



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



TEMPORARY ORDERS IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

CALL US FOR ALL YOUR FAMILY LAW NEEDS (281) 810-9760

INTRODUCTION

Thank you for downloading our special report: about Temporary Orders, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

TEMPORARY ORDERS IN TEXAS

GET HELP FROM A PROVEN HOUSTON ATTORNEY

If you're in the process of getting a divorce, oftentimes you will be required to make quick decisions. These decisions can be in regards to spousal support, property possession or restraining contact. Temporary orders are granted by the judge and will quickly settle agreements temporarily on a number of issues that may unexpectedly arise throughout the divorce process.

At the Law Office of Bryan Fagan, PLLC, our Houston family law attorney can assist you in all aspects of your temporary order request. We have the skill and experience to not only guide you through the process but also advocate on your behalf in every step of the way.

- ☑ Temporary Orders and Temporary Restraining Orders in Texas
- ☑ The Divorce Temporary Orders Guide
- ☑ Getting Ready for a Hearing On Temporary Custody Orders

TEMPORARY ORDER HEARINGS

Once the proper paperwork has been completed, the judge will consider your temporary order request during your court hearing. These hearings typically do not last long and, at its conclusion, the judge will make an immediate ruling that either issues the temporary order you requested or modify it.

During temporary order hearings, the judge will:

- ☑ Review details of the request
- ☑ Ask your spouse for his or her side of the story
- ☑ In child support cases, the judge will look at factors such as income and who has primary custody of the children

SCHEDULE YOUR FREE EVALUATION

The Law Office of Bryan Fagan, PLLC is dedicated to delivering high quality legal service to clients. Because every case is different, our Houston family lawyer's legal representation is personalized and focused on your specific needs. Our firm believes that the foundation of success is built upon the relationships that the legal team maintains with clients and those who retain our services can be confident that a legal advocate will make their concerns and interests a top priority.

TEMPORARY ORDERS AND TEMPORARY RESTRAINING ORDERS IN TEXAS

Sometimes filed with the Original Petition for Divorce or at times after is a request that the court issue a mutual temporary restraining order (TRO) without a hearing to facilitate maintaining the status quo until the spouses can reach an agreement or until there can be a hearing for Temporary Orders.

Generally, these requests are made in counties do not have Standing Orders. Standing Orders are Orders that automatically go into place after a divorce or family law case is filed. Generally, they include similar provisions as temporary restraining orders.



In most divorce cases, a standard temporary restraining order will be granted if it is requested by one or both spouses. Temporary restraining orders are good 14 days once issued by the court and can be extended for up to another 14 days. The idea of a temporary restraining order is to maintain the status quo until the temporary orders are in effect.

A temporary restraining order is not a protective order this is a common misconception. Generally, a temporary restraining order it has more to do with maintaining the status quo not to keep a particular individual from being around another individual or location.

If a protective order is needed you will need to provide sufficient evidence of a history of family violence and likelihood it will occur again in the future. If this is done the court may enter a protective order which can last for up to 2 years. Law enforcement agencies maintain records or protective orders and can promptly assist you by removing the violating individual and incarcerate them before a hearing. In Harris County, the 280th District Court attends to all protective orders in family law cases.

TEMPORARY SPOUSAL SUPPORT & PARENTING TIME

In some circumstance temporary spousal support is appropriate when there is one spouse is a homemaker or has is significantly lower income than the other spouse. In these case the Texas courts may enter an order for temporary spousal support. While the divorce is going on a Court may also Order that the spouse with health insurance continue to supply health insurance coverage throughout the pendency of the case.

Generally where children are concerned temporary primary custody will be granted to one parent. This parent is known as the primary joint managing conservator (PJMC). The primary joint managing conservator has the right to designate where the child will reside pending the finalizing custody arrangement. Usually the other parent will received a standard visitation order.

THE DIVORCE TEMPORARY ORDERS GUIDE

WHAT OCCURS BETWEEN FILING AND FINALIZING A DIVORCE CASE IN TEXAS?

One of the biggest concerns spouses have after filing for divorce is, "What happens now?" It is vital for you to fully understand all the stages of the divorce process so that there won't be surprises during the pendency of your case. Knowledge and preparation are key to positive outcomes for you and your family.

