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Why the LA County Superior Court is a stalker's paradise

Edwin F. McPherson is a partner at McPherson Rane LLP in Century City. The firm specializes in all facets of entertainment litigation.



Because my firm does almost exclusively entertainment litigation, we have been immersed for some time, of necessity, in the world of celebrity stalkers. It is a sad world, typically involving one type of mental illness or another. Generally, the victims are female, though males are definitely not immune from

being stalked. Some of our clients only have to deal with this once in their lives; some have the misfortune of having numerous stalkers. I even seem to have picked up one myself recently.

Stalkers come in all shapes and sizes, and they rarely look the part. By and large, they tend to look quite normal. The one common denominator of all of these individuals is that they are desperate to meet the objects of their obsession; they dream about spending time with them; they dream about "being" with them. Unfortunately, as unlikely as it would seem (but very disturbingly), the Los Angeles County Superior Court has become the place where stalkers' dreams come true.

Typically, when applying for a temporary restraining order or TRO, I file it personally at the filing window. There is no separate line for restraining orders; there is no "priority." One must wait behind hoards of leather-laden motorcycle messengers and attorney service personnel, while they file their 20 pleadings each for the day. As if that wait is not bad enough - while one's client may literally be in a life or death situation - it gets considerably worse.

When I first started obtaining restraining orders against stalkers, the TRO's were pretty easy - not that we did not put a lot of work into them. We would submit numerous declarations, with exhibits. We would go into court, and routinely get the relief that we requested. That procedure has not changed (and sadly, neither has the procedure at the filing window). What has changed, however, is the procedure for the so-called "permanent" restraining orders, which in California is three years.

In the past, even when the stalker came to the hearing, the judge would listen to him, question him, and then issue the "permanent" restraining order based on the declarations and exhibits, without an appearance by the victim.

In the past few years, however, the Los Angeles County Superior Court has decided to change the procedure for obtaining a "permanent" restraining order. Judges, instead of allowing the petitioner to rely on her papers and simply questioning the alleged stalker himself or herself, are requiring full evidentiary hearings (often lasting an entire day), at which the celebrity victim must testify in open court.

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SPECIAL REPORT

New Laws

A list of all state laws that took effect on Jan. 1, 2012.



Wednesday, January 4, 2012

Litigation

Bench trials are up despite growing burdens on judges

Statistics released by the Judicial Council show that the rate of civil bench trials has grown statewide, whereas the number of civil jury trials has remained relatively flat.

Judge rejects SEC's efforts to crack down on joint representation in insider trading case

A recent ruling by a Northern District federal judge may stymie efforts by the Securities and Exchange Commission to crack down on joint representation by individual defendants subject to securities investigations.

Government

Shipping company settles false claims case for \$31.9 million

Maersk Line Ltd., the American subsidiary of the world's largest shipping container company, has agreed to pay the U.S. government \$31.9 million to resolve allegations it overcharged for transporting cargo to U.S. troops abroad.

California Supreme Court

State justices to consider child sex abuses cases

After a scandal at Penn State drew the nation's attention to the problem of child sexual abuse and its legal ramifications, the state Supreme Court is set to hear two cases that test the limits of institutional liability in California.

Environmental

Groups sue over pollution from freeways

The 1.2 million people in Los Angeles who live close to freeways may be getting exposed to air so dirty it violates federal air pollution laws, according to a lawsuit filed Tuesday by several environmental groups.

Criminal

Report: counties should help treat incompetent inmates

lasting an entire day), at which the celebrity victim must testify in open court.

In many instances, our client has very little personal knowledge about the stalking, and her representatives often know much more than she does about what lead up to the application. When I have explained this to court clerks, their response sometimes has been that, at the very least, my client has to testify that she actually was in *fear* of the stalker, and that nobody else could testify to that fact.

Is that really necessary? Cannot we *assume* - or at least take the celebrity's written declaration on its face - that when she received the threatening letters, or fingernail or toenail clippings, or when the stalker tried to kill her husband, *she was afraid*? Unfortunately, the distinct impression that I have gotten in some of these cases is that the judge simply wants to meet my client.

It seems to me that, in a case where a petitioner does not know the respondent, which is true for 90 percent of our restraining order cases, great deference should made to the papers, and the celebrity should not have to face her stalker or an onslaught of paparazzi by being compelled to testify in open court - particularly if other live witnesses are available to testify to the factual underpinnings - just to tell the court *how she feels* about the stalking.

Imagine a young man who is obsessed with an actress. Imagine that he has a bit of a mental illness (which most celebrity stalkers do). Imagine that his primary goal in life is to meet the object of his obsession. The message that our courts are sending out to this young man, and everyone like him, is that if he stalks his victim *long* enough, and if he stalks her *well* enough, and if he *scares* her enough, he now gets to meet her.

