

ORDERS FOR PROTECTION WITHOUT HEARINGS

Summary and Tips

With the current law that eliminates the need for hearings in some order for protection cases, battered women have a choice about whether to ask for a hearing when filing and order for protection. This new law took effect on August 1, 1995 and is called Chapter 142. It amends MN § 518B.01. Only five kinds of relief can be given in these orders. If the respondent does not request a hearing either, then the ex parte order for protection becomes the final order. If the respondent requests a hearing, the court notifies the petitioner of the time and date of the hearing. A new provision says that if the petitioner asks, the respondent and the general public CANNOT get her address. Note that some courts are mailing the notice stating that the temporary OFP has become the one year order to the petitioner, respondent, and police; this is not required by the law, but it is happening in some areas of the state.

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COMMON QUESTIONS WITH SIMPLE ANSWERS FOR OFPs WITHOUT HEARINGS

If a woman wants to avoid a hearing, how does she do that?

If she does nothing, she will not get a hearing. In order to get a hearing, the petitioner must check the box to request a hearing on the Affidavit and Petition form.

If a battered woman does not request a hearing, is she guaranteed there will be no hearing?

No. If the respondent requests a hearing, a hearing must be held. If the battered woman does not appear at the hearing, the order for protection will be dismissed. Various systems could later hold this against the woman, such as in custody evaluation.

What kinds of relief can a battered woman get without a hearing?

Whatever relief is appropriate for an *ex parte* order. This means the five things that have always been specifically authorized in law, plus other things the court deems “proper” to protect from immediate and present danger. The five things are:

- 1) Restraining the abuser from committing acts of domestic abuse.
- 2) Excluding the abuser from a shared dwelling or from the woman’s residence.
- 3) Excluding the abuser from the woman’s place of employment or limiting access to her place of employment.
- 4) Continuing all currently available insurance coverage.
- 5) Awarding custody to the petitioner (*ex parte* orders are authorized in Baker v. Baker, 494 N.W.2d 282 (Minn. 1992)).

The statute (Minn. Stat. § 518B.01, subd. 7) says that *ex parte* orders can include things not on this list “as the court deems proper”. Examples include confiscation of keys and firearms and allowing the abuser in with the sheriff to get personal items. Examples of things rarely appropriate in *ex parte* orders because they aren’t needed to protect from immediate danger are spousal maintenance and restitution.

BWLAP recommends that petitioners usually request hearings when obtaining an *ex parte* custody order. Reasons for not requesting a hearing would be if the woman would not, for cultural or other reasons, file an OFP if she knows she will have to go to court. Reasons favoring hearings are that judges will likely be reluctant to give battered woman *ex parte* custody if the judge knows there need not be a hearing. Battered women also risk backlash from Guardians ad Litem and custody evaluators who believe that they “pulled a fast one” to get custody in a manner that didn’t allow for a simultaneous visitation order. (Remember that the respondent can always file for a modification requesting visitation.) Finally, the Baker case which authorized *ex parte* custody orders, did so knowing that a hearing would be held later. Therefore, we are not sure that the law authorizes *ex parte* custody orders.

Non-adjudicated fathers present a major exception to the recommendation to usually request hearings when requesting *ex parte* custody. Non-adjudicated fathers usually do not have a legal right to visitation and mothers have statutory right to custody. Therefore having a hearing would

serve no purpose. In these cases, *ex parte* custody orders are appropriate because they recognize the mother's status as the sole legal parent. See the Agents for Change manual for a complete explanation of custody and visitation rights of the non-adjudicated fathers in orders for protection. See also the OFP Hearings: Contested Custody Technical Assistance Packet.

What if a woman needs child support or a visitation order?

Then she must ask for a hearing. **If a woman wants any of the following she must ask for a hearing:**

- child support
- visitation order
- spousal maintenance
- counseling, treatment, or social services for the abuser
- temporary use of property
- restraint from disposing of money or property
- restitution
- exclusion from a specific distance surrounding the woman's home or work place if a woman wants a custody order, it is usually best for her to request a hearing.

What if the respondent does not ask for a hearing?

If the respondent also did not ask for a hearing, the *ex parte* OFP becomes final order.

If the petitioner wants a hearing, when does she ask for it?

She checks the box requesting the hearing on the Affidavit and Petition for an Order for Protection. If no, box appears on the form, she should write in, "Petitioner requests a hearing" in the space for other relief.

What is the deadline for a respondent to request a hearing?

