

**Minnesota Second Judicial District  
Juvenile and Family Division**

**Guide for Handling:**

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**ORDERS FOR PROTECTION  
AND  
HARASSMENT RESTRAINING ORDERS**

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**Second Judicial District  
Family Violence Coordinating Council**

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# I. PREFACE AND INTRODUCTION

## A. PREFACE

The Second Judicial District Family Violence Coordinating Council was formed as an interdisciplinary working group, as were similar councils in every judicial district throughout the state, on recommendation of the Minnesota Conference on Family Violence and the Courts, held in November 1993. The Council has met regularly since that time to work on improving Ramsey County's handling of domestic violence cases in all parts of the system.

In 1997, the Minnesota Legislature passed into law [Minn. Stat. §484.79](#), establishing Family Violence Coordinating Councils (FVCC). "A judicial district may establish a Family Violence Coordinating Council for the purpose of promoting innovative efforts to deal with family violence issues. A coordinating council shall establish and promote interdisciplinary programs and initiatives to coordinate public and private legal and social services and law enforcement, prosecutorial and judicial activities."

The chief judge appoints the members of the FVCC with representatives from judges, court administrators, probation; domestic abuse advocates and social services; health care and mental health care providers; law enforcement and prosecutors; public defenders and legal aid; educators and child protection works; and public officials and other public organizations.

Since 1997, the Second Judicial District Family Violence Coordinating Council (FVCC) has continued as an interdisciplinary working group pursuant to the statute. The original *Guide for Handling Orders for Protection and Harassment Restraining Orders* was prepared by the FVCC and working subcommittee with adoption by the bench on April 19, 2008. The FVCC has been responsible to periodically update the *Guidelines* with a working subcommittee, approval by the FVCC, and subsequent approval by the bench. The Second Edition was approved by the bench on May 26, 2009. The Third Edition was approved by the bench on February 22, 2011. Through the years, the guidelines have served everyone working on domestic violence cases in Ramsey County as a tool for interdisciplinary training, assisting in identification of weaknesses in the system and ways to improve systemic handling of domestic abuse, developing protocols when needed, and coordinating proceedings involving family violence issues in keeping with [Minn. Stat. §484.79, Subd. 3](#).

This Fourth Edition of the *Guide for Handling Orders for Protection and Harassment Restraining Orders* was drafted by a subcommittee and approved by the FVCC on October 8, 2013. The subcommittee consisted of the following members: Hon. Robert Awsumb (Judge), Bree Adams Bill (St. Paul Intervention Project), Amanda Jameson (Court Administration), Danielle Kluz (Bridges to Safety), Ann Leppanen (Retired Referee), Karen Oleson (Tubman), Rebecca Rossow (Referee), Valerie Snyder (Southern Minnesota Regional Legal Services), James Street (Referee), and Nykee Younghans (Court Domestic Abuse/Harassment Office).

Changes were reviewed and input was provided from all members of the FVCC. The Guide was reviewed by the Family and Juvenile Court bench. The Second Judicial District Court bench approved the Fourth Edition of *Guide for Handling Orders for Protection and Harassment Restraining Orders* on \_\_\_\_\_, 2013. The Fourth Edition incorporates statewide legislative, case law developments, and

local procedural changes for the handling of Orders for Protection and Harassment Restraining Orders since 2010 including statutory changes that took effect August 1, 2012.

Members of the 2013 Second Judicial District Family Violence Coordinating Council:

Judge Robert Awsumb, Second Judicial District Court  
Judge Gary Bastian, Second Judicial District Court  
Janice Barker, Ramsey County Attorney's Office  
Kevin Beck, Suburban Prosecutor  
Shawn Betts, Defense Attorney  
Bree Adams Bill, St. Paul Intervention Project  
Bret Byfield, South Metro Human Services  
Michael Davis, Ramsey County Public Defender's Office  
Maria DeWolf, St. Paul City Attorney's Office  
Patty Dunder, St. Paul Public Schools  
James Erickson, Jr., Suburban Prosecution  
Jill Gerber, Ramsey County Attorney's Office  
Sara Gonsalves, State Court Administration  
Corey Hazelton, Ramsey County Community Corrections  
Amanda Jameson, Second Judicial District Court  
Peter Jessen-Howard, Ramsey County Juvenile Corrections  
Sean Johnson, St. Paul Police Department  
Bob Kelly, Bob Kelly Programs  
Joe Kelly, Suburban Prosecutor  
Danielle Kluz, Bridges to Safety  
Deputy Chief Dave Kvam, Maplewood Police Department  
Carolina Lamas, Neighborhood Justice Center  
Mary Pat Maher, Project Remand  
Commander Rollie Martinez, Ramsey County Sheriff's Office  
Tami McConkey, Ramsey County Attorney's Office Victim/Witness Program  
Rebecca McLane, St. Paul Intervention Project  
Heather Nelson, Regions Hospital  
Denise Oleary, Emergency Communications Center  
Karen Oleson, Tubman  
Commander Joe Paget, Ramsey County Sheriff's Office  
Jan Peterson, Second Judicial District Court  
Dave Pinto, Ramsey County Attorney's Office  
Jackie Powell, Women's Advocates  
Robert Sierakowski, Ramsey County Corrections  
Val Snyder, Southern Minnesota Regional Legal Services  
Referee Jim Street, Second Judicial District Court

## B. INTRODUCTION

The Domestic Abuse Act is found at [Minn. Stat. §518B.01](#) and was enacted as means to protect victims of domestic abuse<sup>1</sup> by providing an efficient remedy for victims of abuse<sup>2</sup>.

The Act is a substantive statute that is complete in itself, carefully drafted to provide limited types of relief to persons at risk of further abuse.<sup>3</sup> It is also a remedial statute, and as such receives liberal construction in favor of the injured person.<sup>4</sup> It gives law enforcement a tool to protect a victim of domestic violence by providing authority for immediate arrest of respondent without needing evidence of physical violence.

The *Harassment Restraining Order Statute* provides relief for victims of repeated, unwanted acts or single incidents of physical or sexual assault. There is no familial or dating relationship required for protection under this Act.

The *Domestic Abuse Act* provides for relief to be granted on an *expedited* basis. Thus, the rights and obligations of the parties are contained within the Act itself, and should not be tied to unnecessary external requirements.<sup>5</sup>

The specialized process of Domestic Abuse Court is designed to permit parties to proceed *pro se*. The process is governed by the [Rules of Civil Procedure](#), including the lower civil burden of proof by a fair preponderance of the evidence.<sup>6</sup> In 2012, the Rules of General Practice were amended effective May 1, 2012, and specifically state that they apply to Orders for Protection.<sup>7</sup>

The underlying purpose of Orders for Protection is to provide safety to victims.<sup>8</sup> There are situations where the potential for further violence is extreme. Danger assessment tools have been developed by researchers to attempt to identify warning signs for potential lethality. A copy of lethality assessment tools used by St. Paul and suburban Ramsey County law enforcement are included with this manual for easy reference.<sup>9</sup>

Recognize that each case is different and there are still cases in which a homicide occurs that was not foreseeable. However, there are certain warning signs that are important to know.

This guide was developed from a consensus on domestic abuse court procedure as it is practiced by the Ramsey County District Court Bench. Its purpose is to make the practice smoother for judicial officers as well as more predictable for parties and attorneys.

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<sup>1</sup> *Burkstrand v. Burkstrand*, 632 N.W.2d. 206, 211 (Minn. 2001)

<sup>2</sup> *State v. Errington*, 310 N.W.2d. 681, 682 (Minn. 1981)

<sup>3</sup> *Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992)

<sup>4</sup> *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. Ct. App. 1992)

<sup>5</sup> *Baker* at 286

<sup>6</sup> [Minn. Stat. §518B.01, subd. 5\(e\)](#)

<sup>7</sup> [Minn Rule Gen. Prac. 301.01 \(b\)3](#)

<sup>8</sup> *Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992) and *Burkstrand v. Burkstrand*, 632 N.W.2d 206 (Minn. 2001)

<sup>9</sup> See [Appendix A](#)

# **ORDERS FOR PROTECTION**

## **II. SERVICE AND COST**

### **A. Personal Service**

The petition and any order other than Orders for Dismissal shall be served on the respondent personally by peace officers licensed by the State of Minnesota, corrections officers, court service officers, parole officers, and employees of jails or correction facilities.<sup>10</sup>

The filing fees for an Order for Protection are waived for the petitioner, although the respondent may be ordered to pay the petitioner's filing fees and costs.<sup>11</sup>

The respondent may also be served a "short form" notification in lieu of personal service if the respondent is located by a law enforcement officer who determines that there is an existence of an unserved Order for Protection.<sup>12</sup> This form gives notice to the respondent of the order, how to get a copy of the full order, and that the Order for Protection is now enforceable.

### **B. Service by Publication**

If personal service cannot be made upon the respondent, the Court may order service by publication, in which publication must be made as in other actions.<sup>13</sup>

The moving party must file an Affidavit and Order for Alternate Service or Publication. The Affidavit must state that an attempt at personal service made by a sheriff or other law enforcement or corrections officer was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's last known address or the residence is not known to the petitioner. An attempt to serve by law enforcement is necessary even if there is no known address for respondent. The Court can then order service by alternate service, which must include service by publication and continue the hearing for another initial hearing once publication has been completed.<sup>14</sup>

If the petitioner is proceeding under the "No Hearing" provisions as described below<sup>15</sup>, then service by publication may be made by one week published notice. Service is complete 7 days after publication.

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<sup>10</sup> [Minn. Stat. §518B.01, subd. 8 and 9a](#)

<sup>11</sup> [Minn. Stat. §518B.01, subd. 3a](#)

<sup>12</sup> [Minn. Stat. §518B.01, subd. 8a](#)

<sup>13</sup> [Minn. Stat. §518B.01, subd. 8\(c\)](#)

<sup>14</sup> *Ayala v. Ayala*, 749 N.W.2d 817 (Minn. Ct. App. 2008)

<sup>15</sup> [Minn. Stat. §518B.01, subd. 7](#)

If an affidavit by the petitioner alleging the need for service by publication is not filed within 14 days of the issuance of an *ex parte* order, the order expires. If the personal service or service by publication is not completed within 28 days of the issuance of the *ex parte* Order for Protection, the order expires.<sup>16</sup>

### **III. ONE JUDGE, ONE FAMILY**

The combined Family, Civil Harassment, Juvenile and Probate Jurisdiction, which is often referred to as “One Judge, One Family,” suspends the District Court review and referee findings may be appealed directly to the Court of Appeals.<sup>17</sup>

- The protocols of One Judge, One Family are predicated on the first case drives if/when the next case is blocked.
- Judges will hear all post judgment family matters related to cases they are/were blocked to during the years they are assigned to Juvenile and Family Court.
- Open cases from an outgoing judge will be reassigned to an incoming judge.
- Post judgments from a family case of a judge or referee that is no longer in Juvenile and Family Court will be rotationally assigned, unless there are other case types blocked to an individual judge or referee.
- New CHIPS matters or re-opened CHIPS matters filed after the assigned judge or referee is no longer in Juvenile and Family Court will be assigned as a new case and not according to a judicial lineage (e.g., motions to re-open jurisdiction).
- OFP and HRO cases are only blocked when there is a companion Dissolution, Custody, Transfer of Legal Custody, Paternity, or CHIPS case assigned to a Judicial Officer. Individual Judicial Officers decide whether or not a Harassment case will be blocked.

