

Notes from POCC Brown Bag- Writing Agreements in POCC cases Presented by Joel Bogen

1. Write an agreement only if you are certain it is safe to do so. Restrictions are placed on restrained parties, not protected parties. The protected and restrained parties cannot have any contact with each other at all, unless an exception is written into the agreement.
2. Typical subjects of agreements are: children, short term bills, removal of personal possessions, and when, if ever, contact is allowed. Partial agreements are possible, and can be very helpful to the parties even if not every issue has been resolved.
3. Possible outcomes are: a permanent protection order, an extension of the temporary protection order, or no protection order.
4. When writing an agreement, always state first what is happening with the protection order- the parties agree to make it permanent, the parties agree to extend the temporary for x number of days, etc. This first statement may be: the parties do not agree on what is to happen with the protection order and will leave that to the judge. However, should the protection order issue, the parties agree to the following ...
5. Remember to put in any agreement you write that it will not be a violation of the PPO or extended TPO for the parties to engage in further mediation, should both parties feel it would be helpful. Sample language is provided, below.
6. If the parties agree to extend the temporary protection order (tpo), the extension is typically for 30, 60, 90 or 120 days (the maximum). The agreement can include the statement that the tpo is extended with a review date, Court to set date. This means the parties are asking the Court to set a specific date to review the temporary order and decide whether to make it permanent. If there is a violation of the TPO, and the protected party wants a review hearing sooner than had been agreed to, they can come in and request a quicker review date. However, they will have to get personal service of the new review date on the restrained party.
7. Without a specific, court set review date the temporary order will simply expire. If there is a violation of the TPO, or one party decides they want a PPO, they will have to re-file for a TPO, pay the fee (or request a waiver) and get the other party served again.
8. The decision about what it to happen with the protection order itself is usually the hardest part of the process for the parties. It is also the only part of the agreement that will always be legally enforceable.
9. If children are included as protected parties, the restrained party cannot have any contact with them AT ALL. If the children are not included, and someone is going to help facilitate parenting time and/or exchanges, that person must be contacted by the mediator during mediation and give their assent to being included in the agreement in this way.

10. Exchanges can be set up for any place that is safe and works for both parties, as well as any others involved in the exchange. Exchanges can be made at formal Centers, like the Karlis Center, or at places like McDonalds or even a police station (with prior notice to the police). Note the specificity used to keep the parties apart in the sample wording for unsupervised parenting time arrangements, below.

11. If the parties are going to use an official parenting center for exchanges or supervised parenting time, the agreement can not be that specific, as no one at the mediation will know what hours the Center has availability for this family. Instead, the language should be something like, two hours, twice a week, with exact date and time to be determined by the Center's availability. In addition, the agreement should indicate who is going to contact the Center to start intake, and by when. It is also critical to state who is going to pay any fees charged by the Center.

12. Removal of personal possessions- The agreement should include a list of what is to be removed, when, from where, and who is going to supervise the removal (as the protected party can not be present when the restrained party removes possessions). The person suggested to supervise must be contacted during the mediation session, and give their permission to be listed in the agreement. Be sure to allow enough time for all the listed items to be removed. The restrained party will need to go to different court to recover possession of any items for which no agreement is reached about ownership. Sample language is provided below.

13. A civil assist can be obtained from the local police for them to be present during the removal of personal property. This can be unreliable, as if the police are busy, there may not be an officer available to assist at the designated time, or the officer may be called away to a crime scene before removal has been completed.

14. Short Term bills - The parties may want to agree on how some immediate bills are going to get paid. Long term bills will have to be settled in a different court in future. Sample language on bill paying is provided below.

15. It is valuable to detail for the parties what is meant by no contact in the protection order. No contact means: No face-to-face contact, no stalking, no drive-bys, no photography, and no postal mail. It also means no electronic contact through phone, email, IM, texting, or social media like Facebook or My Space. It also means no third-party contact - it is a violation of the order to have someone else contact the other party at your request.

