

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Robert B. Freedman, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 6, 2006

SUBJECT: *Application for Emergency Protective Order* (revise form EPO-001)
(Action Required)

Issue Statement

Application for Emergency Protective Order (form EPO-001) needs to be revised to reflect recent changes in the law. It should also be revised to make it clearer and more effective.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the *Application for Emergency Protective Order* (form EPO-001) be revised, effective January 1, 2007, to reflect recent statutory changes and to be clearer.

Revised form EPO-001 is attached at pages 5–6.

Rationale for Recommendation

Several changes are proposed to improve the *Application for Emergency Protective Order* (form EPO-001), a form used by law enforcement officers to ask a court for emergency protective orders.

First, the list of prohibited actions in item 9 of the form should be expanded to prohibit a restrained person from taking “any action to obtain the address or location” of each person to be protected. This language implements Assembly Bill 978 ([Runner] Stats. 2005, ch. 472), which added new sections to several statutes

prohibiting restrained persons “from taking any action to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian, unless there is good cause not to make that order.” (See Code Civ. Proc., § 527.10; Fam. Code, §§ 6252.5 and 6322.7; Pen. Code, §§ 136.3 and 646.91A; Welf. & Inst. Code, §§ 213.7 and 15657.04.) The new code sections apply to the emergency protective orders for which form EPO-001 is used. (See Fam. Code, § 6252.5; and Pen. Code, § 646.91A.) Hence, item 9 on form EPO-001 should be revised to include the new prohibitions.

Second, in the italicized language at the bottom of page 2, the sentence “This order shall expire on the date and time specified in item 12 on the reverse” should replace the current second sentence, which states “This order shall expire not later than the close of judicial business on the fifth day of judicial business or the seventh calendar day following the day of its issue.” The new language is clearer and easier to understand for persons given copies of the order.

Third, the remainder of italicized language at the bottom of page 2 of the form should be changed to state:

“The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons to the extent the provisions of this order are more restrictive. In other words, the provisions in this emergency protective order take precedence over the provisions in any other protective order, including a criminal protective order, if (1) the person to be protected is already protected by the other protective order, (2) the person to be restrained is subject to that other order, and (3) the provisions in this emergency order are more restrictive than the provisions in that other order. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order.”

This language will inform law enforcement personnel and others about the provision in new subdivision (c) of Penal Code section 136.2 added by Assembly Bill 112 ([Cohen] Stats. 2005, ch. 132) relating to the precedence of emergency protective orders.¹

¹ That section provides:

(c)(1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 649.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

Alternative Actions Considered

Under the proposal circulated for comment, a new sentence would have been added to the notice to law enforcement on page 2 of the form, stating: “The officer who obtains and completes this order must fax it immediately to the court at (*fax number*): () _____ regardless of whether the restrained person has been served.” The purpose of providing this instruction was to have orders entered more promptly into the California Law Enforcement Telecommunications System (CLETS), thereby notifying law enforcement of the existence of the emergency protective order. For the reasons explained in the next section, the committee concluded that the proposed new sentence was not workable and should not be added.

Comments From Interested Parties

Revised form EPO-001 was circulated for comment in the spring of 2006. Fifteen comments were received on the proposal. The commentators included a judge, court administrators, and representatives of the California Department of Justice. A chart summarizing the comments and the committee’s responses is attached at pages 7–12. The commentators supported some of the changes, but not others. The committee reviewed and discussed the comments and modified the revised form in several respects.

The first proposed revision to form EPO-001 is to expand the list of prohibited actions in item 9 to include “any action to obtain the address or location” of each person to be protected. There were no specific comments on this particular proposal, which implements AB 978. This straightforward change should be made as proposed.

Second, several comments were received on the proposed new sentence near the bottom of page 2: “This order shall expire on the date and time specified in item

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- (A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.
 - (B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).
 - (C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).
- (2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

12 on the reverse.” This statement, as some commentators noted, is somewhat repetitive; however, it clarifies why a person may need to apply for a child custody order. The committee therefore recommends using it on the form.

