

A Guide to Responding to a Protection Order

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Whitireia Community Law Centre Trust Incorporated

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Thank you to Paul Drake

A Guide to Responding to a Protection Order

Introduction

Under the **Domestic Violence Act 1995**, any person can apply to the Family Court for a protection order, if that person (or a child of his or her family) has been the victim of domestic violence from someone they have (or had) a domestic relationship with. The phrases “domestic violence” and “domestic relationship” have been given wide meaning under the Domestic Violence Act.

This resource booklet uses a sample case study example to demonstrate how someone may respond to a protection order – whether they are given notice of the application, or are served with a temporary protection order as a result of a without notice application.

The booklet contains simple forms with examples filled in by the respondent, to demonstrate how to complete the documents necessary for responding to an application. It is designed for people who are not eligible for legal aid but cannot afford to pay a lawyer and feel confident enough to start and carry on legal proceedings in the Family Court themselves.

There are serious consequences that result from the granting of a protection order. It will affect the contact the respondent is able to have with a partner and/or children. It may mean the respondent is required to move out of the shared family house. It may mean the applicant can remove furniture from the house. If the respondent has a firearms licence it will be suspended by a temporary protection order. The respondent will probably be required to attend a stopping violence programme.

It is important that if the respondent wishes to respond to the order or to challenge any of the alleged facts that it is done within the prescribed time limits.

It is likely that any situation involving a protection order is going to be complicated and this booklet can not address all the circumstances. It is therefore advisable to talk to a lawyer or someone at a Community Law Centre before proceeding with an application to the Family Court.

Contents

Introduction	1
Case Study – Fred and Mary	3
SECTION ONE: PROTECTION ORDERS – THE LAW	4
Without notice applications	5
On notice applications	6
Conditions of a protection order	6
Property orders	8
SECTION TWO: DEFENDING AN APPLICATION MADE ON NOTICE	10
Notice of Defence	11
Affidavit in support	12
After the defence is filed	16
SECTION THREE: RESPONDING TO A TEMPORARY ORDER	18
Objection to Direction to Attend a Programme	18
Applying to Modify or Add a Special Condition	20
Objecting to a Final Order	21
APPENDIX	
Forms	23

Case Study – Fred and Mary

Fred and Mary Jones have been married for twelve years. They live with their daughter Megan at 8 Pember Place, Porirua in a rented house. Over the period of their relationship Fred has shouted at and fought with Mary on a number of occasions after they have been out drinking. Often this happens because they have been drinking and they end up arguing about money.

Mary has threatened that she is going to leave Fred and take Megan on a number of occasions, but she has never gone through with it. After a particularly bad argument, Mary takes Megan and goes to stay at her brother Joe's house. Fred assumes she is going to come back when she has calmed down and therefore doesn't think much about it. He calls her every couple of days to ask when she is coming back and to talk to Megan.

Scenario One: Application for a Protection Order (on notice)

Fred is served with papers letting him know that Mary is applying for a protection order and giving him a time frame to respond to the papers (an on notice application). Fred wants to know exactly what a protection order is and what he should do about Mary's application.

Scenario Two: Temporary Protection Order (without notice)

Fred is served with papers saying that Mary has applied for AND obtained a temporary protection order without Fred's knowledge (a without notice application). Fred is ordered to attend a Stopping Violence Programme and is not able to have any contact with Mary or Megan. There is a lot of information for Fred to take in and he is unsure what to do next.

SECTION ONE: Protection Orders – the Law

Anyone **who is or has been in a domestic relationship with another person** can apply to the Family Court for a protection order against that person under the Domestic Violence Act 1995.

The person applying for the protection order is the **applicant**. The person the application is made against is called the **respondent**.

The court will make a protection order if it is satisfied that;

- a **domestic relationship** exists (or existed) **and**
- the **respondent** is using, or has used, **domestic violence** against the **applicant**, or a **child of the applicant's family** (or both), **and**
- a protection order is necessary to protect the applicant and/or that child.

A **domestic relationship** includes marriage, civil union, same-sex and de facto partnerships, family relationships (including in-laws, de facto in-laws and culturally recognised family groups), those who ordinarily share a household and those in a close personal relationship.

(Note: People who occupy the same house as landlord and tenant, or employer and employee, are not in a domestic relationship just because of that fact).