One might argue that nobody is going to do these kind of things, run the risk of having a restraining order against them, run the risk of police intervention, run the risk of jail time - just to meet their favorite actress. First, that is a bit speculative; if I were a female celebrity, I certainly would not want to bet my life on that. Second, and more importantly, that argument might fare better if we were talking about someone who was not mentally ill already. Someone who is mentally ill enough to stalk a celebrity in the first place just might amp it up to a whole new level if he thinks that it will get him to the promised land.

This is clearly a procedure that must change. I am not professing that celebrities should be treated specially; if they have disputes with their spouses that land them in court on one end or another of a restraining order application, they should have to testify, as the rest of us do. However, when a victim does not know the stalker, which situation is fairly specific to celebrities, that stalker should not get to achieve "stalker nirvana" because a celebrity is not allowed to obtain a restraining order without having to meet the stalker and testify in court.

I have had more than one celebrity decide not to seek a restraining order for this very reason - either she did not want to face the stalker in person or she did not want to deal with the circus of paparazzi to testify in open court, or both. If one celebrity fails to seek a restraining order for either of these reasons, and that stalker ultimately harms or kills her, very few could argue against the proposition that the Superior Court of the state of California will have done a tremendous injustice to her and the community. It is time for the procedure to change - before such a tragedy is allowed to occur.

Another aspect that must change, presumably at the Legislature, is the concept of having a "permanent" restraining order expire after three years. Under the present law, a victim receives protection for a maximum of three years. The only way that a restraining order may be extended is if there has been recent stalking activity. However, the stalker has been under court order not to have such activity, and often times, the restraining order is the only reason for which the stalker has not engaged in stalking behavior.

That is the Catch-22. The only way that one can extend a "permanent" restraining order is if the original one has been violated. If there has been no violation, the stalker is free to stalk again, the day after the "permanent" restraining order expires. The victim will have to obtain another temporary restraining order, and appear in court once again for another "permanent" restraining order.

As California continues to shift thousands of state prisoners to county jails, another inmate population may soon find itself the purview of the counties: defendants deemed incompetent to stand trial.

Entertainment & Sports

Warner Bros. asks judge to dismiss "Exorcist" claims

Warner Bros. Entertainment Inc. has asked a federal judge for the second time to dismiss key claims in a profit participation case with the writer of 1973 film "The Exorcist."

Discipline

State Bar clears discipline backlog

The State Bar announced Tuesday that it has succeeded in clearing away a backlog of 3,000 discipline cases under investigation for six months or more.

Law Practice

Schools counsel returns to private practice

Maribel S. Medina, former general counsel to the San Francisco Unified School District, has returned to private practice in Southern California, where she will represent school districts and other public entities.

Real Estate

Homes at risk: Public agency reserves swift and blind justice only for Section 8 tenants

L.A.'s housing agency seems to have forgotten about their mission to help people remain in their homes. By **Gurdeep Dhaliwal** of the Legal Aid Foundation of Los Angeles

Entertainment & Sports

Why the LA County Superior Court is a stalker's paradise

A change in court procedure has brought stalkers face-to-face with their celebrity obsessions. By **Edwin F. McPherson** of McPherson Rane LLP

Real Estate

Landowners ... you should have 'seen' it coming

Landowners cannot turn a blind eye to preventable criminal misconduct simply because it has not happened yet. By **Douglas A. Rothen** of Kabateck Brown Kellner LLP

It's the end of redevelopment as we know it

The state Supreme Court's decision brings to life the nightmare redevelopment agencies feared most. By **Rick E. Rayl** and **Bradford B. Kuhn** of Nossaman LLP

Intellectual Property

The effects of the new standard for inequitable conduct

A new heightened standard may reduce the

If a victim, celebrity or not, does not know the stalker, has never met the stalker, and has no relationship with the stalker (other than in the stalker's mind), that stalker *never* needs to be within 100 yards of that victim ever again, particularly when the stalker does not live anywhere near the victim.

Stalking laws and restraining order laws must adapt with the times. Twenty-two years ago, Rebecca Schaeffer's stalker obtained her home address from a private detective for \$250 - it was that easy then. With the Internet, it is now much simpler and cheaper to obtain a celebrity's personal information, irrespective of how many safeguards she thinks she has in place to guard that information. The courts have got to make it easier to obtain restraining orders for victims who do not know their stalkers; they should not be part of an unwitting conspiracy to facilitate the stalker's dreams. And permanent restraining orders for such victims should be permanent.

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number of inequitable conduct claims against patents. By **David E. Kleinfeld** and **Jacqueline Lyandres** of Goodwin Procter LLP

Judicial Profile

Russell S. Kussman
Superior Court Judge Los Angeles County (Van Nuys)

Law Practice

Orrick moves to restructure
As leaders at Orrick Herrington & Sutcliffe LLP gear up for the departure of Chairman and CEO Ralph Baxter, they're implementing an internal reorganization they hope will better focus the firm's governance structure.



Hon. **Michael Latin** (Ret.)



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Steven Pearl, Esq.



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