

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 20

**ORDERS PROHIBITING CIVIL
HARASSMENT AND
WORKPLACE/POSTSECONDARY
SCHOOL VIOLENCE**

[REVISED 2016]



JUDICIAL COUNCIL
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ORDERS PROHIBITING CIVIL HARASSMENT AND WORKPLACE/POSTSECONDARY SCHOOL VIOLENCE

I. [§20.1] SCOPE OF BENCHGUIDE

II. APPLICABLE LAW

- A. [§20.2] General Background
- B. Temporary Restraining Order and Order After Hearing Prohibiting Harassment (CCP §527.6)
 - 1. [§20.3] Procedural Checklist: Issuing Temporary Restraining Order
 - 2. [§20.4] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing
 - 3. [§20.5] Who May Seek Relief
 - 4. [§20.6] Definitions
 - 5. [§20.7] Issuing a Temporary Restraining Order
 - 6. Subsequent Hearing
 - a. [§20.8] Time for Hearing
 - b. [§20.9] Service on Respondent
 - c. [§20.10] Respondent's Response
 - d. [§20.11] Continuance
 - e. [§20.12] Evidence
 - f. [§20.13] Presence of Petitioner's Support Person at Hearing
 - 7. Issuance of Order After Hearing
 - a. [§20.14] Findings
 - b. [§20.15] Award of Costs and Fees
 - c. [§20.16] Service of Order by Mail
 - d. [§20.17] Duration of Order
 - e. [§20.18] Modification or Termination of Order
 - f. [§20.19] Renewal of Order

- g. [§20.20] Persons Protected by Order
- h. [§20.21] Mutual Orders
- 8. [§20.22] Transmission of Order to Law Enforcement Agencies
- 9. [§20.23] Subsequent Award of Fees and Costs
- 10. [§20.24] Effect of Respondent's Bankruptcy Petition
- 11. [§20.25] Criminal Consequences of Violating Order
- 12. [§20.26] Statute's Effect on Other Remedies
- 13. [§20.27] Appeal of Order
- C. Temporary Restraining Order and Order After Hearing Prohibiting Workplace Violence (CCP §527.8)
 - 1. [§20.28] Procedural Checklist: Issuing Temporary Restraining Order
 - 2. [§20.29] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing
 - 3. [§20.30] Who May Seek Relief
 - 4. [§20.31] Potential Respondents
 - 5. [§20.32] Definitions
 - 6. [§20.33] Issuance of Temporary Restraining Order
 - 7. Subsequent Hearing
 - a. [§20.34] Time for Hearing
 - b. [§20.35] Service on Respondent
 - c. [§20.36] Respondent's Response
 - d. [§20.37] Continuance
 - e. [§20.38] Evidence
 - 8. Issuance of Order After Hearing
 - a. [§20.39] Findings
 - b. [§20.40] Service of Order by Mail
 - c. [§20.41] Duration of Order
 - d. [§20.42] Modification or Termination of Order
 - e. [§20.43] Renewal of Order
 - f. [§20.44] Persons Protected by Order
 - 9. [§20.45] Transmission of Order to Law Enforcement Agencies
 - 10. [§20.46] Violation of Order
 - 11. [§20.47] Statute's Effect on Other Remedies
- D. Temporary Restraining Order and Order After Hearing Prohibiting Off-Campus Threats to Postsecondary School Students (CCP §527.85)
 - 1. [§20.48] Procedural Checklist: Issuing Temporary Restraining Order
 - 2. [§20.49] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing
 - 3. [§20.50] Who May Seek Relief

4. [§20.51] Definitions
5. [§20.52] Issuance of Temporary Restraining Order
6. Subsequent Hearing
 - a. [§20.53] Time for Hearing
 - b. [§20.54] Service on Respondent
 - c. [§20.55] Respondent's Response
 - d. [§20.56] Continuance
 - e. [§20.57] Evidence
7. Issuance of Order After Hearing
 - a. [§20.58] Findings
 - b. [§20.59] Service of Order by Mail
 - c. [§20.60] Duration of Order
 - d. [§20.61] Modification or Termination of Order
 - e. [§20.62] Renewal of Order
 - f. [§20.63] Persons Protected by Order
8. [§20.64] Transmission of Order to Law Enforcement Agencies
9. [§20.65] Violation of Order
 - E. [§20.66] Firearms Restrictions
 - F. [§20.67] Gun Violence Restraining Orders
 - F. [§20.68] Subsequent Malicious Prosecution Action
 - G. [§20.69] Anti-SLAPP Motion To Strike
 - H. [§20.70] Special Provisions Regarding Petitioners or Respondents Who Are Minors
 - I. [§20.71] Strategic Plan for Language Access in the California Courts

IV. [§20.72] SCRIPT: ADVISEMENTS TO PARTIES AT COMMENCEMENT OF CIVIL HARASSMENT HEARING

V. [§20.73] ADDITIONAL REFERENCES

I. [§20.1] SCOPE OF BENCHGUIDE

This benchguide provides an overview of the procedures for reviewing and deciding requests for a temporary restraining order (TRO) and order after hearing prohibiting civil harassment under CCP §527.6, workplace violence under CCP §527.8, and off-campus threats to postsecondary school students under CCP §527.85 (note: earlier versions of these statutes used the word injunction instead of order after hearing or order). It contains procedural checklists for these three proceedings, and a summary of the applicable law. It also contains a script the court may use at the commencement of a civil harassment hearing on the petition to advise the parties of the matters the court must consider.

II. APPLICABLE LAW

A. [§20.2] General Background

Code of Civil Procedure §527.6 (civil harassment), CCP §527.8 (workplace violence), and CCP §527.85 (off-campus threats of violence against student) set forth the requirements for statutorily created orders. They establish procedures designed to provide expedited injunctive relief to persons who have suffered civil harassment or who are under a credible threat of violence in the workplace or postsecondary school students who have received off-campus threats of violence. See *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1250, 29 CR3d 521 (speech that constitutes “harassment” is not constitutionally protected); *Byers v Cathcart* (1997) 57 CA4th 805, 811, 67 CR2d 398. They provide for issuing orders of limited scope and limited duration. See 57 CA4th at 810–812 (CCP §527.6 is not intended to provide for summary determination of potentially complex issues, e.g., it cannot be used to resolve dispute over easement use); *Marquez-Luque v Marquez* (1987) 192 CA3d 1513, 1517–1519, 238 CR 172 (because CCP §527.6 protects people, not property, court does not have authority to evict respondent who has threatened to damage property but not to harm petitioner).

A person seeking an order under these statutes need not make the showing that is generally required for the granting of injunctive relief. For example, the person need not show that a legal remedy (e.g., money damages) is inadequate. Nevertheless, in determining whether to issue an order, the court should consider the general principles that

- Injunctive relief is designed to deter and not to punish (*Russell v Douvan* (2003) 112 CA4th 399, 401–402, 5 CR3d 137; *Scripps Health v Marin* (1999) 72 CA4th 324, 332, 85 CR2d 86);
- A change in circumstances at the time of the hearing may render injunctive relief moot or unnecessary (*Russell v Douvan, supra*);
- An injunction is an equitable remedy (*People v Sangiacomo* (1982) 129 CA3d 364, 367, 181 CR 90);
- A prior restraint is a disfavored remedy (*Hurvitz v Hoefflin* (2000) 84 CA4th 1232, 1241–1242, 101 CR2d 558); and
- A court should issue a mandatory injunction only on a clear showing that injury will result if the injunction is not issued (*Youngblood v Wilcox* (1989) 207 CA3d 1368, 1372 n1, 255 CR 527).

B. Temporary Restraining Order and Order After Hearing Prohibiting Harassment (CCP §527.6)

1. [§20.3] Procedural Checklist: Issuing Temporary Restraining Order

(1) *Review the petition and application.* The petitioner must use Judicial Council form CH-100. Judges who hear these cases should make sure that their courts have Judicial Council form CH-100-INFO, *Can a Civil Harassment Restraining Order Help Me?*, available to petitioners. This form provides instructions for completing the petition. The petitioner must also provide to the court a Judicial Council form CLETS-001, Confidential CLETS Information. This form is confidential and private, and does not become part of the public court file. See Cal Rules of Ct 1.51.

(2) *A request for a TRO without notice must be granted or denied on the same day that the petition is filed.* If the petition is filed too late in the day to permit effective review, you must be grant or deny the TRO on the next court day. CCP §527.6(e). See §20.7.

(3) *Determine that the petitioner is a proper party to seek relief under CCP §527.6.* The petitioner must be a natural person, not an artificial entity, such as a corporation, partnership, or association. The petitioner must also be the person who has personally and actually suffered the harassment, *e.g.*, the petitioner may not be a parent who is seeking a TRO for a minor child in a capacity other than as a guardian ad litem. CCP §527.6(a). See §20.5. If the petitioner is a minor, special provisions apply. CCP §374(a). See §20.70.

(4) *In deciding whether to grant a TRO, determine whether the petitioner has shown reasonable proof of harassment by the respondent and that the petitioner will suffer great or irreparable harm if the TRO is not granted.* CCP §527.6(d). See §20.7. The “harassment” must consist of unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at the petitioner that seriously alarms, annoys, or harasses the petitioner, and that serves no legitimate purpose. CCP §527.6(b)(3). See §20.6. If the conduct about which the petitioner is complaining does not meet this statutory definition, the court may not provide relief, temporary or otherwise.

(5) *Issue a TRO if the petitioner has made the required showings.* Courts must use the Judicial Council form CH-110, Temporary Restraining Order. If the petitioner shows good cause, the court has the discretion to issue a TRO that includes other named family or household members if the court determines that third parties will also suffer great or irreparable harm. CCP §527.6(c). However, you need not issue all requested orders. For example, if the parties are roommates or landlord and tenant (watch for similar addresses), it may be appropriate to issue an order preventing harassing conduct but not a stay-away order.

(6) *Set hearing on the petition.* Set the matter for hearing within 21 days or, if good cause appears, 25 days, from the date that the petition for the TRO is granted or denied. CCP §527.6(g). If no request for temporary orders is made, the court must set the hearing within 21 days or, if good cause appears, 25 days, from the date that the petition is filed. CCP §527.6(g). Courts must use the Judicial Council form CH-109, Notice of Court Hearing.

(7) *The petitioner may ask you to shorten the time for service, which you may grant for good cause.* CCP §527.6(m); Cal Rules of Ct 3.1152(c). See §20.13.

2. [§20.4] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing

(1) *Before the hearing on the petition, determine that the respondent was properly served with a copy of the petition, the TRO, and notice of hearing on the petition.* Personal service is required in the manner provided for service of summons at least 5 days before the hearing, unless the court has shortened the time for service for good cause. CCP §527.6(m). See §20.9. The proof of service should be made on Judicial Council form CH-200. If there is not proper service but all parties are present, the respondent may waive any service irregularities and proceed, or be granted a reasonable continuance.

(2) *Before the hearing, determine that the petitioner was properly served with the respondent's response to the petition.* The response may be written or oral, or both. See Cal Rules of Ct 3.1152(d). If a written response is served on the petitioner or the petitioner's attorney at least 2 days before the hearing, the petitioner may not request a continuance on an account of the response. See Cal Rules of Ct 3.1152(d); §20.10. The proof of service should be made on Judicial Council form CH-250. You should exercise your judgment to determine if the petitioner can and is willing to read any written response in court before the hearing, has time to digest it, and can proceed with the hearing.

(3) *Review the response to the petition and any cross-petition filed by the respondent.* If the response is written, the respondent must use Judicial Council form CH-120. The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-petition for an order prohibiting harassment. CCP §527.6(h). The respondent is entitled to one continuance for a reasonable period to respond to the petition. CCP §527.6(o). See §20.10.

(4) *Before calling the calendar, advise the parties of the matters the court must consider.* See Script in §20.72.

(5) *If a mediator is available at your court, ask the parties if they might be willing to consider mediation of their dispute.* If so, refer the case to

mediation, and advise the parties that what happens during mediation is not admissible in any subsequent court proceeding. See Evid C §1119. If a mediator is not available, or the parties have gone to mediation and failed to settle, proceed to the hearing.

(6) *If the parties wish to proceed to hearing, advise them that they have the right to present any relevant testimony, including oral testimony.* The court may not deny a party the opportunity to present oral testimony. But a full-fledged evidentiary hearing with oral testimony is not necessary, unless requested by a party. Also advise the parties that the court may make an independent inquiry, *i.e.*, the court may question the parties and their witnesses. See CCP §527.6(i). Hearsay evidence is admissible at the hearing. *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830. See §20.12.

(7) *If a support person is present at the hearing with a petitioner who is appearing in pro per, advise the participants that the support person may sit at the counsel table to provide moral and emotional support to the petitioner, but may not provide legal advice to the petitioner.* See CCP §527.6(l); §20.13. The respondent is *not* entitled to a support person.

