

# UMLS FOOTBALL CLE

## Injunctions in Montana

Prof. Cynthia Ford  
November 13, 2010

- **Injunction** – A court order commanding or preventing an action. *Black’s Law Dictionary*. Injunctions can be either positive (“Do it”) or negative (“Don’t do it”). In Montana, Title 27, Chapter 19 of the Montana Code Annotated is the primary authority on injunctions in general.
  - MCA § 27-19-101 – An injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court in which the action is brought or by a judge thereof and, when by a judge, be enforced as the order of the court.
  - “In a general sense, every order of a court which commands or forbids is an injunction; but in its accepted legal sense, an injunction is a judicial process or mandate operating *in personam* by which, upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. An injunction has also been defined as a writ framed according to the circumstances of the case, commanding an act which the court regards as essential to equity and good conscience; as a remedial writ which courts issue for the purpose of enforcing their equity jurisdiction; and as a writ issuing by the order and under the seal of a court of equity.” 1 Howard C. Joyce, *A Treatise on the Law Relating to Injunctions* § 1 at 2-3 (1909).
- **Type of Remedy: Equitable, not available when there is an adequate remedy at law**
  - “To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted.” *Black’s Law Dictionary*.
  - What distinguishes an injunction from other forms of relief is that it is an equitable remedy granting prospective, as opposed to retrospective, relief. *Jefferson v. Big Horn County*, 4 P.3d 26 (2000).

- An injunction is merely a process by which the court enforces equity, and it has not only power, but duty, to modify or annul an injunction as equity demands. *Santa Rita Oil Co. v. State Board of Equalization*, 116 P.2d 1012 (1941).
- **Types of Injunctions by Purpose**
  - Preventative: to prevent future wrong from occurring
  - Reparative: to repair future injury from wrong that has already occurred (staunch the blood flow)
  - Structural: to restructure institution to prevent constitutional violations; e.g. prisons or school districts
- **Types of Injunction by timing**
  - **Temporary Restraining Order (“TRO”)** – MCA § 27-19-314: Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is call a temporary restraining order.
    - Very short in duration
    - May be *ex parte*
    - Often an emergency setting
    - Court has very little time to hear evidence or consider law
    - No appeal to a higher court
    - Only remedy is to ask issuing court to vacate the TRO
  - A temporary restraining order is effective to maintain the status quo only for a reasonable time necessary to enable notice to be given for a hearing as to whether such order shall be made effective *pendente lite*, and cannot be continued in effect *pendente lite* without such notice and hearing. *State ex rel. McKenzie v. District Court of Fifteenth Judicial Dist. in and for Sheridan County*, 107 P.2d 885 (Mont. 1940).
  - Where only issue before district court at show cause hearing was necessity of a restraining order, any findings or conclusions of the court on that hearing would deal

only with that matter and would become moot when restraining order was complied with; thus, findings of fact and conclusions of law entered by district court on show cause hearing were not binding in a trial upon merits of lawsuit. *Sexton v. Adams*, 485 P.2d 947 (Mont. 1971).

- **Preliminary** – A temporary injunction that is issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case. *Black’s Law Dictionary*. A temporary injunction is a procedural device, interlocutory or provisional in nature, granted at commencement of an action before there can be a determination of rights of parties to preserve subject in controversy in its existing condition pending a determination; it does not determine merits of case or decide controverted facts, but preserves status quo pending adjudication on merits and seeks to prevent threatened wrong, further injury, and irreparable harm until rights of parties are adjusted. *Boyer v. Karagacin*, 582 P.2d 1173 (Mont. 1978).
  - Deciding the merits of a case is not the purpose of a temporary restraining order or preliminary injunction.
    - “The limited function of a preliminary injunction is to preserve the *status quo* and to minimize the harm to all parties pending full trial . . . prevents further injury or irreparable harm by preserving the *status quo* of the subject in controversy pending an adjudication on the merits.” *Yockey v. Kearns Properties, LLC*, 106 P.3d 1185, 1188-1189 (Mont. 2005).
  - Criteria for issuance of a preliminary injunction: MCA § 27-19-201 gives the criteria for when a preliminary injunction may be granted:
    - (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
    - (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15.

