

Your new client, Jessica, wants a protection order against Mark, a man she met online on June 1. After chatting online for a week, they went on an in-person date on June 15, followed by two additional dates on June 25 and July 10. Jessica thought Mark was considerate and funny, but she had no chemistry with him and decided not to pursue a relationship. When Jessica told Mark she did not want a fourth date Mark seemed to take her decision well but wanted to “stay in touch.” Because all their communication had been through the online dating app, Mark suggested they exchange phone numbers. Jessica did not want Mark to have her phone number, but she did let him add his phone number to her phone. Jessica knew she would never call Mark, and she planned to delete his number when she got home. After she left the date, Jessica forgot about Mark.

On July 25, Jessica saw Mark in the grocery store where she worked. Mark seemed surprised to see Jessica at the store, which made sense to her because she never told him where she worked. The two made small talk for a few minutes and then Jessica gave Mark a brief hug (“to be nice,” she said) and went back to work. When Jessica got home from work on July 25, she received a flower delivery at her apartment. The outside of the card had her full name and address, and the inside read, “I was so excited to see you again. I missed you and will see you soon. – Mark.” This frightened Jessica because she never gave Mark her last name or address. She wondered if he followed her home from work. Jessica threw the flowers away.

Mark texted the next morning (July 26) and asked if she liked the flowers. Jessica didn’t respond, hoping he would leave her alone if she ignored him. However, Mark continued to send text messages. At first, the texts were innocuous, like “it’s a beautiful day today,” or “Mondays, am I right?” But as the days went on, the texts became accusatory (“I know ur avoiding me,” “ur starting to p*ss me off by ignoring me”) and aggressive (“I know u start work today at 4,” or “don’t ignore me b***h.”). On August 31, Mark started sending photos that he had taken of Jessica during her regular routine - a photo of her getting on the bus, a photo of her at work, and a photo of her at a bar with some friends. Jessica said it wasn’t unusual to get 200 or more texts each day from Mark. Jessica did not respond to any of Mark’s texts.

Around August 31, Jessica started to notice that her phone was performing strangely. Her apps seemed sluggish and wi-fi would connect and disconnect at random. Photos of Jessica’s male friends and relatives were being deleted from her phone (but not by her) and items in her calendar would disappear. Jessica started to see Mark more regularly at the grocery store (where he would not buy anything) and at the park where she took her little sister to play.

After his first visit to the grocery store, Jessica did not approach Mark when she saw him and did not interact with him. Mark started to sit in his car outside her apartment complex. On September 10, when Jessica saw Mark in the parking lot of her apartment complex, she made eye contact with him, and Mark immediately texted: “yeah, I see you too, b***h.” Mark has not approached Jessica but has never made it a secret that he is watching her. October 15, Jessica finally sent a text to Mark that read, “LEAVE ME ALONE,” and immediately blocked his phone number.

This morning (November 18) Jessica woke up to a series of aggressive texts from an unknown number, one of which read: “you can run but you can’t hide.” Certain the texts are from Mark, Jessica has retained you for help to obtain a protection order against him. Jessica tells you that she has been afraid of Mark since he sent flowers to her home on July 25. Jessica doesn’t understand how Mark always knows where she is and thinks he must be following her or tracking her phone.

Refer to the attached statute and draft language to include in a petition for civil protection order against Mark by explaining:

- 1) The basis on which Jessica is seeking a protection order;
- 2) The most recent threat(s) or act(s) that cause Jessica to seek a protection order;
and
- 3) The most serious incidents that cause Jessica to seek a protection order. In this section, please describe the reason(s) why you selected these incidents.

SECTION 13-14-104.5:
Procedure for a Temporary Civil Protection Order

(1)

(a) Any municipal court of record, if authorized by the municipal governing body; any county court; and any district, probate, or juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order against an adult or against a juvenile who is ten years of age or older for any of the following purposes:

(I) To prevent assaults and threatened bodily harm;

(II) To prevent domestic abuse;

(III) To prevent emotional abuse of the elderly or of an at-risk adult;

(IV) To prevent sexual violence; and

(V) To prevent stalking.

(b) To be eligible for a protection order, the petitioner does not need to show that he or she has reported the act that is the subject of the complaint to law enforcement, that charges have been filed, or that the petitioner is participating in the prosecution of a criminal matter.

(2) Any civil protection order issued pursuant to this section shall be issued using the standardized set of forms developed by the state court administrator pursuant to section 13-1-136.

(3) Venue for filing a motion or complaint pursuant to this section is proper in any county where any one of the acts or behaviors that are the subject of the motion or complaint occurred, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(4) A motion for a temporary civil protection order shall be set for hearing at the earliest possible time, which hearing may be ex parte, and shall take precedence over all matters, except those matters of the same character that have been on the court docket for a longer period of time. The court shall hear all such motions as expeditiously as possible.

(5) Any district court, in an action commenced under the “Uniform Dissolution of Marriage Act”, article 10 of title 14, C.R.S., shall have authority to issue temporary and permanent protection orders pursuant to the provisions of subsection (1) of this section. Such protection order may be as a part of a motion for a protection order accompanied by an affidavit filed in

an action brought under article 10 of title 14, C.R.S. Either party may request the court to issue a protection order consistent with any other provision of this article.

