



**Domestic Violence:**

**What You Need to Know About Domestic Violence Court**

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## INTRODUCTION AND DISCLAIMER

You are receiving this information because you either went on to my website or requested it or someone you know requested it and sent to you.

The information presented in this whitepaper is simply that, information; it is not legal advice of any kind. You should **not** rely on this information to resolve any legal issues or problems you may have; but, instead, you should seek the assistance of an attorney in your area to give you specific advice for your circumstances.

**Reading or accessing this information will not create an attorney-client relationship between you and me.**

**Domestic violence is a serious issue.**

Victims need to know they are not alone and can get help.

Those accused of acts of domestic violence are entitled to representation as much as the victims, but need to know there are serious consequences to a violation of a restraining order, whether it's a temporary or permanent injunction. And, if you are accused of domestic violence, you need to know that a permanent injunction can have serious consequences for you.

The things I will talk about in here are things to think about before you even get into court.

These things include:

- Getting Protection as a Victim or Accused
- The Temporary Injunction – What Does it Mean?
- Why Get a Lawyer?
- What You Need to Know To Get A Lawyer for Domestic Violence

## #1 – Getting Protection in Domestic Violence as a Victim or Accused

**The court system provides protection for victims of domestic violence while at the same time making sure that the rights of a person accused of domestic violence are protected.**

**A domestic violence case begins** with a person filing for a temporary injunction, commonly referred to as a restraining order, against acts of domestic violence.

**The initial restraining order is granted or denied** by a judge based solely on the allegations made by the alleged victim in a petition for protection against domestic violence. Whether the petition is initially granted or denied, a hearing will be held two weeks after the temporary injunction is granted or denied to decide whether a longer injunction is justified. The person who wants the injunction is called the petitioner.

**The temporary injunction is served on the** accused (called the respondent) in the case. The papers include a copy of the original petition filed by the victim as well as the injunction itself, which also tells the respondent the date, time and location of the hearing.

### **THE RIGHT TO HAVE A LAWYER FREE OF CHARGE:**

**As either a victim (petitioner) or an accused (respondent)**, you are entitled to be represented by an attorney at any hearings. **But as a victim you are not entitled to free representation**—meaning the right to have the court appoint an attorney free of charge. This is a common myth about the right to a lawyer or legal representation in civil cases. **You do have the right to hire** a lawyer to represent you at the hearings so you can prove the allegations or charges you describe in your petition.

**As a respondent or accused, you do not have the right** to a lawyer free of charge (that is, appointed by the state) **unless** there are criminal charges connected to the domestic violence action for which the state is obligated to provide you an attorney. Even if there are no criminal charges, you will probably want a lawyer representing you to defend against the possibility of having a permanent injunction entered against you.

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## #2 – The Temporary Injunction – What Does it Mean?

**A temporary injunction means** that the person named in the injunction must stay away from, and have no contact whatsoever, with the person in whose favor the injunction was granted and who is also named in the injunction and designated as the petitioner.

**Having no contact includes** having no contact directly, and also not trying to get other people to contact the person indirectly. I like to say that there shouldn't even be smoke signals from the respondent in trying to communicate with the petitioner.

**Usually the officer serving a restraining** order or injunction will also inform the respondent that any weapons he or she may have need to be surrendered to the police immediately.

**The injunction is also very specific** as to the distance the respondent must keep from the petitioner, and all the places that the respondent cannot be at if the petitioner is also there.

**Anyone served with an injunction should read it very** carefully to make sure that they do not violate the terms of the injunction in any way since that can have bad consequences for the respondent.

**The temporary injunction also** sets the date when a hearing will be held to consider whether the injunction will be made permanent. This is the date on which both sides must be ready to proceed to present their case to the judge. In the case of the petitioner, he or she must be ready to prove the allegations of the petition. In the case of the respondent, he or she must be ready to defend against the allegations.

**Usually these cases are set for about 15 minutes.** This means that if a side is going to have more than one witness, then a special hearing must be requested to have enough time to present all evidence at that time. This includes subpoenaing any witnesses to attend for either side, and this is the responsibility of the side that will need those witnesses.

