

## Memorandum 94-3

---

**Orders to Show Cause and Temporary Restraining Orders**

---

Attached is a revised staff draft of a Recommendation on *Orders to Show Cause and Temporary Restraining Orders*. The draft includes revisions made by the Commission at the September 1993 meeting and revisions suggested by the State Bar Committee on Administration of Justice. The staff believes this draft is now satisfactory to CAJ. The staff recommends the Commission approve this recommendation for submission to the Legislature. We have asked Legislative Counsel to draft a bill, and drafting is in progress.

At the last meeting, the Commission wanted to know what, other than plaintiff's failure to serve the order to show cause, might cause a hearing not to be held within the required time. In the *Agricultural Prorate* case cited in footnote 19 in the draft, the order to show cause was not heard within the required time because plaintiff twice obtained two-week continuances over defendant's objection. In the *McDonald* case cited in footnote 20, the hearing was inadvertently set for hearing one day later than the last permissible day. In both cases, the defendant was entitled to have the TRO dissolved.

Respectfully submitted,

Robert J. Murphy  
Staff Counsel

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**Revised Staff Draft**

**RECOMMENDATION**

## **Orders To Show Cause and Temporary Restraining Orders**

**January 1994**

**California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739**

## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335



January 7, 1994

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation proposes to clarify the time requirements for service and hearing of an order to show cause and temporary restraining order, and to conform the civil harassment provision to general provisions in the Code of Civil Procedure.

The recommendation also would provide that an order to show cause for a preliminary injunction not set for hearing within the required time could still be heard by the court if the moving papers are served no later than would be required for a notice of motion.

This recommendation was prepared pursuant to Resolution Chapter 42 of the Statutes of 1984, continued in Resolution Chapters 31 and 96 of the Statutes of 1993.

Respectfully submitted,

Sanford M. Skaggs  
*Chairperson*

## ORDERS TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDERS

### Nonuniformity in Time for Hearing and Service

The Code of Civil Procedure provides varying times for service and hearing of an order to show cause issued with a temporary restraining order, depending on the type of proceeding.

The general statute on injunctive relief provides that if a temporary restraining order is granted without notice,<sup>1</sup> the hearing must be held "on the earliest day that the business of the court will admit of, but not later than 15 days . . . from the date of the order."<sup>2</sup> The court may extend this time to 20 days for good cause.<sup>3</sup> Supporting affidavits and points and authorities must be served not later than two days before the hearing.<sup>4</sup> The statute provides no minimum time before the hearing for service of the order to show cause itself, and, by case law, the order to show cause may be served the same day as the hearing.<sup>5</sup>

In a civil harassment proceeding, the 15-day period for the hearing runs from the date the petition was filed, not from the date of the order.<sup>6</sup> There is no authority in the civil harassment statute for the court to extend this time.<sup>7</sup> It is unclear whether the general requirement that supporting papers be served at least two days before the hearing applies to a civil harassment proceeding.<sup>8</sup>

There is no apparent reason for different time requirements for various proceedings. These differences cause confusion and uncertainty.<sup>9</sup> There is also

---

1. A temporary restraining order may be granted without formal notice to the party restrained unless constitutional rights are involved. See Code Civ. Proc. § 527; 6 B. Witkin, *California Procedure Provisional Remedies* § 296, at 253-54 (3d ed. 1985); Gilbert & Kaplan, *Injunctions*, in 2 *California Civil Procedure Before Trial* §§ 39.38 (Cal. Cont. Ed. Bar 3d ed. 1992). When formal notice is not required, Section 527 requires a good faith attempt to inform the other party (e.g., by telephone) that an application for a temporary restraining order will be made.

2. Code Civ. Proc. § 527.

3. *Id.*

4. *Id.*

5. *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 656, 64 P.2d 738 (1937).

