

Domestic Violence Law: A Guide to Protective Orders in Maryland



By Marc Emden, Esq.
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Forward



In Maryland the process for facing a protective order in court can be intimidating and confusing. It is my hope that this short work will simplify and guide you through this tricky process.

Respectfully yours,

Marc Emden, Esq.

About the Author

For over 35 years, Marc Emden has handled civil and criminal cases in Maryland and Washington, DC. Marc was born and raised in Silver Spring, Maryland, attended Northwood High School, graduated *cum laude* from the University of Maryland with a degree in Government & Politics, and received his law degree from the American University Washington College of Law in 1981. He currently practices law in Maryland with the law firm of Emdenlaw.

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Comparing Protective and Peace Orders

Where?	Protective Order (FL Art. 4-501 et seq.)	Peace Order (CJP Art. 3-1501 et seq.)
What is it?	Allows victims of domestic violence to receive protection and some kinds of relief	Provides protection to people experiencing certain kinds of abuse who are not eligible for protective orders
How do these orders compare?	They're very similar. Each is a 3-step process beginning with an interim order and moving to a hearing where both parties are present.	They're very similar. Each is a 3 step process beginning with an interim order and moving to a hearing where both parties are present
Who is eligible?	<ul style="list-style-type: none"> ● Current and former spouses. ● Cohabitants for 90 days ● A person related to the Respondent by blood, marriage, or adoption ● A parent, stepparent, or stepchild (under certain circumstances) ● Vulnerable adults ● Person who has had a child with the Respondent 	Anyone who is not eligible for a protective order, but who is a victim of abuse

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<p>How is abuse defined?</p>	<ul style="list-style-type: none"> ● Act that causes serious bodily harm ● Act that places the Petitioner in fear of imminent serious bodily harm ● Assault ● Rape or sexual offense ● False imprisonment ● Stalking ● Revenge Porn 	<ul style="list-style-type: none"> ● Act that causes serious bodily harm ● Act that places the Petitioner in fear of imminent serious bodily harm ● Assault ● Rape or sexual offense ● False imprisonment ● Harassment ● Stalking ● Trespass ● Malicious destruction of property ● Revenge Porn ● Misuse of telephone ● Misuse of electronic communication ● Visual surveillance
<p>Which courts have jurisdiction?</p>	<p>District and circuit courts</p>	<p>Only the District court</p>
<p>How soon after the act must the Petitioner file for a protective order?</p>	<p>Anytime after the act occurs</p>	<p>The act must have occurred within 30 days of filing the petition</p>
<p>Are there any other requirements?</p>	<p>No</p>	<p>The Petitioner must show that the act occurred and that it is likely to occur again</p>

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<p>Is there a filing fee?</p>	<p>No</p>	<p>There is a \$20 filing fee and a \$30 service fee. The court may waive the filing fee for indigent Petitioners, but not the service fee</p>
<p>What is the penalty for filing a false order?</p>	<p>There are misdemeanor penalties for knowingly providing false information on the petition</p>	<p>There are misdemeanor penalties for knowingly providing false information on the petition</p>
<p>What is the standard of proof for getting this order?</p>	<p>Interim and Temporary Orders - “reasonable grounds to believe that the Respondent has abused a person eligible for relief (PEFR)”</p> <p>Final Order - Preponderance of Evidence</p> <p>Permanent Protective Order After Conviction and Imprisonment - A permanent protective order may issue against an individual that was convicted and served a term of imprisonment of at least five years for specified underlying acts of abuse. This final protective order is permanent unless terminated at the request of the victim.</p>	<p>Interim and Temporary Orders - “reasonable grounds to believe that the Respondent has abused a person eligible for relief (PEFR)”</p> <p>Final Order - Preponderance of evidence that the Respondent committed the alleged act, and is likely to commit the act in the future</p>

