

Overview of a Formal Injunction Hearing Process

This document, created by the Wisconsin Coalition Against Domestic Violence (WCADV) Legal Department, does not constitute legal advice. The WCADV thanks the Winnebago County Bar Association for the videotape entitled “A Domestic Restraining Order,” from which this document is based in part.

Before the hearing:

- Arrive at the court at least 15 minutes before the time of the hearing. Check-in with bailiff or clerk of court.
- Wait until the clerk calls the case.

As the hearing begins:

- The clerk announces that the judge or circuit court commissioner is about to enter by saying “all rise.” Everyone stands.
- The Clerk calls the case.
- The Court states the subject of the hearing and the law under which the injunction petition was brought
- The Court states that the hearing will be on record. (If the Court does not state that the hearing will be on record, the petitioner should not ask for the hearing to be on record under Wisconsin Statute 813.12 (7m).)
- The Court asks for all people in the room to identify themselves by saying something such as: “State the appearances.”
- The court *may* state that the Petitioner’s Temporary Restraining Order (TRO) was granted and will verify that the Respondent received notice of the TRO and the injunction hearing. **(If the Respondent did not receive notice, the injunction hearing cannot be held.)**
- The court *may* ask the Respondent if s/he is contesting the injunction.
- The court *may* state the definition of domestic abuse under Wis. Stat. 813.12(am).
- The court *may*, at this time, give parties information about the injunction process.

Testifying at an Injunction Hearing-Pre-steps:

- Petitioner has the burden of proof because s/he filed the injunction petition. This means that s/he will testify first.
- Petitioner needs to notify the Court of any witnesses who will testify on Petitioner’s behalf.
- The Respondent has a right to ask the court to have witness wait outside while the parties testify.
- If the Respondent makes this request, the Court will ask the witness(es) to wait outside until they are called.

Petitioner’s Testimony:

- Petitioner rises at her seat and is sworn under oath.
- Petitioner will testify from the witness stand unless s/he requests or the court allows testimony from the Petitioner’s seat.

- Petitioner starts testimony by giving her/his full name, and her/his address. (**However, Petitioner does not have to give her/his address in a domestic abuse injunction hearing (Wis. Stat. 813.12(5m)) or a harassment injunction hearing (Wisc. Stat. 813.125(5m).)**)
- Petitioner may take the petition to the witness stand while testifying. Some courts will only allow the Petitioner to say things that are in the petition.
- Petitioner gives testimony to the court. (Tells her story.). Petitioner should start with the most recent events and mention specific instances of abuse, threats of abuse, or destruction of property, or harassment. Next, it is important to talk about past incidents of abuse or threats of abuse to help establish a pattern. It can be beneficial to try to keep testimony succinct, and focused on the specific incidents of abuse, threats of abuse or property damage; the testimony does not have to be a complete history of relationship.
- **Petitioner should end with what she wants from the court. This is a closing statement or summary in which the Petitioner explains how s/he met the burden of proof required by law, what s/he requests, and his/her fear of the other party (Respondent).**

Evidence:

- Petitioner should submit any relevant documents, photographs, medical reports, police reports or other material into evidence at this time. Petitioners must “lay the foundation” for evidence before submitting it. This means that the Petitioner must call as a witness the person who created the document or photograph (i.e. the officer who wrote the police report) or who is responsible for maintaining the document (i.e. the custodian of records).
- The petitioner will need to ask the witness questions regarding when and how the document was prepared to establish the authenticity of the document.
- A court *may* not allow evidence if it is not introduced properly.

Respondent Cross-Examines Petitioner:

- Respondent is allowed to ask Petitioner questions about his/her testimony. S/he can *only ask* questions that are relevant to Petitioner’s testimony. This is not the time for the Respondent to tell his/her side of the story.
- If the question is not relevant to the matter of the injunction or related to her testimony, Petitioner may make an **objection** and decline to answer the question.
- A pro se Petitioner (a Petitioner representing him/herself) must object to any irrelevant questions or other inappropriate questions.

Petitioner May Make an Objection to Certain Questions:

If the Petitioner makes an objection, the court will decide whether or not the objection can be sustained under the rules of evidence. *To make an objection, the Petitioner can say “Your honor, I object because,…”* The most common reasons to make an objection are the following:

- **Irrelevant/Immaterial:**-The Petitioner may object if the Respondent asks a question that has nothing to do with the subject of the injunction hearing or is inappropriate (i.e. “why don’t you love me anymore?” or “why are you doing this to me?”)
- **Hearsay:** Generally, hearsay is defined as testimony about something someone else said rather than what he or she knows personally. Because the person quoted in the testimony is not there to verify whether that is really what he/she said, the court cannot accept hearsay as evidence. However, the rules about hearsay are complicated. There are many exceptions to hearsay. The Petitioner might object to hearsay during the Respondent’s testimony or if the Respondent calls a witness to testify.