6. Code Civ. Proc. § 527.6(d).

7. Code Civ. Proc. § 527.6.

8. See Code Civ. Proc. § 527.6(c). Under the general statute, supporting affidavits and points and authorities must be served on the opposing party at least two days before the hearing. Code Civ. Proc. § 527. But if a civil harassment petition and application for a temporary restraining order are submitted on a Judicial Council form, no memorandum of points and authorities is required. Cal. R. Ct., Rule 363(b). And defendant's response in a civil harassment proceeding must be filed not later than 48 hours before the hearing (Cal. R. Ct., Rule 363(d)), suggesting that service of plaintiff's moving papers on the defendant be made more than two days before the hearing. The statute on notices of motion cannot apply to a civil harassment proceeding, because that statute requires service at least 15 days before the hearing with additional time where notice is served by mail. Code Civ. Proc. § 1005. It is obviously impossible to require notice to the defendant 20 days before the hearing, for example, while requiring the hearing to be held not later than 15 days after the petition was filed.

9. For example, by case law, an order to show cause may be served the same day as the hearing. *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 656, 64 P.2d 738 (1937). The civil harassment statute prescribes no minimum time for service of moving papers on the defendant. See Code Civ. Proc. § 527.6. Judicial Council rules

confusion whether general requirements for service of a notice of motion<sup>10</sup> apply to orders to show cause.<sup>11</sup>

The Commission recommends one uniform time period for hearing and service of an order to show cause with a temporary restraining order applicable in all proceedings under the Code of Civil Procedure.<sup>12</sup> This should be accomplished by making clear that the time for service is governed by rules applicable to injunctive relief, not general notice of motion provisions, and by conforming the civil harassment statute<sup>13</sup> to the general statute<sup>14</sup> by revising it to give the court authority to extend for good cause the 15-day time within which the hearing must be held, and to measure the time for hearing from the date of the order rather than from the filing of the petition.<sup>15</sup>

The five-day limit on the additional time the court may allow for good cause may cause a problem in small counties that hear orders to show cause only one day a week. In such a case, if the day for hearing orders to show cause falls on a

---

merely require the moving papers to "be personally served on the defendant." Cal. R. Ct., Rule 363. The Judicial Council form for an order to show cause in a civil harassment proceeding requires that the order to show cause and temporary restraining order be served on the opposing party at least two days before the hearing. Judicial Council Form CH-120 (rev. Jan. 1, 1993).

10. Code Civ. Proc. § 1005.

11. It seems reasonably clear the general requirements for service of a notice of motion in Section 1005 of the Code of Civil Procedure do not apply to orders to show cause. Section 1005 requires moving papers to be served and filed at least 15 days before the hearing unless "otherwise ordered or specifically provided by law." Section 527 appears specifically to provide otherwise by requiring a hearing "on the earliest day that the business of the court will admit of" and by requiring affidavits and points and authorities to be served at least two days before the hearing. By case law, the order to show cause may be served the same day as the hearing. *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 656, 64 P.2d 738 (1937). But a leading treatise says an order to show cause and temporary restraining order should be served at least two days before the hearing. Gilbert & Kaplan, *Injunctions*, in 2 California Civil Procedure Before Trial §§ 39.39, 39.43 (Cal. Cont. Ed. Bar 3d ed. 1992). *Accord*, Marshal's Manual of Procedure § 112 (rev. Jan. 1985). Sheriffs normally require an order to show cause with a temporary restraining order to be served at least 15 days before the hearing. See California State Sheriffs' Association, Civil Procedural Manual 2.21 (4th ed. 1989, rev. 1992). This practice means the applicant will either have to obtain an order shortening time for service, or, if the hearing is set 15 days after the date of the order, will have to serve the order to show cause the same day it is issued. These problems were brought to the Commission's attention by Joseph B. Harvey, Judge of the Superior Court of Lassen County. See letter from Judge Joseph B. Harvey to San Francisco Daily Journal (August 28, 1992) (copy on file in office of California Law Revision Commission).

12. In proceedings under the Family Code, the hearing must be held "on the earliest day that the business of the court will permit, but not later than 20 days" from the date of the order, which the court may extend to 25 days for good cause. Fam. Code § 242, amended by 1993 Cal. Stat. ch. 219, § 85.4. The recommended legislation makes no change in the Family Code provisions.

