

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT LEG13-08

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Title	Action Requested
Judicial Council-Sponsored Legislation: Amend Restraining Order Statutes to Clarify Procedures for Continuance of Hearings	Review and submit comments by September 30, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Code of Civil Procedure sections 527.6, 527.8, and 527.85 and Welfare and Institutions Code section 15657.03	July 1, 2015
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Bruce Greenlee, <a href="mailto:bruce.greenlee@jud.ca.gov">bruce.greenlee@jud.ca.gov</a> , 415-865-7698  Patrick O'Donnell, <a href="mailto:patrick.o'donnell@jud.ca.gov">patrick.o'donnell@jud.ca.gov</a> , 415-865- 7665

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends that the Judicial Council sponsor legislation to amend the statutes on restraining orders to clarify and improve the procedures for continuing hearings. This proposal was originated by the committee and the Protective Order Working Group comprised of members from the civil and other advisory committees to the Judicial Council.

### Background

In 2010, the Judicial Council sponsored legislation that resulted in an extensive revision of the statutes providing for restraining orders to prevent to civil harassment, workplace violence, private post-secondary school violence, elder and dependent adult abuse, domestic violence, and juvenile violence. (See Assem. Bill 1596, 2010 Stats., ch. 572) The legislation created greater consistency in procedure and practices, eliminated many unnecessary statutory differences, filled in procedural gaps, clarified uncertain matters, and generally improved the statutes that relate to protective orders.

One important area that remained unaddressed in the legislation is the law on reissuing temporary restraining orders and continuing hearings. The statutes on these matters were not amended to reflect best practices or to be consistent across all different case types. Indeed, for

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

civil (i.e., non-domestic violence and non-juvenile) restraining orders, the provisions on continuances remain in the Rules of Court rather than in the codes. (See Cal. Rules of Court, rule 3.1152.)<sup>1</sup>

## **The Proposal**

For cases involving civil harassment, workplace violence, private post-secondary school violence, and elder and dependent adult abuse, the protective order statutes currently provide a procedure for petitioners to request the reissuance of a temporary order.<sup>2</sup> A rule of court provides a procedure for respondents to request a continuance.<sup>3</sup>

This proposal recommends that these civil restraining order statutes be amended to include clear, consistent, and effective procedures for continuing hearings. The amendments would benefit the public and the courts by providing simpler, improved means for requesting, and ruling on requests for, continuances in sensitive proceedings involving significant numbers of self-represented litigants.

Specifically, this proposal would amend the civil restraining order statutes to eliminate the current provisions concerning the reissuance of temporary orders and replace them with new provisions providing a procedure for continuance of hearings. The new provisions to be placed in each of the restraining order statutes would read as follows:

- (1) Either party may request a continuance of the hearing on a showing of good cause. The court may also grant a continuance on its own motion.
- (2) If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. The court may modify or terminate the temporary restraining order.

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<sup>1</sup> See Cal. Rule of Court 3.1152(a) [This rule applies to requests for protective orders under Code of Civil Procedure sections 527.6, 527.8, and 527.85, and Welfare and Institutions Code section 15657.03].

<sup>2</sup> The statutory provisions for reissuance (Code Civ. Proc., § 527.6(o), § 527.8(o), § 527.85(o), and Welf. & Inst. Code, § 15657.03(m)) provide:

- (1) The court may, upon the filing of a declaration by the petitioner that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall remain in effect until the date set for the hearing.
- (2) The reissued order shall state on its face the date of expiration of the order.

<sup>3</sup> California Rules of Court, rule 3.1152(e) provides:

### **(e) Continuance**

A respondent may request continuance of the hearing upon a showing of good cause. If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court.

This continuance provision is based on rule 3.1152(e) but would apply to both petitioners and respondents. It would allow a party to request a continuance, but require a showing of good cause. A court could also grant a continuance on its own motion. Any temporary restraining order that had been granted would remain in effect until the end of the continued hearing unless otherwise ordered by the court. The provision would also allow the court to modify or terminate the temporary restraining order when granting a continuance.

If this new provision is added to the codes, the current reissuance procedure for petitioners would no longer be necessary and should be repealed. The reissuance procedure has been problematic. It limits the ground for a reissuance to the inability to serve the respondent with the moving papers within the time allowed by statute and provides that reissuances apply only to orders previously dissolved for failure to serve the respondent. This means that a petitioner cannot request a reissuance before a temporary restraining order has been dissolved, which is not a good or safe practice.<sup>4</sup> There is no statutory provision for continuing a pending hearing and keeping the TRO in place until the new hearing date.

If the proposed new provision is added to the codes on restraining orders, rule 3.1152(e) on continuances should be repealed because the substantive provisions on continuances would be in all the applicable statutes.

### **Alternatives considered**

The law on reissuances and continuances could be left unchanged. However, for the reasons discussed above, it would be better for the public and the courts if legislation is enacted providing for a simpler, consistent procedure for continuances in cases involving temporary restraining orders.

