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Abuse of Domestic Violence Proceedings: Playing Dirty in Divorce

Under New Mexico law, a victim of domestic abuse can file a petition for order of protection asking the civil court to issue a restraining order (called the Order of Protection from Domestic Abuse) preventing the restrained party from contact with the abused party. The order of protection is an important mechanism available to protect victims of abuse. Unfortunately, as pointed out in recent columns in the Albuquerque Journal, the order of protection is often misused.

For instance, as part of a divorce proceeding, one party will often file a petition for order of protection even though no domestic abuse has occurred. The filing party may do this to prevent the other party from seeing their children or to force the other party from the marital residence. Or the filing party may just file the petition to cause the other party trouble because they then have to hire an attorney and miss work to appear at the hearing on the order of protection. Worse yet, the tactic can be used to literally ruin the other party.

The improper use of the order of protection can cost parties more than just time and money. A temporary order of protection is entered as a result of most petitions and although the temporary order does not make a finding of domestic violence, it is still part of the public record and may hinder the restrained party's ability to find employment or pass a background check. A finding of domestic violence has consequences far beyond the order of protection itself.

This misuse of the legal system is not only hard on the parties involved, but it puts the hearing officers and judges that review petitions for order of protection in a very difficult position. If the hearing officer issues a petition against a party that has not really committed domestic violence, then the restrained party can suffer serious and unfair consequences. On the other hand, if the hearing officer does not issue an order of protection and there really is domestic violence, then the life of the abused party could be in danger.

Given the frequent abuse of domestic violence proceedings, it is very important that parties on both sides consult an attorney prior to filing or immediately after being served with an order of protection. An innocent party's failure to do so may result in the entry of a bogus order of protection. A dishonest person filing a domestic violence action for wrongful purposes if found out by the court, can be facing numerous penalties including loss of child custody and time-sharing and findings of contempt with fines and awards of attorney fees. It is very dangerous game and should be treated as such by all.

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