THE ART OF
CRIMINAL DEFENSE

Useful Information For People
Facing Criminal Charges In California

Jo-Anna Nieves, Esq.
The Nieves Law Firm, APC
"We take the criminal out of criminal defense."

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FOREWORD

We believe that mistakes and failures are an opportunity to learn and grow. That knowledge is power and our experiences are the most powerful lessons of all.

We believe that people are strong and resilient. That when you fall down you can get right back up and that our scars are simply stories for us to tell.

We believe in compassion, forgiveness, and rehabilitation. That people are beautiful and they change just like seasons.

We believe in thoughtful communication and plans for a brighter future. Solving problems with open doors and listening ears.

We believe in restoring reputations and dreams.

That we aren't defined by our worst mistake and obstacles are meant to get over. We are overcomers.

We believe in making an impact and being a catalyst for change. Giving back to our communities, providing access to justice and mentoring our youth

We believe in travel, road trips, and vacations - that you and your freedom of movement shouldn't be confined.

We believe in being there for our clients to talk to in their time of need. In offering support and reassurance that everything is going to be okay because we believe everything *is* going to be okay.

We believe that we should all be truthful in the things we say and have integrity; in creating trusting relationships with our clients, treating them like family, and yes --- we believe in hugs.

At The Nieves Law Firm we believe in taking the criminal out of criminal defense.

We believe in You.

DEDICATION

You.

DISCLAIMER

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert who is aware of the specific facts of your case and is knowledgeable of the law in your jurisdiction.

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TESTIMONIALS

"We were very pleased with our decision to use NLF…. I would recommend this firm to all of my family and friends who needed an attorney. Very attentive and professional firm. It is apparent they are well respected in the courtroom and very knowledgeable. Since we did not have any dealings with the court system until this, we were a bit skeptical in finding the right attorney. We felt they walked us through everything perfectly. Their attention to detail and responsiveness was above and beyond what we expected."

- Fernando R.

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"Jo-Anna treated me with a ton of respect, patience, kept up to date with everything and I felt really comfortable and confident after leaving her office from the very first day. My experience was great, I wasn't too worried about my case anymore after the first day I sat down and met with Jo-Anna. Nothing is ever guaranteed, but I felt certain that she could help me with what I needed to be helped with. For sure, would recommend to anyone that asks me."

- Joshua K.

****

"I am so thankful to find Jo-Anna & her office. I must have contacted a dozen attorneys and could not find assistance. I was not a defendant in a case but the plaintiff. She was still willing to help me with my case. She was extremely responsive and kept me informed every step of the way. Her decisions were always in my best interest. I would definitely recommend Nieves Law Firm."

- Ashley B.

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"I have had the pleasure of connecting with Jo-Anna Nieves for about two years now. Her character, work ethics and accomplishments continue to inspire me and she has truly proven to be someone that I can always count on. I am forever grateful for the impact that her mentorship has had on my life and I am confident that her services will continue to change the lives of her clients."

- Natalia C.

****

"I was treated with respect, kept up to date on my case, and felt comfortable about my decision in hiring this firm. Not that I wasn't calm, but I felt a calming from everyone I dealt with at the firm. The Nieves firm is professional, competent and reliable. Their web portal is an efficient means for communication, scheduling and retention of documents."

- R.W

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"The attorney was very professional, patient and understanding of our situation! Made everyone as comfortable and confident as possible. Given an experience that is inherently fraught with concern and discomfort, they were fantastic. I would recommend them highly!"

- Dwayne T.

****

"My son was falsely accused of a high number of felony counts, which would have landed him in Prison for 10+ Years. Due to the severity of this case, I opted not to work with a Public Defender. I contacted The Nieves Law Firm based on their 5 Star Reviews on Yelp. I was extremely impressed by the wonderful things people had say about this Firm. I immediately contacted the firm and received a call back from Jo-Anna Nieves, I explained my son's situation, immediately she was empathetic to our situation. Her tone was very genuine and comforting…. I highly recommend this firm for any and everything…. You won't be disappointed. 10 Stars."

Tanya T.

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About The Author

When you are charged with a criminal offense, you need a strong, experienced, and committed advocate. It's a role that Jo-Anna Nieves has undertaken many times, with great success.

As a criminal defense attorney who began her post-bar legal career at the Sacramento County District Attorney's Office, Ms. Nieves has a rare perspective that she uses to support, advise, and defend the firm's clients. She uses her experience on the prosecution side to help strategize and analyze her client's cases and mount the best possible defense.

Jo-Anna Nieves graduated from The Florida State University in 2005 with two Bachelor of Science degrees in Multinational Business and Finance. Thereafter, she attended Florida State University College of Law where she earned her Juris Doctorate. Ms. Nieves interned with the Sacramento County District Attorney's Office, where she gained experience in the arraignment of misdemeanor and domestic violence offenses, the prosecution of Adult

Sexual Assault crimes, and felony preliminary hearings - she was offered a full-time position upon completion of law school. Ms. Nieves also worked at the State Attorney's Office for the 2nd Judicial Circuit in Leon County, FL where she chaired numerous felony trials including the prosecution of animal cruelty, possession of a firearm by a convicted felon, battery on a law enforcement officer, and attempted murder.

Ms. Nieves passed the California Bar in 2009 and accepted her offer at the Sacramento County District Attorney's Office where she further developed her advocacy skills. Two years later, she accepted a position as a trial attorney at a civil litigation firm where she effectively and successfully litigated over 400 cases by reaching favorable resolutions and arguing the matters at trial to verdict. In 2014, she embarked on The Nieves Law Firm journey with a goal of helping those accused of crimes navigate the complex and challenging legal process of the criminal justice system.

The Nieves Law Firm is a supportive, empowering and strategic firm that takes the "criminal" out of criminal

defense. The Nieves Law Firm believes in creating trusting relationships with clients by finding the right way to get results that will have long lasting and impactful life changes.

Since opening her own office, Ms. Nieves has successfully represented clients charged with crimes such as assault and battery, DUI, contempt, drug offenses, sexual assault, theft, fraud, forcible rape, sodomy, child abuse, domestic violence and much more. She believes in restoring the reputation of those who have been accused of crimes and help them plan for a better future.

Ms. Nieves is a member of the Alameda County Bar Association's Judicial Appointments Evaluation Committee. She has also served as the Chair of the ACBA Barristers Executive Committee and on the Board of Directors. She volunteers yearly as a mock trial coach for El Centro Legal de la Raza's Youth Law Academy and is a member of the Earl Warren Inns of Court. She has been named as a Rising Star SuperLawyer for Northern California every year since 2016, been recognized as a Young Alumni Thirty Under 30 award recipient from Florida State University

and received the Distinguished Barrister award from the Alameda County Bar Association in 2017. She is admitted to practice before all courts of the State of California and the United States District Courts for the Northern and Central Districts of California as well as the State of Florida and the United States District Court for the Southern District of Florida.

CHAPTER 1

THE BASICS

I have been a full-time owner of a criminal defense firm since 2014 where I advocate for the rights of the accused. I chose this area of law because I knew this was where I wanted to make an impact since I first cracked open a criminal law book in law school. I gained my first bit of experience through the District Attorney's office several years ago and built on that experience over the course of several years. I was able to conclude that I was passionate about criminal law as a whole whether it was on the prosecution or defense side; but, as time went on,

experiences and wisdom helped me fashion a purpose driven outlook. As I delved deeper into the law, perceived the injustices, observed the abuses of power, and witnessed the scales of justice tipping in an unbalanced manner I knew that criminal defense was where I could do the best work, make the biggest impact, and help the most people.

