such as occur in neighbor disputes, interference with economic advantage, or intentional infliction of emotional distress, are best left to litigation.

Detractors of § 527.6 claim the law infringes on the right to free speech, the right to bear arms, the right to assemble, and the right to petition for grievances. Both §§ 527.6 and § 527.8 implicate Constitutional issues. One of the more significant problems is that the cases are fact-intensive with many involving personal freedoms specifically guaranteed in the Constitution.

Hence, the court must balance the Respondent's First Amendment personal-freedom rights against the Petitioner's right to personal safety, to wit: if the allegations are true, the Petitioner is in serious danger of their life or safety; if the allegations are not true, the Respondent's rights are immediately and permanently impinged.

3.1.3 Glaring, Correctable Issues

Obviously, the real vice in issuing TROs is the lack of due process. The order is obtained ex parte simply because the Petitioner checked Box 11 Immediate Orders and signed FAM 018 Declaration of Ex Parte Notice, much of the time without just cause.

The second inequity is that simply checking Box 13 No Fee for Filing or Service is enough to waive all fees, thus removing any financial barrier to filing a capricious or simply vengeful petition. Hypothetically, a person can make up a completely false story about someone, put in a few false or half-true “facts," and get the TRO issued and served without paying any fees.

I believe the Petitioner should be required to pay the filing fee, just as any other litigant except in cases of serious need such as harassment or stalking. If there are financial issues, the court can waive the filing and service fees based on the information provided on Form FW-001 Request to Waive Court Fees. If the Petitioner gets a permanent restraining order injunction, the costs should be recoverable by the Petitioner from the Respondent, just as in small claims court. If they lose, they wouldn't get their money back, plus they should pay some amount to the other party as a sanction. Failure to pay would constitute contempt. This would make it the equivalent of a citation in vehicle cases. People have to pay the fine or do community service. The court gets the benefit of the additional revenue and the public gains from the community service.

Even if the Petitioner cannot afford the fee and did not pay them because of a fee and cost waiver, the costs should be assessed by the court as a sanction if they lose or don’t show up at the hearing. If people have to put up money or can be found liable and have to pay the fees and costs (or do community service), they may think twice about filing.

"Costs" can and should be assessed unless the court finds there was prima facie merit to the allegations even though it was insufficient to meet the clear-and-convincing burden.

The third injustice is the lack of a mechanism for expungement. If there is no permanent restraining order injunction after the TRO is issued, the entire record should be expunged from all active and inactive files.

The fourth issue arises from the admission of hearsay, which I discuss at length below. I would make all hearsay inadmissible, unless it comes under a hearsay exception.

4 PERMANENT RESTRAINING ORDER (RO) INJUNCTION

Recognizing how serious a full restraining order would be if granted, the Legislature required a higher burden of proof to obtain the permanent injunction than necessary for the TRO. A person charged with harassment is given full opportunity to present his or her case before a judge, who is required to receive relevant testimony.

In a civil lawsuit, there is a full trial on the merits to follow the issuance of the injunction, but that is not the case with a § 527.6(d) or § 527.8. The § 527.6 and § 527.8 hearing provides the only forum the Respondent will have to present their case in the harassment proceeding. Relevant oral testimony must be heard from available witnesses.[9]

> *[I]f there are any witnesses to the [respondent's] conduct or [petitioner's] emotional distress they should also be there at the hearing, and that if the defendant wishes to oppose 'the lawsuit' and he or she has any witnesses, they must also be present.*[10]
>
> *The trial court in a harassment proceeding may not arbitrarily limit the evidence presented to written testimony only, when relevant oral testimony is offered. Both sides may offer evidence by deposition, affidavit or oral testimony, and the court shall receive such evidence, subject only to such reasonable limitations as are necessary to conserve the expeditious nature of the harassment procedure set forth by § 527.6.*[11]

[9] *Schraer* [supra]

[10] *Schraer* [supra]

[11] *Schraer* [supra]

The hearing is like any other hearing. Cross-examination is not only permitted but is given wide latitude.

The Petitioner must present "clear and convincing evidence" of a "credible threat of violence" or "unlawful violence" that must be proven through a "course of conduct," which must be established to have "no legitimate purpose" associated with it.

This is the meter by which all Permanent Injunctions must be judged. As stated in Scripps v. Marin:

> *The court must find by clear and convincing evidence that to not issue the injunction would subject Petitioner to great or irreparable harm, or in other words further unlawful violence or the threat thereof. Moreover, not only can injunctive relief be denied where the defendant has voluntarily discontinued the wrongful conduct, there exists no equitable reason for ordering it where the defendant has in good faith discontinued the proscribed conduct.*[12]

The Petitioner must also prove that:

> *…great or irreparable harm would result…if a prohibitory injunction was not issued due to the reasonable probability unlawful violence will occur in the future.*[13]

In other words, they must show the reasonable probability that such unlawful violence has occurred in the past and will be repeated in the future. As such, a verbal threat given during a single incident with no prior or subsequent events to indicate the behavior will continue is not viewed as a credible threat. The court is then charged with determining the Petitioner's credibility.

