



Cite as: 2009 (12) AELE Mo. L. J. 101

ISSN 1935-0007

Civil Liability Law Section – December 2009

**Use of Injunctions Against Gang Activity – Part 3:
Practical and Procedural Issues**

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Introduction

In [part 1](#) of this series of articles, the legal basis for and practical advantages of using injunctions against gang activities were examined, illustrating how civil injunctive relief can be a powerful weapon in combating the negative impact of gang activities on the daily life of the community in ways that ordinary criminal law enforcement sometimes cannot accomplish.

In [part 2](#), prior constitutional challenges to the validity of such injunctions were briefly examined.

In this concluding article in the series, we examine some of the problems of procedure and proof, as well as some of the other practical considerations involved in obtaining and enforcing anti-gang injunctions.

Practical and Procedural Issues

In the previous articles in this series, it was spelled out what some of the reasons were that an anti-gang injunction can be a valuable tool in combating the violence and harassment that gang activity brings to a community, as well as how courts have addressed some of the common constitutional objections raised to issuance of an

injunction. It is not enough, however, to decide that obtaining such an order from a court is a desirable and obtainable goal. A prosecutor or law enforcement agency interested in actually obtaining and enforcing such an order will quickly confront a number of practical and procedural issues. The details of these, of course, may vary considerably between jurisdictions, but there will also be a number of things in common.

To begin with, the burden will be on the party seeking an injunction to convince the court that there is a justification for injunctive relief. An injunction is thought of as an extraordinary remedy, not available simply because someone with a legal right shows that they have or will suffer injury or damage. In that an injunction prevents future conduct, restraining an individual's or a group's liberty, courts are very demanding in setting forth requirements that first must be met.

Injunctions are only granted when the party seeking the order can show that normal legal remedies, such as lawsuits for money damages after the fact, are inadequate to cure the harm. Given that the gang activity sought to be enjoined includes violent criminal conduct, which wreaks havoc on the daily lives of people in the community, this is a burden that can be met. The physical injuries, the loss of ability of the community to freely go about its daily business of work, school, family, and social life unhindered by fear cannot be compensated for merely by money, even if there were any realistic prospect of actually collecting a judgment for damages from gang members.

Additionally, as the injuries that gang members inflict are on many people, large numbers of damage lawsuits by would be required, and are not practical to pursue.

But it is not sufficient to merely allege this in generalized terms. A court wants evidence and proof before concluding that an injunction against gang activity is warranted. It also wants to know that the criminal nuisance activity is ongoing, or is likely to occur again, since if it is not, enjoining it in the future is pointless, and the remedies then available are indeed only lawsuits for money damages and/or criminal prosecution for completed past criminal acts.

In some jurisdictions, the requirements for injunctive orders have been spelled out in statutes, while in others, they are spelled out in caselaw. As the first two articles in this series used California as a specific example of a jurisdiction in which many anti-gang injunctions have been issued, it is worth also examining how California spells out the requirements for such orders:

[“An injunction may be granted in the following cases: ...”](#)

“(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ...”

“(4) When pecuniary compensation would not afford adequate relief.”

“(5) When it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.”

“(6) Where the restraint is necessary to avoid a multiplicity of judicial proceedings.” -[California Code of Civil Procedure Sec. 526\(a\)](#).

Most of the gang injunctions that have been obtained and enforced have aimed at gangs whose activities are primarily located in a given geographical area or “turf.” Courts are understandably loathe to issue orders that are not clear on what behavior is enjoined, where it is enjoined, and who is enjoined from doing it. An injunctive order is a powerful thing, with serious consequences possible for those found to have violated it, so it must be specific as opposed to a general admonition not to do “bad” things.

Those interested in obtaining such orders must document and gather evidence of the gang’s specific acts that constitute crimes or public nuisance, that are ongoing or repeated, as well as the general boundaries of the area or areas where the gang plies its trade.

Those seeking the injunction must also identify at least some individual gang members, both for purposes of showing that the gang does engage in criminal and nuisance activity in the community (and individual criminal convictions can be part of the building blocks of marshalling the proof of the harm the gang poses to the community), and for selecting representatives of the gang to receive notice of the legal proceeding seeking the injunctive order against it and its members. Other types of proof may include crime and investigation reports, search warrant requests, affidavits or complaints, and affidavits by officers. Officers with a depth of experience in investigating a particular gang and its activities can be qualified as an expert in its operation and help the court fashion of details of the injunctive order required to make it effective.

Police records of investigative interviews may also contain admissions of gang membership by particular individuals, and photographs may indicate the display of gang insignia, hand signals, or tattoos. And photos of gang graffiti can show the presence of the gang in a given geographical area.

In California, the state Supreme Court in [People ex rel. Gallo v. Acuna](#), #SO46980, 14 Cal 4th 1090, 929 P.2d 596 (1997), cert. denied, [Gonzalez v. Gallo](#), 521 U.S. 1121 (1997), indicated, without ruling, that it was permissible to name the gang as an entity as a defendant in an injunctive action, rather than just individual gang members. In [Acuna](#) itself, only individual members were actually named, but since that case, such actions in California have routinely named the group also. This approach was explicitly approved in [People ex.rel. Totten v. Colonia Chiques](#), #B184772, 156 Cal. App. 4th 31 (2007), holding that gangs are entities that may be sued, and that an injunction against the gang can be binding on active members of the gang who were not individually named as parties to the proceeding.

