

# THE PROTECTIVE ORDER HEARING

## LOGISTICS

When you enter the courtroom, there will be three tables in front of the judge. They are usually marked with two tables marked Petitioner and one marked Respondent. The third table is for a Guardian *ad Litem* or other party who might be involved in a particular case. Respondent's table is always the one closest to the side door. Some judges prefer that the Petitioner sit at the middle table, and some prefer them to sit at the end. If the judge or deputy directs you to the middle but you are uncomfortable sitting so close to the Respondent, ask to sit further away.

When you are in the courtroom, always refer to the judge as, "Your Honor." There will also be a clerk sitting near the judge to help with paperwork, and there will be one or two sheriff's deputies to assist with security. The deputies also help hand papers back and forth between you and the judge.

Other courtroom rules:

- There is no eating or drinking in the courtroom, and no chewing gum.
- Make sure your electronic devices (cellphones, tablets, smartwatches) are silent.
- You can bring your notes and something to write with up to the table, but you should leave anything else (your coat, bag, or other belongings) should be left on a bench in the back of the courtroom.

## INTERPRETERS

If either or both of the parties needs an interpreter, the court cannot start until the interpreter is set up and both parties are able to hear them. In Fairfax, the interpreters use a special headset system, so they can quietly interpret in a way that anyone who needs interpretation can hear. If you cannot hear or understand the interpreter, it is important to raise your hand to alert the judge and the interpreter right away.

If you are using an interpreter, it is important to stay with that language throughout the court hearing; even if you understand or speak some English, it's important to use your primary language and the interpreter.

## INTRODUCTIONS

Once the hearing begins, the judge will usually explain that we are here today for a Protective Order and will make sure that everyone is present.

- If Petitioner is not present and Respondent is there, the judge may call over the loudspeaker again, but the case will probably be dismissed.
- If neither party is present, the court will call the case and the parties' names over the loudspeaker several times before dismissing the case.
- If Petitioner is there but Respondent is not, then the judge will check the paperwork to determine if there is proof of **service [link to service page]**, that is, proof that the Respondent knows about the court hearing.
  - If there is no proof of service and Respondent is not present, the court can continue the hearing to a new date up to six months. [described above?]
  - If there is proof of service in the file and Respondent hasn't called the court to explain why they are late or unable to come, then the court can just enter the Protective Order on the terms Petitioner requested.
    - Many judges ask Petitioner to briefly explain again under oath why they need the protective order and what they want the order to say.

- If both Petitioner and Respondent are present, then the judge will usually ask Petitioner if they still want to go forward with the Protective Order, and if so, if they want it to last the full two years.
  - NOTE: Petitioner has the right to dismiss or “nonsuit” the case and make it go away at any time up until the judge decides the case. Also, the final Protective Order doesn’t have to be for the full two years – sometimes Petitioner only needs it for six months or a year because of plans to move away or other circumstances.
- If Petitioner wants to move forward, then it is Respondent’s choice about what happens next. Respondent can choose to:
  - Agree to the entry of the Protective Order. If this happens, the judge will clarify what the order will say and make sure Respondent understands what they have agreed to.
  - Ask for a continuance. If the respondent wants more time to hire a lawyer, gather evidence, or wait until a related criminal charge has been heard, the court will usually allow them to do that. However, if the respondent asks for a continuance, the court will issue a new Preliminary Protective Order to last until the next court date. That order will have the same terms as the original one unless both parties agree to change something about it.
  - Disagree with the order and have a trial immediately.
- Court can be unpredictable sometimes – it is possible that something else might happen in your case. If you don’t understand what is happening, you can ask the judge.
- Who else will be able to be in the courtroom? Generally only people who are involved in the case are allowed to be in the courtroom. Before a hearing starts, you can ask the judge for a “Rule on Witnesses”

### **IF THERE IS A TRIAL**

The judge will hear evidence from both sides about what has happened and why a Protective Order is necessary, and then the judge will decide whether to grant the Protective Order at all, and if so, what it should say.

In legal terms, we say that it is Petitioner’s “burden” to prove two things: (1) that there has been an act of family abuse and (2) that the Protective Order is going to be necessary to protect Petitioner’s health and safety. The “burden” means that it is Petitioner’s responsibility to convince the judge. In a protective order case, the burden of proof is that the judge just has to believe that Petitioner’s version of events is more likely than not, or about 51% sure.

In some cases, it’s just Petitioner’s word against Respondent’s word, and the judge can’t decide what they think really happened. In those cases, the judge does not grant the Protective Order. That’s why it is important for Petitioner to bring some evidence that helps to show what happened – things like a witness or person who personally saw or heard what happened, pictures of injuries, text messages or emails, videos or audio recordings of threats, social media messages or screenshots, or pictures of damage to property, etc.