13. Code Civ. Proc. § 527.6.

14. Code Civ. Proc. § 527.

15. Both the time limit for service and the time limit for the hearing are for the benefit of the party against whom the temporary restraining order is issued. The applicant who obtained the order has no need for an early hearing as long as the order remains in effect. Requiring service a reasonable time before the hearing gives the party restrained time to prepare for the hearing. Requiring a prompt hearing gives the party restrained an early opportunity to contest the order. *International Molders & Allied Workers Union, Local 164 v. Superior Court*, 70 Cal. App. 3d 395, 407, 138 Cal. Rptr. 794 (1977). Until a temporary restraining order is served, the party is not required to do or refrain from doing anything, and thus suffers no adverse consequence. There appears to be no justification for the civil harassment provision (Code Civ. Proc. § 527.6) measuring the time for hearing from the date the petition is filed.

This suggests the time within which a hearing must be held should be measured from the date of service of the temporary restraining order, not from its issuance. But the time for hearing is set when the order is issued, at which time it is impossible to know when service will be made. Measuring the time for hearing from issuance rather than service of the order is a practical solution to this problem.

holiday and that is the fifteenth day after issuance of the order, the five-day limit prevents the court from extending the time until its next regular day for hearing orders to show cause.<sup>16</sup> The Commission recommends increasing the limit on the additional time the court may allow under the Code of Civil Procedure from five to seven days.

Existing law requires that the applicant's moving papers be served at least two days before the hearing.<sup>17</sup> This permits the applicant to delay service as a tactical measure to minimize the other party's time to prepare. The Commission recommends that service of the moving papers be required not later than five days after issuance of the order to show cause and temporary restraining order or two days before the hearing, whichever is earlier.<sup>18</sup>

### **Hearing Despite Failure To Bring Order to Show Cause to Hearing Within Required Time**

If an order to show cause and temporary restraining order are issued but a hearing is not held within the time required, the temporary restraining order terminates automatically on the last day for hearing<sup>19</sup> and the court may not hear the application for a preliminary injunction.<sup>20</sup> There is no sound reason to prevent the court from hearing the application for a preliminary injunction merely because the order to show cause is accompanied by an unenforceable temporary restraining order. The Commission recommends that, if an order to show cause for a preliminary injunction is not set for hearing within the prescribed time and the moving papers are served no later than would be required for a notice of

---

16. See letter from Judge Joseph B. Harvey to California Law Revision Commission (June 2, 1993) (copy on file in office of California Law Revision Commission).

17. Code Civ. Proc. § 527.

18. The recommended legislation makes clear the court may for good cause further shorten the time for service. The party restrained is protected by a right to one continuance to prepare for the hearing. Code Civ. Proc. § 527. The recommended legislation makes clear that if the party restrained obtains a continuance, the temporary restraining order continues in effect. This is consistent with *International Molders & Allied Workers Union, Local 164 v. Superior Court*, 70 Cal. App. 3d 395, 407, 138 Cal. Rptr. 794 (1977).

19. *Sharpe v. Brotzman*, 145 Cal. App. 2d 354, 358-59, 302 P.2d 668 (1956) (temporary restraining order terminates automatically unless subsequent order is made continuing it in force). It has been said that the temporary restraining order is "void." *Agricultural Prorate Commission v. Superior Court*, 30 Cal. App. 2d 154, 156, 85 P.2d 898 (1938). In the latter case, the original hearing was set within the time required by statute. On the date set for hearing, plaintiff asked for and was granted a two-week continuance over defendant's objection. On the new date, plaintiff asked for and was granted another two-week continuance over defendant's objection. The appellate court held the defendant was entitled to have the temporary restraining order dissolved. It is unclear whether the temporary restraining order is enforceable before it terminates. Cf. *Oksner v. Superior Court*, 229 Cal. App. 2d 672, 681, 40 Cal. Rptr. 621 (1964) (void "order of court in aid of execution").

20. *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 655, 64 P.2d 738 (1937). In this case, the order to show cause was said to be "void" because the hearing was inadvertently set for hearing one day later than the last permissible day under the statute. According to Joseph B. Harvey, Judge of the Superior Court of Lassen County, "some courts are routinely issuing void restraining orders and orders to show cause by requiring service at least 15 days before the hearing" and setting the hearing later than the required 15-day period to allow time for service. See letter from Judge Joseph B. Harvey to San Francisco Daily Journal (August 28, 1992) (copy on file in office of California Law Revision Commission).

motion,<sup>21</sup> the court could hear the application for the preliminary injunction without making the applicant start over.

