

ALBUQUERQUE DIVORCE LAWYER BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

December 15, 2009

Consequences of a Finding of Domestic Violence in Family Court

After an alleged victim (the Protected Party) of domestic violence has filed a Petition for Order of Protection and the Temporary Order of Protection has been entered preventing the alleged abuser (the Restrained Party) from any contact with the alleged victim, the court holds hearing to determine whether or not the Petition provides enough information for the court make a formal finding that domestic abuse has occurred.

These petitions are often filed in the context of a divorce or custody battle. However, they can be filed by any "household member" as defined under the statute. The Family Violence Protection Act statute defines household member as follows:

"household member" means a spouse; former spouse; family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child; or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section."

A parent can also file a Petition in order to protect their minor child. The court must find that a preponderance of the evidence provided at the hearing shows that an act of domestic abuse has occurred.

According to the Family Violence Protection Act, the definition of domestic abuse is very broad, but it basically defined as an incident by a household member against another household member and includes things like actual physical harm, severe emotional distress or just making a threat that causes the Protected Party reasonably think that the Restrained Party might harm them.

A finding of domestic abused can have serious implications. The court records of these civil domestic violence Petitions are not accessible to the public in New Mexico, however, all Orders of Protection are reported to the database maintained by the National Crime Information Center (NCIC), which is accessible to all law enforcement agencies in the country. A finding of domestic violence results in registry in the database as a domestic violence offender.

Registry as a domestic violence offender has numerous severe consequences. The full faith and credit clause requires that every state recognize and enforce the Orders of Protection issued by another state. Many employers, especially for jobs that require any kind of security clearance, will request that a potential employee report whether or not any findings of domestic abuse or violence have ever been made against them. And, under the federal gun control regulation, a finding of domestic abuse will prevent a Restrained Party from ever owning or possessing a firearm. This includes firearms used in hunting. It also includes firearms used in the course of law enforcement and the military effectively barring domestic violence offenders from law enforcement and military service in the absence of waivers. Finally, a finding of domestic violence serious immigration consequences including immigration removal proceedings for deportation and exclusion of the domestic violence offender from the United States.

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquedivorcelawyerblog.com/>

Due to the severe consequences of a finding of domestic violence and the rather liberal burdens and rules of evidence in domestic violence hearings, the parties to a Petition may want to enter into a Stipulated Order of Protection, in which the Restrained Party agrees to comply with an extended Order of Protection, but a full evidentiary hearing is not held and there is no finding of domestic abuse. Both the alleged victim and the alleged abuser benefit from this arrangement particularly in cases where there are support issues. After all, it does little good to have family's provider fired from his job or worse, deported from the United States.

A party facing the a Petition for Order of Protection from Domestic Violence should discuss the implications of a finding of domestic violence and a Stipulated Order of Protection with their attorney or the court itself at the prior to the beginning of the hearing.

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquedivorcelawyerblog.com/>