16. Always include contingency options in case an emergency prevents a planned event (such as exchange of the children). Sample contingency language is provided below.

17. If the parties are going to text each other, clearly state under what emergency conditions they will text, and limit the content of the text and the number of texts that may be sent.

Wording Examples Section

Further Mediation

It will not be a violation of this order for the parties to participate in further mediation while this order is in effect.

Unsupervised Parenting Time

The parties have made the following agreements:

1. They will share parenting time.
2. Defendant/Father/George will have unsupervised parenting time with the children (Richard and Joyce) every other weekend from Friday 3pm until Sunday 12pm starting next weekend. Plaintiff/Mother/Emma will have the children the rest of the time.
3. Plaintiff will drop off children at her mother's home (park/zoo /library/McDonald's/police station/etc) at 526 Black Hills Drive, Denver, Co 80666 on Friday NO LATER than 2:45pm.
4. Defendant will pick up children from Plaintiff's mother's home on Friday NO EARLIER than 3pm.
5. Defendant will drop off children at Plaintiff's mother's home on Sunday NO LATER than 12pm.
6. Plaintiff will pick up children from her mother's home on Sunday NO EARLIER than 12:15pm.

Removal of Personal Possessions

The parties have made the following agreements:

1. They have lived together at 9876 Visalia Place, Denver, CO 80591.
2. Defendant is entitled to remove the following personal possessions from that address:
 - 1 Sony DVD player on black cabinet in living room
 - 1 Hitachi TV flat-screen on wall in living room
 - 1 Sears red couch in living room
 - 2 maple end tables in living room given to Defendant by grandmother
 - Defendant's clothing in east-wall closet in bedroom
 - Defendant's toiletries in bathroom
 - 2004 Toyota Corolla in garage
3. Defendant will pick up these items this coming Saturday, July 17, 2010, between 9am and 3pm. Defendant may bring his friends Mike Brown and Tom Smith with him to help move these items.
4. Sunday, July 18, 2010, between 9am and 3pm is a backup time if parties cannot make Saturday work.
5. Aaron Springer and Cecilia Branson have agreed to serve as neutrals monitoring the personal possession removal.
6. Plaintiff will be absent from the premises at the time Defendant will be there.

Short Term Bills

The parties have made the following agreements:

1. They share responsibility for the utilities bill at their home at 2734 Main St., Denver, CO 80999.
2. The bill is due Friday, March 26, 2010, before the protection order ends.
3. They will split the payment of this bill 50/50, as has been their custom.
4. Each party will bring their share of the bill payment to the Excel office at 15000 Mississippi, Denver, CO 80789.
5. Plaintiff will bring his/her share on Wednesday, March 24, 2010.
6. Defendant will bring his/her share on Thursday, March 25, 2010.

Alcohol/Drug Issues

The parties have made the following agreements:

Restrained party will be alcohol-free for a minimum of 24 hours prior to picking up the children, and for the entire time he has the children. Restrained party will not drive the children without being in possession of a valid driver's license and appropriate car seats.

Sample Contingency Wording

The parties understand that Restrained Party/Protected Party is a fireman, and that s/he may be called to a fire at a moment's notice. Said party agrees to call Aunt Matilda at such times at the number listed earlier in the agreement. Aunt Matilda will then call the other party.

OR

Parties agree to call each other if they must arrive more than 15 minutes late to pick up or drop off the children. The call will be limited to providing the anticipated arrival time.

OR

No text messages may be sent by the restrained party to the protected party except on days when the children are being exchanged. On those days, the parties agree to text each other if they must arrive more than 15 minutes late to pick up or drop off the children. The restrained party may only text the protected party to provide the anticipated arrival time. No more than two texts may be sent by the restrained party regarding any one exchange of the children.

OR

No text messages may be sent by the restrained party to the protected party except in an emergency. The message shall be limited to what is strictly required by the unexpected emergency.