**At the end of the hearing,** if the case is not set for a special hearing, the judge will make a decision on the evidence presented on whether the injunction will be made permanent or whether the petition will be dismissed.

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### #3 - Why Get a Lawyer?

**The law lets you represent** yourself in court. Whether you are a petitioner seeking protection or a respondent against whom an injunction has been entered, the law still recognizes your right to represent yourself.

**But domestic violence cases are like any other case in court.** This means that there are rules to be able to present witnesses and evidence in domestic violence just like in any other court case. Knowing how to proceed in a domestic violence case can

mean the difference between getting a permanent injunction by a petitioner or in being able to get the injunction dismissed in the case of a respondent.

**Preparing for a domestic violence case**, then, is no different than any other case, even though the consequences are different and maybe more serious.

**In addition, if you are a respondent who is also criminally charged**, you need to make sure that the lawyer you hire is also a lawyer who handles criminal charges related to a civil domestic violence case it will be more advantageous to you in terms of handling both cases and in terms of costing less. For example, I do not represent respondents in criminal charges related to domestic violence, which is why I then refer a respondent who contacts me to an attorney who can handle both the civil and criminal case associated with allegations of domestic violence. It just makes more sense from the standpoint of your pocket and the case itself.

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#### **#4- Hiring a Lawyer for Domestic Violence Cases**

**Most domestic violence lawyers will** charge a flat fee for taking on your case, whether you are a petitioner or a respondent. That is also what I do.

**Some lawyers will also give you a free consultation.** I do not provide free consultations as a general rule because I feel that between the information on my website and the whitepapers (such as this one) that I provide, I pretty much give as much useful free information as can be given in a free consultation. The truth is that I provide a service only when hired since you only want to hire me to actually help you. With domestic violence cases, I offer to speak with you on the telephone to determine your specific situation and proceed from there with a flat fee if you decide to hire me.

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#### **WHAT TO DO NEXT**

**If you need more information about domestic violence**, please visit the Miami State Attorney's Website, at <http://www.miamisao.com/services/domestic/index.htm> , for information on acts of domestic violence, how to get an initial injunction, and also to see other resources available.

**If you requested this information but do not live in Miami-Dade County**, Florida, then know that you will probably be able to find this information on a site pertaining to your local State Attorney's Office or court website. A online search will show you those sites.

If you are looking for legal assistance as a petitioner or as a respondent, and would like to find out more about my services in connection with a domestic violence, please contact my office at 786-477-6017.

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## FURTHER READING RESOURCES

### Amazon Kindle Books:

[Divorce: Why Fighting in Court Will Only Make You BOTH Poorer](#): This is a case study from one of my actual litigated cases. It gives an example of how much money is spent on a divorce.

[Divorce Negotiations: 5 Principles to Help You Succeed \(Sensible Divorce Series\)](#): Put them to use to resolve your divorce in a civilized way, to navigate sticky situations; and move you along to achieve a better outcome than the alternative warring scenario. They will reduce a lot of the stress found in divorce because they provide you a saner way to approach a resolution.

[Doing Your Own Divorce: 8 Steps & Tips to Prepare Yourself](#): Even as a pro se litigant, there are things you can do to prepare for hearings and trials. There is no substitute for being prepared; and not all preparation requires a legal degree.

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### [Comment and Suggestions About This Whitepaper](#)

**I hope this material is helpful to you.** If you have any comments about the content of this whitepaper, please send me an email to [viviancrodriguez@gmail.com](mailto:viviancrodriguez@gmail.com) with your comments and/or suggestions to improve it; they are all welcome.

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**A little bit about me:** I have been practicing in Miami, Florida for over 20 years. Family law lets me provide a service to help people solve their divorce, paternity and domestic violence problems. If you want to know more about me visit <http://www.viviancrodriguez.com/aboutus/>.

**Following is the Bonus information I promised** on the “5 Most Common Mistakes People Make In Divorce Court”. Actually, these are mistakes people make in addition to

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those mistakes I warn you against making in the information you just read in this whitepaper.

I think this too will be helpful to you.

All the best,

*V.Rodriguez*

Vivian C. Rodriguez, Esq.