DIVORCE TEMPORARY ORDERS

Once the divorce is filed it is time to take stock for their situation. Things to consider include:

- ☑ How community expenses are going to paid
- ☑ Who will have use of and possession of specific community property such as vehicles and the marital residence
- ☑ Who will be the primary parent in possession of the children
- ☑ What sort of visitation the children will have with the parents
- ☑ The amount of temporary child support
- ☑ Which parent will be responsible for providing health insurance
- ☑ Temporary spousal support
- ☑ Whether one spouse will pay for the interim attorney fees for the other spouse, and
- ☑ Whether temporary injunctions be put in place

It may be necessary if the parties cannot agree on the above issue to ask the court for orders to determine how the parties' relationship with the children and finances will be handled while the divorce is ongoing.

These court orders are called "temporary orders" and can include temporary provisions ordering:



- ☑ the payment of temporary alimony
- ☑ the payment of Temporary child support
- ☑ Temporary residency restriction for the children;
- ☑ Temporary conservatorship/custody of the children;
- ☑ Temporary medical support;
- ☑ Temporary possession of and access to the children (possession schedule);
- ☑ which spouse pays specific debts during the divorce process
- ☑ Temporary exclusive use of motor vehicles;
- ☑ Temporary payment of expenses related to the household, including the mortgage and utilities;
- ☑ Temporary payment of insurance premiums, including auto insurance, health insurance, life insurance, and homeowner's insurance;
- ☑ Temporary exclusive use of personal property and furnishings;
- ☑ Payment of attorney fees
- ☑ Temporary exclusive use of the marital residence and;
- ☑ who has the use of other community property, such as vehicles

MAINTAINING THE STATUS QUO

Often the court does not want to make any major changes to the parties lives by its Orders. This might mean the court prevent a party from substantially changing accounts and policies so that the community estate and the parties are protected financially.

An example of this would be the Court Ordering a party to maintain health insurance on his or her spouse and the children.

Another example of maintaining the status quo would be the Court Ordering that the parties have the exclusive use of the vehicle they normally drive. This does not mean they will get that vehicle on final orders

WHEN NEGOTIATIONS FAIL

If Temporary Orders cannot be worked out informally and a dispute arises, a party can request a hearing before a judge to obtain temporary orders. These Temporary Orders will remain in place until the final divorce decree is entered or the court makes additional orders.

A temporary orders hearing is often like a mini-trial or a preview of what the final trial will look like. The attorneys present arguments, examine witnesses, and present evidence before the judge. This gives the Judge an idea of the temporary issues at hand that need to be decided.

These Orders are temporary and generally designed to maintain the parties' status quo until the case is finalized. However, tactical advantages can be gained during this stage with respect to final child custody or property division. You can also see in what direction a Judge is leaning on the particular issues in the case.

NECESSARY FINANCIAL INFORMATION FOR A TEMPORARY ORDERS HEARING

During a Temporary Orders hearing it is important to bring certain financial documents to show the Court so that the Judge use that information to help makes financial orders that will last during the pendency of the divorce.

Typically, the documents needed include:

- ☑ your three most recent pay stubs
- ☑ your prior year's tax return
- ☑ W-2's from the prior tax year
- ☑ Any 1099's
- ☑ All documents pertaining to any life, casualty, liability, and health insurance;
- ☑ documentation as to the cost the family's health insurance as well as documentation as to the cost of only the children's
- ☑ monthly health insurance amount.



There are several factors a Judge considers when deciding who should be given the temporary exclusive right to establish the primary residence of the child.

If both parents are fit and there has not been any child abuse, harm or neglect, a Judge is going to be looking to see which parent has been the primary caretaker of the child. Somethings a Judge considers when making this determination include:

- ☑ Who fed your child;
- ☑ Who bathes your child;
- ☑ Who gets the child ready for school;
- ☑ Who takes the child to school or daycare;
- ☑ Who picks up your child from school or daycare;
- ☑ Who takes the child to and from doctors' appointments;
- ☑ Who attends school activities and parent-teacher conferences;
- ☑ Who participated in the child's extracurricular activities; and
- ☑ Who helped with the child's homework.

