



Harriett Buhai Center for Family Law

New Volunteer Training



New Volunteer Training

Introduction

## Goals / Objectives

Our goal in this course is to prepare you to do the crucial work of our volunteers.

Specifically, you will become familiar with:

- **basic family law concepts**
- **common issues** facing HBCFL clients
- **essential interviewing skills**

A follow-up practice session will train you in how to complete forms.

## Basics

Types of Family Law Cases

- **Dissolution** of marriage (divorce)
- **Parentage** (Petition to Establish Parental Relationship)
- **Domestic Violence Prevention Act (DVPA)** case (stand-alone Restraining Order)
- **Child Support Services Department** case (CSSD)

## Basics

Family Courts can make orders about:

- Legal parentage of children
- Custody and visitation
- Child support
- Spousal support (in Dissolution only)
- Control and division of property (in Dissolution only)
- Restraining orders
- Attorney fees

## Basics

As a volunteer, you will be helping clients in various stages of their family law case. Clients may:

- **not have filed** a case yet  
or
- **need to respond** to a case filed by the other person  
or
- be in the middle of their case and need a **temporary order** of some kind

## Basics

### Length of Case

- The **minimum time** it can take to be divorced (after the other party is served with the divorce summons and related papers)  
= 6 months.
- **Contested cases:**  
timeline = 1–2 years (if not longer).
- **Uncontested cases:**  
timeline = 9 months–1 year (if not longer).



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Child Custody

## Child Custody

Our client, Rachel, is married to Carlos and they have 2 children.

Rachel tells you she's nervous about getting a divorce, but she knows that the parent who files first for divorce gets custody of the children.

Is this true?

No, this is not true. The court considers the child's best interests when deciding on custody. The parent who files for divorce does not automatically get custody. Filing first is not relevant to anything but venue.

## Child Custody

Rachel and Carlos have two daughters, 16-year-old Christina and 3-year-old Melinda.

- Rachel worries that Carlos doesn't know how to take care of Melinda, who has autism.
- She doesn't want him to talk to Melinda's doctor. She asks you, "Can the judge say that I am the only person who can take my daughter to the doctor?"

Here's where you can talk to Rachel about **legal custody** and **physical custody**.

## Child Custody

### Legal custody

- Gives a parent the **authority to make decisions** about the child's school, religion, medical treatment, etc.

- **Joint legal custody:**

either parent can make these decisions and act on their own, unless there's a specific order that they must agree on a particular issue

- **Sole legal custody:**

only one parent has the right to make these decisions

## Child Custody

### Physical custody

- Person with whom the child lives

- **Sole physical custody:**

child's primary place of residence is with one parent

- **Joint physical custody:**

child may live with both parents for significant periods of time

## Child Custody

### Legal standards

- To determine custody of a child, California must be the **“home state.”**

This means the child has lived here for 6 consecutive months prior to the filing of the case, and there are no other orders from another state.

- Custody is determined by a standard of what’s in the child’s **“best interests”** – the child’s health, safety and welfare

## Child Custody

### California statutory preferences:

1. for **joint legal custody**, except when a parent has a restraining order or criminal conviction for domestic violence, or a court makes a finding of domestic violence
2. for **frequent and continuing contact** with both parents. This is determined on a case-by-base basis, based on the child’s best interests.

## Child Custody

The child's "best interests" is a **discretionary standard**.

But the judge must consider:

1. Child's **health, safety and welfare**
2. History of **domestic violence**
3. Nature and amount of **contact** with both parents
4. **Substance abuse**

## Child Custody

Examples of how the Court considers the child's health, safety and welfare:

### Health

Does the child have **health issues or special needs** that the custody arrangement may impact?

- Physical health conditions
- Mental/emotional health conditions
- Developmental or learning disabilities



## Child Custody

Examples of how the Court considers the child's health, safety and welfare:

### Safety

Is there a risk the child will **not be safe** with either parent?

- Parental substance abuse or domestic violence
- Living environment of parents (other adults in household)
- Lack of age-appropriate supervision

## Child Custody

Examples of how the Court considers the child's health, safety and welfare:

### Welfare

Includes any factors impacting child's **general well-being**

- Child's social and emotional ties
- Child's school/academics
- Child's activities
- Sibling/stepsibling relationships

## Child Custody

For the “nature and amount of contact with both parents”, the court considers:

- **status quo**: who has been providing the basic care, regardless of gender
- each parent’s willingness to allow the other parent to have a **healthy relationship** with the child

## Child Custody

History of domestic violence, substance abuse or crime **may be relevant** to the court’s consideration

If these issues are relevant in our client’s case, gather all available evidence, such as:

- Police reports
- Medical records
- Criminal convictions

## Child Custody

However, **immigration issues are not relevant** in Family Law court.

- Clients may mention threats of deportation that come up in domestic violence situations. This is a sensitive issue and volunteers should discuss with HBCFL staff attorneys.
- Clients may mention the other parent is undocumented and ask if that can be used against the other parent

## Child Custody

- For Rachel and Carlos, what **information** would you want to find out about Melinda's special needs?
  - Did Carlos ever take Melinda to the doctor, or talk to the doctor about her autism?
  - Is Carlos involved with any services Melinda is receiving?
  - What kind of special support does Melinda need?
  - Does Carlos follow the doctor's and/or therapists recommendations about how to care for Melinda?

