

**ELDER ABUSE PREVENTION ACT
INSTRUCTIONS AND FORMS FOR OBTAINING
A RESTRAINING ORDER**

PACKET E1

Deschutes County Courts
Bend, Oregon

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**ELDER ABUSE PREVENTION ACT
INSTRUCTIONS FOR OBTAINING A RESTRAINING ORDER**

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**ELDER ABUSE PREVENTION ACT
INSTRUCTIONS FOR OBTAINING A RESTRAINING ORDER**

PACKET E1

I. INTRODUCTION

This packet contains forms and instructions to assist you in obtaining a Restraining Order under the Elder Abuse Prevention Act. The instructions are designed to give you complete, line-by-line information about how to fill out the forms. You can use the Table of Contents to quickly find the page number in the instructions where the form you are filling out is described.

A "Restraining Order" is an order of the court that orders the person named in the Restraining Order (the "respondent") to stop threatening or abusing you (the "petitioner") and to stay away from you. The Restraining Order can order the respondent to move out of or stay away from your home and stay away from your job or school. The police are required to enforce a Restraining Order. A person who violates a Restraining Order can be arrested, tried for contempt of court or any crimes committed, and if found guilty, can be fined or put in jail.

If you have questions about how the law works or what it means, you may need to see a lawyer. The court clerk cannot give you any legal advice.

You do not have to have a lawyer to use this procedure, but you have the right to have a lawyer represent or help you. If you do not know a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free by dialing 1-800-452-7636. If you believe you cannot afford a lawyer, ask the court staff if your area has a legal service (legal aid) program that might help you.

Not everyone is eligible for a Restraining Order under the Elder Abuse Prevention Act. Check the eligibility list in the next section carefully to determine whether you are eligible to use the procedure and forms provided in this packet. If you are eligible, you may use the procedure whether or not you have left your residence or household to avoid abuse.

II. ELIGIBILITY

You are eligible to use this Restraining Order procedure if:

- (1) you are 65 years of age or older; AND
- (2) you are NOT a resident of a long-term care facility; AND
- (3) the abuse was committed within the 180 days* preceding the filing of the petition (*any period of time after the abuse occurred during which the respondent was in jail or prison or lived more than 100 miles from your home does not count as part of the 180-day time period, and you may still be eligible for a Restraining Order); AND
- (4) you are in immediate and present danger of further abuse from the respondent;

AND

You are a victim of one or more of the kinds of "abuse" listed below:

- (1) physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;
- (2) neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;
- (3) abandonment, including desertion or willful forsaking of you or the withdrawal or neglect of duties and obligations owed to you by a caregiver or other person;
- (4) willful infliction of physical pain or injury; or
- (5) use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation, or inappropriate sexual comments of such a nature as to threaten you with significant physical or emotional harm.

III. OUTLINE OF PROCEDURES AND GENERAL INFORMATION

A. Filing Papers

After you complete the forms as directed in these instructions, you should present them to the court clerk. There is no fee for filing papers under the Elder Abuse Prevention Act.

B. First Hearing

The court is required to hold a hearing on the day you file your papers or the next day that the court is open for business. The hearing may be done in person or, in some courts, by telephone. There is no hearing fee.

If you have a disability and need special help at the hearing or you are unable to speak English and need a foreign language interpreter at the hearing, you must notify the clerk immediately. You will need to tell the clerk specifically what type of disability you have or which language you speak and what type of assistance you need or prefer.

C. Issuing the Restraining Order

If the judge decides that you are in immediate danger of further abuse, the judge must issue a Restraining Order. What protection the judge includes in the Restraining Order depends on what you ask for in the Restraining Order and the information the judge receives at the hearing.

D. Order Lasts One Year

Once the judge signs the Restraining Order, it is in effect for one year unless it is ended earlier by the court at your request or unless the court renews it at your request.

E. Serving a Copy on Respondent

A copy of the Restraining Order must be given to ("served on") the person who has abused you. That person is called the "respondent." The order must be given to the respondent personally by the sheriff or other person who is qualified to serve legal papers unless the court finds that further service is unnecessary because the respondent appeared in person before the court and received the papers. See the section on "Serving the Respondent."

F. Hearing on Respondent's Request

Within 30 days after receiving the Restraining Order, the respondent has the right to ask for a hearing. If the respondent requests a hearing, the court must hold a hearing within 21 days following the request. If the respondent is represented by an attorney, the time for the hearing may be extended for up to five days at your request if you would also like to be represented by an attorney. The judge may change or cancel the Restraining Order based on the information the judge receives at the second hearing.

The respondent may request a hearing by filling out the "Respondent's Request For Hearing" portion of the "Notice To Respondent/Request for Hearing" form (Form 3), and filing that form with the court clerk.

G. Arrest for Violating the Restraining Order

The respondent can be arrested for violating the Restraining Order. The order will state the amount of security ("bail") to be posted if the respondent is arrested for violating the order. The respondent will be released if he/she is able to post 10 percent of this bail amount, but will still have to appear for trial. Violating a Restraining Order is contempt of court and is punishable by a fine of up to \$500 or 1 percent of respondent's annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

IV. COMPLETING THE FORMS

A. Forms

This packet contains five forms. **The first four are those you need to complete to ask for a Restraining Order:**

- **Petition for Restraining Order to Prevent Elder Abuse (Form 1)**
- **Restraining Order (Form 2)**

- **Notice to Respondent/Request for Hearing (Form 3)**
- **Petitioner's Certificate of Document Preparation (Form 4)**

The fifth form is a form to ask the court to end the Restraining Order early if you do not want the order to last a full year:

- **Petitioner's Motion and Order of Dismissal (Form 5)**

B. Use Black Pen

If you intend to complete the forms by hand, you should use black pen (blue does not show up well on copies) and print (not write) the information clearly.