(8) *If the court finds by clear and convincing evidence that unlawful harassment occurred, it should issue the requested order.* The petitioner must prove that he or she was subjected to one of the following: (a) unlawful violence, *i.e.*, assault, battery, or stalking; (b) a credible threat of violence, *i.e.*, a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose; or (c) a knowing and willful course of conduct directed at the petitioner that seriously alarms, annoys, or harasses the petitioner, and that serves no legitimate purpose. In addition, the petitioner must show that the conduct, by its nature, would cause a reasonable person to suffer substantial emotional distress, and that this conduct did, in fact, cause the petitioner substantial emotional distress. CCP §527.6(b)(3). And the petitioner must establish that great or irreparable harm would result to the petitioner if an order is not issued because of the reasonable probability that unlawful violence will occur in the future. The court is not required to make a specific finding on the record that harassment occurred, or to cite to the statutory elements of harassment. See §20.14. But the granting of the injunction implies that the court has found that the respondent “knowingly and willfully engaged in a course of conduct that seriously alarmed, annoyed or harassed [the petitioner], and that [the petitioner] actually suffered substantial emotional distress.” *Ensworth v Mullvain* (1990) 224 CA3d 1105, 1112, 274 CR 447. The court must use Judicial Council form CH-130 to issue the order. If the petitioner shows good cause, the court has the discretion to issue an order that includes other named family or household members. CCP §527.6(c).

(9) *Determine if an award of attorney’s fees and costs to the prevailing party is appropriate.* It is within the court’s discretion to award the prevailing party costs and attorney’s fees. See CCP §527.6(s); §20.15. However, as with any civil action, a motion is required. Cal Rules of Ct 3.1702. Costs must be claimed by a memorandum of costs. Cal Rules of Ct 3.1700.

(10) *Advise the parties of the order’s terms and scope, including any exceptions or nuances, as well as its duration (maximum of 5 years).* Also advise the petitioner that he or she may apply for renewal of the order by filing a new petition at any time within 3 months before the order expires. See CCP §527.6(j); §§20.17, 20.19.

(11) *Advise the respondent that he or she may not own, possess, purchase, receive, or attempt to purchase or receive a firearm for the duration of the order.* Order the respondent to sell to a licensed gun dealer or turn in to the police any firearms that he or she possesses or controls within 24 hours of receiving the order. See CCP §527.6(u); §20.66.

(12) *Advise the respondent that he or she must file proof of sale or surrender of any firearm with the court within 48 hours of receiving the order.* See §20.66.

(13) *Advise the petitioner that he or she must deliver a copy of the order to the law enforcement agencies specified in the order by the close of the business day on which the order is granted.* See CCP §527.6(r); §20.22.

3. [§20.5] Who May Seek Relief

A person who has suffered harassment (see §20.6) may seek a TRO and an order after hearing prohibiting harassment. CCP §527.6(a)(1). The term “person” is limited to natural persons and does not include artificial entities such as corporations, partnerships, or associations. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1258, 29 CR3d 521 (animal testing laboratory cannot maintain cause of action against organization and individuals protesting laboratory’s activities); *Diamond View Ltd. v Herz* (1986) 180 CA3d 612, 618–619, 225 CR 651 (limited partnership not entitled to injunctive relief).

The petitioner may appear in the proceeding by counsel or in pro per. CCP §527.6(k).

4. [§20.6] Definitions

Harassment means 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. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. CCP §527.6(b)(3).

Unlawful violence is any assault, battery, or stalking, but does not include lawful acts of self-defense or defense of others. CCP §527.6(b)(7).

Credible threat of violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.6(b)(2). The intent requirement for a true threat is that the respondent intentionally or knowingly communicates the threat; it is not necessary that the respondent intends to, or is able to carry out the threat. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1255–1256, 29 CR3d 521.

Course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CCP §527.6(b)(1); see *Leydon v Alexander* (1989) 212 CA3d 1, 4, 260 CR 253 (single incident of harassment is insufficient; potential different result in case involving verbal abuse amounting to credible threat of violence). It includes following or stalking an individual, making harassing telephone calls, or sending harassing correspondence by any means including mail, fax, or email. CCP §527.6(b)(1). See *Brekke v Wills* (2005) 125 CA4th 1400, 1412–1414, 23 CR3d 609 (teenage boyfriend’s behavior constituted “course of conduct” against minor girlfriend’s parents; boyfriend sent three vitriolic letters to girlfriend knowing her mother would read them, he had earlier sent letters instructing girlfriend on retaliatory measures she could take against her parents for their restrictions on her, and he taunted mother on telephone). Constitutionally protected activity is not included within the term “course of conduct.” CCP §527.6(b)(1). For example, filing a legal action does not constitute harassment because an individual has a constitutional right to petition for redress of grievances. See *Byers v Cathcart* (1997) 57 CA4th 805, 809, 67 CR2d 398; *Leydon v Alexander, supra*, 212 CA3d at 5; see also *Smith v Silvey* (1983) 149 CA3d 400, 406, 197 CR 15 (respondent could not be enjoined from initiating complaints about petitioner with public agencies). But see *R.D. v P.M.* (2011) 202 CA4th 181, 191–193, 135 CR3d 791 (former patient could be enjoined from coming within 100 yards of therapist, and therefore prevented from distributing flyers about therapist at therapist’s office and son’s school, without violating First Amendment). The course of conduct must by its nature cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. CCP §527.6(b)(3); *Brekke v Wills, supra*, 125 CA4th at 1414–1415. For example, the court may not grant a TRO and preliminary injunction under CCP §527.6, enjoining a nuisance such as the noise from the use of a basketball court, without proof that the noise caused substantial emotional distress to the petitioner. See *Schild v Rubin* (1991) 232 CA3d 755, 761–765, 283 CR 533. The phrase “substantial emotional distress” is not defined by CCP §527.6. But in the analogous context of the tort of intentional infliction of

emotional distress, the similar phrase “severe emotional distress” has been defined to mean highly unpleasant mental suffering or anguish “from socially unacceptable conduct,” that entails such intense, enduring, and nontrivial emotional distress that “no reasonable [person] in a civilized society should be expected to endure it.” 232 CA3d at 762–763.

Code of Civil Procedure §527.6 is not intended to supplant normal injunctive procedures applicable to cases concerning issues other than harassment as defined in the statute. *Byers v Cathcart, supra*, 57 CA4th at 811. Conduct that is outside the definition of “harassment” cannot be enjoined under the summary procedures of CCP §527.6, even if it might ultimately be enjoined under normal injunctive procedures after full development of the facts and law. *Byers v Cathcart, supra*, 57 CA4th at 812. For example, without substantial evidence of harassing conduct, a court may not use CCP §527.6 to order a respondent to stay 25 feet away from the petitioner who was conducting judgment debtor examinations in court. *Nebel v Sulak* (1999) 73 CA4th 1363, 1370, 87 CR2d 385.

5. [§20.7] Issuing a Temporary Restraining Order

The court may grant a TRO on the petition and application, with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment by the respondent, and that the petitioner will suffer great or irreparable harm if the TRO is not granted. CCP §527.6(d); see CCP §527.6(w)(1) (petitioner must use Judicial Council form CH-100 for petition; court must use Judicial Council form CH-110 to issue TRO). Unless ordered by the court, no supporting memorandum is required. Cal Rules of Ct 3.1152(b).

Fees. No filing fee may be charged for a petition that alleges that the respondent has inflicted or threatened violence against the petitioner, stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking, future violence, or threats of violence. CCP §527.6(x). And no fee may be charged for filing a subpoena in connection with or a response to a petition alleging these acts. CCP §527.6(x). In addition, there must not be a fee for a sheriff or marshal to serve a protective or restraining order to be issued, if the order is based on stalking, unlawful violence, or a credible threat of violence. CCP §527.6(y).

- **JUDICIAL TIP:** Code of Civil Procedure §527(c) provides that a TRO cannot be granted without notice to the opposing party unless specified legal requirements are met. However, CCP §527.6(d) trumps that statute by allowing you to issue a TRO “with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the

respondent, and that great or irreparable harm would result to the petitioner.”

A TRO may include any of the following (CCP §527.6(b)(6), (d)):

- An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning (including, but not limited to, making annoying telephone calls as described in Pen C §653m), contacting (either directly or indirectly, by mail or otherwise), destroying the personal property of, coming within a specified distance of, or disturbing the peace of the petitioner.
- On a showing of good cause, an order granting petitioner the exclusive care, possession, or control of an animal owned, possessed, leased, kept, or held by petitioner, or residing in the petitioner’s residence or household, and/or requiring respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.
- An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described above.

The court need not issue all requested orders. For example, if the parties are roommates or landlord and tenant (watch for similar addresses), it may be appropriate to issue an order preventing harassing conduct but not a stay-away order. A request for the issuance of a TRO without notice must be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. CCP §527.6(e).

On a showing of good cause, the court has the discretion to issue a TRO that includes other named family or household members. CCP §527.6(c). The TRO remains in effect, at the court’s discretion, for up to 21 days or, if the court extends the time for hearing, for up to 25 days, unless otherwise modified or terminated by the court. CCP §527.6(f).

- **JUDICIAL TIP:** You may grant or deny the TRO based only on the petition, without holding a hearing. Some judges require petitioners to submit a written declaration with the mandatory form so that there is enough information to make an informed decision. You may also order the petitioner to court to provide you with needed information on the record. The petitioner should be instructed to add any new information from the hearing to the written declaration.

6. Subsequent Hearing

a. [§20.8] Time for Hearing

A hearing must be held within 21 days or, if good cause appears, 25 days from the date that the petition for a temporary order is granted or denied. CCP §527.6(g). In the unusual case that no request for temporary orders is made, the hearing must be held within 21 days, or if good cause appears, 25 days, from the date that the petition is filed. CCP §527.6(g).

- **JUDICIAL TIP:** Although most judges consider the requirements for issuing a TRO to be fairly low, sometimes the petitioner fails to meet them. Many judges set a restraining order hearing anyway, unless the petition for the restraining order has no validity either at the time of its filing or in the future. Thus, whether you grant or deny the TRO, you almost always set a hearing for the restraining order itself.

b. [§20.9] Service on Respondent

The respondent must be personally served with a copy of the petition, TRO, and notice of hearing on the petition at least 5 days before the hearing. CCP §527.6(m); Cal Rules of Ct 3.1152(c). Service must be made in the manner provided by law for personal service of the summons in a civil action. Cal Rules of Ct 3.1152(c). For good cause, the court may shorten the time for service. CCP §527.6(m); Cal Rules of Ct 3.1152(c).

- **JUDICIAL TIP:** Petitioners will often ask you to shorten the time for service because of the possibility of retaliation by the respondent, or the risk that the respondent will escalate his or her conduct.

The notice of hearing must notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to 5 years. CCP §527.6(n).

If a respondent, named in a restraining order issued after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required to enforce the order. CCP §527.6(q)(1).

But if personal service of an order after hearing is required, there must not be a fee for a sheriff or marshal to serve the order, if it is based upon stalking, unlawful violence, or a credible threat of violence. CCP §527.6(y).

c. [§20.10] Respondent's Response

The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-petition. CCP §527.6(h);

see CCP §527.6(w)(1) (respondent must use Judicial Council form CH-120); see also CCP §527.6(x) (when filing fee is not required).

If a written response is served on the petitioner or the petitioner's attorney at least 2 days before the hearing, the petitioner is not entitled to a continuance on account of the response. Cal Rules of Ct 3.1152(d). The respondent may appear in the proceeding by counsel or in pro per. CCP §527.6(k). In addition to, or in lieu of, a written response, the petitioner can challenge the issuance of a permanent order through oral testimony at the hearing. Cal Rules of Ct 3.1152(d).

d. [§20.11] Continuance

The respondent is entitled, as a matter of course, to one continuance for a reasonable period to respond to the petition. CCP §527.6(o). Either party may receive a continuance of the hearing after making a request and showing good cause. CCP §527.6(p)(1); Cal Rules of Ct 3.1152(e). The request may be made in writing before or at the hearing, or orally at the hearing. CCP §527.6(p)(1). The court may also grant a continuance on its own motion. CCP §527.6(p)(1). If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. CCP §527.6(p)(2); Cal Rules of Ct 3.1152(e). The court may modify or terminate a TRO when granting a continuance. CCP §527.6(p)(2). An error in failing to grant a request for a continuance is reversible only if the denial results in a denial of a fair hearing, or otherwise prejudices the requesting party. *Freeman v Sullivant* (2011) 192 CA4th 523, 527–528, 120 CR3d 693.

e. [§20.12] Evidence

At the hearing, the court must consider any relevant evidence, including hearsay evidence, when deciding whether to issue an order prohibiting the harassment. CCP §527.6(i); *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830; *Duronslet v Kamps* (2012) 203 CA4th 717, 728–730, 137 CR3d 756. The court may also make an independent inquiry. CCP §527.6(i). The court may not deny a party the opportunity to present oral testimony. *Schraer v Berkeley Prop. Owners' Ass'n* (1989) 207 CA3d 719, 730–733, 255 CR 453 (court should not have refused introduction of oral testimony and should not have based its decision entirely on written declarations, documentary evidence, and arguments of counsel); but see *Malatka v Helm* (2010) 188 CA4th 1074, 1084–1085 n5, 116 CR3d 343 (discussing *Schraer* and finding it “to be an open question whether [CCP §527.6] implicitly authorizes a declaration in opposition to be considered as testimony”). However, it is the parties' obligation to ensure that their witnesses are present at the hearing and ready

to testify. *Schraer v Berkeley Prop. Owners' Ass'n, supra*, 207 CA3d at 732 n5. Both sides may offer evidence by deposition, affidavit, or oral testimony, and the court must receive this evidence, subject only to reasonable limitations necessary to preserve the expeditious nature of the harassment procedure. A full-fledged evidentiary hearing with oral testimony is not necessary, unless requested by a party. See *Ensworth v Mullvain* (1990) 224 CA3d 1105, 1110–1111, 274 CR 447; *Schraer v Berkeley Prop. Owners' Ass'n, supra*, 207 CA3d at 733 n6. Direct testimony from the petitioner that he or she suffered substantial emotional distress is not required for the court to issue an order; the petitioner's declaration may be sufficient. *Ensworth v Mullvain, supra*, 224 CA3d at 1110–1111.

