

DOMESTIC VIOLENCE INJUNCTIONS

By K. Dean Kantaras and Jennifer H. Cavill

THERE ARE DIFFERENT TYPES OF injunctions for protection that can be sought in Florida, including injunctions against dating violence, sexual violence, repeat violence, and domestic violence. This article specifically addresses domestic violence. Florida Statute §741.28 defines domestic violence as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” If the Petitioner and Respondent are either not related or did not live together as if they were a family, then a DVI is not the appropriate injunction for protection.

The petition for a domestic violence injunction “DVI” may be obtained, filled out, and filed at the courthouse in the circuit where the Petitioner and/or Respondent reside or temporarily reside, or where the domestic violence occurred. The petition for DVI will then be sent to the judge, who will review the petition to determine whether the allegations establish an immediate and present danger of domestic violence. If so, the Court will grant a temporary DVI without notice to the Respondent, and will schedule a full evidentiary hearing for a later date to give both Petitioner and Respondent an opportunity to present evidence and testimony as to why a final DVI should be entered or not. See Florida Statute §741.30. If the Court does not find an immediate and present danger of domestic violence upon reviewing the petition, a temporary DVI will not be granted, but a full evidentiary hearing will still be scheduled. There are a number of factors the Court must consider at the full evidentiary hearing to determine whether a final DVI should be entered including, but not limited to, the history between the parties; whether the Respondent has



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attempted to harm the Petitioner or Petitioner’s family members; and whether the Respondent has physically prevented the Petitioner from leaving or calling the police. For a full list of factors, see Florida Statute §741.30.

Depending on the testimony presented at the evidentiary hearing, the Petitioner’s testimony alone may be sufficient for the Court to find that the Petitioner has been or has reasonable cause to believe he or she is in imminent danger of domestic violence. Additionally, Florida law does not require the Petitioner to prove that he or she has been the victim of domestic violence, just that he or she has reasonable cause to believe that he or she is about to become a victim of domestic violence. See *Rey v. Perez-Gurri*, 662 So. 2d 1328, 1330 (Fla. 3d DCA 1995). However, the Court cannot consider new allegations discussed for the first time at the evidentiary hearing if the allegations were not contained in the Petition. To do so would be a

violation of the Respondent’s due process rights since the Respondent would not be on notice of the allegations he or she must defend against. Furthermore, the incidents that give rise to the Petition for DVI must be specifically directed toward the Petitioner, and cannot be vague, or too remote in time. See *Horowitz v. Horowitz*, 2D13-3871, 2015 WL 1443223 (Fla. 2d DCA 2015). The amount of time the final DVI is in place is dependent on the facts of each case.

Although both parties to a domestic violence matter have the right to self-representation, it is beneficial to consult with an experienced attorney to discuss your legal rights and the ramifications involved with the evidentiary hearing and possible injunction, including self-incrimination if there is a corresponding criminal case. ■■■

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