

Petitioning for an EPPDAPA protective order

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Oregon's Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA), ORS 124.005 to 124.040, provides elders and their advocates with a powerful tool to both correct abuse and prevent future abuse. As part of an EPPDAPA order a court may require, among other relief, that an abuser vacate the victim's home, refrain from contacting the victim, return the victim's money or property, or make other orders necessary to provide for the safety and welfare of the victim. ORS 124.015; ORS 124.020. This article will provide a basic overview of the requirements, petition, initial hearing, and a few practical considerations in EPPDAPA restraining order proceedings.

The petitioner

As the full title suggests, to make use of EPPDAPA, the victim must be an "elderly person," i.e., 65 years of age or older, or a person with a disability as defined under ORS 410.040(7) or provided by ORS 410.715. Though EPPDAPA protects more than just Oregon's elders, they will be the focus of this article. Do not forget, however, that this relief may be available in other situations, for example when disabled people are victims of abuse.

A victim who meets this requirement may petition the court for relief under EPPDAPA. In many scenarios the elderly victim may not be capable of completing and filing the petition, much less appearing before the court. ORS 124.010(1)(b) allows that the petition may be filed by the elder victim, their guardian if one has previously been appointed, or a guardian ad litem. ORS 124.020(3) further allows that the showing required to obtain an EPPDAPA order may be made by the victim, their guardian or guardian ad litem, witnesses to the abuse, or an adult protective services worker who investigated the abuse. In any case, the victim is referred to as the petitioner. If the petition is filed by a guardian or guardian ad litem, they are referred to as the guardian petitioner.

The abuse

To obtain relief under EPPDAPA the petitioner must show that they were the victim of at least one incident of abuse committed by the respondent within 180 days prior to the date the petition is filed. ORS 124.020(1).

Abuse is defined under ORS 124.005(1), and includes:

- non-accidental physical injury
- neglect
- abandonment
- willful infliction of physical pain or injury
- verbal abuse
- the wrongful taking of the victim's money or property, or threatening to do so
- sexual abuse

Also included is "persistent sweepstakes offerings," defined as:

Causing any sweepstakes promotion to be mailed to an elderly person or a person with a disability who had received sweepstakes promotional material in the United States mail, spent more than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.

Neglect on which an EPPDAPA petition is based must have resulted in physical harm by withholding necessary services for health and well-being. For example, terminating or interfering with the caregiver of a person with capacity issues can result in the unsupervised individual leaving their home and being injured by falling, wandering into traffic, or encountering a stray or wild animal.

Abandonment is the desertion or forsaking of duties owed to the victim by a caregiver or other person.

ORS 124.005(1)(e) provides examples of actionable verbal abuse, and also includes a catchall for other "conduct of such a nature

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as to threaten significant physical or emotional harm” that can be helpful when an incident of abuse does not quite fit any other provision.

Incidents of abuse that occurred more than 180 days prior to the filing of the petition are not actionable in and of themselves but can still be helpful in satisfying the next element, which is the risk of further abuse.

Risk of further abuse

In addition to actual abuse committed within the prior 180 days, to succeed a petitioner must also show that the respondent represents an immediate and present danger of further abuse to the victim. ORS 124.010(1)(a). See also *M.E.D. v. Rohrbach*, 257 Or.App. 523 (2013); *D.R.S. v. Baker*, 296 Or.App. 96 (2019).

Purely anecdotally, this is where many EPPDAPA petitioners likely fail. It is not enough to show that abuse occurred, no matter how egregious. One of the key purposes of an EPPDAPA order is to prevent future abuse. If there is no danger of future abuse, an EPPDAPA order is not appropriate and should not be granted.

As mentioned above, however, one way to potentially make this showing is to demonstrate a history of abuse, including even incidents of abuse that may have occurred beyond the 180-day window in which they could themselves be actionable under EPPDAPA. In the face of such a history, the court might reasonably infer that the respondent represents an “immediate and present danger of further abuse” to the victim.

Completing the petition

Restraining-order petitions are often prepared and filed by self-represented parties. Given the urgency these proceedings are intended to address, as a matter of ensuring access to justice the forms center of the Oregon Judicial Department (OJD) provides detailed instructions and forms for both petitioners and respondents. <https://www.courts.oregon.gov/programs/family/domestic-violence/Pages/elderly-abuse.aspx>.

The petition may be filed in the circuit court of a county in which either the petitioner or respondent resides. ORS 124.012. Use of the standard forms is strongly recommended, as it allows quick review by clerks and judges for the necessary information in the format with which they are already familiar. Be aware that the packet includes more than just the petition. There are items to be completed by the petitioner (or guardian petitioner) on other documents, as well — the order, for example. With the detailed instructions provided by the OJD informational packets, it is common practice among attorneys to provide the OJD packet and allow the client to complete the forms, followed by the attorney’s review, correction, and supplementation. Any relevant exhibits should be appended to the petition as it will be filed.