Testimony of mental health practitioner. Although communications between a patient and a psychotherapist are confidential and privileged under Evid C §1012, the “dangerous patient” exception to the psychotherapist-patient privilege permits disclosure of any threatening communications of the patient if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure of the communications are necessary to prevent the threatened harm. Evid C §1024.

f. [§20.13] Presence of Petitioner's Support Person at Hearing

If there are allegations of unlawful violence or credible threats of violence, a support person may accompany the petitioner in court. CCP §527.6(*l*). If the petitioner is appearing in pro per, the support person may sit at the counsel table. CCP §527.6(*l*). The support person may not provide legal advice, but is allowed to be present to provide moral and emotional support to the petitioner. CCP §527.6(*l*). The court has the discretion to remove the support person from the courtroom if the court believes that the support person is prompting, swaying, or influencing the petitioner. CCP §527.6(*l*). Absent a hearing where mutual orders are sought, the respondent is *not* entitled to a support person.

7. Issuance of Order After Hearing

a. [§20.14] Findings

If the court finds by clear and convincing evidence that unlawful harassment occurred, it must issue an order prohibiting the harassment. CCP §527.6(*i*); see Judicial Council form CH-130. The order lies only to prevent future harm, so the petitioner must also establish that great or irreparable harm would result to the petitioner if an order is not issued because of the reasonable probability that unlawful violence will occur in the future.

Russell v Douvan (2003) 112 CA4th 399, 401–404, 5 CR3d 137 (trial court erred in issuing order based on a single act of violence without finding threat of future harm). When read literally, the language of CCP §527.6(i) appears to provide that once the petitioner establishes by clear and convincing evidence that the respondent has engaged in a single act of harassment, the court must issue an order. But CCP §527.6(i) must be read to include the requirement that the petitioner show that great or irreparable harm is likely to occur absent the order because the petitioner is required to make such a showing under CCP §527.6(d) to obtain a TRO or a permanent order; the order should not serve just as punishment for past acts. 112 CA4th at 402–404. A change in circumstances at the time of the hearing may render injunctive relief moot or unnecessary. 112 CA4th at 401.

The court is not required to make a specific finding on the record that harassment occurred, or to cite the statutory elements of the harassment, though doing so is a preferred practice to make a clear record. Although there must be evidence to support the required elements of harassment and substantial emotional distress, direct testimony by the petitioner is not required to establish or support those elements. See *Ensworth v Mullvain* (1990) 224 CA3d 1105, 1112, 274 CR 447.

b. [§20.15] Award of Costs and Fees

The court may award the prevailing party court costs and attorney’s fees. CCP §527.6(s). See *Leydon v Alexander* (1989) 212 CA3d 1, 5, 260 CR 253 (award is discretionary); see also §20.10. Because CCP §527.6(s) does not define “prevailing party,” the court may use the general definition of “prevailing party” in CCP §1032. *Adler v Vaicius* (1993) 21 CA4th 1770, 1777, 27 CR2d 32; *Elster v Friedman* (1989) 211 CA3d 1439, 1443–1444, 260 CR 148 (court properly awarded fees and costs to petitioners even though terms of order entered under stipulated settlement applied to them as well as to respondents, because petitioners obtained precise relief they sought). Attorney’s fees, as well as costs, may be awarded to a prevailing respondent even if the action was brought in good faith and is not frivolous. *Krug v Maschmeier* (2009) 172 CA4th 796, 800–803, 91 CR3d 452. However, as with any civil action, a motion is required. Cal Rules of Ct 3.1702. Costs must be claimed by a memorandum of costs. Cal Rules of Ct 3.1700.

c. [§20.16] Service of Order by Mail

If the respondent named in a TRO is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the TRO, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the TRO,

except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by mail. CCP §527.6(q)(2). Petitioners may use Judicial Council form CH-260, Proof of Service of Order After Hearing by Mail, when service of the order is authorized under CCP §527.6(p)(2).

d. [§20.17] Duration of Order

In the discretion of the court, an order issued after notice and hearing may have a duration of up to 5 years. CCP §527.6(j)(1). However, these orders are subject to modification or termination (see §20.18), and renewal (see §20.19).

e. [§20.18] Modification or Termination of Order

An order issued after notice and hearing may be terminated or modified by order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.6(j)(1).

If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order must be given notice of the hearing for modification or termination by personal service (see CCP §1005(b)) or, under specified circumstances, by service on the Secretary of State. CCP §527.6(j)(3). If the party who is protected by the order cannot be notified prior to the expiration date, the court must deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, on a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. CCP §527.6(j)(3). The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice. CCP §527.6(j)(3).

f. [§20.19] Renewal of Order

An order issued after notice and hearing may be renewed, on the request of a party, for a duration of not more than 5 additional years, *without a showing of any further harassment since the issuance of the original order*, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.6(j)(1). Renewal is not automatic. *Cooper v Bettinger* (2015) 242 CA4th 77, 89, 194 CR3d 772 (“trial court has discretion whether to renew the restraining order and the duration of the restraining order”). “[A] restraining order should be renewed only when the trial court finds a reasonable probability that the defendant’s wrongful acts would be repeated in the future.” *Cooper v Bettinger, supra*, 242 CA4th at 90. The request for

renewal may be brought at any time within the 3 months before the order's expiration. CCP §527.6(j)(1). If no expiration date is indicated on the order, the order has a duration of 3 years from the date of issuance. CCP §527.6(j)(2).

The petitioner must use Judicial Council form CH-700 to request a renewal of the order. The court must use CH-710 to issue a notice of a hearing to renew the restraining order. If the respondent wishes to make a written response to the request to renew the restraining order, he or she must use Judicial Council form CH-720. And the court's grant or denial of a renewal request must be made on Judicial Council form CH-730.

g. [§20.20] Persons Protected by Order

On a showing of good cause, the court has the discretion to issue an order that includes other named family or household members. CCP §527.6(c); §20.7.

- **JUDICIAL TIP:** You should ensure that there is a sufficient evidentiary nexus between the respondent and any of the petitioner's family members or third parties who are proposed protected persons. Beware that petitioners sometimes present an exhaustive list of family members and friends, not all of whom know the respondent, have suffered the effects of harassment, violence, or threats of violence, and/or live with the petitioner.

h. [§20.21] Mutual Orders

The court may not grant mutual orders, absent express consent by the petitioner, against both the petitioner and the respondent at a hearing on the petition for an order against the respondent, unless the respondent has filed a cross-petition, as permitted by CCP §527.6(h), and the petitioner is given notice of the cross-petition and an opportunity to respond to it. *Kobey v Morton* (1991) 228 CA3d 1055, 1058–1060, 278 CR 530. See also *Nora v Kaddo* (2004) 116 CA4th 1026, 1029, 10 CR3d 862 (trial court erred in issuing mutual orders when court refused to hear witnesses offered by both parties, and respondent did not file a cross-complaint but merely requested mutual orders at the close of the proceedings).

8. [§20.22] Transmission of Order to Law Enforcement Agencies

The court must order the petitioner or the petitioner's attorney to deliver a copy of an order issued under CCP §527.6, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner

and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. CCP §527.6(r)(2).

Alternatively, the court or its designee must transmit, within 1 business day, to law enforcement personnel all information required under Fam C §6380(b) regarding any order issued under CCP §527.6, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service. CCP §527.6(r)(3).

Information on a TRO or order after hearing relating to civil harassment issued by a court under CCP §527.6 must be transmitted to the Department of Justice in accordance with CCP §527.6(r)(2) or (3). CCP §527.6(r)(1).

9. [§20.23] Subsequent Award of Fees and Costs

On the expiration of the TRO or the petitioner's dismissal of the action, the court retains jurisdiction to grant the respondent's motion for attorney's fees and costs as the prevailing party. *Adler v Vaicius* (1993) 21 CA4th 1770, 1774–1777, 27 CR2d 32.

10. [§20.24] Effect of Respondent's Bankruptcy Petition

When the petitioner files a petition for an order under CCP §527.6 and the respondent subsequently files a petition in bankruptcy, the automatic stay provisions of federal bankruptcy law (11 USC §362(a)) do not apply to the petition unless the order interferes with the bankruptcy case. An action to restrain harassment will not generally interfere with a bankrupt debtor's estate or threaten the role of the automatic stay in protecting both the debtor and the debtor's creditors. *Grant v Clampitt* (1997) 56 CA4th 586, 590–592, 65 CR2d 727. However, any award of costs and fees to the petitioner as the prevailing party is required to be stayed under 11 USC §362(a). 56 CA4th at 593.

11. [§20.25] Criminal Consequences of Violating Order

Any willful disobedience of any TRO or order after hearing granted under CCP §527.6 is punishable under Pen C §273.6. CCP §527.6(t). Penal Code §273.6 provides that any intentional and knowing violation of an order issued under CCP §527.6 is a misdemeanor punishable by a fine of up to \$1000 and/or by imprisonment in the county jail for up to 1 year. Pen C §273.6(a). Any violation of the order that results in physical injury is punishable by a fine of up to \$2000 and/or by imprisonment in the county jail for not less than 30 days nor more than 1 year. Pen C §273.6(b). However, if a respondent is imprisoned in county jail for at least 48 hours, the court may, in the interest of justice, reduce or eliminate the 30-day minimum imprisonment. Pen C §273.6(b).

A subsequent conviction for violation of Pen C §273.6(a), occurring within 7 years of a prior conviction and involving an act of violence or a credible threat of violence, is punishable by imprisonment in the county jail for up to 1 year or in state prison. Pen C §273.6(d). A subsequent conviction occurring within 1 year of a prior conviction that results in physical injury is punishable by a fine of up to \$2000 and/or by imprisonment in county jail for not less than 6 months nor more than 1 year, or by imprisonment in state prison. Pen C §273.6(e). However, if a respondent is imprisoned in county jail for at least 30 days, the court may, in the interest of justice, reduce or eliminate the 6-month minimum imprisonment. Pen C §273.6(e).

A respondent who is convicted of owning, possessing, purchasing, or receiving a firearm when prohibited from doing so by an order under CCP §527.6 may be imprisoned in the county jail for up to 1 year or in state prison and may be subject to a fine of up to \$1000. Pen C §§273.6(g), 29825.

12. [§20.26] Statute’s Effect on Other Remedies

The provisions of CCP §527.6 do not apply to any action or proceeding under the Domestic Violence Prevention Act (Fam C §§6200–6389) or under the Rosenthal Fair Debt Collection Practices Act (CC §§1788–1788.33). CCP §527.6(v). The statute does not preclude a petitioner from using other civil remedies. CCP §527.6(v).

13. [§20.27] Appeal of Order

A restraining order issued under CCP §527.6 “is appealable as an appeal from an order granting an injunction.” *R.D. v P.M.* (2011) 202 CA4th 181, 187, 135 CR3d 791; see CCP §904.1(a)(6).

- **JUDICIAL TIP:** It is probably a good practice to extend the court’s reasoning in *R.D. v P.M.* to orders issued under CCP §§527.8 and 527.85, meaning that they too may be appealed.

C. Temporary Restraining Order and Order After Hearing Prohibiting Workplace Violence (CCP §527.8)

1. [§20.28] Procedural Checklist: Issuing Temporary Restraining Order

(1) *Review the petition and application.* The petitioner must use Judicial Council form WV-100. Judges who hear these cases should make sure that their courts have Judicial Council form WV-100-INFO, *How Do I Get an Order To Prohibit Workplace Violence?*, available to petitioners. This form, among other things, provides specific instructions for completing the petition. The petitioner must also provide to the court a Judicial Council form CLETS-001, Confidential CLETS Information. This

form is confidential and private, and does not become part of the public court file. See Cal Rules of Ct 1.51.

(2) *Determine that the petitioner is a proper party to seek relief under CCP §527.8.* The petitioner must be the employer of a person who has suffered unlawful violence or a credible threat of violence. CCP §527.8(a). See §20.30.

(3) *If the petitioner is seeking a TRO, determine whether the petitioner has shown reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the respondent and that the employee will suffer great or irreparable harm if the TRO is not granted.* CCP §527.8(e). See §20.33. The “unlawful violence” must be assault, battery, or stalking. The “credible threat of violence” must be a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.8(b)(2), (b)(7). See §20.32. If the conduct about which the petitioner is complaining does not meet this statutory definition, the court may not provide relief, temporary or otherwise.

(4) *Issue a TRO if the petitioner has made the required showings.* Courts must use the Judicial Council form WV-110, Temporary Restraining Order. If the petitioner shows good cause, the court has the discretion to issue a TRO that includes other named family or household members, or other persons employed at any of employee’s workplaces. CCP §527.8(d).

(5) *Set hearing on the petition.* Set the matter for hearing within 21 days or, if good cause appears, 25 days, from the date that the petition for the TRO is granted or denied. CCP §527.8(h). If no request for temporary orders is made, the court must set the hearing within 21 days or, if good cause appears, 25 days, from the date that the petition is filed. CCP §527.8(h). Courts must use the Judicial Council form WV-109, Notice of Court Hearing.