### **IV. EX PARTE ORDERS FOR PROTECTION**

#### **A. Jurisdictional Requirements<sup>18</sup>**

- Either party lives in Ramsey County; or
- If there is pending or completed Family Court proceedings in Ramsey County involving the parties or their minor children; or
- The alleged domestic abuse occurred in Ramsey County.

There are no minimum residency requirements that apply to a petition for an Order for Protection.

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<sup>16</sup> [Minn. Stat. §518B.01, subd. 7\(d\)](#)

<sup>17</sup> [Minn. R. Gen. Pract. 312.01](#)

<sup>18</sup> [Minn. Stat. §518B.01, subd. 3](#)

## B. Relationship<sup>19</sup>

The parties must be:

- Married/formerly married; or
- Living/lived together; or
- Have a child/unborn child together; or
- Have/had significant sexual/romantic relationship; or
- Related by blood

The Court of Appeals clarified that parties who shared common kitchen and living areas with separate sleeping areas, but had no romantic or blood relationship were still covered under the Act.<sup>20</sup> In *Sperle v. Orth*<sup>21</sup>, the Court of Appeals held that past relationships qualify as a “significant sexual or romantic relationships” and that a petitioner who had recently ended a three-year relationship was a family or household member within the statutory definition.

## C. Allegations of Domestic Abuse

If the matter concerns a first-time request by the petitioner for an Order for Protection ([see section IX for subsequent orders](#)), the judicial officer must determine if there has been an act of domestic abuse. Domestic abuse means the following, if committed against a family or household member by a family or household member<sup>22</sup>:

- Physical harm or bodily injury or assault; or
- Infliction of fear of imminent physical harm or bodily injury or assault<sup>23</sup>; or
- Terroristic threats: “threatening directly or indirectly to commit any crime of violence with the purpose to terrorize another or in reckless disregard of the risk of causing such terror.” In an unpublished Court of Appeals decision, the Court of Appeals held that attempted suicide is not a “crime of violence” as described in [Minn. Stat. §609.713](#) (referring to crimes listed in [Minn. Stat. §609.1095, subd. 1\(d\)](#), which defines crimes of violence). However, the Court affirmed the issuance of the order finding the respondent demonstrated “reckless disregard of the risk of causing such terror;”<sup>24 25</sup> or
- Criminal sexual conduct (first through fifth degrees)<sup>26</sup>; or
- Interference with an emergency call. The Court of Appeals held that to establish the elements of this crime, the state must establish that an emergency existed at the time of the call which

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<sup>19</sup> [Minn. Stat. §518B.01, subd. 2\(b\)](#)

<sup>20</sup> *Elmasry v. Verdin*, 727 N.W.2d 163 (Minn. Ct. App. 2007)

<sup>21</sup> *Sperle v. Orth*, 763 N.W.2d 670 (Minn. Ct. App. 2010)

<sup>22</sup> [Minn. Stat. §518B.01, subd. 2](#)

<sup>23</sup> There is no “reasonable person” standard. The focus is on the petitioner’s perception of fear, not whether that perception might seem “reasonable” to another person.

<sup>24</sup> [Minn. Stat. §609.713, subd. 1](#)

<sup>25</sup> The Court could find that the respondent inflicted fear of imminent physical harm on the basis of a threat to attempt suicide and issue the order under a separate theory from “terroristic threat.”

<sup>26</sup> [Minn Stat. §609.342](#), [§609.343](#), [§609.344](#), [§609.345](#), and [§609.3451](#)

is defined as a “serious event that demands immediate action” and is not limited to threats of violence, violence or an underlying criminal event.<sup>27</sup>

#### **D. Ex Parte Options**

When considering a request for an ex parte order, the judicial officer should determine whether or not the application alleges there is an immediate and present danger of domestic abuse.

##### **1. Grant Ex Parte Order Without Hearing**

A hearing is not required unless the petitioner requests relief beyond the relief allowed in [Minn. Stat. §518B.01, subd. 7\(a\)](#).

##### **2. Grant Ex Parte Order With a Hearing Date**

A hearing is required if the petitioner requests one or if petitioner requests relief beyond [Minn. Stat. §518B.01, subd. 7\(a\)](#).

###### **a. Court Grants the Relief Requested**

###### **b. Court Declines to Order Some of the Relief Requested**

When the judicial officer modifies the relief requested then a hearing must be held within 7 days.<sup>28</sup>

##### **3. Deny Ex Parte Order**

###### **a. Issue Order for Hearing**

If the judicial officer decides that neither order will issue, a hearing must still be scheduled within seven (7) days.<sup>29</sup> Often, if no *ex parte* order has been issued, the petitioner may be fearful to proceed without an *ex parte* order and may elect to withdraw the petition, and no hearing is scheduled.

###### **b. Grant Harassment Restraining Order**

If the judicial officer decides not to issue the *ex parte* Order for Protection, s/he may indicate a willingness to issue a Harassment Restraining Order. The petitioner must file a petition and affidavit for one. See [Harassment Restraining Orders](#) below.

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<sup>27</sup> *State v. Brandes*, 781 N.W.2d 603(Minn. Ct. App. 2010) and [Minn. Stat §609.78, subd. 2](#)

<sup>28</sup> [Minn. Stat. §518B.01, subd. 5\(c\)](#)

<sup>29</sup> [Minn. Stat. §518B.01, subd. 5\(a\)](#)

### E. Length of Time Ex Parte Order for Protection Is Effective

If the petitioner has selected an order through the “No Hearing” option under [Minn. Stat. §518B.01, subd. 7](#), relief granted by the Order for Protection shall be for a period not to exceed two years, except when the Court determines a longer period is appropriate.

In all other situations, the *ex parte* order remains in effect until a hearing is held and the order expires or a new order is issued.

If the respondent is not served the *ex parte* order within 14 days, the order expires.<sup>30</sup>

## V. Relief

An Order for Protection may include the following relief:

### A. No Abuse

An Order for Protection (whether *ex parte* or following hearing) prohibits the respondent from committing acts of domestic abuse upon the petitioner and/or the minor child(ren).<sup>31</sup>

### B. No Contact

An Order for Protection (whether *ex parte* or following hearing) orders the respondent to have no contact with the petitioner whether in person, by telephone, mail, e-mail, through electronic devices, or through a third party.<sup>32</sup>

On rare occasion, a petitioner will ask that this provision not be included, or that exceptions be listed. Such a provision or exception to no contact may be requested and ordered.

#### BEST PRACTICE

*The Order for Protection form allows for exceptions to no contact. Use these exceptions sparingly. Any exceptions can cause extreme enforcement issues and should be rarely used. When used, be specific.*

### C. Exclusion from Residence

An Order for Protection (whether *ex parte* or following hearing) may exclude the respondent from the dwelling that the parties share or from the residence of the petitioner.<sup>33</sup>

<sup>30</sup> [Minn. Stat. §518B.01, subd. 7\(d\)](#)

<sup>31</sup> [Minn. Stat. §518B.01, subd. 7\(a\)](#)

<sup>32</sup> [Minn. Stat. §518B.01, subd. 7\(a\)](#)

<sup>33</sup> The petitioner’s right to apply for this relief is not affected by her/his leaving the residence to avoid abuse. An Order for Protection can be issued to allow the petitioner to return to the residence and the respondent be excluded. [Minn. Stat. §518.B.01, subd. 10\(a\)](#)

This provision does not decide ownership of property and it is not the same as dissolution’s “occupancy of the homestead.” Those decisions are properly made within the dissolution proceeding, and the domestic abuse proceeding is not a substitute for that. If the petitioner moves, the new dwelling or residence of the petitioner will be protected under the provision.

The Court has authority to exclude the respondent from the dwelling, but not the petitioner.<sup>34</sup>

#### **D. Exclusion from Employment**

The Order for Protection (whether *ex parte* or following hearing) may exclude the respondent from the petitioner’s place of employment or otherwise limit access to petitioner by the respondent at the petitioner’s place of employment.<sup>35</sup>

#### **E. Exclusion of Specific Distance Surrounding Residence**

The Order for Protection (whether *ex parte* or following hearing) may exclude the respondent from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order.<sup>36</sup>

Based on *State v. Carufel*<sup>37</sup>, the format of the order has been suggested by Ramsey County Bench policy to state, “2 city blocks or ¼ mile in all directions, whichever is greater.”

#### **F. Custody and Parenting Time**

The Order for Protection (whether *ex parte* or following hearing) may grant temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis that gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the Court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. The Court’s decision on custody and parenting time shall in no way delay the issuance of an Order for Protection granting other relief.<sup>38</sup>

Child custody and parenting time in an Order for Protection are always temporary until order of the Family Court.

#### **1. No Marriage, No Custody/Parenting Time Order**

- Mother Petitioner: In most domestic abuse situations, the child is placed in the custody of the mother (petitioner) where there is not a previous custody order.
- Father Petitioner: If the parties were never married and the father is the petitioner and there is no custody order, the order should remain silent as to custody and/or

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<sup>34</sup> *Swenson v. Swenson*, 490 N.W.2d 668 (Minn. Ct. App. 1992)

<sup>35</sup> [Minn. Stat. §518B.01, subd. 7\(a\)](#)

<sup>36</sup> *Ibid*

<sup>37</sup> *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010)

<sup>38</sup> [Minn. Stat. §518B.01, subd. 6](#)

parenting time.

#### **BEST PRACTICE**

*In order to make custody clear, the “other” box should be marked and the statement “Paternity has not been decided by a Court, and the Court is not addressing issues of custody, parenting time (visitation), and support.” (Under [Minn. Stat. 257.541, subd. 1](#), where paternity has not been decided, sole physical and legal custody of a child is with the biological mother.) Without this, an enforcement problem often arises, as police, day care, and/or schools will not assist the mother with custody if the order does not say this.*

### **2. Prior Order Gives Joint Custody or Parties Are Married and No Order**

If the children were born during the marriage, and there is no court order, they have equal rights to the children.

If parties have joint physical custody through a court order, then access is governed by that order. In this situation, the petitioner could be granted custody; however, the question of temporary custody shall consider the safety of the victim and children given the facts alleged in the petition.

### **3. Prior Order Gives Petitioner Sole Physical Custody**

Petitioner should continue to have sole custody in the Order for Protection (*ex parte* and after hearing).

### **4. Prior Order Gives Respondent Sole Physical Custody**

Just because the respondent has custody does not mean the petitioner should not get an Order for Protection. However, granting the petitioner custody in an *ex parte* order should be done cautiously. It is best to have clear, specific allegations that would show risk to the safety of the children.

