

Protection Orders That Matter

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Disclaimer

- The discussion that follows includes information about protection orders and the protection order process generally within the several states. You should always consult the law of your jurisdiction before proceeding to adopt any of the following suggestions.

Part I : Why do Protection Orders Matter?

- When properly crafted and enforced, protection orders have the potential to empower both victims and survivors of abuse, as well as law enforcement in preventing future abuse.

The Most Dynamic Cases

- Protection Orders have the potential to be some of the most dynamic cases, offering an opportunity for the court, the petitioner, and the respondent to enter an order that maximizes the legal protection of the petitioner, while minimizing the restraints placed on the respondent.

Definitions

- *Protection Orders, Orders for Protection, Restraining Orders, Injunctions, No-Contact Orders* are all court orders entered following notice and hearing which place some restrictions on an individual's conduct.
- *Petitioner or Plaintiff* is the person requesting the protection order.
- *Respondent or Defendant* is the person subject to the order.
- *Prosecution* refers to both a criminal prosecution for the violation of an order, and also refers to the petitioner's pursuit of the order.

“Protection Order? It’s Just a Piece of Paper”

- This statement does a disservice to everyone, including members of our legal system.

Our Legal System at its Best

- Protecting the Vulnerable
- Resolving Disputes Peacefully and Fairly
- Avoiding Self-Help
- Reflecting Society's Values

What is it?

- Protection Orders are a unique category of cases in the legal system.
- They are legislative creations, without common-law tradition.
- Though civil cases in nature, the remedy for violating them is a criminal punishment.
- For this reason, notice and an opportunity to be heard (Due Process) are vital.
 - Notice includes notice of the hearing date, time, and place. Also includes notice of allegations against respondent.
 - Also includes notice of the terms and extent of the order.
- This is the strength of the protection order.

What Can it Do?

- Following a due process hearing, the court can restrict the Respondent from engaging in otherwise lawful conduct.
- Put another way, what appears to be perfectly innocent conduct may be prohibited if it impacts a specific person. The Respondent has lost the right to impact that person while the order is in place.
- Because the Respondent is put on notice of the prohibited conduct, arrest and prosecution are the natural consequences of a violation.
- Law enforcement is empowered intervene and to stop abuse before any other crime is committed.
- The victim is empowered to stop the abuse as well.

What is it Not?

- Not a Criminal Sanction or Punishment.
 - Criminal Sentences focus on a past incident, and punish that conduct in an attempt to correct future behavior or somehow atone for the transgression.
 - Protection Orders consider past conduct, including patterns of past conduct, and attempt to predict future conduct.
- Not a Severe Restriction on Liberty Interests.
 - Optimally, the Respondent is present for the due process hearing, and can be included in fashioning a remedy for the future.

Part II: What Should a Protection Order Include?

- Specific:
- Language
- Limitations
- Exceptions to the Limitations

Specific Language

- The remedy for a violation is arrest and prosecution.
- Law enforcement may be reluctant to arrest, or even investigate, unless the violation seems clear.
- Clearly defined and specific limitations should be spelled out and explained to the respondent.
- Without this notice element, law enforcement is disadvantaged, but at the same time, petitioner is not protected because the respondent does not have a clear understanding of what is prohibited.

Limitations

- Restrictions on the Respondent's conduct are the essence of the protection order.
- To an extent, these will be determined by the law of your jurisdiction, and any forms that may comprise the final or temporary order.

Exceptions

- If there are exceptions to the limitations, these also need to be carefully crafted and spelled out clearly.

PART III: Other Considerations

Geographical Restrictions

- Maintain specified distance – Advisability
- Areas that are off limits

Restrictions on Conduct

- Conduct may be otherwise innocent and lawful, under other circumstances

Restrictions on Contact

- “Innocent” or “Friendly” Contact
- Parties have ongoing need for contact
 - Children*
 - Business
 - Neighbors
 - Family
- *Most frequently abused order, requires careful drafting.

Limitations on Restrictions

- Restricting all communication may implicate First Amendment
- Additional protected parties
- Business as protected party

Modifications of Existing Orders

- Lifting no Contact should be done step-wise, if permitted
- Consider having Petitioner explain reasons on the record
- Consider alternate Limitations, such as “Absolute Sobriety”.

PART IV: The Hearing

- Petitioner has the Burden of Proof
 - This includes the burden of production of evidence
 - The system is adversarial, no order is granted if Petitioner fails to meet the burden
 - The defense to the allegations tends to focus on this burden
 - Potential petitioners should weigh the strength of this defense before proceeding

Absence of Traditional Evidence

- Whether the allegations are of physical abuse, stalking, or harassment, this conduct tends to take place privately and secretively, and can leave little physical evidence.
- In domestic relationships, victims are frequently reluctant to report behavior. There may be no past reports to introduce.
- Petitioners should understand the distinction between admissibility of evidence and weight of evidence.
 - Witness testimony is evidence
 - Corroboration is also evidence
 - Testimony does not lose its character by lack of corroboration, although it may lack weight
 - Impeachment of testimony diminishes its weight

Application of Facts to Law

- This is ruled by the law of your jurisdiction
- What is required? A recent act? A pattern of Abuse?
- This will determine which facts need to be brought out, and how they are applied.

PART V: Conclusion

- Protection Orders should matter. By providing due process to both parties, the courts can enter an order which empowers law enforcement and victims/survivors to prevent future abuses in a legal manner.
- These orders should be taken seriously by all who are involved in creating and enforcing them.