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<p>How long is the order in effect?</p>	<p>Judges may extend a temporary protective order from 30 days to 6 months. Temporary protective orders may be extended to effectuate service of the order, to provide protection, or other good cause.</p> <p>Final orders last up to 1 year with the option to extend for 6 months.</p> <p>The permanent protective order lasts until the victim requests termination.</p>	<p>Up to 6 months</p>
<p>What types of relief are available under the order?</p>	<p>All of the relief available under the temporary order, and</p> <ul style="list-style-type: none"> ● Establishment of temporary visitation ● Award of emergency family maintenance ● Award of use and possession of jointly titled car ● Counseling ● Order for Respondent to surrender all firearms ● Order for Respondent to pay filing fees and court costs 	<p>All of the relief available under the temporary order, and</p> <ul style="list-style-type: none"> ● Counseling ● Order for Respondent to pay filing fees and court costs
<p>Will the court always order all of the relief available?</p>	<p>The protective order may include any or all of the available relief</p>	<p>No. The court may only order the relief that is minimally necessary to protect the Petitioner</p>

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<p>Can the court order mutual orders?</p>	<p>The court can only issue a protective order to a person who has filed a petition. When both parties have filed, the court may issue mutual orders if it finds (by a preponderance of evidence) that:</p> <ul style="list-style-type: none"> • mutual abuse has occurred, • both parties acted as primary aggressors, and • neither party acted primarily in self defense 	<p>The court can only issue a mutual peace order if both parties have filed for one and the court finds (by a preponderance of evidence) that:</p> <ul style="list-style-type: none"> • each party has committed, and • is likely to commit, in the future, an act of abuse as described in the law
<p>What can the Petitioner do if the order is violated by the Respondent?</p>	<p>The Petitioner can file a Petition for Contempt against the Respondent. In addition, if the Respondent violates the “stay away” portions of the order, the Petitioner can file a criminal charge. Violation of the order is a fine of up to \$1000, and/or imprisonment for up to 90 days, for the first offense. For a subsequent offense, a fine of up to \$2500, and/or imprisonment for up to 1 year, may be imposed</p>	<p>The Petitioner can file a Contempt Petition against the Respondent. The Petitioner can also file a criminal charge. Violation of the order is a misdemeanor and on conviction a Respondent is subject to a fine for the first offense of up to \$1000, and/or imprisonment of up to 90 days</p>
<p>Can the police arrest the Respondent for violating the order?</p>	<p>If the “stay away” portion of the order is violated, the Respondent can be arrested with or without a warrant.</p>	<p>If the “stay away” portion of the order is violated, the Respondent can be arrested with or without a warrant</p>

<p>Can the order be modified or rescinded?</p>	<p>A motion to modify or rescind the order can be filed in any court with jurisdiction, or where the order was issued</p>	<p>A motion to modify or rescind the order can be filed in the court where the order was issued</p>
<p>Can the issuance or denial of the order be appealed?</p>	<p>An order issued in the District court may be appealed to the Circuit court. The appeal will be heard “de novo”. An order issued in the Circuit court may be appealed to the Court of Special Appeals</p>	<p>A peace order may be appealed to the Circuit court, “de novo”</p>
<p>What kinds of relief are available under the interim order?</p>	<ul style="list-style-type: none"> ● Respondent may be ordered to refrain from threatening or committing abuse ● End all contact with Petitioner ● Stay away from Petitioner’s home, place of employment, school, or residence of family member ● If Respondent and Petitioner are living together, and child abuse is alleged, temporary custody of children may be given to Petitioner ● If Respondent and Petitioner are living together, Respondent may be ordered to vacate their home, and temporary use and possession of the home may be awarded to the Petitioner 	<ul style="list-style-type: none"> ● Respondent may be ordered to refrain from threatening or committing abuse ● End all contact with Petitioner ● Stay away from Petitioner’s home, place of employment, or school

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How long does the interim order last?	Until the temporary protective order hearing, or the end of the second business day the office of the Clerk of the District Court is open after the interim order was issued, whichever is sooner	Until the temporary peace order hearing, or the end of the second business day the office of the Clerk of the District Court is open after the interim order was issued, whichever is sooner
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Section 1. What are Protective Orders?