Criminal Cases That Our Firm Handles

Our case type at The Nieves Law Firm runs the ambit of misdemeanor petty theft and drug paraphernalia offenses to serious violent felonies such as attempted murder and rape. Our cases carry varying degrees of exposure from 90 days in county jail to Life sentences. Although that is the exposure on the case it doesn't mean that they get resolved for actual jail time or prison sentences. Our skilled team works diligently to secure the best resolutions for our clients whether than is a dismissal, non-custodial sentence, reduction, or acquittal.

In addition to defense of pending charges we also represent clients in post-conviction matters such as expungements, certificates of rehabilitation, motions to vacate, and motions to seal and destroy. The goal with

seeking this type of relief for our clients is to give them an opportunity to clean up their record and get a fresh start. We help alleviate the personal, financial, and professional burdens that affect our clients because of their past criminal convictions.

Finally, our firm also handles two quasi-criminal case types – restraining orders and contempt. We handle these matters because being found guilty of contempt or violating a restraining order can result in potential jail time. Due to the risk of incarceration we defend against these accusations in the civil arena.

Hiring an Attorney Prior To Arrest

It is very possible and even advantageous to hire an attorney prior to an arrest. Our firm offers a service called pre-charging representation that allows clients to have representation if they suspect that they may be arrested.

Oftentimes, people know in advance that they are going to be accused of a crime – perhaps they are being investigated or they have come in contact with law enforcement – and it is crucial for them to get an attorney

on their side right away. Our firm monitors the case for our clients, determines whether or not charges have actually been filed by the District Attorney or if it is still in the stage of a pending investigation with law enforcement. We track the status of the case for clients because they do not have as much access as an attorney has and we want them to avoid putting themselves into a precarious situation - for instance, calling the police department or the DA's office themselves and inadvertently making statements that can be used against them. We also make public records request that allow us to access the police reports and determine the nature of the investigation.

Additionally, part of the service that we offer in pre-charging representation is that we serve as a buffer between investigators, detectives, law enforcement and the accused. If someone came knocking at the door trying to get a statement from a suspect, that person is actually able to say that they have an attorney once they've hired our firm. They can politely cut the conversation off by saying "talk to my attorney" and providing our contact information.

Some people wonder if it makes them look guilty by not giving a statement – our response – it does not matter whether they perceive you as guilty or having something to hide. What matters is that the right against self-incrimination is being preserved and that person is not making statements that could be used against them at a later time. It is important for those being investigated for a crime to be overly cautious. We tell our clients that there is no way that they are going to talk themselves out of an investigation or arrest – more likely than not they will talk themselves into a deeper hole. The best thing to do is to keep quiet and to let your attorney handle everything for you.

First 72 Hours after Arrest on a Criminal Charge

When an individual is arrested they are taken down to the jail for booking. They placed in a holding cell for hours, searched, and given terrible food to hold them over. They will be fingerprinted, photographed, and adding into the electronic database. They will then have the opportunity to contact a bail bondsman once bail has been set to get released immediately. If they do not post bail then they will be brought to court for their first appearance.

At the first appearance, they will find out what the charges are being filed by the District Attorney, whether the bail is increasing, decreasing, staying the same, or whether they will be released on their "own recognizance" (OR).[1]

Sometimes an individual may arrive in court on their first appearance date and charges have not *yet* been filed they will automatically be released from custody. This is because there is a specific set of time that the District Attorney has to file charges if the defendant is in custody without release.

If arrested during the week, the DA has 48 hours (and up to the next continuing morning if the arrest occurred after hours) to file charges. If the defendant was arrested on the weekend, the DA has 72 hours, not including Sunday to charge the crime. If the DA does not file charges within the

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[1] OR release is basically an honor code release – a monetary bail amount does not get paid but rather the defendant is released from custody (*for free*) because they have made a promise that they will come to court and stay out of trouble while they are out of custody. This is typically appropriate for people who have ties to the community, don't pose a danger to the public, have not failed to appear in the past, and have little to no prior arrests.

time limit, then the defendant must be released from custody. Keep in mind that this does not mean that the DA cannot bring charges at a later date – it simply means that they cannot hold the individual in custody any longer while they make their charging decisions.

CHAPTER 2

YOU HAVE THE RIGHT TO REMAIN SILENT

What Are Miranda Rights?

We have all heard TV cops give Miranda warnings when making an arrest:

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?"

These Miranda warnings actually stems from a case called Miranda v. Arizona where the court held that due to the coercive nature of police interrogations, an individual in custody must be advised of their right to an attorney and their right to remain silent before being interrogated. So, Miranda Warnings are specifically required when a person is being interrogated while in custody.

If someone is pulled over for a DUI, and the officer is doing pre-field sobriety test questions, meaning they are asking questions on the side of the road but the individual has not been placed under arrest, it would still be considered the investigation stage. In this situation, the officers are not yet required to Mirandize the individual – even if the cops place handcuffs on them and transport them into custody – unless an interrogation begins. If the officer starts a line of questioning about the incident after placing the suspect under arrest then Miranda Warnings must be given first. An explicit waiver of those Miranda rights must be given by the suspect before questioning commences.

If a person is not in custody and they are not being interrogated – Miranda is not required. If a custodial

interrogation did take place without the suspect being Mirandized then there is a potential Miranda violation and statements made can be suppressed.

It is crucial to remember that Miranda serves the purpose of protecting individual's 5th Amendment right against self-incrimination and most attorneys tend to encourage their clients to invoke the protection, remain silent, and ask for counsel to assist during the investigatory stages.

Will I Have To Be Arraigned Or See A Judge Before I Am Released From Jail?

Typically in California, someone who has been arrested and taken into custody will see a judge before being released from jail unless they post bail. The accused must be brought into court within 48 hours (72 hours under certain circumstances like being arrested on the weekend), and the District Attorney will have to file charges within that time frame in order to continue holding that person in custody.

While in custody the accused is transported from the jail to court and they appear in front of the judge from behind a caged off, barred area. In some counties the person is not transported but instead they appear via video conference. An attorney will either be appointed in court or if that person has hired counsel beforehand their attorney would appear in court to make an argument to the judge about the client's custody status: whether or not the client should be released on their own recognizance, or if bail should be reduced, and for what reason. At this point, the client will either be released, post bail, or remain in custody – with an opportunity to make another bail motion at a later date.

At What Point Will I Be Allowed To Contact an Attorney in A DUI Arrest?

The phone call that most people make when they are in custody is to their family members because those are the numbers they tend to have memorized.[2] Family members

[2] People also tend to call bail bondsmen because their numbers are posted near the phones in the holding cell.

usually contact attorneys right away. Other times, as soon as a person is released from custody, they immediately contact an attorney.

During a DUI arrest there usually isn't enough time during the stop and investigation to get a call out to an attorney. The police will typically take the driver into custody and place them in a "drunk tank" which is a holding cell where the police figure the arrestee will sleep it off or sober up. The police typically do not hold first time DUI offenders in custody more than 10 to 16 hours and it is usually unnecessary to post bail. Rather, once time has passed, the officers will release the driver with a citation and a notice to appear in court. Once released that is usually when a call to an attorney is made for a first DUI arrest with no serious bodily injury.

If this is a more serious DUI offense – for instance one involving great bodily injury, death, or a third or fourth DUI then the chances of being released with a citation and a notice to appear are slim. These types of cases will typically have a bail amount set and a court date in short order (within 48-72 hours). The arrestee can choose to post the bail

amount set by the arresting agency or they can wait until they go to their first court appearance to determine if the judge is inclined to release them on their own recognizance or reduce bail. In these situations, the family members are usually reaching out to an attorney to make arrangements for the first appearance and bail arguments.