Some helpful questions for this rare situation: Are there previous or current Orders for Protection? Is there a criminal matter? A Juvenile Court matter? Advice from a prior bench book is to proceed with caution. In matters involving specific or direct allegations of harm to children the Court has the authority to issue an order on behalf of children that could override previous custody orders.

### **5. Petitioner Is Not Parent of Protected Child(ren)**

There is no explicit statutory authority authorizing the Court to grant custody or parenting time to a non-parent. There are occasions when the Court is confronted with a non-parent petitioner seeking custody and there are serious allegations that raise grave concerns for the safety of the child in the parent’s care. The Court should proceed cautiously and make specific findings to support the decision.

## BEST PRACTICE

*In cases where the petitioner is not the parent of the protected child(ren), the Court should proceed cautiously and make specific findings to support the decision.*

### G. Protection of Pets or Companion Animals

The 2010 Minnesota Legislature expanded jurisdiction for the Court to direct the care of a companion animal owned, possessed or kept by either party or either party's child in an Order for Protection (whether *ex parte* or following hearing).<sup>39</sup>

Jurisdiction was also expanded to allow the Court to restrain a party from injuring or threatening to injure a companion animal in the other party's residence as an indirect means of threatening the other party.<sup>40</sup>

### H. On Behalf Of (OBO) Minor Child(ren)

A petitioner may seek an Order for Protection (whether *ex parte* or following hearing) on his/her own behalf, solely on behalf of minor child(ren), or on behalf of him/herself and minor child(ren). Orders on behalf of minor child(ren) are granted when there are allegations of domestic abuse to the child(ren).

Usually, Orders for Protection on behalf of child(ren) require the respondent to have no contact with the child(ren) and place the child(ren) in the custody of the petitioner until a hearing is held or the order expires. Orders for Protection on behalf of child(ren) issued following a hearing will usually place the child(ren) in the custody of the petitioner but may make a provision for contact between the respondent and the child(ren), giving primary consideration to the safety of the petitioner and the child(ren) (e.g. supervised parenting time, etc.).

If the order is issued on behalf of a child and the Court has reason to believe that the minor child is a victim of domestic child abuse<sup>41</sup> or neglect<sup>42</sup> as defined by statute<sup>43</sup>, then the Court may need to appoint a Guardian ad Litem. (Go [here](#) for more information on Guardians ad Litem.)

This may be a situation in which the Court will consider ordering parental access be supervised.

The following circumstances should be taken into consideration when a petitioner is seeking an Order for Protection on behalf of minor child(ren):

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<sup>39</sup> [Minn. Stat. §518B.01, subd. 6 and 7](#)

<sup>40</sup> [Minn. Stat. §518B.01, subd. 7](#)

<sup>41</sup> [Minn. Stat. §260C.007](#)

<sup>42</sup> [Minn. Stat. §626.556](#)

<sup>43</sup> [Minn. Stat. §518.165](#)

## 1. Caption of Case

Consider whether the child should be included in the caption of the case. One situation when this is necessary is when there is an order *solely* on behalf of children because there are concerns for the safety of the children and there are no allegations of abuse against the adult petitioner. The only basis to issue an order in this situation is if the child has been a victim of abuse.

The order may not be issued on behalf of a child named in the caption if the alleged abuse is not directed at the child. The Minnesota Supreme Court reversed the issuance of an Order for Protection on behalf of a minor child against a grandfather who committed domestic abuse against the grandchild's mother. The person seeking the order was the mother's husband.<sup>44</sup>

The Court noted the Act authorizes a district court to grant relief to protect victims and children if the alleged abuse is directed at one of them. "[A] court may grant relief to minors in a family or household where domestic abuse occurs, pursuant to an OFP granted to the victim of the abuse."<sup>45</sup> Thus, even if the Act allows petitions by and on behalf of victims only, minors in a family or household with a domestic abuse victim are still eligible for relief."<sup>46</sup>

Respondents may resist the issuance of an Order for Protection on behalf of a child due to its perceived stigma. They may fear that such an order will raise concerns to third parties about the respondent's suitability to have contact with children in subsequent court proceedings.

There may be an advantage for enforcement purposes if the child is named in the caption due to the limited information available to law enforcement in the field.

## 2. Relief to Protect Child

Consider the type of relief that should be ordered to protect the child(ren). It is unnecessary to issue the order on behalf of the child because of concerns about the respondent's parenting abilities and the Court believes that the respondent should have supervised parenting time. Those concerns can be addressed regardless of whether the order is issued on behalf of the child because the Court must consider the safety of the victim and the child as well as the best interests of the child when making decisions about custody and parenting time. Primary consideration must be given to the safety of the victim and the children.<sup>47</sup>

## 3. Domestic Abuse Versus Reasonable Force to Restrain or Correct a Child

In situations where the respondent is the other parent and an Order for Protection on behalf of children is sought on the basis of domestic abuse to the children, the judicial officer must determine whether the acts of respondent constitute domestic abuse or whether they constitute the

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<sup>44</sup> *Schmidt v. Coons*, 818 N.W.2d 523 (Minn. 2012)

<sup>45</sup> See [Minn.Stat. § 518B.01, subd. 6\(a\)\(13\)](#), authorizing a district court to order 'other relief as it deems necessary for the protection of a family or household member'

<sup>46</sup> *Schmidt v. Coons*, 818 N.W.2d 523, 529 (Minn. 2012).

<sup>47</sup> [Minn. Stat. §518B.01, subd.6\(a\)\(4\)](#) and *Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992)

reasonable use of force by a parent to restrain or correct a child.<sup>48</sup> There is some question as to whether the Court should apply the standards for domestic child abuse found in [Minn. Stat. §626.556, subd. 2\(d\)](#); the form order promulgated by the Council of Chief Judges contains this notation.

The Minnesota Supreme Court has held that the use of corporal punishment in the form of using a paddle to strike a teenage son was not abuse in the context of determining whether child abuse occurred for child protection purposes.<sup>49</sup>

#### **4. No Parental Access If No Adjudication of Parentage**

As in actions which are not on behalf of children, *the Domestic Abuse Court does not have jurisdiction* to decide custody or parenting time if there has not been an adjudication of parentage or if there has not been an order concerning custody/parenting time as part of a paternity proceeding, even if it is an action for the protection of the children. This creates difficulty in the relatively rare circumstance where the petitioner alleges domestic abuse of the children by respondent/mother and the action is brought by unadjudicated petitioner/father. Each judicial officer must decide case by case how this issue will be resolved.

#### **BEST PRACTICE**

*In such situations, each judicial officer must decide case by case how this issue will be resolved.*

The Minnesota Supreme Court held that a father who had not been to court to establish his custody or parenting time rights, yet the parties had executed a valid Recognition of Parentage, could be granted supervised parental access over the objections of the mother.<sup>50</sup> The decision does not change the requirement that the Court focus on the safety of the victim and child when determining custody and parental access, nor does it require the Court to award parental access.

#### **I. Continuation of Insurance Coverage**

The Order for Protection (*ex parte* or after hearing) may require the respondent to continue all currently available insurance coverage without change in coverage or beneficiary designation.

## **VI. Additional Relief That Requires Hearing**

### **A. Child Support**

Temporary child support can be ordered following a hearing. Temporary child support is in effect until the Family Court makes a subsequent order or the Order for Protection expires. Child support may be determined on the same basis as is provided in Minnesota Statutes, Chapter 518 or 518A,

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<sup>48</sup> [Minn. Stat. §609.06\(b\)](#)

<sup>49</sup> *In the Matter of Children of N.F.*, 749 N.W.2d 802 (Minn. 2008)

<sup>50</sup> *Beardsley v. Garcia*, 753 N.W.2d 735 (Minn. 2008)

and order the withholding of support from the income of the person obligated to pay according to Chapter 518A.<sup>51</sup>

If the information is available either through documentary or testimonial evidence, it is important for victims to be able to receive immediate child support as part of a larger plan to stay safe. The child support calculator can be used to determine what the child support award should be under the Guidelines under the current law. To access the web calculator, click on the icon that should be on your desktop or go to [the State of Minnesota's Child Support Calculator](#).

If the information is not available, there are a number of options, most of which have consequences that may impact the victim.

- The parties could be required to return to court for a review hearing with the necessary documents.
- The parties could be required to file a motion for child support accompanied with the proper documentation in the Order for Protection.
- The parties could be referred to Family Court to address this matter, but this referral requires the parties to pay additional filing fees, which could be a barrier for the victim.
- The parties could be referred to Ramsey County for IV-D (Child Support Enforcement Services), but this also takes time depending on the County's schedule and may create another barrier for the victim.
- Other options include keeping the record open for the parties to bring in the documentation so that the judicial officer can make the calculations and issue a separate order. This option requires the obligor to bring in documents with little incentive to do so.
- If for some reason either party lacks information about his or her income, the statute permits the Court to assign potential income, and if there is no other basis to assign potential income, the Court may do so at 150% of the minimum wage.

## **B. Spousal Maintenance**

Temporary spousal maintenance can be ordered following a hearing. Any temporary spousal maintenance in an Order for Protection is in effect until the Family Court makes a subsequent order or the Order for Protection expires.<sup>52</sup>

## **C. Restitution**

An Order for Protection may order the respondent to pay restitution to the petitioner and is enforceable as civil judgment. A separate Order for Restitution should be issued.<sup>53</sup>

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<sup>51</sup> [Minn. Stat. §518B.01, subd. 6](#) and [Minn. Stat. §518A](#)

<sup>52</sup> [Minn. Stat. §518.552](#)

<sup>53</sup> [Minn. Stat §518B.01, subd. 6\(a\)](#)

#### **D. Treatment or Counseling for Domestic Abuse and/or Chemical Dependency**

An Order for Protection following hearing may order a respondent to complete a specific program for domestic abuse counseling, obtain a chemical dependency evaluation, and/or follow the recommendations of the evaluator, etc. under [Minn. Stat. §518B.02](#).

Enforcement of these provisions is accomplished through the setting of a review hearing, which requires the respondent to appear and provide verification of completion.

The statute does not provide for mandatory treatment for a victim of domestic abuse, thus, there is no authority to order petitioners to participate in treatment programs.

#### **E. Counseling or Other Social Services for the Parties**

Upon request of the petitioner, the Court may order after hearing, counseling or other social services for the parties, if married, or if there are minor children.<sup>54</sup> Typically these services, if ordered, are provided separately to the parties.

#### **F. Award Use and Possession of Property**

An Order for Protection following hearing may address the use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life. The Court may order one or both parties to account for all such transfers, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.<sup>55</sup>

Any temporary property provision in an Order for Protection is in effect until the Family Court makes a subsequent order or the Order for Protection expires.