Domestic violence is violence used within a domestic relationship. The definition of violence in the Act is wide. It includes;

- physical abuse
- sexual abuse (including any unwanted sexual contact)
- psychological abuse (this abuse includes intimidation, harassment, threat or damage to property).

A person also psychologically abuses a child if that person causes or allows a child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship. An obvious example of this is where one parent hits the other in front of their child or children.

When the Court grants a protection order it **automatically protects any child of the applicant's family**. This includes any child under 17 who normally or regularly lives with the applicant. The child does not have to be the applicant's child, or the respondent's child. Obviously the existence of a protection order will effect contact that the respondent is able to have with any children.

There may be an associated respondent also named in the application. The **associated respondent** is a person who may not be in a domestic relationship with the applicant, but who has been encouraged by the respondent to engage in domestic violence against the applicant. This book does not deal with applications which include associated respondents. If you are an associated respondent named in a protection order, the information in this book will give you an idea of the process involved, but you should seek further advice before responding to an order.

1. WITHOUT NOTICE APPLICATIONS

The court can make a protection order without the respondent being told about it (application without notice). This can only be done if the Court is satisfied that any delay that would be caused by requiring notice be given to the respondent, might cause a risk of harm or undue hardship to the applicant or a child of their family. Where an applicant fears that to give the respondent notice would in itself cause further violence, an application is generally made without notice.

The temporary order lasts for three months after an application without notice is granted. It remains in force until it becomes final, it lapses or is discharged by application from the respondent. **If the respondent doesn't challenge the temporary order, it automatically becomes final after three months.** If for any reason the respondent didn't get served with a copy of the temporary order then a final order can't be made, and if it remains unserved for 6 months the application lapses.

There are some basic conditions of every protection order (see below). Special conditions can be added by either the applicant or the respondent to modify the order to fit the situation. **It is important to read the protection order and the notice with it which outlines what the order means.**

2. ON NOTICE APPLICATIONS

Protection orders can be made **on notice** to the respondent. This means that after the court receives the application, the respondent is served with the application before the court considers granting the order. The respondent therefore has an opportunity to appear before the court to oppose the application.

Sometimes the applicant will choose to give the respondent notice of the application – but other times the Court will order that the respondent be given notice (i.e. served with the application) before an Order is considered.

If the application is on notice, any protection order granted will be a final order. This means it is permanent, but may be amended or discharged on application in the future.

3. CONDITIONS OF A PROTECTION ORDER

Once a protection order has been made (whether temporary or final), the respondent's behaviour and contact with the applicant (and any children covered by the order) is governed by the conditions of the protection order.

There are standard conditions of every protection order – they include non-violence conditions and non-contact conditions. There may also be special conditions that deal with an individual's situation.

Non-violence conditions apply to every case.

The respondent must not:

- physically or sexually abuse the applicant or the applicant's children, or threaten to do so
- damage, or threaten to damage, property belonging to the applicant
- psychologically abuse the applicant - including intimidation and harassment or threatening to do so
- encourage any other person to physically, sexually or psychologically abuse the applicant or the applicant's children, or threaten to do so.

Non-contact conditions apply UNLESS the applicant expressly agrees to the respondent living in the same house.

The respondent must not:

- watch, loiter near or prevent access to/from the applicant's house, workplace or any other place the applicant visits often
- follow the applicant about or stop or accost the applicant in any place
- enter or remain on any land or building occupied by the applicant without the applicant's express consent
- make any contact with the applicant (including phone, fax, email, text and mail).

The non-contact conditions mean the respondent cannot contact the applicant UNLESS:

- this is reasonably necessary in an emergency or
- if permitted by a parenting order or written parenting agreement or
- it is permitted by a special condition of the protection order or
- the respondent is attending a family group conference convened under the Children, Young Persons and Their Families Act 1989.

If the applicant and the respondent are living in the same house with the express consent of the applicant, these non-contact conditions are suspended. **However, the applicant is able to withdraw consent for contact (or living together in the same house) at any time just by saying so and then these non-contact provisions will apply in addition to the standard conditions.** This may mean that the respondent should have back-up accommodation should the need arise.

Weapons

A respondent must not possess or have under their control any weapon (e.g. firearms, ammunition, explosives) or hold a firearms licence. This means that **within 24 hours of being served with a temporary protection order, the respondent must hand in any weapons and their firearms licence to the Police.** If you don't do this, the Police have the power to enter any property and seize the weapons and you could be prosecuted for breaching the order.