Appointment of a guardian ad litem to act as guardian petitioner is done by motion completed and filed contemporaneously with the petition. Both the OJD website and court clerks have a form of motion available. Even where a guardian has been appointed, be aware that some clerks may still recommend or even require the guardian ad litem motion be completed and filed with the packet.

Filing the petition

There is no filing fee for an EPPDAPA petition. ORS 124.020(7)(d). Some Oregon circuit courts require the petition to be filed conventionally, rather than electronically. The petition must also be filed before a particular time each morning, so that it may be heard and considered by a judge the same day. The department in which the petition is filed varies by county, as well. The following table lists the basic filing requirements for Oregon’s five most populous counties.

County	E-filing OK?	Paper petition filed with	Filing Deadline	Hearing Time
Multnomah	No	Family Law Dept., 2nd floor	12:00 PM, but by 11:30 AM preferred	1:15 PM same day †
Washington	Yes	Room 103J	10:00 AM	1:00 PM same day
Clackamas	Yes*	Information desk	11:00 AM	1:00 PM same day
Lane	Yes	Information desk, 2nd floor	9:30 AM	10:30 AM same day
Marion	Yes	Family Law Dept.	10:30 AM	1:30 PM same day

* Clerks have provided conflicting information as to whether e-filing is allowed or if conventional filing is required.
 † Multnomah County also allows the initial hearing to be conducted remotely via telephone upon request, in which case the court will call the filer (petitioner or guardian petitioner) sometime between 1:15 PM and 4:00 PM the same day.

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Because it is an ex parte matter, it is also not uncommon for attorneys to allow clients of sufficient sophistication to file and appear at the initial hearing without counsel. If the petition indicates that it was prepared by an attorney or that the petitioner or guardian petitioner will be represented at the initial hearing, most counties will require that both the attorney and client be present to conventionally file a petition. Any particular court's filing and hearing details should be confirmed by contacting the court prior to filing.

The initial hearing

As mentioned above, the initial hearing is held ex parte, and must occur either the day the petition is filed or on the next judicial day. ORS 124.020(1). These hearings are usually conducted at the same time as hearings in other types of restraining-order matters. It goes without saying that the Oregon courts have limited judicial time for even these serious matters. As such, if the petition, on its face, makes the required showing, some judges may rule, granting the requested order, from chambers or take the bench only to ask a few questions. The conduct of the initial hearing will vary widely from court to court and even judge to judge.

Following the hearing, the judge will issue findings and either grant or deny the petition, indicating all of this on the form of order submitted with the petition. If the order is granted, the attorney or client should be sure to request a sufficient number of copies of the order and other documents that will be served on the respondent. At minimum, copies should be requested for the attorney, the client, and the respondent, plus one for the petitioner if the client filed as a guardian petitioner, and another (called the 911 copy) to be provided to facility security if the petitioner lives in a care facility and the order disallows the respondent from entering the property. If the respondent then visits the facility, security can call the police and show them the 911 copy. Police may then arrest the respondent if they had already been served, or serve them if they had not been previously.

Service

After the hearing, service copies for the respondent, and the petitioner (if filed by a guardian petitioner) should be taken immediately to the sheriff's office of the county where the court is located, to arrange for service. If service on the petitioner is required, it must occur within 72 hours of the grant of the order. ORS 124.024(4). When a party to be served is located in another county, the granting county's sheriff's office will help coordinate service with the other county.

Again, there is no fee for service by the sheriff. ORS 124.020(7)(d). The sheriff will file proof of service with the court. Service by a private party process server is an option, but also requires that a copy of the proof of service be provided to the sheriff. ORS 124.030.

Other issues

Following service, the respondent has 30 days within which to request a hearing to contest the order. ORS 124.020(9)(a). For orders obtained by a guardian petitioner, the petitioner may also contest the order.

A hearing requested by the respondent or petitioner must be held within 21 days of the request. ORS 124.015(1). If uncontested or affirmed following a contested hearing, an EPPDAPA order is effective for a period of one year from the date it was granted, unless amended or withdrawn sooner. ORS 124.020(1). Violations of the order may be reported to law enforcement and are punishable through criminal contempt proceedings under ORS Chapter 133.

Though EPPDAPA proceedings do not allow for the treble damages provided by a civil action for elder abuse under ORS 124.100, et seq., they should not be discounted as an option, especially when urgency may prevent wrongfully taken assets from being squandered by an otherwise "judgment-proof" abuser. ■

Elder Law CLE program available online

If you missed the annual Elder Law Section CLE program on October 7, 2022, you can still download it from the Oregon State Bar website.

Topics include planning strategies for Medicaid eligibility and estate recovery analysis, protection trusts and their tax planning considerations, Medicaid eligibility for unmarried partners, estate planning with estate recovery in mind, and maintaining Medicaid eligibility after a triggering event.

5.5 General CLE credits

Cost: \$200

Find it here: <https://ebiz.osbar.org/ebusiness/ProductCatalog/Product.aspx?ID=5663>