To make that determination, the court explicitly distinguishes "between political hyperbole, which is protected; and true threats, which are not."[14] A communication need not specify who would carry out the threat to qualify as a true threat. "The fact that a threat is subtle does not make it less of a threat."[15] Whether or not the maker of the threat has an actual intention to carry it out, an apparently serious threat may cause the mischief, or evil, toward which the statute was in part directed.

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[12] *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 5Cal.Rptr.3d 137

[13] *Los Angeles v. Animal Defense League* (2003) Cal.App.4th 399, 5Cal.Rptr.3d 137

[14] *Huntingdon* [supra]

[15] *Huntingdon* [supra]

> *The alleged threat must be analyzed in light of 'the entire context and under all the circumstances,' including prior violence by third parties.'*[16]

> *Merely endorsing or encouraging the violent action of others, [is] … protected. However, while advocating violence is protected, threatening a person with violence is not.*[17]

The court further stated, "...fantastical threats that once were taken lightly as fancies of immature youth now cause reasonable persons to pause and even to become fearful..."[18]

The court must ascertain whether the speech or conduct at issue actually caused substantial emotional distress and "would cause a reasonable person to suffer 'substantial emotional distress.'"[19] Although Section 527.6 does not define the phrase "substantial emotional distress," the courts have given it a definition by analogy. The court stated:

> *However, in the analogous context of the tort of intentional infliction of emotional distress, the similar phrase 'severe emotional distress' means highly unpleasant mental suffering or anguish 'from socially unacceptable conduct,' which entails such intense, enduring and non-trivial emotional distress that 'no reasonable (person) in a civilized society should be expected to endure it.'*[20]

> *This is true even when the speech is expected to be of the type that is not constitutionally protected.*[21]

On the question of free speech and threats, the court stated:

> *As speech strays further from the values of persuasion, dialogue and a free exchange of ideas, and moves toward willful threats to perform illegal acts, the state has greater latitude to regulate expression. [Once] a court has found that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited 'prior restraint' of speech.*[22]

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[16] *Huntingdon* [supra]

[17] *Huntingdon* [supra]

[18] *Brekke* [supra]

[19] *Schild* (1991) 232 Cal.App.3d 755, 283 Cal.Rptr. 533

[20] *Schild* [supra]

[21] *Evans* (2008) 162 Cal.App.4th 1157

"Speech on matters of purely private concern—while not totally unprotected—is of less First Amendment concern."[23] When speech such as defamation or the intentional infliction of emotional distress causes damage, civil sanctions may be imposed because:

> *[t]here is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas concerning self-government; and there is no threat of liability causing a reaction of self-censorship by the press...*[24]

4.1.1 Case in Point

In a significant case dealing with First Amendment issues, a fifteen-year-old boy wrote threatening and menacing letters to his sixteen-year-old girlfriend, knowing that her mother would read them. He described a plot to kill her parents.

The court issued a restraining order. He appealed, claiming free speech, freedom of association, and right to privacy. He claimed the letters would not have caused a reasonable person in the mother's position to suffer substantial emotional harm because any parent should expect some emotional distress when they do not like their children's choice of friends.

"The right of free speech, however, is not unlimited."[25]

A defendant's letters and actions are "harassment" within the meaning of the injunction statute because they constitute a knowing and willful course of conduct directed at the Petitioner that a) seriously alarmed, annoyed or harassed her, b) served no legitimate purpose, and c) would cause a reasonable person to suffer substantial emotional distress.

The court concluded that certain letters would alarm someone, and that is harassment. The court found that the boy had engaged in a course of conduct directed at the mother that seriously alarmed her. It stated:

> *His speech, which was used to annoy, ridicule and threaten Petitioner, was entitled to no protection because it was between purely private parties, about purely private parties, and on matters of purely private interest and the right of*

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[22] *U.S.S.-Posco* [supra]

[23] *Dun & Bradstreet v Greenmoss* (1985) 472 U.S. 749, 758-759 (86 L.Ed.2d 593, 602)

[24] *Brekke* [supra]

[25] *Huntingdon* [supra]

> *privacy does not entitle him to interfere with Petitioner's exercise of her fundamental right as a parent to direct and control her daughter's activities.*[26]

4.2 RIGHTS TO FREE SPEECH

In contrast, an injunction against continued distribution of a publication which a jury has determined to be defamatory may be more readily granted. The rule does not apply to an order issued after a trial prohibiting the defendant from repeating specific statements found at trial to be defamatory. "[The] right to free speech would not be infringed by a properly limited injunction prohibiting defendant from repeating statements about plaintiff that were determined at trial to be defamatory."[27] Injunctions should be available as ancillary relief for personal and political defamations.