- “In *Van Loan*, this Court adopted a four-part test to determine “whether a preliminary injunction should issue when a party's monetary judgment may be made ineffectual by the actions of the adverse party thereby irreparably injuring the applicant. The moving party has the burden of proving these elements.” The test is: (1) the likelihood that the movant will succeed on the merits of the action; (2) the likelihood that the movant will suffer irreparable injury absent the issuance of a preliminary injunction; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party (a balancing of the equities); and (4) the injunction, if issued, would not be adverse to the public interest. *Van Loan*, 271 Mont. at 182, 895 P.2d at 617.” *Shammel v. Canyon River Resources Corp.*, 83 P.3d 912, 917 (Mont. 2003).
- Longer duration than a TRO
- Ends once the court enters final judgment in the case
- More leisurely procedure, and thus more time for informing the court of the parties’ positions than TRO
- A party need only satisfy one of the five disjunctive factors listed in MCA § 27-19-201 to obtain an preliminary injunction. *Cole v. St. James Healthcare*, 199 P.3d 810 (Mont. 2008).

- *Van Loan v. Van Loan*, 895 P.2d 614 (Mont. 1995). District court did not abuse its discretion in issuing preliminary injunction, in incest victim's tort action against his father, prohibiting father from transferring over \$1.5 million in Individual Retirement Account (IRA) and investment account assets, where father had threatened that he would move his assets out of victim's reach, father had admitted liability and stated that significant damages had occurred, father was imprisoned, and father did not identify any damage he would suffer as result of preliminary injunction. Rule that preliminary injunction may be issued prior to judgment to prohibit defendant's transfers of assets applies only in cases where party seeking money damages alleges that defendant is hiding or dissipating assets in such manner that money judgment will be ineffectual and/or plaintiff will be irreparably harmed.
  - *Smith v. Ravalli County Bd. of Health*, 679 P.2d 1249 (Mont. 1984). Property owners were not entitled to preliminary injunction to prevent neighbors from building their septic system where there was no evidence that owners' property would be damaged if system became operable, county regulations governing septic systems had been complied with and, even if regulations had not been complied with, it did not mean as a matter of course that septic system would contaminate owners' well.
- **Permanent** – An injunction granted after a final hearing on the merits. Also called perpetual or final injunctions. *Black's Law Dictionary*. See MCA § 27-19-102.
    - May be finite or infinite
    - Permanent because at the end of trial, after judge has heard and considered all, it is the final judgment
    - Appealable of right
      - Trial court did not abuse its discretion in permanently enjoining property owners from any further obstruction, encroachment, disturbance, or impairment of adjoining property owners' ditch easement; ditch encroachment is

prohibited by statute, and evidence supported finding that there was likelihood of future interference by property owners with easement. *Butler v. Germann*, 822 P.2d 1067 (1991).

- District court abused its discretion, as a matter of law, in granting property owners a permanent injunction against their neighbors preventing neighbors from irrigating their land; neighbors breached no obligation to owners. *Wells v. Young*, 47 P.3d 809 (2002).
- Licensed game farmers violated statute requiring Department of Fish, Wildlife and Parks (FWP) to approve transplantation of wildlife into the wild when they attempted to transfer approximately 500 elk to Indian reservation, and thus FWP was properly granted a permanent injunction to prevent the transfer. *Hagener v. Wallace*, 47 P.3d 847 (2002).
- **When an injunction of any sort may not be granted:**
  - MCA §27-19-103 lists 8 circumstances:
    - (1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;
    - (2) to stay proceedings in a court of the United States;
    - (3) to stay proceedings in another state upon a judgment of a court of that state;
    - (4) to prevent the execution of a public statute by officers of the law for the public benefit;
    - (5) to prevent the breach of a contract the performance of which would not be specifically enforced;
    - (6) to prevent the exercise of a public or private office, in a lawful manner, by the person in possession;
    - (7) to prevent a legislative act by a municipal corporation;
    - (8) in labor disputes under any other or different circumstances or conditions than if the controversy were of another or different character or between parties neither or none of whom were laborers or interested in labor questions.