C. Information on Local Adult Protective Services

When you receive this packet or when you file your papers with the court, you should receive information provided by the Senior and Disabled Services Division of the Department of Human Resources about the local adult protective services, domestic violence shelters, and local legal services available in your area. If you do not receive this information, ask the court clerk for a copy.

V. FILLING OUT THE PETITION FOR RESTRAINING ORDER TO PREVENT ELDER ABUSE (FORM 1) (CALLED "PETITION" IN THESE INSTRUCTIONS)

PAGE 1.

A. Caption (Heading at Top of Form)

Line 7. Write your name in the space on the left. (You are the "Petitioner.")

Line 10. Write in the name of the respondent (the person who has abused (hurt) you or threatened you and whom you want the court to order to stay away from you). Leave the "No. ____" space blank.

B. General Information

Lines 19 through 21. Write in the name of the county in which you live at line 19. Write in the name of the county and state where respondent lives at line 20. Write in your age at line 21.

C. Section 1. Fill in the blanks that apply to you. If none apply, proceed to Section 2.

Item A. If you are living with the respondent, check the space at line 23 and put in the date (as best you can remember it) you started living with the respondent.

- Item B.** If you are not living with the respondent now but used to, check the space at line 24 and write in the date (as best you can remember it) you began living with that person and the date you stopped living with that person.
- Item C.** If you are currently under the care of the respondent, check the space at line 25 and write in the date (as best you can remember) when respondent began to provide care to you.
- Item D.** If you are not currently under the care of the respondent but used to be, check the space at line 26 and write in the date (as best you can remember) when respondent began providing care to you and the date when respondent stopped providing care to you.
- Item E.** Check the space at line 27 and fill in your relationship to the respondent (for example, neighbor, caregiver, relative, etc.).

PAGE 2.

D. Section 2

- Item A.** If the respondent has physically injured (hurt) you and that injury was not an accident, check the space at line 3.
 - Item B.** If the respondent has caused you physical harm by withholding services you need to maintain your health and well-being, check the space at line 4.
 - Item C.** If the respondent has abandoned or deserted you by withdrawing or neglecting to perform duties and obligations, check the space at line 5.
 - Item D.** If the respondent has willfully inflicted you with physical pain or injury, check the space at line 6.
 - Item E.** If the respondent has used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation, or inappropriate sexual comments of such a nature as to place you in fear of significant physical or emotional harm, check the space at line 7.
- E. Section 3.** Any period of time after the abuse occurred during which respondent was in jail or prison or lived more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for a Restraining Order.

Line 13. If the respondent was incarcerated (in jail or prison) during the 180 days after the abuse, fill in the dates (as best you can remember) that respondent was incarcerated.

Lines 14 and 15. If the respondent lived more than 100 miles from your home during the 180 days after the abuse, fill in the dates (as best you can remember) that respondent lived more than 100 miles from your home.

F. Section 4

Line 17. Circle the appropriate response to tell the court whether or not the abuse happened within the last 180 days, not including the times respondent was in jail or prison or lived more than 100 miles from your home.

Lines 18 and 19. Fill in the date and location of the abuse (when and where these things happened to you).

Lines 21 through 26. Please describe how you were abused, hurt, or threatened by the respondent.

PAGE 3.

G. Section 5

Lines 2 through 4. If there have been other incidents not described in your answers to question 4 in which respondent has hurt or threatened to hurt you, please describe those incidents.

H. Section 6

Lines 5 and 6. If the abuse you are complaining about was witnessed (seen or heard) by another person or persons, please fill in the name of the person or persons in the space at lines 5 and 6. You must attach to the Petition an affidavit (sworn statement) from each person describing in detail the abuse they witnessed. The person must sign the statement in the presence of a notary public or court clerk.

Lines 6 and 7. If other persons have knowledge of the abuse you are complaining of (but did not witness it), please fill in the name of the person or persons in the space at lines 6 and 7. You must attach to the Petition an affidavit (sworn statement) from each person describing in detail what they know about the abuse you are complaining of. The statement must be signed in the presence of a notary public or court clerk.

I. Section 7

Lines 8 through 11. Describe why you feel you are in danger of further abuse from the respondent.

J. Section 8

Line 13. Circle the appropriate response to tell the court whether or not drugs, alcohol, or weapons were involved in the incidents you described above.

Line 14. Circle the appropriate response to tell the court whether or not you needed medical help in the incidents you described above.

Line 15. Circle the appropriate response to tell the court whether or not the police or the courts were involved in the incidents you described above.

Lines 16 through 18. If you circled "Yes" to any of the questions above, please explain in more detail in the blanks provided.

K. Section 9. You must tell the court whether certain other legal actions or court proceedings are pending (filed in a court but not yet decided or final).

Item A. Circle the appropriate response to tell the court whether there is or is not another Elder Abuse Prevention Act proceeding or Family Abuse Prevention Act proceeding pending between respondent and you at line 19. If there is another proceeding pending, write in the county and state where it is filed, and circle whether you are the "Petitioner" or the "Respondent" in that case at lines 20 and 21. Fill in the court case number at line 22.