If the order becomes final, the respondent's firearms licence is automatically revoked unless an application is made to the Court to modify or discharge this condition. Any weapons handed in are returned by the Police when the order is discharged or the conditions relating to weapons are modified to allow the respondent to possess a weapon.

Attending a programme

The Court will usually require a respondent to attend a programme about living without violence. Programmes are likely to involve group sessions of two to three hours at a time with about 30-50 hours attendance required in total. The order will specify which programme provider the respondent will be working with and the number of sessions required. It will also state where and when the respondent must go for the first session or that they will be contacted by the programme provider.

The respondent has five days after they have been served to object to the direction to attend a programme. If the objection is not made and the respondent fails to attend sessions, they can be prosecuted for failing to comply with the order.

Breaching the Conditions of a Protection Order

Once a protection order has been granted, (whether temporary or final) it is a criminal offence to breach the conditions of it. The maximum penalty for this offence is 6 months' imprisonment or a \$5,000 fine, or both. In the case of certain repeat offences, the maximum penalty for this offence becomes 2 years' imprisonment.

If a member of the police has good reason to suspect that the respondent has committed a breach of the order (other than failing to comply with a direction to attend a programme), they may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest in these circumstances.

Also, as well as any offences under the Domestic Violence Act, other charges could be laid if the order was breached. These could include offences in the Crimes Act such as assault, male assaults female or trespass which all carry potential imprisonment penalties.

4. PROPERTY ORDERS

As well as a protection order, an applicant may have applied for a **property order**. There are four types of these orders:

- **Occupation order** – entitles the applicant to be the sole occupant of the owned family home.
- **Tenancy order** – entitles the applicant to be the sole tenant of a rented home.

- **Ancillary furniture order** – entitles the applicant to use furniture and household effects in the home that had been occupied by the couple.
- **Furniture order** – entitles the applicant to take furniture and household effects to another house.

The court can make a property order if it is satisfied that this is necessary for the protection of the applicant, or in the best interests of a child of the applicant's family.

If an occupation or tenancy order is made and you don't leave, the Court may issue a warrant to remove you from the property. If you stay or go onto the property, you could be charged with trespass which carries a maximum penalty of three months' imprisonment. This is in addition to any charges that may be laid for breaching the protection order.

This booklet only deals with responding to a protection order, not any of the property orders (or parenting orders) which may have been granted as well. It is important to speak to a lawyer if there are other orders involved.

SECTION TWO: DEFENDING AN APPLICATION

In the first scenario at the beginning of the book, Fred was given notice that Mary wanted to apply for a protection order. Fred first learned about her application when he was served with Mary's papers supporting her application for a protection order. Fred is not happy at the thought of having a protection order made against him.

In order to defend an application for a protection order, Fred will need to show the Court one of these things:

- that no domestic relationship exists between himself and Mary, or
- that there was no domestic violence against Mary or Megan, or
- that a protection order isn't necessary to protect Mary or Megan.

In Fred's case, he is married to Mary and there are occasions where he has hit or verbally abused her. But he wishes to defend the application as he believes that there is no need for the order since whenever the abuse has occurred there have been other circumstances, and if he's not living with Mary the abuse will not occur.

If Fred does nothing about the Court papers, the application will go ahead without him and it is likely a final protection order will be made.

If Fred wishes to respond to the application, he has up until five days before the date of the hearing to inform the Court that he wishes to respond. He needs to do two things:

- File a Notice of Defence
- File an affidavit in support. (This is Fred's sworn evidence.)

If Fred doesn't file the Notice of Defence in time, he can still turn up to Court on the day of the hearing to defend the application, but he may have to pay Court costs for delaying the proceedings.

1. NOTICE OF DEFENCE

The Notice of Defence is simply a form that tells the Court (and the applicant) what is happening with the file. It allows the Court to schedule the correct hearings and send out relevant letters. Once the Notice of Defence and an affidavit are completed, they need to be taken to the same Family Court as the application was made in. There is no cost for this.