- Despite statute barring an injunction to prevent the execution of a public statute by officers of the law for the public benefit, court could grant preliminary injunction in prohibiting hospital from reporting summary suspension of physician's privileges to the Montana Board of Medical Examiners (MBME) as mandated by federal statute; MBME, whether an “officer of the law” or not, was not a party to the case, and notification to MBME would merely trigger an inquiry and investigation, both of which could occur if physician failed to prevail on his claim in district court and the injunction was lifted. *Doe v. Community Medical Center, Inc.*, 221 P.3d 651 (2009).

- **Injunction Procedure –**

- MCA § 27-19-105. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall
  - (1) set forth the reasons for its issuance;
  - (2) be specific in its terms
  - (3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and
  - (4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
  
- *But see Rice v. Lanning*, 97 P.3d 580 (Mont. 2004). The original injunction in this case was issued against only the son, prohibiting him from operating a body shop on the land owned by his mother. She was also a defendant, but there was no jury finding against her. After the original injunction was issued (and actual notice of it given to both mother and son), the mother formed a sham corporation to operate a body shop on the same lot. The corporation’s only employee was the son. The trial court then entered a permanent injunction against both the mother and son. The Montana Supreme Court affirmed, holding: “A final or permanent injunction is a continuing process over which a court necessarily retains jurisdiction in order to do equity. . . . Pursuant to MCA 27-19-105(4), a non-party to an injunction may be enjoined if she is acting in active concert or participation with someone who is enjoined, provided she received actual notice of the injunction . . .”

- **TRO:**
  - Open a court file first
    - File complaint
    - Then, or at the same time, file motion for TRO
    - Support with briefs and affidavits
    - Certification that you have attempted to contact opponent
      - Father's sworn affidavit stating that temporary restraining order was necessary to prevent mother from removing children from the jurisdiction of the court, and alleging that mother had threatened to remove children from court's jurisdiction should father ever seek modification of custody order, was sufficient grounds for issuing temporary restraining order, apparently without a hearing or notice to the other side. MCA 40-4-220(1). *In re Marriage of Morazan*, 772 P.2d 872 (1989).
- **Preliminary injunction:**
  - Make a motion for preliminary injunction
  - Support with a brief on law
  - Support with affidavits on facts
- **Permanent injunction:**
  - Simply state in your prayer for relief that you request an injunction against the defendant to make her do or refrain from doing something specified
  - Produce evidence at trial that will justify court's entry of injunction, including the finding that there is not adequate remedy at law
- **How to write an injunction**
  - Cannot be broader than the violation found.
    - E.g. if only one store discriminated and there is no evidence of nationwide policy/violation, then you can only enjoin that one store, not the whole chain.
  - Has to be sufficiently specific so it will be easy to tell if the defendant violates it

