

ALBUQUERQUE DIVORCE LAWYER BLOG

PUBLISHED BY

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Objections to an Domestic Violence Order of Protection

November 10, 2011

The [New Mexico Family Violence Protection Act](#) ("the Act") creates a specific cause of action that allows a victim of domestic abuse to obtain a civil restraining order against the household member who committed the abuse. This type of restraining order is called an order of protection and will prevent the restrained party from any contact with the victim. Any person accused of domestic violence has a right to a hearing before a long-term order of protection is entered against them. The Act provides that those hearings may be conducted by a domestic violence special commissioner.

The special commissioner is not a judge, although they must be an attorney licensed to practice law in New Mexico and be knowledgeable in the areas of [domestic relations](#) and domestic violence. The special commissioner also has the authority to review initial petitions for orders of protection, issue temporary orders and enforce or modify orders of protection. However, all decisions by the special commissioner must be approved by a district court judge. Essentially, the special commissioner recommends a certain action (in the case the entry of an order of protection) and then the district court judge decides whether or not to accept that recommendation and issue the order. As a practical matter, most recommendations by the special commissioner are initially approved and entered by the reviewing district court judge.

Even though a special commissioner's initial recommendations will almost always be entered, the restrained party still has the opportunity to object to the special commissioner's findings and have those objections heard by the district court judge. Generally those objections must be filed with the district court within ten (10) days of the entry of the order of protection, or other related order, and they must be submitted in writing. Further, when submitting objections, it is also important to remember that the district court judge is only reviewing the special commissioner's recommendations and will only reverse or modify the resulting order if they determine that the

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recommendations were: arbitrary and capricious or an abuse of discretion; not supported by substantial evidence in the record; or, otherwise not in accordance with the law. This legal standard can be hard to overcome, which means that objections clearly explain to the district court why the entry of the order of protection is improper. It is not enough for an objecting party to tell the court that he or she disagrees with the entry of the order of protection; they must provide a legal basis for the objection.

Given that the district court judge is only reviewing the special commissioner's recommendations, it is essential that a party facing an order of protection take the initial hearing with the special commissioner seriously and present as much evidence as possible refuting the charges. By the same token, a party seeking to have an order of protection should be ready to present evidence supporting their case and explaining why they need protection. Parties should not disregard the importance of the initial hearing by relying on their ability to object later. And, given the very serious [consequences of the finding of domestic violence](#) that underlies an order of protection, both parties should seriously consider having legal counsel represent them before the special commissioner as well as to file any required objections.

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