GETTING READY FOR A HEARING ON TEMPORARY CUSTODY ORDERS

Often times it feels that the Temporary orders hearing comes very quickly. There have been times when representing the Petitioner there has only been 14 days' notice or when representing the Respondent only 3 days' notice to prepare. Therefore, good organization and helpful trial exhibits ahead of time in effective presentation in court.

The purpose of this blog article is to answer common questions that many people have regarding a temporary orders hearing, and to give you an idea of what to expect when preparing for the hearing and when you testify. The ideas in this article will apply not only to clients, but in part also to other witnesses.

STEPS AND EXHIBITS FOR AID IN A TEMPORARY ORDERS HEARING:

- ☑ Write a history of your marital relationship with your spouse. This history should contain dates and facts supporting your claim for custody.
- ☑ Make a list of all the reasons why you are best for custody, with supporting facts and dates.
- ☑ Make a list of all the reasons why your spouse should not be appointed custodian of the child, with supporting facts and dates.
- ☑ Make a list of all witnesses you will need at the temporary hearing, names, addresses, telephone numbers, and a brief summary of what they know. Also, determine if they need a subpoena.
- ☑ Fill out the financial information statement on your income and living expenses.
- ☑ Make an appointment with your attorney to discuss strategy if possible 7 days prior to the hearing date.
- ☑ Develop a plan to manage the child now—from day to day, while you are employed.

TESTIMONY IN COURT

You are about to testify in a Temporary Orders hearing. Testimony takes place in the courtroom before a judge. You will be testifying at a temporary hearing. Testimony in a final hearing may be to a judge or, in some cases, to a jury.

At either the temporary hearing, or the final hearing, there may be a court reporter present, a bailiff, both parties, and their attorneys.



DRESS/BEHAVIOR.

If you will be testifying, you need to dress for your testimony as if you were going to church. Women need to wear darker clothing, no expensive flashy jewelry, and light makeup. Men should wear a suit, or at least a tie.

Everyone is nervous before testifying. Never, however, “fortify” yourself for testimony by taking tranquilizers, drinking alcohol, or having anything else which will either slow down or speed up your nervous system.

If you are testifying, remember that you will be observed both in and out of the courtroom by jurors (perhaps), attorneys, witnesses for the other side, and sometimes, the judge. Jurors, if any, may see you in the elevator or on the stairway at the courthouse, or in the restroom or on the street. They may see you driving to the courthouse in your car.

It is important that you conduct yourself in a courteous manner at all times. Obviously, a witness is not going to make a good impression on the stand if he has had an unfriendly encounter with a juror in traffic, or, if after his testimony, a juror hears him in the hall laughing at something humorous that occurred in the courtroom. While you are at the courthouse, either before or after your testimony, be serious, do not joke with other witnesses or attorneys, or do anything else that might give a juror the impression that you are taking your testimony, or the case itself, lightly.

If your case is to a jury, try to avoid the individual jurors. A friendly smile to a juror is all right, if it is not forced. You might even say “good morning.” But under no circumstances should you ever enter into any conversation with any juror for any reason at any time. The same rules will apply to the judge.

TELL THE TRUTH

Always tell the truth when testifying. Failure to tell the truth constitutes perjury, a crime under the Texas Penal Code. Tell the truth to the best of your ability, whether it may “help” our side’s case, or “hurt” our case. Do not exaggerate, or try to make anything seem better or worse than it really is.

I hope that you have not held anything back in our previous conversations. Some clients and witnesses feel that, if they do not tell everything to their lawyer, the other side may not know or be able to find out about the concealed facts. The problem with this approach is that the other side may know those detrimental facts, or learn about them, while I am not aware of them. The only way that I can be properly prepared to explain or perhaps overcome the impact of detrimental facts is to know about them in advance, and not hear about them for the first time at a hearing or trial.

The corollary to this rule is that, once I am aware of these facts, I cannot allow you, if asked a question about these detrimental facts, to be untruthful about them.

It is also important for me to know if you have ever had any prior arrests, criminal convictions, or other allegations of wrongdoing to misdeeds made against you, whether fairly or not. It is possible that the other side may try to use this to “impeach” your testimony, and therefore, it is important for me to be aware of this information.