- This gives the defendant clear notice of what is allowed and what is prohibited
  - *Guthrie v. Hardy*, 28 P.3d 467 (Mont. 2001). “[T]he court’s 1996 injunction, and 1999 order and judgment which reaffirmed the injunction, do not spell out which of the named parties to this action now carries the obligation to maintain the road, in particular the portion that crosses the Nine Mile Creek and enters the north-end of Section 12, which is not used by either the Guthries or the Krages as an access route. For example, it is not clear from the 1999 order and judgment whether Appellants Arno and Miller may maintain – but not “improve” or “expand” – the easement. Alternatively, it is not clear whether the Krages and Guthries must now – in the absence of any agreement between the parties – maintain the entire easement for the benefit of the Appellants’ use, however limited their use may be under the court’s order. Further it is not clear which of the foregoing parties has the burden of fronting the costs for repair and maintenance. In light of these lingering uncertainties, we conclude that the court’s injunction was not “specific in its terms” nor did it “describe in reasonable detail . . . the act or acts sought to be restrained” or specifically which parties would be bound as required under § 27-19-105, MCA. Obviously, the ultimate goal of the court was to equitably resolve this dispute once and for all. The parties here, however, have identified a potential issue for future dispute. Accordingly, we remand for the limited purpose of clarifying the issue of maintenance and repair on the entire easement road.” *Gutherie*, 28 P.3d at 477.
- **Appealability of Injunctions**
  - **TRO** – Not appealable; Only remedy is to ask issuing court to vacate.
    - M.R. App. P. 6(5)(f) – “Orders and judgments that are not appealable. Although not exhaustive, the following judgments and orders are among those that are not appealable: . . . (f) Interlocutory judgments, except as provided in sections (3)(j) and (6) of this rule.”
    - **What if the TRO injunction is wrong?**
      - You have to move for dissolution of TRO. *See* MCA § 27-19-401.

- You cannot violate the TRO and then use wrongfulness of the order issuing it as a defense because it would offend the rule of law
      - *Walker v. City of Birmingham*, 388 U.S. 307 (1967).
- **Preliminary Injunction** – Prior to 2007, an order granting or denying a preliminary injunction was appealable to the Montana Supreme Court:
  - “A district court’s refusal to grant an injunction is an appealable order. M.R. App. P. 1(b)(2).” *Benefis Healthcare v. Great Falls Clinic, LLP*, 146 P.3d 714, 717 (Mont. 2006).
  - *But see MCA § 27-19-401: Application to dissolve or modify injunction.* The party enjoined may apply to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad.
  - M.R. App. P 6(3)(e) (2007) – “(3) Order appealable in civil cases. In civil cases, an aggrieved party may appeal from the following, **provided that the order is the court’s final decision on the referenced matter:** (e) From an order granting or dissolving, or refusing to grant or dissolved, an injunction or an attachment.” (emphasis added).
  - Several post-2007 Montana Supreme Court cases rule on trial courts’ decisions granting or denying preliminary injunctions without any apparent concern that they are not appealable
    - *City of Whitefish v. Board of County Commissioners of Flathead County*, 199 P.3d 201 (Mont. 2008).
      - The city brought an action against the county seeking an injunction and declaratory relief after the county rescinded its consent to an interlocal agreement. The district court denied the city’s motion for injunction because it found the

interlocal agreement to be invalid and unenforceable. The city appealed this adverse ruling. The Supreme Court reversed holding the district court manifestly abused its discretion when it denied the injunction after improperly resolving the ultimate merits of the underlying case by declaring the agreement invalid. The Supreme Court also held the city was entitled to a preliminary injunction and remanded the case. The Court said nothing about the appealability of the denial of the injunction and stated the question presented as follows: “The dispositive issue on appeal is whether the District court erred in denying the City’s request for a preliminary injunction and by ruling on the underlying legal issue of the case.” *Id.* at 203.

- *Bitterrooters for Planning v. Board of County Commissioners of Ravalli County*, 189 P.3d 624 (Mont. 2008).
  - “Bitterrooters” sued the Board alleging the Board’s actions in releasing a proposed agreement to the public the day of the public hearing violated notice requirements. The Bitterrooters sued the Board for this alleged violation and sought a preliminary injunction enjoining implementation of the agreement. The district court denied the motion for the preliminary injunction, and the Bitterrooters appealed. The Supreme Court affirmed the denial. The issue before the Court was “. . . whether the District Court manifestly abused its discretion when it denied the Bitterrooters’ motion for preliminary injunction.” *Id.* at 627.
- *Cole v. St. James Healthcare*, 199 P.3d 810 (2008).
  - Dr. was put on restricted staff privileges. He asserted the actions that led to this violated the hospital bylaws, which he argued constituted a binding contract. He sought a preliminary injunction preventing the hospital from taking further adverse action against him. The district