Notice of Defence Domestic Violence Act 1995 Rule 31, Domestic Violence Rules 1996	
In the Family Court at Porirua	FAM-0101-1001-1010 (1)
BETWEEN: Mary Jones, Mother of 8 Pember Place, Porirua Applicant	
AND: Fred Jones, Builder of 8 Pember Place, Porirua Respondent	
I, Fred Jones, of 8 Pember Place, Porirua, Builder, the Respondent, give notice that I intend to defend the application for: (2)	
Protection order	
Occupation order	
Tenancy order	
Ancillary furniture order	
Furniture order	
Affidavit in Support	
I rely on the content of the affidavit dated 3 June 2005 filed in support of this application. (3)	
<i>Fred Jones</i>	
Respondent	
Date: 3 June 2005	(4)
To: The Registrar Family Court Porirua	
And to: The Applicant	
This application is filed by Fred Jones, whose address for service is at 8 Pember Place, Porirua. (5)	

Please note: The Notice of Defence above has been modified for clarity. All the forms at the back of the book have a front page with the contact details on, and the rest of the information on the next page, but the substance is exactly the same as the examples filled in by Fred and Mary.

An explanation of how Fred completes the form is provided by referring to the numbers in brackets, e.g. (1) and the associated explanations.

(1) Court details and FAM number

Fred will find this information on the documents from Mary that were served on him. The Family Court location will generally be the Family Court closest to the applicant.

(2) Orders that are to be defended

Fred needs to delete the orders that he does *not* wish to defend. This is so it is clear to the court exactly which order/s he is to defend.

(3) Affidavit in support

Fred fills out the date when his affidavit supporting this Notice of Defence was sworn.

(4) Fred signs and dates the Notice.

(5) Address for filing

Fred needs to inform the Court as to which address they should send further documents and correspondence relating to the proceedings. If Fred had a lawyer generally this address would be the lawyer's address.

2. AFFIDAVIT IN SUPPORT

Fred will need to complete an affidavit (evidence sworn on the Bible) or an affirmation (evidence affirmed as true and correct) to support his defence. It needs to set out the grounds on which the defence is based and also provide the facts relied upon.

This written statement must be sworn or affirmed in front of a Justice of the Peace, a lawyer or a Registrar of the Court. (JPs can be found in the Yellow Pages and do not charge for this service.)

The potential penalty for making a false affidavit/affirmation is found in s110 of the Crimes Act 1961 which provides for a period of imprisonment of up to five years. **It is therefore important that details in the statement are true and accurate.**

The affidavit Mary has submitted with her application is below, along with Fred's response.

Affidavit in Support of Protection Order Domestic Violence Act 1995 Rule 21, Domestic Violence Rules 1996	
In the Family Court at Porirua	FAM-0101-1001-1010
BETWEEN:	Mary Jones, Mother
of	8 Pember Place, Porirua
	Applicant
AND:	Fred Jones, Builder
of	8 Pember Place, Porirua
	Respondent
I, Mary Jones, mother, of 8 Pember Place, Porirua swear:	
1. I am the applicant in these proceedings.	
2. I have been in a domestic relationship with Fred Jones the respondent.	
3. The nature of my domestic relationship with the respondent is I have been married to the respondent for two years and he is the father of my daughter Megan. We were living together at the time of Megan's birth.	
4. Last Friday Fred came home from work and was angry because his dinner wasn't ready. He then shouted at me and punched me in the face. The punch gave me a cut lip and a bruised chin.	
5. Megan was in the room and she saw what happened and started crying.	
6. Fred has hit me on one previous occasion. He often shouts at me and calls me a useless bitch.	
7. If I tell Fred I don't want to have sex with him he tells me he will give me a hiding so I do it to keep him happy.	
8. Fred gives me \$200 a week to buy food and clothes. I have to tell him what I spend it on.	
9. In the past when I have tried to leave, Fred said if I did he would kill himself. He also said if I left I would never see my daughter again.	
10. To my knowledge Fred does not have a firearms licence or a gun.	
11. I also request that my brother, Joe McDonald be protected by this order. Fred has threatened to beat up Joe in the past when he has helped me. Joe has helped me with this application so it is necessary for his protection that this order also apply to him. Joe consents to this protection order applying to him. (Letter of consent attached)	

A Guide to Responding to a Protection Order

12. If Fred finds out I have applied for this protection order I am afraid he will hurt me. I am also sure he will try and carry out his threats to take Megan.
13. The application for these orders is made without notice to the respondent because the respondent has physically abused me and any delay might expose me to physical abuse. He has threatened to take Megan away from me and kill himself if I ever leave him.