Finally, if you have made any statements to police officers, investigators, etc., whether orally or in writing, you need to let me know about that. You have a right to copies of any written statements which you have made. Additionally, if you have written any letters, cards, or other writings to the other side, which bear on any issues in the case, you need to let me know. This is particularly true if those writings contain information which you might not want to hear in the courtroom. The same rule applies to telephone conversations. It is not uncommon for one party to a lawsuit to record their conversation with another party to the lawsuit; and, if you have said anything to your spouse or ex-spouse which you would not want repeated in the courtroom, you need to let me know about that also.



GENERAL RULES

When I am asking you questions, it is called “direct-examination.” I must ask questions that are non-leading, and which do not suggest the actual answer. The questions that the other lawyer will ask you are “cross-examination.” He may ask you leading questions; that is, questions that suggest answers. When the other lawyer is asking you these questions, he is trying to “put words in your mouth.” Leading questions many times begin with “isn’t it a fact,” “isn’t it true that,” or similar

questions. If you sense that the answer is in the question, be careful. These questions may contain implications that are only partially true and that require an explanation.

Different lawyers have different techniques in cross-examining witnesses. At the outset of the cross-examination, the other attorney may appear to be friendly, but remember that he represents the other side of the lawsuit. Many lawyers, at the outset of cross-examination, are careful not to antagonize the witness so that the witness will prove what appears to be non-controversial information voluntarily and readily.

Once this information is obtained, the lawyer will start to ask the harder questions, and press the witness. The moral of this story is that, although the other lawyer may appear to be friendly, he or she is not your friend; be careful that he or she does not lead you into saying something that you do not believe.

Remain calm and polite, and do not lose your temper no matter how hard you may be pressed. Even though something may happen during your testimony that makes you angry or embarrassed, always be courteous to everyone, including the judge, the jury, and particularly the lawyer who is cross-examining you. Many times in life it may be appropriate to “talk back” or make some type of wise-crack, but it is never appropriate when you are testifying.

Neither judges nor juries like witnesses that appear to be flippant, antagonistic, vindictive, or hostile; and this type of behavior can only have an adverse effect on the case. When answering the cross-examining attorney’s questions, give him the information in the same tone of voice and manner that you do your own attorney’s questions.

For example, a woman would be simply stating the facts and would be an effective witness if she would say, reluctantly, that her husband slept until noon every day. On the other hand, if she were to go on and add that he was a “worthless, shiftless, lazy person who slept every day until noon,” her vindictiveness would be very likely to help the cause of her husband.

Never answer a question with a question. For example, if the other lawyer asks you “how old are you?”, you do not answer with “how old do you think I am?”

Do not react while the other party, or a witness for the other party, is testifying. You should remain calm, and your expression should not change no matter what the testimony is from the witness stand. No one likes histrionics from a client at a counsel table.

Do not try to memorize what you are going to say in your testimony, either in response to my direct examination, or cross-examination. You will sound coached, and far less believable than if you are simply spontaneous. It is a good idea for you to have a general idea of what you intend to say, but do not worry about saying it exactly the same way every time.

If you have previously been deposed, we will review your deposition testimony before your hearing or trial testimony; but again, do not try to memorize the answers which you gave on deposition. You need only to be familiar with what you previously said, and give clear, truthful answers without exaggeration.

At both a hearing and a trial (or at deposition), speak clearly and do not mumble. At a hearing or trial, while you are on the witness stand, look at the members of the jury or at the judge. Talk to them, and speak to them frankly as you would to a neighbor or a friend. Do not cover your mouth with your hand. It is important that you speak loudly enough for everyone in the courtroom to hear you.



Avoid certain expressions like “to tell you the truth,” or “I’ll tell you the truth,” or “to be honest,” or “well to be perfectly frank,” etc. The judge (or jurors) may be suspicious of witnesses who begin their testimony with these statements. They may believe that a witness who has to keep telling them that something is the truth may not be telling the truth.

Although you and I will discuss the different areas upon which you will be cross-examined, and the types of questions I believe the other lawyer will ask, there will certainly be some questions which we have not discussed. If the other lawyer asks you a tough question, do not turn and look to me for the answer. Look him in the eye and answer the questions as truthfully as you can. I will not let the other lawyer abuse you on the witness stand, but I cannot keep him from asking you hard questions, nor can I provide you the answers.