## Visitation / Parenting Time

Our clients should always ask for a **specific visitation schedule**, to:

- decrease the chance for conflict
- provide consistency and a regular schedule for the child

Logistics matter!

## Visitation / Parenting Time

### Restrictions

In case child is endangered, ask the court to place **limits or restrictions** such as:

- No overnight visits
- No drinking alcohol before or during the parent's time with the child
- Supervised visitation where someone of the client's choice is present during the visitation

## Modification of Custody Orders

Clients often ask to **change** an existing custody or visitation order.

- Important: How recently was the current order made? The more recent the order, the less likely it is to be changed
- Need a critical mass of facts to change a custody order

## Modification of Custody Orders

Specific requirements to modify:

- Changes in legal or physical custody after a final order in a Judgment cannot be done without:  
**a showing of significantly changed circumstances and best interests of the child**
- Minor changes in the visitation schedule after a final order can be made:  
based on best interests

Orders requested on a temporary basis, pre-judgment (whether initial or modifications) are based on a best interests standard.



## New Volunteer Training

# Domestic Violence

## Domestic Violence

- Domestic violence will affect orders made in a case.
- Most of our clients report some form of domestic violence. It can arise or be disclosed at any point in the case.
- A client may need to obtain a Domestic Violence Restraining Order.

## Domestic Violence

In 2017, Rachel got a 1-year Domestic Violence Restraining Order after an argument in which Carlos was yelling and throwing dishes. A shard hit Rachel's arm and cut her. A neighbor heard the fight and called the police. Carlos was arrested but released without being charged.

After that, Rachel applied for the restraining order. Six months after it was issued, the two reconciled and Carlos moved home.

Does domestic violence always include physical violence?

No. it doesn't always include physical harm to the person. It can be mental and emotional abuse alone, like insults, threats of harm, harassment.

## Domestic Violence

What is domestic violence?

**Learned behavior** used by one person in a relationship to have power and control over the other person.

Can include:

- Physical violence
- Insults, threats, harassment
- Sexual coercion
- Not allowing access to finances

## Domestic Violence

If domestic violence is an issue, we need to know:

1. Is a **restraining order** needed?
  - Do facts and evidence support a restraining order in Family Court?
  - Standard = reasonable proof of past act(s) of abuse or reasonable apprehension of imminent serious bodily injury

## Domestic Violence

If domestic violence is an issue, we need to know, cont:

2. What kind of **safety planning** is needed at all stages?
  - Gather important documents
  - Necessities for self and children
  - Have a safe person to call
  - Have a safe place to go
  - Be ready to leave a dangerous situation without having to return



## Domestic Violence

If domestic violence is an issue, we need to know, cont.

3. How does DV **affect the child custody** and visitation order requested?

- If a Restraining Order was issued in the last 5 years, then rebuttable presumption **against** sole or joint legal custody

4. Is **spousal support** an issue?

- If a Restraining Order was issued in the last 5 years, then rebuttable presumption that the abusive spouse **should not receive** temporary or permanent support

## Domestic Violence

Trauma of domestic violence

- A client **may not see herself** as a victim of domestic violence; may be **reluctant** to talk about it
- **Telling their story** can be re-traumatizing for clients
- Might be the **first time** client is telling their story; can be hard to do it in a linear way.

## Domestic Violence

Trauma can look like this:

- **Unwillingness** to talk
- **Inconsistencies** in the story, disorganized memory, difficulty with the timeline
- **Reluctance** to disclose information
- Worrying about **being judged** by you and/or the attorney
- **Fear** about what will happen to them when the other parent reads the court pleadings

## Domestic Violence

Trauma can look like this, cont:

- **Emotional reactions** like crying or getting angry and frustrated
- **Dissociating** behavior
  - Clients may not look at you when they talk
  - May look disinterested, spaced out, distant from the situation
  - Can give an impression of being unreliable, flaky, or disorganized

## Domestic Violence

### Ways to be trauma-sensitive:

- Watch your **body language**
- Don't react strongly; keep your voice **calm and neutral**
- Focus on **building rapport and trust** through friendliness and support, rather than information-gathering
- Clients may need to trust you first before they feel comfortable talking

## Domestic Violence

### Ways to be trauma-sensitive, cont:

- Offer the client a break or a glass of water
- Don't ask questions like, "Why didn't you leave?" or "Why didn't you call the police?"
- **Don't minimize** their experiences or reactions.
- Don't make your own **judgment** about whether a behavior is "real" domestic violence.
- Clients are the **best judge** of their own safety. Don't substitute your judgment for theirs.