Third, the proposal that circulated for comment would have changed the last sentence on page 2 of the EPO-001 form to read: “This order takes precedence in enforcement over any less restrictive conflicting civil court order between the same parties.” Commentators from the California Department of Justice pointed out that this statement would not be altogether accurate. Under certain circumstances, an emergency protective order would take precedence over even a criminal protective order. The precedence of emergency protective orders is stated in section 136.2 of the Penal Code. To accurately reflect this statute, the committee recommends using instead the language explaining the precedence of orders described above.

Finally, the revised version of form EPO-001 that was circulated for comment would have added a sentence stating: “The officer who obtains and completes this order must fax it immediately to the court at (*fax number*): _____ regardless of whether the restrained person has been served.” Although a few commentators supported adding this sentence, most opposed it. Representatives of the California Department of Justice commented that adding the sentence would serve no purpose because law enforcement does not have the capacity to fax an order from the field. Several court administrators indicated that requiring officers to fax orders to the courts would not be practical, would not work in their court systems, and would not result in the orders being more promptly entered into CLETS. (See comment chart.) The committee found the comments on this issue to be persuasive and has deleted the language requiring law enforcement to fax copies of emergency protective orders to the court.

Implementation Requirements and Costs

The revisions to the forms would clarify the law, but would not change how the form is used. So the revisions should not require any additional implementation efforts. Some costs will be incurred in making new versions of the form available to law enforcement.

Attachments

APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)

EPO-001

(Name): _____ has provided the information in items 1-5.

LAW ENFORCEMENT CASE NUMBER:

1. PERSONS TO BE PROTECTED (insert names of all persons to be protected by this order):

2. PERSON TO BE RESTRAINED (name):

Sex: [] M [] F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

3. The events that cause the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (other than solely financial abuse), or stalking are (give facts and dates; specify weapons):

4. [] The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 9.

5. a. [] The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 3. A custody order [] does [] does not exist.

b. [] The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.

6. [] A child welfare worker or probation officer has advised the undersigned that a juvenile court petition [] has already been filed. [] will be filed. [] will NOT be filed.

7. [] Adult Protective Services has been notified.

8. Judicial officer (name): _____ was contacted on (date): _____ at (time): _____

[] The judicial officer granted the Emergency Protective Order that follows.

By: _____ (PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____

EMERGENCY PROTECTIVE ORDER (See reverse for important notices.)

9. To restrained person (name):

a. [] You must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy any personal property of, disturb the peace of, or take any action to obtain the address or location of each person named in item 1.

b. [] You must [] stay away at least _____ yards from each person named in item 1. [] stay away at least _____ yards from [] move out immediately from

(address): _____

10. [] (Name): _____ is given temporary care and control of the following minor children of the parties (names and ages): _____

11. Reasonable grounds for the issuance of this order exist and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking.

12. THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON:

INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER; DO NOT COUNT DAY THE ORDER IS GRANTED

13. To protected person: If you need protection for a longer period of time, you must request restraining orders at (court name and address):

PROOF OF SERVICE

14. Person served (name): _____

15. I personally delivered copies to the person served as follows: Date: _____ Time: _____ Address: _____

16. At the time of service I was at least 18 years of age and not a party to this cause. [] I am a California sheriff or marshal.

17. My name, address, and telephone number are (this does not have to be server's home telephone number or address):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ (TYPE OR PRINT NAME OF SERVER)

(SIGNATURE OF SERVER)

EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

EPO-001

VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PERSONS SUBJECT TO A RESTRAINING ORDER ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM (PENAL CODE SECTION 12021(g)). SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 13710(b), "THE TERMS AND CONDITIONS OF THE PROTECTION ORDER REMAIN ENFORCEABLE, NOTWITHSTANDING THE ACTS OF THE PARTIES, AND MAY BE CHANGED ONLY BY ORDER OF THE COURT."

