

APPEALS PROCESS

No matter what happens in the Protective Order hearing, if the judge issues a final order (either a Protective Order or an Order Denying the Protective Order), either party has the right to appeal the decision, as long as they fill out the right form within 10 days. (That is ten calendar days, not ten business days.)

This kind of appeal goes to the Fairfax Circuit Court, and it is called a “de novo” appeal, which means that it’s basically a do-over, a whole new trial in a new court.

If a Protective Order is issued by the J&DR court and it gets appealed, the order will stay in effect to protect Petitioner until the Circuit Court decides the case on appeal.

If you want to appeal the decision, you have to go to the “Post-Court” window of the clerk’s office, marked as room 302. The clerk will give you an appeal form to fill out. It is not necessary to say why you are appealing the decision; you don’t have to have a reason.

Behind the scenes, the clerk will take the appeal form and put it together with the court file and send it all upstairs to the Circuit Court clerk’s office. This process can take several days, or even a week. Once the Circuit Court clerk’s office receives the file, they have two business days to process it, give the case a new case number, and schedule it for a court date.

The first court date for an appeal is at Civil Term Day, which is usually at 9:59am on the 4th Monday of the month, unless that falls on a holiday. On that day, the Chief Judge for Circuit Court gathers all of the cases that have been appealed over the last month and schedules them for trial. This “Civil Term Day” hearing is not a time to bring your evidence or your witnesses; all the court will do is schedule a new court date.

In Circuit Court, all trials start at 10am, and they are only scheduled Monday through Thursday. Cases on Monday, Tuesday, or Wednesday can take a whole day or longer, but cases on Thursday have to be finished in less than 3 hours. Most protective order appeals are simple enough that they can be heard on a Thursday unless there are many witnesses or other complications.

At Civil Term Day, the judge will issue a “scheduling order,” which is like a set of instructions for what you need to do before you show up for the trial date. That order contains deadlines for certain things you must do to prepare. Most commonly, each party must prepare a Witness and Exhibit List at least 15 calendar days before the next court date and submit it to the court and to the other party. This is just a list of the witnesses you expect to testify (even if it is just yourself) and a list of any documents, pictures, or other evidence you want the judge to see. You don’t need to submit the actual evidence to the court, just the list. However, you will need to send the evidence to the other party, so they know what to expect. If you don’t complete this step, the judge may not let you present any evidence in your new trial.

When it is time for the Protective Order Appeal Trial, the process is very similar to the process in the J&DR court, but more formal. The judge is not allowed to consider what happened at the trial in the J&DR court; they are supposed to look at the evidence with fresh eyes. Remember that in Circuit Court, if you can see a red digital clock, everything that anyone says is being recorded, even if the judge is not in the room.

At the end, the Circuit Court Judge will decide whether to grant a new Protective Order for up to 2 years from that date, or to deny it and dissolve any Protective Order that was issued by the J&DR court.

The parties do not get a "do over" appeal after that. Either party can appeal the decision to the Court of Appeals, but that process is very complicated, and there has to be a good reason for the appeal. The person who is appealing has to say that the judge made a clear mistake in the way they understood or interpreted the law.

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