

Rule 26: Domestic Violence

(A) NEW FILINGS AND ASSIGNMENT OF CASES

(1) Any person who qualifies as a family or household member under R.C. 3113.31 may file a petition for a domestic violence civil protection order on the person's own behalf or on behalf of any other family or household member. Any person who qualifies as a person in a dating relationship under R.C. 3113.31 may file a petition for a dating violence civil protection order. All filings shall use the Ohio Supreme Court approved or substantially similar Domestic Violence Protection Order forms.

A parenting proceeding affidavit is required if the petitioner is seeking orders allocating parental rights and responsibilities. The court will make a reasonable effort to determine the existence and terms of protection orders and no contact orders issued by another court involving the same parties.

Forms can be completed in person at the courthouse or online through the Court's Virtual Help Center. Forms and use instructions are also available on the Ohio Supreme Court website (<http://www.supremecourt.ohio.gov>).

(2) Petitions and accompanying documents are public records and will be provided to the respondent. A petitioner who wishes to keep a home address confidential should use a safe mailing address on the petition. A petitioner participating in the Secretary of State's address confidentiality program may use the P.O. Box address provided by the Secretary of State.

(3) The petitioner must provide the current address of the respondent, or a last known address if the current address is not known, for service of process. The court will not assist in locating an address for the respondent.

The petitioner must also provide a physical description of the respondent; the respondent's ownership or possession of firearms and ammunition and concealed carry weapon permits if known; and one of the following: the respondent's date of birth, driver's license number, vehicle license number, or social security number. This information will be entered into the National Crime Information Center for purposes of law enforcement.

(4) A petition requesting a civil protection order shall be a separate case. The case shall not be incorporated, merged, or consolidated into any other case such as a divorce or dissolution.

(5) The petition will be assigned a case number and randomly assigned a judge upon filing. If the petitioner and the respondent have another case together that was previously assigned to a different judge, the domestic violence case will be reassigned to that judge.

(6) Petitions for civil protection orders will be heard by a magistrate.

(B) VICTIM ADVOCATE

Persons considering obtaining a domestic violence civil protection order are strongly encouraged to speak to a victim advocate. Victim advocates can assist with safety planning, accessing community resources, and applying for the Secretary of State's Safe at Home Program to obtain a P.O. Box. Victim advocates are available by phone and at the courthouse.

A victim advocate may accompany the petitioner to any hearing on a civil protection order to provide support and assistance but may not be called as a witness in the proceedings before the court or interfere with the hearing process.

(C) HEARING ON PETITION

Pursuant to R.C. 3113.31(A)(1)(a), the petitioner must prove, by a preponderance of evidence, that one or more of the following acts were taken against a family or household member or person with whom the respondent was in a dating relationship:

1. Attempting to cause or recklessly causing bodily injury;
2. Threatening to use force to make someone fear imminent serious physical harm or committing certain offenses like stalking or aggravated trespass;
3. Engaging in actions toward a child that would qualify as child abuse; or
4. Committing a sexually oriented offense.

(1) Ex parte

After filing a petition, the petitioner shall go to Room 53 on the ground floor for the ex parte (emergency) hearing.

The court will conduct an ex parte (emergency) hearing without the respondent present on the same day a petition is filed pursuant to R.C. 3113.31(D)(1)), if requested by the petitioner. The Court will hear the petitioner's testimony under oath.

If the court finds that the requirements of the law for ex parte orders are met, the court will grant a Domestic Violence Civil Protection Order Ex Parte (Form 10.01-H) and may grant any relief authorized by R.C. 3113.31(E)(1). If an ex parte (emergency) order is not requested or is requested but is not granted, the petition will be scheduled for a full hearing.

(2) Service of Process upon Respondent

The respondent must be personally served with the petition, the order granting or denying the ex parte order, and any accompanying documents pursuant to Civ.R. 65.1(C)(2).

Process shall be served by the County Sheriff where the respondent resides or a special process server pursuant to Civ.R. 4.1(B). Pursuant to Civ.R. 65.1(C)(2), the respondent may additionally be served by certified mail or other methods of service under Civ.R. 4-4.6 when personal service has failed. After the petition has been served, any additional service upon the respondent in the pending case shall be in accordance with Civ.R. 5(B).

It is the responsibility of the petitioner to ensure that service through the Clerk of Courts is ~~perfected~~ completed upon the respondent.

(3) Full hearing

(a) The court will schedule a full evidentiary hearing upon the petition in accordance with R.C. 3113.31 after the ex parte hearing. The denial of an ex parte order does not preclude the granting of a civil protection order following a full hearing. The full hearing will be scheduled within seven court days if possession of the residence or household is granted to the petitioner to the exclusion of the respondent;

otherwise, the full hearing will be scheduled within 10 court days. A full hearing will be scheduled in a timely manner if an ex parte order was not granted pursuant to R.C. 3113.31(D)(3), in approximately 10 court days.