Item B. Circle the correct response to tell the court whether there is or is not another proceeding of the types listed pending between you and respondent at line 23. If there is another proceeding pending, write in the type of lawsuit and the county and state where it is filed at lines 25 and 26.

PAGE 4.

L. Section 10. You have the right, under the Elder Abuse Prevention Act, to have the court order the respondent to move out only if:

- (1) the residence is solely in your name (for instance, rented or owned by you); or
- (2) the residence is jointly owned or rented by you and respondent; or
- (3) you and the respondent are married to each other and the residence is where you and your spouse have been living.

If one of those statements is true for you AND you want the court to order the respondent to move out of the residence, circle the "do" response at line 3. Indicate whether your residence is owned, leased, or rented and fill in by whom at lines 4 and 5. If these statements are NOT true or you do NOT want the court to order the respondent to move out of the residence, circle the "do not" response at line 3.

If the court orders the respondent to move out, the court may allow the respondent to return to your residence, on one occasion only, accompanied by a peace officer, to remove the "essential personal effects" (clothes or other necessary or important personal property) of the respondent. "Essential personal effects" include, but are not limited to, such important personal items as clothing, toiletries, medications, social security cards, birth certificates, identification, tools of the trade, etc. It does NOT include property items such as televisions, furniture, etc.

M. Signature

Line 16. DO NOT SIGN THE PETITION YET. The petition is a sworn statement. You should sign your name in the blank at line 16 ONLY in front of a notary public or a court clerk. Clearly print or type your name on the line below your signature.

Lines 18 through 24. The notary public or court clerk will fill in these lines.

Lines 25 through 27. If you sign and complete this form yourself, print or type your name, address, and telephone number, and check the blank next to "Petitioner." You may use a contact address and contact telephone number if you need to keep your residence address and telephone number confidential. Please note that for the purposes of the forms in this packet, "address" means a residence, mailing, or contact address in the same state as your home (the place where you live.) (If your attorney completes this form, your attorney will mark the "Attorney" blanks and will fill in his or her Oregon State Bar number, along with his or her name, address, and telephone number.)

VI. FILLING OUT THE RESTRAINING ORDER (FORM 2)

The Restraining Order is the official court document which orders the person named in the order, the "respondent," to stop threatening or abusing you. The instructions below describe each paragraph in the Restraining Order form. You will be checking the blanks to the left of the paragraphs which have the language you would like the Restraining Order to contain. If the judge grants your request, he or she will initial the appropriate paragraphs on the right side of the Restraining Order form and then will sign the form at the bottom.

PAGE 1.

A. Caption (Heading at Top of Form)

Fill in the blank spaces of the caption in the same way as you did for the caption of the petition (Form 1). The directions are on pages 4 and 5 of these instructions.

B. Judge's Findings

Do not fill in lines 17 through 22; the court will complete this section.

C. Section 1. Under the Elder Abuse Prevention Act, "intimidate" means to compel or deter conduct by threat; "molest" means to annoy, disturb, or persecute, with hostile intent or injurious effect; "interfere" means to interpose in a way that hinders or impedes; and "menace" means to act in a threatening manner.

If you want the respondent prohibited from abusing, intimidating, molesting, interfering with or menacing you, or attempting to abuse, intimidate, molest, interfere with, or menace you, check the box at the left on line 25.

PAGE 2.

- D. Section 2.** If you want the respondent ordered by the court not to enter or attempt to enter your home, business or place of employment, school, or other place, check as many boxes as fit your situation at the left on lines 2 through 9. If you check "Other locations," be sure to write in the other place(s) you want the respondent prohibited from entering or attempting to enter. Include the addresses of those locations unless you need to withhold the addresses for safety reasons.
- E. Section 3.** If you want the respondent ordered by the court not to contact you or attempt to contact you by telephone or by mail, check the appropriate boxes at the left on lines 10 through 12.
- F. Section 4.** If you have the right to require the respondent to move from your residence (see pages 7 and 8 of these instructions), and you want the respondent to move, check the box at the left on line 13 and write in the address of the residence in the blank below.
- G. Section 5.** If you left some "essential personal effects" (clothes or other necessary or important personal property) at your residence, you may request that the court order a peace officer to accompany you to your residence, on one occasion only, to remove those essential personal effects. "Essential personal effects" include, but are not limited to, such important personal items as clothing, toiletries, medications, social security cards, birth certificates, identification, tools of the trade, etc. When you return to your residence with the peace officer, the peace officer may remain for up to 20 minutes; however, the peace officer may temporarily stop the removal of any property at any time.
- If you want the court to order a peace officer to accompany you to your residence to pick up these things, check the box at the left on line 19.
- H. Section 6.** The judge might use Section 6 to include other conditions in the Restraining Order the judge considers necessary to provide for your safety and welfare. If there are other conditions you would like the court to include in the Restraining Order, check the box at the left on line 23, and write in those items in the blanks at lines 23 through 25.
- I. Section 7.** If you believe that the respondent will be present in court at the first hearing and will therefore receive a copy of the Restraining Order at that hearing, check the box at the left on line 26. If the respondent does in fact appear in court at the first hearing and the judge initials Section 7 at the right margin of the Restraining Order, you will NOT need to serve the respondent with the Restraining Order and other papers again. Please see Section XIII. "Serving the Respondent" on page 14 of these instructions for more details.

