

USLegal Guide to Restraining Orders and No Contact Orders



INTRODUCTION

A restraining order is a court order restricting a person from doing something. It can be temporary or permanent. Restraining orders are also referred to as protection order or protective order or stay-away order.

For example, a court order prohibiting family violence is a restraining order. This type of order is issued most commonly in cases of domestic violence. The court order can prohibit a person from harassing, threatening, and sometimes merely contacting or approaching another specified person. It is a civil order and it does not give the abuser a criminal record. A restraining order is a court document that is an order signed by a judge. Typically, civil court orders are not published in newspapers, but

violations of criminal restraining orders will become part of one's legal record. The restraining order may expire by statute or remain in effect until vacated by the court.

The order may or may not be issued ex parte, or without both parties to the order present. In certain cases, a judge may require testimony by both sides before issuing a restraining order. Ex parte refers to a motion or petition by or for one party. An ex parte judicial proceeding is one where the opposing party has not received notice nor is present. Ex parte hearings, petitions, or motions are usually temporary orders, such as a restraining order or temporary custody, pending a formal hearing or an emergency request for a continuance. Most jurisdictions require at least a good faith effort to notify the opposing lawyer of the time and place of any ex parte hearing.

DOMESTIC VIOLENCE AND PERSONAL HARASSMENT

A court may grant an ex parte restraining order in a family-violence case if it is necessary to (1)

achieve the government's interest in protecting victims of family violence from further abuse, (2) ensure prompt action where there is an immediate threat of danger, and (3) provide governmental control by ensuring that judges grant such orders only where there is an immediate danger of such abuse.[Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983 (1972)]

A restraining order may be issued in a divorce matter to prevent taking a child out of the county or to prohibit one of the parties from selling marital property.

Also, a person who is a victim of harassment may seek a restraining order from the court. The person or guardian of a minor who is the victim of harassment may seek a restraining order on behalf of the minor. The restraining order prohibits harassment. Harassment is governed by state laws, which vary by state, but is generally defined as a course of conduct which annoys, threatens, intimidates, alarms, or puts a person in fear of their safety. Harassment is unwanted,

unwelcome, and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim. Harassing behavior may include, but is not limited to, epithets, derogatory comments or slurs and lewd propositions, assault, impeding or blocking movement, offensive touching or any physical interference with normal work or movement, and visual insults, such as derogatory posters or cartoons.

A restraining order may be issued against an individual who has engaged in harassment, or against organizations which have sponsored or promoted harassment. The person against whom a restraining order may be issued includes your current or former spouse, boyfriend, or girlfriend; a relative; the father of your child; the person with whom you now or used to live; or someone you have recently dated. The distance required to be maintained is governed by the language of each specific order, which

may include places of work, school, etc.

You can request that the defendant leave the home and stay away; you can request that the defendant refrain from abuse; you can request custody of your children, support for your children, that the defendant be prohibited from having any guns or weapons, from keeping or consuming alcohol; restitution for damages caused by the defendant, participation in counseling, and any other order the court deems appropriate. A restraining order can only deal with custody and parenting time issues temporarily. To get “permanent” custody and parenting time orders, you need to file a family law case, such as a divorce or a custody case.

The no contact portion of the order means the defendant cannot come near you, cannot call you, cannot write you letters or send you cards, cannot send you flowers or leave you notes, and cannot send someone else to talk to or call you on the defendant's behalf. It does not matter whether or not the

contact involves any threat. The defendant simply cannot contact you.

Often the restrained person will ask for a mutual stay-away order. If the other party never wants to see this person again, it may be irrelevant if they are restrained from visiting the restrained person's house. Therefore, by staying away from each other, their needs may be met and court avoided by stipulating to a mutual order.

A temporary restraining order is an order of a court to preserve current conditions as they are until a hearing is held at which both parties are present. Temporary restraining orders typically expire on the hearing date, but local law should be consulted for specific requirements. To renew the order, you must file the court paperwork before the order ends.

STEPS FOR OBTAINING A RESTRAINING ORDER

Step 1. Complete the proper forms.

Step 2. Give the completed forms to the court clerk. Provide as

much information as possible about the qualifying incidents and how to locate the abuser. It is helpful to provide the court with the following information about the respondent: a photograph, social security number, addresses of residence and employment, phone numbers, description and plate number of the abuser's car, and any history of drugs, violence or gun ownership.

Generally, you must pay a fee to file the request. If the harassment has included violence or threats of violence, however, there may be no filing fee pursuant to state laws, which vary by state. Also, if you cannot afford to pay the filing fee, you may request that this filing fee be waived. You will need to obtain an Application for Waiver of Court Fees and Costs or similar form.

Step 3. Make note of the hearing date, get copies of the order and keep a copy with you at all times.

Step 4. Have the papers served on the person sought to be restrained.

Someone who is over 18 and not protected by the restraining order must personally serve (give) a copy of the restraining order forms to the other party a certain number of days before the Court hearing. The forms can be served by someone you know, a process server, or the sheriff. If the respondent is a juvenile and the parent or legal guardian is not the petitioner, the court will mail a copy of the order to the respondent's parent or legal guardian at their last known address. If personal service cannot be completed because the respondent is avoiding service or you do not know the respondent's address, you may ask the court administrator's office to complete service by published notice.

Step 5. Make a copy of the marshal's return of service. If you had a friend serve the papers, Your friend will have to fill out an "Affidavit of Proof of Service" or similarly named form and sign it in front of a notary. Make two copies of this and take the original to the clerk to be filed. One copy is for

your file. The clerk will "certify" the other copy. The Proof of Service shows the judge and police that the restrained person got a copy of the order. Make copies of the completed Proof of Service and bring a copy to your hearing.

Step 6. Attend the hearing. Bring all other papers that you have not already filed that support your case. Bring at least 3 copies: one for yourself, one for the judge, and one for the person you want to have restrained. You can bring a friend or relative for support, but that person must not talk for you in court. If you are representing yourself your support person may sit with you, even during a hearing.

Step 7. Present your case. Tell the truth. Speak slowly and calmly. Do not interrupt the judge or the restrained person. Give complete answers. If you don't understand, say "I don't understand." If you do not agree with what the restrained person says in court, wait until he or she finishes talking. Then tell the judge.

Speak only to the judge
unless it is your turn to
ask questions.