At the full hearing the petitioner and respondent will each be afforded the opportunity to testify, call witnesses, and present evidence. The court will address whether to issue the protection order, and other requested relief including but not limited to financial support, child support, allocation of parental rights and responsibilities, and counseling. Proceedings will be conducted in accordance with the Rules of Civil Procedure.

Evidence, including social media and text messages, should be presented as documents in printed format. Any audio or video files must be submitted on a USB drive.

All evidence submitted ~~offered~~ will be kept by the court.

If the court finds that the requirements of the law for granting a civil protection order are met, the court will issue a Domestic Violence Civil Protection Order Full Hearing (Form 10.01-I) that the respondent shall not abuse, harm, attempt to harm, threaten, follow, stalk, harass, force sexual relations upon, or commit sexually oriented offenses against the protected persons named in this Order.

The court may issue a Domestic Violence Civil Protection Order Full Hearing (Form 10.01-I) that includes the following provisions with respect to a petition involving a family or household member or a petition involving a dating relationship, as applicable:

- (a) Prevent the respondent from abusing the petitioner;
- (b) Grant exclusive possession of the home to the petitioner;
- (c) Permit the respondent to pick up personal items from the home;
- (d) Require respondent to stay away from the residence, property, school, or place of employment of petitioner and any protected person;
- (e) Provide child or spousal support;
- (f) Allocate custody or parenting time;
- (g) Require the respondent to complete counseling;
- (h) Grant exclusive use of a vehicle to petitioner;
- (i) Apportion personal property;
- (j) Require the respondent to surrender house and/or car keys;
- (k) Prevent the respondent from removing companion animals;
- (l) Prevent respondent from possessing or using drugs and/or alcohol;
- (m) Prohibit the respondent from possessing or purchasing firearms and ammunition;
- (n) Turn over deadly weapons to law enforcement;
- (o) Transfer wireless service to the petitioner; and
- (p) Grant other relief as the court considers fair and equitable.

The remedies and procedures provided in these proceedings are in addition to other available civil or criminal remedies.

(b) The petitioner is expected to appear for the full hearing and any other proceedings. The court may dismiss the petition if the petitioner does not appear, and no continuance has been requested and granted.

(c) A petitioner may dismiss a petition for a civil protection order in writing prior to a full hearing. Any oral request made at a full hearing by a petitioner to voluntarily dismiss a petition for a civil protection order shall be heard on the record.

(4) Consent Agreement and Order of Protection

At the time of the full hearing, the petitioner and the respondent may enter into a Consent Agreement and Domestic Violence Civil Protection Order (Form 10.01-J) pursuant to R.C. 3113.31(E)(1).

The court may approve a Consent Agreement and Domestic Violence Civil Protection Order.

(5) Notification to Law Enforcement

The court will complete and file a Protection Order Notice to the National Crime Information Center (NCIC) (Form 10-A) with any ex parte or final protection order or consent agreement. The Protection Order Notice specifies the terms and conditions of the civil protection order.

The Clerk of Courts shall provide the protection order, any accompanying documents, and the NCIC Protection Order Notice to the County Sheriff and the law enforcement agency where the petitioner resides and, if requested, where the petitioner works, pursuant to R.C. 3113.31(F)(1) and Civ.R. 65.1(C)(1). The County Sheriff will promptly enter the information into the NCIC database, and it will be available to all law enforcement agencies.

(6) Report of Child Abuse or Neglect

The magistrate will make a report to child protective services if there is a reasonable suspicion of abuse or neglect of a child pursuant to R.C. 2151.421 and R.C. 3113.31(H).

(D) DISCOVERY

Parties may issue subpoenas to non-parties.

Pursuant to Civ.R. 65.1(D), discovery between parties is permitted only upon order of court. Any discovery orders will include:

- (1) The time and place of the discovery;
- (2) The names of the persons who may be present; and
- (3) Any terms and conditions necessary to assure the safety of the petitioner and the confidentiality of the petitioner's address.

(E) CONTINUANCES

The court does not favor delay in domestic violence cases, and it is the expectation of the court that hearings will go forward as scheduled. The court may, however, continue a full evidentiary hearing for a reasonable time pursuant to R.C. 3113.31(D)(2)(a) if:

- (1) The respondent has not been served with the petition and notice of the full hearing;
- (2) The parties consent to the continuance;
- (3) The continuance is needed to allow either party to obtain counsel; or
- (4) The continuance is needed for other good cause.

(F) DURATION OF PROTECTION ORDER

(1) A Domestic Violence Civil Protection Order Ex Parte (Form 10.01-H) does not expire because of failure of service pursuant to R.C. 3113.31(D)(2)(b) or because the court grants a continuance.

