

The Responsibilities of Protection Order Judges and Courts



Your protection order can be an important part of your safety plan. If wisely written and strictly enforced, a protection order may help keep you and your children safe. You have the right to expect the judge in your protection order case to handle it in a professional manner. This means the judge should follow well-recognized guidelines for protecting families in domestic violence cases. The judge should grant orders with all the protections you need and should enforce the law.

This brochure will describe YOUR LEGAL RIGHTS and the JUDGE'S PROFESSIONAL RESPONSIBILITIES.

IMPORTANT NOTE: This brochure should give you some idea of your rights and what you can ask for when you are in court. Keep in mind that courtrooms in different communities have different rules, and that what you expect should happen is not necessarily what will happen. This may be because of different rules or laws, but may also be because the legal system does not always respond the way it should.

Your local domestic violence program should have domestic violence advocates that understand the legal process in your area. They can give you information on what to expect, as well as help you understand the information in this brochure.

The Protection Order Judge...

...Should Provide Relief from Domestic Violence

Every state had similar goals in mind when protection order laws were adopted. In every state those goals were aimed at **safety first**.

- ◆ **Stopping the violence:** Your judge should take immediate action to stop the violence. Your abuser should not be allowed to intimidate you in the courtroom. The judge should remove all access to and possession of weapons, unsupervised access to your children, and access to you and your property.
- ◆ **Safety:** Your judge should recognize that family safety requires much more than a stay-away order. Every protection order should be molded to the specific needs of the family and include everything needed to keep the family safe, according to the law. Adequate financial support and secure visitation arrangements are some of the critical safety issues often overlooked.
- ◆ **Restoration:** Your judge should always try to keep you and your children in your home and with your belongings. A judge should not allow your abuser to benefit financially from abusing you. When available, a judge should consider ordering your abuser to pay for you to retain an attorney to obtain a protection order.
- ◆ **Self-determination:** Your judge should recognize that you are the expert on your abuser, and respect your knowledge about when you are in danger and what will keep you safe.

The Protection Order Judge and Court...

...Should be Accessible and Helpful to Victims of Violence

- ◆ The court should be readily **available**. Most courts are open for protection order cases during regular business hours. Additionally, many courts now offer access to protection orders 24 hours a day in order to better protect people. Ask for a referral to the local domestic violence agency, if you want to find additional services.
- ◆ The court should provide you with **forms and instructions** on how to get a protection order. In some states this help is available on the Internet.
- ◆ The judge and court staff should be **courteous and helpful**. Even though they cannot give you legal advice, they can explain court procedures to you and what your protection order means.
- ◆ The court should assist in finding an interpreter for you when English is not your native language, or when you have difficulty understanding legal terms and procedures in English.
- ◆ **No fees or costs** can be charged. Federal law says you may not be charged any fee or deposit for filing, serving or enforcing a protection order.
- ◆ You should feel **safe in the courthouse**. The court should have rules to keep the abuser separated from you, and to prevent intimidation by the abuser, the abuser's friends and family or the abuser's lawyer. If you feel intimidated or in danger, tell the court staff or security officer. If necessary, ask for a security officer to escort you between your vehicle and the courthouse. Request that a domestic violence advocate be allowed to be with you at your hearings.



The Protection Order Judge...