As a matter of well-settled law, persons may be bound by a court's injunctive order despite not having been a party to the proceeding or having been served with a copy of the lawsuit, as long as they have actual notice of an injunction that, by its terms, would apply to them. [In re Lennon](#), 166 U.S. 548 (1897). The court in [Acuna](#) found this to be the case in anti-gang injunctions.

This principle is a major reason why anti-gang injunctions are a viable tool in law enforcement's arsenal. If you had to individually identify each gang member, name each and every gang member as a party, and serve each of them with a copy of the lawsuit to be able to enforce it, much of the advantage of an injunction over individual criminal prosecutions and/or lawsuits for damages would be lost.

The fact that only "actual notice" of an anti-gang injunction is required to make it enforceable against each and every gang member means that knowledge of what conduct the injunction forbids, and where, may be spread through news coverage, community meetings and leaflets, and a wide variety of means of communication, as well as directly provided to gang members officers encounter engaging in conduct barred by the injunction. Having been thus informed, such gang members must disperse and desist from their nuisance activity, or face the consequences of defiance of the court's order. Officers should serve the gang members with the injunctive order, whenever possible, to serve as proof of actual notice.

In this manner, an anti-gang injunction may be enforced against new gang members who have just joined, who could not have previously been named as parties to the proceeding or served with notice. This eliminates the need to continually go back to court.

When a gang and its members are enjoined, enforcement of the order against the individuals is possible without having to show that the individuals intended to engage in the criminal acts sought to be avoided. Therefore, if an anti-gang injunction bars gang

members from congregating and loitering together in groups on street corners in a neighborhood, while the purpose may be to deter drug dealing, armed robberies, harassment of residents, etc., an individual gang member who is part of the group congregating and loitering there renders themselves susceptible to enforcement of the order even if it can never be shown that they individually had the specific intent to engage in drug transactions, armed robbery, or harassment. As the court stated in Acuna:

“Although all but three of the eleven defendants who chose to contest entry of the preliminary injunction . . . were shown to have committed acts, primarily drug related, comprising specific elements of the public nuisance, such individualized proof is not a condition to the entry of preliminary relief based on a showing that it is the gang, acting through its individual members, that is responsible for the conditions prevailing in [the area covered by the injunction].”

See also, People v. Englebrecht, #D033527, 88 Cal. App. 4th 1236 (2001), commenting that it “does not appear . . . Acuna requires for a sufficient demonstration of membership any showing the individual had engaged in nuisance activities.”

Once the injunctive order has been obtained, it may be enforced. Gang members who violate its terms are guilty of contempt of court. Judges may treat it as civil contempt, but it may also amount to criminal contempt, as it does in California under Sec.166 of the Penal Code, depending on the rules of the jurisdiction, allowing officers to arrest gang members when they have probable cause to believe that they have violated the order.

In this manner, police officers who encounter a group of gang members congregating and loitering on a street corner need not wait until they rob, shot, or rape someone before arresting them. The mere violation of the terms of the injunctive order suffices to get them off the street, and subject to at least misdemeanor criminal penalties that can deter repeat violations.

How effective are anti-gang injunctions? Clearly, they are no panacea, and areas that have experimented with them, even extensively, devoting many resources to them, have by no means eliminated the existence of gangs and the disruptive force they represent in the life of a community. At the same time, they do represent an important additional weapon in law enforcement’s arsenal against gangs, with a number of advantages.

Los Angeles in California is a city that has been a pioneer in the use of such injunctions. Concurrent with the enforcement of 65 gang injunctions, applicable to 60 gangs and 11,000 gang members in that city, gang membership reportedly decreased from 57,000 in 2001 to 39,000 in 2006. See Wikipedia, [Gang Injunctions](#).

There is, of course, no easy way of measuring all of the factors involved in such a dramatic decrease in gang membership, but common sense would seem to suggest that aggressive use of such injunctions is certainly a tactic worth more than a cursory look.

In a [2005 study](#) of the impact of an anti-gang injunction in San Bernardino, California, the findings were more mixed:

“Analyses indicated positive evidence of short-term effects in the primary injunction area, including less gang presence, fewer reports of gang intimidation and less fear of confrontation with gang members. The primary injunction area showed no significant changes in intermediate or long-term outcomes save lower fear of crime. Comparison of the new and old injunction areas suggested that improvements in neighborhood dynamics might accrue over the long term. [,,] This study suggests that strategic suppression of gang member activities may translate into modest immediate improvements in community safety and well-being. Further experimentation with Civil Gang Injunctions is recommended, with caution regarding the characteristics of the targeted gang and the geographic reach of the injunction. Effects might be substantially improved by coupling an injunction with efforts to improve neighborhood social organization and provide positive alternatives for gang members.”

This series of articles was designed to at least raise the suggestion that agencies explore their use, not as a substitute for, but an adjunct to, normal criminal law enforcement investigation and prosecution.

Resources

The following are some useful resources related to the subject of this article.

- FBI Information page, [Violent Gangs](#)
- [2009 National Gang Threat Assessment](#). National Gang Intelligence center (NGIC) and the National Drug Intelligence Center (NDIC)
- [Gangs Toolkit](#): Resources for law enforcement, educators, and parents. Office of Community Oriented Policing Services (COPS)
- [Chicago Gang Information website](#)
- [Safeguarding Your Child From Gangs](#) (Redwood City, CA Police Department)
- [List](#) of gang information web links
- [National Gang Center](#)

AELE Monthly Law Journal

Bernard J. Farber

Civil Liability Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: bernfarber@aele.org

Tel. 1-800-763-2802

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