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Legal Insights

by Steven L. Hartley

As most of us know, the restraining order and protective order system is far from perfect. Likewise, the legal processes involved are not perfect either. However, this doesn't mean that victims of abuse should not seek the help that is available to them. They should.

The systemic and procedural problems that exist regarding restraining and protective orders can and are being addressed by the Hawaii legislature. This year there are several bills in the legislature regarding TROs and Orders for Protection. Currently, a TRO is invalidated once an Order for Protection is issued. However, a protective order is not valid until it is served on the alleged abuser. One bill seeks to reconcile this by proposing that a TRO remain in effect for ninety (90) days or until the effective date of a protective order, whichever occurs first. Another bill proposes stiffer penalties for alleged abusers with criminal convictions who violate an Order for Protection, including mandatory jail time. The process, if used correctly, can protect victims from violence and abuse. However, there are additional precautions to take to ensure one's safety. The Victim/Witness Assistance Division of the Honolulu Prosecutor's Office and the Domestic Violence Clearinghouse are just a few agencies that can provide additional assistance and services.

If you have any questions or need more information regarding restraining orders, please call the Adult Services branch of Family Court at (808) 538-5959.

In A Nutshell: TRO/Protective Orders

Incidents of domestic violence in Hawaii are on the rise. Just read the newspaper or watch the evening news. Temporary Restraining Orders and Orders for Protection are tools used to prevent these tragic occurrences.

A Temporary Restraining Order, or "TRO" as they are commonly referred to, prevents an alleged abuser from harassing or contacting someone temporarily. Filing a Petition for an Order for Protection with the Family Court is the first step to obtain a TRO against a family or household member. The Family Court has jurisdiction if the alleged abuser is someone that: 1) you are married to or were married to; 2) is related to you; 3) lives with you or used to live with; 4) you have a child with; or 5) you are in a dating relationship with or have been in the past. If the alleged abuser does not fall within one of these categories, the Petition must be filed at the District Court.

A Petition for an Order for Protection can also be filed on behalf of a minor or incapacitated person who is a member of the Petitioner's household. Whenever a child is named in a Petition, an agency working with the Judiciary gets involved to conduct a preliminary investigation and will submit a report to the judge prior to the hearing. However, parties involved in a child custody case are strictly prohibited from strategically using the TRO process to gain an advantage for custody.

There are several ways to file a Petition for an Order for Protection. The Adult Services Branch (ASB) of the Family Court is staffed with trained individuals to gather information and provide assistance in filing such Petitions. ASB can be reached at 538-5959 from 7:45 a.m. through 3:00 p.m. When calling ASB be prepared to provide details about the incidents of abuse. ASB will provide information on the court process, assistance in completing the Petition and set up an interview to finalize the same. This interview may take up to four (4) hours, after which time the Petition is sent to a judge for review. An attorney can also prepare the Petition or it may be completed by the Petitioner *pro se* (representing themselves). Forms can be found online at the Hawaii State Judiciary Website at www.courts.state.hi.us.

When completing a Petition, be as detailed as possible regarding allegations of physical harm, threat of imminent physical harm, bodily injury or assault, extreme psychological abuse, or malicious property damage. Also provide examples of the abuse and attach any documentation substantiating the abuse such as personal logs and police or medical reports.

A judge will review the Petition and if granted, the Judge will issue a TRO and set a hearing within fifteen (15) days to determine if a permanent Order for Protection is warranted. The court will process the paperwork and will inform the Petitioner that the Petition was granted and that the TRO is ready for pick up. A TRO is effective for ninety (90) days from the date it is issued; however, it is not effective until it is served on the alleged abuser. The police department will serve the alleged abuser within the district where the alleged abuser resides. The TRO will prevent the alleged abuser from contacting the Petitioner in any way, including in person, by telephone, text message or email. In addition, if the alleged abuser owns any firearms, the police will take these away.

At the hearing, each side will have time to present arguments to a judge. The judge will decide whether an Order for Protection is appropriate and set a fixed reasonable time for the same. The Order for Protection provides the same limitations as a TRO, but is for a longer period of time.