#### **G. Firearms**

Federal law prohibits a person subjected to an Order for Protection (following hearing) from possessing firearms and ammunition.<sup>56</sup> A qualifying court order is one that:

- Issues after a hearing where the respondent received actual notice of the hearing and had an opportunity to participate in the hearing. The respondent does not need to actually attend the hearing for the ban to apply. The respondent just needs to receive actual notice of the scheduled hearing and be given the opportunity to participate. The respondent cannot avoid the firearm ban simply by not attending the hearing.<sup>57</sup>

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> [18 U.S.C. §922\(g\)\(8\)](#)

<sup>57</sup> This factor applies to all ex parte orders and harassment orders that do not require a hearing. An individual who is the subject of an Order for Protection where he/she was not notified of a scheduled hearing that both parties can attend would not meet this factor and would not be prohibited from possessing firearms or ammunition. Therefore, an individual who is the subject of an OFP issued without a hearing under [Minn. Stat. §518B.01, subd. 5](#) would not be prohibited from possessing firearms or ammunition.

- Restrains the respondent from harassing, stalking, or threatening an intimate partner<sup>58</sup> of the respondent or child of the intimate partner or child of the respondent, or engaging in other conduct that would place the respondent's intimate partner in reasonable fear of bodily injury to the partner or the child;
- Includes a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

A good summary of the application of these federal statutes can be found at [Battered Women's Legal Advocacy Project Federal Law: Firearms and Ammunition Prohibitions](#).

There is an exception for law enforcement and military personnel when carrying a department or government issued firearm, under [18 U.S.C. §925\(a\)\(1\)](#).

Therefore, if a police officer is the respondent in a qualifying Order for Protection, the officer would still be able to possess his/her service revolver, but could not possess other firearms. This provision applies whether the Court marks the box prohibiting firearms or not, as the federal law does not give the issuing State Court authority to waive the provision.

At least one court has upheld a conviction of this provision despite the defendant arguing he did not know that he was violating the law.<sup>59</sup> Given the serious consequences of violating this provision, it is prudent to give the respondent notice to possess firearms is a crime.

The prohibition of possessing firearms expires when the Order for Protection expires. The Court may not order the petitioner to return rifles to a respondent as part of an Order for Protection, under the theory that the firearms were the respondent's property and it was the respondent's responsibility to comply with federal law. The Court of Appeals issued a Writ of Prohibition preventing enforcement of such an order.<sup>60</sup>

Historically, the Court has not required firearms to be turned over or picked up by law enforcement. Presumably, this has been due to a belief that respondents can protect their property by putting their firearms in the care of a third party.

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<sup>58</sup> Intimate partners include spouses, former spouses, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. See [18 U.S.C. § 921\(a\)\(32\)](#).

<sup>59</sup> *U.S. v. Bostic*, 168 F.3d 718, 722-23 (4th Cir. 1999)

<sup>60</sup> *Dickie v. Almen*, (Minn. Ct. App. A06-1436 2006)

**BEST PRACTICE:**

*Since there is no explicit statutory authority for the Court to order the respondent to turn over the firearms, this relief should probably be reserved for incidents where there is a close nexus between the firearms and the safety of the victim or the victim's family.*

**H. Duration of Order for Protection Following Hearing**

An Order for Protection shall be issued for a period not to exceed two years, except when the Court determines a longer period is appropriate.

The order granting relief becomes effective upon the judicial officer's signature.<sup>61</sup>

**VII. Interface With Other Court Actions**

**A. Family Court**

The Order for Protection cannot be vacated or modified during a dissolution of marriage or legal separation proceeding without proper motion and notice cannot be waived.<sup>62</sup>

In a subsequent custody proceeding the Court must consider a finding of domestic abuse.<sup>63</sup>

Efforts should be made to minimize the parties' legal fees and inconvenience by hearing related matters at the same time, but the judicial officer also has a responsibility to prevent parties from trading safety for dollars. There is an increased risk of the above in situations where the domestic abuse respondent is represented by counsel and the domestic abuse petitioner is not.

If the Court makes orders as to child support, insurance, parenting time, etc., it may be helpful to the parties to remind them that the decisions on these collateral issues are in effect only until the Family Court issues an order.

**1. Case Management Options in the Family Law Cases**

Mediation cannot be required when domestic abuse is alleged.

If, at a hearing, it appears that a family law case is going to be initiated or a post-decree motion filed, the judicial officer should consider making an exception to the no contact provision of the Order for Protection to permit contact with *court-approved* alternative dispute resolution between the parties.

The above avoids the necessity of the Family Court judicial officer from later amending the Order for Protection should that be necessary, and still adds the protection to the victim as most alternative

<sup>61</sup> [Minn. Stat. §518B.01, subd. 6 \(b\)](#)

<sup>62</sup> [Minn. Stat. §518B.01, subd. 6 \(c\)](#)

<sup>63</sup> [Minn. Stat. §518B.01, subd. 17](#)

dispute resolution alternatives are voluntary, especially when domestic abuse has been alleged between the parties.

## **2. Different Legal Standards**

Depending on the type of proceeding that is held, the Court has different authority in terms of: jurisdiction, venue, service of process, necessary pleadings, notice including time line for hearing, available relief before and after a hearing, and enforceability of the order.

Some judicial officers emphasize that some provisions are only in effect until a final order is determined by Family Court by adding “pending further order of the Family Court” to applicable provisions in the Order for Protection.

### **B. Juvenile Court**

#### **1. Referral to Human Services**

Petitions for Orders for Protection which include allegations of child abuse or neglect (OBO orders) include a provision in the *ex parte* Order for Protection: "As required by law, a copy of the petition and this order shall be forwarded to the Child Protection Agency of Ramsey County." Court staff forwards a copy of the order to the Ramsey County Human Services (RCCHSD) Intake for review.

RCCHSD applies their established criteria and determines whether or not an investigation or services are necessary.

#### **2. Custody**

If there is an existing Juvenile Protection matter, it is important to consider and/or defer to the custody arrangement in that case.

### **C. Criminal Court**

#### **1. Effect of Criminal and Civil Orders**

There are often situations where both a Domestic Abuse No Contact Orders (DANCOS) issued through a Criminal Court proceeding, as well as an Order for Protection issued through a Civil Court proceeding, are in effect independent of one another. Modifications of the orders should be handled in the corresponding court.

The civil order is effective for criminal enforcement once service is made or the respondent knows of the existence of the order.<sup>64</sup>

It is important for enforcement of criminal charges of violation of an Order for Protection to show proof that the respondent had been personally served with the Order for Protection or personally served with a continuance order stating that the Order for Protection remained in effect.

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<sup>64</sup> [Minn. Stat. §518B.01, subd. 14 \(b\)](#)

## **2. Discovery When Criminal Proceedings Are Pending**

[See section below.](#)

## **3. Fifth Amendment Issues**

[See section below.](#)

# **VIII. HEARINGS**

## **A. Participants and Their Roles**

### **1. District Court Clerk**

The Ramsey County Domestic Abuse/Harassment clerk provides courtroom support to the judicial officer presiding over the master calendars. Domestic Abuse/Harassment hearings scheduled on a judicial officer's block calendar will be clerked by the judicial officer's law clerk.

Judicial support includes:

- Ensures the MNCIS record is complete;<sup>65</sup>
- Attaches companion cases into Session Works;
- Arranges transportation if a party is in custody;
- Orders interpreters if requested by a party;
- Provides a printed calendar to the judicial officer, court reporter and deputies;
- Checks on service of orders;
- Arranges for service of orders;
- Provides parties with paperwork to request alternate service;
- Communicates with attorneys regarding possible agreements;
- Keeps judicial officer informed of appearances;
- Calls cases into the courtroom;
- Administers oaths to witnesses and interpreters;
- Drafts orders immediately following the hearing;
- Provides copies of orders to parties and attorneys following the hearing;
- Maintains exhibits admitted; and
- Other judicial support as requested.

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<sup>65</sup> As of January 1, 2012 the Domestic Abuse/Harassment Office no longer maintains a paper court file.

## 2. Advocates

According to Minnesota law, "domestic abuse advocate" means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under [Minn. Stat. §611A.32](#) that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.<sup>66</sup>

The Minnesota Supreme Court issued an order allowing domestic abuse advocates to assist victims in the preparation of petitions for Orders for Protection, attend and sit at counsel table, confer with the victim, and, at the judge's discretion, be heard by the judge. When advocates assist victims as specified in that order, advocates are not engaged in the unauthorized practice of law. Advocates are not expected to give their name or their program's name on the record. Advocates should not be asked to mediate, coming to an agreement between the petitioner and the respondent.

Advocates do not give legal advice. They educate victims on the unique focus of the domestic abuse hearing and prepare them for the process and possible outcomes. Advocates focus on safety issues while explaining options and offering support and encouragement to victims who are often afraid or intimidated. Advocates also bring safety concerns to the attention of deputies outside of the courtroom. Consistency in Court proceedings is important to advocates in preparing victims for court.

A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the Court. In determining whether to compel disclosure, the Court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs.<sup>67</sup>

Domestic abuse advocates are mandated reporters under [Minn. Stat. §626.556](#) and [§626.557](#).

## 3. Interpreters

The Domestic Abuse/Harassment Office will schedule an interpreter for a party or a witness if the party makes such a request. In order to assure that all parties understand the role of the interpreter, it may be helpful to explain the following at the start of a court proceeding (taken from the Minnesota Judicial Branch Bench Card: Courtroom Interpreting):

- The interpreter can only interpret for one person at a time;
- The interpreter can only interpret testimony that is spoken so all responses must be verbal;
- Speak slowly and clearly;
- The interpreter must interpret everything that is said;
- The interpreter is not allowed to engage in any conversation with the litigant/witness;

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<sup>66</sup> [Minn. Stat. §595.02, subd. 1 \(l\)](#)

<sup>67</sup> Ibid

- The interpreter is not allowed to give any legal advice or express personal opinions; and
- The interpreter is expected to maintain confidentiality and not publicly discuss this case.

If concerns arise, questions you can ask to determine whether an interpreter is qualified along with other information can be found on the [Minnesota Judicial Branch website, including voir dire questions.](#)

#### **4. Deputies**

There should always be courtroom security in these hearings when both parties are present. During a domestic abuse or harassment hearing, the deputy should be positioned so as to observe the behavior of the parties. This is different from the deputy's position at criminal/delinquency hearings, in which the risk is that the defendant will flee. In a domestic abuse hearing, the risk is that the respondent will violate the Order for Protection or intimidate the petitioner during the hearing. The placement of the deputy is for the deputy to decide, since courtroom security is his/her responsibility and s/he has the training and experience to make decisions concerning courtroom security.

#### **5. Guardians ad Litem**

The Court shall appoint a Guardian ad Litem (GAL) if the Court has reason to believe that a minor child is a victim of domestic child abuse or neglect, as those terms are defined in statute.<sup>68</sup> These appointments are "mandatory appointments." The Court may also appoint a GAL when there are not concerns about child abuse or neglect. These are "permissive appointments."