---

21. By case law, if an order to show cause is issued without a temporary restraining order, the order to show cause is simply a notice of motion. See *Difani v. Riverside County Oil Co.*, 201 Cal. 210, 213-14, 256 P. 210 (1927); *Eddy v. Temkin*, 167 Cal. App. 3d 1115, 1120, 213 Cal. Rptr. 597 (1985); see also Code Civ. Proc. § 1003 (application for order is a motion); California State Sheriffs' Association, Civil Procedural Manual 2.14 (4th ed. 1989); Marshal's Manual of Procedure § 112 (rev. Jan. 1985). A notice of motion must be served at least 15 days before the hearing, with additional time allowed for service by mail. See Code Civ. Proc. § 1005(b) (time for serving motions); see also California State Sheriffs' Association, Civil Procedural Manual 2.15 (4th ed. 1989) (rev. 1991). The recommended legislation codifies this rule to make clear that an order to show cause without a temporary restraining order is treated as a notice of motion, and is subject to the same time requirements for service as a notice of motion.

## RECOMMENDED LEGISLATION

Code Civ. Proc. § 527 (amended). Injunctions and temporary restraining orders

527. (a) An A preliminary injunction may be granted at any time before judgment upon a verified complaint ; or upon affidavits , if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. ~~A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith. No preliminary injunction shall be granted without notice to the opposing party.~~

(b) A temporary restraining order or a preliminary injunction, or both, may be granted in a class action, in which one or more of the parties sues or defends for the benefit of numerous parties upon the same grounds as in other actions, whether or not the class has been certified. ~~No preliminary injunction shall be granted without notice to the opposite party; nor shall any~~

(c) ~~No~~ temporary restraining order shall be granted without notice to the ~~opposite~~ opposing party, unless (1) ~~it shall appear both of the following requirements are satisfied:~~

(1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury ~~would~~ will result to the applicant before the matter can be heard on notice and (2) ~~the~~ .

(2) The applicant or the applicant's attorney certifies one of the following to the court under oath (A) ~~that~~ ;

(A) That within a reasonable time prior to the application ~~he or she~~ the applicant informed the opposing party or his ~~or her~~ the opposing party's attorney at what time and where the application would be made ; (B) ~~that he or she~~ .

(B) That the applicant in good faith attempted but was unable to inform the opposing party and his ~~or her~~ the opposing party's attorney ~~but was unable to so inform the opposing party or his or her attorney, specifying the efforts made to contact them ; or~~ .

(C) ~~that~~ That for reasons specified ~~he or she~~ the applicant should not be required to so inform the opposing party or his ~~or her~~ the opposing party's attorney.

(d) In case a temporary restraining order ~~shall be~~ is granted without notice ; in the contingency above specified, ~~the~~ in subdivision (c):

(1) The matter shall be made returnable on an order requiring cause to be shown why ~~the~~ a preliminary injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, ~~20~~ 22 days , from the date ~~of the order. When the matter first comes up for hearing, the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to the hearing, the temporary restraining order is issued.~~



(2) The party who obtained the temporary restraining order shall, within five days from the date the temporary restraining order is issued or two days prior to the hearing, whichever is earlier, serve on the opposing party a copy of the complaint and of all affidavits if not previously served, the order to show cause stating the date, time, and place of the hearing, any affidavits to be used in the application, and a copy of the points and authorities in support of the application; if, The court may for good cause, on motion of the applicant or on its own motion, shorten the time required by this paragraph for service on the opposing party.

(3) When the matter first comes up for hearing, if the party who obtained the temporary restraining order is not ready to proceed, or if he or she fails to serve a copy of his or her complaint, affidavits and points and authorities, as herein required, the party has failed to effect service as required by paragraph (2), the court shall dissolve the temporary restraining order. The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he or she desires it, to enable him or her to meet the application for the preliminary injunction. The defendant

(4) The opposing party is entitled to one continuance for a reasonable period of not less than 15 days or any shorter period requested by the opposing party, to enable the opposing party to meet the application for a preliminary injunction. If the opposing party obtains a continuance under this paragraph, the temporary restraining order shall remain in effect until the date of the continued hearing.

