

INSTRUCTIONS

ON PETITION FOR A PROTECTIVE ORDER TO PREVENT ELDER OR DEPENDENT ADULT ABUSE

INSTRUCTIONS FOR THE PETITIONER

1. Where to file

A petition for a protective order must be filed in the superior court in the county where the abuse occurred or where the defendants, or some of them, reside at the time the petition is filed.

2. Who may be protected by the orders?

An elder or dependent adult who has suffered abuse as defined in Section 15610.07 of the California Welfare and Institutions Code may be protected by the orders. Under Section 15610.07, "abuse of an elder or a dependent adult" means either of the following:

- (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

3. Who can petition for the orders?

The person to be protected, the conservator of the person to be protected, or a guardian ad litem appointed by the court to represent the person to be protected can file a petition.

4. What forms are required?

Prepare an original and, once completed, make **at least two copies** of each of the following:

Form EA-100 — *Petition for Protective Orders*

Form EA-120 — *Order to Show Cause and Temporary Restraining Order*

You will need one copy of the temporary restraining order for each law enforcement agency or others who will help enforce the order and two copies for yourself. Thus, if you want to give copies of the court orders to three law enforcement agencies, you will need **at least five copies** of your forms. Bring the original and all copies to court to present to the court clerk.

5. Judicial signature

The court clerk will inform you where to take your documents for judicial signature.

6. Filing fee, filing, and hearing date

The *Petition for Protective Orders* (form EA-100) and the *Order to Show Cause and Temporary Restraining Order* (form EA-120) must be presented to the court. There is no fee for filing these documents. The court will provide a hearing date, which will be inserted in the order. When you file these documents, you should ask the court clerk to file-stamp your copies.

7. Delivery of the temporary restraining order to law enforcement

You should ensure that each order is delivered to the appropriate law enforcement agencies so that the orders will be enforced. Check with the court clerk to find out how to deliver an order.

8. **Personal service requirements**

Once you have obtained a signed order, the original petition and order have been filed with the court, and you have received your filed-stamped copies from the court clerk, you must have the respondent — the person from whom you wish to be protected — personally **served** with a filed-stamped copy of the *Petition for Protective Orders* (Form EA-100), a filed-stamped copy of the *Order to Show Cause and Temporary Restraining Order* (Form EA-120), and a blank *Response to Petition for Protective Orders* (Form EA-110). The papers must be **served** at least two days before the hearing date, unless the court has shortened the time required for service.

The law requires that the person from whom you wish to be protected must be personally **served** this notice that you have filed for a restraining order. The judge cannot make any orders at the hearing unless and until the person from whom you wish to be protected has been properly served.

"Serve" is a legal term which means that your completed forms must be personally delivered to the person from whom you wish to be protected. Neither the protected person nor the petitioner (if that is someone other than the protected person) may serve the papers on the other party. Service may be made by a licensed process server, the sheriff's department, or any person 18 years or older who is not a party to the case.

If you hire a professional process server, you must pay for this service. It is helpful to give the process server a picture of the person from whom you wish to be protected and a list of times and places when it will be easier to find that person to serve the forms. **You may not have to pay to have the court forms served on the person from whom you wish to be protected. For instance, if you cannot afford to pay, you may file a fee waiver application with the court. The judge may waive your fees so that the sheriff or marshal will serve your papers for free. If the person from whom you wish to be protected is in jail, there is no fee to have the person served.**

9. **Proof of service requirements**

After the restrained person has been personally served, the person who served the papers must complete and sign a *Proof of Service* (form EA-140 (for personal service)). The original proof of service must be filed with the court. Keep copies for yourself and deliver a copy to each of the law enforcement agencies you would like to enforce the order. Check with the court clerk to find out how to deliver the order.

10. **Bring documents to the court hearing**

Bring copies of all documents you have filed with the court, including your *Proof of Service* forms, to the court hearing. In addition, complete and bring with you a completed copy of the *Restraining Order After Hearing* (form EA-130) for the judge's signature at the hearing.

11. **After the hearing**

a. **Filing the signed restraining order after the hearing**

At or after the hearing, the *Restraining Order After Hearing* (Form EA-130) may be modified to reflect the judge's orders. Ask the judge or court clerk how to obtain the judge's signature on the final order. After the judge signs the order, make **at least two copies**. File the original with the court clerk and ask the court clerk to file-stamp the copies for you.

11. a. **Filing the signed restraining order after the hearing (*continued*)**
(You will need one copy of the final court order for each law enforcement agency or others who will help enforce the order and two copies for yourself. Thus, if you want to give copies of the court order to three law enforcement agencies, you will need **at least five copies** of your forms.)
- b. **Delivery of the signed restraining order**
You should ensure that the order is delivered to the law enforcement officials that you would like to have enforce the order. Check with the court clerk to find out how to deliver the order.
- c. **Serving the signed restraining order**
If the respondent—the person from whom you wish to be protected — was not present in court at the court hearing, you should arrange to have the respondent personally served with a filed-stamped copy of the *Restraining Order After Hearing* (form EA-130). If the respondent was present in court at the court hearing, you can have the respondent served with the order by mail.
- d. **Proof of service of the signed restraining order**
After the restrained person has been served, the person who served the papers must complete and sign a *Proof of Service* (form EA-140 (for personal service) or form EA-141 (for service by mail)). The original must be filed with the court. Keep copies for yourself. A copy of this proof of service must be registered along with the order itself with the law enforcement agencies that you want to enforce the order. Check with the court clerk to find out how to register the order and proof of service.

INSTRUCTIONS FOR THE RESPONDENT

- A. If you are served with an *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* (form EA-120) and a *Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-100), you should promptly seek legal advice. If you have no attorney, the attorney referral service of your local bar association may be of assistance.
- B. If you wish to respond to or oppose the petition, you should file a *Response to Petition for Protective Orders* (form EA-110). An original response must be filed with the court and a copy served on the petitioner or the petitioner's attorney. You do not have to pay any fee to file your response.

In addition to the response, you may file and serve declarations signed by you and other persons who have personal knowledge of the facts. A declaration form (form MC-031) is available from the court clerk's office. If you do not know how to prepare a declaration, you should see an attorney. After you have filed the response with the clerk of the court, a copy must be delivered personally or by mail to the petitioner or the petitioner's attorney.

You cannot serve the petitioner yourself. The person who serves the petitioner must complete and sign a *Proof of Service* (form EA-140 (for personal service)) or (form EA-141 (for service by mail)). You should take the completed form back to the court clerk before the hearing date or bring it with you to the hearing.
- C. If you wish to oppose the petition, in addition to filing a response you should be present at the hearing. If you have any witnesses, they must also be present at the hearing.