



FOURTH JUDICIAL DISTRICT

Family Violence Coordinating Council

February 14, 2019

Minutes

**Fourth Judicial District
Family Violence Coordinating Council
Serving Hennepin County**

Present: Braun-Lewis, Jackie; Brey, Katie; Coy, Erica; Crockford, Carrie; Eckberg, Deborah; Golden, Naomi; Hogan, Elizabeth, McNaughton, Lisa; McTigue, Penny; Milgrom, Aaron; Morgan, Stephanie; Nelson, Melynda; Osborne, Erin; Taylor, Jennifer; Torborg, Kari; Weinstein, Michael; Wilson, Kate

1. **Welcome:** Katie Brey welcomed the group.

2. **Committee reports**
 - a. **Criminal:** Katie provided an update on behalf of the committee. They met on February 11th and discussed their role in the 2019 strategic plan. They discussed CLE and training topics for the year and want to do a repeat of the popular firearms CLE. They also discussed goals for the year; ways of facilitating communication between agencies; and the impact on court calendars of bringing some of the Southdale calendars downtown.
 - b. **Advocates:** No update.
 - c. **Civil:** The committee met and discussed potential funding for services by Central Minnesota Legal Services (CMLS). CMLS currently provides services at the Family Justice Center but will move those services to DASC so they can work with victims earlier in the process.
 - d. **Juvenile:** Lisa said they met and talked about the resource fair and talked about options for trainings in the future.


3. **Overview of Order for Protection: Rana Alexander, StandPoint**

Rana Alexander from StandPoint presented a training on orders for protection. She reviewed the legal definition of domestic abuse and reviewed who is considered family/household members under Minnesota statute. She gave examples of relief available ex parte and relief available after hearing, an overview of who can file in Minnesota under state statute, and reviewed the types of orders for protection. Rana reviewed the timelines for hearing and the definition of service by alternative means. She reviewed the standards to apply for an OFP as ex parte or after a hearing and reviewed how long OFPs can be in place, how people can extend or add subsequent OFPs, and how they can modify OFPs. Lastly, she reviewed the differences between OFPS, HROS, and DANCOS.

4. **Open forum/announcements: All**

There were no announcements or further discussion and the meeting adjourned at 1:20 pm.

ORDERS FOR PROTECTION
 RANA S ALEXANDER



STANDPOINT
 Attorneys & advocates against domestic & sexual violence

WHAT IS DOMESTIC ABUSE?

- Physical harm, bodily injury or assault
- Creating fear of imminent physical harm, bodily injury or assault (threats) in another person
- Criminal sexual conduct
- Terroristic threats (threats of violence)
- Interference with an emergency call

Minn. Stat. § 518B.01, subd.2 (a)

WHO ARE FAMILY/HOUSEHOLD MEMBERS?

- Spouses, former spouses;
- Parents and children;
- Blood relatives;
- Live or used to in the same house together;
- Have a child together;
- Have a pregnancy in common; or
- Current or formerly dating partners in a significant romantic or sexual relationship
 - 1) length of time of the relationship
 - 2) type of relationship
 - 3) frequency of interaction between the parties
 - 4) if the relationship has terminated, length of time since the termination
- Significant modifies both romantic and sexual
- On a case by case basis

State v. Robinson, __ NW2d __ (Minn. 2019)
 Minn. Stat. § 518B.01, subd.2 (b)

RELIEF AVAILABLE EX PARTE

- Order the respondent not to commit acts of domestic abuse;
- Exclude the respondent from the residence;
- Exclude the respondent from a "reasonable area around the house";
- Exclude the respondent from work place or limiting access to place of employment;
- Order the respondent not to contact the petitioner, which can include no contact in person, by telephone, letter or third-party;
- Award/modify/return custody of the children (Can be ordered in an ex parte order, the court will require a hearing) see Minn. Stat. § 518B.01, subd. 6(a)

Minn. Stat. § 518B.01, subd. 7(a)

RELIEF AVAILABLE EX PARTE

- Give care, possession, or control of a pet or companion animal;
- Prevent respondent from physically abusing or injuring any pet or companion animal;
- Order the respondent to not make changes in insurance coverage, or to dependent insurance coverage;
- Ask for the return of house or car keys;
 - Ask the sheriff/police recover the keys when the OFP is served
- Order the sheriff/police to go with the petitioner to the house to remove the respondent or to help recover property;
- Allow the respondent to only remove property with the sheriff/police present;

