

How Protection Orders Work & Best Practices

OBTAINING A PROTECTION ORDER:

- The Clerk of Court's Office in each County has the forms needed to apply for a PO/Stalking PO (also available online: ujs.sd.gov)
- Some Shelters and or Advocacy Centers have the forms needed to apply for a PO/Stalking PO
- The petitioner is the person who applies for a PO and is the protected person when PO is granted
- The respondent is who the protection order is against.

Advocates are always willing and able to help victims apply for a PO/Stalking PO and can be contacted at any time day or night. Most Counties in SD are covered by DV advocates • A PO information form is available to help a petitioner complete the application and provide all relevant information. To get a form, contact an advocate.

AFTER THE PAPERWORK IS COMPLETED:

- Return the forms to the Clerk of Courts
- The Clerk of Courts will have a Judge review the petition
- Judge can do one of the following three things after reviewing the forms:
 - 1 Decline to grant a TPO and not set a hearing
 - 2 Not grant TPO but still set hearing to determine if a permanent PO should be granted (just because you do not get TPO does not mean a permanent PO will not be granted)
 - 3 Grant TPO set hearing for permanent PO

DURING THE HEARING:

- Judge will generally explain the rules prior to the hearing
- Petitioner goes first and presents their evidence by calling witnesses and giving testimony (*Telling the Judge why they need the Order*)
- The Petitioner if they testify is subject to cross examination by the Respondent. The Judge will not allow the Respondent to badger, argue with or intimidate the Petitioner during this questioning
- The Respondent will then be given an opportunity to present evidence by witnesses or their own testimony
- The Petitioner will be given an opportunity to cross examine the Respondent and/or the Respondent witnesses. The Judge will not allow the Petitioner to badger or argue with the Respondent during this questioning
- Judge is free to and often does ask any party or witness questions during the hearing.

TIP: Bring a Notebook with a list of reasons why you need the Protection Order

AT THE HEARING:

The Petitioner must appear at the hearing and be prepared to present evidence and witnesses telling the Judge why they need the Order

- If the Respondent fails to appear, the PO is not automatically put in place. The Judge must still ask questions and take evidence in support of the PO
- If Respondent appears, the Judge will generally ask for Respondents position on the PO
- If Respondent does not object, the Judge may then enter the Order. The Judge may still ask the Petitioner questions to support the granting of the order
- If Respondent opposes Order the Judge will conduct a full hearing
- The Judge should rule on the Order at the conclusion of the hearing

AFTER THE HEARING:

- Judge determines how long, if at all, the PO should be granted for
- If kids are involved this must be addressed by the court

It is best to have the contact between the Petitioner and Respondent regarding the kids electronically (e.g. text, email) and not on the phone

A protection order and a restraining order are two separate things. Essentially, a protection order can be enforced by law enforcement, whereas a restraining order cannot.

IF AN ATTORNEY IS INVOLVED:

If either party is represented by an attorney:

- Hearing is handled the same
- However, if an attorney is involved they may try to work out an agreement to avoid the hearing or resolve other outstanding issues, and it is not uncommon that the Judge may grant them an opportunity to do this
- At the end of the hearing, a Judge must enter Findings of Fact, which outline why the order was entered

AFTER THE ORDER IS GRANTED:

“Once a Judge enters the PO/Stalking PO and Respondent knows about the Order, the Order is in place and the Respondent must follow the Order”

- Upon a Judge signing the Order, it should be taken to the Sheriff for service on the Respondent
- **The Judge is the ONLY person that can modify or dismiss the order**
- Petitioner should not contact Respondent after the Order is in place
- Once the Order is served, Petitioner should be notified by Law Enforcement

MODIFICATIONS:

- Any party, at any time, can ask the Judge to modify the Order
- Requests to modify the order should be made in writing and filed with the Clerk
- After a Judge is provided with a request to modify an Order the Judge will decide if he will have a hearing on the modification request
- It is not required that a Judge have a hearing.

BEST PRACTICE: It is best for a Judge to hold a hearing in order to gather new information, prior to deciding if the order is no longer required or should be modified to maintain the Petitioner’s safety

- The Judge will only modify the Order after a hearing on the modification request
- At modification hearing, the party asking for the modification must present evidence to the Judge in support of the modification request

FIREARMS:

- A Judge can order in a PO/Stalking PO that the Respondent not possess any firearm
- It is a federal violation for any Respondent to possess a firearm while subject to a permanent protection order

BEST PRACTICE:
A Judge should always order “NO FIREARMS” so it can be enforced by local Law Enforcement

JURISDICTION:

- The Clerk of Courts will assign PO application to the same Judge as other civil litigation between parties (e.g. divorce, child custody)
- Parties should make Judges aware of other litigation and/or proceedings
- If the PO conflicts with a valid Child Custody Order the PO controls and will be enforced by law enforcement

DISMISSAL OF THE ORDER:

- Any party at any time can ask the Judge to dismiss the Order
- Requests to dismiss the order should be made in writing and filed with the Clerk
- A form is available from Clerk of Courts
- After a Judge is provided with a request to dismiss an Order the Judge will decide if he will have a hearing on the dismissal request
- The Judge may require a hearing before deciding on a request to dismiss
- At the dismissal request hearing the party asking for the dismissal must present evidence to the Judge in support of the dismissal request

BEST PRACTICE:
It is best if a Judge holds a Hearing before entering a Dismissal to ensure victim safety

ENFORCEMENT:

- Any and all violations should be immediately reported to Law Enforcement
- ALWAYS keep a copy of the Order with you
- Law Enforcement in SD should enforce Orders from other states and Tribes
- If you obtained the order in another state or Tribal Jurisdiction, you should file it with Clerk of Courts in the county you live in.



Together, we are
The Network.

**The South Dakota Network
Against Family Violence
and Sexual Assault**

FOR MORE INFORMATION: Call the Domestic Violence Resource Prosecutor at 605-353-8430, the Network at 605-731-0041, or your local domestic violence program for more information