To the restrained person: This order will last until the date and time in item 12 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la persona bajo restricción judicial: Esta orden durará hasta la fecha y hora indicadas en el punto 12 al dorso. La persona protegida puede, sin embargo, obtener una orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la orden.

To the protected person: This order will last only until the date and time noted in item 12 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 13, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 13, or if there is a juvenile dependency action pending you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody Order* from the court at the address in item 13. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

A la persona protegida: Esta orden durará sólo hasta la fecha y hora indicadas en el punto 12 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el artículo 13, o tendrá que hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el artículo 13 o, si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés **Welfare and Institutions Code**. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody Order*), en la dirección indicada en el artículo 13 de este formulario. Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar un abogado sin pérdida de tiempo para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

To law enforcement: Penal Code section 13710(c) provides that, upon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody. The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

If a child is in danger of being abducted: This order will last only until the date and time noted in item 12 on the reverse. You may apply for a child custody order from the court.

En el caso de peligro de secuestro de un niño o de una niña: Esta orden será válida sólo hasta la hora y fecha indicadas en el punto 12 al dorso. Usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody Order*).

This emergency protective order is effective when made. This order shall expire on the date and time specified in item 12 on the reverse. The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons to the extent the provisions of this order are more restrictive. In other words, the provisions in this emergency protective order take precedence over the provisions in any other protective order, including a criminal protective order, if (1) the person to be protected is already protected by the other protective order, (2) the person to be restrained is subject to that other order, and (3) the provisions in this emergency order are more restrictive than the provisions in that other order. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Sandy Almansa Supervising Legal Clerk II Superior Court of California, County of Stanislaus Modesto	A	Y	No specific comments.	No response required.
2.	Ms. Grace Andres Program Manager Superior Court of California, County of Solano Fairfield	A	N	No specific comments.	No response required.
3.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No specific comments.	No response required.
4.	Mr. Timothy Gee Management Analyst III Planning and Development Division Superior Court of California, County of San Mateo Redwood City	AM	N	<p>1. The forms, such as the EPO-001, should have a line that immediately identifies the relationship of the restrained person to the requesting person. This can be included in section 2 that can read:</p> <p>Relationship to the Applicant: _____</p> <p>This inclusion will help clarify the situation immediately to all persons who reads or is enforcing the order.</p> <p>2. The proposal indicates that the court's</p>	<p>1. This information is not needed on the emergency protective order form.</p> <p>2. The committee agreed that the</p>