(6) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and the party's attorney or licensed legal paraprofessional have an independent duty to disclose, knowledge the party and the party's attorney or licensed legal paraprofessional may have concerning the existence of any prior protection or restraining order of any court addressing in whole or in part the subject matter of the requested protection order. In the event there are conflicting restraining or protection orders, the court shall consider, as its first priority, issues of public safety. An order that prevents assaults, threats of assault, or other harm must be given precedence over an order that deals with the disposition of property or other tangible assets. Every effort must be made by judicial officers to clarify conflicting orders.

(7)

(a) A temporary civil protection order may be issued if the issuing judge or magistrate finds that a risk or threat of physical harm or the threat of psychological or emotional harm exists to the person or persons seeking protection under the civil protection order. In determining whether a risk or threat of physical harm or the threat of psychological or emotional harm exists to one or more persons, the court shall consider all relevant evidence concerning the safety and protection of the persons seeking the protection order, regardless of when an incident occurred or the existence of a protection order issued pursuant to section 18-1-1001 or 18-1-1001.5.

(b) If the judge or magistrate finds that a risk or threat of physical harm or the threat of psychological or emotional harm exists to the employees of a business entity, the judge or magistrate may issue a civil protection order in the name of the business for the protection of the employees. An employer is not liable for failing to obtain a civil protection order in the name of the business for the protection of the employees and patrons.

(8)

(a) Upon the filing of a complaint, duly verified, alleging that the respondent has committed acts that would constitute grounds for a civil protection order, any judge or magistrate, after hearing the evidence and being fully satisfied that sufficient cause exists, may issue a temporary civil protection order to prevent the actions complained of and a citation directed to the respondent commanding the respondent to appear before the court at a specific time and date and to show cause, if any, why the temporary civil protection order should not be made permanent. In addition, the court may order any other relief that the court deems appropriate. Complaints may be filed by persons seeking protection for themselves or for others as provided in section 26-3.1-102 (1)(b) and (1)(c).

(b) The judge or magistrate may continue the temporary protection order for a period of not more than one year after the date when the permanent protection order hearing takes place. If

the temporary protection order is continued for one year and the petitioner seeks a permanent protection order, the petitioner shall file a motion at least fourteen days before the scheduled hearing notifying the court and the respondent of the petitioner's intent to pursue a permanent protection order on the date of the scheduled hearing.

(9) Upon the issuance of a temporary civil protection order, a copy of the complaint, a copy of the temporary civil protection order, and a copy of the citation must be served upon the respondent and upon the person to be protected, if the complaint was filed by another person, in accordance with the rules for service of process as provided in rule 304 of the rules of county court civil procedure or rule 4 of the Colorado rules of civil procedure. Service upon the respondent and upon the person to be protected is prohibited if the temporary protection order is denied or if the petitioner moves to vacate the temporary protection order prior to the court receiving confirmation that the respondent was personally served or had actual knowledge of the request for a civil protection order. The citation must inform the respondent that, if the respondent fails to appear in court in accordance with the terms of the citation, a bench warrant may be issued for the arrest of the respondent and the temporary protection order previously entered by the court made permanent without further notice or service upon the respondent. If the temporary protection order is based in whole or in part on an act of domestic violence, as defined in section 18-6-800.3, and the act of domestic violence involved the threat of use of physical force, use of physical force, or attempted use of physical force, the citation must also inform the respondent that the respondent must comply with section 13-14-105.5 by refraining from possessing or purchasing any firearm or ammunition for the duration of the order and relinquishing for the duration of the order any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.

(10) The hearing for a permanent protection order must be set not more than fourteen days after the issuance of the temporary civil protection order and citation. If the petitioner is unable to serve the respondent in that period, the court must extend the temporary protection order previously issued, continue the permanent protection order hearing, and issue an alias citation stating the date and time to which the hearing is continued. The petitioner may thereafter request, and the court must grant, additional continuances as needed if the petitioner has still been unable to serve the respondent if the petitioner is able to show the petitioner has made reasonable efforts to serve the respondent or that the respondent is evading service.

(11)

(a) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes the person from a shared residence, is permitted to return to the shared residence one time to obtain sufficient undisputed personal effects as are necessary for the person to maintain a normal standard of living during any period prior to a hearing concerning the order. The person against whom a temporary protection order is issued is permitted to return to the shared residence only if the person is accompanied at all times by a peace officer while the person is at or in the shared residence.

(b) When any person is served with a temporary protection order issued against the person excluding the person from a shared residence, the temporary protection order must contain a notification in writing to the person of the person's ability to return to the shared residence pursuant to paragraph (a) of this subsection (11). The written notification shall be in bold print and conspicuously placed in the temporary protection order. A judge, magistrate, or other judicial officer shall not issue a temporary protection order that does not comply with this section.

(c) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes the person from a shared residence, may avail himself or herself of the forcible entry and detainer remedies available pursuant to article 40 of this title. However, such person is not entitled to return to the residence until such time as a valid writ of restitution is executed and filed with the court issuing the protection order and, if necessary, the protection order is modified accordingly. A landlord whose lessee has been excluded from a residence pursuant to the terms of a protection order may also avail himself or herself of the remedies available pursuant to article 40 of this title.