## **“5 Most Common Mistakes People Make In Divorce Court”**

**As a divorce lawyer, I get to go to** court for my own hearings before judges as well as I sometimes get to see the hearings of other lawyers and pro se people—pro se people are those who do their own divorce without a lawyer.

**Whether you have a lawyer representing you, or you do your divorce on your own,** avoiding these mistakes will go a long way in your case. They are not in any particular order; they are all important.

### **Mistake #1 – Not Being Prepared**

**You may think this is obvious but you would be surprised** at how many people show up to court as if this were some Sunday morning stroll. Being prepared means knowing what the exact topic of the hearing is going to be, and having all of your papers ready to deal with what the hearing will be about.

**If you don't have a lawyer,** you must not only be prepared about the subject that will be discussed, but also make sure that you have all of your papers in some order. It has been a painful experience for me just to watch this: people show up in front of the judge, argue with the judge about a paper or something else that they say they can prove, only to start looking among their papers like chickens scratching around to find a worm. The end result is usually that the judge loses patience because they have so many cases to deal with just on that same day, and the hearing may not go well.

**But if you are represented by a divorce lawyer, you are not excused from preparing.** You too should be prepared but in your case, the preparation for that hearing should have been done with your lawyer, whether at the lawyer's office or via telephone. The bulk of the work will be done by your lawyer.

### **Mistake #2 – Speaking Out of Turn**

**All hearings in court have an orderly** process to present evidence and testimony to the judge so that he or she can make a decision; and there is a particular way of doing it.

**Hearings are not social events.** If you are represented by a lawyer, you answer only when you are asked a question directly by your lawyer, the other lawyer or the judge. Sometimes, a judge will ask questions directly of the parties even when they have lawyers; and, of course, you should answer. But if you must say something to your lawyer in the middle of a hearing and there is no question pending for you to answer, then whisper it to your lawyer or write it on a paper and pass it on to her or him.



**If you are not represented by a lawyer**, and are not sure of what to do at a hearing, then try to find out what the order of the hearing will be. In any event, you should not shout answers to questions that are not put to you; better to ask permission of the court to say something (and check with your lawyer, if you are represented, before doing so).

### **Mistake #3 – Not Dressing Appropriately**

**If it were up to me**, I would work in jeans and comfortable shoes; but there is a formality to court that I, as a lawyer, need to observe.

**But guess what? Even you should observe some formality, regardless of whether you represent yourself or have a lawyer helping you.** This doesn't mean you have to go out and get expensive clothes though (lucky you).

**What it does mean is that you should** come with clean clothes with no holes or stains. Leave your fashion-sense at home. **For men** this means no pants below the waist where we are all treated to a peak of your underwear (no one cares and it makes you look shoddy and unkempt). **For women**, this means no spaghetti straps or revealing clothes (chances are you will find no potential mates here, and I say that without any regard for political correctness because in the "serious" environment of a courthouse, this is just out of place and it looks like you ended up at the wrong place).

### **Mistake #4 – Not Taking a Judge's Offers For You to Look for a Lawyer**

**Every so often**, I am present in court where one of the parties in a hearing without a lawyer gets another opportunity to get one, meaning that the judge literally stops the hearing, and tells that party to consider getting a lawyer.

**If a judge tells you this, take the opportunity he or she is giving you**, even if you think there is no way you can afford a lawyer. **Why?** Because you buy yourself some time to try and understand what is going on that you should get a lawyer. And because you may be able to get a lawyer to look over your papers without necessarily hiring him or her to represent you at the later hearing.

### **Mistake #5 – Not Being Truthful**

**At every hearing where you will provide testimony**, you will be sworn to tell the truth.

**Putting aside for a moment the fact that failure to tell the truth after you have sworn to do so is perjury (which is a criminal offense)**, at the very least you want to be truthful because if the judge thinks you are being less than so or trying to be cute, your side of the case may suffer—the judge may not believe anything you say after that.

**I don't know of any one who is perceived as having lied to a judge** who can later make that judge think that what they say afterwards is the truth...so think twice, three times even before that happens. Your credibility before that judge will be shot for the remainder of that case!

So there you have it, 5 mistakes that I see people make in court...make sure you don't.

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**You must send it "as is."**