(6) *The petitioner may ask you to shorten the time for service, which you may grant for good cause.* CCP §527.8(m); Cal Rules of Ct 3.1152(c). See §20.35.

2. [§20.29] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing

(1) *Before the hearing on the petition, determine that the respondent was properly served with a copy of the petition, the TRO, and notice of hearing on the petition.* Personal service is required in the manner provided for service of summons, at least 5 days before the hearing, unless the court has shortened the time for service for good cause. CCP §527.8(m). See §20.35. The proof of service should be made on Judicial Council form WV-200.

(2) *Before the hearing, determine that the petitioner was properly served with the respondent's response to the petition.* The response may be written or oral, or both. See Cal Rules of Ct 3.1152(d). If a written response is served on the petitioner or the petitioner's attorney at least 2 days before the hearing, the petitioner may not request a continuance on an account of the response. See Cal Rules of Ct 3.1152(d); §20.36. The proof of service should be made on Judicial Council form WV-250.

(3) *Review the response to the petition filed by the respondent.* If the response is written, the respondent must use Judicial Council form WV-120. The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence. CCP §527.8(i). The respondent is entitled to one continuance for a reasonable period to respond to the petition. CCP §527.8(o). See §20.36.

(4) *If a mediator is available at your court, ask the parties if they might be willing to consider mediation of their dispute.* If so, refer the case to mediation, and advise the parties that what happens during mediation is not admissible in any subsequent court proceeding. See Evid C §1119. If a mediator is not available, or the parties have gone to mediation and failed to settle, proceed to the hearing.

(5) *If the parties wish to proceed to hearing, advise them that they have the right to present any relevant testimony, including oral testimony.* Also advise the parties that the court may make an independent inquiry, *i.e.*, the court may question the parties and their witnesses. CCP §527.8(j). Hearsay evidence is admissible at the hearing. *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830. See §20.38.

(6) *If the court finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, it should issue the requested order prohibiting further unlawful violence or threats of violence.* The petitioner must also establish that great or irreparable harm would result to the employee if an order is not issued because of the reasonable probability that unlawful violence will occur in the future. See §20.39. The court must use Judicial Council form WV-130 to issue the order. If the petitioner shows good cause, the court has the discretion to issue an order that includes other named family or household members, or other persons employed at any of employee's workplaces. CCP §527.8(d).

(7) *Advise the parties of the order's terms and scope, including any exceptions or nuances, as well as its duration (maximum of 3 years).* Also advise the petitioner that he or she may apply for renewal of the order by filing a new petition at any time within 3 months *before* the order expires. See CCP §527.8(k); §§20.41, 20.43.

(8) *Advise the respondent that he or she may not own, possess, purchase, receive, or attempt to purchase or receive a firearm for the*

duration of the order. Order the respondent to sell to a licensed gun dealer or turn in to the police any firearms that he possesses or controls within 24 hours of receiving the order. See CCP §527.8(s); §20.66.

(9) *Advise the respondent that he or she must file proof of sale or surrender of any firearm with the court within 48 hours of receiving the order.* See §20.66.

(10) *Advise the petitioner that he or she must deliver a copy of the order to the law enforcement agencies specified in the order by the close of the business day on which the order is granted.* See CCP §527.6(r); §20.45.

3. [§20.30] Who May Seek Relief

Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a TRO and an order after hearing on behalf of the employee and, at the discretion of the court, on behalf of any number of other employees at the workplace and, if appropriate, other employees at other workplaces of the employer. CCP §527.8(a). The provisions of the statute apply to public and private employers. CCP §527.8(b)(3). The term “employee” includes volunteers and independent contractors performing services for the employer at the employer’s workplace, members of corporate boards of directors, and elected or appointed public officers. CCP §527.8(b)(3). The petitioner (employer) may appear in the proceeding by counsel or in pro per. CCP §527.8(l). A petitioner that is a corporation may only appear through counsel. *Merco Constr. Eng’rs v Mun. Court* (1978) 21 C3d 724, 731, 147 CR 631. See *Scripps Health v Marin* (1999) 72 CA4th 324, 333, 85 CR2d 86 (corporate employer is allowed to seek order on behalf of employee).

An order may issue under CCP §527.8 in a dependency case. *In re M.B.* (2011) 201 CA4th 1057, 134 CR3d 45. In *In re M.B.*, a party in a dependency proceeding made harassing phone calls to the department of child and family services and physically obstructed department offices. The Fourth District Court of Appeal found that an order issued by the trial court prohibiting the party from contacting any employee of the department was authorized under CCP §527.8. 201 CA4th at 1062–1064.

By its terms, CCP §527.8 is applicable only to actions at the employee’s workplace, not his or her home. *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 625–627, 37 CR3d 632 (noting that employee could seek his or her own order against harassment at his or her home under CCP §527.6).

An employer subjected to generalized threats of workplace violence may obtain relief under CCP §527.8 on behalf of an employee who is a logical target of the threats, even if the employee was not specifically

identified by the harasser. *USS-Posco Indus. v Edwards* (2003) 111 CA4th 436, 442–444, 4 CR3d 54.

Labor Code §§6400 et seq (employers' duties and responsibilities regarding safety in employment) and CCP §527.8, when read together, establish an explicit public policy requiring employers to provide a safe and secure workplace, including a requirement that an employer take reasonable steps to address credible threats of violence in the workplace. *Franklin v Monadnock Co.* (2007) 151 CA4th 252, 258–263, 59 CR3d 692 (terminated employee's allegations regarding threats of violence made by co-worker were sufficient to state claim of wrongful termination based on public policies that require employers to provide a safe and secure workplace and encourage employees to report credible threats of violence in the workplace); *City of Palo Alto v Service Employees Int'l Union* (2000) 77 CA4th 327, 336–337, 91 CR2d 500.

4. [§20.31] Potential Respondents

A TRO or order after hearing prohibiting workplace violence may only be issued against natural persons, and not against groups, associations, or corporate entities. *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 622–625, 37 CR3d 632.

5. [§20.32] Definitions

Unlawful violence is any assault or battery, or stalking under Pen C §646.9. CCP §527.8(b)(7). It does not include lawful acts of self-defense or defense of others. CCP §527.8(b)(7).

Credible threat of violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.8(b)(2). The intent requirement for a true threat is that the respondent intentionally or knowingly communicates the threat; it is not necessary that the respondent intends to, or is able to carry out the threat. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1255–1256, 29 CR3d 521.

- **JUDICIAL TIP:** Courts should be leery of finding that there has been a credible threat of violence when the respondent has not directly conveyed the threatening words. For example, the Third District Court of Appeal, in an employment retaliation case, acknowledged a lower court's finding that there was insufficient evidence of a threat for purposes of issuing injunctive relief under CCP §527.8 when the respondent did not convey a threat but merely answered questions put to him by an investigator, and the investigator interpreted his responses as constituting a threat.

Brown v Department of Corrections (2005) 132 CA4th 520, 524–525, 33 CR3d 754.

Course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CCP §527.8(b)(1); see *Scripps Health v Marin* (1999) 72 CA4th 324, 336, 85 CR2d 86 (order not warranted based on single threat of violence when there was no evidence respondent was likely to commit further acts of violence). It includes following or stalking the employee to or from the workplace, entering the workplace, following the employee during employment hours, making telephone calls to the employee, or sending correspondence to the employee by any means including mail, fax, or email. CCP §527.8(b)(1).

The threat of violence need not be directed at a particular employee. An employer may seek injunctive relief under CCP §527.8 on behalf of any employee who is credibly threatened with unlawful violence, whether or not the respondent identifies the employee. *USS-Posco Indus. v Edwards* (2003) 111 CA4th 436, 442–444, 4 CR3d 54 (evidence of employee’s threats to bring a gun into the workplace and shoot employees against whom he harbored a grudge was sufficient for his former manager to fear for her own safety for purposes of issuing order when that manager instigated disciplinary action that led to the employee’s suspension and termination). The court may not issue a TRO or an order after hearing prohibiting speech or other activities that are constitutionally protected, or protected by CCP §527.3 (specified acts relating to labor disputes) or any other provision of law. CCP §527.8(c).

6. [§20.33] Issuance of Temporary Restraining Order

The court may grant a TRO on the petition and application, with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to the employee. CCP §527.8(e); see CCP §527.8(v)(1) (petitioner must use Judicial Council form WV-100). Unless ordered by the court, no supporting memorandum is required. Cal Rules of Ct 3.1152(b).

Fees. No filing fee may be charged for a petition that alleges the respondent has inflicted or threatened violence against the employee, stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking, future violence, or threats of violence. CCP §527.8(w). And no fee may be charged for filing a subpoena in connection with or a response to a petition alleging these acts. CCP §527.8(w). Similarly, there must not be a fee for a sheriff or marshal to serve

a TRO to be issued, if the order is based upon stalking, unlawful violence, or a credible threat of violence. CCP §527.8(x).

A TRO may include any of the following (CCP §527.8(b)(6), (e)):

- An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning (including, but not limited to, making annoying telephone calls as described in Pen C §653m), contacting (either directly or indirectly, by mail or otherwise), destroying the personal property of, coming within a specified distance of, or disturbing the peace of the employee.
- An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described above.

A request for the issuance of a temporary restraining order without notice must be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. CCP §527.8(f).

On a showing of good cause, the court has the discretion to issue a TRO that includes other named family or household members, or other persons employed at any of the employee's workplaces. CCP §527.8(d). The duration of the TRO may not exceed 21 days or, if the court extends the time for hearing, for up to 25 days, unless otherwise modified or terminated by the court. CCP §527.8(g).

7. Subsequent Hearing

a. [§20.34] Time for Hearing

A hearing must be held within 21 days or, if good cause appears, 25 days from the date that the petition for a temporary order is granted or denied. CCP §527.8(h). If no request for temporary orders is made, the hearing must be held within 21 days, or if good cause appears, 25 days, from the date that the petition is filed. CCP §527.8(h).

b. [§20.35] Service on Respondent

The respondent must be personally served with a copy of the employer's petition, any TRO, and notice of hearing of the petition at least 5 days before the hearing. CCP §527.8(m); Cal Rules of Ct 3.1152(c). Service must be made in the manner provided by law for personal service of the summons in a civil action. Cal Rules of Ct 3.1152(c). For good cause, the court may shorten the time for service. CCP §527.8(m); Cal Rules of Ct 3.1152(c).

- **JUDICIAL TIP:** Petitioners will often ask you to shorten the time for service because of the possibility of retaliation by the respondent, or the risk that the respondent will escalate his or her conduct.

The notice of hearing must notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to 3 years. CCP §527.8(n).

If a respondent, named in a restraining order issued after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required to enforce the order. CCP §527.8(q)(1).

But if personal service of an order after hearing is required, there must not be a fee for a sheriff or marshal to serve the order, if it is based upon stalking, unlawful violence, or a credible threat of violence. CCP §527.8(x).

c. [§20.36] Respondent’s Response

The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence. CCP §527.8(i); see CCP §527.8(v) (respondent must use Judicial Council form WV-120); see also CCP §527.8(w) (when filing fee is not required).

If a written response is served on the petitioner or the petitioner’s attorney at least 2 days before the hearing, the petitioner is not entitled to a continuance on account of the response. Cal Rules of Ct 3.1152(d). The respondent may appear in the proceeding by counsel or in pro per. CCP §527.8(l). In addition to, or in lieu of, a written response, the petitioner can challenge the issuance of a permanent order through oral testimony at the hearing. Cal Rules of Ct 3.1152(d).

d. [§20.37] Continuance

The respondent is entitled, as a matter of course, to one continuance for a reasonable period to respond to the petition. CCP §527.8(o). Either party may receive a continuance of the hearing after making a request and showing good cause. CCP §527.8(p)(1); Cal Rules of Ct 3.1152(e). The request may be made in writing before or at the hearing, or orally at the hearing. CCP §527.8(p)(1). The court may also grant a continuance on its own motion. CCP §527.8(p)(1).

If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. CCP §527.8(p)(2); Cal Rules of Ct 3.1152(e). The court may modify or terminate a TRO when granting a continuance. CCP §527.8(p)(2). An error in failing to grant a request for a continuance is reversible only if the denial results in a denial

of a fair hearing, or otherwise prejudices the requesting party. *Freeman v Sullivant* (2011) 192 CA4th 523, 527–528, 120 CR3d 693.

e. [§20.38] Evidence

At the hearing, the court must consider any relevant evidence, including hearsay evidence, when deciding whether to issue an order. CCP §527.8(j); *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830 (interpreting identical language contained in CCP §527.6(i)). The court may also make an independent inquiry. CCP §527.8(j). Moreover, if the respondent is a current employee of the petitioner-employer, the court must receive evidence concerning the employer’s decision to retain, terminate, or otherwise discipline the respondent. CCP §527.8(j).

Testimony of mental health practitioner. Although communications between a patient and a psychotherapist are confidential and privileged under Evid C §1012, the “dangerous patient” exception to the psychotherapist-patient privilege permits disclosure of any threatening communications of the patient if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure of the communications are necessary to prevent the threatened harm. Evid C §1024.