In this section:

- What are Protective Orders?
- Types of Protective Orders
- Impact of Protective Orders

What are Protective Orders?

Maryland's Protective orders is a type of restraining order which can be issued by a Judge in order to protect a victim from an alleged abuser. Protective orders may be filed at any time by the person abused or threatened with violence by a person who is either the spouse, ex-spouse, domestic partner, someone with whom he/she shares a child, someone they dated or had a sexual relationship with, or are a current or ex-boyfriend or girlfriend of the person seeking protection from the court. If the abuser is someone who doesn't fit into any of those categories, such as a friend, acquaintance, neighbor, or a complete stranger, then you should file a "peace order" not a "protective order."

Peace Orders offer similar protections, but have different filing requirements. You can find information on [filing a peace order here](#). In both situations, the alleged victim is known as the "Petitioner" and the alleged wrongdoer is known as the "Respondent."

Protective orders offer many kinds of protection for the Petitioner. A Judge has the power to order a Respondent to stop threatening or committing abuse, to stay away from the Petitioner, or stop contacting them altogether. A protection order can also offer, the Petitioner, relief in other ways, as discussed in Section 4 of this guide.

The degree of protections offered to the Petitioner depend greatly on the evidence presented to the Judge and perhaps the timeliness of your filing. An attorney may be helpful in advising you about your case, filing for the protective order, or representing you in court.

For many of the same reasons, an attorney may be helpful in advising the person who has been accused of any wrongdoing (Respondent) about any defenses they make have in court. This advice may often cover whether the Respondent may have

grounds to file a protective order against the original filer. These are known as “mutual protective orders.”

Types of Protective Orders

There are three types of protective orders: the first is an “interim protective order,” A district court commissioner (quasi-Judge) issues these orders when courts are closed, times outside of 8:30-4:30, Monday-Friday, and on federal holidays. This order lasts for about 48 hours or until the second day once the courts are open.

The second type is a temporary protective order. This order is the more typical order which a Judge initially issues at the end of 48 hours or if you have filed your petition with the court during normal business hours. The Courts enter these orders provided that it finds that you demonstrated “reasonable grounds” that you or other person eligible for relief has been a victim of “abuse”. This order lasts for about one week or until the Final Protective Order hearing is held.

The third type is a final protective order. A Court may issue a final protective order if the Petitioner has proved grounds of abuse by higher standard called the “preponderance of evidence”. A FPO can last up to a year.

Impact of Protective Orders on Respondents

There are many things that a Respondent should know before attempting to handle a protective order on his or her own. For example, Maryland courts are required to post protective order cases on the Maryland Judiciary Case Search (as a “Domestic Violence Case”). The Case search is a public database which lists all cases pending in Maryland courts.

Having a protective order filed against a person may affect them in the following ways:

- Disqualification from obtaining a security clearance for employment;
- Inability to obtain a lease. Landlords may be unwilling to rent to you if you are the Respondent in a protective order;
- Inability to secure employment. Employers may be reluctant to hire you;
- Inability to obtain favorable credit. Banks may choose not to extend credit to you;

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- Jeopardization of your custody arrangement If you are a party in a domestic relations case,
- Incriminating yourself. Statements you make in the protective order case may be used against you if the police later charge you with a crime in the same matter or a related matter.
- Imperiling your immigration status.

Frequently, protective orders are also the focus of future divorces and custody litigation. An order may also affect your employment, security clearance, police work, or any job which requires the carrying of a handgun. For spouses, another consequence may also be the loss of support, if the Respondent then loses his or her job. To avoid the legal impediment of having an order issued, you may want to consider using the family court to enter a civil order instead.

Section 2. Grounds for Filing a Protective Order

In this section:

- What is Abuse?
- Who is Eligible to File for a Protective Order?

What is Abuse?