The court addressed the publishing of confidential information.

> *A prohibition against disclosing confidential information constitutes a prior restraint.… However, because it also potentially concerns the countervailing right of privacy protected under the California Constitution, a prohibition may be proper under certain compelling or 'extraordinary circumstances.'*[28]
>
> *In determining whether such circumstances exist, courts generally apply a balancing test, weighing the competing privacy and free speech constitutional rights.*[29]
>
> *Relevant factors include whether the person is a public or private figure, the scope of the prior restraint, the nature of the private information, whether the information is of legitimate public concern, the extent of the potential harm if the information is disclosed, and the strength of the private and governmental interest in preventing publication of the information.*[30]

An injunction must clearly define the conduct prohibited. "... the court should engage in a balancing test to determine whether there is a compelling reason that such information be kept private."[31]

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[26] *Brekke* [supra]

[27] *Evans* [supra]

[28] *Evans* [supra]

[29] *Evans* [supra]

[30] *Evans* [supra]

[31] *Evans* [supra]

> *The grant of a preliminary injunction does not determine the merits of the controversy. However, a trial court may order a preliminary injunction if the plaintiff shows that the status quo should be maintained pending a trial of the merits.*[32]

However, a party is entitled to observe events in a way that does not unduly interfere or disrupt such an event, especially if the event is in a public place.[33] If a party is disruptive, an order can be issued as to future events.

4.3 ISSUES WITHIN THE PUBLIC INTEREST

It is speech on matters of public concern that is at the heart of the First Amendment's protection. The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."[34]

Speech concerning public affairs is more than self-expression; it is the essence of self-government. It is for the public interest and public value that the balance is addressed. Commenting on a matter of public concern is a classic form of speech that lies at the heart of the First Amendment.

What is "public interest?" According to the court, "It should be something of concern to a substantial number of people."[35]

> *Thus, a matter of concern to the speakers and a relatively small, specific audience is not a matter of public interest. There should be some degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad amorphous public interest is not sufficient.*[36]
>
> *The focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of (private) controversy.*[37]
>
> *There are cases where essentially private conduct can serve to be an issue of public interest where it impacts a broad segment of society. [Matters] of public*

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[32] *Paradise Hills v. Procel* (1991) 235 Cal.App.3d 1528, (1 Cal.Rptr.2d 513)

[33] *Pat Nebel v. Joseph Sulak, Sr.* (1999) 73 Cal.App.4th 1363, 87 Cal.Rptr.2d 385

[34] *Dun & Bradstreet* [supra]

[35] *Dun & Bradstreet* [supra]

[36] *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 24 Cal.Rptr.3d 619

[37] *Quintero* [supra]

> *interest include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals.*[38]
>
> *The public interest component is met when 'the statement or activity precipitating the claim involved a topic of widespread public interest' and 'the statement in some manner itself contribute(s) to the public debate. Websites are public. A public street is a "traditional public forum."*[39]

Consider the case of one Petitioner, an animal-testing lab and some of its employees, who sued for trespass and harassment. There was vandalism and a vigil in front of the Petitioner's house.

> *The constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy or the use of force or of law violation* ***EXCEPT*** *where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. The mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.*[40]
>
> *When 'spontaneous and emotional' appeals for unity and action in a common cause does not incite lawless action, they must be regarded a protected speech. To rule otherwise would ignore the 'profound national commitment' that 'debate on public issues should be uninhibited, robust, and wide open.'*[41]
>
> *The First Amendment permits restrictions upon the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. These categories include defamatory speech, fighting words, incitement to riot or imminent lawless action, obscenity and child pornography.*[42]
>
> *The First Amendment also permits a state to ban a true threat. 'True threats' encompass those statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals. Violence and threats of violence fall outside the protection of the First Amendment because they coerce by unlawful conduct,*

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[38] *Quintero* [supra]

[39] *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 37 Cal.Rptr.3d 632

[40] *Huntingdon* [supra]

[41] *Huntingdon* [supra]

[42] *Huntingdon* [supra]

> *rather than persuade by expression, and thus play no part in the marketplace of ideas. As such, they are punishable because of the state's interest in protecting individuals from fear of violence, the disruption fear engenders and the possibility the increased violence will occur.*[43]

4.4 PROTECTED ACTIVITY

Picketing is a protected speech activity. But what if the picketing constitutes trade libel? A court can appropriately enjoy a party from physically impeding pedestrian or vehicular traffic and could enjoin that person from creating a disturbance or harassing customers uninterested in the message.

4.5 BALANCING PROTECTED RIGHTS

To narrow the analytical focus, § 527.6 specifically excludes "constitutionally protected activity" from the definition of "course of conduct." To limit the "prior restraint" to a reasonable period of time, and to avoid permanence, § 527.6 provides that the restraining order can be issued only for a period of up to three years. It is subject to a renewal under conditions set forth in § 527.6 (7) (j) and the court's ability to modify the order at any time.

