



# Protect Yourself: Elder Abuse Restraining Orders

Pro Bono Week LA Law Library  
October 25-31 2020

## Agenda

### I. OVERVIEW

- A. Common Fact Patterns in Elder Abuse Cases
- B. Restraining Order Examples

### II. SUBSTANTIVE LAW

- A. Describe Victims Qualifying for EARO
- B. Define Elder Abuse
- C. Determine Standing to File EARO
- D. Learn Standard of Proof for Obtaining EARO
- E. Discuss Remedies Provided by EARO
- F. Compare EARO to Other Restraining Orders

### III. PROCEDURE FOR PETITIONERS

- A. Clinic Intake Procedure
- B. Documents Required
- C. Declarations
- D. Filing the TRO
- E. Service
- F. Next Steps
- G. Trial

### IV. PROCEDURE FOR RESPONDENTS

- A. Clinic Intake Procedure
- B. Defendant's Response

### V. CLINIC

- A. Clinic Logistics
- B. Common Clinic Issues



# OVERVIEW

---

## Common Fact Patterns in Elder Abuse Cases


---

- Majority of elder abuse is perpetrated by a family member, often a family member with mental illness or substance abuse problems.
  - Filing ROs against family can be very difficult and many elders hold off on filing until they reach a breaking point.
- Often people ask for a restraining order and move out order against a family member who has moved in with the elder and is engaging in verbal abuse and harassment.
- Financial abuse is incredibly common—using elder or dependent adult’s income (often fixed Social Security or SSI) for abuser’s own use. Financial abuse can be perpetrated by a power of attorney, agent, conservator, caregiver, or anyone with access to the elder’s finances.

## Sample Elder Abuse Restraining Order Example: Ms. Gonzales

---

Ms. Gonzales is an 80-year-old widow who suffers from mild dementia. Two years ago, Ms. Gonzales' son, Albert, moved into Ms. Gonzales' apartment after losing his job. Albert struggles with alcoholism and has severe bouts of depression. Albert won't let his siblings visit Ms. Gonzales and though Albert claims to be Ms. Gonzales' caregiver, he spends her SSI paycheck on alcohol for himself. Ms. Gonzales only eats one frozen meal per day. Albert also refused to bring Ms. Gonzales to the doctor when the apartment had a bed bug infestation that caused infected scabs on Ms. Gonzales' body. A sibling reported the situation to Adult Protective Services (APS) and APS referred Ms. Gonzales to the EARO clinic for an elder abuse restraining order with move-out order.




## SUBSTANTIVE LAW


---

## Who Qualifies for an EARO?

---

1. **Elder** (WIC § 15610.27): person 65+ years of age.
  2. **Dependent adult** (WIC § 15610.23): person 18 to 64 years old with physical or mental limitations that restrict ability to carry out normal activities or protect his/her rights.
  3. **Adult w/ Developmental disability** (WIC § 4512): a disability that originates before age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability.
    - Includes intellectual disability, cerebral palsy, epilepsy, and autism
    - Does not include conditions solely physical in nature
- 

## Definition of Elder Abuse

1. **Physical abuse** (WIC §15610.63): assault, battery, sexual assault, prolonged or continual deprivation of food or water, or use of physical or chemical restraints
  2. **Neglect** (WIC §15610.5): failure of person with care or custody of elder or dependent adult to exercise degree of care that reasonable person in like position would exercise. Includes failure to assist in personal hygiene, food, clothing, or shelter, medical care, or protection from health and safety hazards.
  3. **Financial abuse** (WIC §15610.30): Occurs when person or entity takes, secretes, appropriates, obtains, or retains real or personal property for wrongful use, with intent to defraud, or by **undue influence** (Excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity)
- 

## Definition of Elder Abuse Cont.

4. **Abandonment** (WIC § 15610.05): The desertion or willful forsaking of elder or dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

5. **Isolation** (WIC §15610.43): Preventing elder from receiving mail, telephone calls, or visitors when contrary to elder's wishes, false imprisonment, physical restraint.

6. **Abduction** (WIC § 15610.06): Moving elder, who cannot or doesn't consent, from state and restraining elder from returning.

## Definition of Elder Abuse Cont.


7. **Other treatment resulting in physical harm or pain or mental suffering** (WIC §15610.53): Fear, agitation, confusion, severe depression, or other forms of serious emotional distress brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of elder or dependent adult.

8. **Deprivation by Care Custodian of Goods/Services** (WIC § 15610.17 and WIC § 15610.17): Includes medical care, hygiene, clothing, heated and ventilated shelter, protection from health and safety hazards and malnutrition, transportation

## Standing—Who can petition?

---

The following people can petition for an EARO:


1. Elder or dependent adult who has suffered abuse.
  2. Conservator of elder or dependent adult
  3. Trustee of elder or dependent adult
  4. An attorney-in-fact of elder or dependent adult who acts within authority of power of attorney
  5. A person appointed as guardian ad litem for elder or dependent adult (the guardian ad litem must be represented by an attorney or be an attorney)
  6. Adult Protective Services (APS)
- 

## Petitioner's Burden of Proof

---

The court may grant elder abuse restraining order on **a preponderance of the evidence**. *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131 (rejecting application of heightened “clear and convincing” standard).