8. Issuance of Order After Hearing

a. [§20.39] Findings

If the court finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, the court must issue an order prohibiting further unlawful violence or threats of violence. CCP §527.8(j); see Judicial Council form WV-130. The petitioner must also establish that great or irreparable harm would result to the employee if an order is not issued because of the reasonable probability that unlawful violence will occur in the future. *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 615, 625, 37 CR3d 632; *Scripps Health v Marin* (1999) 72 CA4th 324, 332, 335, 85 CR2d 86.

Read literally, the language of CCP §527.8(j) appears to provide that once the petitioner establishes by clear and convincing evidence that the respondent has engaged in violence or made a credible threat of violence, the court must issue an order. 72 CA4th at 332. But CCP §527.8(j) must be read to include the requirement that the petitioner show that great or irreparable harm is likely to occur absent the order because the petitioner is required to make such a showing under CCP §527.8(e) to obtain a TRO. 72 CA4th at 334–335.

A single credible threat of violence may be sufficient to establish a likelihood of future harm. *City of San Jose v Garbett* (2010) 190 CA4th 526,

542–543, 118 CR3d 420 (respondent unsuccessfully argued he did not “repeat any alarming conduct or make any threatening statement . . . to anyone” after the statement to the employee, and therefore, the evidence of future harm was insufficient).

b. [§20.40] Service of Order by Mail

If the respondent named in a TRO is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the TRO, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the TRO, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by mail. CCP §527.8(q)(2). Petitioners may use Judicial Council form WV-260, Proof of Service of Order After Hearing by Mail, when service of the order is authorized under CCP §527.8(q)(2).

c. [§20.41] Duration of Order

In the discretion of the court, an order issued after notice and hearing may have a duration of up to 3 years. CCP §527.8(k)(1). However, these orders are subject to modification or termination (see §20.42), and renewal (see §20.43).

d. [§20.42] Modification or Termination of Order

An order issued after notice and hearing may be terminated or modified by order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.8(k)(1).

If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order must be given notice of the hearing for modification or termination by personal service (see CCP §1005(b)) or, under specified circumstances, by service on the Secretary of State. CCP §527.8(k)(3).

If the party who is protected by the order cannot be notified prior to the expiration date, the court must deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, on a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. CCP §527.8(k)(3). The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice. CCP §527.8(k)(3).

e. [§20.43] Renewal of Order

An order issued after notice and hearing may be renewed, on the request of a party, for a duration of not more than 3 years, *without a showing of any further harassment since the issuance of the original order*, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.8(k)(1). The request for renewal may be brought at any time within the 3 months before the order's expiration. CCP §527.8(k)(1). If no expiration date is indicated on the order, the order has a duration of 3 years from the date of issuance. CCP §527.8(k)(2).

The petitioner must use Judicial Council form WV-700 to request a renewal of the order. The court must use WV-710 to issue a notice of a hearing to renew the restraining order. If the respondent wishes to make a written response to the request to renew the restraining order, he or she must use Judicial Council form WV-720. And the court's grant or denial of a renewal request must be made on Judicial Council form WV-730.

f. [§20.44] Persons Protected by Order

On a showing of good cause, the court has the discretion to issue an order that includes other named family or household members, or other persons employed at any of the employee's workplaces. CCP §527.8(d).

- **JUDICIAL TIP:** You should ensure that there is a sufficient evidentiary nexus between the respondent and any of the petitioner's family members or third parties who are proposed protected persons. Beware that petitioners sometimes present an exhaustive list of family members and friends, not all of whom know the respondent, have been victims of violence or threats of violence, and/or live or work with the petitioner.

9. [§20.45] Transmission of Order to Law Enforcement Agencies

The court must order the petitioner or the petitioner's attorney to deliver a copy of an order issued under CCP §527.8, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. CCP §527.8(r)(2).

Alternatively, the court or its designee must transmit, within 1 business day, to law enforcement personnel all information required under Fam C §6380(b) regarding any order issued under CCP §527.8, or a reissuance,

extension, modification, or termination of the order, and any subsequent proof of service. CCP §527.8(r)(3).

Information on a TRO or order after hearing relating to workplace violence issued by a court under CCP §527.8 must be transmitted to the Department of Justice in accordance with CCP §527.8(r)(2) or (3). CCP §527.8(r)(1).

10. [§20.46] Violation of Order

The penalties for any intentional disobedience of any TRO or order after hearing granted under CCP §527.8 are the same as for any willful disobedience of a TRO or order granted under CCP §527.6. See CCP §527.8(t); discussion in §20.25.

11. [§20.47] Statute’s Effect on Other Remedies

The TRO and order after hearing available under CCP §527.8 are in addition to whatever other remedies the employer or affected employee may have against workplace violence. *City of Palo Alto v Service Employees Int’l Union* (2000) 77 CA4th 327, 336, 91 CR2d 500.

D. Temporary Restraining Order and Order After Hearing Prohibiting Off-Campus Threats to Postsecondary School Students (CCP §527.85)

1. [§20.48] Procedural Checklist: Issuing Temporary Restraining Order

(1) *Review the petition and application.* The petitioner must use Judicial Council form SV-100. Judges who hear these cases should make sure that their courts have Judicial Council form SV-100-INFO, *How Do I Get an Order To Prohibit Private Postsecondary School Violence?* available to petitioners. This form, among other things, provides specific instructions for completing the petition. The petitioner must also provide to the court a Judicial Council form CLETS-001, Confidential CLETS Information. This form is confidential and private, and does not become part of the public court file. See Cal Rules of Ct 1.51.

(2) *Determine that the petitioner is a proper party to seek relief under CCP §527.85.* The petitioner must be the chief administrative officer of a private postsecondary educational institution, or an officer or employee designated to maintain order on the school campus or facility, a student of which has suffered a credible threat of violence made off the campus or facility that can be reasonably be construed to be carried out or to have been carried out at the school. CCP §527.85(a). See §20.50.

(3) *If the petitioner is seeking a TRO, determine whether the petitioner has shown reasonable proof that the student has suffered a credible threat*

of violence made off the school campus or facility by the respondent and that the student will suffer great or irreparable harm if the TRO is not granted. CCP §527.85(e). See §20.52. The “credible threat of violence” must be a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.85(b)(3). See §20.51. If the conduct about which the petitioner is complaining does not meet this statutory definition, the court may not provide relief, temporary or otherwise.

(4) *Issue a TRO if the petitioner has made the required showings.* Courts must use the Judicial Council form SV-110, Temporary Restraining Order. If the petitioner shows good cause, the court has the discretion to issue a TRO that includes other named family or household members of the student, or other students at the campus or facility. CCP §527.85(d).

(5) *Set hearing on the petition.* Set the matter for hearing within 21 days or, if good cause appears, 25 days, from the date that the petition for the TRO is granted or denied. CCP §527.85(h). If no request for temporary orders is made, the court must set the hearing within 21 days or, if good cause appears, 25 days, from the date that the petition is filed. CCP §527.85(h). Courts must use the Judicial Council form SV-109, Notice of Court Hearing.

(6) *The petitioner may ask you to shorten the time for service, which you may grant for good cause.* CCP §527.85(m); Cal Rules of Ct 3.1152(c). See §20.54.

2. [§20.49] Procedural Checklist: Conducting Hearing and Issuing Order After Hearing

(1) *Before the hearing on the petition, determine that the respondent was properly served with a copy of the petition, the TRO, and notice of hearing on the petition.* Personal service is required at least 5 days before the hearing, unless the court has shortened the time for service for good cause. CCP §527.85(m). The proof of service should be made on Judicial Council form SV-200.

(2) *Before the hearing, determine that the petitioner was properly served with the respondent’s response to the petition.* The response may be written or oral, or both. See Cal Rules of Ct 3.1152(d). If a written response is served on the petitioner or the petitioner’s attorney at least 2 days before the hearing, the petitioner may not request a continuance on an account of the response. See Cal Rules of Ct 3.1152(d); §20.54. The proof of service should be made on Judicial Council form SV-250.

(3) *Review the response to the petition filed by the respondent.* If the response is written, the respondent must use Judicial Council form SV-120. The respondent may file a response that explains, excuses, justifies, or

denies the alleged credible threats of violence. CCP §527.85(i). The respondent is entitled to one continuance for a reasonable period to respond to the petition. CCP §527.85(o). See §20.55.

(4) *If a mediator is available at your court, ask the parties if they might be willing to consider mediation of their dispute.* If so, refer the case to mediation, and advise the parties that what happens during mediation is not admissible in any subsequent court proceeding. See Evid C §1119. If a mediator is not available, or the parties have gone to mediation and failed to settle, proceed to the hearing.

(5) *If the parties wish to proceed to hearing, advise them that they have the right to present any relevant testimony, including oral testimony.* Also advise the parties that the court may make an independent inquiry, *i.e.*, the court may question the parties and their witnesses. CCP §527.85(j). Hearsay evidence is admissible at the hearing. *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830. See §20.57.

(6) *If the court finds by clear and convincing evidence that the respondent made a credible threat of violence off the school campus or facility, it should issue the requested order prohibiting further threats of violence.* The petitioner must also establish that great or irreparable harm would result to the employee if an order is not issued because of the reasonable probability that unlawful violence will occur in the future. See §20.58. The court must use Judicial Council form SV-130 to issue the order. If the petitioner shows good cause, the court has the discretion to issue an order that includes other named family or household members of the student, or other students at the campus or facility. CCP §527.85(d).

(7) *Advise the parties of the order's terms and scope, including any exceptions or nuances, as well as its duration (maximum of 3 years).* Also advise the petitioner that he or she may apply for renewal of the order by filing a new petition at any time within 3 months before the order expires. See CCP §527.85(k); §§20.59, 20.61

(8) *Advise the respondent that he or she may not own, possess, purchase, receive, or attempt to purchase or receive a firearm for the duration of the order.* Order the respondent to sell to a licensed gun dealer or turn in to the police any firearms that he possesses or controls within 24 hours of receiving the order. See CCP §527.85(s); §20.66.

(9) *Advise the respondent that he or she must file proof of sale or surrender of any firearm with the court within 48 hours of receiving the order.* See §20.66.

(10) *Advise the petitioner that he or she must deliver a copy of the order to the law enforcement agencies specified in the order by the close of the business day on which the order is granted.* See CCP §527.85(r); §20.64.

3. [§20.50] Who May Seek Relief

Any chief administrative officer of a private postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered a credible threat of violence made off the campus or facility from any individual, which can reasonably be construed to be carried out or to have been carried out on the school campus or facility, may seek a TRO and an order after hearing on behalf of a student. CCP §527.85(a). The student's written consent to seek a TRO is required. CCP §527.85(a). At the court's discretion, the petitioner may also seek relief on behalf of any number of other students at the campus or facility who are similarly situated. CCP §527.85(a). The term "student" includes any adult currently enrolled in or applying for admission to a private postsecondary educational institution. CCP §527.85(b)(7).

4. [§20.51] Definitions

Credible threat of violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP §527.85(b)(3). The intent requirement for a true threat is that the respondent intentionally or knowingly communicates the threat; it is not necessary that the respondent intends to, or is able to carry out the threat. *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 CA4th 1228, 1255–1256, 29 CR3d 521.

- **JUDICIAL TIP:** Courts should be leery of finding that there has been a credible threat of violence when the respondent has not directly conveyed the threatening words. For example, the Third District Court of Appeal, in an employment retaliation case, acknowledged a lower court's finding that there was insufficient evidence of a threat for purposes of issuing injunctive relief under CCP §527.8 when the respondent did not convey a threat but merely answered questions put to him by an investigator, and the investigator interpreted his responses as constituting a threat. *Brown v Department of Corrections* (2005) 132 CA4th 520, 524–525, 33 CR3d 754.

Course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. CCP §527.85(b)(2); see *Scripps Health v Marin* (1999) 72 CA4th 324, 336, 85 CR2d 86 (order not warranted based on single threat of violence when there was no evidence respondent was likely to commit further acts of violence). It includes following or stalking a student to or from school,

entering the school campus or facility, following a student during school hours, making telephone calls to a student, or sending correspondence to a student by any means including mail, fax, or email. CCP §527.85(b)(2).

The court may not issue a TRO or an order after hearing prohibiting speech or other activities that are constitutionally protected, or protected by CCP §527.3 (specified acts relating to labor disputes) or any other provision of law. CCP §527.85(c).

5. [§20.52] Issuance of Temporary Restraining Order

The court may grant a TRO on the petition and application, with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof that the student has suffered a credible threat of violence made off the campus or facility by the respondent, and that the student will suffer great or irreparable harm if the TRO is not granted. CCP §527.85(e); see CCP §527.85(v)(1) (petitioner must use Judicial Council form SV-100). Unless ordered by the court, no supporting memorandum is required. Cal Rules of Ct 3.1152(b). No filing fee may be charged for a petition that alleges the respondent has inflicted or threatened violence against the student, stalked the student, or acted or spoken in any other manner that has placed the student in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future threats of violence. CCP §527.85(w). And no fee may be charged for filing a subpoena in connection with or a response to a petition alleging these acts. CCP §527.85(w). Moreover, there must not be a fee charged for a sheriff or marshal to serve a TRO to be issued, if the order is based upon stalking or a credible threat of violence. CCP §527.85(x).

A TRO may include any of the following (CCP §527.85(b)(8), (e)):

- An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning (including, but not limited to, making annoying telephone calls as described in Pen C §653m), contacting (either directly or indirectly, by mail or otherwise), destroying the personal property of, coming within a specified distance of, or disturbing the peace of the student.
- An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described above.