> *To establish a valid prior restraint under the federal Constitution, a proponent has a heavy burden to show the countervailing interest is compelling, the prior restraint is necessary and would be effective in promoting this interest, and less extreme measures are unavailable.*[44]
>
> *Further, any permissible order 'must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order.'*[45]
>
> *Even if an injunction does not impermissibly constitute a prior restraint, the injunction must be sufficiently precise to provide 'a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.'*
>
> *An injunction is unconstitutionally vague if it does not clearly define the persons protected and the conduct prohibited.*[46]

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[43] *Huntingdon* [supra]

[44] *Evans* [supra]

[45] *Evans* [supra]

[46] *Evans* [supra]

An order prohibiting a party from making or publishing false statements is a classic type of an unconstitutional prior restraint.

> *While [a party] may be held responsible for abusing his right to speak freely in a subsequent tort action, he has the initial right to speak freely without censorship.*[47]

4.6 OVERBROAD ORDERS

Can a court enjoin the publishing of false and defamatory statements or confidential personal information on the Internet and contact with a Petitioner's employer? It depends on whether the order can be framed so that it is not over broad.

In *Evans v. Evans,* a deputy Sheriff obtained an injunction against his ex-wife "from publishing 'false and defamatory statements' on the Internet, from publishing 'confidential personal information' on the Internet and from contacting Petitioner's employer."[48]

> *In determining whether an injunction restraining defamation may be issued ... it is crucial to distinguish requests for preventive relief prior to trial and post-trial remedies to prevent repetition of statements judicially determined to be defamatory ... The attempt to enjoin the initial distribution of a defamatory matter meets several barriers, the most impervious being the constitutional prohibitions against prior restraints on free speech and press.*[49]

In an opinion finding that the order from the trial court was over broad, the Court of Appeal stated:

> *Our reversal should not be interpreted to mean that a court lacks authority to enjoin certain speech and/or conduct. Before trial and upon a proper showing, a court may prohibit a party from having contact with certain persons or from disclosing certain specific private information under narrowly drawn circumstances." This allows for some prior restraint before trial, if it qualifies.*[50]
>
> *To establish a valid prior restraint under the federal Constitution, a proponent has a heavy burden to show the countervailing interest is compelling, the prior*

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[47] *Evans* [supra]

[48] *Evans* [supra]

[49] *Evans* [supra]

[50] *Evans* [supra]

> *restraint is necessary and would be effective in promoting this interest, and less extreme measures are unavailable.*[51]
>
> *Further, any permissible order 'must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order.'*[52]
>
> *Even if an injunction does not impermissibly constitute a prior restraint, the injunction must be sufficiently precise to provide 'a person of ordinary intelligence fair notice that his contemplated conduct is forbidden…. An injunction is unconstitutionally vague if it does not clearly define the persons protected and the conduct prohibited.*[53]

Thus, "an injunction issued following a trial that determined that the defendant defamed the plaintiff that does no more than prohibit the defendant from repeating the defamation is not a prior restraint and does not offend the First Amendment."[54]

4.7 HEARSAY

Hearsay is admissible in both the TRO application and at the hearing, per *Kaiser v. Wilson,* which cited *Schraer v. Berkley*.

> *The language that the Legislature used reflects an intention to give trial courts wide latitude in determining what evidence to credit when considering a request for an order to protect employees from workplace violence. Hearsay evidence clearly may be relevant, and if hearsay evidence is relevant, section § 527.8 required that the court receive it.*[55]

As such, nothing prevents "garbage" hearsay from consideration during the TRO process. Police reports are a prime example. The officer takes information from the complaining party, who refers to people saying and doing things that are clearly hearsay. Since the Respondent is not there, they have no safeguard. At least at the hearing the Respondent can argue the hearsay's admissibility/weight.

4.7.1 Case in Point

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[51] *Evans* [supra]

[52] *Evans* [supra]

[53] *Evans* [supra]

[54] *Evans* [supra]

[55] *Kaiser v. Wilson* (2011) 201 Cal.App.4th 550, 133 Cal.Rptr.3d 830

Petitioner was a psychologist and Respondent was her patient. Respondent started to harass her after termination. Respondent followed Petitioner, tried to stop her car, kept her house under surveillance, made phone calls, sent threatening letters and made phone calls to other professionals to harm her reputation.

Petitioner claimed significant emotional distress and that this conduct was a distraction at work. Respondent claimed insufficient evidence and that Petitioner had to testify to it. Respondent had objected to hearsay declarations. The court held that direct testimony of Petitioner was not required. The evidence was sufficient without Petitioner saying she had suffered emotional distress. Relevant circumstantial evidence is admissible.