PAGE 3.

Lines 1 through 19. Do not fill in these lines; the court will complete this section.

Lines 20 through 24. If you sign and complete this form yourself, print or type your name, address, and telephone number, and check the blank next to "Petitioner." You

may use a contact address and contact telephone number if you need to keep your residence address and telephone number confidential. (If your attorney completes this form, your attorney will mark the "Attorney" blanks and will fill in his or her Oregon State Bar number, along with his or her name, address, and telephone number.)

PAGE 4.

J. Relevant Data

Page 4. Under the heading "RELEVANT DATA" fill in the requested information on page 4 of the Restraining Order form.

This information helps the sheriff (or other person) identify the respondent when the person serves the order and helps police officers identify both you and the respondent when they enforce the order. You can also attach a photograph of the respondent to help the sheriff (or other person) identify the respondent.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the court and sheriff can reach you if necessary. You are responsible for making sure that all papers delivered to your contact address or agent are actually delivered to you. **YOU MUST NOTIFY THE COURT OF ANY CHANGE OF ADDRESS.**

VII. FILLING OUT THE NOTICE TO RESPONDENT/REQUEST FOR HEARING (FORM 3)

The purpose of the "Notice To Respondent/Request for Hearing" form (Form 4) is to give the respondent important information about the Restraining Order. This form must be attached to the copy of the Restraining Order served on the respondent.

A. Caption (Heading at Top of Form)

Lines 7 through 9. Write in your name and your date of birth.

Lines 11 through 13. Write in respondent's name and date of birth. When the clerk gives you a case number, write in the case number at the right on line 11.

B. The Rest of the Form

Do not fill in the rest of the form. The respondent can use this form to request a hearing. If the respondent requests a hearing, the court will notify you of the date and time of the hearing and will send you a copy of the respondent's hearing request.

VIII. FILLING OUT THE PETITIONER'S CERTIFICATE OF DOCUMENT PREPARATION FORM (FORM 4)

If one or more of the completed forms in this packet do not bear the name and bar number of an attorney, you must complete and give to the court the "Petitioner's Certificate of Document Preparation" form (Form 4), along with the rest of the papers you file.

A. Caption (Heading at Top of Form)

Lines 7 through 10. Fill in the caption the same way as directed in these instructions at pages 4 and 5.

B. The Rest of the Form

Line 14. If you selected and completed the forms yourself without paid assistance and without assistance from an attorney, check the blank at line 14.

Lines 15 and 16. If you paid or will pay money to another person who is not an attorney for assistance in preparing all the attached forms, check the blank at line 15 and write in that person's name.

Lines 17 through 19. If you paid or will pay money to another person who is not an attorney for assistance in preparing some but not all of the attached forms, check the blank at line 17, write in the name of that person, and then list the documents that person helped you with. If you paid more than one person to assist you in preparing the forms, please indicate who helped you with which forms.

Lines 21 through 25. Sign your name, write in the date, then type or print your name below. Fill in your address or contact address and telephone number.

IX. FILING YOUR PAPERS WITH THE COURT

A. Signing

After you have completed the "Petition for Restraining Order to Prevent Elder Abuse" (Form 1), the "Restraining Order" (Form 2), portions of the "Notice to Respondent/Request for Hearing" form (Form 3), and the "Petitioner's Certificate of Document Preparation" form (Form 4) as described above, take these forms to the court clerk. If you have not yet signed the Petition, ask the clerk to watch you sign the Petition and to "acknowledge" (notarize) your signature.

B. Case Number

When the clerk gives you a case number, be sure that the case number is written in the blank at the top right of each form.

C. Copies

The clerk will make the necessary number of certified true copies of the papers at no charge.

X. THE FIRST HEARING

The court is required to hold a hearing on the date you file your petition or on the next day the court is open for business. The hearing will be held in the courthouse or, in some courts, by telephone. The clerk will give you instructions about your hearing. The respondent usually is not present at this hearing. At the hearing you can have witnesses to the abuse or adult protective services workers who have conducted an investigation testify concerning the abuse that you are complaining of.

If you have a disability and need special help at the hearing or you are unable to speak English and need a foreign language interpreter at the hearing, you must notify the clerk immediately. You will need to tell the clerk specifically what type of disability you have or which language you speak and what type of assistance you need or prefer.

XI. SERVING THE RESPONDENT

If the court grants a Restraining Order, "true" copies of the Restraining Order and the Petition must be "served on" (personally delivered to) the respondent to inform the respondent that the Restraining Order exists and to tell the person what the court has ordered. The sheriff's office will serve the papers on the respondent unless you elect to have the respondent served personally by a private process server. Additionally, in some limited circumstances, a peace officer who is called to the scene of a domestic disturbance may serve the Restraining Order and Petition on the respondent. You, the petitioner, cannot serve the respondent.

There is no service fee when the sheriff's office serves the order. If you arrange to have a private process server serve the papers, you will need to pay any fees to that person. You may be able to recover any service fees you pay from the respondent. If the respondent is not a resident of the state of Oregon, you (petitioner) are responsible for forwarding the certified copies to the proper agency for service.