The GAL shall represent the best interests of the child and advise the Court with respect to temporary custody and parenting time. It is not the GAL's role to determine whether domestic abuse occurred. Since an Order for Protection is temporary, the GAL should not be asked to make recommendations for permanent custody or parenting time. Those requests of the GAL should be made in the Family Court case, if one exists, and the same GAL can be appointed in the Family Court case.

The Court must make specific findings about whether the appointment is mandatory or permissive, and the Court must identify what information it seeks from the Guardian.

If the Court appoints a GAL, a review hearing should be scheduled to review the recommendations of the GAL and the Court should set a due date for the GAL's report, which should be 90 days for a mandatory appointment and 120 days for a permissive appointment.

### **B. Procedures**

#### **1. Mentally Ill Parties**

A diagnosis of mental illness does not preclude a person from being the victim of domestic abuse or harassment nor from perpetrating domestic abuse or harassment.

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<sup>68</sup> [Minn. Stat. §260C.007](#) and [Minn. Stat. §626.556](#)

## **2. Incompetent Parties**

In some circumstances, the Court may have concerns about a party's ability to understand the proceedings. In such a case, the Court should appoint a Guardian under [Minnesota Courts Rules of Civil Procedure 17.02](#). This is different than the Guardian ad Litem program. Second Judicial District has developed a procedure to appoint volunteer attorneys as Guardians ad Litem for Incompetent Persons.

## **3. Discovery When Criminal Proceedings Are Pending**

There may be attempts to use the existence of a domestic abuse proceeding to engage in discovery for an overlapping criminal proceeding that might not otherwise be permitted in the criminal process. This leaves the victim with the dilemma of choosing between supporting a vigorous criminal prosecution and obtaining necessary relief in the Order for Protection. The Minnesota Supreme Court clarified in such situations it is appropriate to:

- Allow the State to permissively intervene for the limited purpose of seeking a protective order to preserve the integrity of the criminal process; and
- Issue a protective order to stay discovery including depositions in the domestic abuse proceedings pending the result of the criminal proceedings even if that means continuing custody and no contact provisions of the Order for Protection until the hearing can be held.<sup>69</sup>

A request for a continuance may come from a victim where there is concern that the defendant in a criminal case arising out of the same facts is using the Order for Protection proceeding as a means of deposing the witnesses; the request may also come from a defendant in a criminal case who is concerned that his or her testimony may be used to impeachment purposes in a criminal proceeding despite the language in [Minn. Stat. §518B.01, subd. 15](#).

## **4. Administrative Continuances**

The Domestic Abuse/Harassment Office receives many requests to continue matters. The clerks instruct parties to submit their requests in writing. When the requests are received, the clerk forwards the request along with a proposed order to continue the matter to the judicial officer assigned to hear the case.

Careful consideration should be made when deciding whether to grant or deny the requests to continue without requiring appearances. Caution should be given before granting a request for a continuance for a previously scheduled hearing if it is made by the petitioner since the respondent has statutory rights to a hearing and due process rights to a hearing. Similarly, if last minute continuances are granted for previously scheduled evidentiary hearings, the Court's precious evidentiary hearing time is lost and the continued hearing takes up another slot which creates a cycle that contributes to delayed evidentiary hearings. This can cause a systemic problem for future parties.

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<sup>69</sup> *State v. Deal*, 740 N.W.2d 755 (Minn. 2007)

## **C. Initial Hearings**

### **1. Parties' Appearances**

#### **a. Both Parties Appear**

If both parties appear at the hearing, and the petitioner is still seeking the Order for Protection, the recommended procedure is to explain to the respondent their options listed in paragraph 2 below.

If the respondent requests an evidentiary hearing and there is sufficient time to have the hearing that day, the evidentiary hearing should be held unless a continuance is granted. [See section D below.](#)

If a continuance is granted, the Court should issue an Order for Continuing Protection that explains the reason for the continuance and addresses any other urgent issues pending the evidentiary hearing.

#### **b. Service Not Completed, No Appearance by Respondent**

If personal service has not been completed upon the respondent, the petitioner may be the only party to appear. The Court should have the petitioner complete an Affidavit and Order for Alternate Service or Publication.

If the *ex parte* order is not personally served or the petitioner's affidavit for alternative service is not filed with the Court within 14 days, the *ex parte* order expires.<sup>70</sup> If personal service is not completed and service by published notice is not completed within 28 days of issuance of the *ex parte* order, the order expires.

#### **c. Service Completed, No Appearance by Respondent**

If personal service (or service by publication) was completed upon the respondent but the respondent does not appear, the recommended procedure is to inquire with the petitioner if the allegations contained in the petition and affidavit are true and correct. The Court may then issue the final Order for Protection Following Hearing incorporating the contents of the petition and affidavit as findings of fact, if the petition and affidavit contain sufficient allegations of domestic abuse. If not, the matter may be dismissed.

If the hearing was scheduled at the request of the respondent, the Court may dismiss the respondent's request for a hearing and the *ex parte* order for protection remains in effect.

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<sup>70</sup> [Minn. Stat. §518B.01, subd. 15, subd. 7\(d\)](#)

**d. No Appearance by Petitioner**

If the respondent appears but the petitioner does not, the recommended procedure is to dismiss the Order for Protection. There will, of course, be exceptions in unusual situations (illness, incarceration, etc.).

**e. Neither Party Appears**

If neither party appears, the usual procedure is to dismiss the Order for Protection.

If the hearing was scheduled at the request of the respondent, the Court may dismiss the respondent's request for a hearing and the ex parte order for protection remains in effect.

**2. Respondent's Options**

When both parties appear, the Court should explain the respondent's three options as follows:

- Admit the allegations in the petition and affidavit and agree to the Order for Protection with findings of domestic abuse;
- Agree to the issuance of the Order for Protection without any findings of domestic abuse; or
- Deny the allegations in the petition and affidavit and request an evidentiary hearing.

**3. Continuances**

**a. By Request of the Parties**

Continuances are granted by securing a date from the courtroom clerk, using the form (Order for Continuing Protection), stating that any ex parte order remains in effect, and having the order served on each party immediately after the hearing.

*Sometimes frequently requesting continuances can be a way for a respondent to manipulate a victim by increasing chances to either directly or indirectly apply pressure on the petitioner to dismiss the petition.*<sup>71</sup>

**Timelines for Hearing:**

The respondent may request a continuance of up to 5 days if served fewer than 5 days prior to the hearing which continuance shall be granted unless there are compelling reasons not to do so.<sup>72</sup>

Normally, the continuance shall be for no more than 5 days unless otherwise agreed to by the parties and approved by the Court.<sup>73</sup>

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<sup>71</sup> *Gada v. Dedefo*, 684 N.W.2d 512 (Minn. Ct. App. 2004) Court of Appeals affirms denial of request for continuance where Court noted family members pressuring petitioner in waiting area of Court.

<sup>72</sup> [Minn. Stat. §518B.01, subd. 5\(c\)](#)

<sup>73</sup> [Minn. Stat. §518B.01 subd. 5\(e\)](#)

If an *ex parte* order has been issued and the Court declines to order some relief requested by the petitioner, a hearing must be held within 7 days. If the Court declines to issue an *ex parte* order, a hearing must be held within 14 days. The Court should hold the evidentiary hearing within these limits, but it is rarely feasible to do so. These time frames do not limit the Court's subject matter jurisdiction. The Court still has authority to hear the Order for Protection even if the full hearing happens outside the time lines but the *ex parte* order expires if the evidentiary hearing is not held with the time limits set by the Act.<sup>74</sup>

This may require the judicial officer and staff to make special efforts to meet the deadline. Some judicial officers take sufficient testimony to confirm the need for an Order for Protection and then continue the hearing to a date when there is sufficient time to complete the hearing. Other times it is possible to modify the *ex parte* Order for Protection to address the respondent's legitimate concerns with the *ex parte* order until a hearing can be completed. This means that the order is no longer an *ex parte* order as the Court has heard from both sides.

#### **4. Interim Custody and Parenting Time**

Frequently the [issues of interim parenting time and custody will require consideration](#) at an initial hearing. In situations where the parties are/were married, or situations in which there is a Family Court paternity file or where there is a valid Recognition of Parentage executed, the Court may include a provision for parenting time.

In situations where the parties have never been married to each other and there is no Family Court paternity file, opinions differ as to whether the Domestic Abuse Court has jurisdiction to order parenting time. In all situations, the initial hearing is more in the nature of triage and the judicial officer is frequently asked to rule on matters with conflicting cross claims and little information. The Court may need to err on the side of safety of the victim and the child until the Court can obtain more detailed information.

The Court should direct the parties to address detailed issues of custody and parenting time in Family Court where there are more options available to help the parties. Parties should be encouraged to file appropriate actions or motions in the appropriate Family Court for permanent and detailed orders.

#### **D. Evidentiary Hearings**

##### **1. Introduction**

Defining domestic abuse for the parties before the evidentiary hearing may help the parties focus on the issue of domestic abuse. While context may be important, the Court should direct the parties to focus on the allegations provided in the petition and affidavit. This can lead to limited scope of inquiry. One incident of domestic abuse is a sufficient finding upon which to issue an Order for

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<sup>74</sup> *Burkstrand v. Burkstrand*, 632 N.W.2d 206 (Minn. 2001)

Protection. It may be helpful to determine whether there was domestic abuse before hearing testimony about possible relief.

The statutory definition of domestic abuse is much broader than “hitting.” Additional history may be recited in the petition or by the petitioner at a trial and may be helpful to the judicial officer in deciding various aspects of the matter.

The evidentiary hearing is meant to be an expedited hearing. This can be facilitated by focusing on the narrow issues that the Court must determine. Focusing on the issues not only keeps the hearing to a manageable length but also minimizes the need for continuances to complete the trial. According to language in *Baker* and *Burkstrand*<sup>75</sup>, an expedited hearing is in accord with the purpose of the statute.

## **2. Respondent’s Options**

It is appropriate to determine whether the petitioner still wants to proceed and whether the respondent still wants to contest the order.

## **3. Standard of Proof**

Since the Minnesota Legislature has not identified the standard of proof to be used in Order for Protection cases, the preponderance of the evidence standard applies. The petitioner bears the burden of proof as the party seeking to obtain the Order for Protection.

## **4. Opening Statements**

Normally, parties and their attorneys waive opening statements.

## **5. Continuances**

[See previous section on administrative continuances.](#)

## **6. Testimony**

### **a. Out-of-Court Statements by Children**

Use of out-of-court statements may be a way to avoid requiring children to testify and traumatizing the children through the process.

[Minnesota Rule of Evidence 807](#), the residual or “catch-all” exception to the hearsay rule, provides that if certain procedures involving notice are followed and the Court finds sufficient guarantees of trustworthiness, out-of-court statements may be admissible as evidence regardless of the availability of the declarant.