"Circumstantial evidence" can be substantial evidence for an inference based on it. Inferences may be drawn not only from the evidence, but from the demeanor of witnesses and their manner of testifying.

Is it proper for the court to consider hearsay evidence that Respondent made a credible threat of violence and that great harm might result to an employee of Petitioner?

The answer is yes.

Petitioner had submitted declarations in support of the application for a TRO. "As long as the hearsay evidence presented at a § 527.8 hearing is relevant, the court is to consider it."[56]

The hearing need not proceed as a full-fledged evidentiary hearing with oral testimony from all sides. "The hearing may be based on affidavits or declarations, which are, themselves, a form of hearsay evidence."[57]

Judges can weigh the testimony, which is not limited to non-hearsay testimony.

> *The language that the Legislature used reflects an intention to give trial courts wide latitude in determining what evidence to credit when considering a request for an order to protect employees from workplace violence. Hearsay evidence clearly may be relevant, and if hearsay evidence is relevant, § 527.8 required that the court receive it.*[58]

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[56] *Kaiser* [supra]

[57] *Kaiser* [supra]

[58] *Kaiser* [supra]

5 LOOP HOLES IN THE LEGISLATION

The real issue with restraining orders is "prior restraint."

§ 527.6 was put in place to protect individuals who are under real threat of danger; i.e., they violate a person's freedoms temporarily in order to protect the life of another. But as written, the law has become a loop hole, a misused tool or a stop-gap that allows impatient citizens to satisfy a whim to seek revenge against another. Worse, this abuse of the law hinders the very purpose for which it was written.

5.1.1 Case in Point

In a classic neighbor dispute, one neighbor complained the other was making noise playing basketball. The neighbors started harassing each other. A civil complaint was filed, as well as a request for a TRO and injunctive relief, to which there was a cross complaint. Both included causes of action for nuisance.

A TRO and injunction was issued against Respondent and not appealed, but Respondent then obtained a TRO and an injunction against Petitioner.

The court must look at the facts to determine if such conduct would cause another to suffer emotional damage, although "[a] reasonable person must realize that complete emotional tranquility is seldom attainable and some degree of transitory emotional distress is the natural consequence of living among other people in an urban or suburban environment."[59]

Some Petitioners allege that the complained-of conduct is a nuisance, and should therefore be enjoined via a TRO and a permanent injunction. In response to the argument that the conduct is a nuisance and that nuisance is harassment, the court stated, "Excessive and inappropriate noise may under certain circumstances constitute an interference with the present enjoyment of land amounting to a nuisance."[60] In some instances, this can be the basis for a TRO and a permanent injunction.

But the Court stopped short of announcing a blanket rule.

> *Each case must be decided upon its own facts... [Every] annoyance or disturbance of a landowner from the use made of property by a neighbor does not constitute a nuisance. The question is not whether the plaintiffs have been annoyed or disturbed ... but whether there has been an injury to their legal rights. People who live in organized communities must of necessity suffer some*

[59] *Schild* [Infra]

[60] *Schild* [supra]

> *inconvenience and annoyance from their neighbors and must submit to annoyances consequent upon the reasonable use of property by others.*[61]

This case really belonged in the forum of a civil suit, but such avenues of relief are costly, time consuming, and lack certainty in the results. Because Petitioner sought the route of a TRO and a permanent injunction, he received immediate--albeit temporary--relief for what was nothing more than a personal nuisance via a system that facilitated such endeavor.

5.2 CROSS PETITION

At the close of an argument in a § 527.6 hearing, a Respondent may ask that the orders be mutual. Could the court grant a mutual injunction over Petitioner's objection?

The answer is no.

Petitioners are entitled to due process and a hearing. If a Respondent wants a mutual injunction, they must file a separate CH-100 petition prior to the hearing. In the absence of such counter-petition, the court may not grant an oral request to make the order mutual. The court must consider evidence offered by this new Respondent. Without a formal cross-petition, the court cannot issue a mutual restraining order.

5.2.1 Case in Point

Respondent, when she served her response to the TRO and for a permanent injunction, stated she had no problem with mutual restraining orders, but she filed no petition herself. The trial court granted mutual orders. Petitioner appealed and the Court of Appeal held that the trial court exceeded its authority.

§ 527.6 requires the filing and service of a formal pleading to allow for the other party to have due process,[62] even though Respondent put on evidence as part of a defense and orally made a request.

Both sides had the right to respond and present evidence. Granting an order to make a restraint mutual without a formal pleading is an abuse of discretion.

From a practical standpoint, Respondent could have prevented the immediate effect of a TRO or permanent injunction by filing an appeal. The court's order would not be effective until the appeal had been determined.

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[61] *Schild v* [supra]

[62] *Kobey v. Morton (1991) 228 Cal.App.3d 1055, 278 Cal.Rptr. 530*

5.3 BANKRUPTCY

Some participants have tried to avoid the ramifications of an order by filing bankruptcy to stay any effort to enforce the order. That does not work; there is no stay.[63]

Section § 527.6 is written and designed to provide quick relief to would-be Petitioners.