If a respondent has not been served, the ex parte order shall be valid for no more than one year; the court will then issue an order dismissing the petition. The Court may dismiss the petition and terminate the order on its own motion after six months for failure to prosecute pursuant to Civ.R. 41(B)(1) if the petitioner has not actively attempted to obtain service upon the respondent.

(2) A Domestic Violence Civil Protection Order Full Hearing (Form 10.01-I) or Consent Agreement and Domestic Violence Civil Protection Order (Form 10.01-J) will expire on the date specified in the order, but no later than five years from its issuance pursuant to R.C. 3113.31(E)(3)(a).

Once a protection order expires, all orders contained within that protection order also expire.

(G) EFFECT OF OTHER COURT CASES ON CIVIL PROTECTION ORDER

(1) A civil protection order will remain in effect even if the petitioner or the respondent later become involved together in another court case such as a divorce, dissolution, or post-decree matter.

(2) The parties shall promptly notify the court in the later case of the existence and terms of the civil protection order, and if necessary, request safety measures during proceedings in the later case.

A party's compliance with court orders made during ~~in~~ a later case involving the allocation of parental rights and responsibilities that require parties to be in contact to attend court hearings, to attend mediation or to participate in a custody evaluation, is not an automatic violation of an existing civil protection order and/or no contact order.

(3) Any terms contained in a civil protection order allocating parental rights and responsibilities, parenting time and/or support that will terminate by operation of law when a court issues an order allocating parental rights and responsibilities and/or support in a later court case that involves both the petitioner and the respondent, such as a divorce, post-decree matter, or juvenile court proceedings, pursuant to R.C. 3113.31 (E)(3)(b).

(4) The parties may need to modify or terminate the civil protection order when a court issues an order allocating parental rights and responsibilities, parenting time and/or support or other orders in a later court case that conflict with the terms of the civil protection order. The court will not revise its protection order or parenting order on its own motion if it becomes aware of conflicting court orders.

The court will then issue an amended Protection Order Notice to NCIC (Form 10-A) or remove a civil protection order from the NCIC database. A party's failure to modify the civil protection order may result in law enforcement agencies not having accurate, up to date information for proper enforcement.

(H) MODIFICATION, TERMINATION, RENEWAL, AND CONTEMPT OF CIVIL PROTECTION ORDER

(1) Generally

Service of a motion to modify, terminate, renew, or hold in contempt of a Civil Protection Order must be made in the manner provided for service of process under Civ.R. 4 through Civ.R. 4.6.

Motions will be scheduled for hearing.

Proceedings will be conducted in accordance with the Rules of Civil Procedure. The petitioner and respondent will each be afforded the opportunity to testify, call witnesses, and present evidence.

Any modification, termination, renewal, or contempt of a Civil Protection Order shall be by order of court.

The court will complete and file an amended Protection Order Notice to NCIC (Form 10-A) with any order granting a modification, termination, or renewal. The Clerk of Court shall send a copy of the order and the amended Protection Order Notice to NCIC, to the petitioner and respondent, and send a copy of the NCIC Protection Order Notice to specified law enforcement agencies as directed in the order pursuant to R.C. 3113.31(F)(1).

(2) Modification and Termination

A petitioner or respondent may file a motion to modify or to terminate a Civil Protection Order or Consent Agreement pursuant to R.C. 3113.31(E)(8).

The movant must prove, by a preponderance of the evidence, that modification or termination is appropriate because the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate.

The court will consider the following factors when asked to modify or terminate a protection order:

- (a) Whether the petitioner agrees to change or end it;
- (b) Whether the petitioner still fears the respondent;
- (c) The current relationship between the parties;
- (d) The parties' circumstances including how closely they live and work in relation to each other and have children together;
- (e) Whether the respondent complied with the original order or agreement;
- (f) Whether the respondent has ongoing issues with drugs or alcohol;
- (g) Whether the respondent has been convicted of violence since the order or agreement;
- (h) Whether there have been other protection orders, restraining orders, consent agreements, or no-contact orders against the respondent related to the situation;
- (i) Whether the respondent has participated in and completed any domestic violence treatment program;
- (j) How much time has passed since the order or agreement;
- (k) The age and health of the respondent;
- (l) When was the last incident of abuse, threat of harm, or sexually oriented offence occurred or any other information that might affect the safety of the petitioner or other protected persons.

(3) Renewal

A petitioner may file a motion to renew a Civil Protection Order or Consent Agreement pursuant to R.C. 3113.31(E)(8)(b).

A civil protection order or consent agreement may be renewed in the same manner as the original order or agreement.