(5) Upon the filing of an affidavit by the applicant that the opposing party could not be served within the time required by paragraph (2), the court may reissue any temporary restraining order previously issued. The reissued order shall be made returnable as provided by paragraph (1), with the time for hearing measured from the date of reissuance. No fee shall be charged for reissuing the order.

(e) The opposing party may, in response to an order to show cause, present affidavits relating to the granting of the preliminary injunction, and if the affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. On the day upon which the order is made returnable, the hearing shall take precedence of all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

(f) Notwithstanding failure to satisfy the time requirements of this section, the court may nonetheless hear the order to show cause why a preliminary injunction should not be granted if the moving and supporting papers are served within the time required by Section 1005 and one of the following conditions is satisfied:

(1) The order to show cause is issued without a temporary restraining order.

(2) The order to show cause is issued with a temporary restraining order, but is either not set for hearing within the time required by paragraph (1) of subdivision (d), or the party who obtained the temporary restraining order fails to effect service within the time required by paragraph (2) of subdivision (d).

(b) (g) This section does not apply to an order described in Section 240 of issued under the Family Code.

(e) (h) There shall be no filing fee for a petition or response relating to a protective order, restraining order, or a permanent injunction restraining violence or threats of violence in any action brought pursuant to this chapter.

**Comment.** Paragraph (1) of subdivision (d) of Section 527 is amended to increase from five to seven days the additional time the court may for good cause allow to hear an order to show cause with a temporary restraining order. This permits a court that hears such matters one day a week to extend the hearing until the next regular day for hearing.

A provision is added in paragraph (2) of subdivision (d) to require the moving papers to be served within five days after issuance of the temporary restraining order or two days before the hearing, whichever is earlier. Although paragraph (2) permits the order to show cause to be served less than 15 days before the hearing (the general requirement for a notice of motion under Section 1005), the short time permitted for service is ameliorated by paragraph (4) of subdivision (d) which gives the opposing party the right to a continuance to prepare for the hearing.

A provision is added in paragraph (2) of subdivision (d) to include a copy of the order to show cause with the documents that must be served. A copy of the complaint must be served only if not previously served. (The former second sentence of subdivision (a), which required a copy of the complaint or of the affidavits on which the "injunction" was granted to be served if not previously served, is deleted. Neither a preliminary nor a permanent injunction may be granted without notice.) Paragraph (2) of subdivision (d) requires the order to show cause to state the date, time, and place of the hearing. This is consistent with Section 1010 (notice of motion must state when it will be made).

A provision is added in paragraph (2) of subdivision (d) to give the court authority to shorten the time for service. This is consistent with Family Code Section 243. The requirement of good cause for shortening time is taken from Rule 305 of the California Rules of Court.

A provision is added in paragraph (4) of subdivision (d) to provide that if the opposing party obtains a continuance, the temporary restraining order is continued in effect until the hearing. This codifies the rule of *International Molders & Allied Workers Union, Local 164 v. Superior Court*, 70 Cal. App. 3d 395, 407, 138 Cal. Rptr. 794 (1977).

Paragraph (5) is added to subdivision (d) to give the court authority to reissue a temporary restraining order not served within the required time. This is consistent with *McDonald v. Superior Court*, 18 Cal. App. 2d 652, 655-56, 64 P.2d 738 (1937), and with Family Code Section 245.

Subdivision (f) is added to make clear that if the time requirements of this section are not satisfied or if the order to show cause is issued without a temporary restraining order, the court may still hear the matter if the papers are served within the time provided by Section 1005 for a notice of motion (15 days, with additional time if mailed). This changes the result in *McDonald v. Superior Court*, *supra*, and treats an order to show cause without a temporary restraining order the same as a notice of motion for a preliminary injunction without a temporary restraining order. See *Gilbert & Kaplan, Injunctions*, in 2 California Civil Procedure Before Trial § 39.43 (Cal. Cont. Ed. Bar 3d ed. 1992).

The other revisions to Section 527 are technical.