If the respondent was present at the first hearing and received a copy of the papers at the hearing, the court might decide that no further service is necessary. If that occurred, look at item 7 on page 2 of the Restraining Order (Form 2) to see if the judge initialed that paragraph. If so, the respondent does not need another copy of the papers, and you can skip to the next section of these instructions, Section XIV. "What Happens After the Restraining Order is Served."

A. Service by Sheriff

The law requires the court clerk to have a set of "true" copies of the papers delivered to the sheriff's office to be served on the respondent. However, you may deliver the papers

to the sheriff. Let the court clerk know if you are willing to deliver the papers to the sheriff's office. If the sheriff's office serves the papers, that office will furnish the court with the proper proof of service.

If the sheriff cannot serve the respondent within ten days after accepting the Restraining Order and Petition, the sheriff will notify you by mail. You then have ten days to give the sheriff's office additional information to help the sheriff find and serve the respondent. If you do not respond within ten days of the sheriff's notice to you, the sheriff will hold the Restraining Order and Petition for future service and file a return with the court clerk showing that service was not completed.

B. Private Service

The Restraining Order and Petition can be served by someone other than the sheriff. Any person (except yourself, your attorney, or your employee) who is mentally competent, 18 years of age or older, and a resident of Oregon or the state of service may serve the papers. If you have someone other than the sheriff serve the papers, be sure that:

- (1) the person who served the respondent completes an "Affidavit of Proof of Service" and signs it only in front of a notary public or the court clerk;
- (2) the notary public notarizes or court clerk "acknowledges" the signature of the person signing the affidavit; and
- (3) the Affidavit of Proof of Service is filed with the court clerk.

If you have a friend or other person serve the Order, that person should follow the instructions to fill out the "Affidavit of Proof of Service" form after the person serves the Restraining Order on the respondent:

XII. WHAT HAPPENS AFTER THE RESTRAINING ORDER IS SERVED

A. Entering the Restraining Order Into the Police Computer

If the sheriff serves the papers on the respondent, the sheriff will enter the information from the Restraining Order into the police computer. After the information is entered in the police computer, police anywhere in the state can find out about the Restraining Order. If you have the papers served by someone other than the sheriff's office, or the respondent received the papers at the first hearing, the sheriff will not get a copy of the Restraining Order and will not enter the information into the police computer until the court clerk notifies the sheriff that the respondent has been served with a copy of the Restraining Order.

If the sheriff decides that the Restraining Order and Petition are incomplete, the sheriff will return the papers to the court clerk. The court clerk then will notify you by mail concerning the error or problem.

B. The Respondent's Right to Ask for a Hearing

Within 30 days after the order is served, the respondent (the person the court ordered to be restrained) has the right to ask for a hearing on the Restraining Order. The respondent may request a hearing by filling out the "Respondent's Request For Hearing" portion of the "Notice To Respondent/Request for Hearing" form (Form 3) and filing that form with the court clerk.

If the respondent requests a hearing, the court clerk will supply you with a copy of the respondent's request for hearing and notify you of the date and time of the hearing. The hearing will be held within 21 days of the respondent's request. If the respondent is represented by an attorney, time for the hearing may be extended for up to 5 days at your request so that you may seek representation.

Both you and the respondent should be present at the hearing. If the respondent does not appear, the order will most likely remain in effect. **If you (the petitioner) do not appear, the order may be canceled.**

If a hearing is held, the hearing need not be limited to the issues (information) the respondent raised (brought up) in the request for hearing form. However, if the respondent raises issues at the hearing that were not previously raised in the request for hearing form, you are entitled to a reasonable continuance to allow you additional time to prepare a response (answer) to the new issues that the respondent has raised.

If you are represented by an attorney, you may be able to recover your attorney fees and costs from the respondent. Likewise, the respondent's attorney fees and costs could be assessed against you in certain circumstances.

At the hearing the judge may modify (change) the Restraining Order, terminate (end) it, or leave it as it is. The Restraining Order remains in effect for one year unless it is ended earlier by the court at your request or unless the court renews it at your request.

C. Enforcement of the Restraining Order

If the police have probable cause (good reason) to believe that the respondent has violated (disobeyed) the Restraining Order, they must arrest the respondent. It is not always necessary that the police see a violation of the Restraining Order before making an arrest. They can often arrest based on other reliable information available to the police. You also can ask the district attorney to prosecute (bring legal charges against) the respondent for violating a Restraining Order. Unless you terminate (end) the Restraining Order or until it ends after the one year, the police may arrest the respondent even if you call the police to report that respondent has violated the order and then change your mind, or even if someone else calls about a violation, or even if police see you and respondent together.

XIII. FILLING OUT THE PETITIONER'S MOTION AND ORDER OF DISMISSAL (FORM 5)

You have the right to ask the court to end a Restraining Order early.

A Restraining Order under the Elder Abuse Prevention Act is in effect (lasts) for one year (365 days) from the date the judge signs it. If you want the Restraining Order to end before the year's time is up, use the form called "Petitioner's Motion and Order of Dismissal" (Form 5). You do NOT need to fill out this form at the time you fill out and file the other forms to ASK for a Restraining Order.

A. Caption (Heading at Top of Form)

Lines 7 through 10. Fill in the caption in the same way you did for the original Petition form, as directed on pages 4 and 5 of these instructions. Include the case number on line 10.

B. Rest of the Form

Line 14. Fill in your name as you have it listed in the caption.