...Should Issue a Thorough Protection Order

- ◆ If you appear for a court hearing and unexpectedly discover that your abuser has brought a lawyer, ask the judge for a **continuance** so you have the opportunity to get help from a lawyer and to speak with a domestic violence advocate. Judges will almost always allow a continuance under this circumstance.
- ◆ Judges should issue **orders that will help keep you and your children safe**.
- ◆ Even if your judge appears unwilling to include a specific protection in your order, you should be allowed to explain why the requested protection is important.
- ◆ If your paperwork is rejected or your protection order turned down, you should request a **clear and complete explanation of the court's reasons in writing**, so you may correct any errors or appeal the decision.
- ◆ You may need **additional copies** of your protection order to give to schools, employers, landlords, police officers, etc. The court should give you as many as you need.
- ◆ The judge should recognize the importance of **swift service** of your protection order upon the abuser, and must take steps to make this happen quickly.
- ◆ Every protection order should be tailored to the needs of the person requesting it. Tell your judge about any specific issues you want included in the order.
- ◆ Domestic violence abusers are creative in the ways they harass and threaten. You should expect your judge to protect you from all the most common abuses. For instance, a court should always order the return of all keys, garage door openers, personal papers and property (undamaged). The judge should direct the abuser not to cut off utilities and insurance. The order should prohibit harm to pets; prohibit asking any relative or other third party to violate the protection order on the abuser's behalf; prohibit harassment by mail, phone or any other electronic means; and restrict the abuser from coming near your vehicle, employer, or your school or your children's school.
- ◆ Unless state law does not allow it, an award of financial support is critical to continued safety. Financial support should go beyond normal spousal and child support guidelines in protection order cases, to include replacement of essential property destroyed by the abuser, housing costs, and moving expenses. If you need support and believe you are entitled to it, ask your judge to provide fair support for you and your children. If this request is refused, ask for an explanation in writing.

- ◆ Manipulation of children and visitation is one of the most frequently used tools of abuse after separation. Tell the judge in detail what you think will keep you and your children safe. Some judges mistakenly believe that visitation rights are more important than family safety, too often with harmful results. You have the right to expect that your judge will put the safety of you and your children first.
- ◆ By federal law, as long as a qualifying protection order is in effect, your abuser may not possess a firearm. No state judge has the authority to change this federal law or give your abuser “permission” to possess a firearm. You have the right to expect your judge to obey federal law and to fully complete the forms needed for law enforcement to be notified of your protection order.
- ◆ A judge may not issue a “mutual protection order.” A mutual protection order means that both you and your abuser are restrained equally from each other. Only the person who files for the protective order is entitled to get that order. If the abuser wants a protection order against you, it must be filed and set on the court calendar for a separate hearing on a later date. If you are the only one who asks for a protection order, your judge may not issue any order against you. Doing this is against the law in many states. In the other states, ordering a mutual protection order violates your due process rights. Your due process rights are violated when you are not given proper notice of the hearing (in this case, the new issues being raised) and have not had an opportunity to prepare your case.
- ◆ If for any reason you withdrew any prior protection orders and you need to go back to court for a new one, your judge should be just as helpful as before. However, the judge may find that it is important to hear why you dropped any previous protective orders.
- ◆ If requested, your judge should issue your protection order for the maximum time allowed by law in your state, or to explain in writing why the judge thinks you will be safe from harm in a shorter period of time.

An Effective Protection Order Judge...

...Educates All Parties

- ◆ **Information about relief.** The judge should explain to a domestic violence victim the range of “relief” available in a protection order case. The judge should also explain the relief actually granted by the court, the reasons any requested relief was denied, how the orders can be modified and what you should do if the orders are violated. The judge or a court staff member should be knowledgeable of or direct you to victim assistance, domestic violence, legal assistance and state victim benefit programs.
- ◆ **Information about conduct required or prohibited.** The judge should explain to every domestic violence defendant the conduct required or prohibited by the protective order. The judge should also explain all state and federal restrictions concerning weapons, restrictions concerning drugs and alcohol, visitation with children, financial support requirements and the potential state and federal penalties for violating any part of the order. During this process, the judge should also review any orders for batterer intervention, substance abuse or other counseling.
- ◆ **Clarification that domestic violence is both harmful and criminal.** An effective protection order judge will recognize that violence against intimate partners is both morally wrong and a criminal act. The judge should explain that the community will not tolerate such behavior and that any violations of the protection order will have serious consequences.



