5-09/040.10 - Enforcement of Temporary Restraining Orders and Injunctions in Family Law Cases

Often, the deputy is called to the scene of a family disturbance and encounters a situation where a husband and wife are in the process of obtaining a dissolution of marriage (divorce). Emotions run high and the danger of the situation escalating into a crime of physical violence is great. For this reason, the superior court will often issue restraining orders to prohibit certain activity on the part of one or both of the principals. Therefore, it is not correct to advise the parties that the dispute is civil and take no action.

Field personnel who are called to the scene of a domestic disturbance and require information regarding TROs (as defined under the Code of Civil Procedure) shall contact their station/unit. Station/unit personnel shall check the TRO file and the TRO~WEB to determine whether a valid TRO exists. If there is no record of a TRO in the station/unit file, TRO~WEB, or one of the parties involved states there was a modification, station/unit personnel should make a reasonable attempt to verify the TRO's validity and content.

The following important items should be carefully examined prior to arresting for violation of a TRO:

- The complainant has a valid copy of the TRO bearing a file stamp of the issuing court;
- Check the dates on the order to ensure the TRO is valid; and
- Make reasonably sure the person has been served with the order.

If the above criteria is satisfied, an arrest shall be made.

In the event the suspect has left the location and a deputy has reason to believe a crime was committed, he shall make a reasonable attempt to locate and arrest the suspect. If the deputy is unable to locate and arrest the suspect, he shall write a report. He shall also advise the victim of the follow-up criminal procedure and the file number of the report.

A violation of any court order/TRO is a misdemeanor, and is an arrestable offense under section 273.6 PC whether or not it is committed in the presence of the deputy.

If a deputy encounters a situation involving a TRO, and the copy of the TRO is in the possession of another police agency located in close proximity to the site of the violation, the deputy shall obtain a copy of the TRO from that agency before booking the suspect. If the location of the agency is such that this would be impractical, an abstract of the TRO shall be obtained by station/unit personnel before the suspect is booked. A copy of the TRO shall be obtained before the complaint is filed and shall be attached to the complaint.

When deputies are confronted with this situation and are in doubt as to the validity of such documents, they are advised to consult with their supervisors as to the proper procedure to follow. If any reasonable doubt remains, the deputy should not arrest for violation of the court order.

Under no circumstances shall the deputy suggest or request the complaining party to use the private person's arrest procedure when the deputy can legally make the arrest.

When a deputy verifies that a TRO exists but cannot verify proof of service or prior knowledge of the order by the suspect, the deputy shall:

- Inform the suspect of the terms of the order and allow him an opportunity to read, if practical, and comply with the order;
- Advise the suspect that he has now been served and that any violation of the order will result in his arrest;
- Make a report, even if the suspect complies after admonishment of the TRO; and
- Update the station's/unit's copy of the TRO to indicate that the suspect was advised of the TRO.

The report shall include the following details:

- Name of the suspect admonished of the terms of the TRO;
- The specific terms of the TRO that the suspect was violating;
- Name of the advising deputy; and
- Make sure to note a special request distribution (SRD) at the end of the report, listing the court that issued the TRO.

Court deputies should handle the filing of the complaints in the same manner as any other misdemeanor.

If an injunction or supplemental court order is directed to the Department, ordering him to enforce the injunction, the deputies shall do the following:

- Ensure the order is signed by the judge and has the seal of the court;
- Advise the suspect of your intent to arrest for noncompliance with the injunction; and
- Make an arrest if the violation(s) continues.