Mistakes That Can Harm A Criminal Case

One of the most common mistakes people make in a criminal case is saying too much to the police. According to the 5th Amendment of the U.S. Constitution – we all have the right against self-incrimination. It's critical to understand that it is highly unlikely that a suspect of a crime is going to be able to talk themselves out of an arrest or an investigation. It is important to maintain the right to remain silent and consult with a criminal defense attorney about the next steps in the process, potential outcomes and options, and how to be protected from further inquiry by arresting agencies.

Another common mistake is that many people do not know that they have the right to refuse certain aspects of a DUI investigation. For instance, it is permissible to

refuse to submit to the preliminary alcohol-screening test (PAS) if you are not on probation for a prior DUI.[3] There are usually two alcohol screening tests that are conducted in relation to a DUI investigation. There is a breath test administered on a PAS device in the field (on the roadside) prior to arrest and then there is a secondary breath or blood test conduct at the jail *after* arrest. In California, it is permissible to refuse the initial PAS test – which is considered a field sobriety test. It is also permissible to refuse all the other field sobriety tests that the officers try to conduct on the roadside prior to arrest. This includes the Walk and Turn, One Leg Stand, Horizontal or Vertical Gaze Nystagmus, Romberg, Finger to Nose, ABCs, and any other infield sobriety test.

Another mistake is the attitude and behavior of the arrestee. Many times, people will be rude or belligerent with the police officer and start arguing or making the process difficult. Yes, we are entitled to an opinion and

[3] This refers to the breathalyzer that is administered on the roadside during the DUI investigation – not the breathalyzer at the jail.

yes, we have the freedom of speech but there are ways to avoid making matters worse. This behavior could be construed by a police officer – because everything is totally subjective with them – as a delay in the process and that could turn into resisting arrest, because resisting arrest is obstructing or delaying a police officer while he is trying to carry out his duties.

Disobey a command – resisting arrest.

Refuse to present identification – resisting arrest.

Breathe wrong – resisting arrest.

Of course, I'm being facetious with the *breathing wrong* part but the point is that sometimes the slightest indication of disobedience can be conveyed in a police report as the arrestee being "uncooperative" or tacked on as an additional charge of resisting arrest. This day and age it is imperative to be mindful and cautious about how we protect our rights and make sure we are protecting our bodies too.

CHAPTER 3

BAIL AND RELEASE

Bail and bond are interchangeable terms. Bail is set at arrest and then adjusted at arraignment. There is a guideline bail chart available in most counties which indicates the standard level for bail - how much money should be hanging over the defendant's head to ensure that they are going to show up in court when they are supposed to show up in court.

The court wants to make sure that defendants out on bail are not going to pose a flight risk and run away, and are

not going to be a danger to the public while out of custody. The bail is set higher depending on the seriousness of the crime, past failures to appear, prior convictions, and so on.

Once bail is set, it can be paid in full or a bondsman can be hired to assist. Let's say bail is $25,000 the full $25,000 can be paid to get out of custody. Alternatively, one can hire a bail bondsman to post the bond, meaning that the arrestee can sign a contract and agree to pay a small percentage to the bail company (usually 10%) while the bail bondsman covers the rest. The arrestee will then be released from custody and can remain out of custody so long as they comply with the conditions of release.

It is important to know that if someone fails to show up to court, commits a new crime, or violates some other term of the release while out on bail they can be placed in custody again and still be responsible for paying the original bail amount that was contracted for the original release.

What to Do After Release from Jail?

Typically, when one is released from custody, they will leave with papers telling them what to do. For example,

if they are getting released pursuant to a DUI, then they will walk out of jail with a pink sheet regarding their driver's license, and sometimes a yellow citation regarding any traffic violations that occurred. They will also receive a notice to appear telling them when and where to go to court. They will be able to pick up their property before leaving as long as it is not being held as evidence of the crime.

For more serious cases, where the arrestee is held in custody with bail set and not released on their own recognizance there is a court date that gets set relatively quickly (usually within 48-72 hours). If bail is not posted then they will go to court and if released after appearing in front of a judge (on their own recognizance or bail gets reduced, etc.) they will leave court with a copy of the complaint. The complaint is a document that says what the charges are, how many counts, where it occurred, who the alleged victim is, and what the DA is accusing you of doing. In addition to the complaint, the defendant will receive notice of the next court date, be transported back to the jail, and then be released as described above.

Will I Be Able To Drive After I Am Released In A DUI Case?

After a DUI the arrestee leaves the jail with a pink form that gives them the authority to drive for 30 days, so long as they request a hearing within 10 days. That ability to drive will extend beyond 30 days so long as a hearing is set and until a decision regarding the license suspension is made at an administrative per se hearing. If a hearing is not requested within 10 days, then the license will be suspended.

Things That You Should Not Do After the Arrest

In cases that involve a victim or a witness, the number one thing NOT to do is to make contact with them directly or indirectly. Do not encourage them in any way to change their testimony or to lie, or to ignore a subpoena. This is probably one of the more common things that people don't realize can get them in serious trouble or that people do not comply with.

The other thing to consider is whether or not a criminal protective order was issued at arraignment. Sometimes the criminal protective order says that no communication is allowed at all with the victim of the crime and a certain

distance (usually 100 yards) needs to be maintained, even if the parties are married. If they live together, the defendant will have to find someplace else to stay, and will not be allowed to communicate with the victim.

Oftentimes, the victim begins reaching out to the arrestee, the district attorney, or the court in hopes of reconciling the relationship, recanting, or "getting it over with." That is where an experienced defense attorney comes in handy – to help facilitate a modification to the criminal protective order. There are exceptions that can be granted which allow for peaceful contact and do not prohibit communication or interaction but rather allows the parties to communicate but requires that there be no harassment, annoyance, or molestation in the course of those communications.

Criminal Court Appearance

Whether a person has a criminal court appearance in the first month after arrest depends on the county. If the defendant is in custody, then there will definitely be an appearance within the first month. After the first felony appearance a preliminary hearing will be set within 10 days,

unless there is a waiver of the Sixth Amendment right to a speedy trial. If the charge is a felony, and the defendant is in custody, then it is likely there will be multiple court appearances within the first 30 days. If the charges are more like a misdemeanor DUI, where the person was arrested and then released shortly thereafter, the notice to appear given upon release is likely for a date 30 to 45 days in the future.

Many times, people will show up to court on their Notice To Appear date, and no charges have been filed at that time. What that means is the District Attorney has either decided that they are NOT going to file charges or that they are not ready to file charges yet. If the District Attorney doesn't file charges at the first appearance, the District Attorney still has time to file charges at a later time. For misdemeanors, the statute of limitations is usually one year and for felonies it is usually three years or more. This mean that the DA has up to one year or more to make a filing decision depending on the type of crime they are charging.

Meeting With the Attorney in the First 30 Days

How often one could expect to meet with their attorney in the first 30 days really depends on the specific

attorney's office practices and the type of charges at issue. Our office prides itself on having a system that makes it convenient for clients to communicate and engage with us electronically. They are able to message us, check their documents, and to look up their next court dates so it reduces the need to have several in person meetings because so much communication can take place from the privacy and comfort of their own home.

Oftentimes, it is not necessary for the client to come into the office in the first 30 days because so much communication can be done online. In addition to that, with misdemeanor cases, until the charges have been filed and the arraignment actually takes place, there is not much that is going on within the first 30 days.