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<sup>75</sup> *Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992) and *Burkstrand v. Burkstrand*, 632 N.W.2d 206 (Minn. 2001)

Mirroring the notice and reliability criteria of [Rule 807](#), two Minnesota statutes expressly provide for the admission of the out-of-court statements of children under the age of 10 regarding child abuse committed on them or committed on another child but observed by them. [Minn. Stat. §260C.165](#) covers out-of-court statements regarding either abuse or neglect and applies to any CHIPS, foster care, or domestic child abuse proceeding or proceeding for termination of parental rights. [Minn. Stat. §595.02, subd. 3](#) applies to any court proceeding involving child abuse but requires that there be other corroborative evidence of the act if the declarant (child under 10) is unavailable as a witness.

These statutes serve to highlight for the Court the Legislature’s intent that the out-of-court statements of child abuse victims under the age of 10 be admitted as evidence in appropriate circumstances. However, the application of [Rule 807](#) alone is generally sufficient and is not age-limited.<sup>76</sup>

[Minn. Stat. §595.02, subd. 3](#) and [Rule 807](#) consider similar factors when determining guarantees of trustworthiness. These factors include: [1] whether the statements were spontaneous, [2] whether the person talking with the child had a preconceived idea of what the child should say, [3] whether the statements were in response to leading or suggestive questions, [4] whether the child had any apparent motive to fabricate, ... [5] whether the statements are the type of statements one would expect a child of that age to fabricate, ... [6] the mental state of the child at the time the statements were made, ... [7] the consistent repetition of the child's statements during the same interview or conversation, ... [and][8] whether the child had an apparent motive to speak truthfully.<sup>77</sup> An unpublished case has used this analysis in the context of an Order for Protection.<sup>78</sup>

#### **b. In-Court Statements by Children**

The Court is sometimes asked to interview children. Each judicial officer may have different views of this. Interviewing children requires special skills and can cause emotional damage to the child even if done skillfully by the judicial officer. Judicial officers in Ramsey County have been reluctant to interview children. The Court has options to minimize harm to children if it is necessary.

#### **c. Fifth Amendment Issues**

Sometimes parties may offer testimony that has the potential to subject them to criminal prosecution. [Minn. Stat. §518B.01 subd. 15](#) states that “any testimony offered by a respondent in a hearing...is inadmissible in a criminal proceeding.” Nonetheless, there are times when a witness offers testimony that might result in criminal prosecution. Parties in civil proceedings may invoke the Fifth Amendment in order to protect themselves from criminal prosecution.<sup>79</sup> However, when a party asserts the Fifth Amendment in a civil action, the Court may make an adverse inference when that party refuses to testify.<sup>80</sup>

<sup>76</sup> *State v. Edwards*, 485 N.W.2d 911, 913 (Minn. 1992)(Statement made by victim to police admissible where no motive to fabricate and officer had no preconceived notion of what child would say.) But see *State v. Scott*, 501 N.W.2d 608 (Minn. 1983)(Taped police and social worker interview with victim had insufficient indicia of reliability.)

<sup>77</sup> *State v. Edwards*, 485 N.W.2d 911, 915-917 (Minn. 1992)

<sup>78</sup> *Wahl v. Wahl*, 2010 WL5071351 (Minn. Ct. App.)

<sup>79</sup> *In re Welfare of J.W.*, 391 N.W.2d 791, 797 (Minn. 1986)

<sup>80</sup> *Parker v. Hennepin County Dist. Court*, 285 N.W.2d 81, 83 (Minn. 1979)

## **7. Witnesses**

Sometimes parties seek to call witnesses who do not have direct knowledge of the allegations in the petition or whose testimony will be repetitive to previous witnesses. One way to keep the evidentiary hearings focused is to limit witnesses by requiring the parties to make an offer of proof. Witnesses who have direct knowledge of the allegations may be allowed to testify. This also deescalates situations where both sides are bringing in “allies” to take sides. The Court should consider sequestration of the witnesses.

## **8. Rulings**

The Court should announce its ruling in open court with the parties present. If the order is going to be issued, the judicial officer should go through all of its provisions to make sure the parties understand the terms of the order. The parties should then be ordered to wait outside the courtroom in order to be personally served with the order that is issued after the evidentiary hearing. If, for some rare circumstance, the Court takes the case under advisement, the Court should issue an Order for Continuing Protection since the *ex parte* order will otherwise have expired at the time of the hearing.

## **9. Reciprocal Orders for Protection**

Orders for Protection may be issued if there is a petition filed. It is an error for the Court to issue reciprocal Orders for Protection where only one party files a petition for an Order for Protection and there is no evidence that the requesting party committed abuse against the adverse party.<sup>81</sup>

There are times when both parties have filed petitions for Orders for Protection and both have committed domestic abuse against each other, and issuing separate reciprocal orders is appropriate.

Requests for reciprocal Orders for Protection can be problematic. They can be another way for an abuser to harass and control a victim by using the Order for Protection to have a victim arrested. Reciprocal orders give the impression that both parties are violent and can be difficult for law enforcement to enforce. In cases where there are claims of domestic abuse by both parties, it is important to determine if one party was acting in self-defense and/or if one party was the primary aggressor, and consider that in your decision whether to issue one or both orders.

## **10. Collateral Consequences**

The issuance of an Order for Protection may have collateral or unintended consequences for the parties. These issues sometimes come up during hearings or negotiations between counsel for the parties who attempted to settle prior to their evidentiary hearing.

Collateral consequences should not detract from the purpose of the hearing, which is to determine whether an act of domestic abuse occurred.

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<sup>81</sup> *FitzGerald v. FitzGerald*, 406 N.W.2d 52 (Minn. Ct. App. 1987)

## **E. Motion Hearings**

The statute provides that upon application, notice to all parties, and hearing, the Court may modify the terms of an existing Order for Protection.<sup>82</sup> The [Minnesota General Rules of Practice for the District Courts](#) explicitly apply to domestic abuse proceedings.

The Domestic Abuse/Harassment Office has procedures to address the motions depending on the type of motion that is brought. If the motion presents an emergency, the process is similar to a new petition. The clerk prepares an Emergency Ex Parte Order for Relief Upon Motion to Modify Order for Protection with immediate relief to the judicial officer and a hearing is set within seven days and the motion is served. All motions need to originate through the Domestic Abuse/Harassment Office in order to coordinate files, check the electronic court record for conflicting orders, and update the statewide database.

Depending on the motion filed, testimony will likely be taken by parties or witnesses if the motion is opposed. If the motion is argued, it would be done as if it was a motion hearing in Family Court, based on the record including the affidavit(s) filed in support or opposition to the motion.

The Court should never deny a party an opportunity to serve and file a motion unless the party has been previously restricted by court order as a frivolous litigant.

### **1. Types of Motions**

#### **a. Non-Emergency**

If the motion is one to dismiss the order or make the order less restrictive, the motion is served by mail and the hearing is set at least 17 days out to allow for service by mail. Court staff does not prepare an order in this situation. Court staff will mail the documents to the last known address of the non-moving party when the motion is a non-emergency motion.

#### **b. Emergency**

If the moving party alleges an emergency, court staff prepares an Emergency Ex Parte Order for Relief Upon Motion to Modify with Immediate Relief. If the Court grants the emergency relief, the court staff will set the hearing within 7 days, then send the order and motion for personal service on the moving party. If the request for immediate relief is denied, the court staff will proceed with filing and scheduling the motion.

#### **c. Motion for New Trial**

Orders for Protection are considered “special proceedings,” which means a motion for a new trial is not authorized and will not alter the time to appeal.<sup>83</sup>

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<sup>82</sup> [Minn. Stat. §518B.01, subd. 11](#)

<sup>83</sup> *Steeves v. Campbell*, 508 N.W.2d 817 (Minn. Ct. App. 1993)

#### **d. Motions to Dismiss**

Often, the petitioner will seek to dismiss the Order for Protection for a variety of reasons.

The Court may ask the petitioner if s/he has considered a “protection only” order. This is an order that allows contact with the respondent, but prohibits the respondent from committing domestic abuse against the petitioner. Although this offers minimal protection, it permits the petitioner to seek more restrictions on the order in the future before a recurrence of violence simply by showing an escalation of concerning behavior rather than a recurrence of abuse.

If the Order for Protection is dismissed and another order (ie. Domestic Abuse No Contact Order) is in effect, the Court should remind the parties that this amendment or dismissal does not amend or dismiss that order.

If the respondent seeks to dismiss the Order for Protection, the Court shall consider it as a motion to vacate<sup>84</sup>. If this is an order issued under [Minn. Stat. §518B.01, subd. 6a](#) (up to 50 years), [see section IX below](#).

#### **e. Request for Immediate Dismissal**

Petitioner may motion the Court for an immediate dismissal before the hearing is scheduled. The Court should proceed cautiously in this instance. It is difficult to determine, without hearing from the parties, what is causing the need for immediate action and what motivates the request. Some of these factual situations can be fast-changing and the Court may need to be more deliberate in this situation.

#### **F. Review Hearings**

Review hearings are set to review matters including compliance with ordered counseling, treatment, parenting time, custody, child support, Guardian ad Litem reports, etc.

If the respondent is personally served the order setting the review hearing and fails to appear for a review hearing to review compliance with court-ordered treatment, a writ of attachment, commanding the arrest of the respondent, may be issued.

#### **G. Contempt Hearings**

The most effective way of enforcing many conditions in OFPs is through law enforcement. This is why contempt hearings are and should be rare in OFPs. Hearings shall be set within 14 days and are handled as in other contempt proceedings.<sup>85</sup>

## **IX. Subsequent Orders and Extensions**

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<sup>84</sup> [Minnesota Rules of Civil Procedure, Rule 60](#)

<sup>85</sup> *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968) and *Mahady v. Mahady*, 448 NW 2d 888 (Minn. Ct. App. 1989)

### **A. Subsequent Orders**

When an Order for Protection has expired, a petitioner can apply for a new order. In this situation, a lower threshold standard applies. A petitioner does not need to show that physical harm is imminent or that a new act of domestic abuse has occurred in order for a subsequent Order for Protection to be issued. Upon application, notice to all parties, and hearing, testimony likely will be taken if the respondent opposes the issuance of the subsequent order. A new order may be issued upon a showing that:

- Respondent violated the prior Order for Protection; or
- Petitioner is reasonably in fear of physical harm from the respondent (physical harm need not be imminent); or
- Respondent has engaged in the act of stalking within the definition of [Minn. Stat. §609.749, subd. 2](#). The respondent need not have intended his/her actions to be harassing to the petitioner<sup>86</sup>; or
- Respondent is incarcerated and about to be released, or has recently been released from incarceration.<sup>87</sup>

### **B. Extensions of Existing Orders**

When an Order for Protection is still in effect, a petitioner can apply for an extension. Like a subsequent order, a lower threshold standard applies. A petitioner does not need to show that physical harm is imminent or that a new act of domestic abuse has occurred in order for the Court to extend the terms of an existing order. Upon application, notice to all parties, and hearing, testimony likely will be necessary if the respondent opposes the extension. An existing order may be extended upon a showing that:

- Respondent violated the prior or existing Order for Protection; or
- Petitioner is reasonably in fear of physical harm from the respondent (physical harm need not be imminent); or
- Respondent has engaged in the act of stalking within the meaning of [Minn. Stat § 609.749, subd. 2](#). The respondent need not have intended his or her actions to be harassing to the petitioner<sup>88</sup>; or
- Respondent is incarcerated and about to be released, or has recently been released from incarceration.<sup>89</sup>

### **C. Up to 50-Year Orders for Protection**

The Court may issue an order for a period of up to 50 years if the Court finds:

- The respondent has violated a prior or existing Order for Protection two or more times; or

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<sup>86</sup> *Braend vs. Braend*, 721 N.W.2d 924 (Minn. Ct. App. 2006)

<sup>87</sup> [Minn. Stat. §518B.01, subd. 6a \(a\)](#)

<sup>88</sup> *Braend v. Braend*, 721 N.W.2d 924 (Minn. Ct. App. 2006)

<sup>89</sup> [Minn. Stat. §518B.01, subd. 6a \(4\)](#)

- The petitioner has had two or more Orders for Protection in effect against the same respondent.

