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Whether Civil or Criminal, Domestic Violence Finding Has Severe Consequences

It is the unfortunate truth that divorce and child custody disputes can often lead to charges of domestic violence by or against either party.

In New Mexico, a single incident of reported domestic violence can result in criminal domestic violence and/or a civil domestic abuse case, either of which have serious consequences for the accused abuser.

The criminal domestic violence case is usually the result of the typical domestic violence call to the police or 911. Whenever the police are called on a domestic violence incident, one of the parties will be arrested if both are still present. Criminal charges are then filed against the arrested party. If the alleged abuser has left the premises, criminal charges will be filed without an arrest.

No matter how the charges are filed, the Court will almost always issue a no contact order that prevents the accused abuser/defendant from any contact with the victim. Typically, the court will also order the defendant to stay away from the alleged victim's home which is often also the home of the defendant.

In addition to criminal charges, the New Mexico Family Violence Protection Act allows a victim of domestic violence to file a civil case against the accused abuser by filing what is called a petition for order of protection. Upon filing the petition, an immediate temporary order of protection will be issued. Like the no-contact order in the criminal proceeding, the order of protection prevents any contact between the alleged abuser and the alleged victim. This civil proceeding can run concurrently with a criminal case.

In case of criminal charges, the case can go on for months. A civil case proceeds much more quickly. A hearing is set within ten days of service of the temporary order of protection and notice of hearing. In other words, once the alleged abuser receives notice of the allegations, an evidentiary hearing will be held for the court to determine whether or not the alleged abuser is guilty of an act of domestic violence. If domestic violence is found, a 6 month order of protection will be issued. This order may be extended for good cause.

Either a criminal conviction for domestic violence or a finding of domestic violence in family court have very serious and negative consequences on things like future employment options, the ability to carry a firearm, immigration status and even the ability to rent an apartment.

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Either a criminal proceeding or civil proceeding will have many of the same negative collateral consequences. The severity of these consequences is why it is so important that parties on either side of a domestic violence action speak to an attorney to understand their rights, responsibilities and the consequences of a finding of domestic violence. It is equally important in both a criminal and civil proceeding.

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