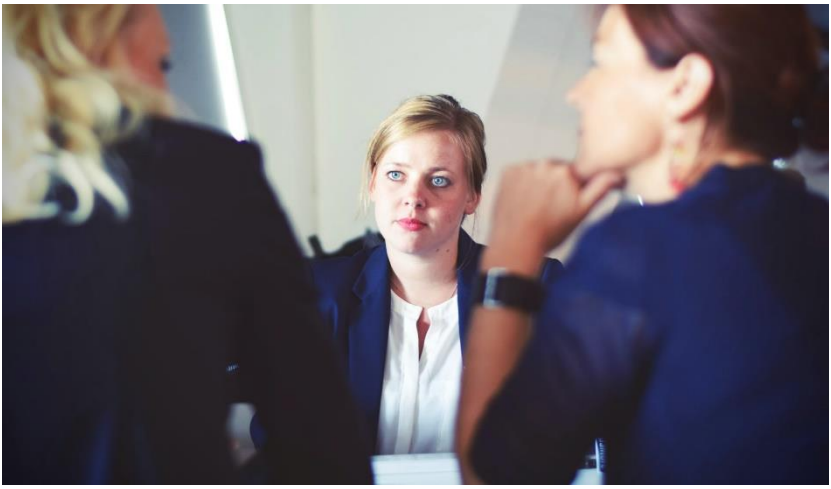
The first part of the case is focused on information gathering - requesting discovery, reviewing reports, statements and other evidence, and getting to understand the client's main goals and concerns. We then pre-try the case, negotiate with the District Attorney, and analyze whether any motions need to be filed. It's not until roughly midway through the case when one can anticipate meeting

with their attorney on a more regular basis, whether that's to prepare for a hearing, preparing for a trial, or to prepare for a negotiated disposition.

What needs to happen within the first 30 days is an extensive intake about the client's background, their priors, what happened on the night in question, their family background, education, community involvement, immigration status, and so on. This way, the attorney and client can get familiar with one another and the attorney can discover any mitigating circumstances that could be helpful in negotiating the case.

CHAPTER 4

COUNSELING OR TREATMENT BEFORE THE FIRST COURT DATE



Depending on the individual case, we sometimes recommend counseling or treatment before the first court date. If this is a DUI case, and let's say it's a second or third DUI, it would probably be very beneficial for the client to go on their own accord to an Alcoholic's Anonymous (AA) meeting or an outpatient program. The judge may ultimately order it as part of sentencing if convicted or may even require it as a condition of OR release (staying out of custody while your case is being litigated). It can also help

for purposes of mitigation, by showing that the client is taking the crime seriously and making efforts to address the issue - like alcohol or substance abuse in a DUI.

In some other cases, like a battery or domestic violence case, sometimes it is advisable to get into an anger management program or to talk to a therapist about what happened if the defendant concedes that this is a pattern of behavior that they may need help addressing.

Sometimes a client may feel remorseful or may want to take accountability for their role in the offense but in many situations, it doesn't necessarily mean that a person is guilty of a crime, or that their participation in counseling is indicative of guilt. However, if this is a matter where the client is adamant that they are innocent of the crime or that they want to fight their case until a jury decides the outcome then there may be no incentive for them to attend counseling classes – evaluating the client's goals and desired outcome is imperative in advising on whether or not to enroll in counseling or treatment.

Impact of a Good Job and a Clean Record on a Criminal Case

Having a good job and a clean prior record would be considered mitigating circumstances. The whole purpose of punishing people for crimes should be to prevent recidivism, to introduce them back into society as productive members, and seek rehabilitation. It is often the case that this is a client's first offense and their case has stemmed from an isolated incident. They have a job, they have a family they are caring for, and they are already a productive member of society. With that in mind, having a job or a clean record can play into the offer negotiated with the DA and the ultimate sentence in a case if convicted—whether time is spent in custody, on an ankle monitor, or in a Sheriff's Work Alternative Program.

These factors can be considered as mitigating factors to penalties and often they can be used to secure Deferred Prosecution or Deferred Entry of Judgment resolutions – these are alternatives to convictions which lead to a dismissal after the client has made some effort to "work" for the dismissal (for example: staying out of trouble for 90 days, attending Narcotics Anonymous and

then dismissing or staying out of trouble for 12 months doing community service and staying away from where the incident occurred). These are just two examples of a wide variety of resolutions that could be achieved with a skilled defense attorney, like the lawyers at The Nieves Law Firm, negotiating on your behalf.

Pleading Guilty To a Criminal Charge

It is not the wisest move for someone accused of a crime to just throw him or herself at the mercy of the court without consulting with and hiring an attorney like the attorneys at The Nieves Law Firm. The purpose of hiring a skilled criminal defense attorney is to have someone who will advocate on your behalf, empower you with information so you can make educated decisions, and mitigate the negative outcomes. Even if someone believes they are guilty and wants to accept responsibility there are approaches a defense attorney can implement to work towards a better disposition (outcome). There are ways that we can try to negotiate for lower custody time, potentially negotiate for a lower DUI school, less anger management classes, or to have the charge reduced to an

infraction rather than a misdemeanor or to get a misdemeanor rather than a felony.

Even if the client does not want to go to trial and fight the case, an attorney can still help secure the best resolution possible. The attorney is going to be more familiar with the inner workings of the courthouse, the courtroom, the DA, and the judge than the accused. Another thing to consider with pleading to the court is that the judge is very limited on what he or she can do with a criminal complaint. If a defendant is charged with more than one count in a complaint, the judge isn't able to dismiss the remaining counts and allow a plea to just one count. The defendant would have to plead to the sheet – each violation charged on the complaint. That means the defendant could end up with multiple convictions that could seriously affect their future. Alternatively, when defense attorneys negotiate with the District Attorney, we are sometimes able to get multiple charges dismissed or reduced. It is highly recommended to hire an attorney who knows what he or she is doing before taking a deal. The attorneys at The Nieves Law Firm are skilled in negotiating and fighting cases. We have over 60 years of combined experience and are focused on goal setting with

our clients, educating our clients, and fighting for the best outcome we can achieve.

Impact of a Prior Arrest or Conviction on a Criminal Case

Prior arrests and convictions will definitely be taken into consideration by the DA when it comes to extending an offer to resolve the case with a plea and when it comes time for sentencing. It's also important to know that some prior charges will actually enhance the penalties of a new offense. For instance, DUI offenses are priorable, meaning that if you have a DUI within 10 years and you pick up another DUI, this is no longer a first offense. It's now a second offense. This means that the penalties automatically start at a harsher position because the prior conduct exists. This can result in more jail time, longer DUI school, and additional consequences, which could include having to attend AA or even an outpatient program. The same is true for felony conduct, especially if the prior is a strike where your exposure automatically gets doubled if you pick up another offense.

There are serious collateral consequences to take into consideration when there are prior offenses, especially if the client is not a citizen of the United States. Even with a first offense, we are now in the territory where the client could potentially be deported, excluded from the United States or be denied naturalization based on the charged offense. When we are talking about second offense crimes, even with misdemeanors it could put them in a category where removal proceedings begin. Priors can definitely affect the outcome of a case so it is important that the client is honest with their attorney about prior conduct even if they think it was not important. People who have been accused of a crime and have prior convictions should hire an attorney who can successfully navigate those prior arrests and convictions, effectively inform the client of their options, and help attain desirable results.

CHAPTER 5

TAKING A CASE TO TRIAL OR NEGOTIATING A PLEA DEAL

Whether or not a case goes to trial depends entirely on the client.

- Can the client be patient with the amount of time and preparation that it takes to get to trial?
- Are the client's expectations managed about the number of court appearances that are involved?

- Is the client prepared for the expense that is involved, not just with the trial but potentially hiring experts and hiring an investigator?
- Is the client determined to defend their innocence?

Managing the client's expectations is crucial – for many of our clients it is the first time they've ever been involved in the court process and they just need someone who will take the time to explain "what happens next" and to educate them on the pros and cons. If a client is willing and ready to go forward with trial then we are eager, resilient, and tenacious about defending them in front of a jury.

As far as taking a plea offer is concerned, even if the client wants to get this over with as quickly as possible, we would still conduct an analysis of the case and provide the client with options and potential outcomes if they were to continue fighting. We would advise them of their rights to go through a jury trial, ensure that the decision to plea is something that the clients truly wants to do after being fully informed and educated, and then strategize with

them about steps for the future to prevent repeat convictions and clean their record if applicable.

