

ORDER OF PROTECTION

Good morning, my name is Judge De Alessandro. In just a moment I am going to call the Protection from Abuse cases scheduled for today. But first I am going to explain the procedure that will be followed in these cases.

In each of these cases, someone has come to court requesting a court order of protection against someone else. The person who starts the case is the Plaintiff and the person who has been brought to court is the Defendant.

All of the cases I am about to call are scheduled for hearing today so all Plaintiffs and Defendants must be ready with all their witnesses and evidence if a trial is needed in the case. I am going to call the Plaintiff's name and the Defendant's name. If the Plaintiff does not answer, I will assume that person is no longer pursuing the case and the case will be dismissed.

If the Plaintiff is here and the Defendant does not answer, what happens next depends on whether the Defendant has been served with the complaint as the law requires.

If not, then the case cannot proceed today and will be continued or postponed to a future date. If there is a temporary order in the case, it continues in effect until the next court date.

If the Defendant has been served and fails to answer, I will assume the Defendant has chosen not to contest the case and will ordinarily grant the Plaintiff a court order of protection.

If both parties are present, then I am going to try to determine whether a trial is needed or not. Most cases of this kind are not resolved through a trial even when both parties are in court. Sometimes the Plaintiff chooses not to proceed. If I hear that in any case today, I am going to make sure the Plaintiff is acting voluntarily without anyone pressuring them. In some other cases, the Defendant is not opposed to the Plaintiff getting a court order of protection. In many cases, court orders are issued without a trial based on the parties agreeing that the court should approve an order.

The Plaintiff gets a court order that can have the same level of protection as a court order issued after a trial. A court order issued by agreement contains no decision that the Defendant has or has not done anything wrong. Both parties benefit by not having to wait for a trial to be scheduled, and both parties avoid the uncertainty and stress of a trial. So in any case where both parties are here, I am going to ask the Plaintiff and the Defendant whether each of them is willing to consider the possibility of a court order by agreement. If you say "Yes", all you are saying is that you are open to the possibility-- you are not committing yourself to agreeing to anything.

There should be no contact or discussion between a Plaintiff and a Defendant in a case. In some cases, there are temporary orders in effect that prohibit contact, and I am directing that there be no contact, whether or not there is an order in effect. Sometimes a lawyer involved in the case or a representative of an advocacy group can be a go-between to explore whether agreement on a court order is possible. If the parties to a case can agree on a court order, there is no trial. On the other hand, if an agreement as to what should happen is not reached, the parties still have a right to a trial.

If there is a trial in any case, the Plaintiff presents evidence first, because the Plaintiff has the burden of proof: First, the Plaintiff has to prove that the Plaintiff and Defendant are family or household members. This means generally that the parties in a protection from abuse case must be related by blood, or be married, or have had a sexual relationship. Plaintiff also must prove that the defendant committed abuse against the Plaintiff.

The law defines abuse to mean any one or more of the following kind of conduct:

1. assaulting or attempting to assault someone as to cause injury or offensive physical contact, including sexual assaults
2. threatening someone in a way that would put that person in reasonable fear of bodily harm
3. putting someone in reasonable fear of bodily injury through a course of conduct
4. stalking someone to the point that they are in reasonable fear of bodily harm
5. forcing someone to do something against their will or preventing them from doing something that they have a right to do.

In deciding what evidence to present, the Plaintiff and the Defendant should keep in mind the limitations of what evidence the court can consider. There are three major requirements:

First, evidence must be relevant or have a bearing to the issues in the case. Second, hearsay evidence is not allowed. Third, evidence should not be repetitive.

The Plaintiff and the Defendant each have the right to testify, and they each have the right to call other witnesses to testify. Whether you are a Plaintiff or a Defendant, you should be prepared to ask questions to your own witnesses. You also have a right to cross examine, or ask questions to the other party's witnesses. The judge may also exercise control over what kinds of questions can be asked, and may require each party to present their questions through the court, so that the judge is actually questioning the witnesses based on what questions the party wants to be asked.

In cases involving children, the court can make decisions about parental rights and responsibilities, and the parties can present evidence to help the court make decisions in the best interests of the children.

After both parties have presented their evidence, the trial ends. The judge may make a decision on the spot, or may wait until later. This is called taking the case under advisement. If the judge decides the Plaintiff has proved abuse, the court will issue an order of protection from abuse. On the other hand, if the judge decides Plaintiff has not proved abuse, the case is terminated without further order. Either party has the right to appeal a decision made over their objection. You can get more information about the appeal process from the clerk.