Minn. Stat. § 518B.01, subd.7(a)

RELIEF AVAILABLE AFTER HEARING

- Order restitution for expenses related to the abuse;
- Establish/modify a parenting time schedule;
- Order supervised parenting time;
- Award child support;
- Award spousal maintenance;
- Specify who gets to use the property which both parties have in common, such as a car;
- Order neither party sell any property, damage property or use it for a loan;
- Order the abuser to complete a counseling or treatment program; or
- Order other relief necessary for protection from the abuse
- Firearm prohibitions

Minn. Stat. § 518B.01, subd. 6(a)

CAN I FILE IN MINNESOTA?

- No residency requirements for Petitioner Minn. Stat. § 518B.01, subd. 3
- Respondent does not have to live in Minnesota.
 - Petitioner in fear in Minnesota AND
 - Respondent has had minimum contacts with Minnesota *Hughs v. Cole*, 572 N.W.2d 747 (Minn. Ct. App. 1997)
- Which County Can I File In? (Venue)
 - Petitioner/respondent reside
 - individual's desire to make a permanent home
 - Where the abuse occurred; or
 - Where other family court proceedings have occurred with the abuser Minn. Stat. § 518B.01, subd. 3

WHO CAN FILE?

- Adult victim of domestic abuse
- A minor, age 16 or older, against
 - a spouse or former spouse, or
 - a person with whom the petitioner shares a child.
- All other minors must have a family or household member; guardian; or a reputable adult 25 years or older file on the minor petitioner's behalf. Minn. Stat. § 518B.01, subd. 4(a)

TYPES OF OFPS

- Ex parte
 - By one party without notice to the other party
 - Must allege an immediate and present danger of domestic abuse
 - Can become final without a hearing if:
 - Specific relief is request AND
 - Neither respondent nor petitioner request a hearing Minn. Stat. § 518B.01, subd. 5(b)
- Final
 - After agreement OR
 - After an evidentiary hearing Minn. Stat. § 518B.01, subd. 5

TIMELINES FOR HEARING

- If an ex parte is not issued:
 - Hearing scheduled in 14 days Minn. Stat. § 5188.01, subd. 5(a)
- If ex parte is issued:
 - Only limited relief: No hearing required
 - If respondent requests hearing: 10 days after request Minn. Stat. § 5188.01, subd. 5(d)
 - If no personal service within 14 days, ex parte expires
 - Must file for service by alternative means Minn. Stat. § 5188.01, subd. 7(d)
 - If additional relief: Hearing in 7 days Minn. Stat. § 5188.01, subd. 5(c)

SERVICE BY ALTERNATIVE MEANS

- Alternative means Minn. Stat. § 5188.01, subd. 8(c)
- Publication if:
 - service is unsuccessful because
 - respondent is avoiding service by concealment or otherwise Minn. Stat. § 5188.01, subd. 4(g)

Minn. Stat. § 5188.01, subd. 5(f)
Ayala v. Ayala, 749 N.W.2d 817 (Minn. Ct. App. 2008)

- might reasonably succeed in notifying the respondent Minn. Stat. § 5188.01, subd. 8(c)

COURT FEES

- None for the petitioner or the respondent Minn. Stat. § 5188.01, subd. 3a

Standard to Apply – Ex Parte

- Domestic abuse against
 - petitioner (family or household member)
 - true even if O/B/OI

Schmidt, on behalf of P.M.S. v. Coons, 818 N.W.2d 523 (Minn. 2012)
- Domestic abuse occurred:
 - Overt act is not necessary
 - Totality of the circumstances
 - includes a history of past abusive behavior
 - No temporal restriction

Hall v. Hall, 408 N.W.2d 626 (Minn. Ct. App. 1987)
Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009)
Thompson v. Schrimsher, 906 N.W.2d 495 (Minn. 2018)

Standard to Apply – After Hearing

- 1) Domestic abuse occurred
 - Against petitioner (family or household member)
 - Preponderance of the evidence

Oberg v. Bradley, 868 N.W.2d 62 (Minn. Ct. App. 2015)
- 2) Should OFP be granted
 - The relevant circumstances of the domestic abuse, including:
 - Timing
 - Frequency
 - Severity
 - Likelihood of further abuse

Thompson v. Schrimsher, 906 N.W.2d 495 (Minn. 2018)

HOW LONG DOES THE OFP LAST?