5.3.1 Case in Point

In Nettie L. Grant v. Ohma Rosemarie Clampitt, Petitioner obtained an injunction based on Respondent playing loud music, mostly at night—another case where the legal avenues may have best been left to civil action. Petitioner likely "checked the box" stating they felt threatened, and it went to hearing. Nonetheless, the court granted the injunction, limiting playing to between 8:00 a.m. and 10:00 p.m.

Respondent filed for bankruptcy and sought a stay of the order resulting from the § 527.6 hearing. Because there are no monetary penalties involved in such cases, filing for a stay as to the injunction is not effective. The court ruled against the stay.

5.4 REQUEST FOR CONTINUANCE

Often, Respondents want or need time to respond and to obtain counsel. Although § 527.6 seems to provide for an automatic continuance, this is not an absolute entitlement. "There is no mandatory right to a continuance under § 527.6."[64]

5.4.1 Case in Point

In *Freeman v. Sullivant*, Respondent's "appearance attorney" sought a continuance. It was denied. After, the lawyer was given the opportunity to review the file and interview Respondent. The hearing took place and the court found a credible threat. An injunction was issued. Respondent moved ex parte to set aside the injunction claiming the right to a continuance.

The court held that Respondent is not entitled to a continuance of the hearing as a matter of right even where Respondent's appearance attorney makes the request.

In this case, the appearance attorney was given an opportunity to interview Respondent and prepare for the hearing. The court concluded that Respondent was not prejudiced.

> *A judgment is reversible only if any error or irregularity in the underlying proceeding was prejudicial. Any error in failing to grant a request for a*

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[63] *Grant v. Clampitt* (1997) 56 Cal.App.4th 586, 65 Cal.Rptr.2d 727

[64] *Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 120 Cal.Rptr.3d 693

> *continuance, whether mandatory or discretionary, is reversible only if it is tantamount to the denial of a fair hearing. There is no presumption of prejudice. Instead, the burden to demonstrate prejudice is on the appellant. Nothing in the section mentions a right to a continuance.*[65]

While Respondents may have the right to request a continuance, they do not have the right to have one granted automatically; it is a discretionary call that is entirely up to the judge.

5.5 EXPEDITED PROCESSES

Section § 527.6 provides a unique expedited procedure different from the typical injunctive relief that is part of a litigation. Whereas parties in a civil lawsuit have time for research and investigation, pleadings and motions, and, if necessary, discovery and preparation followed by an opportunity for a full trial when contesting injunctions, this is not so in § 527.6 and § 527.8 cases.

5.6 CIVIL CASE V. § 527.6

Preliminary and permanent injunctions that arise from civil cases are significantly unlike those issued through § 527.6 petitions. Section 527.6 was designed to be streamlined and quick, for example, while civil litigation can take some time for finality. And while a § 527.6 is essentially free—the cheap way to bring a matter to the court's attention without taking any financial risk other than attorney fees—civil plaintiffs must pay filing and service fees, not to mention attorney/discovery costs.

Other differences are also noteworthy. In a civil case, the opposing party/ Respondent gets notice and can argue against the restraining order preliminary injunction. The Respondent in the § 527.6 or § 527.8 case is completely deprived of due process and thus has no opportunity to impeach the Petitioner.

In a civil case, the preliminary injunction is not reported to CLETS. In the § 527.6 case, as stated above, the TRO is not only reported but remains in the official database for five years and in various online databases forever.

In a civil case, the plaintiff/Petitioner bears a burden of proof. They must show a preponderance of evidence to demonstrate irremediable harm not covered by money damages, as well as a lack of prejudice. In a § 527.6 or § 527.8 TRO, the burden is almost nonexistent, as the matter is whatever the Petitioner says, with or without any supporting evidence.

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[65] *Freeman* [supra]

6 SLAPP AND ANTI-SLAPP

Are §§ 527.6 and 527.8 petitions subject to an anti-SLAPP Motion to Strike pursuant to Code of Civil Procedure § 425.16?

The answer is technically yes. The anti-SLAPP statute applies to challenging petitions for injunctive relief brought under § 527.6 because they constitute "causes of action" under the anti-SLAPP law. But it is rarely done because the process is too complicated with the expedited time frames.

In reality, the same type of anti-SLAPP defenses are merely pled in the response or are argued orally at the time of the hearing. The result is the same. Since the anti-SLAPP motion does not delay the § 527.6 or § 527.8 hearing, little is gained by making a separate motion.

A Respondent or attorney can file an anti-SLAPP (§ 425.16 CCP) type response on form CH-120 to respond to allegations in the Petition without having to file an anti-SLAPP motion.