Signature Mary Jones

Sworn at Porirua this 31st day of May 2005
In front of me, S Smith,
Justice of the Peace, Porirua.

Affidavit in Support of Notice of Defence
Domestic Violence Act 1995
Rule 314, Domestic Violence Rules 1996

In the Family Court at Porirua

FAM-0101-1001-1010

BETWEEN: Mary Jones, Mother
 of 8 Pember Place, Porirua
 Applicant

AND: Fred Jones, Builder
 of 8 Pember Place, Porirua
 Respondent (1)

I, Fred Jones, Builder, of 8 Pember Place, Porirua, swear: **(2)**

1. I am the respondent in these proceedings.
2. I acknowledge that I have been in a domestic relationship with Mary Jones, the applicant. **(3)**
3. The nature of my domestic relationship with the applicant is I have been married to the applicant for twelve years and she is the mother of my daughter, Megan.
4. In paragraph 4 of her affidavit, Mary refers to an incident which happened last Friday. When I came home Mary had been drinking and she started yelling at me that I didn't make enough money. She started throwing things at me and I pushed her in self-defence. **(4)**
5. Mary alleges there is a history of hitting and name-calling in paragraph 6. I acknowledge this has happened in the past, but it has occurred on both sides whenever we argue.
6. I have no memory of ever threatening Mary to have sex with me as she sets out in paragraph 7.
7. In regards to paragraph 8, our finances have always been tight and I like to be informed as to how we are doing with our weekly spending.
8. The conversation that Mary refers to in paragraph 9 took place in the context of a traumatic time in our relationship about 2 years ago, Mary and I had both been drinking

and both said things that we did not really mean. We apologised to each other in the morning.

9. Currently Mary and I are living apart, and while I would still like to have a relationship with Mary, I have accepted that this is not the way that she feels anymore.
10. I do not believe that a protection order is necessary for the protection of the applicant or my daughter Megan.

Signature *Fred Jones*

Sworn at Porirua this 3rd day of June 2005.

Before me, *G Geks*,

Justice of the Peace, Porirua. **(5)**

A Guide to Fred's Affidavit

(1) Personal details

These details are the same as on the application.

(2) Swearing to the affidavit

Swearing to an affidavit means you are stating that the contents are true and correct, and signing it in front of a solicitor, JP or court registrar.

(3) Domestic relationship

Fred acknowledges the type of domestic relationship he has with Mary.

(4) Facts supporting the defence

For the court to consider not granting protection order, Fred must show that:

- He does not have a domestic relationship with Mary, or
- He has not used domestic violence against Mary, or
- It is not necessary for Mary's protection for the Court to grant her a protection order.

Given that clearly Fred does have a domestic relationship with Mary, and he acknowledges that he has used domestic violence against her in the past, the only real ground upon which he can defend the application is that a protection order is not necessary for Mary's protection. So the facts in the affidavit need to clearly explain why this is the case. If there are facts in Mary's affidavit that Fred disputes he should also raise those issues in his affidavit.

(5) Witness

Fred has used a local Justice of the Peace to take his affidavit. A lawyer or a court registrar can also do this job. Both Fred and the witness must initial all pages.

3. AFTER THE DEFENCE IS FILED

Once Fred has filed his Notice of Defence and Affidavit in Court and it has been served on Mary (or her lawyer), the process is underway. Fred will now be kept informed by the Court of when his case is to be heard. Generally there will be an appearance in Court to timetable any further things that need to be done before a hearing, for example filing of further affidavits from parties or their witnesses.

If a final protection order is made, Fred can still apply to have the weapons, programme or any special conditions modified or discharged. This is covered in the next section, as it is the same process as when these conditions are part of a temporary protection order. If Fred wished to appeal the order being made or apply to have it discharged, he would need to see a lawyer.

EXAMPLE ONLY



Please quote this no. on all correspondence:
FAM -0101-1001-1010

Case assigned to: Mary Brown, Phone (04) 777 5555

09 June 2005

Fred Jones
8 Pember Place
Porirua

**Judges List
Domestic Violence Act 1995
s.13 Protection Order**

Jones v Jones

TAKE NOTICE that the above case has been allocated a date:

ON: 30 June 2005 AT: 2.30pm
TYPE: Judges List
WHERE: Family Court
27 Misty Road, Porirua

You should report to the above court room on the above date.

