

THE BRIEF

February 2020

An electronic update for the legal community providing a brief look at news in Eau Claire County Courts.

~ Temporary Restraining Orders and Injunctions ~

Forms for restraining orders based on domestic abuse, child abuse, harassment, and individuals at risk as well as additional information is available in the Clerk of Court office or www.wicourts.gov

~ Firearm Restrictions relating to Protective Orders ~

Wisconsin law prohibits the possession of firearms by individuals who are subject to a domestic abuse or child abuse injunction. A person who is subject to an individual at risk or harassment injunction is also prohibited if ordered not to possess a firearm as a condition of an injunction by the Court. §813.1285(2)

If the **respondent is present at the injunction hearing**, the court shall stay the injunction for a period not to exceed 48 hours for purposes of firearm surrender. §813.1285(2)

If the **respondent is not present at the injunction hearing**, the Court shall provide the petitioner with the opportunity to inform the court orally or in writing:

1. If the petitioner believes the respondent owns a firearm; and
2. The Court shall request the petitioner to inform the Court how many firearms the respondent owns, the make and model of any firearm, and the location of any firearm.

After taking testimony from the petitioner, **the court can do one of the following:**

1. Schedule a firearms surrender hearing within one week of the injunction hearing, continue the stay of the injunction, and issue a surrender and extend order.
2. Schedule a firearms surrender hearing within one week of the injunction hearing, lift the stay of the injunction, and send the respondent notice of the hearing.
3. If the Court is satisfied that the respondent does not possess a firearm, the Court shall file any firearm possession form, lift the stay of the injunction, and dismiss the temporary restraining order. No firearm surrender hearing will be scheduled. §813.1285

~ Firearm Surrender Hearings ~ (§813.1285 (4)(b)1,2,3,4)

1. A Firearm surrender hearing must be held no more than 7 days after the issuance of an Injunction.
2. The only instance where the Respondent does not need to attend the hearing, is when they have properly surrendered their firearms to the Eau Claire County Sheriff's Dept. and they do not wish to have a 3rd party take possession of them for the duration of the Injunction.
3. If the Respondent does not appear and they have not surrendered their firearms to the Eau Claire County Sheriff's Dept. a warrant will be issued for their arrest.

~ Common Misconceptions about the Firearm Surrender process in Eau Claire County~

1. If the respondent gave their firearms to a third party prior to the Injunction hearing, they don't need to do anything further. **FALSE**
2. The respondent can surrender their firearms to the sheriff in their county of residence. **FALSE**
3. If the respondent wishes to have a third-party take possession of their firearms, they do not need to attend the firearm surrender hearing. **FALSE**

Once an injunction has expired or has been dismissed, the respondent can request the return of firearms by completing CV-433 Petition to Return Firearm and file this with the Clerk of Court. If approved by the Court, the respondent will need to contact the person holding their firearms to notify of this decision.

RETIREMENT NEWS: Annie Nelson retired from the Clerk of Court office effective January 31, 2020.