



HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

Think Twice: Protection Orders in Divorce & Custody Disputes

Protection orders in divorce and custody cases can be a dangerous weapon that may hit the target or backfire horrendously. Today, we are going to discuss how to ensure you are using protection orders appropriately. To learn more about what protection orders are and how to obtain and enforce them, check out our other articles on our website.

Protection orders in divorce or custody disputes aim at 2 targets:

1. to remove the other party from the residence, and/or
2. to gain a custody advantage.

Protection orders used as a weapon without a legitimate basis are typically stopped by the judge. This leaves the party that attempted to gain an advantage with a strike against them.

However, there are many more cases where legitimate abuse has occurred, but the victim has insufficient evidence to prove the standard required by the court. These victims get stuck with the label of utilizing protection orders as a weapon when there was a very real reason for seeking the order of protection. In most cases, there is improper behavior by the offending party that has occurred, but the victim has little evidence. The courts are inundated with claims of domestic abuse, so when abuse occurs but is not believed, there can be any number of reasons and scenarios.



Whether one party is self-destructing while trying to cope with an unwanted divorce or abuse has been occurring systematically for the duration of a relationship, the court has likely heard a version of your experience previously.

When filing a protection order coincides with a divorce and custody case, judicial suspicions are raised due to potential other motives. Having evidence and a competent attorney who understands the different forms of abuse are crucial.

If you are considering filing an order of protection, make sure you have ample evidence confirming the offending behavior. Evidence can be in the form of text messages, photos, witness accounts, medical documents, police reports, video recordings, journals, etc.

UNDERSTANDING DOMESTIC ABUSE

There are many types of abuse and different ways the court measures it. You must seek an attorney that understands the different forms and how different types of abuse can arise in relationships. All of these factors are difficult for a victim of abuse to process and even more difficult for an inexperienced family law attorney to explain to the court.



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**Rebekkah J. Mouw
is a skilled advocate
on our Family Law
Team.**

Our Passion Shows!

Reviews



Rebekkah J. Mouw

Avvo

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community by
referring us to your
friends & family.

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Abuse can come in many forms, degrees, and combinations. Whether it is sexual, financial, physical, emotional, psychological, financial, or verbal abuse, the common threads are power and control. It is common for victims to feel like this mistreatment is their own fault and justify the abuser's behavior. Many victims are afraid of engaging in the legal process because they are constantly conditioned to believe it is their fault.

There are horror stories where substantial abuse occurred in the marriage and the party files a protection order but is unable to prove that abuse with evidence in court. Despite police reports and photo evidence, the perpetrator fought the protection order and, two years later, ended up getting custody of the minor children. South Dakota has a more respondent-friendly protection order process compared to other states, which is not favorable to domestic abuse victims also involved in divorce and custody proceedings.

If your divorce process has already begun, the Summons served upon the Defendant is intended to pre-empt possible problems that occur during the course of the divorce process, and one of those pre-emptions can be used to compel the other party to leave you alone without jeopardizing your case.

Included in the Summons is a Temporary Restraining Order intended, among other things, to restrain the parties from "disturbing the peace of the other party" and, essentially, engaging in harassing behavior. This is a civil restraining order that is meant to pre-empt the use of protection orders and will be a strong enough remedy if the issue is not a long-standing abuse and is instead a single occurrence. Even if it is a long-standing issue of abuse, lack of evidence to substantiate your claims make the use of the civil restraining order a more optimal choice. The downfall is that unless your attorney is able to get you in front of a judge quickly or expedite a civil restraining order, the process takes much longer than filing an ex-parte protection order, which makes it a much less optimal remedy if the situation requires an immediate response.

If you are experiencing abusive behavior, always seek intervention from outside help. If you are not comfortable going to any authority, then at the very least document after every occurrence and keep the documentation with a trusted friend. Abuse of power and manipulation within relationships is not justifiable, and it is not healthy for yourself or your child(ren). If you seek legal intervention, make sure you find someone who is well-versed in family and abuse issues. Our team understands the emotions and additional legal complications that arise when abuse enters into a divorce or custody dispute. Call us to schedule a consultation today at 605-777-1772. It's time to have an advocate on your side.

**This article is only intended to give general information and not specific legal advice. Consult with an attorney on your situation before taking any legal action.*