Five days from service of the *ex parte* order on the respondent. This usually means five business days, or one week. Specifically, it is five days excluding Saturdays, Sundays, and legal holidays. Your local court administrator can tell you what days are legal holidays. For example, if the respondent is served on Monday, July 3, he has until Tuesday, July 11, to request a hearing because of the July 4th holiday.

How does the respondent request a hearing?

By filling out and mailing a new form to the court administrator.

What is the deadline for holding a hearing requested by the respondent?

Between eight and ten days of when the court administrator receives the respondent's hearing request. The petitioner has to receive notice of the hearing at least five days before the hearing.

How and when does the petitioner find out that the respondent has requested a hearing?

The court administrator will mail her a form notice with the hearing date and time. Once the respondent has been served, **it is very important for the woman to regularly check with the court administrator about whether the respondent has requested a hearing.**

What if the petitioner gets less than five days notice of a hearing requested by the respondent?

The petitioner should call the court administrator and ask for a new hearing date. If this fails, she should write the judge, ask for a new hearing date because she did not get the required five-days notice, cite the law, and mail a copy of the letter to the respondent. The law says that the court “may” set a new hearing date. The case of Andrasko v. Andrasko, 443 N.W.2d 229 (MN Ct. App. 1989) says that if there is less than five days notice before a hearing, the judge must honor requests to continue the hearing to a later date.

What is the deadline to hold a hearing requested by the petitioner?

The court administrator should give the petitioner a hearing date when files her order for protection. As before, it must be held within seven days of filing.

If the petitioner has not requested a hearing, can she ask for additional relief, such as spousal maintenance, if respondent requests a hearing?

Probably. No law prohibits it as long as 1) the respondent has not served and filed any court papers in the OFP; 2) the petitioner fills out court papers requesting the relief and serves and files them before the hearing; and 3) it is less than 20 days since the respondent was served. The law allowing amendments is Minnesota Rule of Civil Procedure 15.01.

We recommend that the woman fill out another Affidavit and Petition for an OFP. Write in “Amended” above the title “Petitioner’s Affidavit and Petition for Order for Protection.” Repeat word for word everything in the woman’s first Petition. Check the boxes asking for the additional things the woman wants, such as spousal maintenance. Fill in the spaces asking for information related to the new requests, such as income information. Serve and file it as soon as possible. If the respondent has already been served, the Amended Petition can be served on the respondent by mail. If you need more information about service by mail, contact the Battered Women’s Legal Advocacy Project.

Might the fact that ex parte orders can turn into final orders make judges even more reluctant to sign them?

Maybe. The legal standard to obtain an *ex parte* order stays the same: immediate and present danger of domestic abuse.

Does the petitioner have to give the court administrator the address where she lives?

No. A mailing address at which mail can be delivered to her is enough. For instance she could give her address as “c/o County Battered Women’s Services, 345 Rural Lane, Freedom City, MN.” If your program is willing to serve as a mailing address, be sure to remind the woman to always let you know how to contact her, every time she moves. Court papers could be mailed to her at whatever address she gives for as long as her OFP is valid. If the woman requests a hearing, she need not give an address.

How “confidential” is the battered woman’s address?

If she does not ask it to be confidential, it becomes public information and the abuser will have it. She can ask that her address be disclosed only to court personnel and law enforcement. If the petitioner wants her address confidential, she should write that request in her petition. Law enforcement has access to her address “for purposes of service of process, conducting an

investigation, or enforcing an order.” This does not prevent law enforcement from using the address to arrest the woman for any outstanding warrants. Once law enforcement gets the woman’s address, the confidentiality protections should follow that data. It is unclear whether existing remedies for violation data practices protections would apply to records of the judicial branch. The existing penalties include lawsuits for damages and charge for criminal misdemeanor. (See Minn. Stat. §§ 13.08 and 13.09).

We do not know what method court administration will use to keep addresses out of the court file and inaccessible to the public and the abuser. The two mechanisms that administrators have discussed include keeping the address in a separate envelope in the court file and keeping a separate card file of addresses. Obviously, the second option is more likely to achieve its purpose than the first option.

What if I just want to do OFPs like I’ve always done them?

Have the petitioner ask for a hearing.

What if a woman changes her mind and wants a hearing after filing an OFP and not requesting a hearing?

