

DOMESTIC VIOLENCE FILINGS

Preparing for Child Custody Recommending Counseling when Domestic Violence is an issue

“...The perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child...” (California Family Code, §3020)

The goal of Family Court Services is to assist parents in developing a parenting plan that is good for children, consistent with the terms of any existing restraining order, and provides for the safety of everyone in the family. The Child Custody Recommending Counselor cannot, and will not, make a determination that is binding on the Court as to whether the alleged violence actually occurred.

If there is a restraining order in place:

1. Note this when you fill out your intake form.
2. Discuss this with your CCRC during the session.
3. Bring your restraining order papers to your session.

California law allows a party to bring a support person to the meeting if that party alleges that the other party has perpetrated domestic violence against him/her.

1. The support person may not participate in the session.
2. The support person is only there to provide emotional support.

Important notes about California Family Code, Section 3044

1. Family Code Section 3044 spells out rules that the Court must follow in granting custody to parents when there has been a finding of domestic violence.
2. A copy of this Code section will be given to both parties before the CCRC session. *Be sure to read it.* Both parties should understand their rights regarding child custody prior to the CCRC session.

DOMESTIC VIOLENCE AND CHILD CUSTODY

If you are involved in a family law case involving children and there has been domestic violence, here is important information about a law that affects you.

What is "child custody"?

There are two types.

- *Physical custody:* Whom the child lives with
- *Legal custody:* Who makes important decisions regarding the child's health care, education, and welfare

What is "domestic violence"?

It means to hit, kick, scare, throw things, pull hair, push, follow, harass, sexually assault, or threaten to do any of these things. It also includes other actions that make someone afraid of being hurt. Domestic violence can be spoken, written, or physical.

How does the judge decide if there is domestic violence in my case?

The judge will treat your case as a domestic violence case if, in the last 5 years,

- A parent was convicted of domestic violence against the other parent *or*
- Any court has decided that one parent committed domestic violence against the other parent or the children

Otherwise, the judge will decide based on all the evidence in your case. The judge cannot decide based only on the conclusions or recommendations of CCR Counselor or a child custody evaluator.

What if the judge decides there is domestic violence in my case?

If a court decides there is domestic violence (now or in the past 5 years) against a parent or the children, the judge must follow special rules to decide custody of the children.

Usually, the judge cannot give custody to the person who committed domestic violence. But the judge can give that person visitation.

Are there exceptions?

Yes. The judge can give custody to the person who committed the domestic violence. To do so, the judge must consider whether:

- It is best for the child
- The person has:
 - Completed a 52-week batterer's program
 - Not committed any other domestic violence
- The person has obeyed court orders to:
 - Complete an alcohol or drug abuse program or a parenting class
 - Follow all terms of probation or parole or a protective or restraining order

This law applies to any person seeking custody, not only a parent. To read the law, see California Family Code section 3044. Other laws also apply.

Need Help?

For more information, contact:

**Alameda County Bar Association
Lawyer Referral Services
Phone: (510) 302-2222**

**Superior Court of California
County of Alameda
Self Help Center in Hayward
Phone: (510) 272-1393
www.alameda.courts.ca.gov**

**California Courts Online Self-Help Center
www.courts.ca.gov/selfhelp**