Maryland law defines an act of abuse as:

- Any act which causes physical Harm
- Any act that places someone in fear of serious bodily harm or death
- Battery and any non-consented to touching including: pushing, slapping, spitting, or shoving
- Rape or any sexual assault
- False imprisonment
- Abuse of a minor child or a vulnerable adult
- Stalking
- The Posting of Revenge Pornography

To obtain a protective order, a Petitioner can go to a District Court or Circuit Court where he or she will provide a few minutes of testimony to a Judge or a commissioner. This Judge or commissioner will then decide whether an order should be issued. In addition, make sure that you provide the Judge with the specific facts about happened to you. The more you can describe the particular ways you were injured and the parts of your body which were affected, the easier it will be for the Judge to understand your case. (See Article: “Protective/Peace Order what are they and how to get them” from [here](#).)

While a protective order can provide you with certain protections and relief from domestic abuse, a court order is no guarantee of your immediate safety. Call 911 if

you are in immediate danger. Report any violations of a protective order to the police.

Who is Eligible to File for a Protective Order?

In Maryland, you may file for a protective order if you and the alleged abuser:

- Are current or former spouses;
- Have lived together in an intimate relationship for at least 90 days during the past year;
- Are related by blood, marriage, or adoption;
- Are in a parent-child, or stepparent-stepchild relationship and have resided together for at least 90 days during the past year;
- Are in a caretaker-vulnerable adult relationship;
- Are the parents of a child together; or
- Have had a sexual relationship within 1 year before the filing of the petition.

(See §3-1501, Maryland Courts and Judicial Proceedings Article for Peace orders and §4-501, Maryland Family Law Article)

Section 3. Process for Filing a Protective Order

In this section:

- Overview of the Process
- Proof
- Penalty for Filing a False Order
- Duration of an Order
- Modifying, Rescinding, or Extending Protective Orders

Overview of the Process

There are four steps to getting a protection order:

- Step 1: Complete the Petition Form
- Step 2: File the Petition
- Step 3: Appear for a Temporary Hearing
- Step 4: Appear for a Final Hearing

Step 1: Complete the Petition Form

Even if someone suffers an act of abuse in another state or the perpetrator of the act lives out of state, the Petitioner may still file in Maryland as long as they are a resident of this state. You can file a petition for a protective order at a Maryland [District Court](#) or [Circuit Court](#).

There are no fees for filing protective orders.

Step 2: File the Petition

The Petition for getting a protective or peace order is relatively simple and straightforward. You must complete a form called “The Petition.” This is the first step in the process to obtain a court order. There is no time limit for filing protective orders in Maryland. But in deciding whether you have proven “reasonable ground that the abuse occurred, the court may consider the length of time between the filing of the Petition and the time of the alleged acts.

On the form, you will be asked to check off various boxes to indicate the type(s) of abuse you are contending happened to you. Make sure that the boxes you have checked are truly accurate. In addition, make sure that your written description on the form of the incidents which have led to file is factually accurate and detailed

since your statements may later be challenged in a court hearing by a lawyer representing the opposing side.

Step 3: Appear for a Temporary Hearing

Once you have filed your Petition along with any photographs or other evidence you have of the abuse, the clerk will ask you to wait to see the Judge or commissioner.

When you appear before the Judge or commissioner, he or she will ask you questions about your petition. If the Judge decides that you have offered “reasonable grounds” for the order, a temporary or interim order will be issued by the court.

Once the temporary order is issued, the court then gives it to local law enforcement to be served on the Respondent. The order becomes effective once it is served, and it prohibits the Respondent from contacting the Petitioner or anyone else listed in the order.

At the Temporary Protective Order hearing, if the court believes that there may be evidence that a vulnerable adult, or a child suffered abuse, the court may also request that the Department of Social Services (Child or Adult Protective Services) to prepare a report based on its investigation. This report, and sometimes the caseworker who wrote the report, will be available to the judge and the parties at the final hearing.

Step 4: Appear for a Final Hearing

A final hearing is scheduled usually about one week after the entry of the temporary protective order. This last hearing is called the “final protective order hearing”.

