

## **RESTRAINING ORDER COURT CLERK PROCEDURE**

When a litigant requests Domestic Violence or Harassment restraining orders, the clerk will ask the party:

1. Will they be requesting the Sheriff to serve the paperwork?
2. If yes, will they be requesting the Sheriff serve for free?

If yes, then proceed as follows:

### **DOMESTIC VIOLENCE CASE**

- If a party requests free service from the Sheriff, the clerk will require the party to complete:
  1. Form # 982(a) (17) Application for Waiver of Court Fees and Costs, and # 982(a) (18) Order on Application for Waiver of Court Fees and Costs
  2. Form CH-101/DV-290 - Request and Order for Free Service of Restraining Order

- Clerk will provide the requesting party with a certified copy of form CH-101/DV-290 for delivery to the Sheriff

Note: item #17 on the Request for Order form DV-100 advises the applicant they may need to complete the above 2 forms if they want the Sheriff to serve the orders for free.

### **HARASSMENT CASE - With Fear of sexual assault or stalking**

- If the application is based on a fear of sexual assault or stalking, the clerk will require the party to complete:
  - The fee waiver forms (982(a)(17) Application and 982(a)(18) Order
  - Form CH-101/DV-290 - Request and Order for Free Service of Restraining Order
- Clerk will provide the requesting party with a certified copy of form CH-101/DV-290 for delivery to the Sheriff

### **HARASSMENT CASE - Other allegations**

- If the harassment petition is for other allegations, the clerk will require the party to complete:
  - The fee waiver forms (982(a)(17) Application and 982(a)(18) Order
- Clerk will provide the requesting party with a certified copy of form # 982(a)(18) Order on Application for Waiver of Court Fees and Costs for delivery to the Sheriff
- Form CH-101/DV-290 will not be used

### **JUDICIAL COUNCIL FORM CH-101/DV-290 - REQUEST AND ORDER FOR FREE SERVICE OF RESTRAINING ORDER**

- This form is used after the fee waiver order submitted by the party is signed by the judge or clerk
- Party requesting free service from the Sheriff completes the top portion of the form
- The judge or clerk signs item # 3 and checks either box 'a' or 'b'.
- Clerk will provide the requesting party with a certified copy of form CH-101/DV-290 for delivery to the Sheriff

### **SHERIFF**

- Sheriff will complete the box below item # 3 for service information on form CH-101/DV-290
- Sheriff's offices, including Lompoc and Santa Maria, will deliver the CH-101/DV-290 forms to Relva Maholtz
- Relva will batch the forms and deliver to the Superior Court fiscal department, attn. Dennis Schladweiler, on a monthly or quarterly basis

## FISCAL

- Dennis will prepare appropriate journal entry

Following are some applicable code sections:

**CCP 527.6(q) (1)** Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply: (A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code. (B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, "sexual assault" means the offenses enumerated in Section 1036.2 of the Evidence Code. (C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.

**Family Code 6222(b)** Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. If the petitioner is not eligible for the fee waiver pursuant to this subdivision, he or she may be eligible pursuant to paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure. (c) The declaration required by subdivision (b) shall be on one of the following forms: (1) the form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis. (2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226. (d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

**GC 6103.2 (4)** The requirement for prepayment of a fee deposit does not apply to the orders or injunctions described in paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure. However, a sheriff, marshal, or constable may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.