Line 16. **DO NOT SIGN THE MOTION AND ORDER OF DISMISSAL YET.** This document must be notarized. You should sign your name in the blank at line 16 **ONLY** in front of a notary public or a court clerk. After you sign your name, clearly print your name on the line below.

Lines 18 through 21. The notary public or court clerk will fill in these lines.

Lines 23 through 28. Do not fill in these lines; the court will complete this section.

Line 29 to the bottom of the page. Skip down to the bottom of the form. If you sign and complete this form yourself, print or type your name, address, and telephone number, and check the blank next to "Petitioner." You may use a contact address and telephone number if you need to keep your residence address and telephone number confidential. (If your attorney completes this form, your attorney will mark the "Attorney" blanks and will fill in his or her Oregon State Bar number, along with his or her name, address, and telephone number.)

If an attorney did not prepare or assist you to complete this form, you must also complete and give to the court the "Certificate of Document Preparation" form (Form 5) included in this packet. Please refer to Section IX. "Filling Out the Certificate of Document Preparation (Form 5) at page 12 of these instructions.

Present the "Petitioner's Motion and Order of Dismissal" form (Form 7) and, if applicable, the "Petitioner's Certificate of Document Preparation" form (Form 5) to the court clerk.

Once the judge has signed the "Petitioner's Motion and Order of Dismissal" form (Form 7), the court clerk will send a copy to the sheriff's office. You must give or mail a

copy to the respondent. The sheriff's office will take the information about the Restraining Order out of the police computer, and the police will no longer enforce the Restraining Order.

XIV. CONTINUING OR CHANGING THE RESTRAINING ORDER

A restraining order under the Elder Abuse Prevention Act is effective (lasts) for a period of one year (365 days) from the date it is signed (unless it is ended earlier at your request). You may continue the Restraining Order beyond one year if you request the court to renew the order for another year. You may also ask the court to change (amend) the Restraining Order. The court clerk has forms and instructions for you to use if you want to continue the Restraining Order.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

| | | |
|--------------------------------------|---|------------------------|
| _____ |) | |
| Petitioner (your name) |) | PETITION FOR |
| |) | RESTRAINING ORDER |
| vs. |) | TO PREVENT ELDER ABUSE |
| |) | |
| _____ |) | No. _____ |
| Respondent (person to be restrained) |) | |

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CONTEMPT OF COURT.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the court and the sheriff can reach you if necessary.

ATTACH ADDITIONAL PAGES IF NECESSARY.

I am the Petitioner and I state that the following information is true:

I am a resident of _____ County, state of Oregon.

Respondent is a resident of _____ County, state of _____.

I am 65 years of age or older. I am _____ years of age.

1. CHECK AND FILL OUT OR CIRCLE THE SECTION(S) that apply to you and respondent:

- ___ A. Respondent and I have been living together since _____, 19__.
- ___ B. Respondent and I lived together from _____, 19__, to _____, 19__.
- ___ C. I have been under the care of respondent since _____, 19__.
- ___ D. I was under the care of respondent from _____, 19__, to _____, 19__.
- ___ E. My relationship with respondent is _____.

1 2. To qualify for a restraining order, respondent must have done one or more of the following:

2 Within the last 180 days, respondent has:

- 3 ___ A. Caused me physical injury by other than accidental means.
- 4 ___ B. Caused me physical harm by withholding services necessary to maintain my health and well-being.
- 5 ___ C. Abandoned or deserted me by withdrawing or neglecting to perform duties and obligations.
- 6 ___ D. Willfully inflicted me with physical pain or injury.
- 7 ___ E. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion,
- 8 threats, cursing, intimidation or inappropriate sexual comments of such a nature as to place me in
- 9 fear of significant physical or emotional harm.

10 3. Any period of time after the abuse occurred during which respondent was incarcerated (in jail or prison) or lived
11 more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for
12 a restraining order.

13 Respondent was incarcerated from _____, 19____, to _____, 19____.

14 Respondent lived more than 100 miles from my home from _____, 19____, to
15 _____, 19____.

16 4. Did the abuse happen within the last 180 days not including the times respondent was incarcerated (in jail or
17 prison) or lived more than 100 miles from your home? Yes No

18 Date and location of abuse: _____
19 _____

20 How did respondent injure or threaten to injure you?
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____

- 1 5. Are there incidents other than those described in question 4. above in which respondent injured or threatened to
2 injure you? If yes, explain: _____
3 _____
4 _____
- 5 6. The abuse I am complaining about was witnessed by _____
6 _____ (affidavit attached). Other persons with knowledge of the abuse are _____
7 _____ (affidavit attached).
- 8 7. I am in immediate and present danger of further abuse by respondent because: _____
9 _____
10 _____
11 _____
- 12 8. In any of the above incidents:
13 Were drugs, alcohol, or weapons involved? Yes No
14 Did you need medical help? Yes No
15 Were the police or the courts involved? Yes No
- 16 If you have circled yes to any of the above questions, explain: _____
17 _____
18 _____
- 19 9. A. There (is) (is not) another Elder Abuse Prevention Act or Family Abuse Prevention Act proceeding
20 pending between respondent and me. It is filed in _____ (County), _____
21 (State), and I am (Petitioner) or (Respondent) in that case.
22 The case number of the case is: _____
- 23 B. There (is) (is not) another lawsuit pending between respondent and me for divorce, annulment, or
24 legal separation.
25 If yes, type of lawsuit: _____
26 It is filed in _____ (County), _____ (State).