- ◆ **Explanation that the order is enforceable anywhere in the U.S.** The federal “full faith and credit” law provides that every final protection order is valid in all 50 states, on tribal land and in the U.S. territories (as long as both parties had notice about a hearing on the protection order and the chance to appear at the hearing.) Your judge should advise both parties that the order will be honored anywhere in the U.S.
- ◆ **Questions about the order and consequences of violation.** Prior to ending the hearing, the judge should ask if anyone has questions about the order. Many abusers leave the courtroom claiming not to understand the order. If you have any questions or think that any section of the order is not clear to you or to your abuser, ask the judge to explain it.

NOTE: Batterer intervention programs cannot guarantee safety or even behavior change. Quality programs warn that it takes a full six months before any change in attitude and behavior can possibly be expected. *You should not base any safety decisions on the mere fact that counseling has been ordered.* Judges should advise your abuser of the legal consequences for failure to successfully complete the program as ordered.



The Protection Order Judge...

...Should Enforce Court Orders

- ◆ Protection orders are only effective when they are **swiftly and seriously enforced**.
- ◆ Enforcement typically involves police and prosecutors bringing **criminal charges**.
- ◆ Your protection order judge also has the **option to enforce orders through “contempt powers”** of the court. This means that the judge can punish the abuser for having violated the order (“criminal contempt”) or can hold the abuser in jail until the abuser is willing to do what the order says (“civil contempt”). In most places, the judge can change the order to seek better compliance from the abuser (make it more strict). A failure of the court to use its contempt powers invites an abuser to continue to violate the order and may put you in additional danger.
- ◆ Without financial support, many victims may feel they have no choice but to reunite with their abusers. Support orders can be enforced through the criminal process, but this is rare. A more effective means of **enforcement of support orders** is through the contempt powers of the court. You should immediately report any violations of support orders (non-payment, partial payment, late payment) and expect the prosecutor or your judge to summon the abuser to court.
- ◆ Professional counselors report that swift and serious court consequences keep many abusers from dropping out of batterer intervention programs. Ask that the court enforce attendance by using either contempt proceedings or criminal action against the abuser.
- ◆ If you have any reason to believe that your abuser will violate court orders (for instance, if your abuser has violated court orders in the past, or tells you he intends to disregard future court orders), ask your judge to set a **compliance hearing**. This is a special hearing that requires a person to appear and prove all court orders are being followed.

The Protection Order Judge...

...Should Be Ethically Sound

- ◆ Every judge strives for ethical conduct, and you have the right to expect it.
- ◆ You are entitled to respect and assistance from the judge and every court employee.
- ◆ Judges are not permitted to talk about your case with your abuser or his lawyer without you or your lawyer knowing it. The exceptions to this rule would be when setting or confirming calendar dates, the submission of paperwork or under extraordinary and emergency circumstances.
- ◆ All courts must be free of gender bias. It is unethical for your judge or any court staff to talk or act against you or your case because of your gender. Since well over 90% of all domestic violence victims are women, a judge's actions or comments against enforcement of domestic violence laws may also show gender bias.
- ◆ In order for courts to provide equal justice to all citizens, other forms of discrimination are also banned. You should expect that no bias be shown against you or your case because of your race, age, disability or sexual orientation.
- ◆ Judges should strive to speak in language that is understood by all persons appearing before them. This means they should use non-legal language. If either the victim or abuser does not speak English, the court should strive to make sure that court proceedings and orders are translated fully and fairly.
- ◆ Judges are required to be neutral to the parties and about the disputes they must decide. They should not be neutral about violence in their communities and their role in stopping abuse and preventing future abuse.
- ◆ If a judge denies your request for protection, and you wish to file for reconsideration or appeal of the order, the judge must explain your next step in that process.

For help locating other services for abused adults, call:

National Domestic Violence Hotline
1-800-799-SAFE (7233)

To contact your local domestic violence program look in the emergency or human services pages of your phone book.

To contact your local bar association or legal services/aid office, look in the emergency or human services pages of your phone book.

The Responsibilities of Protection Order Judges and Courts was prepared by the Battered Women's Justice Project (BWJP) of the Pennsylvania Coalition Against Domestic Violence.

For more information please contact BWJP at:
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