

## Negotiating, Drafting and Trying a Protection Order Case

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### 5 Aspects of Protection Order Practice

- 1) Eliciting information from client
- 2) Negotiating
- 3) Drafting a clear, concise protection order
- 4) Preparing for hearing
- 5) Trying a protection order case

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### I. Meet Client

- Review complaint and temporary order
- Explain your role
- Fill out pro bono project forms
- Explain process
- Determine what client wants in final order
- Explain distinction between consent order and order with a finding
- Redirect client as necessary
- Explain you will talk to Defendant to determine whether negotiation is possible

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## II. Negotiation

- Meet Defendant/counsel
- Offer consent order "no finding"
- Explore whether Defendant will agree to an order to stay away from client
- Then get into details
- Approach Defendant respectfully
- Implications of pending criminal charges

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## III. Drafting Orders

(Negotiated Agreement)

- Be as thorough and specific as possible
- Determine what exceptions there will be to a no-contact order
- Is there someone with whom client is comfortable who is willing to act as an intermediary between the parties?
- Can the parties discuss kids issues together?
- Emergency contact?

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## Drafting Orders

Children's issues

- Include detailed language regarding children (see sample contact orders)
- Specify "pick up" and "drop off" times and location
- Remind parties that any child provision can be modified in family law case
- Discuss names of possible third parties who can help transport children
- Discuss possible supervisors if appropriate

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## DRAFTING ORDERS

Property/ Damages

- Ask party who wants personal property to prepare a list of what he/ she wants in order to discuss with other side
- A list of property can be attached and incorporated into order (see sample)
- Damages to home, personal property, lost wages, medical bills

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## Drafting Orders

Child Support

- Is there an existing child support order?
- Prepare child support orders if you know how to do this.
- Sign up for a future training if you would like to learn more about.

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## IV. Prepare for Hearing

(Negotiation fails)

- A. Gather Information
- review details of incidents described in complaint with client
  - details of other incidents (dates)
  - some judges hesitant to allow other allegations not contained in the complaint.
  - where were the children during incidents
  - Defendant's demeanor and proximity to client during incident

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**Trial Prep** cont.

- Any other prior/current PFA orders with this Plaintiff and Defendant
- Any family matter orders
- Any other proceedings—criminal, bail conditions, probation conditions, etc.
- Financial issues including; home, child support, bills, cars, spousal support, personal property, damages

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**Trial Prep**  
Cont.

- B. Witness Preparation
- Explain trial process
  - Testifying advice—take breaths, do not have an attitude, tell the truth, etc.
  - Tell client to look at you or judge not Defendant—block Defendant’s view of client if possible
  - Always be sure you position yourself btw client and Defendant

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**Trial Prep**  
Cont.

- C. Develop Theory
- Check statute and know which definitions of abuse you are attempting to prove
  - Consider credibility issues

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## V. Trial

### A. Preliminary Issues

- Request witness sequestration
- Request recording (if criminal charges pending)
- See Sample Hearing Outline
- Prior to court date: review memo regarding "Basic Areas of Inquiry in Protection Order Cases"

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## Trial

### B. Direct Exam

- Lead thru preliminary questions regarding name, address, children household members, etc.
- Most recent incident first (or most egregious)
- Go through chronology

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## Trial

- Elicit testimony regarding any other behavior which demonstrates abuse
  - Breaking property
  - Taking/ Hiding/ Breaking phone
  - Withholding medication/ medical treatment
  - Threats to call DHHS, threats to take kids
  - Threats to hurt pets
  - Suicide Threats
  - Jealousy, Isolation
  - Stalking
  - Sexual Assault
  - Economic Abuse

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**Trial**

Children's Issues

- Establish where children were during the incident and what if any reaction they had— Prove abuse to them if kids are Plaintiffs
- Best interest of child and safety issues paramount
- Kids—historically who care cares for; routine
- Drugs/alcohol issues
- Info bearing on ability to parent  
mental health issues  
amount of involvement
- Safety for children during visits and client during exchange

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**Trial**

Financial issues

- Child Support— elicit testimony about each party's income, daycare expenses health insurance etc.
- Financial issues
- Damages

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**Trial**

Other relief requested

- Be specific
- Individual counseling
- Batterers' intervention program
- Drug and alcohol treatment
- Possession of pet
- Exchange of personal property  
(also how to safely achieve)

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**Trial**  
cont.

- c. Cross
  - Less is more
  - Did Defendant's direct hurt your case?
  - Keep it short and succinct
  - Use Defendant's prior criminal convictions
  - Use letters, emails of the Defendant
  
- Inference if Defendant takes the 5<sup>th</sup> (Rule 513)

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**Trial**  
cont.

- d. Evidentiary Issues
  - See in materials: foundation and sample rules of evidence
  - Hearsay exceptions—know them, argue them
  - 401-relevance—defendants often attempt questions or testimony regarding bad behavior of plaintiff, sexual history, new boyfriends/infidelity
  - 403 –prejudicial
  - OBJECT when necessary!
  - Look to the judge for cues

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**TRIAL**  
Evidence Issues

- Admissible evidence:
  - Photographs of injuries or damage to property
  - Letters, email or text messages from the Defendant
  - Certified hospital records
  - Answering machine tapes
  - Cell phone messages

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**Trial**  
cont.

- E. Closing
  - See Sample Hearing Outline
  - Reference the specific abuse definitions
  - Did Defendant admit abuse?
  - Highlight any credibility issues/evidence that help you
  - Preponderance of the evidence standard
  - Reiterate relief requested and provide court with any child support worksheets or orders you have drafted

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**TRIAL**  
cont.

- F. Misc. Issues
  - Kids testifying
    - avoid it at all costs
    - ask to have court room cleared
    - alternatively—ask for judge to come off bench and just have child, attorneys and judge at counsel table
    - discuss pros and cons with client

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**Misc. Issues**  
cont.

- Know your judge and/or follow judges cues
- Pro se Defendant issues
- Other witnesses

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## THANK YOU!

Studies show:

Access to legal counsel is the most  
important resource to assist victims to  
leave violent relationships.

Thank you for volunteering

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