An order under this section may restrain the respondent from committing acts of domestic abuse against the petitioner or prohibit the respondent from having any direct or indirect contact with the petitioner.<sup>90</sup>

The Court of Appeals has upheld the constitutionality of this provision<sup>91</sup> holding that the provision did not violate the respondent's First Amendment, Due Process rights and protections against Double Jeopardy and *ex post facto* laws.

For orders issued under [Minn. Stat. §518B.01, subd. 6a \(b\)](#) there are special rules for service, burden of proof and conditions under which motions to modify may be made by the respondent.<sup>92</sup>

## HARASSMENT RESTRAINING ORDERS

### X. Service and Cost

#### A. Service

##### 1. Personal Service

The statute does not address who can serve a Harassment Restraining Order; however, service of the temporary Harassment Restraining Order must be made by a sheriff or by publication, in order for the Court to issue a Harassment Restraining Order following a hearing.<sup>93</sup>

##### 2. Publication

If personal service cannot be made upon the respondent, the Court may order service by publication. Publication must be made as in other actions.

The moving party must file an Affidavit and Order for Publication. The Affidavit must state that an attempt at personal service made by a sheriff was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and Order for Hearing and any temporary restraining order has been mailed to the respondent at the respondent's last known address or place of business, if the respondent is an organization, or the residence or place of business is not known to the petitioner. An attempt to serve by law enforcement is necessary even if there is no known address for respondent. The Court can then order service by publication and continue the hearing for another initial hearing once publication has been completed.<sup>94</sup>

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<sup>90</sup> [Minn. Stat. §518B.01, subd. 6a \(b\)](#)

<sup>91</sup> *Rew v. Bergstrom*, 812 N.W.2d 832 (Minn. Ct. App. 2011)(*pet. for cert. pending*)

<sup>92</sup> [Minn. Stat. §518B.01, subd. 6a \(b\)](#)

<sup>93</sup> [Minn. Stat. §609.748 subd. 3 \(b\)\(1\)](#) and [Minn. Stat. §609.748 subd. 5 \(b\)\(2\)](#)

<sup>94</sup> *Ayala v. Ayala*, 749 N.W.2d 817 (Minn. Ct. App. 2008)

If the petitioner is proceeding under the “No Hearing” provisions as described below, then service by publication may be made by one week published notice.

[Minn. Stat. §609.748 subd. 3 \(b\)](#) states: "The order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under [Minn. Stat. §645.11](#)."

### **3. Service Upon Juvenile Respondents**

[Minn. Stat. §609.748 subd. 3\(c\) and subd. 4\(c\)](#) directs a copy of the Harassment Restraining Order, along with notice of the pendency of the case and the time and place of the hearing be mailed to the last known address of any parent or guardian of the juvenile respondent who is not the petitioner.

The Second Judicial District Domestic Abuse/Harassment Office practice is to send the documents to the Ramsey County Sheriff’s Office for personal service upon the juvenile respondent and a parent or guardian. If personal service upon the parent or guardian is unsuccessful, the clerks will mail a copy to the last known address of that parent or guardian.

#### **B. Filing Fees and Cost of Service**

A civil filing fee applies to each moving party upon the first paper filed in the case by that party.<sup>95</sup>

Filing fees are waived for the petitioner if the petition alleges acts that would constitute a violation of [Minn. Stat. §609.749 subd. 2, 3, 4, or 5](#) (Stalking); or [Minn. Stat. §609.342](#) (Criminal Sexual Conduct in the First Degree), and/or [Minn. Stat. §609.3451](#) (Criminal Sexual Conduct in the Fifth Degree).<sup>96</sup>

Filing fees and cost of service is waived if the party is granted *In Forma Pauperis* status.<sup>97</sup>

The Court may direct a respondent to pay to the court administrator the petitioner’s filing fees and reasonable costs of service of process if the Court determines that the respondent has the ability to pay the petitioner’s fees and costs.<sup>98</sup>

## **XI. One Judge, One Family**

Blocking a Harassment Restraining Order is at the discretion of the judicial officer.

For a full description of the combined Family, Civil Harassment, Juvenile and Probate Jurisdiction, please see [Section III under Orders for Protection](#).

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<sup>95</sup> [Minn. Stat. §357.021](#)

<sup>96</sup> [Minn. Stat. §609.748, subd. 3\(a\)](#)

<sup>97</sup> [Minn. Stat. §563.01](#)

<sup>98</sup> [Minn. Stat. §609.748, subd. 3\(a\)](#)

## **XII. Ex Parte Harassment Restraining Orders**

### **A. Jurisdictional Requirements<sup>99</sup>**

- Either party lives in Ramsey County; or
- The alleged harassment and/or abuse occurred in Ramsey County

There are no residency requirements that apply to a petition for a Harassment Restraining Order.

### **B. Allegations of Harassment**

When a party petitions the court for a Harassment Restraining Order the judicial officer must determine if there have been acts of harassment. Harassment includes the following<sup>100</sup>:

- A single incident of physical or sexual assault<sup>101</sup>; or
- Repeated incidents of intrusive or unwanted acts, words, or gestures that have or intend to have a substantial adverse effect on the safety, security, or privacy of another<sup>102</sup>; or
- Targeted residential picketing, which includes the following acts when committed on more than one occasion:
  - Marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or
  - Marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located; or
- A pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

### **C. Ex Parte Options**

When considering a request for an *ex parte* order, the judicial officer should determine whether or not the petition alleges facts sufficient to show the following:<sup>103</sup>

- The name of the alleged harassment victim;

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<sup>99</sup> [Minn. Stat. §609.748, subd. 2](#)

<sup>100</sup> [Minn. Stat. §609.748, subd. 1](#)

<sup>101</sup> This prong of the statute has been construed to require the petitioner to prove the physical aspect of the statutory definition of assault in Chapter 609. (The infliction of or attempt to inflict bodily harm upon another) *Peterson v. Johnson*, 755 N.W.2d 758 (Minn. Ct. App. 2008) This interpretation is not applicable to the proof necessary for an Order for Protection. See footnote 1 of *Peterson*.

<sup>102</sup> "Repeated" means more than one incident. *Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. Ct. App. 2004) This prong of the statute has been construed to require proof of, first, "objectively unreasonable conduct or intent on part of the harasser," and second, "an objectively reasonable belief on the part of the person subject to harassing conduct" that the conduct had a substantial adverse effect on his or her safety, security, or privacy. *Peterson v. Johnson*, 755 N.W.2d 758 (Minn. Ct. App. 2008).

<sup>103</sup> [Minn. Stat. §609.748 subd. 3 and 4](#)

- The name of the respondent;
- Reasonable grounds to believe that the respondent has engaged in harassment; and
- An immediate and present danger of harassment.

**1. Grant Ex Parte Order Without Hearing**

A hearing is not required unless the petitioner requests one or if the petitioner is requesting an order to be issued for up to 50 years.<sup>104</sup>

**2. Grant Ex Parte Order With Hearing Date**

A hearing is required if the petitioner requests one or if the petitioner is requesting an order to be issued for up to 50 years.<sup>105</sup>

**a. Court Grants the Relief Requested**

**b. Court Declines to Order Some of the Relief Requested**

**3. Deny Ex Parte Order**

**a. Issue Order for Hearing**

If the judicial officer decides that neither order will issue, and the petitioner requests a hearing, a hearing must be scheduled unless the court finds there is no merit. No immediate relief will be granted until the court hearing.<sup>106</sup>

**D. Length of Time Ex Parte Harassment Restraining Order Is in Effect**

The Harassment Restraining Order must be for a fixed period of not more than two years.

## **XIII. Relief**

A Harassment Restraining Order may include the following relief:

**A. No Harassment**

Whether *ex parte* or following hearing the respondent may be ordered to cease or avoid the harassment of another person; or

**B. No Contact**

Whether *ex parte* or following hearing the respondent may be ordered to have no contact with another person. The state’s form orders include a provision that prohibit the respondent from a specific distance surrounding the petitioner’s home and job site.

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<sup>104</sup> [Minn. Stat. §609.748, subd. 3 and 5](#)

<sup>105</sup> *Ibid*

<sup>106</sup> [Minn. Stat. §609.748, subd. 3\(a\)\(3\)](#)

### **C. On Behalf of (OBO) Minor Child(ren)**

The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a Harassment Restraining Order from the district court on behalf of the minor.

## **XIV. Hearings**

### **A. Participants and Their Roles**

#### **1. District Court Clerk**

[See section VIIIA1.](#)

#### **2. Interpreters**

[See section VIIIA3.](#)

#### **3. Deputies**

[See section VIIIA4.](#)

### **B. Procedures**

#### **1. Mentally Ill Parties**

[See section VIIB1.](#)

#### **2. Incompetent Parties**

[See section VIIB2.](#)

#### **3. Administrative Continuances**

[See section VIIB4.](#)

### **C. Initial Hearings**

#### **1. Parties' Appearances**

##### **a. Both Parties Appear**

Cases set for an initial hearing on the Harassment calendars will be offered mediation by trained volunteer attorneys from Lindquist and Vennum. Mediation is not offered in cases that alleged a physical or sexual assault. Cases involving domestic violence can mediate upon agreement of both parties but may not be required.

Mediation is not available for cases scheduled on judicial officer's blocked calendars. If mediation is successful, the agreement is read into the record and the clerk will draft the order. If mediation is not successful, the recommended procedure is to explain to the respondent [their options](#).

If the respondent requests an evidentiary hearing and there is sufficient time to have the hearing that day, the evidentiary hearing should be held unless [a continuance](#) is granted. If a continuance is granted, the Court should issue an Order for Continuance that explains the reason for the continuance and addresses any other urgent issues pending the evidentiary hearing.

