

## INSTRUCTIONS FOR OBTAINING A RESTRAINING ORDER

### IMPORTANT NOTICE COURT PERSONNEL CANNOT GIVE YOU LEGAL ADVICE READ THIS ENTIRE INFORMATION SHEET

#### A. WHEN YOU FIRST APPEAR AT THE COUNTER

1. Fill out the form entitled Verified Complaint for Restraining Order (JDF 402)
2. If you wish, you may complete an Incident Checklist (JDF 401). This form is provided to help you prepare for your hearing. You may keep it or you may file it with your verified complaint. If you do file it, it will become a part of the public record and will be served on the defendant as a part of the complaint.
3. If you are the plaintiff and you intend to ask for temporary care and control of children or a restraining order for the benefit of any minor child, you must fill out the form entitled Affidavit Regarding Children (JDF 404).
4. If you believe that you cannot pay the filing fee, fill out the form entitled Motion to Waive or Postpone Costs and Order (JDF 403).
5. If you want to have your address left out of the pleadings, check box #5 on the complaint.
6. It is possible in some courts that your case might be assigned to a magistrate rather than a judge, if you agree. In that case, you must decide whether you agree to a setting in front of the magistrate. Indicate your position on the Consent to Assignment to Magistrate form (JDF 405).
7. Be sure to have all pleadings that require notarization or witnessing by the clerk signed in front of a notary public or a court clerk.
8. File all pleadings. The clerk will instruct you when you need to be in court.

#### B. IF A TEMPORARY RESTRAINING ORDER (TRO) OR PERMANENT RESTRAINING ORDER (PRO) IS ISSUED FOR THE PLAINTIFF

1. Obtain the following certified copies from the clerk:
  - a) One copy of the order should have the complaint attached, along with a blank form Affidavit/Certificate of Service (JDF 409). Take this copy to the sheriff, a private process server, or anyone over the age of eighteen NOT involved in the case for service. Be sure to direct the sheriff, private process server, or person serving the order to return a copy of the Affidavit/Certificate of Service to you and to file the original with the court as soon as possible after service has been completed. Note: If both parties appear at the PRO hearing, courthouse personnel will complete service, but you should still ask for a copy of the return of service and have the original filed with the court. If personal service is not possible, service may also be obtained by Certified Mail (Registered Mail if overseas). Ask the clerk for assistance.
  - b) One copy of the TRO/PRO to carry at all times.
  - c) As many copies as necessary for home, work, schools, daycare providers, etc. (if you were awarded temporary care and control of minor children or if the defendant was ordered to have no contact with minor children).
2. If you obtained a TRO, you **MUST** appear at the permanent orders hearing on the date and time scheduled in the order **OR YOUR ORDER WILL AUTOMATICALLY EXPIRE**. There may be a victim's advocate program in your area which can provide help. Ask the clerk for information. You may call witnesses and present evidence if you wish. The court clerks will issue subpoenas for witnesses if you need them to.
3. Read the information in part C about procedures to be followed if the defendant violates this order.

### C. IF, AFTER YOU GET A RESTRAINING ORDER, A VIOLATION OCCURS

1. **KNOWING VIOLATION OF A RESTRAINING ORDER IS A CRIME** and may also constitute contempt of court. If you believe that a restraining order issued by the court has been violated, you may call the police or you may come to court and file a Verified Motion for Contempt Citation (JDF 413). You may do both if you choose.

If you call the police, a law enforcement officer has a duty to use every reasonable means to enforce the court's order. The officer can arrest the accused for threatening, molesting, or injuring a protected person, for entering or remaining on premises in violation of a restraining order, or for the violation of **ANY** other provision of the order. If you have a TEMPORARY restraining order, you should show the police the proof of service. If you have a PERMANENT restraining order, it is not necessary to have proof of service. Read the instructions below to determine what you can do if a violation occurs.

2. If the accused was arrested, you should contact the office of the district attorney immediately to find out whether they will be filing charges.
  - a) If no criminal charges are being filed, you also have the option to pursue a contempt citation, you should follow the procedures outlined in part 3 below.
  - b) If criminal charges are being filed, you also have the option to pursue a contempt citation. If you wish to ask the court to punish the violator for contempt of court, you must follow the procedures set forth in part 3 below. If you are satisfied that the criminal prosecution alone is sufficient, you may choose to do nothing. You may wish to discuss this with the district attorney or your own attorney.
3. If you want the court to hold the accused in contempt for violating the restraining order, you must follow these procedures. (You may ask the court to hold the accused in contempt even if he or she was also arrested and charged with a crime. If the accused was arrested, see part 2 above.)
  - a) Obtain the form entitled Verified Motion for Contempt Citation (JDF 413) and fill it out. You **MUST** attach a copy of the return of service of the restraining order to the motion before you file it with the court. If you do not have a copy of the return of service in your possession, ask the court clerk if there is one in the court file. You may then obtain a copy from the clerk and attach it to your motion. If the court does not have a copy of the return of service in the file, you should be able to obtain one from the sheriff or process server that you used. Obtain a copy of the return of service as soon as possible and attach it to the Verified Motion for Contempt Citation before filing it with the court.
  - b) Be sure to sign all pleadings that require notarization or witnessing by the clerk in the presence of a notary public or a court clerk.
  - c) File all pleadings. The clerk will take the file to the judge or magistrate as soon as possible. If a Contempt Citation and Order to Show Cause is issued, you must serve it on the opposing party. A hearing will be scheduled, and you must appear to testify about the alleged violation at the hearing. You may also call witnesses and present other evidence if you wish.
  - d) To obtain service of a contempt citation issued by the judge or magistrate, take a certified copy of the Contempt Citation and Order to Show Cause with the Verified Motion for Contempt Citation attached, along with a blank form Affidavit/Certificate of Service (JDF 409), to the sheriff's department or a private process server. The sheriff or process server should be instructed that the signed original of the Affidavit/Certificate of Service should be filed with the court after service has been completed.