At the final hearing, the Judge hears from the Petitioner’s side first. The Petitioner and any witnesses called will testify. The Petitioner may have an attorney and the Respondent along with his or her attorney presents their case. You should expect to be cross examined by a lawyer representing the Respondent. The Respondent then presents his or her evidence. If the Judge finds by a preponderance of evidence that the Respondent has committed acts entitling you to relief, then a final order is issued.

If the Respondent has offered proof that he or she did not abuse the Petitioner, then the judge will deny the Petition.

Proof

If you have been injured by the act of someone else, you should provide photographs or medical reports of your injuries to the Judge. In addition, you

should preserve any electronic evidence which is relevant to your case. This may include text messages or emails.

Penalty for Filing a False Order

All of your statements in the Petition and in court are made under oath, If your statements are false, you could be prosecuted for filing a false statement.

Duration of an Order

An interim protective order may last one to two days.

A temporary protective order lasts for about one week or until the hearing for the final protective order occurs.

A final protective order may be effective for a period not to exceed 1 year, unless extended pursuant to a modification. The order should state the maximum time for which the order is effective.

Modifying, Terminating, or Extending Protective Orders

Anytime during the existence of an order, the Petitioner may file a request to have the order extended, terminated, or modified.

Section 4. Types of Relief Provided by the Court

In this section:

- Standards of Proof
- Types of Relief - Interim and Temporary Protective Orders
- Types of Relief - Final Protective Orders
- Protections for Person Eligible for Relief (PEFR)
- Permanent Protective Order After Conviction and Imprisonment

Standards of Proof

There are varying degrees or standards of proof required for each type of protective order. To determine the type of protective order and necessary levels of protection for the Petitioner, the Judge will review the evidence presented from both the Petitioner and the Respondent.

To issue an interim or temporary protective order the Court must find reasonable grounds- meaning that the Judge must find that reasonable grounds exist to believe that the Respondent abused the Petitioner.

Final protective order cases in Maryland require the Court to find by a “preponderance of the evidence” that the alleged abuse occurred. This phrase means that the Court must find that the commission of the abuse was more likely than not to have occurred. Another way to think about the standard of proof in a final protective order case is that there is a 51% likelihood the alleged conduct occurred. (Proof beyond reasonable doubt is calculated at a higher than 90% likelihood.)

The Court has the power to offer the following relief to a Petitioner who has prevailed at each stage of the process.

Types of Relief - Interim and Temporary Protective Orders

In an interim or temporary protective order, a Judge can order the abuser to:

- Stop abusing you.

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- Stay away from you and to not try to contact you or harass you at your home, school, job, or the place where you may be staying, stay away from your child's school, and from your family members' homes.
- Stay out of your house.
- Leave the home where the two of you live, if you are married to the abuser, AND you were living with your abuser at the time of the abuse.
- Leave the home if you are not married to the abuser, but were living with the abuser at the time of the abuse, AND your name is on the lease or deed for the house, OR you lived with the abuser for at least 90 days within the past year.
- The Judge can also give you temporary custody of any children that you have with the Respondent.
- The Judge can award temporary possession of any pet of the person eligible for relief or the Respondent.

(Source: <https://www.courts.state.md.us/legalhelp/domesticviolence>)

Types of Relief - Final Protective Orders

In a final protective order, a Judge can order any of the above, and can also:

- Establish temporary visitation with children.
- Award emergency family maintenance.
- Award use and possession of jointly titled car.
- Order counseling.
- Order the abuser to surrender all firearms.
- Order the abuser to pay filing fees and court costs.
- Order any other relief that the Judge determines is necessary to protect a person eligible for relief from abuse.

(Source: <https://www.courts.state.md.us/legalhelp/domesticviolence>)

Protections for Person Eligible for Relief (PEFR)

This section provides more details into the types of relief a Judge can order as necessary to protect a "person eligible for relief" (PEFR) from abuse. All types of

relief discussed here are available. However, the Judge may offer only certain types of relief depending upon the type of protective order and the circumstances surrounding your case.

