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Judges Must Cite Reasons for Denying Restraining Orders

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Yuka Nakamura of San Pablo told a Contra Costa County judge that she was terrified of her estranged husband. He had beaten her and forced her to have sex before they separated, she said, and afterward told her he was having her followed and would make her life miserable.

Within hours, and without holding a hearing, Superior Court Judge Gregory Caskey rejected her request for a restraining order against the estranged husband. He offered no explanation, and signed the denial with only a rubber stamp.

Nakamura, now 37, has not reported any subsequent incidents since she went to court in August 2006, her lawyer said. But anti-domestic-violence groups argued that Caskey put her at risk by not granting her request, and said he is not the only judge who has rejected restraining orders without saying why.

This week, a state appeals court in San Francisco spoke up. Calling Caskey's unexplained response "highly imprudent," it declared that judges statewide must at least spell out their reasoning if they turn down someone who asks for a stay-away order against a former or current partner or housemate and backs it up with written allegations of injuries, threats or harassment.

An unexplained denial "may well stimulate the continuing domestic abuse that the (law) was specifically designed to prevent" and lead victims to believe they have no recourse, Presiding Justice J. Anthony Kline said in the 3-0 ruling by the First District Court of Appeal.

The court stopped short of ordering a hearing in all such cases, as proposed by victims' advocates. But the ruling at least puts judges on notice that "they have to take each domestic violence restraining order application seriously," said Minouche Kandel, a Bay Area Legal Aid attorney representing Nakamura.

That's an important message, because "there is a pattern statewide of judges summarily denying restraining orders without a hearing," said Nancy Lemon, a UC Berkeley law school lecturer who filed arguments on behalf of anti-domestic violence groups in nine counties.

One organization, the High Desert Domestic Violence Program in Victorville (San Bernardino County), said in court papers that local judges routinely denied protective orders when applicants cited only verbal abuse, or physical attacks that had occurred more than a month earlier.

The Family Violence Law Center in Oakland said traumatized clients and people without a strong grasp of English have had problems gathering enough evidence to satisfy some judges.

The case involves the Domestic Violence Prevention Act, a 1979 law that allows a judge to issue an immediate restraining order prohibiting contact, based on written allegations of domestic abuse. The forms are simply worded and available in six languages, and most applicants prepare them without a lawyer.

Violations of the restraining orders are punishable by contempt of court and a jail sentence. After the order expires, generally in three weeks, an applicant can file for an injunction barring contact for up to five years. An injunction requires a hearing at which both parties can appear.

Nakamura applied for a restraining order with a lawyer's help. Caskey denied the order the same day Nakamura sought it, issuing a rubber-stamped statement that said he found no legal basis to grant protection. In this week's ruling, the appeals court ordered further proceedings.

Nakamura's allegations, if true, showed she was at risk of further abuse, Kline said in the court's ruling. In such circumstances, he said, a judge who finds the allegations credible should ordinarily issue an immediate restraining order, and in any event must not dismiss the case without explaining why the application was inadequate.

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