

CONFERENCE ON SELF REPRESENTED LITIGANTS
June 8, 2011

Notes on Civil Harassment Restraining Orders

STATUTE

CCP 527.6 modifications come into effect 1/1/12 that update the current statute, clarify some provisions, and make minimal substantive changes.

PARTIES

No pre-existing relationship necessary. See CH Screening Checklist (p. 55) for the most common kinds of relationships, but can be between strangers w/ no prior relationship.

Parties must be individual people, not organizations.

Only one petitioner and one respondent

Multiple parties may be protected: members of petitioner's household or relatives

NOTICE OF APPLICATION FOR TRO

The statute requires that before the TRO may be issued, notice must be provided to the Respondent (CCP 527(c))

CONDUCT

Harassment consists of

- A. Unlawful violence: Assault, battery or stalking (Penal Code 646.9)
- B. Credible threat of violence
- C. Course of conduct that causes substantial emotional distress to petitioner

FEES

No court filing fee if petition alleges violence, threats of violence or stalking. Otherwise fee is now \$395. Parties may apply for fee waiver as in any other kind of filing.

Fee for sheriff's office to serve the petition/OSC etc. is waived on the same basis as waiver of court filing fees.

SERVICE OF OSC, TRO AND REQUEST

Must have personal service and a valid proof of service for hearing to go forward, unless Respondent appears. If service has not been accomplished, petitioner may request

reissuance before or at the hearing. Court will usually grant multiple reissuances up to a limit.

HEARING

Interpreters are not mandated, so non-English-speaking parties must be prepared to provide an interpreter.

Support persons will be specifically permitted to sit at counsel table, but should not be a witness and must not participate in the hearing.

ORDERS

Standard conduct, no contact, and stay-away orders.

No authority to order a respondent to move out of their residence without notice. Note that DV and EA statutes have very specific provisions as to when a court may order a move-out without notice, which are absent here. May a court order respondent to move out after a noticed hearing?

Keep in mind the due process requirement that prevents the court from granting any relief in a “default” situation that has not been requested in the pleadings served on the respondent. So, for example, if you want a move-out order after hearing, ask for it in the Request in case the respondent does not come to the hearing.

CLETS INPUT

Accuracy and completeness will aid in enforcement. Provide local criminal identifiers if known.

FORMS

New forms are currently out for comment, with a due date of June 30. See the Invitation to Comment at www.courts.ca.gov. A number of new information sheets are being proposed that should assist SRL’s to understand and prepare for their CH case.