

INSTRUCTIONS TO CLERKS RE: PROTECTION ORDER CASES

June 28, 2000

These instructions relate to **updated forms** for both types of proceedings. Remember:

- (1) There are **two completely separate types** of protection order cases: domestic abuse, and, harassment. There is a separate form for each type of case. Petitioners are going to have to **choose** which type of case they are going to file. The forms are generally different for each type of case.
- (2) If I **initially issue** a protection order, there will be **no hearing scheduled** unless the respondent files a written request for a hearing. If the request is made, then an order for hearing will be issued.

The major change is to transfer the forms from the Green Book to the District 8 Internet site (under clerk's form book). For each form, there are two files. The word processing (WP) file is designed to be opened directly in WordPerfect, so that you can make additions and insertions, and then print the form with the changes. There is also an Adobe Acrobat (PDF) file, which will display the format on the Adobe Acrobat Reader. However, you will not be able to make changes in the PDF display. You can print the blank form and make change by typewriter, if desired. The PDF format is usually the easiest to print copies of the petition, praecipe, and information forms for the persons seeking protection orders.

You should print the form book index page off the computer for reference in the Green Book. Remove and dispose of all protection order pages from the Green Book.

The rest of these instructions are intended to walk you through the process, including references to changes in the forms. It is written as if you had very little knowledge of the process or forms. It may be especially helpful to new clerks or to deputies who do not handle there very often. **However, all clerks should review this memorandum now** (before you are under the pressure of having an application that must be dealt with immediately).

I have used the numbers for the standard protection order forms contemplated by the promulgated forms. Where necessary, I have inserted additional forms.

WHEN AN PETITION IS REQUESTED:

When someone comes in to request a protection order, you should:

1. Determine the names of the petitioner and the respondent, and caution the petitioner to properly and consistently complete the caption.

2. Give the petitioner a set for forms for **each type** of protection order, and inform them that they are responsible for choosing the type of form that applies in their situation. **You are not permitted to try to help them choose which type of case to file.**
 - A. Hand the petitioner a complete set of the **harassment** petition forms (Forms 3, 2, 2A, and 1), which should be clipped together **in that order**. (Note: Form 3 is also copied onto the reverse side of Forms 4, 5, 6, and 7.)
 - B. Hand the petitioner a complete set of the **domestic abuse** petition forms (Forms 9, 8, 8A, and 1), which should be clipped together **in that order**. (Note: Form 9 is also copied onto the reverse side of Forms 10, 11, 12, and 13.)
3. Tell the petitioner to **carefully print** when filling in all of the blanks in the form. It is not the judge's responsibility to have to decipher someone's handwriting. Caution the petitioner that **illegible petitions will be dismissed** and costs may be taxed to the petitioner.
4. Explain to the petitioner that you cannot give legal advice, and that the law prohibits you from "provid[ing] assistance in completing the forms."
5. Tell the petitioner what the estimated costs are, and caution the petitioner that a false application made in bad faith can result in costs being taxed to the petitioner.
6. **If the petitioner inquires** regarding the choice of a county judge or a district judge, you should explain who the respective judges are and explain what you will do depending on their choice, if they mark both, or if they leave it blank (see further instructions below). You should not attempt to influence their selection, if any. If the petitioner **does not inquire** about this matter, you should not mention it.

WHEN THE PETITION AND PRAECIPE ARE RETURNED:

1. Before the petitioner leaves, check through the forms to be sure that they are completely filled out and that the petitioner has not checked more boxes than allowed in that section. You may disregard any failure to choose a type of judge. Point out any such problem to the petitioner without characterizing the matter as a problem, and ask the petitioner if he/she wishes to make any changes. If it appears that the statement of facts contains only general statements, e.g. "he threatened me" or "he hurt me," inquire if the petitioner is sure that he/she does not wish to add some more specific information. You should **not**, however, suggest to them what they should include or how it should be worded. If the form becomes messy, you should feel free to offer the petitioner a new form to start over.
2. When you file the forms, you do **not file** Form 3 or Form 9. You file Form 2 (with Form 2A if necessary) first, followed by Form 1; or Form 8 (with Form 8A if necessary) first, followed by Form 1.
3. If the petitioner has checked **only** the box for a **county** judge, file the forms and deliver the original

file to the clerk-magistrate of the county court to pursue action by a county judge. Request the clerk-magistrate to return the file to you after a county judge has acted on the application. Of course, provide any assistance or services requested by the county judge.