If taking a deal is what the client chooses, then of course we will aim to negotiate with the client's goals in mind. Whether that be keeping them out of custody, reducing the exposure, reducing the probation term, securing a dismissal at a future date, avoiding a crime of moral turpitude, and so on – we cannot guarantee an outcome but we can advocate for their primary goals and concerns and make a skilled effort to secure the best resolution possible.

Plea Offers for First Time Offenders

For a first time DUI, typically a plea offer in Alameda County would be two days of SWAP minus any credit for time already served, restitution for any damage that may have been caused if there was a collision, injury, or property damage, a 3-month DUI school (if there wasn't a high blood alcohol content), fines upward of $2000, and a requirement that an ignition interlock be placed in the vehicle installed and maintained at the expense of the client.

In addition to the above, there are standard alcohol terms: (1) no driving with any measurable amount of alcohol in their system, (2) no driving unless properly licensed and insured, (3) no refusal of a chemical test administered by a peace officer, including a preliminary alcohol screening test. Typically, if a person is not on probation they are allowed to refuse a preliminary alcohol screening test (the Breathalyzer that the police try to give administer on the roadside) but once on probation a refusal would be a violation of the alcohol terms. Additionally, a first DUI offense typically comes with about 3 years of court probation.

For other misdemeanor offenses, a typical resolution for a first offender would include a *deferred entry of judgment*, where the client enters a plea but judgment on that plea is put over for a period of time, usually about 12-18 months but it could be less or more depending on the circumstances. They may be required to do some sort of community service, or attend a class such as anger management, parenting, or AA depending on the type of crime they've been accused of. After they have completed the terms of the DEOJ and successfully stayed out of

trouble the matter gets put back on the calendar for a dismissal. It is important to note that if the individual *fails* DEOJ they will automatically be convicted of the underlying offense that was deferred so it is crucial to stay out of trouble and complete the conditions of the DEOJ to successfully secure a dismissal.

In addition to DEOJ, there are pre-plea deferred prosecution options, civil compromises, and PES programs that allow the client to earn a dismissal in a shorter period of time without risking an automatic conviction if there is some failure to complete the terms of the agreement. Rather than entering a plea that gets deferred, there is no plea entered and the matter is continued for about 60 to 90 days. During that time the client has an opportunity to meet certain conditions, like attend AA or Narcotics Anonymous classes or complete community service. As long as they complete their conditions the matter gets dismissed. If they fail or they mess up, they just start back right at square one. They will not receive an automatic conviction for a failure to comply like DEOJ.

There are countless ways that a criminal case can be resolved for first time offenders and the outcome will depend on several factors including the client's goals, the evidence, and the analysis of the issues.

CHAPTER 6

TRIAL VS. SETTLEMENT

Most cases end up not charged by the District Attorney for insufficient evidence, dismissed, or negotiated with a plea rather than going to trial. There is a lot of time and expense that goes into trial, and sometimes there is a great deal of risk as well. If the client is presented with an appealing offer many times they decide that going to trial is not the avenue they want to take after weighing their options. Many would rather resolve it and explore their post-conviction relief opportunities at a later time, such as applying for early termination of their probation, reduction

of the offense, and a dismissal after a year has passed. If a client is convicted but they stay out of trouble and meet the terms and conditions of their probation, after a year has passed they can petition to have the matter terminated early and dismissed so long as they are eligible (i.e. did not serve time in state prison for the offense or it is not on the list of excluded crimes). Often, this is a more appealing route for the client rather than going to trial.

How Do People Respond After A Criminal Case Is Dismissed Or Dropped?

Many times, when the matter is dismissed, clients celebrate the fact that it did not result in a conviction and they do not have to report it as a conviction on employment applications. Some clients want to take it one step further and try to seal and destroy the arrest record. They can do that by filing a motion for factual innocence, pursuant to penal code 851.8. What they do is hire our office to seal and destroy the record through the filing of a motion that includes declarations, character letters, points and authorities and other supporting documentation. Ultimately a judge will make the decision of whether to grant or deny the petition. If the judge finds that the client was factually innocent of the crime and the

police report did not support the arrest then the arrest record will be sealed for 3 years then destroyed.

Here is an example of factual innocence: Let's say your sister was arrested and used your name, your date of birth, and your social security number during the arrest. It came out later that you weren't actually the person arrested because the fingerprints didn't match but now that arrest is appearing in background checks. We can petition the court to declare you factually innocent of the crime so that the record of arrest can be sealed and destroyed from your record.

It is also possible to seal a record that resulted in a dismissal or no charges being filed after the statute of limitations has expired without being declared factually innocent. Under Penal Code section 851.91 it is a matter of law that most arrests that did not result in a conviction or charges being filed can now be sealed through the filing of a petition. Our firm has successfully filed both PC 851.8 factual innocence motions and PC 851.91 petitions to seal arrests.

Sentencing after Someone Is Convicted Of a Charge

The point of time at which sentencing occurs depends on whether or not time guidelines have been waived. The accused has the right to be sentenced at a later time than when they actually enter their plea. It can be from up to 6 hours to 5 days later in misdemeanors. Usually what happens is that time is waived, so that the sentence can be taken right away and the clock on probation can start ticking immediately.

In felony cases, what typically happens is that sentencing gets put over so that the matter can be referred to probation for a recommendation report. The defense attorney and the District Attorney are allowed to submit a sentencing letter for consideration and after probation interviews the defendant, the report is prepared and sent to the court.

If the felony client is out of custody then they will typically remain out of custody on a Cruz waiver – what that means is that they must agree to comply with the following: (1) appear at their sentencing date (2) meet with

probation before their sentencing for the interview and (3) not get in any trouble between the date of the plea and their sentencing date. If they violate any of the terms of the Cruz waiver then they can jeopardize the deal that was previously negotiated. When they return to court, the judge, defense counsel, and the District Attorney get to review the report that was created by probation and probation's recommendations along with any letters that were submitted and then the judge will impose the final sentence.

Things to Take Care Of During Probation

What probation means is that in lieu of going into custody, the potential maximum sentence is being suspended so that the defendant can stay out of custody.

HYPO: Let's say someone is sentenced for a first DUI, and it included two days in county jail to be served through the Sherriff's Work Alternative Program (SWAP). A first DUI offense has a maximum of 180 days in custody but they were only sentenced to two days. That leaves 178 days of potential custody time hanging above their head in suspension. (180 Possible – 2 Served =178 Remaining). Pursuant to the negotiated disposition, the defendant was granted probation and given certain conditions to follow - so

long as these conditions are complied with the defendant will never have to serve those 178 days in custody – but if for some reason they violate probation (i.e. caught drinking and driving again, get arrested for some other offense, refuse a chemical test, don't complete DUI school, etc.) there can be a probation violation and a custody sentence of up to 178 days can be imposed. Typically, probation violation sentences are imposed in increments rather than maximum penalties so for each violation the jail time may increase for example, 10 days for the first violation, 30 days for the next, 45 the time after that. The punishment for violations will incrementally increase so the District Attorney can continue having a balance of time hanging over the defendant's head through the duration of their probation just in case they fall out of compliance in the future.

CHAPTER 7

MITIGATING THE SENTENCING OUTCOME

A good defense attorney will be advising the client throughout the case and encouraging them to gather documentation and evidence that will help mitigate (reduce) any potential sentence. This documentation could include character letters or letters of recommendations from friends and family, awards from their job, proof that they are enrolled in school and getting good grades, pay stubs showing that they are gainfully employed, a letter from their immigration attorney regarding possible

consequences of a conviction, and so on. Our office asks clients to provide us with anything that will help to mitigate a potential sentence or that may help in negotiating a better resolution.