A motion to renew a civil protection order should be filed at least 14 days before the scheduled expiration of the civil protection order. A motion to renew that requests ex parte relief shall be heard on the same day the motion is filed, if there is insufficient time to schedule a full hearing before the protection order expires.

The petitioner must prove the protection order should be renewed by a preponderance of the evidence.

A civil protection order will expire if renewal is not granted by its date of expiration.

(3) Contempt

A petitioner or respondent may file a motion for contempt of a civil protection order. The court may issue an order to appear to the person accused of violating the order.

The petitioner must prove by clear and convincing evidence that the respondent violated the protection order.

If found in contempt, the respondent will be sentenced to a term of incarceration and/or community service and provided an opportunity to purge the contempt and suspend the sentence.

Failure to purge the contempt may result in the issuance of an arrest warrant and imposition of the jail sentence, pursuant to Loc.R. 29.

An arrest warrant may issue at the direction of the assigned judge if a respondent fails to comply with a purge order to surrender firearms.

(I) NATURE OF ORDER, OBJECTION, AND APPEAL

(1) Pursuant to Civ.R. 65.1(F), a magistrate's denial or granting of an ex parte protection order does not require judicial approval and is effective upon filing. A magistrate's denial or granting of an ex parte protection order without judicial approval does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

(2) A magistrate's denial or granting of a protection order after a full hearing is not effective unless adopted by the court. The court may adopt, modify, or reject the magistrate's denial or granting of the protection order.

(3) A party seeking to file objections to a final order resulting from proceedings referred to a magistrate must file the objections within 14 days of the order but, pursuant to Civ.R. 65.1, the filing of objections does not stay the order. If a party files objections the other party has 10 days to file objections after the first objections are filed.

(4) A party filing objections must show that:

(a) an error of law or other defect is evident on the face of the order; or

(b) that the credible evidence of record is insufficient to support the granting or denial of the protection order; or

(c) that the magistrate abused the magistrate's discretion in including or failing to include specific terms in the protection order.

Objections based upon evidence of record must be supported by a transcript of all the evidence submitted to the magistrate or an affidavit of that evidence if a transcript is not available. The objecting party must file the transcript or affidavit within 30 days of filing objections. The court may extend the time for preparation of the transcript or other good cause. A party may seek leave of court to supplement objections filed before a transcript is prepared.

(5) The granting, denial, or dismissal of a civil protection order, the approval or refusal to approve a consent agreement, and an order modifying, terminating, renewing, or contempt of a protection order is a final appealable order, however, a party must file objections and the court must rule on the objections before filing an appeal. The timely filing of objections will stay the running of time for appeal.

(6) The ex parte order will remain in effect until a final order is issued.

(J) DISMISSAL OF PETITION FOR PROTECTION ORDER

A dismissal of a petition for a domestic violence civil protection order is not an adjudication of the merits and does not bar a later filing of the petition pursuant to Civ.R. 65.1(H).

(K) ENFORCEMENT OF A PROTECTION ORDER

A violation of a civil protection order or consent agreement may subject the violator to civil penalties for contempt of court, criminal charges, and/or arrest.

Protection orders are enforceable anywhere in the United States.

(L) REGISTRATION OF PROTECTION ORDER

A petitioner may register a Domestic Violence Criminal Temporary Protection Order, a Domestic Violence Civil Protection Order, or a Consent Agreement issued by another court for law enforcement purposes by presenting a certified copy of the order or agreement to the Clerk of Courts pursuant to R.C. 3113.31(N).

(M) ACCESS TO DOMESTIC VIOLENCE CASE INFORMATION

(1) Domestic violence cases are public records, however, there shall be no remote public access to any domestic violence case information or records through the Clerk of Courts' website.

(2) Sealing of records

In cases where the court has refused to grant a protection order after a full hearing, the court, on its own motion, will order that all case records pertaining to an ex parte order be sealed by the Clerk of Courts if no party has appealed the order denying the protection order or all appellate rights have been exhausted pursuant to R.C. 3113.31(G)(2). Sealed records are not available to the public, court personnel, parties, or attorneys.

A sealed domestic violence case may be reopened only upon order of court specifying the terms and conditions of access.

Cases voluntarily dismissed by a petitioner before or at the full hearing may result in the case being sealed.

(N) COSTS.

The clerk of courts shall not charge or collect from the petitioner any fee or costs in a domestic violence case for the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a protection order, consent agreement, or witness subpoena or for obtaining a certified copy of a protection order or consent agreement, pursuant to RC 3113.31(J)(1).

The court may assess such costs against the respondent pursuant to R.C. 3113.31(H)(2).

(Effective July 1, 1991. Amended effective October 1, 1999; November 20, 2000; July 1, 2009; May 1, 2012; November 1, 2014; July 26, 2022, _____)