

# Were you served with a Domestic Violence Temporary Restraining Order?

## **HOW TO:**

- Fill out and file an Answer (DV-120) to a domestic violence restraining order request.

## **WHEN TO USE:**

- If you have been served with a temporary domestic violence restraining order that protects someone else from you, you should file an Answer so you can tell the judge whether you agree or disagree with the restraining order being made for up to 3 years.

*Restraining Order Help Center, 170 Park Center Plaza, San Jose, CA 95113  
408-534-5709*

[www.sccselfservice.org](http://www.sccselfservice.org)  
Santa Clara County  
Self-Help website

[www.sccsuperiorcourt.org](http://www.sccsuperiorcourt.org)  
Santa Clara County  
General website

[www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)  
State of California  
Self-Help website

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## **It is very important that you respond in writing to the Court. Here is some information on how to do that:**

### **What is a restraining order?**

A restraining order is issued to protect a person, or persons, from someone they claim is abusing them or threatening to abuse them. When a restraining order is filed, the Judge reads what the other party (the person who filed) asks for and agrees to make temporary orders, *or not*, and sets a hearing date. These orders are in effect only until the Court hearing. The Court can make orders:

- Personal Conduct orders - you cannot call, write, contact, harass the other party.
- Stay-Away orders – you have to stay away (usually 300 yards) from the protected people and specific places.
- Move-Out orders - ordering one party to move from the home and not live there anymore.
- If you and the other party are married, the court can make orders that protect things and property you own together.
- If you and the other party have a child together, the court can make temporary custody and visitation orders.

*When there is a restraining order you cannot own, possess, or buy any gun or firearm.*

### **How do I tell my side of the story (respond to the restraining order papers)?**

***First, read the orders very carefully and be sure to obey the orders until the hearing.***

You should file a response (called an "Answer") so that the judge has your side of the story, whether you agree with the other party's statement, or not. If you do not file a response the Judge will only have the other party's side of the story in writing, and not your side. Also, *if you do not file a Response, the Judge may not let you talk in Court.*

### **What if I did not get the papers in time to respond or I want to hire an attorney?**

At your Court hearing you may ask for a "continuance" (a rescheduled hearing) to have more time to hire an attorney and/or write up a response. If the other party has an attorney, you can contact their attorney before the hearing date to ask for a continuance. If you and the attorney agree to a continuance then you can both come to Court on your hearing day and tell the Judge. If you do not agree you will have to ask the Judge for a continuance. If the Judge gives you a continuance, all the orders that s/he made will usually remain in place until the next Court hearing.

### **What forms do I need to respond?**

The Answer To Temporary Restraining Order - form # DV-120) is the required form for responding to a restraining order request. When you were served the restraining order papers this form should have been attached. A blank Answer form is stapled to this handout.

If the other party served you with other papers, like a Petition for dissolution of marriage (divorce)/legal separation or a Petition to Establish Parental Relationship (parentage action for

unmarried parents), then you need to file a separate response to those papers, too. The response to the divorce/legal separation is form #FL-120. The response to the parental relationship is form #FL-220. The other party should have served you with blank copies of these forms. If they didn't, you can get a copy from the Court's website at [www.scservice.org](http://www.scservice.org) or at the Family Law Facilitator at 99 Notre Dame Avenue. There is a fee to file these forms. If your income is very low you may not have to pay the filing fee. Ask the clerk's office on the lower level to give you a fee waiver form to fill out if your income is very low.

### **Child support:**

If the other party is asking for child support you must also file a Financial Statement (Simplified) (form # FL-155) or an Income and Expense Declaration (form # FL-150, four pages). Also attach copies of your 3 most recent pay stubs.

### **Child custody/visitation:**

If you have children with the other party the Court may have ordered you to sign up for *Parent Orientation & Mediation*. This is the required first step in the custody and visitation process. You should sign up before your Court date by calling Family Court Services at (408) 534-5760.