One of the most helpful things is for the client to NOT pick up any new arrests while they have the current case pending. Picking up a new case while there is one active will aggravate the situation rather than mitigate it. It can throw a damper on any headway that the attorney has made in negotiations and increase penalties.

Alternative Punishments

There are several alternative punishments to actual custody time served in jail. Some examples are: getting an electronic home detention, residential treatment programs, and work alternative programs. The client would typically need to be in a situation where they are being monitored, required to be in a specific location, and abide by a curfew.

Another alternative is weekend jail, where the clients turn themselves into jail but they don't serve straight time; instead, they serve their time in chunks – they may report to the jail on a Friday and be released on a Monday then go to work and stay at home throughout the week. Weekend jail is

a good alternative for those who have to serve the time in custody but are the sole breadwinners or have young children and need to be home during the week.

The Sherriff's Work Alternative Program is another jail alternative. Rather than going into custody at a jail the client will report for duty at the Sheriff's office and clean up on the side of the road for a full day of work. This roadside cleanup counts towards the jail time.

There are plenty of alternatives to actually going in to custody and serving straight time and we strive to keep our clients out of jail so they can go on with their lives and start putting this chapter behind them.

CHAPTER 8

HIRING A CRIMINAL DEFENSE ATTORNEY

The importance of hiring a criminal defense attorney as early as possible is evident from both a practical and emotional standpoint. Practically speaking, hiring an attorney early in the case means being able to access the documentation and discovery with ease, being able to have your questions answered, securing a skilled advocate with experience negotiating your matter with the District Attorney, and having someone there who can advise you on the appropriate pace for litigating the case.

The emotional or mental perspective mentioned above is also a significant reason to hire an attorney early in the process. When you have an attorney like those on The Nieves Law Firm team you will partner with people who care about you, your goals and the outcome of your case. We take the time to answer our client's questions, empower them with information, and work towards a holistic result that not only takes care of the case but sets them up with an action plan for the future. The peace of mind they receive from hiring our office early on is invaluable.

Qualities and Red Flags to Look For In a Criminal Defense Attorney

Finding someone that is willing to provide you with information, communicate with you, and be involved—not just in the case, but in your life are qualities to look for. One of the big things that our office focuses on is a holistic approach. We get to know our clients, and we don't want to see them return under the same or similar circumstances. We not only address the case, but we address the person in hopes that they will not end up in the criminal justice system again. This could mean helping them find the right type of treatment, walking them and their family through the

process, or even just giving them a hug or a listening ear when they need one.

Oftentimes, long after the case is over, we receive photos, visits, cards, and surprises from our past clients because they become part of our team family and we genuinely enjoy hearing and celebrating the successes in their lives after the obstacles they pushed through.

Some of the red flags to look for with an attorney:

1) They are guaranteeing an outcome. This is a red flag because attorneys are ethically prohibited from guaranteeing any outcome in a case. Nobody knows what's going to happen, and we cannot promise or guarantee that something will certainly happen when there are so many unknowns and possibilities.
2) Attorneys who fail to communicate. The attorney is nonresponsive and difficult to reach by email or phone and you cannot get an appointment.
3) Attorneys who don't get to know the potential client during the consultation – they aren't taking the time to find out about you, about the reasons why you are in search of an attorney, and how this is going to affect

your life and your family. It's indicative of how the process is going to be throughout the life of a case.

4) An attorney that doesn't show up to court on time and does not keep their appointments.

What Sets You And Your Firm Apart?

Our mission and vision and our targeted approach sets our firm apart. We leverage technology to provide a streamlined and efficient process for our clients. Our electronic process is designed to make our client's life easier and make things more convenient for them. We take on the heavy load, so that a client can get back to doing what they are supposed to be doing, whether that means taking care of their family, getting into treatment, or going to work – that is what their time should be focused. We focus on the case, communicate with them, provide them with documentation, and respond to their questions with as little disruption to their daily lives as possible. We make ourselves accessible through our electronic system, and we genuinely care about them and the outcome of their case.

Another thing that sets us apart is we do not take on every single client that calls or walks through the door.

This is primarily because we want our clients to set and maintain goals for their future and we want to be a part in helping them achieve those goals. Potential clients who are not interested in making a lifestyle change, not willing to follow the office policies and procedures, or those who are not polite or cooperative with staff during the intake process are not best suited for our office. Clients who really want an attorney who is going to fight for them, care for them, empower them and create a relationship based on trust are specific types of clients are the best match for our firm.

CHAPTER 9

DOMESTIC VIOLENCE

In California, domestic violence is an offense that occurs between two people who have some type of intimate relationship with one another. An intimate relationship is defined as one shared between a parent and child, a boyfriend and girlfriend, husband and wife, or ex-partners. Domestic violence occurs when the victim has experienced abuse or sustained an injury at the hands of the alleged defendant in the case.

Are Domestic Violence Charges Bondable Offenses?

A domestic violence charge can be a misdemeanor or a felony. If it's a misdemeanor, it's usually because no actual physical violence took place against the other person; instead, maybe a cell phone was snatched out of the victim's hand in an intimidating way. Something like that might be charged under Penal Code section 243(e)(1) since there was no serious injury.

Perhaps a child was physically disciplined but there is a question about how intense and appropriate that discipline went then there may be a charge under Penal Code section 273a for child abuse.

If a serious injury was involved, then the case could be charged under Penal Code section 273.5, which is a misdemeanor but, depending on the gravity of the injuries, could be charged as a felony. For example, if someone was strangled, admitted to the hospital for broken or fractured bones, or even suffocated then it will likely be charged as a felony.

Oftentimes, a suspect will be arrested by an officer and their arrest charges will be felonies. Then, after the DA has had an opportunity to review the police report and weigh the gravity of the conduct or injury, they decide if it's going to proceed as a felony or a misdemeanor.

The accused will not usually be held in jail without bail - that typically happens if they were already on probation at the time of the new offense. What happens is the accused will appear in court for their first appearance and a determination will be made about the amount of bail that should be set. The amount set will depend on whether the matter has been charged as a felony or a misdemeanor, how many charges there are, and what the guideline bail schedule suggests in the county where the case is filed.

After bail is set a criminal protective order ("CPO") will be issued, preventing the accused from seeing or contacting the victim of the crime. Even if the victim is a spouse, the accused will not be allowed to go home after the CPO is issued unless the victim indicates to the court that they do not want the CPO or that they desire peaceful contact where the accused is not allowed to harass, annoy,

or molest the protected party but communication and contact is permitted. The court may then modify the order.[4] As far as children are concerned, if they are named as protected parties then the accused will not be able to see them unless an order is issued allowing visitation.

Does An Alleged Victim Have To Be Injured For Domestic Violence Charges To Be Brought?

No, an alleged victim does not have to be injured for domestic charges to be brought. There are two different types of domestic violence charges that typically occur. One is a PC 273.5, which is corporal injury to a spouse or significant other. For a PC273.5 to be charged, a serious or traumatic injury has to occur. However, for a PC 243(e)(1) to be charged, a physical traumatic injury does not have to occur; instead, it can be charged if somebody puts another person in an emotional or mental state that would constitute abuse or traumatize them in some way.

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[4] In some counties like, Alameda County, the court may require the victim to attend a class before granting the modification request.

Role of Evidence and Witnesses in a Domestic Violence Case

Most domestic violence cases are "he-said she-said" matters that occur in the privacy of somebody's home and are not witnessed by other people. Because of this, there can be some doubt as to who is telling the truth, whether the alleged victim was actually the primary aggressor rather than the accused, and whether the defendant was acting in self-defense. Having witnesses or evidence in the form of videos or photographs can either help or hurt the defendant in a case.