First, consider whether filing for a modification or an extension will get what the woman wants. If not, we do not know whether the woman can later request a hearing. Nothing in the law says she can do this. Nothing in the law says she cannot do this. It will probably not be possible if it more than five days since the respondent was served because five days is the same deadline for respondents to request a hearing. If the woman chooses to try for a hearing, she should fill out the form respondent’s use to request hearings, crossing out and changing respondent to petitioner in the appropriate places.

Can a woman get an extension of an OFP without a hearing?

No. She must go through a hearing.

Can a woman get an OFP by publication or alternate service without a hearing?

The words of the law do permit it. BWLAP strongly recommends against it though. Such orders could possibly violate constitutional due process requirements.

What if the abuser files an OFP against a battered woman?

She should request a hearing using the form served on her. She **must** do this within five days of service of the OFP on her. If she does not request a hearing, the *ex parte* order will become a final order against her.

If no one requests a hearing, what does the final OFP look like?

The *ex parte* OFP becomes the final OFP. Law enforcement may claim that there is no way to tell from looking at an *ex parte* OFP whether or not it is a valid order. However, the new *ex parte* order form states:

This *Ex Parte* Order will be effective for a period of _____ from the date of this order, or until a hearing is held. The court may extend the duration of this Order or grant an Order for Protection by Default.

In advocating with law enforcement for the validity of such an order issued without a hearing, take the position that the order is valid on its face. This is similar to a final OFP issued after a hearing. The court could always have modified it or dismissed it later, but law enforcement assumes it is valid if it is within the date shown on its face. Keep in mind, however, that ultimately determining validity requires: a) finding out whether or not the respondent asked for a hearing; b) confirming that the petitioner did not request a hearing; and c) the outcome of the hearing. You can inform petitioners that this is important information to remember in case law enforcement asks them.

CONCLUSION

The following list of advantages and disadvantages will help women decide what fits best for them:

ADVANTAGES

The women does not have to come to court for a hearing unless the respondent requests a hearing. This may mean less stress, no time off work, no childcare or transportation challenges. There may be women for whom going to court would not be safe, for example an undocumented woman.

No opportunity for respondent to ask for visitation rights.

The woman has more advance warning that the abuser contests the OFP.

DISADVANTAGES

The woman cannot get many things in her order. They are:

- Child support
- Spousal maintenance
- Custody (probably)
- Counseling or treatment for the abuser
- Temporary use of property
- Restraint from disposing of money or property
- Restitution
- Exclusion form specific distance surrounding home or work

The woman cannot get a finding of domestic abuse. The importance for this kind of finding grows every year. For instance, if the woman doesn't ever tell the children's father about the children's medical care, she might lose custody as an unfriendly parent unless she can convince the judge to make a finding later on that the father abused her. Any woman who might have a custody fight should strongly consider requesting a hearing, not making any agreements at the hearing that do not include findings, and insisting on an evidentiary hearing with a finding. An abuse finding may also help an undocumented woman or a temporarily documented woman to stay legally in the United States.

The woman may not receive the hearing notice if the abuser requests a hearing.

This could result in her order being dismissed because she should not show up at the hearing. Women who do not have an address at which they are sure to receive mail should consider requesting a hearing and/or call the court administrator to find out if the abuser has requested a hearing.

In "borderline" cases, a judge may be more reluctant to sign an *ex parte* order for protection knowing that there may never be a hearing on it.

Orders obtained without hearings may be more difficult to enforce than orders obtained with hearings.

AREAS FOR SYSTEMS ADVOCACY

1. Consider getting the court administrator to notify your program of ALL respondent hearing requests.
2. Find out how your court administrator will keep address confidential. Encourage a system likely to achieve the purpose of confidentiality. Keeping the address in a separate envelope within the court file does not seem likely to preserve confidentiality.
3. Document problems, especially problems with law enforcement and denial of ex parte relief. With documentation the Minnesota Coalition for Battered Women can take appropriate action at the next legislative session.
4. Document the number of OFPs actually issued without hearings in your area.
5. Don't be bashful in repeatedly checking on respondents' hearing requests with the court administrator. The law supposedly will lessen court administrative burdens. Administrators need to know whether or not that is true.
6. Listen to what battered women think of about importance of getting OFPs without hearings. Do they think advantages outweigh the disadvantages?
7. Find out how many battered women in your area have had OFPs filed against them.
8. In cases of heterosexual abuse, compare the numbers of men in your jurisdiction who file/are granted OFPs, and then compare it to the national statistics on the percentages of men who are abused by women.