### **How do I fill out the Answer form?**

First, look over the papers that you received. Look to see what the protected party is asking for in the Request For Order (form # DV-100, 4 pages). You can tell what they're asking for by what boxes are checked on these forms. You need to tell the judge if you agree or disagree with every box that the other party checked. To do this, check the same boxes on your Answer form and check whether you agree or do not agree. Attached is a sample you can look at for help and a blank Answer for you to fill out.

When you fill out your Answer you may type or clearly handwrite your forms in black or blue ink. You may hire an attorney to fill out the Answer form.

### **When do I get to tell the Judge my side of the story?**

As part of the Answer you should also write a statement telling the Judge your side of the story (where the other person described the violence or threat of violence). Clearly tell the Judge your side of what happened for every incident the other party wrote about. For example, if the other person said you grabbed their arm and you know it was in self-defense, tell the Judge about that in your statement. Describe, in detail, what the person did that made you act in self-defense. Make sure to use dates and times and be very detailed about what happened. This should be attached to the Answer form (a blank form is included with this packet).

### **What do I do after I fill out the Answer form?**

After you fill out the form, make at least four (4) copies and file the original and *a//* the copies at the Clerk's office in the lower level of the Family Court (170 Park Center Plaza, San Jose, CA, at the corner of Park & Almaden in downtown San Jose).

### **Does it cost anything to file?**

No, *except* that there may be a first-time filing fee if the restraining order was filed along with papers to start a divorce/legal separation or parentage case. If your income is very low you may not have to pay the filing fee. Ask the clerk's office on the lower level to give you a Fee Waiver packet to fill out if your income is low.

### **Then what do I do?**

You will need to have someone, NOT YOU, 18 years or older and not listed on any of the papers, mail a copy of your *filed* Answer and any other response papers to the other party (service by mail) where they live or where they work. You must do this at least 2 days before the court date. If you have already been to court about the restraining order then follow the instructions the Judge gave you at your first restraining order hearing. If the other party has an attorney, serve them a copy by mail, too.

The person who mails the response must fill out a Proof of Service by Mail (form # DV-250). Make an extra copy. File the original Proof of Service by Mail and the copy in the Clerk's office. Bring the "Filed Endorsed" copy with you to the Court hearing.

### **What happens at the court hearing?**

Bring the 3 filed copies of your Answer to the hearing as well as a copy of the papers that you received from the other party. Speak up and make sure the judge received a copy of your Answer. If the Answer is not in your file yet and the other party did not receive their copy in the mail, give the Judge and other party your extra copies.

If you have any witnesses, be sure that they are available in the courtroom on your hearing day. At the Court hearing, the Judge will listen to you and the other party and may ask questions. After listening to both of you the Judge may extend the temporary orders for up to 3 years, make completely different orders, or cancel the orders. You may hire an attorney to represent you in Court. It's a good idea to watch a court hearing before your own Court date. To find out when Domestic Violence court hearings happen, call the Calendar Office at (408) 534-5710.

### **What should I do after the hearing?**

If the Judge makes an order, either it will be written up by someone in the courtroom or you will be sent to the Family Court Clinic (on the lower level) with a referral slip so they can write up the order. Sometimes the order can be mailed to you but do not leave the courthouse until you find out for sure. If the Judge granted the restraining orders, do not contact the other party in any way while you are waiting for your paperwork.

If the Judge decided *not* to grant the restraining order or make any other orders, you may leave the courthouse after your hearing, unless the Judge has told you not to.

### **Where can I get help or forms?**

You can (a) hire a private attorney (you can get a \$30/30 minute consultation through the Santa Clara County Bar Association 408-971-6822), (b) try to get a free attorney from a legal service agency (see the Do-It-Yourself Resources handout), (c) go to the Restraining Order Help Center at the lower level of Family Court (legal information only, not legal advice), or visit the California Courts' self-help website: [www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp) or Santa Clara County's website at [www.scservice.org/fam/restraining.htm](http://www.scservice.org/fam/restraining.htm)