

ALBUQUERQUE DIVORCE LAWYER BLOG

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Filing and Defending Domestic Violence Orders of Protection in New Mexico

A Domestic Violence Order of Protection is a type of restraining order issued to protect victims of domestic violence and abuse, which is authorized by the Family Violence Protection Act. In New Mexico, including Albuquerque, Rio Rancho and Santa Fe, anyone can file a Petition for an Order of Protection at the Domestic Violence office on the second floor of the Second Judicial District Courthouse. It is not necessary to have an attorney to file a Domestic Violence Order of Protection.

By statute, the Court cannot charge the alleged victim (called the Protected Party) for filing the Petition and the sheriff's office cannot charge a fee for serving the alleged abuser (called the Restrained Party) with Petition and Temporary Order of Protection.

A Domestic Violence Order of Protection is separate from criminal domestic violence charges that are filed in metropolitan, magistrate or district court. In cases of criminal domestic violence actions, the police or district attorney's office will file domestic violence criminal charges based on an alleged incident of abuse in a criminal case. In a Petition for an Order of Protection from Domestic Violence is filed by the alleged or his/her attorney. ,

It is possible for criminal charges and an Order of Protection to arise from the same incident. These Petitions for Order of Protection Against Domestic Violence are often filed during a divorce proceeding or a custody dispute. Unfortunately, these petitions are often used as a weapon in a divorce or custody matter with no real basis for the petition. A party accused of an act of domestic abuse may file a response to the Petition or may also file a Counter-Petition against the party alleging the abuse.

The standard required to file a Petition is very low. Essentially, a Protected Party just has to swear to the court that they have been a victim of domestic abuse and describe the abuse in the Petition. Then the court will issue a Temporary Order of Protection, which means that the Restrained Party cannot have any contact with the Protected Party.

The Petition and Temporary Order must be personally served on the Restrained Party and the Order will set a hearing when the alleged abuser must appear before the court.

Many jurisdiction, including Albuquerque's Second Judicial District and Santa Fe's First Judicial District, have appointed designated domestic violence hearing officers or special commissioners to hold the hearings on Petitions for Orders of Protection. The hearing officer or special commissioner will hear all the evidence and issue all the findings at the hearing and then issue a report that the presiding district court judge will approve.

All testimony at these hearings is on the record and under oath. Either party may have an attorney, but unlike criminal proceedings, an attorney is not provided for you by the State. The Protected Party has the burden of showing the court by a preponderance of the evidence that an incident of domestic abuse has occurred. Preponderance of the evidence basically means that it is more likely than not that domestic abuse occurred. This is a fairly low burden unlike the burden in criminal cases. In addition, the rules of evidence and

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procedure can be a little lax in domestic violence hearings. It is therefore necessary to defend the actions pretty aggressively if the allegations are without merit.

Should the hearing officer find that domestic violence has occurred, an Order of Protection will be issued for a 6 month period. These Orders can be extended for an additional 6 months through the filing of a Motion to Extend Order of Protection upon a showing of good cause.

Either party may file objections to the Hearing Officer's findings and report within 10 days of the issuance of the report. The matter will then be reheard before a District Court Judge.

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