1 10. Respondent may be required to move from your residence if it is in your sole name, or if it is jointly owned or
2 rented by you and respondent, or if you and respondent are married.

3 I (do) (do not) want respondent to move from my residence.

4 My residence is: Owned Leased Rented

5 By: _____

6
7 PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S REQUEST"
8 COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

9 _____

10 PETITIONER MUST NOTIFY THE COURT OF ANY CHANGE OF ADDRESS.

11 ALL NOTICES OF HEARING WILL BE SENT TO THIS ADDRESS AND DISMISSALS
12 MAY BE ENTERED IF YOU DO NOT APPEAR AT A SCHEDULED HEARING.

13 If you wish to have your residential address or telephone number withheld from respondent, use a contact
14 address and contact telephone number so the court and the sheriff can reach you if necessary.

15

16 _____
Signature of Petitioner

17 _____
Print or Type Name of Petitioner

18

19 STATE OF OREGON)
County of Deschutes) ss.
20)

21 SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19____,

22 by _____
(Print Name of Petitioner)

23

24 _____
NOTARY PUBLIC FOR OREGON/COURT CLERK
My commission expires: _____

25

26 Submitted by: _____
Print Name
____ Petitioner
____ Attorney for Petitioner
OSB No. _____

27 _____
Address or Contact Address
____ City _____ State _____ Zip

Telephone or Contact Telephone Number(s)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

| | | |
|--------------------------------------|---|------------------------|
| _____ |) | |
| Petitioner (your name) |) | RESTRAINING ORDER |
| |) | TO PREVENT ELDER ABUSE |
| vs. |) | |
| |) | No. _____ |
| _____ |) | |
| Respondent (person to be restrained) |) | |

TO THE RESPONDENT:

VIOLATION OF THIS RESTRAINING ORDER MAY RESULT IN YOUR ARREST AND IN CIVIL AND/OR CRIMINAL PENALTIES.

REVIEW THIS ORDER CAREFULLY. EACH PROVISION MUST BE OBEYED.

SEE YOUR RIGHTS TO A HEARING.

The court, having reviewed the petition, makes the following findings:

JUDGE'S INITIALS

- ___ Petitioner has been abused by respondent as defined by ORS 124.005;
- ___ The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS 124.010;
- ___ There is an immediate and present danger of further abuse to petitioner;

IT IS HEREBY ORDERED that:

Petitioner's Request

JUDGE'S INITIALS

- 1. Respondent is restrained (prohibited) from abusing, intimidating, _____
molesting, interfering with or menacing petitioner, or attempting to
abuse, intimidate, molest, interfere with or menace petitioner.

1 Petitioner's Request

JUDGE'S INITIALS

2 2. Respondent is restrained (prohibited) from entering or attempting _____

3 to enter: (Include names and address unless withheld for safety reasons.)

4 Petitioner's residence. _____

5 Petitioner's business or place of employment. _____

6 _____

7 Petitioner's school. _____

8 Other locations: _____

9 _____

10 3. Respondent is restrained (prohibited) from:

11 Contacting, or attempting to contact, petitioner by telephone. _____

12 Contacting, or attempting to contact, petitioner by mail. _____

13 4. Respondent shall move from and not return to the residence located _____

14 at _____ except with a

15 peace officer in order to remove essential personal effects of the

16 respondent, including, but not limited to: clothing, toiletries,

17 medications, social security cards, birth certificates, identification,

18 and tools of the trade.

19 5. A peace officer shall accompany the petitioner to the parties' residence _____

20 in order to remove essential personal effects of petitioner,

21 including, but not limited to: clothing, toiletries, medications, social

22 security cards, birth certificates, identification, and tools of the trade.

23 6. Other relief: _____

24 _____

25 _____

26 7. No further service is necessary because respondent appeared in _____

27 person before the court.

1 IT IS FURTHER ORDERED that:

2 SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000 unless otherwise
3 specified.

4 Other Amount (\$)

5
6 THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR A PERIOD OF ONE
7 YEAR OR UNTIL THE ORDER IS AMENDED OR DISMISSED, WHICHEVER OCCURS FIRST.

8
9 IT IS HEREBY ORDERED that:

10 The Petition for Restraining Order to Prevent Elder Abuse is ___granted ___denied ___dismissed.

11 _____
12 _____
13 _____.

14
15 DATED this _____ day of _____, 19__.

16
17 _____
18 JUDGE (Signature)

19 _____
20 Print, Type or Stamp Name of Judge

21 Submitted by: _____

22 Print Name
23 ___ Petitioner
24 ___ Attorney for Petitioner
25 OSB No. _____

26 _____
27 Address or Contact Address

City _____ State _____ Zip _____

Telephone or Contact Telephone Number(s) _____

1 **RELEVANT DATA**

2 RESPONDENT _____ Sex _____ Telephone # _____
3 Residence Address _____
4 City/State/Zip _____ County _____
5 Birth Date _____ Age _____ Race _____
6 Height _____ Weight _____ Hair Color _____ Eye Color _____

7 PETITIONER (you) _____ Sex _____ *Telephone # _____
8 *Residence Address _____
9 City/State/Zip _____ County _____
10 Birth Date _____ Age _____ Race _____
11 Height _____ Weight _____ Hair Color _____ Eye Color _____

12 *If you wish to have your residential address or telephone number withheld from respondent, use a contact
13 address and contact telephone number so the court and the sheriff can reach you if necessary.