The W&I Code states that an elder abuse restraining order may be issued if the victim's declaration shows, to satisfaction of court, reasonable proof of past act or acts of abuse.



## Notice and Fees

---

### Temporary Restraining Order:

- Waiver of notice: can be granted without notice to the defendant if the victim believes that he or she would be harmed if notice were given.
- If there is no basis for waiving notice, the petitioner must give the defendant **at least four hours** telephonic notice.

### Permanent Restraining Order:

- Requires at least **five calendar days** notice.

### Fees:

- No court filing fees for the EARO or fees for the Sheriff to serve the order on the respondent.

## Orders/Remedies - EARO

---

There are five statutory remedies provided by an elder abuse restraining order (EARO):

1. **Conduct**: Prohibits defendant from engaging in specific conduct and communication with the victim
2. **Stay Away**: Usually 100 yards away from the victim unless parties live together (and can't get residence exclusion), then 3 or 4 feet.
3. **Residence Exclusion** (Move-Out Order)
4. **Care, possession or custody of an animal**
5. **Order enjoining party from specified behavior** that court determines is necessary to effectuate orders


# Residence Exclusion Order (Move-Out Order)

---

This is essentially an eviction.

## **Title Issues**

The court will not grant a residence exclusion unless petitioner is on title to the property or a named lease-holder. The defendant can be a co-owner of the property or a co-tenant. If the parties own the property together and the defendant is removed and thereby prevented from living in the property, the defendant still has the right to force a sale of the property.




## Residence Exclusion Order (Move-Out Order) Cont.

---

### **Requirements for Temporary Residence Exclusion Order**

Court may issue ex parte order excluding party from petitioner's residence on a showing of **all the following**:

- (1) Facts sufficient for court to ascertain that party who will stay in dwelling has a right under color of law to possession of premises.
  - (2) That party to be excluded has assaulted or threatens to assault petitioner, other named family or household member of petitioner, or a conservator of petitioner.
  - (3) That physical or emotional harm would otherwise result to petitioner, other named family or household member of petitioner, or a conservator of petitioner.
- 



## Residence Exclusion Order (Move-Out Order) Cont.

---

### **Requirements for Permanent Residence Exclusion**

The court must find that physical or emotional harm would otherwise result to petitioner, other named family or household member of petitioner, or conservator of petitioner.




## Other Orders Enjoining Conduct

---

The judge **can** make any other order that prevents the defendant from doing something.

- Ex: Defendant “cannot” do \_\_\_\_\_. (E.g. – accompany victim to the bank, change beneficiary on life insurance, use victim’s car, etc.)

Judge **can't** make orders requiring the defendant to affirmatively perform an act. There is no way for the restraining order court to enforce such an order. (E.g. – return victim’s personal property, return stolen money.)

- Note: If the judge is willing to be creative, it can be used as a tool to get the defendant to do an affirmative act. E.g. – if defendant returns victim’s personal property by x date, then victim will dismiss restraining order.
- 

## Compare: Domestic Violence Restraining Order (DVRO)

---

Family Code defines “abuse” more narrowly and does not explicitly recognize several forms of abuse in the elder abuse statute including neglect, financial abuse, and isolation. (Family Code §6203)

\* However, case law suggests that abuse is not limited to the actual infliction of physical injury or assault and that emotional abuse is actionable.

Qualifying relationships for DVRO (**not required for EARO**):

- Spouse, ex-spouse
- Dating or engagement relationship
- Someone with whom victim has had a child
- Relative within the second degree (grandparent/grandchild, aunt/uncle, niece/nephew, half-sibling)

## Compare DVRO: Remedies

---

- The DVRO provides for more remedies than the EARO:
  - Custody
  - Visitation
  - Child Support
  - Batterer's Treatment Program
  - Freeze Marital Assets
  - Restitution (Expenses related to abuse, e.g. medical bills)
  - Spousal Support
  - Paternity Stipulation
  - Move-out order: the court to issue a kick-out regardless of who holds title or the lease, although the eviction would only be temporary if the victim was not a title holder.

## Compare: Civil Harassment Restraining Orders (CCP §527.6)

---

Under the Code of Civil Procedure "harassment" is unlawful violence, a credible threat of violence, or 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.

Civil harassment restraining orders can be filed by anyone against anyone

Civil harassment does not allow for the same remedies. There is no residence exclusion.