- **Leading Question:** The Petitioner or Respondent may not ask *their own* witness a leading question. A leading question is one that suggests an answer or puts words into the witness' mouth such as: "Isn't it true that you saw [Petitioner] drinking that night?" However when cross-examining, the Petitioner or Respondent is permitted to ask leading questions to the other party or the other party's witness.

Witnesses:

- Petitioner may call witnesses. Petitioner may call a witness to authenticate a document or photograph she submits into evidence or to testify about what she or he saw. (See Evidence above.)
- The witness is sworn under oath. S/he must first give her/his full name and address for the court.
- Petitioner asks her/his witness questions relevant to the domestic abuse.
- Witness answers questions
- When Petitioner is finished asking questions of the witness, Respondent may ask questions regarding the witness' testimony. This is the time for the Respondent to cross-examine the witness. At this point, Petitioner may make an objection to questions that are irrelevant or do not relate to the Witness' testimony. (See **Petitioner May Make an Objection**..above.)
- Petitioner may question Witness again to clarify anything the Witness said.

Respondent's Testimony, Witnesses and Cross-Examination:

- The Petitioner has a right to ask the court to have the Respondent's witness(es) wait outside while the parties testify.
- If the Petitioner makes the request, the Court will ask the witness(es) to wait outside until they are called.
- The Respondent is sworn under oath. S/he must first give his/her full name and address for the court. Petitioner may make an objection if s/he believes that Respondent is giving testimony that is irrelevant to the subject of the hearing. (See **Petitioner May Make an Objection...** above.)
- Respondent may submit any evidence in the manner described above.
- Petitioner may cross-examine Respondent. Petitioner has a chance to ask Respondent's questions about his/her testimony, though s/he does not need to.
- Respondent may call witnesses. (Remember, a witness may need to be brought back into the room.)
- Petitioner may object to the questions that the Respondent asks the witness if the Respondent asks the Witness questions that are irrelevant to the injunction hearing. The Petitioner may also object if the Respondent asks "leading questions" to his witness. (See **Petitioner May Make an Objection...**above.)
- Petitioner may **cross-examine** the Witnesses by asking them questions about their testimony.

Closing Statement:

- Parties have the right to make a closing statement (also called a "closing argument" or "closing summation"). Not all hearings are conducted with this formality.
- If Petitioner does make a closing statement she should again state to the court what she would like the court to grant and why she needs the Restraining Order.

End of the Hearing:

The Court's Decision.

- The Court states what the Petitioner must have proven in order for the court to grant the injunction, the “burden of proof.” Court must find “reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.” Wisc. Stat. 813.12(4)(a)(3).
- Court states that it will or will not grant the injunction.

The Court may ask the Petitioner the following:

- How many years Petitioner would like the injunction. (For Domestic Abuse Injunctions.)
- What kind of Domestic Abuse Injunction the Petitioner would like (No Hit or No Contact.) NOTE: This information is in the petition the Petitioner filed with the Court so the Court should already have the answers to the above questions.
- Court *usually* tells the Respondent the penalties for violating a Domestic Abuse or Harassment Injunction. (Jail, fines, etc.)
- Court tells the Respondent that he *must not possess a firearm* during the period of a domestic abuse injunction and must surrender his firearms if he has any. (Wis. Stat. 813.12(4m).) The Court usually tells the Respondent the penalties for failing to comply with this order. (In a harassment injunction, the court *may* prohibit the Respondent from possessing a firearm if there is clear and convincing evidence that the “respondent may use the firearm to cause physical harm to another or endanger public safety.” (Wis. Stat. 813.125(4m)).
- NOTE: If the Respondent surrenders firearms to a third party (who *must* be approved by the court), the court shall inform the person to whom the firearm is surrendered of the requirements and penalties under Wis. Stat. 941.29 (4).” (Under Wis. Stat. 813.12(4m)(2)). The third party could be charged with a Class G Felony (10 yrs/\$25,000) if s/he allows the Respondent access to the firearm after it has been surrendered. (Wis. Stat. 941.29)

Court Mistakes or Errors

Parties have a right to challenge an improper court decision by either objecting and noting to the court the discrepancy between what a party requested and what the court ordered or stating one of the following:

- “Your Honor, could you please state the legal basis for your decision?”
- “Your Honor, I don’t understand this decision. Could you please explain to me the legal basis for your decision?”
- “Excuse me, your Honor. My understanding is that Sec 813. [cite the statutory authority not properly applied] says...[give brief explanation, i.e. the court is to grant the remedies requested by the petitioner if an injunction is granted] Could you please explain how you made your decision?”
- “Your Honor, I fear for my safety. I do not believe that this decision is in keeping with what I have asked the court to do today.”
- “Your Honor, I request that you make factual findings and give the legal basis of the decision.”
- “Your Honor, I do not understand what you are asking me to agree to. All I know is I am afraid for my safety and need the court to grant my request for protection.”
- A party has the right to make an objection anytime an error occurs
- A victim service representative, under Wis. Stat. 895.73(2) has the right to ask to address the court. However, the court has the discretion to not allow the service rep to speak in court.