

# PO FULL HEARING BENCHCARD

## **1. Court Shall Issue Protection Order – Preponderance**

- Burden Of Proof. Court shall issue protection order if petitioner proves by preponderance of the evidence that respondent subjected “petitioner” to any one of the six PO types (.225(1); .100(1)).
- “Petitioner” Definition. “Petitioner” means (.010(28)) –
  - Petitioner. Any named petitioner; or
  - Other. Any other person identified in the petition on whose behalf the petition is brought.
- “Preponderance” Definition. Preponderance requires the evidence establish that the proposition at issue is more probably true than not true. *State v. Arredondo*, 188 Wn.2d 244, ¶24 (2017).
- All Relief Requested. Court shall consider ordering all relief requested by petitioner. .305(1).

## **2. Prohibited Court Actions**

- Issue Full Order. Court shall not issue full protection order unless – (1) notice to respondent; (2) opportunity for hearing; and (3) petition filed and served. .310(4)(b).
- Order Petitioner To Obtain Services. Court may not order petitioner to obtain services. .310(4)(a).
- Another Proceeding Involving Parties. Court shall not grant less than full relief because there is or court be another proceeding involves the parties. .105(6).
- Not Report To LE. Court may not deny/dismiss because conduct not reported to LE. .225(2)(b).
- Existing Order. Court may not deny/dismiss because active NCO or dissolution RO. .225(2)(c).
- Other Relief. Court may not deny/dismiss b/c other relief may be available. .225(2)(d), .105(6).
- Passage Of Time. Court may not deny/dismiss because conduct not recent. .225(2)(e).
- Respondent Moved. Court may not deny/dismiss because respondent no longer lives near petitioner. .225(2)(f).
- Impact On Respondent. Court shall not deny because a different type of order would have a less severe impact on respondent. .310(4)(c).

## **3. JIS (Judicial Information System) Mandatory Review**

- Court Shall Consult JIS. Before ruling, court shall consult JIS to determine – (1) criminal history; (2) history of criminal victimization; (3) history of being respondent or petitioner in another protection order proceeding; or (4) pendency of other proceedings involving parties. .230(1).
- Court Must Disclose If JIS Considered. Court need not disclose JIS information if court reviews JIS but does not consider the information. If disclosed, either party may respond. .230(3).

## **4. Judicial Notice – Existing Orders In Other Cases (.105(4))**

- Judicial Notice Mandatory. Court shall take judicial notice of any existing orders in other cases between the parties before entering a protection order.
- Conflicting Provisions Prohibited. Court shall not include provisions in protection order that would allow respondent to engage in conduct prohibited by another order.

## **5. Party Location (.200(12))**

- If possible, court shall – (1) have petitioner + respondent gather in separate locations; (2) have petitioner + respondent enter courtroom at staggered times; (3) have petitioner leave the courtroom first; and (4) arrange to have court security escort petitioner to vehicle/transportation.

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## **6. Zoom Appearance – Notices To Parties (.205(5)(c))**

- Recorded. Hearing is being recorded by the court.
- Copy. A party may obtain a copy of the recording by contacting the clerk's office in room 106.
- Prohibited. Recording or broadcasting of any portion of hearing by any means is strictly prohibited without prior court approval.

## **7. Zoom Appearance – Public Misbehavior (.205(5)(d))**

- Prevent Public Actions. To minimize trauma, the court should take appropriate measures to prevent the public from harassing or intimidating any party or witness.
  - Court may – (1) disallow public from communicating with parties or court during hearing; (2) ensure court controls microphone and viewing settings; (3) announce limitations on allowing others to record hearing; and/or (4) other practices.

## **8. Zoom Appearance – Privacy (.205(5)(f))**

- Privacy. The court should protect participants' privacy concerning telephone numbers, email addresses and other contact information.
- Address/Telephone Number. Participants should not state address or telephone numbers during the hearing unless comfortable doing so.
- Background. Zoom background should not reveal location unless you are comfortable doing so.

## **9. Commencing Full Hearing**

- Review Exhibits. Take recess first to review exhibits if necessary.
  - Admit Exhibits. Make sure to admit exhibits on the record.
- Swear In Witness. "Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give in this matter shall be the truth, the whole truth, and nothing but the truth?" RCW 5.28.020.
- Name. "State your name and spell your last name. What would you like to tell the court?"

## **10. Unlawful Harassment – Two Alternate Means**

- Allege Unlawful Harassment. Petitioner must allege the existence of unlawful harassment committed against the petitioner or petitioners by the respondent. RCW 7.105.100(1)(f).
- Only 1 Need Be Proven. Unlawful harassment definition under RCW 7.105.010(36) includes 2 alternate means of proof – (a) course of conduct; or (b) single violent act. Proof of either is proof of unlawful harassment.

## **11. Unlawful Harassment – Overbearing, Obnoxious Or Rude Respondent**

- Antiharassment statute not designed to penalize people who are overbearing, obnoxious or rude. Statute is geared to protect those victims to whom objectional behavior is directed.
  - *Burchell v. Thibault*, 74 Wn.App. 517, 522 (1994) (Construing former RCW 10.14, protection order reversed where petitioner was an "incidental victim" not the target of the harassment.).
  - *See also Mettling v. Hutchison*, 170 Wn.App. 1015 (2012) (NOT REPORTED) (Construing former 10.14, protection order reversed where respondent knowingly, willfully and irresponsibly allowed dogs to roam free but no evidence respondent did so to target or harass petitioner.)