In a perfect world, only people honestly experiencing or perceiving themselves in life-threatening danger would file § 527.6 or § 527.8 petitions on pain of financial repercussions. All nuisance, property, and other annoyance grievances would be filed as civil suits. This would decimate the number of § 527.6 and § 527.8 petitions, undermine capricious TRO/permanent injunction requests, and return the spirit of the law to its daily application.

6.1 § 527.8 SPECIFIC TO EMPLOYERS/WORKPLACE DISPUTES

Cases involving a § 527.8 hearing are unique. They are specific only to workplace disputes. The code of law was written to provide relief to employers dealing with threats within the work environment. What makes a § 527.8 hearing stand out from a typical § 527.6 hearing is that the Petitioner/employer usually comes with a lawyer. A corporation must be represented by an attorney.

6.1.1 Case in Point

In a case involving the arbitration of a wrongful discharge claim by an employee, the employer obtained an injunction against one employee for threatening another. An arbitrator found that the "threats" did not reach a level sufficient to issue an injunction under § 527.8 and ordered the employee's reinstatement after he was fired.

This was inconsistent with the court order in the § 527.8 case. The grounds for injunction are not the same as an arbitration award. The injunction can stand, even though the employment arbitration order allowed for contact.[66]

6.2 DISCOVERY ISSUES

There is no discovery in a § 527.6 or § 527.8 case.

6.3 CONSEQUENCES OF TROS AND PERMANENT INJUNCTIONS

After the TRO is served on the Respondent, the Respondent has the right to file a response (also on a standard form, CH-120), as aforementioned, setting the matter for a contested hearing. The CH-109 form provides the date of the hearing. A formal response is not necessary, but it tells the court what Respondent is claiming before the hearing. Many Respondents opt not to file a response and rely on the oral argument so as to not telecast their defense.

Once served, the Respondent is bound to either follow the order or be in violation and face the consequences. Violating the order is a crime for which the Respondent can be put in jail.

Petitioners have two options regarding enforcement of the order:

1. Require the Respondent be arrested for violating the order, or
2. Seek a contempt of court charge.

The more frequently used method is the arrest of the Respondent for violating the order. It works the same way as an arrest for any misdemeanor; it allows a party claiming a violation to ask for a "citizen's arrest." The Respondent is arrested, has to make bail to be released, and then must respond to the criminal complaint if issued by the City Attorney or District Attorney. This means engaging counsel or a Public Defender.

If there is a conviction, the court can impose jail time depending upon the seriousness of the conduct. Alternatively, the Respondent may have to answer to a contempt citation before the judge who issued the order. The penalties are the same as for any other contempt.

Either way, the Respondent faces a lot of aggravation.

6.4 MALICIOUS PROSECUTION

Can a party successfully defend a § 527.6 or § 527.8 petition then sue for malicious prosecution?

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[66] *Palo Alto v. SEIU* (1999) 77 Cal.App.4th 327, 91 Cal.Rptr.2d 500

The answer is no.

> *A cause of action for malicious prosecution cannot be predicated upon an unsuccessful civil harassment petition. An injunction proceeding under § 527.6 does not support a cause of action for malicious prosecution.*[67]

Sometimes inconsistent findings between a § 527.6 order and another proceeding occur. If an anti-SLAPP motion is granted in a civil lawsuit, does it automatically mean that the petition in the § 527.6 or § 527.8 case must be denied?

The answer is no.

Although the Petitioner lost the anti-SLAPP Motion to Strike, they could nevertheless obtain a restraining order.

If a party is successful in an anti-SLAPP Motion to Strike in a civil lawsuit, it may recover attorney fees as part of Code of Civil Procedure § 425.16. The converse is also true as to the Petitioner. If the Petitioner obtains the order in the § 527.6 or § 527.8 case, they may be entitled to recover attorney fees.

7 PREVAILING PARTY ATTORNEY-FEE ENTITLEMENT

After the hearing on the petition for a permanent injunction, or if the petition was dismissed, or even with a settlement, what about attorney fees?

The prevailing party is entitled to claim fees. In complicated cases, these fees can be substantial. Entities (which, remember, are not natural persons) cannot appear except through an attorney.

In another attempt to limit the cases to those that have reasonable merit, § 527.6 provides for attorney fees to the "prevailing party." Allowing the prevailing party to recover attorney fees, however, presents a risk to both parties. If it is determined there is no relief in the form of a permanent restraining order, the Respondent can recover fees, meaning that a Petitioner must have a strong case. The same is true for the Respondent.

As a result, Respondents can minimize the financial impact of defending a temporary restraining order by either settling the case or agreeing not to engage in the conduct that is the subject of the action.

7.1.1 Cases in Point

[67] *Siam v. Kizilbash* [supra]

#1. Respondent successfully defended the petition for a § 527.6 injunction and sought attorney fees. Respondent claimed that even if the action was brought in good faith and was not frivolous, if the trial court decided in its discretion to award such fees, he was entitled to them. Respondent was right!