Stop Subsequent Acts of Abuse. All relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 2 years if: (i) the court issues a final protective order under this section against a Respondent on behalf of a person eligible for relief for an act of abuse committed within 1 year after the date that a prior final protective order issued against the same Respondent on behalf of the same person eligible for relief expires; and (ii) the prior final protective order was issued for a period of at least 6 months. Md. Code FL § 4- 506(j)(2).

No further abuse. Order the Respondent to refrain from further abuse or threats of abuse.

No contact. A Judge may order the Respondent to refrain from contacting, attempting to contact, or harassing a PEFR.

Moreover, a Judge may order the Respondent to “stay away” from the Petitioner’s home, job, school, shelter, or childcare provider.

- **Stay away – residence.** Maryland Law defines “residence” to include the yard, grounds, out-buildings and common areas surrounding the residence (Family Law Article § 4-501(p)). This type of protection does not start or stop at the door but, rather, extends throughout the surrounding grounds also called “curtilage”.
- **Stay away – job, school, shelter.** This is an order requiring the Respondent to stay away from the Petitioner’s place of employment, school or temporary residence.
- **Stay away – childcare.** This is an order requiring the Respondent to stay away from a Petitioner’s childcare provider while the Petitioner’s child is in the provider’s care.

In situations where you, the Petitioner, and the abuser live together, the “residing together” need only be at the time of the alleged abuse, not at the time of the filing of the petition or at the time that the temporary protective order is under consideration. The alleged abuse may have taken place weeks or even months before the petition is presented to court.

Order to Vacate. If a Petitioner and a Respondent live together, a Judge may order the Respondent to vacate the home and give the Petitioner “temporary use and possession” of the home for up to one year.

However, the law sets “limits as to a non spouse.” The court may not grant an order to vacate and award temporary use and possession of the home to a non spouse unless the name of the Petitioner appears on the lease or deed to the home or the

Petitioner has resided in the home with the Respondent for a period of at least 90 days within 1 year before filing the petition.

In granting an order to vacate, a Judge may consider:

- (1) the housing needs of any minor child living in the home;
- (2) the duration of the relationship between the Respondent and Petitioner;
- (3) title to the home;
- (4) pendency and type of criminal charges against the Respondent;
- (5) the history and severity of abuse in the relationship between the Respondent and Petitioner;
- (6) the existence of alternative housing for the Respondent and the Petitioner; and
- (7) the financial resources of the Respondent and the Petitioner.

Retrieval of Personal Effects. If the Respondent has not already retrieved his or her belongings from the marital/family residence, the order should state expressly how a Respondent is to arrange to return home to do so. However, if you are a Respondent, you must ask the court to do this! The order may require that a law enforcement officer accompany the Respondent and may list the effects that the Respondent can remove.

Temporary Use and Possession of a Home. A Judge may also order temporary use (and possession) of a home in cases alleging the abuse of a child or a vulnerable adult. However, the “limits as to a non spouse” also apply here.

Temporary Use and Possession of a Vehicle. Award temporary use and possession of a vehicle jointly owned by the Respondent and PEFR, if necessary to the PEFR to be able to work or care for a child or other PEFR. A Judge will use the legal title of the vehicle to determine the possession of a motor vehicle.

Possession of Pet. A Judge may award possession of any pet of the person eligible for relief to the Petitioner or the Respondent.

Temporary Custody. The court’s power as to custody in a temporary protective order hearing is limited to minor children of a Petitioner and the Respondent. As such, a commissioner or the court may wish to direct a Petitioner requesting custody to bring proof of parentage to the final protective order hearing.

Visitation. Establish temporary visitation with a minor child of the Respondent and a PEFR on a basis that gives primary consideration to the welfare of the minor child and the safety of any other PEFR(s). The court can condition or restrict visitation as

to time, place, duration or supervision, or deny visitation entirely, as needed to protect any PEFR.