court granted the injunction, and the hospital appealed. The Supreme Court affirmed the grant of the injunction without questioning its appealability. In fact, the Court held it was the only issue that was appropriate for appeal. “The only issue properly before this Court, however, is the propriety of the preliminary injunction issued by the District court.” *Id.* at 812.

- *Sandrock v. DeTienne*, 2010 MT 237.
  - “A district court's decision to grant or deny a preliminary injunction is “‘largely within the discretion of the district court.’” *Pinnacle Gas Resources, Inc. v. Diamond Cross Props., LLC*, 2009 MT 12, ¶ 12, 349 Mont. 17, 201 P.3d 160 (quoting *Yockey v. Kearns Props., LLC*, 2005 MT 27, ¶ 12, 326 Mont. 28, 106 P.3d 1185). We will only disturb a district court's decision to grant or deny a preliminary injunction upon a showing of manifest abuse of discretion. *Cole v. St. James Healthcare*, 2008 MT 453, ¶ 9, 348 Mont. 68, 199 P.3d 810 (citing *Sweet Grass Farms, Ltd. v. Bd. of Co. Comm'rs of Sweet Grass Co.*, 2000 MT 147, ¶ 20, 300 Mont. 66, 2 P.3d 825). “ ‘A manifest abuse of discretion is one that is obvious, evident, or unmistakable.’ “ *Pinnacle Gas*, ¶ 12 (quoting *Yockey*, ¶ 12). Preliminary injunctions do not resolve the merits of the case, *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 19, 334 Mont. 86, 146 P.3d 714 (citing *Yockey*, ¶ 18), and our analysis “is not intended to express and does not express any opinion about the ultimate merits” of the underlying case. *Benefis*, ¶ 19. In addition, we review a district court's conclusions of law for correctness. *Pinnacle Gas*, ¶ 12 (citing *Yockey*, ¶ 12)”

- **Standard of Review of Grant or Denial of Preliminary or Permanent Injunction:**
  - Manifest Abuse of Discretion



- (xii) arson as defined in 45-6-103.
  - (2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:
    - (a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or
    - (b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.
  - (3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.
  - (4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.
  - (5) A petitioner is eligible for an order of protection whether or not:
    - (a) the petitioner reports the abuse to law enforcement;
    - (b) charges are filed; or
    - (c) the petitioner participates in a criminal prosecution.
  - (6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant.
- Temporary order of protection –
    - MCA § 40-15-201: (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal

of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

- Can be issued immediately, without notice to respondent, good for 20 days, per MCA § 40-15-201(4)
  - Hearing to be conducted within 20 days after the temporary order of protection is entered
- Court must make written findings and conclusions to support the temporary order of protection after the hearing
- *Edelen v. Bonamarte*, 162 P.3d 847 (Mont. 2007). The ex-girlfriend obtained a temporary order of protection from the JP court, which later held a hearing and continued it. The defendant appealed to the district court, which held a hearing de novo and continued the order of protection for one year. The defendant appealed to the Supreme Court, which remanded the case for entry of sufficiently specific finding of fact and conclusions of law for the Supreme Court to be able to conduct appellate review. The Supreme Court continued the order of protection during the remand period. The Court specifically commented that “Simply reciting the contentions of the parties and reaching a legal conclusion does not satisfy the court’s duty to make factual finding and conclusions of law under M.R. Civ. P. 52(a).”



decision to deem permanent a temporary order of protection. A review of the record indicates that such a hearing did not occur. Hence, the Permanent Order of Protection and the Amended Permanent Order of Protection issued by the District Court was a manifest abuse of the District Court's discretion.” *Coogler*, 90 P.3d at 416-417.