**b. Service Not Completed, No Appearance by Respondent**

If personal service has not been completed upon the respondent, the petitioner may be the only party to appear. The Court should have the petitioner complete an Affidavit and Order for Publication. The court should issue an Order for Continuance.

**c. Service Completed, No Appearance by Respondent**

If personal service by a sheriff or publication was completed upon the respondent but the respondent does not appear, the recommended procedure is to inquire with the petitioner if the allegations contained in the petition and affidavit are true and correct. The Court may then issue the final Harassment Restraining Order incorporating the contents of the petition and affidavit as findings of fact, if the petition and affidavit contain sufficient allegations of harassment. If not, the matter may be dismissed.

If the hearing was scheduled at the request of the respondent, the Court may dismiss the respondent's request for a hearing and the *ex parte* Harassment Restraining Order remains in effect.

**d. No Appearance by Petitioner**

If the respondent appears but the petitioner does not, the recommended procedure is to dismiss the Harassment Restraining Order. There will, of course, be exceptions in unusual situations (illness, incarceration, etc.).

**e. Neither Party Appears**

If neither party appears, the usual procedure is to dismiss the Harassment Restraining Order.

If the hearing was scheduled at the request of the respondent, the Court may dismiss the respondent's request for a hearing and the *ex parte* order remains in effect.

**2. Respondent's Options**

If mediation was unsuccessful, the Court should explain the respondent's three options as follows:

- Admit the allegations in the petition and affidavit and agree to the Harassment Restraining Order with findings of harassment;
- Agree to the issuance of the Harassment Restraining Order without any findings of harassment; or
- Deny the allegations in the petition and affidavit and request an evidentiary hearing.

### **3. Continuances**

#### **a. By Request of the Parties**

Continuances are granted by securing a date from the courtroom clerk, using the form (Order for Continuance), stating that any *ex parte* order remains in effect, and having the order served on each party immediately after the hearing.

Sometimes frequently requesting continuances can be a way for a respondent to manipulate a victim by increasing chances to either directly or indirectly apply pressure on the petitioner to dismiss the petition.<sup>107</sup>

### **D. Evidentiary Hearings**

#### **1. Introduction**

Defining harassment for the parties before the evidentiary hearing may help the parties to focus on the issue of harassment. While context may be important, the Court should direct the parties to focus on the allegations provided in the petition and affidavit. This can lead to limited scope of inquiry. It may be helpful to determine whether there was harassment before hearing testimony about possible relief.

The evidentiary hearing is meant to be an expedited hearing. This can be facilitated by focusing on the narrow issues that the Court must determine. Focusing on the issues not only keeps the hearing to a manageable length but also minimizes the need for continuances to complete the trial.

#### **2. Respondent's Options**

It is appropriate to determine whether the petitioner still wants to proceed and whether the respondent still wants to contest the order.

#### **3. Standard of Proof**

Since the Minnesota Legislature has not identified the standard of proof to be used in Harassment Restraining Order cases, the preponderance of the evidence standard applies. The petitioner bears the burden of proof as the party seeking to obtain the Harassment Restraining Order.

#### **4. Opening Statements**

Normally, parties and their attorneys waive opening statements.

#### **5. Continuances**

See previous [section on administrative continuances](#).

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<sup>107</sup> *Gada v. Dedefo*, 684 N.W.2d 512 (Minn. Ct. App. 2004) Court of Appeals affirms denial of request for continuance where Court noted family members pressuring petitioner in waiting area of Court.

## **6. Testimony**

### **a. Out-of-Court Statements by Children**

[See section VIID6a.](#)

### **b. In-Court Interviews of Children**

[See section VIID6b.](#)

### **c. Fifth Amendment Issues**

[See section VIID6c.](#)

## **7. Witnesses**

[See section VIID7.](#)

## **8. Rulings**

[See section VIID8.](#)

## **9. Mutual Harassment Restraining Orders**

Mutual Harassment Restraining Orders are sometimes issued by agreement.

If both parties have filed petitions for Harassment Restraining Orders and both have committed acts of harassment against each other, separate orders should issue in each case.

## **10. Collateral Consequences**

The issuance of a Harassment Restraining Order may have collateral or unintended consequences for the parties. These issues sometimes come up during hearings or negotiations between counsel for the parties who attempted to settle prior to their evidentiary hearing.

Collateral consequences should not detract from the purpose of the hearing, which is to determine whether harassment occurred.

### **E. Motion Hearings**

The statute does not provide direction on motions to modify the Harassment Restraining Order. The court should refer to [Minnesota Rules of Civil Procedure](#).

The Domestic Abuse/Harassment Office has procedures to address the motions depending on the type of motion that is brought. If the motion presents an emergency, the process is similar to a new petition. The clerk prepares an Amended Order Granting Petition for Ex Parte Harassment Restraining Order and provides it to the judicial officer for review and a hearing is set approximately 17 days out. All motions need to originate through the Domestic Abuse/Harassment Office in order to coordinate possible companion cases and check the electronic court record for conflicting orders.

If the motion is argued, it would be handled based on the record including the affidavit(s) filed in support or opposition to the motion.

The Court should never deny a party an opportunity to serve and file a motion unless the party has been previously restricted by court order as a frivolous litigant.

## **1. Types of Motions**

### **a. Non-Emergency**

If the motion is one to dismiss the order or make the order less restrictive, the motion is served by mail and the hearing is set at least 17 days out to allow for service by mail. Court staff does not prepare an order in this situation. If not already served, court staff will mail the documents to the last known address of the non-moving party when the motion is a non-emergency motion.

### **b. Emergency**

If the moving party alleges an emergency, court staff prepares an Amended Order Granting Petition for Ex Parte Harassment Restraining Order. If the Court grants the emergency relief, the court staff will set the hearing at the earliest practicable time<sup>108</sup>, and then send the order and motion for personal service on the non-moving party. If the request for immediate relief is denied, the court staff will proceed with filing and scheduling the motion.

### **c. Motion for New Trial**

Harassment Restraining Orders are considered “special proceedings,” which means a motion for a new trial is not authorized and will not alter the time to appeal.<sup>109</sup>

### **d. Motions to Dismiss**

Often, the petitioner will seek to dismiss the Harassment Restraining Order for a variety of reasons.

If the Harassment Restraining Order is dismissed and another order (ie. Domestic Abuse No Contact Order) is in effect, the Court should remind the parties that this amendment or dismissal does not amend or dismiss that order.

If the respondent seeks to dismiss the Harassment Restraining Order, the Court shall consider it as a motion to vacate<sup>110</sup>. If this is an order issued under [Minn. Stat. §609.748, subd. 5\(3\)](#) (up to 50 years), see [section XV](#) below.

### **e. Request for Immediate Dismissal**

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<sup>108</sup> [Minnesota Rules of Civil Procedure, Rule 65.01](#)

<sup>109</sup> *Steeves v. Campbell*, 508 N.W.2d 817 (Minn. Ct. App. 1993)

<sup>110</sup> [Minnesota Rules of Civil Procedure, Rule 60](#)

The petitioner may motion the Court for an immediate dismissal before the hearing is scheduled. The Court should proceed cautiously in this instance. It is difficult to determine, without hearing from the parties, what is causing the need for immediate action and what motivates the request. Some of these factual situations can be fast-changing and the Court may need to be more deliberate in this situation.

#### **f. Contempt Hearings**

The most effective way of enforcing many conditions in Harassment Restraining Orders is through law enforcement. This is why contempt hearings are and should be rare in HROs. Hearings shall be set within 14 days and are handled as in other contempt proceedings.<sup>111</sup>

## **XV. Extensions and 50-Year Harassment Restraining Orders**

### **A. Extending a Harassment Restraining Order**

Nothing in the statute allows for a petitioner to request for an extension of an existing Harassment Restraining Order. In an unpublished case, the Court found that a restraining order may be granted if the proceeding met the statutory requirements for issuing an initial restraining order. In this case, the party's motion for an extension of the restraining order met the requirements for a petition because it identified the parties and was accompanied by a sworn affidavit setting forth alleged incidents of harassment so the Court construed it as issuing a new restraining order that did not violate the prohibition against extending a restraining order beyond 2 years.<sup>112</sup>

### **B. 50-Year Harassment Restraining Orders**

The Court may issue an order for a period of up to 50 years if the Court finds<sup>113</sup>:

- The respondent has violated a prior or existing Harassment Restraining Order two or more times; or
- The petitioner has had two or more Harassment Restraining Orders in effect against the same respondent.

For orders issued under [Minn. Stat. §609.748, subd. 5\(3\)](#) there are special rules for service, burden of proof, and conditions under which motions to modify may be made by the respondent.<sup>114</sup>

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<sup>111</sup> *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968) and *Mahady v. Mahady*, 448 N.W.2d 888 (Minn. Ct. App. 1989)

<sup>112</sup> *Roer v Dunham*, 682 N.W.2d 179 (Minn. Ct. App. 2004)

<sup>113</sup> [Minn. Stat. §609.748 subd. 5 \(3\)](#)

<sup>114</sup> [Minn. Stat. §609.748, subd 5](#)

# Appendix A: Domestic Violence Risk Assessment Bench Guide

## Domestic Violence Risk Assessment Bench Guide

*A research-based bench guide for use by Minnesota judges  
at all stages of family, Order for Protection, civil or criminal involving domestic violence*<sup>115</sup>

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a **firearm**, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a **weapon** against the victim?
3. Has alleged perpetrator ever attempted to **strangle** or choke the victim?
4. Has alleged perpetrator ever **threatened to or tried to kill** the victim?
5. Has the physical **violence increased in frequency or severity** over the past year?
6. Has alleged perpetrator **forced** the victim to have **sex**?
7. Does alleged perpetrator try to **control** most or all of victim's **daily activities**?
8. Is alleged perpetrator constantly or violently **jealous**?
9. Has alleged perpetrator ever threatened or tried to commit **suicide**?
10. Does the **victim believe** that the alleged perpetrator will re-assault or attempt to kill the victim? A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant.
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?

*These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al, "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).*

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<sup>115</sup> Reissued in July 2013 without changes by the Gender Fairness Subcommittee of the Committee for Equality and Justice. Originally prepared by the Gender Fairness Implementation Committee, 2009.

## How To Use The Domestic Violence Risk Assessment Bench Guide

- **Obtain information regarding these factors through all appropriate and available sources**
  - Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties and attorneys
- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court**
  - This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized
  - Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible
- **Expect consistent and coordinated responses to domestic violence**
  - Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides
- **Do not elicit safety or risk information from victims in open court**
  - Safety concerns can affect the victim's ability to provide accurate information in open court
  - Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim
- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates**
  - Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments
- **Note that this list of risk factors is not exclusive**
  - The listed factors are the ones most commonly present when the risk of serious harm or death exists
  - Additional factors exist which assist in prediction of re-assault
  - Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports
- **Remember that the level and type of risk can change over time**
  - The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
    - might attempt to separate from the alleged perpetrator or to terminate the relationship
    - has disclosed or is attempting to disclose the abuse to others, especially in the legal system