



Court Watch

Justice doesn't just happen

Types of Injunctions

It is critical to file under the appropriate Statute – viewable online at <http://www.leg.state.fl.us/Statutes/>

- ▶ Domestic Violence (with or without children)
- ▶ Dating Violence
- ▶ Repeat Violence
 - Neighbors, co-workers, individuals who have a third party in common (e.g., the ex-husband & the new boyfriend)
 - Stalking cases where there was no dating or intimate relationship
- ▶ Sexual Violence

Injunctions are Granted in Two Stages:

- ▶ Ex-parte (based solely on the Petitioner's request)
 - Lasts only for two (2) weeks until both parties come to court for a final hearing
 - Enforceable only after the Respondent is served
- ▶ After an Evidentiary (Final) Hearing

At the Evidentiary (Final) Hearing, the Judge Should:

1. Familiarize him/her self with court file before parties come in to courtroom
2. Introduce him/her self to parties & look at them, not the court file
3. Set ground rules:
 - a. No interrupting the Judge or each other
 - b. No looking at the other party – talk to the Judge, not each other
 - c. Assure them they'll both have an opportunity to speak
 - d. If Interpreter is being used, give them enough time to translate
4. Advise the parties that the hearing is being recorded & they need to speak loud enough for the recording – also advise that they need to answer “yes” and “no” – not “uh huh” for the recording.
5. Ask if a criminal case is pending. If so, advise that anything they say could be used in that case
6. Ask Petitioner if s/he still wants the injunction
7. Ask Respondent if s/he agrees to an injunction being put in place or if they want to proceed with a hearing where testimony is taken. If children are involved, the Judge should explain that s/he will help work out visitation issues between the parties. If Respondent agrees, go to Step #12

8. Ask Petitioner to describe the incident that led up to why s/he filed the petition, beginning with most recent incident and then working backwards
 - a. If Petitioner has an attorney, they will be the one asking questions of the Petitioner. However, if they miss an important or clarifying question, the judge should ask it
 - b. Ask if Petitioner has any witnesses or exhibits to support their story¹
If Petitioner does not have an attorney, Judge should ask questions to get them entered into evidence “Describe what the photo shows. When was it taken? Is it a clear and accurate representation of the injuries you sustained on (date)?”
 - c. Make sure deputy shows any exhibits to Respondent before giving them to judge
 - d. If Respondent has an attorney, give them an opportunity to ask Petitioner questions
9. Respondent testifies about what Petitioner has said first (either by having his/her attorney ask questions, having the judge ask questions or in narrative fashion)
 - a. After Respondent’s rebuttal testimony, Respondent may add anything else they believe is pertinent
 - b. Ask Respondent if they have any witnesses or exhibits to support their story² Ask same questions as noted in 8b above.
 - c. Make sure deputy shows any exhibits to Petitioner before giving them to judge
 - d. If Petitioner has an attorney, give them an opportunity to ask Respondent questions
10. Ask Petitioner if they have anything to add after hearing Respondent’s testimony
11. If Judge does not grant injunction, s/he should explain why.
12. If Judge grants injunction:
 - a. Explain how long it will last and its terms:
 - i. Explain what “no contact” means? It includes no indirect (third party) contact, emails, text messages, etc.
 - ii. Explain that if there’s a “no contact” order in criminal court, the injunction does not change any conditions of that order – Respondent must follow both
 - iii. Must stay 500’ away from addresses in petition – Judge should enumerate all addresses and make sure Respondent is aware – if s/he disputes an address (e.g. their mutual church, the Judge should work out a schedule)
 - iv. Must stay 100’ away from Petitioner’s car
 - v. Explain what to do if one party inadvertently walks into a public place where the other party is (whomever was present first gets to stay)
 - vi. Explain that if Respondent violates injunction, they could be prosecuted
 - vii. **NOTE:** “No Hostile Contact” orders are essentially unenforceable

¹ *Some judges will accept police reports & others refuse to do so, considering them “hearsay” without the law enforcement officer there to testify. CourtWatch believes that the reports should be admissible as it relates to the LEO’s observations of the parties’ demeanor, any property damage or injuries observed, etc.*

² *See note 1*

- b. Explain that Respondent may return once to mutual residence with law enforcement officer to get personal belongings
 - i. Petitioner may be asked to box them up to make it a quick trip – make sure they're told to not damage or destroy any of Respondent's belongings
 - ii. Respondent is instructed to contact LEO to arrange a time for pick up
 - iii. If Respondent has lots of furniture to move out, the LEO won't wait for that. If a Dissolution (Divorce) is pending, the Judge will probably defer to that judge. Or the judge may suggest they come up with a third party that's agreeable to both who can supervise the removal of belongings while Petitioner is not home.
 - c. Address issues of visitation ("time sharing") for any children
 - i. Ask Petitioner if s/he has any objection to Respondent visiting with children
 - 1. If no, proceed to Step iii below
 - 2. If yes, ask what the objections are.
 - ii. Judge's options:
 - 1. Unsupervised visits
 - 2. Monitored Exchange
 - 3. Supervised Visits
 - a. Mutually agreeable family member or friend
 - b. Supervised Visitation Center
 - iii. Judge works out a schedule & advises the parties that it is only temporary.
 - 1. If married, the Dissolution Judge will be the final authority
 - 2. If not married, Judge should recommend that a Paternity Action be initiated
 - d. Address issue of child support & advise the parties that it is only temporary
 - i. If married, the Dissolution Judge will be the final authority
 - ii. If not married, a Child Support case will be the final authority
 - iii. Child support should be ordered using an Income Deduction Order (IDO) if the paying parent is employed
 - e. Florida Statute §741.30(6)(e) Requires the Judge to order Batterer's Intervention Program if:
 - i. Respondent willfully violated the temporary (ex parte) injunction [Judge should ask Petitioner if Respondent did this]
 - ii. Respondent has been convicted of, had adjudication withheld on or pled nolo contendere to a crime involving violence or a threat of violence in any State
 - iii. Respondent has had at any time, in any State, a prior final injunction entered against them after a hearing
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- f. Order Mental Health Evaluation / Treatment if applicable
 - g. Order Drug/Alcohol Evaluation / Treatment if applicable
13. Advise the parties that if they want to have the injunction modified, either one may file a petition to do so
 14. Advise the Petitioner that if s/he violates the injunction, the Court will assume that s/he is not in fear of the Respondent
 15. Dismiss the Petitioner
 16. Detain the Respondent for 15 minutes after Petitioner is served with their copy of paperwork
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