*Staff note.* This revised draft makes the following changes to the draft considered by the Commission at the September 1993 meeting:

(1) In the first sentence of subdivision (a), it is made clear that it refers to a "preliminary" injunction.

(2) The second sentence of subdivision (a) is relocated in the first sentence of paragraph (2) of subdivision (d).

(3) The second sentence of subdivision (b) is relocated in subdivision (a).

(4) In paragraph (1) of subdivision (d), it is made clear that it refers to a "preliminary" injunction, and the "ready to proceed" language is relocated in paragraph (3) of subdivision (d).

(5) Paragraphs (2) through (5) of subdivision (d) are made subordinate to the introductory clause to make clear they apply where a temporary restraining order is granted without notice.

(6) In paragraph (2) of subdivision (d), service must be made within five days after the temporary restraining order is issued or two days before the hearing, whichever is earlier, as decided by the Commission at the last meeting.

(7) Paragraph (5) of subdivision (d) (reissuance) is restored from the Tentative Recommendation of May 1993 in slightly revised form.

(8) Subdivision (f) permits the court to hear an order to show cause, despite failure to satisfy the time requirements of this section, if the papers are served within the time required for a notice of motion. The earlier language was cast in terms of what the applicant must do, rather than what the court may do.

Section 527 includes revisions made by 1993 Cal. Stat. ch. 583 [AB 284].

**Code Civ. Proc. § 527.6 (amended). Temporary restraining order and injunction prohibiting harassment**

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order ; and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included with the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with ~~subdivision (a) of Section 527, except to the extent this section provides a rule that is inconsistent.~~ A temporary restraining order may be granted issued with or without notice upon an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. A temporary restraining order ~~granted~~ issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days of the filing of the petition, or, if good cause appears to the court, 22 days, from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response which explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on ~~his or her~~ the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and ~~his or her~~ the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made within five days from the date the temporary restraining order is issued or two days before the hearing, whichever is earlier. The court may for good cause, on motion of the applicant or on its own motion, shorten the time for service on the opposing party.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and

current status of these orders to law enforcement officers responding to the scene of reported harassment.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a plaintiff's right to ~~utilize~~ use other existing civil remedies.

(l) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

**Comment.** Subdivision (d) of Section 527.6 is amended to give the court authority to allow an additional seven days for the hearing for good cause. This is consistent with Section 527. Subdivision (d) is also amended to measure the time within which a hearing must be held from the date the temporary restraining order is issued, rather than from the date of filing of the petition. This is consistent with Section 527 of the Code of Civil Procedure and Section 242 of the Family Code.

Subdivision (c) is amended to provide that a temporary restraining order under this section is governed by Section 527 "except to the extent this section provides a rule that is inconsistent." For example, there is no requirement under this section, as there is under Section 527, that the plaintiff serve points and authorities in support of the application. See also Cal. R. Ct., Rule 363(b) ("unless otherwise ordered no memorandum of points and authorities is required if the petition and the application for temporary restraining order are submitted on a form approved by the Judicial Council"). Although subdivision (c) permits a temporary restraining order to be issued without notice, the plaintiff must make a good faith effort to give informal notice or show good cause for not doing so. See Section 527(c); Cal. R. Ct. 379.

Subdivision (g) is amended to require the moving papers to be served within five days after issuance of the temporary restraining order or two days before the hearing, whichever is earlier. This is consistent with Section 527.

The other revisions to Section 527.6 are technical.

**Staff note.** This revised draft makes the following changes to Section 527.6 in the draft considered by the Commission at the September 1993 meeting:

(1) The "except" clause in the first sentence of subdivision (c) is limited to temporary restraining orders, and does not apply to an "injunction or application therefor" under this section.

(2) In subdivision (c), the 22-day effective period for a temporary restraining order is made contingent on the court extending the time for hearing under subdivision (d).

(3) In subdivision (d), the court's authority to extend the hearing to 22 days is made clear.

(4) In subdivision (f) (support person), references to a "party" are restored in place of "plaintiff."

(5) In subdivision (g), service is required within five days after issuance of the temporary restraining order or two days before the hearing, whichever is earlier, as decided by the Commission at the last meeting.

Section 527.6 is shown as amended by 1993 Cal. Stat. ch. 219 (Family Code cleanup).