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				fax number be inserted so that the agency can fax the order to the court in order to have it entered into CLETS more promptly. This creates a problem with those courts that do not enter such orders into CLETS on their own. Our court has the sheriff's office enter information into CLETS. If the court's fax number is placed on the form, it would not make sense to send us the order, since we do not do the CLETS entries. Perhaps, the entry should reference entering the fax number of the appropriate agency instead.	court's fax number should not be included on the form.
5.	Mr. Scott Jonas Manager FCS Superior Court of California, County of Ventura Ventura	AM	Y	Prompt entry into CLETS is preferred, but what costs coverage is provided for the courts that must enter CLETS inputs? We agree only if costs to courts are covered.	The fiscal issues relating to the entry of protective orders into CLETS are beyond the scope of this proposal.
6.	Mr. Dennis B. Jones Court Executive Officer Superior Court of California, County of Sacramento Sacramento	AM	N	We request that a space for the court's fax number to be listed on the form.	Based on the comments, it appears that only a minority of the courts would use this information.
7.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura	AM	Y	No. 3 once faxed--What is court's responsibility? No need to fax to court--LEA already updating CLETS.	The committee agreed that the court's fax number should not be on the form.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
8.	Ms. Peggy Kelly and Ms. Valerie Fercho-Tillery Field Representative/Manager Automated Systems Program California Department of Justice Sacramento	AM	Y	<p>1. The last sentence on the bottom of page 2, “This order takes precedence in enforcement over any less restrictive conflicting civil court order between the same parties.” What about Criminal Protective Orders (CPO)? It is our understanding that an EPO would, under certain circumstances, take precedence over a CPO. If this is the case, appropriate language must be added to the EPO.</p> <p>2. The new sentence to be added as a notice to law enforcement on page 2 of the form, “The officer who obtains and completes this order must fax it immediately to the court at (fax number) regardless of whether the restrained person has been served.” Adding this sentence serves no purpose. Law enforcement does not have the ability to do this in the field. This sentence would not cause the order to be entered more promptly into CLETS. We recommend removing this sentence.</p> <p>3. At the bottom of page 2, the sentence, “This order shall expire at the date and time specified in item 12 on the reverse.” Is this sentence even necessary? We recommend removing the sentence. A similar sentence is at the top of page 2, “To the restrained</p>	<p>1. The committee agreed that the proposed language is not altogether accurate. The committee has developed alternative language that more accurately reflects Penal Code section and recommends that that language be used instead.</p> <p>2. The committee agreed that a statement requiring law enforcement to fax the form should not be included.</p> <p>3. Although the sentence is somewhat repetitive, it is helpful in context; hence, the committee recommends retaining it.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				person: This order will last until the date and time in item 12 on the reverse.” No need to repeat the information and it will save some space.	
9.	Ms. Tressa S. Kentner and Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	A	N	No specific comments.	No response required.
10.	Ms. Diana Landmann Family Law Court Manager Superior Court of California, County of San Joaquin Stockton	AM	N	Not every court has the capability of entering EPO’s, CPO’s, TRO’s, etc. into CLETS, yet. We currently fax all restraining orders to LEA for them to enter into CLETS. To my knowledge, there are only 6 courts in the state that are currently entering into CLETS. We are in the process of researching the possibilities.	The committee agreed that the court’s fax number should not be on the form.
11.	Hon. Sandra L. McLean Judge of the Superior Court of California, County of Butte Oroville	AM	N	Suggests adding to the end of item 9a: “...either directly or through a third party.”	“Any action” is already very broad.
12.	Ms. Julie M. McCoy Orange County Bar Association Irvine	A	N	No specific comments.	No response required.
13.	Ms. Andrea Nelson	AM	N	Law enforcement should be required to	The committee agreed that the

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Court Operations Director Superior Court of California, County of Butte Oroville			enter these into CLETS. The change to add “fax it to the court immediately” for timely submission into CLETS will not occur if these were issued on Friday night and over a holiday. Law enforcement should enter them into CLETS and file a copy with the court.	court’s fax number should not be on the form.
14.	Ms. Amanda Noble Research Program Specialist Attorney General’s Office Sacramento	AM	Y	We are concerned that asking law enforcement officers to fax EPO’s to the court immediately will result in more work for officers and is not likely to ensure that orders will be entered more quickly into CLETS. We want more, not less, EPO’s to be issued and creating additional work for law enforcement officers is not likely to encourage them to issue EPO’s.	The committee agreed that the court’s fax number should not be on the form.
15.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	AM	Y	The third change to the EOP form adds a sentence to the notice to law enforcement section that requires the listing of the court’s fax number to which the officer is to fax the EPO. All parties to the EPO are given to all of the parties as it is part of the EPO. Also faxing the form to the court, only to have the court fax the EPO to the Warrants Division of the sheriff’s office, would cause a time delay in the entering of the EPO into CLETS. The court does not enter the EPO into CLETS; rather, the	The committee agreed that the court’s fax number should not be on the form.

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				sheriff/marshal enters this information. Law enforcement can fax an EPO to their warrants division 24/7, while courts should not receive nor take action on a faxed EPO transmitted after normal business hours or on the weekend. Thus, including the court's fax number would not expedite entry into CLETS as proposed.	