



More to the Story: How the Economic Effects of Domestic Violence Can Lead to Dangerous Custody Outcomes

Approaches & Tools

I. Identify and Combat Litigation Abuse in the Courtroom

a. Identify: What does litigation abuse look like?

⇒ Filing numerous meritless motions	⇒ Serving improper discovery requests	⇒ Refusing to comply with court orders
⇒ Relitigating issues	⇒ Refusing to comply with discovery requests	⇒ Threatening to sue the survivor
⇒ Repeatedly asking for hearings	⇒ Insisting on judicial intervention	⇒ Requesting unnecessary outside evaluations or otherwise increasing the costs of litigation
⇒ Filing contempt motions against the survivor	⇒ Prolonging court proceedings	

b. Combat: What Tools Are Available?

Mechanism	Description	Application
Court's Inherent Sanction Power	CA courts have inherent power to control litigation in order to insure the orderly administration of justice. ⁱ	<ul style="list-style-type: none"> - Terminating sanctions for deliberate misconductⁱⁱ - Evidence preclusionⁱⁱⁱ - Attorney disqualification^{iv} - No monetary sanctions^v
Court's Inherent Procedure Power	CA Courts have the inherent authority to conduct hearings and formulate rules as justice may require. ^{vi}	<ul style="list-style-type: none"> - Show cause hearings - Telephonic hearings
Fam. Code § 271	CA Courts may award attorney's fees and costs against a party who violates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation.	<ul style="list-style-type: none"> - Require harm-doer to pay survivor's attorney's fees and costs resulting from the harm-doer's litigation misconduct - "Costs" is more expansive than attorney's fees alone

Mechanism	Description	Application
Civ. Code § 128.5	<p>CA Courts may award reasonable expenses incurred as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.</p>	<ul style="list-style-type: none"> - Require harm-doer to cover costs survivor has incurred as a result of bad faith tactics - Not limited to written pleadings - Court can move sua sponte - Allows for monetary relief only
Civ. Code § 128.7	<p>CA Courts may award attorney's fees against an attorney or pro se litigant for motions, pleadings, etc. that:</p> <ul style="list-style-type: none"> - Are filed only to harass, delay litigation, or increase costs of litigation; OR - Contain meritless legal contentions or unsupported factual contentions. 	<ul style="list-style-type: none"> - Require harm-doer to cover costs survivor has incurred responding to meritless motions, claims, defenses or pleadings - Specific to written pleadings - Respondent has the opportunity to withdraw offending document - Court can move sua sponte - Allows for nonmonetary relief - 21-day safe harbor applies
CCP § 2023.010 <i>et seq.</i>	<p>CA Courts may impose sanctions against anyone engaging in conduct that is a misuse of the discovery process.</p>	<ul style="list-style-type: none"> - Award attorney's fees resulting from abuse of the discovery process - Evidence preclusion - Termination sanctions - Strike pleadings - Treat disputed facts as admitted

II. Consider Economic Abuse in Custody Determinations

a. **Consider:** Is there evidence of domestic violence?

Economic abuse is not explicitly included in CA's definition of domestic violence. However, "threats" and "harassment" are considered domestic violence in California.^{vii} Consider if the economic abuse experienced by the survivor falls within the definition. If so, the custody determination calculus shifts, and the harm-doer must overcome a rebuttable presumption against custody.^{viii}

b. **Consider:** How are the effects of economic abuse impacting the survivor's apparent credibility or fitness?

Examine assumptions and inferences about the survivor's fitness for custody – are they the result of the survivor's actual character, or are they driven by the effects of economic abuse?

Fact	Assumption	Reality
Survivor parent doesn't know any of the passwords or PINs for the family bank accounts or credit cards.	"This person is flakey, irresponsible, and not mature enough to provide their child with proper care."	For the duration of the relationship, the harm-doer controlled all of the financial information and became volatile whenever the survivor asked about it.
Survivor parent has bad credit and didn't even seem to know their credit score.	"This person not only spends irresponsibly but doesn't even understand basic and important financial information about themselves. They are not ready to care for a child."	The harm-doer took out several credit cards in the survivor's name without the survivor's knowledge and incurred significant debt, damaging the survivor's credit. The harm-doer monitored all of the survivor's internet use and forbade the survivor from checking their credit score.
Survivor parent hasn't worked for years and has no job training or prospects.	"This person isn't motivated and will not be able to find a good job. The other parent is more stable and is a better caretaker for the child."	The harm-doer refused to let the survivor go to work, job interviews, or job training opportunities. The harm-doer would go so far as to hide the survivor's car keys and slash the survivor's tires to keep them at home. Survivor wants to work and has skills that they can put to use as an entrepreneur.