If you are represented by a lawyer a copy of this letter has been sent to them. You should discuss with your lawyer whether you are required to attend on the above date. If you are not represented, you should attend personally. If you or your lawyer do not attend, an order may be made in your absence.

The Family Court office is situated at the address below and is open for enquiries between the hours of 9.00am and 5.00pm. You must notify the Court immediately if the case settles.

If you require any further information, please contact your lawyer or telephone me on the above number.

Mary Brown
Court Officer

**Porirua Family Court
27 Misty Road, Porirua, New Zealand
Phone: 04 777 5555 Fax: 04 777 4444**

SECTION THREE: RESPONDING TO A TEMPORARY PROTECTION ORDER

In our second fact scenario at the beginning of the book, Mary made an application for a protection order without any notice to Fred and the Court granted her a temporary protection order. The first thing Fred knew about Court proceedings was when the Police (or a Court bailiff) served the Protection Order and the other court papers on him.

If Fred does nothing, the temporary protection order will automatically become final after three months.

However, before that happens, Fred has a number of options. He could:

1. Object to being required to attend a non-violence programme, or have the conditions relating to the programme changed,
2. Apply to add or modify any special conditions made in the order, e.g. so he can speak to Megan on the phone,
3. Object to the protection order being made final.

1. OBJECTING TO ATTENDING A PROGRAMME

Fred has **five days** after he has received the temporary order to object to the direction to attend a non-violence programme or to ask for the conditions of it to be changed. There is an example of the notice of objection completed below. There is also a blank form that can be photocopied at the back of the booklet.

Fred can choose whether or not he wishes to appear before a Judge about the application. If he chooses not to, the objection will be decided on the written submission made on the objection notice. If he wants to appear, the Registrar will make a hearing date and Fred and/or his lawyer will get to speak about why there is no need for him to attend a non-violence programme.

Objection to Direction to Attend Programme

Section 36, Domestic Violence Act 1995

In the Family Court at Porirua

FAM-0101-1001-1010

BETWEEN: Mary Jones, Mother
of 8 Pember Place, Porirua
Applicant

AND: Fred Jones, Builder
of 8 Pember Place, Porirua
Respondent

I, Fred Jones, the respondent under the temporary protection order made on 2 June 2005 in favour of Mary Jones, the applicant, against me, the respondent, object to the direction that I attend a programme.

I request that:

[Delete one]

The direction be discharged

~~The terms of the direction be varied as follows:~~

Statement in Support

I say the reason I am seeking the ~~discharge~~/variation is I am defending the application and will seek to have the temporary order discharged.

~~I wish to be heard at a hearing~~/ I do not wish to be heard at a hearing.

Other relevant information for the Court is N/A

Fred Jones

Objector

Date: 4 June 2005

To: The Registrar
Family Court at Porirua

And to: The Applicant

This application is filed by Fred Jones, whose address for service is at 8 Pember Place, Porirua.

2. APPLYING TO MODIFY OR ADD A SPECIAL CONDITION

Fred can't see his daughter Megan because of the non-contact condition in the protection order and because there have been no agreements as to childcare made yet. So he wants to apply to the Court to add a special condition to the order allowing him to phone Megan to speak to her.

He needs to fill in an application to vary the protection order by imposing the special condition. This can be done at any time, whether it is a temporary or final order. If it is a temporary order there will be a hearing to decide whether the condition should be imposed. If it is a final order, and Mary does not defend the application to modify the order, it is unlikely there will be a hearing.

Application to Vary Conditions of Protection Order Domestic Violence Act 1995, section 46	
In the Family Court at Porirua	FAM-0101-1001-1010
BETWEEN:	Mary Jones, Mother of 8 Pember Place, Porirua Applicant
AND:	Fred Jones, Builder of 8 Pember Place, Porirua Respondent
<p>I, Fred Jones, apply for an order varying the conditions of the protection order made on 2 June 2005 in favour of Mary Jones, the applicant, against me, the respondent, by imposing the following special condition:</p> <p>Allowing me, Fred Jones to speak to my daughter Megan Jones, who is currently living with the applicant, by phone each night at 7pm</p> <p>Statement in Support</p> <p>I say the reason I am seeking the imposition of the special condition is that arrangements for contact have not been made yet and I would like to maintain the relationship with my daughter.</p> <p><i>Fred Jones</i> Applicant Date: 5 June 2005</p> <p>To: The Registrar Family Court</p>	

Porirua

And to: The Respondent

This application is filed by Fred Jones, whose address for service is at 8 Pember Place, Porirua.