In addition to the procedures recommended, this proposal might have included adding detailed provisions for service of orders after a continuance is granted. But there were numerous permutations depending on which party requested the continuance, whether the respondent had previously been served, and whether in granting the continuance, the court modified the order. So the committee decided that the better course was not to add complexities to the relatively simple proposed statutory amendments.

The committee also considered whether the revised statute should either specifically allow or specifically prohibit requests for continuance that are made before the hearing date. It was reported that some courts allow the *Request for Continuance* (form CH-115) to be filed and granted before the original hearing. Others require the petitioner to show up to the hearing and

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<sup>4</sup> In practice, TRO's are seldom if ever "dissolved by the court." They end because the expiration date passes without the need for any affirmative judicial step or "dissolution." Therefore, a TRO cannot be reissued until after the original hearing date has come and gone and the TRO has expired.

request a continuance then. The committee concluded that there were valid reasons for both approaches and that the statute should be allow for both by being silent on the point.

Finally, the committee considered whether the respondent (or both parties) should be able to obtain one continuance as a matter or right without a showing of good cause.<sup>5</sup> The committee preferred requiring a showing of good cause for any motion for a continuance from either party.<sup>6</sup>

### **Implementation Requirements, Costs, and Operational Impacts**

If this proposal is enacted, the result should be to improve the processes for requesting and ruling on continuances in cases involving temporary restraining orders. Several existing Judicial Council forms on reissuances would need to be revised to be consistent with the new provisions on continuances. Although this would not require significant costs or time, a delayed implementation date of July 1, 2015 is proposed so that the form changes could be made in a timely manner and courts would have sufficient opportunity to prepare for the use of the revised forms Also, if the legislation is enacted, subdivision (e) of rule 3.1152 (on continuances) would no longer be needed and should be repealed.

### **Request for Specific Comments**

See the request on the next page.

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<sup>5</sup> See Fam. Code, § 243(d) [The respondent is entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition for orders].

<sup>6</sup> In July, the Family and Juvenile Law Advisory Committee reviewed this entire proposal and considered whether to also recommend changes to the statutes on reissuances and continuances relating to domestic violence and juvenile protective orders. (See Family Code section 217, 243, 245, and 6345 and Welfare and Institutions Code section 213.5.) Those statutes contain rather different procedures than those in either the existing or the proposed amended civil protective order statutes. In the end, that committee decided to recommend no changes to the domestic violence or the juvenile protective order statutes at this time but will continue to consider possible amendments to those statutes in the future.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees is interested in comments on the following:

- Does this legislative proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would the delay of the effective date of this legislation for six months provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments

Amended code sections at pages 6-8

Code of Civil Procedure sections 527.6, 527.8, and 527.85 and Welfare and Institutions Code section 15657.03 would be amended to read:

1 Code of Civil Procedure section 527.6

2  
3 (a)-(n) \* \* \*

4  
5 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the~~  
6 ~~respondent could not be served within the time required by statute, reissue an order~~  
7 ~~previously issued and dissolved by the court for failure to serve the respondent. The~~  
8 ~~reissued order shall remain in effect until the date set for the hearing.~~

9  
10 ~~(2) The reissued order shall state on its face the date of expiration of the order.~~

11  
12 (1) Either party may request a continuance of the hearing on a showing of good cause.  
13 The court may also grant a continuance on its own motion.

14  
15 (2) If the court in its discretion grants the continuance, any temporary restraining order  
16 that has been granted remains in effect until the end of the continued hearing unless  
17 otherwise ordered by the court. The court may modify or terminate the temporary  
18 restraining order.

19  
20 (p)-(x) \* \* \*

21  
22 Code of Civil Procedure section 527.8

23  
24 (a)-(n) \* \* \*

25  
26 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the~~  
27 ~~respondent could not be served within the time required by statute, reissue an order~~  
28 ~~previously issued and dissolved by the court for failure to serve the respondent. The~~  
29 ~~reissued order shall remain in effect until the date set for the hearing.~~

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37 that has been granted remains in effect until the end of the continued hearing unless  
38 otherwise ordered by the court. The court may modify or terminate the temporary  
39 restraining order.

40  
41 (p)-(w) \* \* \*

1 Code of Civil Procedure section 527.85

2  
3 (a)-(n) \* \* \*

4  
5 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the~~  
6 ~~respondent could not be served within the time required by statute, reissue an order~~  
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17 otherwise ordered by the court. The court may modify or terminate the temporary  
18 restraining order.

19  
20 (p)-(w) \* \* \*

21  
22  
23 Welfare and Institutions Code section 15657.03

24  
25 (a)-(l) \* \* \*

26  
27 ~~(m) (1) The court may, upon the filing of a declaration by the petitioner that the~~  
28 ~~respondent could not be served within the time required by statute, reissue an order~~  
29 ~~previously issued and dissolved by the court for failure to serve the respondent. The~~  
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39 otherwise ordered by the court. The court may modify or terminate the temporary  
40 restraining order.

41  
42 (n)-(w) \* \* \*