UNDERSTAND THE QUESTION

Everyone is nervous when they testify, and nervous people tend not to comprehend things as well when nervous. Do not hesitate to ask the other lawyer to repeat or rephrase the question, as many times as necessary, until you are certain that you have understood it. If you do not believe that you heard the questions correctly, ask the lawyer to repeat it.

Once you are certain that you have heard the question correctly, and understood it, answer it, but answer only the question that is asked of you and then stop. I do not mean to be evasive -- provide the information that is requested; but, once you have done this, stop talking. Do not provide additional information.

You do not testify on cross-examination in order to “tell your story.” You testify only to answer the questions which are asked and, on cross-examination, the best answer to any question is the shortest honest answer.

For example, if you are asked how many children are in your family, simply give the number. Do not answer like this: “we have two children. I would have liked many more, but due to the fact that my spouse spent five years in the penitentiary, we were unable to have a larger family.” This is what I mean when I say do not volunteer information.

OBJECTIONS

There will be many objections during the trial. Whenever an objection is made while you are testifying, stop instantly, particularly when I am the one that makes the objection. Do not try to give an answer before the judge rules on the objection. Wait until the judge has ruled. If the objection has been “sustained”, the judge believes the objection is correct.

If an objection is “overruled”, the judge believes the objection is not correct. Do not try to decide what the effect of an objection is on your testimony. When the objection is being made and the judge is giving his ruling, wait silently. After the judge has ruled, either you will be asked another question, or you will be told what to do next.

Whenever the judge tells you something, of course, you will follow his instructions. One common instruction is “please just tell us what you observed, don’t tell us what anybody else told you.”

We will go over these rules before your testimony begins, so don’t be concerned about having to learn the rules of evidence. Whatever you need to know at the courthouse, either the judge or I will tell you.

If a question is asked that you do not wish to answer, do not turn to the judge and ask “judge, do I have to answer that question?” If the question is improper, I will make an objection. If I do not make an objection, answer the question as truthfully and honestly as you can. If there are any questions that you do not want to answer, tell me now, before you give your testimony, so that we can protect you from having to answer any improper question.



NOTES TO ME

This applies only to clients, while others are testifying. During the testimony of someone else, do not tug at my sleeve, whisper in my ear, or give me a nudge. I am trying to concentrate on the testimony, and I cannot listen to that

testimony, and listen to you at the same time. Simply make a note of what you wanted to tell me; and, when the other lawyer's examination of the witness is complete, I will review those notes either at the beginning or at the end of my redirect or cross-examination of that witness.

TALKING ABOUT OUR PREPARATION

You should never be embarrassed about admitting that you have met with and consulted with me prior to your testimony. If asked what you talked about, simply say that I instructed you to be truthful and honest.

The other lawyer may simply ask you "who have you talked to about this case?" What the other lawyer may try to suggest is that some person has prepared you for your testimony, and sometimes he goes even further and suggests someone has told you what answers to give. There is nothing wrong with having spoken to me about your testimony.

If you have talked with members of your family, your doctor, your pastor, your counselor, or anyone else, do not be afraid to say so.

There is absolutely nothing wrong with talking about your case with other persons, as long as you do not violate the witness role discussed later in this paper. People who say they have never talked to anybody else about their case, or their testimony, usually will not be believed. The important point here is that no one should ever be allowed to tell you what your testimony should be. I will never tell you what evidence to give;

I will never tell you to cover the facts in a certain way, or to lie, or to distort the truth. What you and I will discuss before you testify is simply the most effective way in which to tell the truth.

THE WITNESS RULE

As witnesses are sworn in at the beginning of their testimony, one of the lawyers will usually "invoke the rule." The rule is also sometimes called the witness rule. The most important thing you need to remember about the rule is that the testimony must be your own.

Your testimony must not be affected by the testimony of others. If you are not a party, you must not see or hear the testimony of others.

Neither a party nor witnesses may discuss their own testimony or the testimony of others. If the rule has been invoked, the judge will place you under oath and explain the meaning of the rule to you. From that point forward, until the case is over, you may not discuss any facts of the case with any person but me. Only the lawyers in the case will be able to discuss the case with you.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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