

Troubleshooting 3 Common Issues in Restraining Orders

1

Abuser lives in a different state

Issue: To issue a restraining order against someone, the judge needs power over that person (“personal jurisdiction”). If the abuser lives in a different state from where you filed your petition, the judge may not have personal jurisdiction over the abuser.

Alternative: The law establishes a few ways in which a judge can obtain personal jurisdiction over an out-of-state respondent. Ask yourself if any of these apply:

- ◆ Did the respondent abuse you in your state?
- ◆ Was the respondent served with the petition while physically in your state?
- ◆ Is the respondent regularly in your state for business, education, vacations, etc.?
- ◆ Did the respondent appear in court after being served with your petition without making an objection about personal jurisdiction? If so, s/he may have unknowingly consented to your state having jurisdiction.

2

Victim/survivor forgot to include an incident of abuse in the petition

Issue: You failed to include one or more incidents of abuse in your petition that you think are important. If incidents are not included in the petition, the opposing party could keep you from testifying about them at trial, and it could damage your chances of getting the order.

Alternative: A victim/survivor could try to:

- ◆ Amend the petition before the hearing to include those incidents. Some states require a written amendment, while other states allow an oral amendment.
- ◆ If you are not able to amend the petition, you might try to testify about the incidents anyway. It’s possible that the other party won’t object, or the judge will allow it.

3

Victim/survivor needs an order based on emotional abuse

Issue: You want a restraining order based on emotional abuse, but “emotional abuse” is not included as a legal reason for getting an order.

Alternative: In some situations, it is an issue of framing the abuse differently. Look at the legal definition of abuse in your state to see if what happened to you matches any of the abusive incidents that qualify someone for a restraining order. For example:

- ◆ If the abuser has taken or destroyed your personal property, this could be “disturbing your peace” and “destruction of property.”
- ◆ Throwing an object in your direction, even if it doesn’t hit you, could fall under “trying to cause you physical harm” or “making you afraid of physical harm.”
- ◆ Telling you what to do, how to act, or who to talk to, and threatening you if you don’t act accordingly could be “coercion” and “harassment.”
- ◆ Not allowing you to go out by hiding your keys or blocking your path could be “illegal restraint.”