A request for the issuance of a temporary restraining order without notice must be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. CCP §527.85(f).

On a showing of good cause, the court has the discretion to issue a TRO that includes other named family or household members of the student, or other students at the campus or facility. CCP §527.85(d). The duration of the TRO may not exceed 21 days or, if the court extends the time for hearing, for up to 25 days, unless otherwise modified or terminated by the court. CCP §527.85(g).

6. Subsequent Hearing

a. [§20.53] Time for Hearing

A hearing must be held within 21 days, or, if good cause appears to the court, 25 days from the date that the petition for a temporary order is granted or denied. CCP §527.85(h). If no request for temporary orders is made, the hearing must be held within 21 days, or if good cause appears, 25 days, from the date that the petition is filed. CCP §527.85(h).

b. [§20.54] Service on Respondent

The respondent must be personally served with a copy of the petition, any TRO, and notice of hearing of the petition at least 5 days before the hearing. CCP §527.85(m); Cal Rules of Ct 3.1152(c). Service must be made in the manner provided by law for personal service of the summons in a civil action. Cal Rules of Ct 3.1152(c). For good cause, the court may shorten the time for service. CCP §527.85(m); Cal Rules of Ct 3.1152(c).

- **JUDICIAL TIP:** Petitioners will often ask you to shorten the time for service because of the possibility of retaliation by the respondent, or the risk that the respondent will escalate his or her conduct.

The notice of hearing must notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to 3 years. CCP §527.85(n).

If a respondent, named in a restraining order issued after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required to enforce the order. CCP §527.85(q)(1).

But if personal service of an order after hearing is required, there must not be a fee for a sheriff or marshal to serve the order, if it is based upon stalking or a credible threat of violence. CCP §527.85(x).

c. [§20.55] Respondent's Response

The respondent may file a response that explains, excuses, justifies, or denies the alleged credible threats of violence. CCP §527.85(i); see CCP

§527.85(l) (respondent must use Judicial Council form SV-120); see also CCP §527.85(w) (when filing fee is not required).

If a written response is served on the petitioner or the petitioner’s attorney at least 2 days before the hearing, the petitioner is not entitled to a continuance on account of the response. Cal Rules of Ct 3.1152(d). The respondent may appear in the proceeding by counsel or in pro per. CCP §527.85(v)(1). In addition to, or in lieu of, a written response, the petitioner can challenge the issuance of a permanent order through oral testimony at the hearing. Cal Rules of Ct 3.1152(d).

d. [§20.56] Continuance

The respondent is entitled, as a matter of course, to one continuance for a reasonable period to respond to the petition. CCP §527.85(o). Either party may receive a continuance of the hearing after making a request and showing good cause. CCP §527.85(p)(1); Cal Rules of Ct 3.1152(e). The request may be made in writing before or at the hearing, or orally at the hearing. CCP §527.85(p)(1). The court may also grant a continuance on its own motion. CCP §527.85(p)(1). If the court in its discretion grants the continuance, any TRO that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. CCP §527.85(p)(2); Cal Rules of Ct 3.1152(e). The court may modify or terminate a TRO when granting a continuance. CCP §527.85(p)(2). An error in failing to grant a request for a continuance is reversible only if the denial results in a denial of a fair hearing, or otherwise prejudices the requesting party. *Freeman v Sullivant* (2011) 192 CA4th 523, 527–528, 120 CR3d 693.

e. [§20.57] Evidence

At the hearing, the court must consider any relevant evidence, including hearsay evidence, when deciding whether to issue an order. CCP §527.85(j); *Kaiser Found. Hosps. v Wilson* (2011) 201 CA4th 550, 555–558, 133 CR3d 830 (interpreting identical language contained in CCP §527.6(i)). The court may also make an independent inquiry. CCP §527.85(j). Moreover, if the respondent is a current student of the entity requesting the order, the judge must receive evidence concerning the decision of the educational institution to retain, terminate, or discipline the respondent. CCP §527.85(j).

Testimony of mental health practitioner. Although communications between a patient and a psychotherapist are confidential and privileged under Evid C §1012, the “dangerous patient” exception to the psychotherapist-patient privilege permits disclosure of any threatening communications of the patient if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be

dangerous to himself or herself or to the person or property of another and that disclosure of the communications are necessary to prevent the threatened harm. Evid C §1024.

7. Issuance of Order After Hearing

a. [§20.58] Findings

If the court finds by clear and convincing evidence that the respondent made a credible threat of violence off the school campus or facility, the court must issue an order prohibiting further threats of violence. CCP §527.85(j); see Judicial Council form SV-130. The petitioner must also establish that great or irreparable harm would result to the employee if an order is not issued because of the reasonable probability that unlawful violence will occur in the future. *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 615, 625, 37 CR3d 632; *Scripps Health v Marin* (1999) 72 CA4th 324, 332, 335, 85 CR2d 86. Code of Civil Procedure §527.85(j) must be read to include the requirement that the petitioner show that great or irreparable harm is likely to occur absent the order because the petitioner is required to make such a showing under CCP §527.85(e) to obtain a TRO. See discussion of *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 37 CR3d 632, and *Scripps Health v Marin* (1999) 72 CA4th 324, 85 CR2d 86, in §20.39. These cases impose the requirement under the similarly worded CCP §527.8.

b. [§20.59] Service of Order by Mail

If the respondent named in a TRO is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the TRO, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the TRO, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by mail. CCP §527.85(q)(2). Petitioners may use Judicial Council form SV-260, Proof of Service of Order After Hearing by Mail, when service of the order is authorized under CCP §527.85(q)(2).

c. [§20.60] Duration of Order

In the discretion of the court, an order issued after notice and hearing may have a duration of up to 3 years. CCP §527.85(k)(1). However, these orders are subject to modification or termination (see §20.61), and renewal (see §20.62).

d. [§20.61] Modification or Termination of Order

An order issued after notice and hearing may be terminated or modified by order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.85(k)(1).

If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order must be given notice of the hearing for modification or termination by personal service (see CCP §1005(b)) or, under specified circumstances, by service on the Secretary of State. CCP §527.85(k)(3). If the party who is protected by the order cannot be notified prior to the expiration date, the court must deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, on a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. CCP §527.85(k)(3). The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice. CCP §527.85(k)(3).

e. [§20.62] Renewal of Order

An order issued after notice and hearing may be renewed, on the request of a party, for a duration of not more than 3 years, *without a showing of any further harassment since the issuance of the original order*, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. CCP §527.85(k)(1). The request for renewal may be brought at any time within the 3 months before the order's expiration. CCP §527.85(k)(1). If no expiration date is indicated on the order, the order has a duration of 3 years from the date of issuance. CCP §527.85(k)(2).

The petitioner must use Judicial Council form SV-700 to request a renewal of the order. The court must use SV-710 to issue a notice of a hearing to renew the restraining order. If the respondent wishes to make a written response to the request to renew the restraining order, he or she must use Judicial Council form SV-720. And the court's grant or denial of a renewal request must be made on Judicial Council form SV-730.

f. [§20.63] Persons Protected by Order

On a showing of good cause, the court has the discretion to issue an order that includes other named family or household members of the student, or other students at the campus or facility. CCP §527.85(d).

- **JUDICIAL TIP:** You should ensure that there is a sufficient evidentiary nexus between the respondent and any of the

petitioner's family members or third parties who are proposed protected persons. Beware that petitioners sometimes present an exhaustive list of family members and friends, not all of whom know the respondent, have suffered the effects of a credible threat of violence, and/or live or attend school with the petitioner.

8. [§20.64] Transmission of Order to Law Enforcement Agencies

The court must order the petitioner or the petitioner's attorney to deliver a copy of an order issued under CCP §527.85, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. CCP §527.85(r)(2).

Alternatively, the court or its designee must transmit, within 1 business day, to law enforcement personnel all information required under Fam C §6380(b) regarding any order issued under CCP §527.85, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service. CCP §527.85(r)(3).

Information on a TRO or order after hearing relating to schoolsite violence issued by a court under CCP §527.85 must be transmitted to the Department of Justice in accordance with CCP §527.85(r)(2) or (3). CCP §527.85(r)(1).

9. [§20.65] Violation of Order

The penalties for any intentional disobedience of any TRO or order after hearing granted under CCP §527.85 are the same as for any willful disobedience of a TRO or order granted under CCP §527.6. See CCP §527.85(t); discussion in §20.25.

E. [§20.66] Firearms Restrictions

A person subject to a protective order issued under CCP §527.6, §527.8, or §527.85 cannot own, possess, purchase, receive, or attempt to purchase or receive firearms or ammunition during the term of the protective order. CCP §§527.6(u)(1), 527.8(s)(1), 527.85(s)(1); Pen C §29825.

Relinquishment of firearm. On issuing a protective order, the court must order the respondent to relinquish any firearms he or she owns or possesses. CCP §§527.6(u)(2), 527.8(s)(2), 527.85(s)(2), 527.9(a). The court must order the respondent to relinquish all firearms in his or her

immediate possession and control, or subject to the respondent's possession or control, within 24 hours of being served with the order. CCP §527.9(b).

To comply with the relinquishment order, the respondent may either (CCP §527.9(b)):

- Sell the firearm to a licensed gun dealer as specified in Pen C §§26700–26725 and Pen C §§26800–26915; or
- Surrender control of the firearm to the local law enforcement agency.

Note: The local law enforcement agency may charge a storage fee that does not exceed the actual cost of storage. “Actual cost” means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer or to the person relinquishing the firearm. CCP §527.9(c).

The respondent must file a receipt of sale or surrender of any firearms with the court within 48 hours after receiving the order. CCP §527.9(b). Respondents may file with the court Judicial Council form CH-800 (if subject to CCP §527.6 protective order), WV-800 (if subject to CCP §527.8 protective order), or SV-800 (if subject to CCP §527.85 protective order) as proof of sale or surrender.

- **JUDICIAL TIP:** Some judges set a court date and order the respondent to return with proof of compliance with the relinquishment order. Whether you do so can depend on your court culture and the nature of your calendars.

The following exemptions to the firearms restrictions apply (CCP §527.9(f)):

- *Employment.* If the respondent can show (1) a particular firearm is necessary as a condition of continued employment, and (2) the current employer cannot reassign the respondent to a position that does not require a firearm. If the court grants this exemption, then the court must order that the firearm will be in the respondent's possession only during scheduled work hours and travel to and from work.
- *Peace Officer.* If carrying a firearm by a peace officer is necessary as a (1) condition of employment and (2) personal safety depends on carrying the firearm, then the court may allow the officer to carry a firearm on or off duty if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Before making this finding, the court must require the peace officer to undergo a psychological evaluation and may require him or her to enter into a counseling or other remedial treatment program to deal with any propensity for domestic violence.

During the period of the relinquishment order, the respondent is entitled to make one sale of all firearms that are in the possession of local law enforcement. A licensed gun dealer, who presents a bill of sale, must be given possession of those firearms, at the storage location, within 5 days of presenting the bill of sale. CCP §527.9(g).

Requirements of restraining order. The restraining order requiring a person to relinquish a firearm under CCP §527.9(b) must state on its face (CCP §527.9(d)):

- The respondent is prohibited from owning, possessing, purchasing, or receiving a firearm for the duration of the protective order;
- Any firearm in the respondent's immediate possession or control must be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer;
- Proof of surrender or sale must be filed with the court within a specified period of receipt of the order; and
- The expiration date for relinquishment.

Modification of order. The respondent has a right to petition the court at a later date for modification of the order. CCP §527.9(d).

Expiration of relinquishment order. If the firearms were stored with local law enforcement, then the firearms must be returned to the respondent within 5 days after expiration of the order unless the law enforcement agency determines that (1) the firearm has been stolen; (2) the respondent is in a prohibited class for possession of firearms under Pen C §§29800, 29805, 29815, 29820, and 29900 and Welf & I C §§8100 and 8103; or (3) there is another restraining order against the respondent. If the respondent cannot get the firearm back and is the legal owner, the respondent is entitled to sell it to a licensed gun dealer. CCP §527.9(e).

Penalty for violation of firearm restrictions. A respondent who purchases or receives, or attempts to purchase or receive a firearm or ammunition, knowing that he or she is prohibited from doing so by a protective order, is guilty of a public offense punishable by imprisonment in county jail for up to 1 year, or in state prison for 16 months or 2 or 3 years, and/or a fine of up to \$1000. CCP §§527.6(u)(3), 527.8(s)(3), 527.85(s)(3); Pen C §§273.6(g)(1), 29825(a).

A respondent who owns or possesses a firearm or ammunition, knowing that he or she is prohibited from doing so by a protective order, is guilty of a misdemeanor punishable by imprisonment in county jail for up to 1 year and/or a fine of up to \$1000. CCP §§527.6(u)(3), 527.8(s)(3), 527.85(s)(3); Pen C §§273.6(g)(1), 29825(b).

F. [§20.67] Gun Violence Restraining Orders

Effective Jan. 1, 2016, a court may issue a restraining order prohibiting a person from having or buying a gun or ammunition. See Pen C §§18100–18205. Any firearms the restrained person owns must be surrendered to the police, sold, or stored with a licensed gun dealer. Pen C §18120. Unlike the other orders discussed in this benchguide, a gun violence restraining order cannot make a person stay away from or stop contacting another party.