Counseling or a Domestic Violence Program. Order the Respondent or any or all PEFRs to participation in professionally supervised counseling or a domestic violence program.

Surrender of Firearms. The final protective order shall order the Respondent to surrender to law enforcement authorities any firearm in the Respondent's possession, and to refrain from possession of any firearm, for the duration of the protective order. Federal law provides that a Respondent subject to a properly executed order of protection may not obtain, possess, or transport a firearm or ammunition for the duration of the qualifying protective order.

Treatment and Service Options. In ordering counseling or anger management, for the Respondent, the court can order either of these two treatment methods, and make sure that they are structured in a way to ensure the safety of the victim, the children of the parties, or other vulnerable persons. For instance, If the protective order includes a "stay away" provision, the order should NOT also then require the parties to participate in joint counseling, mediation or classes that would require that they be present together or that could increase the likelihood of a chance meeting.

Anger Management Programs. A Petitioner may request that the Respondent participates in an anger management program.

Section 5. For Respondents: Were You Falsely Accused of Abuse You Never Committed?

In this section:

- Basic Strategies for Respondents
 - Consenting to a Protective Order
-

Basic Strategies for Respondent

Without sufficient proof of abuse, a Judge will not issue an order against you. If you believe the Petitioner has falsely filed this action against you, you have the right to offer proof of your lawful conduct at the hearing. This proof could consist of favorable email or text messages, as well as the presentation of witnesses on your behalf.

In addition, if you have been named as a Respondent in a peace or protective order case, remember that you could also be facing criminal charges for the same acts. In addition, if the police attempt to interview you, they may well use whatever information or explanations you give them against you in either the criminal or restraining order case.

Second, do not text or leave voice mail messages.

Third, preserve (do not delete or destroy) any evidence like electronic messages or anything else you might need for court.

Fourth, there are also many situations in which you can draft a private agreement between yourself and the Petitioner. These agreements can help you avoid the many risks that come about from the public disclosure of your peace or protective order matter.

These private agreements consist of a contract between you and the Petitioner to prohibit contact between each other, for example, and which provide for financial penalties for any violation. Private agreements thereby avoid the risk that a court order could be issued against you.

There are many other strategies which you can employ to provide you with the best chances of success. Your lawyer will help you with these.

Consenting to the Entry of a Protective Order

Consider consenting to the entry of a protection order. Consenting to the entry of an order means that you have consented to all of the prohibitions referred to in Section 4 against you. It also means that the court has not made any findings of abuse against you.

Consenting also avoids your having to testify in court. There are advantages and disadvantages with this approach. Consult with your lawyer to decide on the best approach, as a solution depends upon the circumstances surrounding your case.

Section 6. Basic Strategies for Petitioners

In this section:

- Basic Strategies for Petitioners

Basic Strategies for Petitioners¹

Undoubtedly, the circumstances in which you choose to file a petition for a protective order will be stressful for you and your family. This section offers just a few basic strategies for Petitioners to help navigate through the uncertainty of going to court. Other effective strategies are too numerous to mention here. They depend on the facts of your individual case.

First, enlist a friend, relative, or therapist to support you. If you can afford an attorney, hire one.

Second, take safety precautions such as changing the locks to your home.

Third, safely secure any electronic devices and any physical evidence that you will need to provide to the Court.

Fourth, secure your finances. Secure financial records such as W2s, pay stubs, bank records, and online banking passwords. These documents will be helpful in filling out forms and requesting EMF assistance if necessary.

Fifth, draft a summary of all of the events leading to the filing of the Petition to assist your lawyer in court.

Sixth, If you have children, do not criticize the other parent in front of them. Do not bring your young children to court as this could traumatize them.

Finally, before you return home or go to a place where the Respondent might be located, make sure the order has been served. You can find this out by contacting the law enforcement agency that serves the orders in your area. You can also sign up for VINE Protective Order (VPO), a service that will notify you by phone or email when Sheriff serves the protective order.