If the evidence or witnesses will make it more difficult for the District Attorney to prove their case beyond a reasonable doubt then we may encourage clients to exercise their right to a jury trial if the facts and evidence weigh in their favor. We are passionate about domestic violence cases and our attorneys have had a great deal of success in securing dismissals in domestic violence cases before trial and have successfully defended our clients at trial resulting in acquittals (NOT GUILTY).

CHAPTER 10

PENALTIES FOR A DOMESTIC VIOLENCE CONVICTION

The penalties for a domestic violence conviction always include exposure to being put in custody and having to pay a fine. If a person receives a misdemeanor charge and has already spent some time in jail, then they may get credit for that time. They may also receive additional jail time. Alternatively, they may be ordered to wear electronic monitoring equipment or enter a sheriff's work alternative program. Whether or not a defendant is eligible for those types of alternatives really

depends on the situation. If a defendant is the sole income provider for their family, and their family would be put in a more detrimental situation if they went to jail, then they may allow that person to participate in an alternative program instead.

There may be some sort of custodial time, and whether or not it actually has to be served in jail depends on negotiations. There will usually be an anger management class in the form of a 52-week batterer's treatment program or domestic violence counseling that is required. In addition, if the victim does not want to have contact with the defendant, then the court will order that the defendant have no contact with the victim in any way (electronic, phone, mail, etc.) and stay 100 yards away from them. If the victim *does* want to have contact, then usually a peaceful contact order will be issued, which allows the defendant to speak to and be in the presence of the victim so long as all of that contact remains peaceful; the defendant cannot harass, annoy, or molest the victim. Beyond counseling and custodial time, there may be some fines.

If the matter is a felony, then there is a possibility of a state prison sentence; however, it can sometimes be negotiated down to the county jail or some other alternative but that depends on the defendant's background and whether or not there are any prior convictions. Prior violent offenses or domestic violence offenses can enhance the penalties for this particular type of charge. There may also be a possibility that the crime is a *wobbler* which means that the felony can be reduced to a misdemeanor during negotiations or subject to a Penal Code 17(b) motion at preliminary hearing or after significant time is served on probation.

Can Prosecution Use Past Instances Of Domestic Abuse In A Pending Case?

Yes, the prosecution can use past instances of domestic abuse and they typically do. Even if the prior conduct was unreported (the victim never called 911) and did not result in a conviction or an arrest, the prosecution can still use it against the defendant. This type of information often comes directly from the victim of the crime, who might say something like "This is not the first time that this has happened to me. My spouse has hit me in

the past. I just didn't call the police because I was scared and I was being threatened." The underlying assumption is that the typical response of victims in these types of domestic violence situations is to *not* report the conduct out of fear, love, or perceived necessity; however, unreported conduct from the past can still be used.

Steps To Take If I Am Facing a Domestic Violence Charge

First step, comply with the court order prohibiting contact with the alleged victim. Even calling to apologize or to tell them that you love them is not allowed. Now, if the victim takes it upon themselves to voluntarily contact the accused then that is a different situation and the attorney will likely have an investigator take a statement from the victim and work on making arrangements for the victim to come to court to make their request for a modification to the judge and DA direct. It is important that defense counsel and the defendant do not appear as if they are tampering with the witness or intimidating them in any way or that the defense attorney does not make themselves a witness in the case so it's crucial that these conversations take place with a third party investigator.

The second step is to hire an attorney. Domestic violence cases are definitely not the types of cases to handle on your own. There are communications that can take place about the legal process through an attorney's investigator that cannot take place without an attorney. Additionally, an attorney will know what evidence to start gathering or where the investigation should be directed. For instance, if the defense is self-defense and the accused also had injuries then ensuring that photographs of those injuries are taken in a timely fashion and subpoenaing medical records would be an immediate action step.

Complying with the orders, hiring an attorney, and compiling exculpatory evidence for the defense are three critical steps to defending a domestic violence case.

CHAPTER 11

SELF-DEFENSE AS A VIABLE DEFENSE IN A DOMESTIC VIOLENCE CASE

Self-defense is always a very good defense, and you would be surprised how often it is used in these types of cases. It is not uncommon for the alleged victim to fail to mention that they slapped the other party first or that they were throwing things at the other party. If that information is revealed, then we see that the accused was simply trying to avoid being hit when the named victim was struck by a defensive type of movement.

Self-defense is a very realistic and arguable defense in domestic violence cases. We have won domestic violence trials using self-defense theories in the past.

Collateral Effects of Having a Domestic Violence Conviction on Record

One of the long-term collateral effects of having a domestic violence conviction is the immigration consequence. Having a domestic violence conviction can lead to deportation or removal proceedings. Seeking the advice of an immigration attorney is advisable in those types of situations.

The other collateral consequences are in a family court actions. Specifically, there is a rebuttable presumption in family court that custody of children should lie with the non-offending parent, which means that the person who did not commit the act of domestic violence is the person who presumably should have custody of the children and that a person who committed domestic violence should not be awarded spousal support.

A domestic violence conviction can also have a negative impact on a person's ability to obtain professional licenses for employment.

Both a protective order issued in criminal court and a domestic violence restraining order issued in civil court can result from a domestic violence conviction. The latter addresses things such as custody, support, control over the property, whether or not there should be a property restraint made on any money in shared bank accounts, and whether or not the guilty party should be responsible for the payment of any debts if they have to move out of the home.

There are several collateral consequences that can ensue from a domestic violence charge and it is critical that the accused have an attorney in their corner that will listen, ask the right questions, investigate, and educate the client on their exposure to potential penalties and options.

Importance of Retaining an Experienced Attorney in a Domestic Violence Case

Our attorneys know what type of evidence is going to exculpate the accused or mitigate the situation. That

means we know what type of evidence will likely support their innocence or make their position better. If the victim wants to eliminate a criminal protective order (restraining order) we can work with the victim's attorney (if they have one) in getting a letter sent to the DA about whether or not that person still wants to testify or is cooperative in the proceedings and we can make arrangements for the victim to come to court to express whether they want the order in place or not.

We can also analyze what a good resolution of the case would be and strategize about the benefits of pushing the case all the way to trial. If there is insufficient evidence, a viable defense, or the client is factually innocent then we may suggest taking the case to trial. Alternatively, if it is a case that is best resolved by way of a negotiated disposition, we will work on reaching a resolution that's beneficial to the client in both the short run and long run and walk them through the plea and the steps after sentencing through restitution and expungement (if applicable).

CHAPTER 12

HAVING A CRIMINAL RECORD EXPUNGED

To have a record expunged means to have it erased. In California, however, there is no actual expungement in the regular use of the word; rather, one can petition for a dismissal. If a petition for dismissal were to be granted, then the language on the Department of Justice report would be changed from reading "convicted" to reading "dismissed."

Misconceptions About Expungement

Some people have the misconception that receiving an expungement in California means that the charge disappears into oblivion. In California, receiving an expungement really means receiving a dismissal, which means that it is helpful for employment purposes, securing loans, and no longer having a conviction to report in most situations but it could still be used against the accused in certain circumstances. For example, if a DUI conviction was expunged but then that person received another DUI, the new DUI would be treated as a second-time offense despite the expungement.

Another misconception is that an expungement of a sex offense will relieve the convicted party from having to register as a sex offender. Even if a sex offense that requires sex offender registration under Penal Code section 290 gets dismissed the individual will still be required to register. The only means at this point of getting off the registry for certain sex offenses (not all) is to petition for a Certificate of Rehabilitation or to receive a Governor's pardon. Our office has successfully petitioned for dismissal of sex offenses in the

past and attained certificates of rehabilitation for clients who were previously required to register as sex offenders.

Who Is Eligible To File For An Expungement?