Temporary emergency gun violence restraining order. You may issue ex parte a temporary emergency gun violence restraining order, good for 21 days, if specifically requested by a law enforcement officer. Pen C §§18125(a), (b), 18130. You must find reasonable cause to believe that the person poses an immediate and present danger of injuring self or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm. Pen C §§18125(a)(1)–(a)(2). You must also find that less restrictive alternatives have been tried and found to be ineffective, or are inadequate or inappropriate. Pen C §18125(a)(2).

Ex parte gun violence restraining order. A law enforcement officer or a person’s immediate family member may petition the court to issue an ex parte gun violence restraining order preventing the person from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. Pen C §18150(a)(1). You may issue an ex parte gun violence restraining order if there is a substantial likelihood that the person poses a significant danger, in the near future, of injuring self or another by having a firearm or ammunition, and an ex parte order is necessary to prevent injury because less restrictive alternatives have been tried and found to be ineffective, or are inadequate or inappropriate. Pen C §18150(b)(1)–(b)(2). The court must hold a hearing within 21 days after the date on the ex parte order to determine if a gun violence restraining order should be issued. Pen C §18165.

Gun violence restraining order issued after notice and hearing. A law enforcement officer or a person’s immediate family member may ask the court to issue, after notice and a hearing, a gun violence restraining order enjoining the person from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for 1 year. Pen C §18170(a). At the hearing, the petitioner must prove by clear and convincing evidence that the subject of the petition, or the person subject to an ex parte gun violence restraining order, poses a significant danger of injuring self or another by having a gun or ammunition, and a gun violence restraining order is necessary to prevent injury because less restrictive alternatives have been tried and found to be ineffective, or are inadequate or inappropriate. Pen C §18175(b)(1)–(b)(2). A gun violence restraining order is subject to termination and renewal by further court order. Pen C §§18175(d), 18185, 18190.

F. [§20.68] Subsequent Malicious Prosecution Action

A malicious prosecution action cannot be based on an unsuccessful petition under CCP §527.6 *Siam v Kizilbash* (2005) 130 CA4th 1563, 1567, 1571–1574, 31 CR3d 368; *Kenne v Stennis* (2014) 230 CA4th 953, 970, 179 CR3d 198. Nor may a malicious prosecution action be based on an unsuccessful petition under CCP §527.8. *Robinzine v Vicory* (2006) 143 CA4th 1416, 1422–1424, 50 CR3d 65. The respondent’s remedy is to seek sanctions in the CCP §527.6 or §527.8 proceedings for the filing of a frivolous petition.

G. [§20.69] Anti-SLAPP Motion To Strike

A respondent may file a special motion to strike under CCP §425.16, the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, challenging petitions for injunctive relief under CCP §§527.6 and 527.8 *Thomas v Quintero* (2005) 126 CA4th 635, 646–653, 24 CR3d 619; *City of Los Angeles v Animal Defense League* (2006) 135 CA4th 606, 617–620, 37 CR3d 632. Petitions for injunctive relief constitute “causes of action” under the anti-SLAPP law. *Thomas v Quintero, supra*. “There is no question that the filing of a civil harassment petition constitutes protected activity.” *Kenne v Stennis* (2014) 230 CA4th 953, 966, 179 CR3d 198. For a comprehensive discussion of the anti-SLAPP statute, see CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—BEFORE TRIAL, SECOND EDITION (Cal CJER 2008), §§12.117–12.141.

H. [§20.70] Special Provisions Regarding Petitioners or Respondents Who Are Minors

A minor 12 years of age or older, accompanied by a duly appointed and acting guardian ad litem, may appear in court without an attorney for the limited purpose of obtaining or opposing a request for a TRO or injunction prohibiting harassment under CCP §527.6 or workplace violence under CCP §527.8. CCP §374(a). The minor may also appear without counsel, a guardian, or a guardian ad litem. CCP §372(b)(1)(A)–(B). However, the court, either on motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, may appoint a guardian ad litem to help the minor obtain or oppose the order. CCP §372(b)(1). This appointment may not delay the issuance or denial of the order. CCP §372(b)(1). In determining whether to appoint a particular guardian ad litem, the court must consider whether the minor and the guardian have divergent interests. CCP §372(b)(1).

- JUDICIAL TIP: Be alert when a parent requests a TRO against an estranged parent’s new partner and also asks you to name the child

as a protected person. If there are grounds for a restraining order, consider not naming the child as a protected party. Including a child in a civil restraining order that applies to a parent's live-in partner may interfere with a custody arrangement.

A proceeding brought by or against a minor for an injunction under CCP §527.6 or §527.8 will ordinarily be heard in the superior court. See CCP §374.5. However, if the minor bringing the action or against whom the action is brought has previously been adjudged a dependent child or ward of the juvenile court, the matter must be heard in the juvenile court having jurisdiction over the minor. CCP §374.5.

When a minor who is seeking an order under CCP §527.6 or §527.8 initially appears in court without a guardian or guardian ad litem, and resides with a parent or guardian, the court must send a copy of the order to at least one parent or guardian designated by the minor. CCP §372(b)(2). The court has the discretion not to send a copy of the order if the court determines that this notification would be contrary to the minor's best interest. CCP §372(b)(2). The court need not send the order to more than one parent or guardian. CCP §372(b)(2).

I. [§20.71] Strategic Plan for Language Access in the California Courts

The Judicial Council has adopted a comprehensive Language Access Plan (LAP) that provides a consistent statewide approach to ensure language access for all limited English-proficient California court users. This plan is currently being implemented in all 58 trial courts.

One of the plan's key goals is to ensure that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to limited English-proficient court users in all courtroom proceedings and, by 2020, in all court-ordered, court-operated events.

For more information, please see Bench Card: Working with Court Interpreters, in the Language Access section of the Access, Ethics & Fairness Toolkit on CJER Online.

IV. [§20.72] SCRIPT: ADVISEMENTS TO PARTIES AT COMMENCEMENT OF CIVIL HARASSMENT HEARING

OPENING REMARKS

This is the civil harassment hearing calendar. I am Judge _____, and I will hear your cases when they are called for today. Before the calendar is called, I will inform you of the law and some of the procedures that apply in civil harassment cases.

Requests for an order to prohibit civil harassment are governed by statute in California. This means that the Legislature has passed specific laws governing these types of cases. Whether the petitioner is granted an order today will be determined solely by whether the petitioner proves his or her case according to the requirements set out in the statute. If the petitioner proves his or her case according to these requirements, the petitioner can expect to be granted an order. If the petitioner is unable to prove his or her case, the petitioner should not expect to be granted an order.

WHAT CONSTITUTES HARASSMENT

The law defines certain terms in ways that are not always consistent with their common usage. Harassment in common usage is understood to be just about anything that bothers a person. This is not the definition of “harassment” that applies to these hearings. The law defines “harassment” as 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. If the conduct the petitioner is complaining about does not meet this definition, then the conduct is not harassment for the purposes of a civil harassment order.

Let’s look closer at this definition. If the conduct the petitioner is complaining about is not violence or a credible threat of violence, then the respondent’s conduct must be knowing and willful to be harassment, and must be part of a course of conduct before it may be considered civil harassment. “Course of conduct” has its own definition, which we will look at in a moment.

The conduct about which the petitioner complains must be directed at a specific individual, that is, the petitioner, before the conduct may be considered to be actionable civil harassment. If the conduct is not directed toward the petitioner, but rather toward a group, organization, or location, then the petitioner may not be able to prove civil harassment.

The conduct about which the petitioner complains must serve no legitimate purpose in order to constitute civil harassment. For example, if the petitioner admits to owing money to the respondent, then it is not civil harassment for the respondent to call the petitioner on a reasonably consistent basis to ask when the petitioner will satisfy this debt. If the petitioner admits to holding property of the respondent, then it is not civil harassment for the respondent to come to the petitioner’s residence to try to retrieve this property. There are many situations in which the conduct about which petitioners complain serves a legitimate purpose. If that is the case, then the petitioner is not entitled to relief under the civil harassment statute.

The statute also requires the petitioner to show that the conduct would cause a *reasonable person* to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner. By including this requirement, the Legislature has indicated that there are going to be cases in which the court finds that the petitioner is very distressed but that a reasonable person under the same circumstances would not be substantially emotionally distressed. The cases that raise this issue most commonly are ones that involve family—a parent, for example, who is suing his or her child, or a child who is suing his or her parent, claiming harassment and asking the court to grant an order to prevent the family member from ever contacting the petitioner. There are times when family members get very upset with each other. However, a petitioner might not get relief even though he or she may be very distressed.

“COURSE OF CONDUCT”

As I said before, the phrase “course of conduct” has its own definition. The statute defines course of conduct as a pattern of conduct composed of a series of acts over a period of time, however short, that shows a continuity of purpose. To be entitled to relief, the petitioner in any case not involving violence or a credible threat of violence must show a pattern of conduct over time. As a matter of law, a one-time, *nonviolent* incident is not sufficient for a civil harassment order because the petitioner has failed to prove a pattern of conduct over time.

The statute also says that constitutionally protected activity is not included within the meaning of “course of conduct.” That means that I cannot improperly take away the respondent’s constitutional rights by any order I might issue. Whether we like it or not, whether we agree with it or not, we all enjoy certain constitutional rights, including free speech, privacy, due process, associational rights, and property rights. For example, I cannot improperly take away the property and due process rights of a person by ordering him or her out of an apartment he or she rents from the petitioner landlord. The petitioner’s remedy in such a case is to file an unlawful detainer proceeding to terminate the tenancy without the tenant’s consent.

There are also privileges that I cannot take away via a civil harassment case. One privilege that comes up fairly often is the privilege to complain to governmental organizations. Petitioners frequently file civil harassment suits when the respondent has made reportedly improper complaints about the petitioner to law enforcement authorities. Calling law enforcement authorities to report a suspected crime is a privileged phone call. There is nothing a court can or would do to stop someone from making such a call if the report is true and made in good faith. If the person who makes such a call knowingly makes a false report, that person has committed a crime and may be prosecuted and, if convicted, sent to jail. The actual phone call, however, is privileged and cannot be enjoined. This is also true of calls to

other governmental entities, such as the IRS, the INS, and child protective services.

BURDEN OF PROOF

Petitions for an order to prohibit civil harassment do not have the normal civil burden of proof. The normal civil burden of proof is called a preponderance of the evidence. That means that the judge or jury must weigh the evidence presented and can only grant the petitioner's claim if the evidence presented amounts to over 50 percent. But in civil harassment cases, a judge cannot grant an order unless the petitioner proves his or her case by clear and convincing evidence.

There is no numerical standard for clear and convincing evidence. Clear and convincing evidence is a very high standard of proof, but it is not as high as the standard of proof beyond a reasonable doubt required in a criminal case. It has been defined as proof that it is highly probable that the facts are true. CACI 201. I cannot tell you beforehand what will or will not be clear and convincing evidence, but I can give you an example of what probably will not be clear and convincing evidence. If the sole evidence of alleged threats by the respondent is the petitioner's statement under oath that the threats were made, but the respondent under oath denies making these threats, and there are no corroborating witnesses or any corroborating evidence, then it is unlikely that I will find that the petitioner's case has been proved by clear and convincing evidence.

COURT'S INDEPENDENT INQUIRY

The statute expressly provides that the judge may make an independent inquiry at the hearing. If your case is called for a hearing, I may question one or both parties, and their witnesses. Once I have asked all the questions I want answered, I will allow each party to present any other evidence and, if the evidence is relevant, I will consider it before I rule on the request for an order.

DURATION OF ORDER

If I decide to issue an order, the maximum duration of the order is 5 years. If you still need protection at the end of 5 years, you may apply for a renewal of the order by filing a new petition within 3 months before the order is due to expire.

VIOLATION OF ORDER

If I decide to issue an order and the respondent violates this order, this violation is a crime. It may be reported to the police and prosecuted like any other crime. If the police choose not to take action, the petitioner has the additional remedy of filing and serving an order to show cause why the

respondent should not be held in contempt for violating the court's order. Because the respondent is facing a potential jail term on such a contempt charge, the respondent is entitled to court-appointed counsel if the respondent cannot afford counsel, and the contempt must be proved beyond a reasonable doubt.

PROOF OF SERVICE ON RESPONDENT

If your case comes on for hearing and the respondent is not present in the courtroom, please know that the first thing I am going to do after calling your case is to check the court file to confirm that there is a proof of personal service on the respondent in the file. If there is no proof of service or if the proof of service is defective, then I do not have personal jurisdiction over the respondent and cannot listen to your case. All I can do is continue—that is, postpone—your case, so that you can properly serve the respondent. If I continue your case and you have been issued a temporary restraining order, this restraining order will remain in effect until the new hearing date.

CONCLUDING REMARKS

The clerk and the bailiff will now take roll to see who is here and who is not here. Please remain in your seats and answer when your name is called.

DENIAL OF HARASSMENT ORDER (if applicable)

The court does not find by clear and convincing evidence that there has been: (1) Unlawful violence—assault, battery, stalking, not lawful self-defense and defense of others (CCP §527.6(b)(7)); or (2) A credible threat of violence—a knowing and willful statement or course of conduct that would place a reasonable person in fear for self or immediate family and serves no legitimate purpose (CCP §527.6(b)(2)); or (3) a knowing and willful course of conduct directed at the petitioner, that has seriously alarmed, annoyed, or harassed the petitioner (CCP §527.6(b)(1)), would cause a reasonable person to suffer substantial emotional distress, actually caused the petitioner substantial emotional distress, and served no legitimate purpose (CCP §527.6(b)(1)).