¹ These strategies apply equally to either petitioners or respondents

Section 7. Custody of Children and Visitation

This section:

- Custody and Visitation
- Emergency Family Maintenance

Custody and Visitation

If the Petitioner and the Respondent have children together, the Judge must decide the question of temporary custody. The Judge may also establish temporary visitation with a minor child of the Respondent.

In the event that visitation is allowed, the court should set the terms of visitation stated in specific days and times, rather than granting “reasonable” visitation to be worked out by the parties, and should give consideration to the protection, if any, needed during visitation. In awarding visitation, the court should consider requiring the parties to exchange children through a neutral person known to the parties, for example, a family member with whom both parents are comfortable, or through a court-based or private visitation service. A monitored exchange program can be used to minimize contact and conflict between the parties.

Emergency Family Maintenance

If the parties have minor children in common or the Petitioner seeks financial support to pay expenses of the family or the children, the Petitioner is entitled to seek Emergency Family Maintenance (EMF) from the Respondent, which can be ordered at the final protective order hearing. EMF is based on the needs of the party seeking money and the resources available to the Respondent. If the Petitioner seeks EMF, each is expected to complete a financial statement before the hearing and to provide it to the other party.

If the Court determines that abuse has occurred, it will hold a hearing to determine the amount, if any, of EMF the Respondent must pay to the Petitioner and children of the Respondent. At the hearing, the Petitioner should ask the Judge for a specific amount of support. The Judge will need to know how much the Petitioner is seeking from the Respondent. Bring pay stubs and W2’s, tax returns, and proof of family expenses. The amount of EFM can also be decided between the parties by agreement or, either party, may ask the court to decide the amount, if any, in a hearing.

Section 8. Violation of a Protective Order

In this section:

- Violation of a Protective Order

If a Respondent violates any of the terms of a protective order can result in a criminal charge punishable up to 6 months in jail for each violation. For example, possession of a firearm and that failure to comply with any order to surrender firearms is a misdemeanor (pursuant to 18 U.S.C. § 922(g)(8)).

Section 9. Shielding of Protective Order

In this section:

- Shielding of a Protective Order

Under certain circumstances, the person against whom a peace or protective order case was filed can keep the public from seeing information about the case. If the peace or protective order was denied or dismissed, either can file a Request to Shield Records. If fewer than three years has passed since the date of the denial or dismissal, the Respondent must also file a General Waiver and Release. Your signing this release means that you've given up your right to sue the other party for any act arising in this case. The Respondent must mail a copy of the petition to the Petitioner, or the court may serve it if you do not know the address of the other party.

Once the Court receives the Petition to Shield, it will schedule a hearing. Both the Petitioner and the Respondent will receive a Notice of the hearing, and both parties have a right to be present at the hearing.

The Court will grant the shielding request if all of the following are true: (1) the petition was denied or dismissed at either the interim, temporary, or final stage; (2) that a final protective order or peace order has not been previously issued against the Respondent in a proceeding between the Petitioner and the Respondent; (3) that there is not currently pending an interim or temporary protective order or peace order issued against the Respondent in a proceeding between the Petitioner and Respondent; and that there is not currently pending a criminal charge against the Respondent arising from the alleged abuse against the Petitioner.

If the Petitioner shows up at the hearing, he/she will be given an opportunity to explain why the Respondent's Petition should be denied. The Court may deny the shielding for good cause. In determining whether good cause exists, the Court will balance the privacy of the Respondent and the potential danger of adverse consequences to the Respondent against the potential risk of future harm and danger to the Petitioner and the community.

Consented to orders. These order may be shielded; however, there are now special rules which apply to whether and when a court will grant a petition to shield a final order to which the parties consented. You will need to consult with an attorney to learn more about this process.

FINAL THOUGHTS

Whether you are a Petitioner or a Respondent, every case is different, and there is no single right way to handle your case. Thoughtful preparation before any court appearance will always give you the best chance of success.