Although § 527.6 provides for fees to the "prevailing party," the term "prevailing party" is not defined in § 527.6. However, it is defined in California Code of Civil Procedure § 1032, to wit: "prevailing party includes a defendant in whose favor a dismissal is entered."[68]

#2. In a case where Petitioner successfully obtained a TRO, she claimed she was the "prevailing party" because of the granted order even though she voluntarily dismissed the petition for a permanent injunction before hearing. If a Petitioner has obtained a TRO, does that mean the Petitioner is entitled to attorney fees if the permanent injunction is not obtained?

The answer is no.

The court found in this case that Petitioner was not the prevailing party. The court based its analysis on the fact that, because a TRO is obtained ex parte, a TRO process does not generally provide due-process safeguards.[69]

Hypothetically, anyone can obtain a TRO, do nothing more, and seek attorney fees for getting the TRO. That would be unfair and lack due process.

At times, a voluntary dismissal with prejudice is a final determination on the merits allowing Respondents the right to seek fees and costs after dismissal. Attorney fees that are recoverable under statutory authorization are deemed an element of costs.[70]

If the parties settle and agree on mutual restraining orders, is there a prevailing party?

The answer is yes.

The prevailing party is the one that gets what it sought. When Petitioner sought that relief and obtained it, Petitioner is the prevailing party.

#3. In a neighbor dispute, Respondent allegedly was playing loud music at a disturbing level. Before a hearing, the parties stipulated to a mutual restraining order. Petitioner

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[68] *Evans* [supra]

[69] Adler v. Vaicius (1993) 21 Cal.App.4th 1770 (1993); 27 Cal.Rptr.2d 32

[70] *Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 67 Cal.Rptr.2d 398

then sought attorney fees and costs, claiming to be the prevailing party. The court used Code of Civil Procedure § 1032 and applied it to § 527.6. The determination is in the trial court's discretion, not to be abused. The court held:

> *... a party prevails, in essence, when he gets most or all of what he wanted by filing the action. A plaintiff will be considered a prevailing party when the lawsuit 'was a catalyst motivating defendants to provide the primary relief sought' or succeeded in 'activating defendants to modify their behavior.*[71]
>
> *Moreover, [a] plaintiff should not be denied attorneys' fees because resolution in the plaintiff's favor was reached by settlement.*[72]
>
> *Whether to award attorney fees to a prevailing party, plaintiff or defendant, under section § 527.6(I), is a matter committed to the discretion of the trial court.*[73]

7.2 WEAPONS

What about guns? Any TRO or permanent restraining order injunction prohibits the Respondent from owning or possessing a firearm, even if licensed. Failure to immediately turn over their weapon(s) is a misdemeanor. They can retrieve their firearm(s) at the end of the order's term, but while the order is in effect, they will be charged if found in possession.

While, remarkably, the NRA let this one get by, this aspect of the standing "prior restraint" law plays directly into the current controversy regarding calls for stricter gun control. Clear, effective legislation is already in place to control firearm access by individuals with impulse-control or anger issues. At least in restraining order hearings, the gun owner has a due-process right to confront and cross-examine witnesses and make their argument. The same cannot be said of traditional restrictive gun legislation, which never includes these Constitutional underpinnings and is always completely results oriented.

8 CONCLUSION

The TRO and the permanent injunction, if it is issued, must be delivered to law enforcement on the day it is issued. It is entered into the CLETS, meaning that if a

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[71] *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 260 Cal.Rptr. 148

[72] *Elster* [supra]

[73] *Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 91 Cal.Rptr.3d 452

member of law enforcement searches the computer database for the name of a person, the report will display the order, when it was issued, by whom and the terms.

While it is possible for the court to modify the order pursuant to § 527.6, it does not affect the fact that the TRO was issued.

The TRO, if issued, merges into the Permanent Injunction.

The CLETS report may indicate that the order was modified. If a permanent injunction was not granted, the TRO information is moved to the inactive files after 30 days, where it remains for the five years. The entry stating that the petition for a TRO was granted by a judge remains accessible to parties doing online background checks.

This is the real seriousness of § 527.6 and § 527.8. This is why a TRO is not the laughing matter or casual term that Hollywood and the general press use. It can turn up in background checks for job applications, affect security clearances, and possibly even impact loan applications. The issuance of a TRO, and certainly a permanent order, will forever alter the life of the Respondent.

How much more impact does a law need to be taken seriously?

Herbert Dodell

Herbert Dodell is a Superior Court judge (Pro Tem). During his five years assigned to Civil Harassment calendars throughout the courts in Southern California, he reviewed hundreds of TRO petitions and presided over numerous hearings. A member of the American Board of Trial Advocates, he currently presides over unlawful detainer, small claims, and civil litigation cases. He can be reached at (310) 824-1515 or herb@dodelllaw.net.