- Often 2 years
 - Can be longer (or shorter), as the court determines "appropriate"

Minn. Stat. § 518B.01, subd. 6(b)
 - 50 year orders
- Minn. Stat. § 518B.01, subd. 6(c)

EXTENDING OR SUBSEQUENT

- 1) The respondent has violated a prior or existing OFP;
 - Doesn't need to be a conviction
 - Ekman v. Miller, 812 N.W.2d 892 (Minn. Ct. App. 2012)
 - 2) The petitioner is in reasonable fear of physical harm from the respondent;
 - 3) The respondent has engaged in acts of harassment or stalking; or
 - 4) The respondent is incarcerated and about to be released, or has recently been released from incarceration
 - If petitioner only seek relief under subd. 7 no hearing required unless
 - court declines the order or
 - respondent asks for a hearing
- Minn. Stat. § 518B.01, subd. 6a(b)

50 YEAR ORDERS

- 1) Respondent violated a prior or existing order on two or more occasions; or
 - 2) Petitioner had two or more orders in effect against the same respondent.
 - Relief available:
 - No acts of domestic abuse
 - No contact
- Minn. Stat. § 518B.01, subd. 6a(c)
- Can be vacated or modified after 5 years and no violations
 - Burden on respondent by preponderance of evidence of a material change
- Minn. Stat. § 518B.01, subd. 11(b)

MODIFICATION

- File a motion with affidavit
 - Must have a hearing
- Minn. Stat. § 518B.01, subd. 11(a)
- "No abuse" provision may not be vacated or modified in a proceeding for divorce
 - may hear a motion for modification concurrently upon notice of motion and motion
 - notice can't be waived
 - separate order must issue
- Minn. Stat. § 518B.01, subd. 6(c)

OTHER THINGS TO NOTE

- Do NOT need respondent's address to issue
- No mutual OFP unless both parties filed a petition
Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987)
Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995)
- In awarding custody or parenting time primary consideration is safety of the victim or children.
 Minn. Stat. § 518B.01, subd. 6(a)(4)
 - If ordering supervised parenting time or exchanges
 - How is that going to happen?
- Any testimony offered by a respondent is inadmissible in a criminal proceeding.
 - Not true for the petitioner
 Minn. Stat. § 518B.01, subd. 15

DIFFERENCES BETWEEN OFPS, HROS AND DANCOS

	Order for Protection (OFP)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Minnesota Statute	518B.01	609.748	629.75
Type of Order	Family Court Order	Civil Order	Criminal Order
Must Allege	1) physical harm, bodily injury or assault; 2) infliction of fear of imminent harm, injury or assault; 3) terrorist threats; 4) criminal sexual conduct; or 5) interference with an emergency call	1) a single incident of physical or sexual assault; 2) repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another; 3) single incident of nonconsensual dissemination of private sexual images; 4) single incident of using another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person 5) targeted residential picketing; or 6) pattern of attending public events after being notified that the actor's presence at the event is harassing to another	A criminal cases where criminal charges pending and/or conviction for: 1) domestic abuse as defined; 2) harassment or stalking when committed against a family or household member as defined; 3) violation of an order for protection; or 4) violation of a prior domestic abuse no contact order.

	Order for Protection (OPF)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Relationship	Household or family member as defined	No special relationship necessary	Household or family member as defined
Relief	Broad and includes possession of property, custody, child support, spousal maintenance exclusion from house/work/daycare	Only no contact and no harassment	Only no contact

	Order for Protection (OPF)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Fee	No fee for the petitioner or respondent	No fee for the petitioner or respondent if the petition alleges acts that constitute a violation of § 609.749, subd. 2, 3, 4, or 5, or § 609.342 to 609.3451	No fee
Who Can Seek Order?	Victim	Victim	Prosecutor
Hearing Timelines	Strict timelines	No timelines	Any proceeding in which pretrial release or sentencing issues are decided
Additional Notes	Even if OPF is dismissed; there still could be a DANCO	Even if HRO is dismissed; there still could be a DANCO or other criminal no contact order	Even if DANCO is dismissed, there still could be an OPF or HRO Family Court cannot modify

QUESTIONS?

- Feel free to contact us at:
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 - 612-343-9842
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