3. OBJECTING TO A FINAL ORDER

Fred has the right to appear before the Court when it decides whether to make the temporary order final. This is similar to defending an application – but is more difficult because the Court has already seen fit to grant a temporary protection order. If Fred wants the Court to hear from him before deciding whether to grant a final protection order he needs to file some papers.

Fred will need to prepare:

1. A Notice of Intention to Appear
2. An affidavit in support of the Notice

If Fred does not file the Intention to Appear notice, the order will be made final without him.

He needs to file the notice and affidavit at any time before the date the order is going to become final.

The affidavit needs to set out the reasons that the order does not need to be made final, which are the same grounds as are required when the application is made on notice as discussed in Section Two. Fred can use the same affidavit prepared in Section Two to support his Notice of Intention to Appear.

The sooner that Fred files the papers, the sooner the Court is able to set a Court date to determine the matter. In any event, unless there are special circumstances a hearing should take place within 42 days of Fred filing the Notice.

Notice of Intention to Appear
Domestic Violence Act 1995, section 76

In the Family Court at Porirua

FAM-0101-1001-1010

BETWEEN: Mary Jones, Mother
of 8 Pember Place, Porirua
Applicant

AND: Fred Jones, Builder
of 8 Pember Place, Porirua

Respondent

I, Fred Jones, of 8 Pember Place, Porirua, Builder, the Respondent, give notice that I wish to be heard on whether a final order should be substituted for the following temporary order(s) made on 2 June 2005:

Protection order

~~Occupation order~~

~~Tenancy order~~

~~Ancillary furniture order~~

~~Furniture order~~ *[delete those not necessary]*

Affidavit in Support

I rely on the content of the affidavit dated 5 June 2005 filed in support of this application.

Fred Jones

Respondent

Date: 5 June 2005

To: The Registrar
 Family Court
 Porirua

And to: The Applicant

This application is filed by Fred Jones, whose address for service is at 8 Pember Place, Porirua.

APPENDIX: FORMS

The attached blank forms can be completed and lodged with the Family Court to respond to a temporary protection order or an application for a protection order.

If you are unsure about how to complete these forms then you should contact your local Citizens Advice Bureau or Community Law Centre.

IN THE FAMILY COURT
HELD AT

No:.....

.....
.....
.....

[full name, address and occupation of applicant]

Applicant

.....
.....
.....

[full name, address and occupation of respondent(s)]

Respondent(s)

NOTICE OF DEFENCE		
(Domestic Violence Rules 1996, Rule 31)		
Dated:	day of	200

This document is filed by

The address for service is.....

.....

I, _____, of _____
[Respondent's full name]

_____, _____,
[Respondent's address] *[Respondent's occupation]*

the Respondent, give notice that I intend to defend the application for:

- Protection order
- Occupation order
- Tenancy order
- Ancillary furniture order
- Furniture order

[Delete those not necessary]

Affidavit in Support

I rely on the content of the affidavit dated _____
filed in support of this application.

.....
Signature of Applicant

.....
Dated:

To: The Registrar
Family Court
At.....

And to: The Applicant

This application is filed by _____, whose
address for service is at

IN THE FAMILY COURT
HELD AT

No:.....

.....
.....
.....
[full name, address and occupation of applicant]
Applicant

.....
.....
.....
[full name, address and occupation of respondent(s)]
Respondent(s)

AFFIDAVIT OF RESPONDENT IN SUPPORT OF
NOTICE OF DEFENCE

Dated: day of 200

This document is filed by.....
The address for service is.....
.....

I, _____ of _____

_____ swear:

Protection Order

1. I am the respondent in these proceedings.
- 2.

(continue on a separate page if necessary)

Sworn at)
This day of)
200)
(Respondent's signature)

Before me:

.....
(J.P./ Solicitor/ Registrar)

IN THE FAMILY COURT
HELD AT

No:.....