III. Request / Order Financial Relief for Survivors

Survivors should not have to bear the costs of abuse. Requesting / ordering financial relief for survivors in custody and other court proceedings shifts the burden to the proper party: the harm-doer.

Tools:

Mechanism	Description	Application
Fam. Code § 4320(i)	Requires the Court to consider instances of domestic violence when determining amount of spousal support in divorce proceedings	<ul style="list-style-type: none"> - Require harm-doer to support survivor financially through education / job training - Include costs of therapy and other rehabilitative measures in spousal support for survivor - Carefully consider the amount the family was living on prior to the divorce – this number might be low if the harm-doer had the survivor on an allowance
Fam. Code § 4324.5	<p>Where there is a felony criminal conviction for domestic violence within 5 years prior to the divorce proceeding:</p> <ul style="list-style-type: none"> - The survivor is entitled to 100% of the community property interest in their retirement or pension benefits - Spousal support to the harm-doer by the survivor is prohibited 	<ul style="list-style-type: none"> - Request / award survivors 100% of their retirement and / or pension benefits under the proper circumstances. - Object to / refuse to grant requests for support by the harm-doer
Fam. Code § 4325	<p>Where there is a misdemeanor criminal conviction for domestic violence within 5 years prior to the divorce proceeding:</p> <ul style="list-style-type: none"> - Rebuttable presumption that the survivor is entitled to 100% of the community property interests in their retirement or pension benefits - Spousal support to the harm-doer by the survivor is prohibited 	<ul style="list-style-type: none"> - Request / award survivors 100% of their retirement and / or pension benefits under the proper circumstances. - Object to / refuse to grant requests for support by the harm-doer

Mechanism	Description	Application
Fam. Code § 3600	Child and spousal support ordered during the pendency of a divorce is let to the Court's discretion.	<ul style="list-style-type: none"> - Require harm-doer to support survivor financially through the divorce for purposes such as education / job training - Include costs of therapy and other rehabilitative measures in temporary support for survivor and children - Carefully consider the amount the family was living on prior to the divorce – this number might be low if the harm-doer had the survivor on an allowance
Court's Inherent Remedial Powers	CA Courts are authorized to fashion remedies that aren't explicitly set out in statute or case authority where justice requires. ^{ix}	<p>Request and order remedies that will help survivors recover financially:</p> <ul style="list-style-type: none"> - Require harm-doer to turn-over sensitive financial information (including passwords and PINs) - Prohibit harm-doer from accessing survivor's accounts

ⁱ See e.g., Elkins v. Superior Court, 41 Cal. 4th 1337, 1351, 163 P.3d 160, 166 (2007).

ⁱⁱ See e.g., Stephen Slesinger, Inc. v. Walt Disney Co., 155 Cal. App. 4th 736, 761, 66 Cal. Rptr. 3d 268 (2nd Dist. 2007).

ⁱⁱⁱ See e.g., Peat, Marwick, Mitchell & Co. v. Superior Court, 200 Cal. App. 3d 272, 287, 245 Cal. Rptr. 873 (1st Dist. 1988).

^{iv} See e.g., Sheller v. Superior Court, 158 Cal. App. 4th 1697, 1710, 71 Cal. Rptr. 3d 207, 216 (2008), as modified on denial of reh'g (Feb. 6, 2008).

^v See e.g., Bauguess v. Paine, 22 C3d 626, 638-639, 150 CR 461, 468 (1978).

^{vi} See e.g., In re Amber S., 15 Cal. App. 4th 1260, 1264, 19 Cal. Rptr. 2d 404, 407 (1993).

^{vii} Cal. Fam. Code § 6320.

^{viii} Cal. Fam. Code § 3044.

^{ix} Topa Ins. Co. v. Fireman's Fund Ins. Companies, 39 Cal. App. 4th 1331, 1345, 46 Cal. Rptr. 2d 516, 524 (1995).