## Domestic Violence

Leaving a relationship = **the most dangerous time** for a domestic violence victim

Criteria found to show **higher risk of lethal violence** by a current or former partner include:

1. If the partner has used a weapon or threatened the client with a weapon
2. If they've threatened to kill the client or her children
3. If the client thinks the partner might try to kill her
4. If the partner has ever tried to choke the client
5. If the partner has a gun or can get one easily
6. If the partner is consistently jealous and controls the client's daily activities
7. If the partner follows or spies on the client or leaves threatening messages



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# Financial Support

## Financial Support

Our client, Rachel, is concerned about her financial situation if she gets divorced. When her older daughter was born, Carlos encouraged her to stay home and take care of their child. So Rachel has not worked in 16 years, other than occasionally babysitting. Rachel is 40 years old and has no health issues. Carlos has a full-time job as a county maintenance worker and also does odd repair jobs for cash.

Rachel asks you whether Carlos will have to pay her child support and spousal support.

## Financial Support

Every parent has a **duty to support** their child until the child turns 18, or 19 if a full-time high school student.

In California, child support is calculated by a **formula** that considers:

- the gross income of each party, and
- the amount of time that each parent spends with the child

The parent with more physical custodial time generally receives the child support payment.

## Financial Support

- The more time child spends with the custodial parent, the higher the amount of child support award paid by the noncustodial parent (depending on their income).
- Each parent must provide proof of income in a court case, as part of their financial disclosures, or when support is at issue.
- Cash income can be hard to prove.

## Financial Support

There is a duty to **support the spouse** during the marriage.

In a dissolution case, support may be ordered for a period of time that the court determines is just and reasonable.

## Financial Support

**Temporary** spousal support (while the case is pending) is based on need and ability to pay.

**Permanent** spousal support (after judgment) is based on a number of factors the judge must consider:

- Earning capacity of each spouse and ability to maintain standard of living established during the marriage
- Supported spouse's job skills and any periods of unemployment due to domestic duties for the household
- Supporting spouse's ability to pay
- Needs of each spouse based on standard of living established during the marriage
- Debts and assets of each spouse
- Length of marriage
- Supported spouse's ability to work if they have custody of children
- Age and health of both spouses

## Quiz

1. Which of the following financial support is required in a dissolution case?

- a) Child support for a 20-year-old full-time college student
- b) Custodial parent's right to child support for a 6-year-old
- c) A spouse's right to support if their spouse earns a higher salary
- d) A 6-year-old child's right to child support from a noncustodial parent

Answer d) is correct. For a), child support is required up to age 19 only. For b), child support is the child's right, not the parent's. For c), the judge must consider a number of factors in addition to salary when deciding on spousal support

## Public Benefits

Many HBCFL clients rely on public benefits.

Examples:

- CalWorks
- General Relief
- SSI
- Food stamps / CalFresh
- Medi-Cal

Orders for child support or spousal support may affect client's or child's eligibility to receive public benefits.

## Property

**Financial disclosures** to the other party in a divorce case are required.

Includes income and expenses, as well as assets and debts, such as:

- house
- land
- rental properties
- businesses
- bank accounts
- IRAs and other retirement plans



## Property

Rachel and Carlos bought a house 5 years after they married. If they divorce, the house is part of the property that should be divided between them.

Also, Rachel tells you that she thinks Carlos may have a pension with LA County, where he has worked for the past 9 years.

Do you think Carlos' pension is part of the property that should be divided between the parties if they divorce?

Yes. The pension earnings during their marriage is community property that should be divided between them.

## Property

### Community Property

- Property purchased during the marriage = community property
- Each party owns 50% of the community property
- Equalization required after the property and debt have been assigned to each party
- Property in one party's name can still be community property.

## Property

### Separate Property

Separate property belongs only to one party, including:

- property acquired before the marriage or after the date of separation
- property acquired by gift or inheritance
- property acquired with separate property funds

## Property

### Date of Separation

The date of separation determines the length and time period of the marriage.

This affects how property is divided and can affect spousal support.

With a retirement plan, for instance, the amount earned in the plan is community property only up until the date of separation.

## Property

The date of separation is when one party:  
expressed intent to end the marriage to the other party  
**and**  
acted consistently with that intent.

In Rachel's case, the date of separation is the date she told Carlos she wanted to divorce and moved to her mother's apartment.

## Quiz

1. Ana and Robert were married in June 2002. In December 2017, the couple had an argument over Robert's drinking and Ana told Robert he needed to get treatment if he wanted to stay married. In February 2018 she moved to her friend's apartment, hoping it would prompt Robert to get treatment. In June 2018, Ana told Robert she wanted a divorce. In the divorce pleadings, the date of separation would be:

- a) June 2018
- b) December 2017
- c) February 2018

**Answer and explanation:** The correct response is a) June 2018. Only then was there both an expressed intent to end the marriage and action consistent with that intent.

## Property

- Easy to mischaracterize property
- Ask clients about each significant item of property:
  - When was the property obtained?
  - How was the property obtained?
  - If purchased, what was the source of the funds?

## Property

Some assets are “mixed”:

**both** separate property **and** community property.

For example, a house may have been bought before the marriage using one party’s separate property funds,

**but**

the mortgage was paid with community property earnings during the marriage.