4. If the petitioner has: (a) checked **only** the box for a **district** judge, (b) checked **both** boxes, or (c) checked **neither** box, file the forms and present the matter to me, either in person or by fax. If I am not available, try Judge Olberding. If neither is available, refer it to some other district judge from another district.

WHAT TO PRESENT (OR FAX) TO ME:

NOTE: Use the Order forms from the Computer Internet Site, not the copies mailed by the court administrator's office. I have added clerk's instructions, per my usual practice, in the signature block area.

1. **If I am present in your county** (i.e. you are not faxing me the forms),
 - ! If I am not occupied in court, check with me as to which order for to fill out. That will save you from having to fill out all of the alternatives. I will then have you partially complete the one I intend to use.
 - ! If I am occupied in court or not otherwise immediately available, partially complete:
 - Harassment:** If the petitioner files Form 2, complete Forms 4, 7, 14, and 19.
 - Domestic Abuse:** If the petitioner files Form 8, complete Forms 10, 13, 14, and 19.

I will select the forms to be used. By using the WP file in WordPerfect, you can make the insertions directly in the form and then print. The blanks you need to fill in are formatted so that by double-clicking on the blank, that blank will be highlighted; you then simply type in the data for that blank which will automatically replace the highlighted blank.

On **each** form, fill in the:

- A. **Case number;**
- B. **County** in heading, e.g. In the District Court of *Boyd* County, inserting your county for the italicized word.
- C. **Petitioner and Respondent names** (as shown on caption in application) and Respondent date of birth (from application);
- D. Where appropriate, fill in the real estate description:
 - (1) In the small space provided, fill in the **street address**, using **street number, street name, city, county, and state**, e.g. 300 East 8th Street, Ainsworth, Brown County, Nebraska. Spell out names in full **without abbreviation**. If it is necessary to use a mailing address (rural location or village location without street address), fill in the mailing address, e.g. HC 72, Box 112, Springview, Keya Paha County, Nebraska, followed by an asterisk (*).

(2) If you have used the mailing address, insert the additional directions (e.g. white house with green trim, first house north of post office on west side of street) or the abbreviated legal description (e.g. part of S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25, Township 30 North, Range 20 West) in the white space below the numbered paragraphs. Put an asterisk (*) flush with the left margin and insert the additional directions/description following the asterisk. I know there is not much room, just do your best.

- E. **Date of hearing.** This would be the next regular motion day which is **at least 5 days after you would anticipate that the order will be served** on the respondent. This does **not** apply to Forms 4 and 10.
- F. **Time of hearing.** This would be your regular motion day starting time (10:00 AM or 1:30 PM), except for special directions in Brown, Cherry and Holt Counties. This does **not** apply to Forms 4 and 10.
- G. **Place of hearing,** as follows (italics show example): “District Courtroom, *Holt County Courthouse, O’Neill, Nebraska.*” This does **not** apply to Forms 4 and 10.

- ! In any case in which a physical injury is alleged, also complete Form 19, Referral to County Attorney. As with the other forms, you should complete the case number, county, and caption.
- ! Present the file-stamped Petition and Praecipe, together with the partially completed forms, to me.

2. **If I am NOT present in your county** (i.e. you are **faxing** me the forms),

- ! Unless you are positive that you know where I am, call my Ainsworth number (402-387-2162) to see where your call is forwarded.
- ! Fax the **file-stamped** Petition and Praecipe to the Clerk of the District Court in the county where I am then present. If appropriate, include a page of instructions to the receiving clerk to assist in completing the order forms with hearing date, time, etc.
- ! The Clerk in the **receiving** county should consult with me if I am immediately available, and then complete the appropriate forms (see paragraph 1 above) and generally follow the procedures as if the case had been filed in your county. The receiving clerk should telephone the transmitting clerk with any questions. The receiving clerk should then present the faxed petition and praecipe, together with the locally completed forms to me for signature. I will choose the appropriate form (either before or after you have filled out the alternatives), complete the form, and either return it to the receiving clerk for faxing back and mailing of the original to the transmitting clerk or I will do that myself. However, the receiving clerk will **not** complete **Form 14**, even if I issue an ex parte order; the issuing clerk will do that after the ex parte order is faxed to the issuing clerk.