- Written orders of protection – MCA § 40-15-204: (1) The court may, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.
  - (2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.
  - (3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.
  - (4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.
  - (5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.
  - (6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.
  - (7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.
  - (8) There is no cost to file a petition for an order of protection or for service of an order of protection whether served inside or outside the jurisdiction of the court issuing the order.
  - (9) Any temporary order of protection or order of protection must

conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

- *Schiller v. Schiller*, 47 P.3d 816 (Mont. 2002). Trial judge granted initial temporary order of protection for father and minor son, but restricted the permanent temporary restraining order entered after hearing to cover the father only. The Supreme Court affirmed, finding no abuse of discretion. Notably, the Supreme Court affirmed the court's oral entry of findings of fact and conclusions of law on the record as sufficient under M.R.Civ. P. 52(a).
  - *Bock v. Smith*, 107 P.3d 488 (Mont. 2005). Prior to any petition for dissolution, the mother obtained an order of protection that was still in place at the conclusion of the dissolution proceedings. On appeal of the dissolution, the Supreme Court noted that "The order of protection is still in effect, and since it was first put in place Bock has been convicted of three misdemeanor counts for violating its terms." As part of the conclusions of law supporting the dissolution decree, the trial court made the order of protection permanent. The Supreme Court affirmed.
- Jurisdiction and venue for obtaining orders of protection – MCA § 40-15-301
    - There is concurrent jurisdiction in district, justice, city and municipal courts, unless there is a pending dissolution or parenting action in district court. If there is, the petition for the order of protection should usually be filed with that court.
    - "(6) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state."

- Appeal to district court – MCA § 40-15-302. An order issued by a court of limited jurisdiction may be appealed immediately to the district court. The district court’s order may be appealed to the Supreme Court. The same standard of review, manifest abuse of discretion, applies to this form of injunction. E.g., *In re Marriage of Coogler* (2004).
- Registration of orders of enforcement with law enforcement – MCA § 40-15-303
- Uniform Interstate Enforcement of Domestic Violence Protection Orders Act – MCA § 40-15-Part 4 (§§ 40-15-401 through 408)
- **Statutes:**
  - **Preliminary injunctions, general provisions**
    - Affidavits for – 27-19-303; 27-19-401.
    - Answer – 27-19-303; 27-19-314.
    - Application for – 27-15-103; 27-19-301; 27-19-314; 27-19-318; 27-19-401; 27-19-406.
    - Business and industrial development corporation violations – 32-11-402.
    - Consumer loan business violation, restraint – 32-5-405.
    - Costs upon dissolution – 27-19-406.
    - Counterclaim, availability to defendant upon – 27-15-102.
    - Deferred deposit lenders, to restrain violations – 31-1-728.
    - Dissolution – 27-15-103; 27-19-306; 27-19-401; 27-19-404 to 406.
    - Evidence required – 27-19-303.
    - Findings of fact and conclusions of law to accompany granting or refusal – T25-Ch20 MRCP Rule 52(a).
    - Hearing – 27-19-301; 27-19-303; 27-19-307; 27-19-318; 27-19-403.
    - Issuance when – 27-15-103; 27-19-201; 27-19-303.
    - Modification – 27-15-103; 27-19-401; 27-19-404.
    - Notice of Application – 27-19-301; 27-19-314.
    - Notice of Dissolution or modification, application for – 27-19-401.
    - Order to show cause for injunction – 27-19-203; 27-19-301; 27-19-314; 27-19-401.