14 **PLEASE FILL OUT THIS INFORMATION**
15 **TO AID IN SERVICE OF THE RESTRAINING ORDER**

16 Where is respondent most likely to be located?

- 17 Residence Hours _____
18 Employment Hours _____ Address: _____
19 _____
20 Other Hours _____ Address: _____
21 _____

22 Description of vehicle _____

23 Does respondent have any weapons or access to weapons? EXPLAIN: _____
24 _____
25 _____

26 Has respondent ever been arrested for or convicted of a violent crime? EXPLAIN: _____
27 _____
28 _____

29 Is there anything about respondent's character, past behavior, or the present situation that indicates that respondent
30 may be a danger to self or others? EXPLAIN: _____
31 _____
32 _____

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

_____)

Petitioner (your name))

(D.O.B. _____))

vs.)

_____)

Respondent (person to be restrained))

(D.O.B. _____))

NOTICE TO RESPONDENT/
REQUEST FOR HEARING
(Elder Abuse Prevention Act)

No. _____

THIS FORM MUST BE ATTACHED TO SERVICE COPY
OF RESTRAINING ORDER

TO RESPONDENT: A TEMPORARY RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AFFECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:

DESCHUTES COUNTY COURTS

1164 NW BOND

BEND, OR 97701

REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED, OR EXTENDED. Keep in mind that this order remains in effect until the court that issued the order amends or dismisses it. It may also be renewed upon good cause shown, regardless of whether there has been a further act of abuse. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless

1 a different amount is ordered by the court. Violation of this order constitutes contempt of court and is punishable by a fine of up to
2 \$500 or 1 percent of your annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may
3 be imposed.

4
5 **REQUEST FOR HEARING**

6 I am the Respondent in the above-referenced action and I request a hearing
7 to contest all or part of the order as follows (mark one or more):

8 The order restraining me from contacting or attempting to contact
9 the petitioner.

10 Other _____
11 _____

12
13 I (will) (will not) be represented by an attorney at the hearing.

14
15 Notice of the time and place of the hearing can be mailed to me at the address below my signature.

16
17 You are required to truthfully complete the certificate below only if you completed this document without the
18 assistance of an attorney. I certify that: (check the blank that applies)

19
20 I selected this document for myself, and I completed it without paid assistance and without assistance
21 from an attorney.

22
23 I paid, or will pay, money to _____ for assistance in preparing
24 this document.

25
26
27 Date: _____

28 _____
Signature of Respondent

29 _____
Address or Contact Address

30 _____
City State Zip

Telephone or Contact Telephone Number(s)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

Petitioner (your name)
vs.

Respondent (person to be restrained)

PETITIONER'S CERTIFICATE
OF DOCUMENT PREPARATION
(Elder Abuse Prevention Act)

No. _____

You are required to truthfully complete this certificate regarding the document(s) you are filing with the court. Check or complete all blanks that apply:

___ I selected the attached form(s)/document(s) for myself, and I completed it/them without paid assistance.

___ I paid, or will pay, money to _____ for assistance in preparing the attached form(s)/document(s).

___ Other. (See instructions.) Name: _____

Documents: _____

Date: _____

Signature of Petitioner

Print or Type Name of Petitioner

Address or Contact Address

City State Zip

Telephone or Contact Telephone Number(s)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

| | | |
|--------------------------------------|---|------------------------------|
| _____ |) | |
| |) | |
| Petitioner (your name) |) | PETITIONER'S WAIVER OF |
| |) | PERSONAL SERVICE |
| vs. |) | (Elder Abuse Prevention Act) |
| |) | |
| _____ |) | No. _____ |
| |) | |
| Respondent (person to be restrained) |) | |

In order to maintain the confidentiality of my residential address, I hereby waive my right to personal service if I am subsequently charged with contempt. I am giving the following contact address for service of process and select the following method of substituted service: (Check ONE blank only.)

_____ Mailing address: _____

_____ Business address: _____

_____ Specified agent: _____

| | | | |
|-------|----------------------------------|-------|------|
| _____ | Signature of Petitioner | _____ | Date |
| _____ | Print or Type Name of Petitioner | | |

Submitted by: _____

Print Name
 ___ Petitioner
 ___ Attorney for Petitioner
 OSB No. _____

Address or Contact Address

City State Zip

Telephone or Contact Telephone Number(s)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

| | |
|--|------------------------------|
| _____) | |
| Petitioner (your name)) | PETITIONER'S MOTION AND |
| vs.) | ORDER OF DISMISSAL |
| _____) | (Elder Abuse Prevention Act) |
| Respondent (person to be restrained)) | No. _____ |

MOTION

Comes now petitioner, _____, and moves this court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order to Prevent Elder Abuse on file herein.

Signature of Petitioner

Print or Type Name of Petitioner

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19____, by _____
(Print Name of Petitioner)

NOTARY PUBLIC FOR OREGON/COURT CLERK
My Commission Expires: _____

ORDER

___ Motion Granted. ___ Motion Denied.

IT IS SO ORDERED this ___ day of _____, 19___.

JUDGE (Signature)

Print, Type or Stamp Name of Judge

Submitted by: _____

Print Name _____

___ Petitioner

___ Attorney for Petitioner

OSB No. _____

Address or Contact Address

City State Zip

Telephone or Contact Telephone Number(s)