AFTER THE ORDER IS RETURNED (OR FAXED) TO YOU:

1. Follow the instructions on the praecipe to send the original order with copy of petition to appropriate sheriff for service upon respondent and return.
2. **If an ex parte order is initially issued**, there will **not** be a hearing date initially scheduled. The order and copy of petition **must also be accompanied** by a **request for hearing** form (Form 14). You would prepare Form 14 after you receive the fax of the ex parte order (or after I have signed the ex parte order if I am in your county). The sheriff's return should also show service of this form.
3. **If the order to show cause form is used**, a hearing date will be assigned initially. This will be similar to the procedure we have followed in the past.
4. Retain copy of order in file until original is returned by sheriff. You should tell the sheriff to make the return on a separate page to be attached to the order. The forms have the protection order information on the back of the page, and there simply is no room for a return.
5. Mail copy of order to petitioner. The sheriff does not need to serve the petitioner.

IF THE RESPONDENT FILES A REQUEST FOR HEARING FORM:

1. The procedure will be similar to that followed at the original petition. If I am present in the county, you would prepare Form 15 with an appropriate date filled in and present to me for signature. If I am out of the county, you would fax the signed Form 14 to the county where I am present, and the receiving clerk would complete Form 15. You would need to notify the receiving clerk of the date and time for hearing to be filled in. The receiving clerk would fax back and mail the completed Form 15, and you would then mail to the parties and complete the certificate of mailing on the faxed form. The certificate of mailing on the original should be conformed (filled in with the same information) to the faxed form after you receive the original by mail. When the order for hearing has been faxed, the original is **not** file-stamped when later received, but simply placed in the file immediately following the file-stamped fax-filed order.

CANCELLATION BEFORE HEARING:

1. Often, a petitioner will request cancellation before the hearing. Use Form 20 for that purpose. When the petitioner comes in to request that the P.O. be dropped, you should fill in the heading, caption, case number, and county of venue statement. You should then give the form to the petitioner, and tell petitioner to complete the form. After the petitioner returns it to you, complete the notice of hearing section and mail to **both** parties. You would then file the form. The hearing should be scheduled for the same date and time as the protection order hearing. Ordinarily, I will not consider cancellation until the time originally set for hearing on the protection order.

PREPARATION FOR HEARING IN OPEN COURT:

1. **Make numerous copies of Forms 5, 6, 11, 12, 23, and 24 available at the bench.** At the time of hearing, I may ask you for the forms. They should be readily available. **You should keep them replenished as necessary.**
2. Before the hearing, **please attach a notation to the file regarding the itemization of costs.** Unless the costs are taxed to the respondent, they will probably be waived. The existing legislation on p.o. costs drastically limits the circumstances for taxing costs to the petitioner.

AFTER HEARING:

1. If the petitioner comes in after the hearing, and wants the P.O. canceled or modified, you should have the petitioner complete Form 20 (cancellation) or Form 21 (modification). Give them both forms; it is up to them to choose which form to use. Form 20 (cancellation) is designed to work either before or after the hearing. Form 21 (modification) is appropriate after a hearing or if no hearing was requested on the ex parte order. You should fill in the heading, caption, case number, and county of venue statement as described above. The petitioner would fill in the rest. After it is returned, you would assign the hearing date in accordance with Rule 8-3 (next motion day at least 8 days after date of filing and mailing notice of hearing). You will complete the notice of hearing and certificate of service, mail to both parties, and file. Also mail or deliver a copy to your county attorney.
2. Before the scheduled time of hearing on the cancellation request, have forms 23 and 24 available on the bench. I will fill in everything except the heading, caption, and case number, which you will fill in after the hearing. You should also attach a note to the file regarding the status of costs.