

Rule 5. Failure to Appear

(a) Bench warrants. The Court may issue a bench warrant if any party fails to appear in accordance with a (1) notice of hearing and order directing appearance which has been served on that party in accordance with Domestic Violence Unit Rule 3, or (2) notice to return to court signed by that party.

(b) Execution of bench warrants.

(1) Hearing following execution of a bench warrant. Upon execution of a bench warrant issued pursuant to section (a) of this rule, the Court shall hold a hearing no later than the next available court day. If a temporary protection order or civil protection order has previously been issued by the Court but not served upon the party, the party shall be served with a copy of the order in open court. The Court shall notify the respondent, in writing, of any subsequent hearing date and shall require the respondent to sign a notice to return to court.

(2) Release of respondent following execution of bench warrant. The Court may release the respondent after setting any non-monetary conditions of release deemed necessary to protect the safety or welfare of the petitioner and the petitioner's family, including, but not limited to the issuance of a temporary protection order requiring the respondent to avoid any contact with the petitioner or the petitioner's family. The subsequent hearing will be scheduled on or before the expiration date of any temporary protection order. The Court may release the respondent upon execution of a secured or an unsecured appearance bond, which will be set in an amount which will reasonably assure the appearance of the respondent.

(c) Failure of respondent to appear at hearing on petition for civil protection order. When the respondent fails to appear at a hearing on a petition for a civil protection order, after being served pursuant to Domestic Violence Unit Rule 3 with a notice of hearing and order directing appearance, or having signed a notice to return to court, the Court shall enter the respondent's default and may take ex parte proof of the allegations in the petition that day or set the matter for proof of the allegations at a later date. If the Court sets the matter down for proof on another date, the Court shall send notice of this hearing to the respondent. The Court may also issue a temporary protection order pursuant to Domestic Violence Unit Rule 7A, in which case the date set for hearing shall be prior to expiration of the temporary protection order.

(d) Procedure for ex parte default hearing. If, after a default has been entered pursuant to section (c) of this rule and an ex parte hearing has been held, the Court determines that there is good cause to believe that an intrafamily offense has been committed as alleged in the petition, the Court shall enter a civil protection order as a final order by default. The default order shall not be set aside unless, no later than ten (10) days after service of the civil protection order, in accordance with Domestic Violence Unit Rule 3, the respondent files a motion to vacate the default order, signed under oath, showing both good cause for the failure to appear and grounds which, if proved, would be sufficient to prevent the issuance of the civil protection order in whole or in part. The respondent shall serve the motion on petitioner in accordance with Domestic Violence Unit Rule 3. A hearing may be held on the motion to vacate.

(e) Procedure upon failure of the petitioner to appear. When the petitioner fails to appear at a hearing, the Court may dismiss the petition without prejudice, or may continue the case for further hearing.

COMMENT

Several factors may be considered in determining whether to hold a default hearing on the same day the default is entered or at a later date. These factors include, but are not limited to: (1) whether the relief sought is focused primarily on violence prevention, or whether it also includes more complex issues such as custody and child support; and (2) whether the Court has a reliable address for the respondent, or whether s/he is unlikely to actually receive the notice of a subsequent default hearing.