

Supreme Court of Texas
Protective Order Taskforce

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ANDREW WEBER, Clerk

BY Stewart W. Caglion Deputy
Chair January 5, 2005

Sandra Avila The Supreme Court of Texas
Cynthia Dyer Attn: Andrew Weber
Rhonda Gerson Clerk of the Court
Honorables 210 West 14th, Room 104
Toby R. Austin, Texas 78701
Goodman

Sue M. Hall re: Report to the Supreme Court of Texas, Misc. Docket No. 03-9146

Jeana Lungwitz

Honorable
Patricia Macias

Honorable
Harriet O'Neill

Marcus D.
Taylor

Amy Wright

Dear Mr. Weber:

On behalf of the Supreme Court Protective Order Taskforce (Taskforce), I am providing this report to the Supreme Court summarizing the activities of the Taskforce for the period September 2003 through November 2004. In addition to this written report, Taskforce members are available to meet with the Justices of the Supreme Court of Texas to discuss the activities or to answer any questions.

Background

In May 2003, the Texas Access to Justice Commission and the Family Law Section of the State Bar of Texas requested that the Supreme Court create the Protective Order Taskforce to develop a protective order kit for victims of domestic violence. The Court entered an order establishing the Protective Order Taskforce on September 9, 2003, appointing members and outlining three tasks: (1) draft a domestic violence protective order kit, (2) draft an implementation plan to make the kit available on line and directly from law enforcement officers, and (3) draft a final report to the court.

The Taskforce has completed the draft of the protective order kit and the implementation plan. This report will describe the progress and challenges of the Taskforce, present the kit, and suggest recommendations for making protective orders more accessible. Minutes from each Taskforce meeting and the draft kit are attached to this report as exhibits.

The Taskforce includes the following members from across the state:

Stewart Gagnon, Fulbright & Jaworski, Houston, Chair
Sandra Avila, Children's Rights, Texas RioGrande Legal Aid, Edinburg
Cynthia Dyer, Assistant District Attorney, Dallas
Rhonda Gerson, Texas Access to Justice Commission, Houston
Hon. Toby R. Goodman, Texas House of Representatives, Arlington
Sue M. Hall, Attorney at Law, San Antonio
Jeana Lungwitz, University of Texas School of Law, Austin
Hon. Patricia Macias, Judge, 388th District Court, El Paso
Hon. Harriet O'Neill, Supreme Court of Texas, Austin
Marcus D. Taylor, Wood County District Attorney, Quitman
Amy Wright, Women's Advocacy Project, Austin

The Taskforce received staffing and support from the Texas Access to Justice Commission and Texas Lawyers Care.

Development of the Kit

The Taskforce held its first meeting on October 18, 2003, and immediately began planning the protective order kit. The group identified its task as standardizing forms to be available for non-lawyers who cannot afford a lawyer and would not otherwise have access to the courts. The members also agreed that the forms needed to be easily used by *pro se* applicants, which would involve shortening available forms from other sources as well as providing step-by-step instructions on completing the forms.

In the initial stages of planning the kit, the group reviewed a summary of the Protective Order Survey conducted in 2001 by the Texas Access to Justice Commission. The survey confirmed that a majority of victims of domestic violence in Texas do not have access to protective orders. The survey results were part of the impetus for the creation of this Taskforce.

Amy Wright, Taskforce member from the Women's Advocacy Project (WAP), Austin, continued her work on developing a *pro se* application for protective order, which had begun as a project of WAP and the Texas Access to Justice Commission Assisted Pro Se Committee. This gave the Taskforce a format for development of the other forms for the kit.

The Taskforce investigated and reviewed information from multiple parts of the court systems as it planned the kit. It also researched forms and process used in other jurisdictions, such as Maine, California, Arizona, and Illinois, for protective orders or similar restraining orders available to domestic violence survivors.

Members consulted with local authorities, such as law enforcement officers, judges, prosecutors, and service providers, to learn how domestic violence calls are handled, how

protective orders are issued, and other informal information. In doing so, members also learned when applicants are likely to face barriers to obtaining protective orders. The Taskforce also documented support and enthusiasm for the development of the kit, particularly by judges and service providers, as well as concerns. For a detailed list of people who provided input, please see the attached exhibit, "Collateral Sources."

A wide variety of people provided input during the process, both in writing and by attending meetings. These included district and county judges, prosecutors, county officials, an assistant attorney general and domestic violence advocates who are not attorneys. Chair Stewart Gagnon also made presentations to several groups of judges and bar leaders around the state and got input from them as well.

At various meetings, the Taskforce addressed concerns about the length, content, and possible statutory approval of the forms. It decided to include an application for protective order, temporary *ex parte* protective order, and protective order in the kit. Members also decided that step-by-step instructions would be included as part of the kit. A two-page overview, "All About Protective Orders," became the opening pages for the kit.

The Taskforce carefully reviewed applicable sections of the Texas Family Code, Penal Code, and Rules of Civil Procedure to ensure that the forms included necessary statutory language. Review and input from collateral sources were used to verify this.

Once the court forms were finalized, a special work group, comprised of Taskforce members, met separately numerous times to develop the instructions for each form. The instructions are designed for a *pro se* applicant to follow. All of the forms and instructions utilize check boxes, numbering, and other formatting features to help a reader follow and understand the information. The instructions also include brief information about relevant law and available relief for the applicant. The work group reviewed the entire kit for consistency, length, and other concerns. It also added a sheet for Respondent Information as part of the kit.

