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(1) In order to prevent Wife from contacting him, Husband should file for a Temporary Ex Parte Order and then subsequently file for a Protective Order.

First, Husband should file for a Temporary Ex Parte Order. Husband will need to show a clear and present danger of family violence and if this is shown, the court may grant the Husband a Temporary Ex Parte Order without a hearing in order to prohibit Wife from contacting Husband. Husband will easily be able to show a clear and present danger of family violence by introducing evidence of the recent beating and of the threat of future violence. Once shown, the court may grant a Temporary Ex Parte Order preventing Wife from contacting Husband. However, the Temporary Ex Parte Order is only effective for 14 days, as it must be limited in nature to protect the due process rights of the non-moving party.

Second, Husband will need to file for a Protective Order. Temporary Ex Parte Orders serve as temporary stopgaps to protect parties from family violence until a hearing can be held to determine whether a longer Protective Order should be put in place. Once Husband files for a Protective Order, a hearing must be held within 48 hours to 14 days. The moving party will need to show a history of family violence that is likely to reoccur or a violation of a previous protective order in order for the court to grant a protective order. A protective order can stay in place for up to 2 years. Husband should be able to establish a history of family violence using evidence such as the beating and threat and any other previous incidents. Once established, the court may grant a Protective Order preventing Wife from contacting Husband for up to 2 years.

(2) In order to gain exclusive possession of the house, Husband should also request a "kick-out" order be granted at the same time as both of the Temporary Ex Parte Order and Protective Order. A kick-out order prohibits a party from continuing to reside in the same house as the movant. The movant must deliver to the court a sworn affidavit demonstrating that they have the right to occupy the house and that they have resided at such house at some point during the last 30 days. The movant must also appear in person before the court to obtain a kick-out order. Husband should be able to demonstrate facts necessary to support a kick-out order (if he is willing to appear in person) by showing that the house was acquired during the marriage, both Husband and Wife have a right to reside in the house and that exclusive possession is warranted to prevent further family violence.

Husband may also obtain exclusive possession of the house through a Temporary Injunction order as described below. A Temporary Injunction allows the court to grant exclusive possession of a house to a party as a remedy, which will stay in place until a final ruling on the divorce is obtained.

(3) Husband will have to obtain a Temporary Injunction in order to prevent Wife from accessing the gas station. A Temporary Injunction can be used to prohibit a party from taking any reasonable or unreasonable actions as determined by the court during the period while a divorce action is pending. Therefore, Husband will have to file for divorce and obtain a Temporary Injunction from the court prohibiting the wife from accessing the gas station. As the gas station is community property, jointly owned by Husband and Wife, and the Wife manages the property, it is clearly reasonable for the Wife to have access to the gas station in order to

manage the business. A Temporary Injunction is the only procedure available under the Texas Family Code which allows a party to restrict reasonable actions of the other party.

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1. Wife may seek court orders for the following: Temporary Protective Orders; Protective Order; Temporary Restraining Order; Temporary Injunction.

Temporary Proective Order (TPO): Under Texas law, an individual may seek a TPO ex parte from the court if there is a continuing threat of violence. Furthermore, an individual may remove another individual from one's main residence if the party seeking the the relief files an sworn affidavit with the court stating acts of violence as well as appears before the court to testify as to the particular facts. Furthermore, an individual may seek that the other person not be able to communicate with them during this time. A TPO may be granted by the court for 20 days, and may be continued by the court for another 20 days upon showing of continuing threats of violence. Here, Husband will be able to detail for the court acts of violence as indicated from the facts which state that couple has a history of violence as well as the particular case with the tire iron. Upon such showing, the Husband will be able to get a TPO for at least 20 days to stop any communication with Wife.

Proective Order (PO): Under Texas law, an individual may seek a PO with a hearing if there is a continuing threat of violence. Furthermore, an individual may remove another individual from one's main residence if the party seeking the the relief files an sworn affidavit with the court stating acts of violence as well as appears before the court to testify as to the particular facts. Furthermore, a party may seek that the other party may not be able to communcate with them as an individual. A PO may be granted by the court. Here, Husband will be able to detail for the court acts of violence as indicated from the facts which state that couple has a history of violence as well as the particular case with the tire iron. Upon such showing, the Husband will be able to get a PO.

Temporary Restraining Order: Under Texas law, a person may motion the court for a Temporary Restraining Order relief for unreasonable acts such as a restraint on communication with the other spouse. Here, Husband may be able to get such motion granted based upon the fact that Wife has stated that Husband "won't live to see another day." Such statement by the wife is a threatening remark and a reasonable person would not think such actions are permitted by law. Thus, Husband will likely get such approval from the Court for a Temporary Restraining Order.

Temporary Injunction: Under Texas law, a person may motion the court for injuctive relief for both reasonable and unreasonable acts such as a restraint on communication with the other spouse. Here, Husband may be able to get such motion granted based upon the fact that Wife has stated that Husband "won't live to see another day." Such statement by the wife is a threatening remark and a reasonable person would not think such actions are permitted by law. Thus, Husband will likely get such approval from the Court for a Temporary Injunction.

2. Temporary Proective Order (TPO): Under Texas law, an individual may seek a TPO ex parte from the court if there is a continuing threat of violence. Furthermore, an individual may remove another individual from one's main residence if the party seeking the the relief files an sworn affidavit with the court stating acts of violence as well as appears before the court to testify as to the particular facts. A TPO may be granted by the court for 20 days, and may be continued by the court for another 20 days upon showing of continuing threats of violence. Here, Husband will be able to detail for the court acts of violence as indicated from the facts which state that couple has a history of violence as well as the particular case with the tire iron. Upon such showing, the Husband will be able to get a TPO for at least 20 days to gain exclusive access to the home.

Temporary Restraining Order: Under Texas law, a person may motion the court for a Temporary Restraining Order relief for unreasonable acts such as a restraint on communication with the other spouse. Here, Husband may be able to get such motion granted based upon the fact that Wife has stated that Husband "won't live to see another day." Such statement by the wife is a threatening remark and a reasonable person would not think such actions are permitted by law. Thus, Husband will likely get such approval from the Court for a Temporary Restraining Order and exclusive access to the home.

Temporary Injunction: Under Texas law, a person may motion the court for injunctive relief for both reasonable and unreasonable acts such as a exclusive access to the home. Here, Husband may be able to get such motion granted based upon the fact that Wife has stated that Husband "won't live to see another day." Such statement by the wife is a threatening remark and a reasonable person would not think such actions are permitted by law. Thus, Husband will likely get such approval from the Court for a Temporary Injunction and exclusive access to the home.

3. Temporary Injunction: Under Texas law, a person may motion the court for injunctive relief for both reasonable and unreasonable acts such as a restraint on communication with the other spouse. Here, Husband may be able to get such motion granted based upon the fact that Wife has stated that Husband "won't live to see another day." Such statement by the wife is a threatening remark and a reasonable person would not think such actions are permitted by law. Thus, Husband will likely get such approval from the Court for a Temporary Injunction and prevent wife from accessing the gas station. It should be of note, that the court might not grant such motion as Wife is the party that manages this joint asset on a daily basis.

END OF EXAM