### **HOW DOES THE TRIAL WORK?**

A real courtroom is not like TV, so don’t expect things to go the way you have seen it on your favorite show. Petitioner goes first to explain their side of the events. Respondent then has a chance to dispute what Petitioner said and tell their side of the story. Petitioner gets the last word. Then the judge will decide whether to grant or deny the Protective Order. Things can be slightly different if one or both parties has a lawyer, and different judges run their courtrooms in slightly different ways. If you hear someone say, “objection,” you should stop talking and wait for the judge to decide.

First, Petitioner has a chance to present all the evidence in their case. Usually, this means that Petitioner will start by explaining to the judge what happened and showing any evidence.

- **NOTE:** *in order for the judge to consider evidence you have, such as a picture or document, you have to explain what it is, what it shows, and then say you would like to “introduce the exhibit.” The other party will have an opportunity to object, if they disagree or think that the evidence is not what you say it is. If the judge accepts the evidence, they will mark it with a number to keep track.*
- If you are introducing a picture, text message, or video that is on your phone, you can show it on your phone or sometimes, the court can help you connect to a special Wi-Fi network in the courtroom, so that everyone can see what is on your phone. This is very helpful because the judge can print out a screenshot of what you show to introduce it into evidence. Be careful! While your phone is connected, any notifications or pop-ups on your phone will be visible to everyone in the courtroom.
- If you don't want to show your whole phone's screen, you may want to take screenshots and print them out before your hearing.
- Petitioner should be sure to include in their testimony what they want the Protective Order to say and why – specifically, explain how they want custody and visitation to work, or why they do or do not want to stay in the home the parties shared, or if they are asking for Respondent to participate in treatment, what kind of treatment program and why.

After Petitioner has finished presenting their story, Respondent has a chance to ask them questions based on what Petitioner testified about. After the questions, Petitioner will usually get one more chance to clarify anything they didn't get to say before.

Next, the judge will ask Petitioner if they have any other evidence to present. That is Petitioner's chance to show the judge any other evidence. This is the time to call any additional witnesses who saw or heard the incident that led to filing the Protective Order. Petitioner will have to ask the witness open-ended questions (like, who, what, where, when, why, how) to get them to tell what they observed. Then, like before, Respondent will have a chance to ask the witness questions about what they said in court. It is okay if you don't have any additional witnesses – most of the time, there are no witnesses.

Once Petitioner has presented all of the evidence, it is Respondent's turn to tell their side of the story.

Respondent can testify and explain what they say happened and present any evidence that they might have in the same way Petitioner did. When they are finished, Petitioner will have a chance to ask them questions based on their testimony. Respondent will have a chance to clarify and call any additional witnesses they may have brought with them, in the same way that Petitioner did.

Once each side has had a chance to tell their story, the judge may ask a few clarifying questions. Then the judge will decide and explain whether they are granting or denying the Protective Order. If the judge is granting the Protective Order, they will explain what provisions they are going to include in the order – for example, whether they will include the parties' children on the order, whether they will order supervised visitation, exclusive possession of the home, use of a car, etc.

### **IF A PROTECTIVE ORDER IS ISSUED**

If the judge is granting the Protective Order, it can take some time to prepare. The judge will review everything to make sure they have the correct address for Respondent and that they have the correct birth dates and

identifying information. You don't want to have to come back the next day because someone's name is spelled wrong.

The deputy will serve the Protective Order on both parties, so wait until they give you the paperwork and tell you it is okay to leave.

While the order is being prepared, the judge will explain the firearm restrictions and the process for Respondent to give up any firearms they possess, and they may be asked to fill out a form there in the courtroom. [\[link to firearm surrender process\]](#)

Usually the judge will also remind Petitioner about the HOPE Card program [\[LINK\]](#) and offer them an application if the final Protective Order is scheduled to last for more than one year. Either party has the right to appeal the decision to the Circuit Court [\[LINK\]](#). Both parties should make sure their address is up to date with the court in case the other party appeals.

Often, the judge will allow Petitioner to leave the courtroom first and make Respondent wait in the courtroom for a few minutes, to protect Petitioner's safety. That way, Petitioner can leave without Respondent following them and seeing where they have parked. If you would like to leave first, you can ask the judge.

#### **IF THE PROTECTIVE ORDER IS DENIED**

The judge will enter an order saying that the Protective Order is denied. Either party has the right to appeal the decision to the Circuit Court [\[link to appeal section\]](#).

Both parties should make sure their address is up to date with the court in case the other party appeals.