The final draft of the kit was reviewed by the entire Taskforce for comments and suggestions. Chair Stewart Gagnon then reviewed submitted comments and finalized the forms along with Taskforce member Amy Wright. The resulting kit contains the following:

1. "All About Protective Orders," a brief overview with procedural tips for the applicant and information on how to contact the Family Violence Legal Line or the website for further help
2. "How to Complete the Application for Protective Order"
3. Application for Protective Order, including Affidavit to support the Application
4. "How to Complete the Temporary Ex Parte Protective Order"
5. Temporary Ex Parte Protective Order
6. "How to Complete the Protective Order"
7. Protective Order
8. Respondent Information

The kit is approximately 22 pages long. The Taskforce believes that the kit is as short as possible while meeting statutory language requirements. Please note that the attached kit is not ready for distribution. First, a reading assessment and revision of the kit must be completed to assure it is written in plain language at a fifth grade reading level. The Taskforce will contract with a firm experienced in projects involving legal documents, and Chair Stewart Gagnon will supervise the project closely to ensure that the integrity of the content is preserved.

Legislative Issues

During the course of the development of the kit, several legislative issues arose. First, the Taskforce noted that cluster courts or foster care courts may deal with a protective order case as part of a child abuse case. However, information from Angela Miranda-Clark, Foster Care Courts Attorney at the Office of Court Administration, suggested that the statute creating the courts would need to be changed for these courts to expand jurisdiction to specifically handle protective orders.

The Taskforce agreed to ask that the Texas Access to Justice Legislative Committee consider working to amending Texas Family Code Section 82.002(a) to insert language under "Who may file application" as follows (proposed changes in italics):

"With regard to family violence under Section 71.0004(1) or (2), an adult member of the family or household may file an application for a protective order, *through a prosecuting attorney, other attorney, or pro se*, to protect the applicant or any other member of the applicant's family or household."

This suggestion was made because there were indications that some judges refused to accept pro se filings of protective orders. However, after the TATJC Legislative Committee considered the question, the Committee decided that pro se litigants already have the absolute right to file and that judges who refuse such filings should be addressed on a case-by-case basis rather than legislatively.

Distribution Plan

The Taskforce determined that the kit would need to be distributed in hard copy format and in electronic format, so that availability in all parts of the state would be maximized. Therefore, the Taskforce applied for a grant from the Texas Bar Foundation for the distribution project.

The Texas Bar Foundation awarded the Taskforce a total of \$26,140. Although less than the application request of \$39,000, the grant will finance: (1) a reading assessment of the kit to assure it is written in plain language at a fifth grade reading level, (2) translation of the entire kit into Spanish, (3) printing and mailing costs for the kit in hard copy and on CD-ROMs, (4) inclusion of the kit and expanded information on the website, and (5) creation of a training video for those who will be helping pro se litigants complete the forms.

The part of the grant request that was not awarded related to the estimated cost for live presentation trainings for the kit. However, the Taskforce anticipates that presentations can be made locally through use of the video mentioned above, as well as through the various efforts of member of the Taskforce and the Family Law Section of the State Bar of Texas.

The Taskforce has developed a distribution list for hard copies and CDs of the kit. The initial distribution should be to:

- All police departments
- All sheriff and constable offices
- All county and district clerks
- All domestic violence programs
- Hospitals (emergency rooms)
- Municipal prosecutors
- All county and district attorneys
- All local bar associations
- All law school clinics
- All legal aid programs
- All pro bono organizations
- All public libraries

With the Court's approval, the Taskforce would like to "launch" the kit during National Crime Victims' Rights Week, April 10-16, through a press conference with Justice O'Neill and others to announce the mass distribution of the kits. The kit should be ready for distribution and posting on the website at the time of the "launch." It will be included on www.texaslawhelp.org.

Costs incurred for the Taskforce have been \$2,226.28 for FY2005 (to date) and \$3,174.18 for FY2004. This yields a total cost to date of \$5,400.46. The Texas Access to Justice Commission paid all costs.

Other Issues

During the course of the Taskforce's work, other issues arose which were of concern to the Taskforce members but were not within the purview of its charge from the Court. These included:

- The Taskforce discussed the need for the forms in the kit to be approved by the Supreme Court or by the Legislature in order to ensure that courts statewide will accept and use them. The Taskforce strongly encourages the Court to formally approve these forms for use statewide, not as the exclusive protective order forms that may be used, but as approved forms that must be accepted.
- The Taskforce noted that the Texas Family Code Section 85.022(b)(5) does not match the amended stalking statute, Texas Penal Code Section 42.072.

- The Taskforce feels that it is imperative to include in the kit a telephone number for pro se litigants to call if they need additional information or assistance. In Texas, the Women's Advocacy Project operates the statewide domestic violence hotline. While the Project is willing to have its number included in the kit, it is concerned that the hotline staff may not be able to handle all the calls for help to the hotline that could be generated by wide distribution of the kit.
- The Taskforce believes it should continue its work for two years to monitor the acceptance of the kit as well as any problems identified.
- The Taskforce should identify any legislative changes and modify the kit accordingly.

Attachments

The following documents are attached as part of this report:

1. July 1, 2003 letter from John Jones (Texas ATJ Commission Chair)
2. The Court's September 9, 2003 Order Establishing Protective Order Taskforce
3. Minutes from all of the Taskforce meetings
4. Application for Texas Bar Foundation grant
5. Texas Bar Foundation grant award letter to the Taskforce
6. List of individuals who gave input and suggestions to the Taskforce
7. Final draft of the Protective Order Kit

Summary

On behalf of the Taskforce, I would like to thank the Court for its continued support of this project. We look forward to the launch, distribution, and monitoring of the protective order kit.

Respectfully submitted,


Stewart W. Gagnon, Chair

SWG/ss

attachments