V. [§20.73] ADDITIONAL REFERENCES

CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—BEFORE TRIAL, SECOND EDITION (Cal CJER 2008), chap 14.

6 Witkin, California Procedure, *Provisional Remedies* (5th ed 2008).

Table of Statutes

CALIFORNIA

CIVIL CODE	527.6(b)(6)
§1788–1788.33	20.7
20.26	527.6(b)(7)
	20.6, 20.72
CODE OF CIVIL PROCEDURE	527.6(c)
	20.3–20.4, 20.7, 20.20
372(b)(1)	527.6(d)
20.70	20.3, 20.7, 20.14
372(b)(1)(A)–(B)	527.6(e)
20.70	20.3, 20.7
372(b)(2)	527.6(f)
20.70	20.7
374(a)	527.6(g)
20.3, 20.70	20.3, 20.8
374.5	527.6(h)
20.70	20.4, 20.10, 20.21
425.16	527.6(i)
20.69	20.4, 20.12, 20.14, 20.38,
527(c)	20.57
20.7	527.6(j)
527.3	20.4
20.32, 20.51	527.6(j)(1)
527.6	20.17–20.19
20.1–20.3, 20.6, 20.12, 20.22, 20.24–20.27, 20.30, 20.46, 20.65– 20.66, 20.68–20.70	527.6(j)(2)
	20.19
	527.6(j)(3)
	20.18
527.6(a)	527.6(k)
20.3	20.5, 20.10
527.6(a)(1)	527.6(l)
20.5	20.4, 20.13
527.6(b)(1)	527.6(m)
20.6, 20.72	20.3–20.4, 20.9
527.6(b)(2)	527.6(n)
20.6, 20.72	20.9
527.6(b)(3)	527.6(o)
20.3–20.4, 20.6	20.4, 20.11

527.6(p)(1)	527.8(a)
20.11	20.28, 20.30
527.6(p)(2)	527.8(b)(1)
20.11, 20.16	20.32
527.6(q)(1)	527.8(b)(2)
20.9	20.28, 20.32
527.6(q)(2)	527.8(b)(3)
20.16	20.30
527.6(r)	527.8(b)(6)
20.4, 20.29	20.33
527.6(r)(1)	527.8(b)(7)
20.22	20.28, 20.32
527.6(r)(2)	527.8(c)
20.22	20.32
527.6(r)(3)	527.8(d)
20.22	20.28–20.29, 20.33, 20.44
527.6(s)	527.8(e)
20.4, 20.15	20.28, 20.33, 20.39
527.6(t)	527.8(f)
20.25	20.33
527.6(u)	527.8(g)
20.4	20.33
527.6(u)(1)	527.8(h)
20.66	20.28, 20.34
527.6(u)(2)	527.8(i)
20.66	20.29, 20.36
527.6(u)(3)	527.8(j)
20.66	20.29, 20.38–20.39
527.6(u)(3)	527.8(k)
20.66	20.29
527.6(v)	527.8(k)(1)
20.26	20.41–20.43
527.6(w)(1)	527.8(k)(2)
20.7, 20.10	20.43
527.6(x)	527.8(k)(3)
20.7, 20.10	20.42
527.6(y)	527.8(l)
20.7, 20.9	20.30, 20.36
527.8	527.8(m)
20.1–20.2, 20.27–20.28,	20.28–20.29, 20.35
20.30, 20.32, 20.45–	527.8(n)
20.47, 20.51, 20.58,	20.35
20.66, 20.68–20.70	

527.8(o)	527.9(e)
20.29, 20.37	20.66
527.8(p)(1)	527.9(f)
20.37	20.66
527.8(p)(2)	527.9(g)
20.37	20.66
527.8(q)(1)	527.85
20.35	20.1–20.2, 20.48, 20.27,
527.8(q)(2)	20.64–20.66
20.40	527.85(a)
527.8(r)(1)	20.48, 20.50
20.45	527.85(b)(2)
527.8(r)(2)	20.51
20.45	527.85(b)(3)
527.8(r)(3)	20.48, 20.51
20.45	527.85(b)(7)
527.8(s)	20.50
20.29	527.85(b)(8)
527.8(s)(1)	20.52
20.66	527.85(c)
527.8(s)(2)	20.51
20.66	527.85(d)
527.8(s)(3)	20.48–20.49, 20.52, 20.63
20.66	527.85(e)
527.8(t)	20.48, 20.52, 20.58
20.46	527.85(f)
527.8(v)	20.52
20.36	527.85(g)
527.8(v)(1)	20.52
20.33	527.85(h)
527.8(w)	20.48, 20.53
20.33, 20.36	527.85(i)
527.8(x)	20.49, 20.55
20.33, 20.35	527.85(j)
527.9(a)	20.49, 20.57–20.58
20.66	527.85(k)
527.9(b)	20.49
20.66	527.85(k)(1)
527.9(c)	20.60–20.62
20.66	527.85(k)(2)
527.9(d)	20.62
20.66	

527.85(k)(3)	1005(b)
20.61	20.18, 20.42, 20.61
527.85(l)	1032
20.55	20.15
527.85(m)	
20.48–20.49, 20.54	EVIDENCE CODE
527.85(n)	1012
20.54	20.12, 20.38, 20.57
527.85(o)	1024
20.49, 20.56	20.12, 20.38, 20.57
527.85(p)(1)	1119
20.56	20.4, 20.29, 20.49
527.85(p)(2)	
20.56	FAMILY CODE
527.85(q)(1)	6200–6389
20.54	20.26
527.85(q)(2)	6380(b)
20.59	20.22, 20.45, 20.64
527.85(r)	
20.49	LABOR CODE
527.85(r)(1)	6400 et seq
20.64	20.30
527.85(r)(2)	
20.64	PENAL CODE
527.85(r)(3)	273.6
20.64	20.25
527.85(s)	273.6(a)
20.49	20.25
527.85(s)(1)	273.6(b)
20.66	20.25
527.85(s)(2)	273.6(d)
20.66	20.25
527.85(s)(3)	273.6(e)
20.66	20.25
527.85(t)	273.6(g)
20.65	20.25
527.85(v)(1)	273.6(g)(1)
20.52, 20.55	20.66
527.85(w)	646.9
20.52, 20.55	20.32
527.85(x)	653m
20.52, 20.54	20.7, 20.33, 20.52
904.1(a)(6)	18100–18205
20.27	20.67

18120	29825(b)
20.67	20.66
18125(a)	29900
20.67	20.66
18125(a)(1)–(a)(2)	
20.67	WELFARE AND
18125(a)(2)	INSTITUTIONS CODE
20.67	8100
18125(b)	20.66
20.67	8103
18130	20.66
20.67	
18150(a)(1)	ACTS BY POPULAR NAME
20.67	Domestic Violence Prevention
18150(b)(1)–(b)(2)	Act
20.67	20.26
18165	Rosenthal Fair Debt Collection
20.67	Practices Act
18170(a)	20.26
20.67	
18175(b)(1)–(b)(2)	CALIFORNIA RULES OF
20.67	COURT
18175(d)	1.51
20.67	20.3, 20.28, 20.48
18185	3.1152(b)
20.67	20.7, 20.33, 20.52
18190	3.1152(c)
20.67	20.3, 20.9, 20.28, 20.35,
26700–26725	20.48, 20.54
20.66	3.1152(d)
29800	20.4, 20.10, 20.29, 20.36,
20.66	20.49, 20.55
26800–26915	3.1152(e)
20.66	20.11, 20.37, 20.56
29805	3.1700
20.66	20.4, 20.15
29815	3.1702
20.66	20.4, 20.15
29820	
20.66	JURY INSTRUCTIONS
29825	(CACI)
20.25, 20.66	201
29825(a)	20.72
20.66	

UNITED STATES

UNITED STATES CODE

Amend I

Title 11

20.6

362(a)

20.24

Table of Cases

- Adler v Vaicius (1993) 21 CA4th 1770, 27 CR2d 32: §§[20.15](#), [20.23](#)
- Brekke v Wills (2005) 125 CA4th 1400, 3 CR3d 609: §§[20.6](#)
- Brown v Department of Corrections (2005) 132 CA4th 520, 33 CR3d 754: §§[20.32](#), [20.51](#)
- Byers v Cathcart (1997) 57 CA4th 805, 67 CR2d 398: §§[20.2](#), [20.6](#)
- City of Los Angeles v Animal Defense League (2006) 135 CA4th 606, 37 CR3d 632: §§[20.30–20.31](#), [20.39](#), [20.58](#), [20.69](#)
- City of Palo Alto v Service Employees Int'l Union (2000) 77 CA4th 327, 91 CR2d 500: §§[20.30](#), [20.47](#)
- City of San Jose v Garbett (2010) 190 CA4th 526, 118 CR3d 420: §[20.39](#)
- Cooper v Bettinger (2015) 242 CA4th 77, 194 CR3d 772: §[20.19](#)
- Diamond View Ltd. v Herz (1986) 180 CA3d 612, 225 CR 651: §[20.5](#)
- Duronslet v Kamps (2012) 203 CA4th 717, 137 CR3d 756: §[20.12](#)
- Elster v Friedman (1989) 211 CA3d 1439, 260 CR 148: §[20.15](#)
- Ensworth v Mullvain (1990) 224 CA3d 1105, 274 CR 447: §§[20.4](#), [20.12](#), [20.14](#)
- Franklin v Monadnock Co. (2007) 151 CA4th 252, 59 CR3d 692: §[20.30](#)
- Freeman v Sullivant (2011) 192 CA4th 523, 120 CR3d 693: §§[20.11](#), [20.37](#), [20.56](#)
- Grant v Clampitt (1997) 56 CA4th 586, 65 CR2d 727: §[20.24](#)
- Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty USA, Inc. (2005) 129 CA4th 1228, 29 CR3d 521: §§[20.2](#), [20.5–20.6](#), [20.32](#), [20.51](#)
- Hurvitz v Hoefflin (2000) 84 CA4th 1232, 101 CR2d 558: §[20.2](#)
- In re M.B. (2011) 201 CA4th 1057, 134 CR3d 45: §[20.30](#)
- Kaiser Found. Hosps. v Wilson (2011) 201 CA4th 550, 133 CR3d 830: §§[20.4](#), [20.12](#), [20.29](#), [20.38](#), [20.49](#), [20.57](#)
- Kenne v Stennis (2014) 230 CA4th 953, 179 CR3d 198: §§[20.68–20.69](#)
- Kobey v Morton (1991) 228 CA3d 1055, 278 CR 530: §[20.21](#)
- Krug v Maschmeier (2009) 172 CA4th 796, 91 CR3d 452: §[20.15](#)
- Leydon v Alexander (1989) 212 CA3d 1, 260 CR 253: §§[20.6](#), [20.15](#)
- Los Angeles, City of v Animal Defense League (2006) 135 CA4th 606, 37 CR3d 632: §§[20.30–20.31](#), [20.39](#), [20.58](#), [20.69](#)

- M.B., In re (2011) 201 CA4th 1057, 134 CR3d 45: §20.30
- Malatka v Helm (2010) 188 CA4th 1074, 116 CR3d 343: §20.16
- Marquez-Luque v Marquez (1987) 192 CA3d 1513, 238 CR 172: §20.2
- Merco Constr. Eng'rs v Mun. Court (1978) 21 C3d 724, 147 CR 631: §20.30
- Nebel v Sulak (1999) 73 CA4th 1363, 87 CR2d 385: §20.6
- Nora v Kaddo (2004) 116 CA4th 1026, 10 CR3d 862: §20.21
- Palo Alto, City of v Service Employees Int'l Union (2000) 77 CA4th 327, 91 CR2d 500: §§20.30, 20.47
- People v Sangiacomo (1982) 129 CA3d 364, 181 CR 90: §20.2
- R.D. v P.M. (2011) 202 CA4th 181, 135 CR3d 791: §§20.6, 20.27
- Robinzine v Vicory (2006) 143 CA4th 1416, 50 CR3d 65: §20.68
- Russell v Douvan (2003) 112 CA4th 399, 5 CR3d 137: §§20.2, 20.14
- Sangiacomo, People v (1982) 129 CA3d 364, 181 CR 90: §20.2
- San Jose, City of v Garbett (2010) 190 CA4th 526, 118 CR3d 420: §20.39
- Schild v Rubin (1991) 232 CA3d 755, 283 CR 533: §20.6
- Schraer v Berkeley Prop. Owners' Ass'n (1989) 207 CA3d 719, 255 CR 453: §20.12
- Scripps Health v Marin (1999) 72 CA4th 324, 85 CR2d 86: §§20.2, 20.30, 20.32, 20.39, 20.51, 20.58
- Siam v Kizilbash (2005) 130 CA4th 1563, 31 CR3d 368: §20.68
- Smith v Silvey (1983) 149 CA3d 400, 197 CR 15: §20.6
- Thomas v Quintero (2005) 126 CA4th 635, 24 CR3d 619: §20.69
- USS-Posco Indus. v Edwards (2003) 111 CA4th 436, 4 CR3d 54: §§20.30, 20.32
- Youngblood v Wilcox (1989) 207 CA3d 1368, 255 CR 527: §20.2