Burden of proof is higher (clear and convincing evidence)

**Bottom line: Petitioner should file an EARO or DVRO over a CHRO**

---


## PROCEDURE

### PETITIONER

---


# Documents required to request TRO

---

1. EA-100- Request for Orders to Stop Elder or Dependent Adult Abuse
    - Attachments: Petitioner declaration with detailed allegations, Evidence
  2. EA-110 Temporary Restraining Order
  3. EA-120- Notice of Hearing and Temporary Restraining Order
  4. EA-109 Notice of Court Hearing
  5. EA-130 Response to Restraining ORder
  6. CLETS 001
  7. Declaration of Notice /FAM-018
  8. MC-005 if filing via email
  9. FAM-020\* Required by some courthouses
- 


## Victim/Petitioner Declaration

---

- Cognitive and physical disabilities of petitioner.
  - Activities of daily living (ADLs) – e.g. bathing, shopping, walking, eating, cooking, driving, managing finances.
  - Statement of facts – describe relationship to abuser and abuse in chronological order.
  - Evidence – attach evidence (police report, bank statements, witness declarations, photos, texts).
  - Standing to bring petition if victim is not the petitioner.
  - Request for Relief if other than standard orders.
- 


## Filing the TRO

---

- There are currently 4 ways to file (options may differ depending on courthouse):
    - 1. in person (with appointment)
    - 2. by drop off box, outside of the court –must submit with self-addressed, stamped envelope for return
    - 3. by email
    - 4. by fax
  - Judge will either (a) grant TRO and set for permanent hearing in 21 days or (b) deny TRO and set for permanent hearing in 21 days.
    - If the TRO included a move-out order request, this will also be granted or denied. Sometimes the TRO is granted, but not the move-out order.
  - The clerk will return stamped copies of the forms in person, by fax, by mail, or email depending on how it was filed.
- 


## Service Issues

---

- Petitioner must fill out Sheriff Instruction Sheet and provide copies of forms to Sheriff's office in the courthouse. Some Sheriffs might accept service requests via fax, but you should call first to check.
  - If the court granted a move-out, the sheriff will serve and remove the respondent from the premises within a few days.
  - Sheriff will complete a proof of service and send it to the petitioner. The petitioner should bring a copy of the proof of service to the hearing.
  - If a Respondent cannot be served five days before the hearing on the permanent restraining order, then the petitioner may request the court to reissue the TRO. Complete **Judicial Council Form EA-115**.
  - If the Petitioner doesn't have an address for the Respondent, they will have to personally serve the Respondent at least 5 days before the hearing (but petitioner and other protected persons can't serve—must ask someone else to serve on your behalf)
- 

# Trial

---

- All litigants and witnesses must appear in person (\*or through LA CourtConnect) for the judge to consider their declarations and testimony.
  - The judge will likely admit the litigant's declaration into evidence and ask if he/she has anything to add.
  - The litigant should report any violations of the order or new incidents.
  - Any witnesses who did not submit a declaration will have an opportunity to speak and the defendant can cross examine them.
- 


## PROCEDURE

### RESPONDENT

---

## Response to EARO—Forms

---

- Respondents have the opportunity to file a written response to the restraining order request.
    - But it is not necessary to file a written response in order to be heard at the hearing—Respondents can verbally oppose.
  - Respondent may ask for one continuance that the court must grant, generally for the purpose of preparing a defense or hiring an attorney.
  - **Required Forms:**
    - Request for Continuance - EA-115 (+ Order - EA-116)
    - Response to Request for EARO - EA – 120
    - Proof of Service of Response by Mail - EA 250
- 

CLINIC

---

# Bet Tzedek's Self-Help Elder Abuse Restraining Order Clinic—Logistics

---

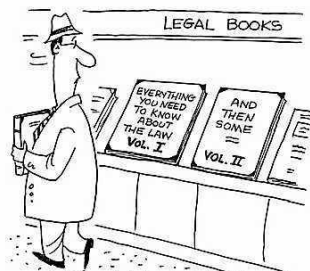
- Currently ALL Remote –we conduct intakes via phone and then email or mail the forms
- Mondays, Wednesdays, Fridays 9:00 am -5:00 pm
  - We respond to calls and emails within 2 business hours on clinic days.
- Call **(323) 648-4730** or Email **eaclinic@bettzedek.org**
- Partnership grant with LA Superior Court
- Will provide self-help services to litigants and respondents
- Our staff can assist callers in any language
- Up to date clinic information available at **www.bettzedek.org/calendar**

---

## Clinic Logistics—Self-Help Model

---

- No attorney-client relationship formed
- Cannot give legal advice





## Common Issues During Clinic

---

- Cannot do EARO if don't have respondent's last name
- We CAN do EARO if we don't have respondent's address, BUT respondent must be personally served before the hearing so if they don't have a way to get an address or see respondent, might not be worth it
- We do modify orders based on petitioner's preferences—some still want to maintain some contact with abuser
- We can do EAROs between roommates and neighbors with restricted stay aways

---

## Speaker Info

Dani Kaiserman, Esq.

Staff Attorney, Bet Tzedek Legal Service

[dkaiserman@bettzedek.org](mailto:dkaiserman@bettzedek.org)

(323) 549-5837