If a person served time in a state prison or was on probation at the time of filing for an expungement, then they would not be eligible to receive expungement. However, if a person was on probation and never served a state-prison sentence, then they could petition for early termination of that probation under Penal Code section 1203.3 of the penal code. If a judge were to grant a request in the interest of justice, a person would be able to request dismissal under Penal Code section 1203.4, so long as they met all conditions of probation.

For example, if they were ordered to attend a DUI school, anger management, or a one-year domestic violence batterer's treatment program, then they would have had to complete those requirements prior to petitioning. After 12 months on probation, a person is eligible to petition for early termination. Crimes resulting in state prison sentences and some sex crimes are ineligible for expungement.

Does Expungement Apply To Charges Only?

Expungements apply to convictions not charges that have been dismissed or arrests that did not result in a conviction. If a person was charged but not convicted, then they would not need an expungement they would need a Penal Code 851.8 Motion for Factual Innocence to seal and destroy the record or a Penal 851.91 Petition to Seal.

Timeframe for an Expungement

A person who has been convicted of a crime is eligible to apply for early termination of probation after serving one full year on probation and completing the terms and conditions such as any classes or fines. The petitioner will be required to show that it is in the interest of justice for them to be relieved of their probation obligation. If successful, as soon as early termination of probation is granted, that individual can immediately request that the matter be dismissed under Penal Code 1203.4.

If a petition for early termination of probation is not granted then as soon as the probation term is over and

all conditions have been met then the Penal Code 1203.4 petition for dismissal can be submitted to the court. The length of probation depends on the crime. Usually for misdemeanors it is 2-3 years of court probation while it is typically 5 years of formal probation for felonies.

CHAPTER 13

AUTOMATIC EXPUNGEMENT

There are no charges that automatically get expunged. When a person is convicted, it stays on their record permanently. There is no drop-off or clean-up period. There are ways to clean up your record, but there are affirmative steps that must be taken to do so. The closest thing to an automatic expungement is if the defense attorney negotiates early termination of probation as a part of the plea deal and then once that is granted a petition for dismissal is submitted. There are also diversion programs that result in the sealing and destroying of records upon

successful completion that are granted at the end of the program. For instance, drug court requires ongoing testing, counseling, and court appearances for several months but once the defendant has graduated from drug court the case will be dismissed and an order will be granted that seals and destroys the arrest. So although there are methods to secure the outcome of a dismissal there are no actual charges that automatically result in an expungement without some sort of action step or request to the court. Once a Penal Code 1203.4 petition is filed there are several charges that will be granted as a matter of law but it does take the filing of the petition to get the order signed by the judge and filed with the court.

Process for Having a Record Expunged

In order to complete the process of having a record expunged in California, there are basic forms that need to be filled out. The CR-180 is a cover sheet that goes with the petition. Some people just submit that form and hope for the best because there are some crimes that do not require much of a showing. If they have successfully completed probation, do not have probation violations, do not have any pending charges, and did not go to state prison then

those crimes will be granted; however, some charges like DUI convictions require a showing that the expungement is in the interest of justice.

Our offices includes a declaration of support from the client where we address the hardships that the person has faced and the positive impact that the person has had on his or her community. We show how the conviction is affecting that person either personally, financially or professionally and why it is in the interest of justice to grant the petition. After the memorandum, points of authorities and all of the paperwork is completed, we submit it to the court and a court date is set. Sometimes there is an actual hearing, and sometimes there is no objection from the DA. The decision of whether or not to object to the petition will be made by the DA on a case-by-case basis. Finally, the judge will sign a CR-181 order indicated if the petition is granted or denied.

What Can I Do If My Petition Is Denied?

If a petition is denied, then it is permissible to apply again at a later time. If a request for early termination was filed and not granted then the person can wait until they

are off probation, which may just be another year or two depending on the length of the probationary period, or they can apply for early termination again in a few months (there is no set time restriction on reapplying). In the meantime, the probationer can work on going above and beyond by staying out of trouble, not violating their probation, meeting the terms of your probation, and giving back to the community in some way.

It is helpful to make a showing of the extra things that the probationer is doing that supports why it is in the interest of justice to relieve them from probation. That can include community service, volunteer work, mentoring or becoming increasingly involved with your religious or educational institution. Those types of activities can have a persuasive effect on the court as long as they are sincere and not done for purposes of getting off of probation.

After The Expungement

If a Penal Code section 1203.4 motion is granted, then the language on the criminal record will change from reading "convicted" to reading "dismissed."

WHAT IS THE NEXT STEP?

Imagine being convicted at the age of 19 for being in the wrong chatroom at the wrong time making thoughtless comments. Imagine being arrested, convicted, and required to register as a sex offender for the rest of your life for that careless immature decision. Our client was in this situation and didn't know there was relief available to him but after 15 long years of being stigmatized and humiliated he reached out to our office in hopes of finding a solution. We were able to gain his trust and strategize the right steps to take to put him in a position where he could make the most impact in his life. Not only did we get all of his charges dismissed but we also got him certified by the court as rehabilitated so he no longer had to register as a sex offender which set him on a whole new path to success.

Being charged with a criminal offense can be a scary and confusing time. At The Nieves Law Firm we believe in empowering our clients with information and helping them navigate the criminal justice system so they can maintain a sense of normalcy in their lives despite the

disruption that has occurred. Our mission is to change the stigma experienced by those accused and convicted of crimes, to inspire those who suffer convictions and arrests, and to encourage them to set goals for the future change notwithstanding the current circumstance.

We believe that people are better than their worst mistakes. We believe in compassion, restoration, and rehabilitation. We believe that knowledge is power. We believe that you should be truthful in the things you say and have integrity and we believe that actions speak louder than words.

If you or a loved one has been accused of a crime and are in need of a fierce advocate who not only knows how to fight a case but knows how to fight for YOU contact The Nieves Law Firm and take the first step to getting back on track.

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Facing Criminal Charges In California

"I have had the pleasure of connecting with Jo-Anna Nieves for about two years now. Her character, work ethics and accomplishments continue to inspire me and she has truly proven to be someone that I can always count on. I am forever grateful for the impact that her mentorship has had on my life and I am confident that her services will continue to change the lives of her clients."

- Natalia C.

"I am so thankful to find Jo-Anna & her office. I must have contacted a dozen attorneys and could not find assistance. I was not a defendant in a case but the plaintiff. She was still willing to help me with my case. She was extremely responsive and kept me informed every step of the way. Her decisions were always in my best interest. I would definitely recommend Nieves Law Firm."

- Ashley B.

Jo-Anna Nieves, Esq.

Founding Attorney

When you are charged with a criminal offense, you need a strong, experienced, and committed advocate. It's a role that Jo-Anna Nieves has undertaken many times, with great success.

As a criminal defense attorney who began her post-bar legal career at the Sacramento County District Attorney's Office, Ms. Nieves has a rare perspective that she uses to support, advise, and defend the firm's clients. She uses her experience on the prosecution side to help strategize and analyze her client's cases and mount the best possible defense.

Jo-Anna Nieves graduated from The Florida State University in 2005 with two Bachelor of Science degrees in Multinational Business and Finance. Thereafter, she attended Florida State University College of Law where she earned her Juris Doctorate. Ms. Nieves interned with the Sacramento County District Attorney's Office, where she gained experience in the arraignment of misdemeanor and domestic violence offenses, the prosecution of Adult Sexual Assault crimes, and felony preliminary hearings - she was offered a full-time position upon completion of law school. Ms. Nieves also worked at the State Attorney's Office for the 2nd Judicial Circuit in Leon County, FL where she chaired numerous felony trials including the prosecution of animal cruelty, possession of a firearm by a convicted felon, battery on a law enforcement officer, and attempted murder.

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