

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 one table for the Petitioner and one for the Respondent. The third table is for a Guardian ad Litem or other party who might be involved in a particular case. Some judges prefer that the Petitioner sit at the middle table, and some prefer them to sit at the ends. 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.

[DO WE WANT TO DESCRIBE WHAT THE INSIDE OF THE COURTROOM IS LIKE IN ANY GREATER DETAIL?]

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.

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.

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 the Petitioner is not present and the 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 the Petitioner is there but the Respondent is not, then the judge will check the paperwork to determine if there is proof of service, that is, proof that the Respondent knows about the court hearing.
 - If there is no proof of service and the respondent is not present, the court can continue the hearing to a new date. [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 the Petitioner requested.
 - Many judges ask the 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 the 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.
- Fight the order and have a trial immediately. If Respondent disagrees and wants to fight the order, then the judge will start the trial.

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 criminal case, the judge has to be convinced, "beyond a reasonable doubt" – like, 95% sure. For a Protective Order, it is a different "burden." In a protective order case, it's what we call a "preponderance of the evidence" standard. That means 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 which of them is most likely telling the truth. 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 that they are telling the truth – things like pictures of injuries, a friend who heard the fight or saw some bruises, pictures of damage to property, etc.

HOW DOES THE TRIAL WORK?

Note that things can be slightly different if one or both parties has a lawyer, and different judges run their courtrooms in slightly different ways.

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, 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.

After Petitioner has finished presenting their story, Respondent has a chance to ask them questions. This can be very intimidating, so some judges will instruct Respondent to ask the questions to them (the judge) and then the judge will turn and ask Petitioner the question, often in a clearer way. That way, it is harder for the respondent to start an argument. This kind of questioning is called "Cross-examination." 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. 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 cross-examine the witness and ask them questions. 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. When they are finished, Petitioner will have a chance to cross-examine them and ask 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 about the things that didn't make sense or that worried them. 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, a car, exclusive possession of the home, etc.

IF A PROTECTIVE ORDER IS ISSUED

If the judge is granting the Protective Order, it can take some time to prepare it. This is a very important order, so it is important that all of the information is clear and accurate. 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. It can sometimes feel like this process is taking forever, but it is very important to make sure that the order is right! You don't want to have to come back the next day because someone's name is spelled wrong.

The deputy will have to serve the Protective Order on both parties, so just wait patiently 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 and offer them an application if the final Protective Order is scheduled to last for more than one year. The judge will also advise both parties that either of them has the right to appeal the decision.

Most of the time, 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 THE PROTECTIVE ORDER IS DENIED

The judge will enter an order saying that the Protective Order is denied and will explain that either party has the right to appeal the decision.