- Public service commission, pending action by – 27-19-203; 69-2-202.
  - Restraint of trade, pending action for – 27-19-202; 27-19-204.
  - Temporary restraining orders preliminary to – 27-19-314.
  - Time for issuance – 27-15-103; 27-19-303.
  - Undertaking and sureties of enjoined party upon dissolution – 27-19-405.
  - Undertaking and surety requirements – 27-19-204; 27-19-306; 27-19-307; 27-19-403; 75-2-211; 75-2-218
- **Restraining Orders**
- Agricultural marketing association, breach of marketing agreement – 35-17-401.
  - Alcoholic beverages, nuisance abatement – 16-6-313.
  - Arrest without warrant, violation as basis for – 46-6-311.
  - Building codes, plumbing installations – 50-60-514.
  - Business and industrial development corporation violations – 32-11-402.
  - Child support proceedings – 3-10-301; 40-4-121; 40-4-122.
  - Collective bargaining, unfair labor practices – 39-31-409.
  - Consumer counsel, application for – 27-19-203; 69-2-202.
  - Consumer loan business violations – 32-5-405.
  - Contents – 27-19-105.
  - Dairies selling or giving away milk or cream for public consumption when – 81-21-102.
  - Deferred deposit lenders, to restrain violations – 31-1-728.
  - Dissolution of marriage or legal separation proceedings – 3-10-301; 40-4-121 to 125.
  - Electric facilities providers, violation or omissions – 69-5-111.
  - Emergency medical serviced transportation or treatment service violations – 50-6-326.
  - Escrow business violations – 32-7-122.
  - Estates and probate, personal representative – 72-3-304; 72-3-617.
  - Facility siting violations – 75-20-408.
  - Forest fire hazard reduction or management, enforcement – 76-13-410.
  - Form – 27-19-105.
  - Funds transfer, to prevent – 30-4A-503.
  - Gambling violations – 23-5-136.

- Identity theft violations – 30-14-1705.
- Insurance, commissioner of – action for – 33-1-318.
- Insurers – 33-2-1305; 33-2-1309; 33-2-1321; 33-18-1003.
- Livestock, garbage feeder violations – 81-2-507.
- Livestock, rendering or disposal plant violations – 81-9-303; 81-9-306.
- Mines and mining, Metal mine reclamation violations – 82-4-361.
- Mines and mining, Strip and underground mine reclamation violations – 82-4-252; 82-4-254.
- Mines and mining strip and underground mine siting violations – 82-4-141.
- Mines and mining, wages, failure to file bond guaranteeing – 39-3-510.
- Oil and gas, enforcement, for – 82-11-145.
- Oil and gas, violations – 82-11-147.
- Oil and gas, wages, failure to file bond guaranteeing – 39-3-510.
- Optometrists, unlawful practices – 37-10-301.
- Procedure for granting, statutes to provide – T25-Ch20 MRCP Rule 65.
- Restitution by offenders, property or assets for satisfaction of order – to preserve – 46-18-244.
- Scope of restraint – 27-19-105.
- Securities, adverse claims – 30-8-125.
- Securities, Living trusts, violations – 30-10-913.
- Securities, violations generally – 30-10-305.
- Snowmobile sound level limitations, sales violations – 23-2-614.
- Stalking victims, protection – 27-19-201; 40-4-121; 45-5-220.
- State lands use or disposition, challenge – written undertaking required – 77-1-110.
- **Temporary Restraining Orders**
  - Contents and filing – 27-19-316.
  - Dissolution or modification – 27-19-318; 27-19-319.
  - Expiration – 27-19-316; 27-19-317.
  - Military personnel, employment rights when called to active duty – remedy for violations – 10-1-1021.

- Notice, issuance without -27-19-315; 27-19-316; 27-19-318.
- Undertaking and surety requirements – 27-19-306.
- Unfair trade practices – 30-14-111; 30-14-142; 30-14-1705.
- Water quality violations – 75-5-614; 75-5-641.
- Water use violations – 85-2-114.
- Zoning boards of adjustment, County, stay of proceedings of action appealed from – 76-2-226; 76-2-227.
- Zoning boards of adjustment, Municipal, stay of proceedings of action appealed from – 76-2-326; 76-2-327.