

Fighting Back Against Abusers Who Misuse Protective Orders, File False Police Reports, and Subpoena Records

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What judge would grant this?



Should my client file for a protective order too?

- Existence of restraining order prohibiting petitioner from contacting respondent does not provide grounds for refusing to issue restraining order prohibiting respondent from contacting petitioner.
- In enacting the Family Abuse Prevention Act (FAPA), Or. Rev. Stat. §§ 107.700 to 107.735, the legislature prohibited courts from approving any term in a consent agreement restraining one person in a relationship from abusing his or her partner unless the person applied for and was granted a restraining order under Or. Rev. Stat. §§ 107.710, 107.716(6). Accordingly, if a consent agreement requires the parties to refrain from abusing each other, each party must separately establish his or her eligibility for a FAPA order. Rosiles-Flores v. Browning, 208 Or App 600, 145 P3d 328 (2006)

Two birds, one scone: Should I move to consolidate?



The opportunistic litigant: protecting victims' rights in parallel cases

- Track with the criminal case
- Motion to stay discovery
- Re-evaluate
- Refile



Lets get this over with: summary
judgment

ORCP 47

Offender petitioner? Directed verdict.

ORCP 60

The pro se litigant

- B.I.F.F. them
- Motions in limine
- RULE 4.3 DEALING WITH UNREPRESENTED PERSONS
 - In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client or the lawyer's own interests

Attorney's Fees?

MAYBE

Subpoenas *Duces Tecum*: How civil do we need to be?

- Subpoenas v. Discovery
- Article 1 Section 42(c) of the Oregon Constitution
 - The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state;
- ORS 136.580
- *State v. Cartwright*, 336 Or 408, 415-415 (2004)

False Police Reports



ORS 162.375

- A person commits the crime of initiating a false report if the person knowingly initiates a false alarm or report that is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property.
- Initiating a false report is a Class A misdemeanor.
- The court shall include in the sentence of any person convicted under this section a requirement that the person repay the costs incurred in responding to and investigating the false report.
- If the response to the false report involved the deployment of a law enforcement special weapons and tactics (SWAT) team or a similar law enforcement group, the court shall impose, and may not suspend, a term of incarceration of:
 - At least 10 days.
- At least 30 days if the deployment resulted in death or serious physical injury to another person.

Questions?

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