.....
.....
.....
[full name, address and occupation of applicant]
Applicant

.....
.....
.....
[full name, address and occupation of respondent(s)]
Respondent(s)

OBJECTION TO DIRECTION
TO ATTEND PROGRAMME

Domestic Violence Act 1995, section 36

Dated: day of 200

This document is filed by.....
The address for service is.....
.....

I, _____, the Respondent under the temporary protection order made on _____ in favour of _____, the applicant, against me, the respondent, object to the direction that I attend a programme.

I request that: *[Delete one]*

The direction be discharged

The terms of the direction be varied as follows:

Statement in Support

I say the reason I am seeking the discharge/variation is

I wish to be heard at a hearing / I do not wish to be heard at a hearing.

Other relevant information for the Court is _____

Signature of Objector

Date:

To: The Registrar
Family Court at

And to: The Applicant

This application is filed by _____, whose address for service is at _____

IN THE FAMILY COURT
HELD AT

No:.....

.....
.....
.....
[full name, address and occupation of applicant]
Applicant

.....
.....
.....
[full name, address and occupation of respondent(s)]
Respondent(s)

APPLICATION ON NOTICE
TO VARY PROTECTION ORDER

Domestic Violence Act 1995, section 46

Dated: day of 200

This document is filed by.....
The address for service is.....
.....
...

I, _____, apply for an order
varying the conditions of the protection order made on
_____ in favour of
_____, the applicant,
against me, the respondent, by imposing the following special
condition:

Statement in Support

I say the reason I am seeking the imposition of the special condition
is

Applicant

Date:

To: The Registrar

Family Court at

And to: The Respondent

This application is filed by _____, whose
address for service is at

IN THE FAMILY COURT
HELD AT

No:.....

.....
.....
.....
[full name, address and occupation of applicant]
Applicant

.....
.....
.....
[full name, address and occupation of respondent(s)]
Respondent(s)

NOTICE OF INTENTION TO APPEAR

Domestic Violence Act 1995, section 76

Dated: day of 200

This document is filed by.....
The address for service is.....
.....

Notice of Intention to Appear
Domestic Violence Act 1995, section 76

I, _____,

[Respondent's full name]

of _____,

[Respondent's address]

[Respondent's occupation]

the Respondent give notice that I wish to be heard on whether a final order should be substituted for the following temporary order(s) made on _____

Protection order

Occupation order

Tenancy order

Ancillary furniture order

Furniture order *[delete those not necessary]*

Affidavit in Support

I rely on the content of the affidavit dated _____
filed in support of this application.

Respondent

Date:

To: The Registrar
Family Court at

And to: The Applicant

This application is filed by _____,
whose address for service is at

A GLOSSARY OF TERMS

Address for Service

The Court requires an address for each party where it can send or deliver correspondence and documents relating to the proceedings. If someone is represented by a lawyer, then usually the lawyer's office is the address for service.

Affidavit

Written evidence that is sworn as true and correct on the Bible in front of a Justice of the Peace, lawyer or a registrar of the court.

Affirmation

Written evidence that is affirmed as true and correct in front of a Justice of the Peace, lawyer or a registrar of the court.

Applicant

The person who is applying for the Order.

Domestic Relationship (Domestic Violence Act 1995)

Includes marriage, civil unions, de facto and same sex partnerships, family relationships (includes in-laws, de facto in-laws and culturally recognised family groups), those who ordinarily share a household and those in a close personal relationship.

Domestic Violence (as per Domestic Violence Act 1995)

Violence used within a domestic relationship. The definition of violence in the Act includes;

- physical abuse
- sexual abuse (including any unwanted sexual contact)
- psychological abuse (this abuse includes intimidation, harassment, threat or damage to property).

Ex Parte

These are the Latin words that mean without notice to the other party. In this guide we have used the phrase "without notice" but sometimes court documents contain the phrase "ex parte" instead.

Respondent

The person who is responding to the application.

This booklet is a “self help” resource targeted at those people who do not have the money to pay a lawyer and do not qualify for legal aid.

It will **assist those** individuals **who feel they have the confidence** to complete the documentation and speak for themselves in court if necessary.

If you are unsure whether you qualify for legal aid or feel that you do not have the confidence to respond personally, you are advised to **seek help from a lawyer** before proceeding.