

RESTRAINING ORDERS

Legislation has been enacted giving magistrate courts the authority to issue restraining orders against individuals engaged in harassment or stalking. This is a civil proceeding which costs nothing to file and serve. The legislation provides for both the issuance of a restraining order with prior notice of the hearing to the defendant, and the issuance of a temporary restraining order without notice to the defendant in an emergency situation. A hearing will be held within 15 days of the filing date, at which time you must appear and prove by a preponderance of the evidence that the defendant has engaged in harassment or stalking. If you prevail, the court will issue a restraining order which may temporarily forbid the defendant from:

1. Abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family,
2. Entering or attempting to enter the plaintiff's place of residence, employment, education, or other location, and
3. Communicating or attempting to communicate with the plaintiff in a way that would violate the law.

Violation of a restraining order is a criminal offense that carries a maximum penalty of 30 days imprisonment and/or a \$500 fine.

In order to prevail, you must prove the defendant has engaged in harassment or stalking. Section 16-3-1700 of the S.C. Code of laws defines these terms as follows:

(A) '**HARASSMENT**' means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that causes the person and would cause a reasonable person in his position to suffer mental distress. Harassment may include, but is not limited to:

- (1) following the targeted person as he moves from location to location;
- (2) visual, physical, or verbal contact that is initiated, maintained, or repeated after a person has been provided notice that the contact is unwanted;
- (3) surveillance of or the maintenance of a presence near the targeted person's:
 - (a) residence;
 - (b) place of work;
 - (c) school; or
 - (d) another place regularly occupied by the targeted person; and

(4) vandalism and property damage.

Harassment does not include words or conduct that is protected by the constitution of the State or the United States, and does not apply to law enforcement officers or process servers performing their official duties.

(B) **'STALKING'** means a pattern of words or conduct that is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

- (1) death of the person or a member of his family;
- (2) assault upon the person or a member of his family;
- (3) bodily injury to the person or member of his family;
- (4) criminal sexual contact on the person or a member of his family;
- (5) kidnapping of the person or member of his family; or
- (6) damage to the property of the person or a member of his family.

Stalking does not include words or conduct that is protected by the constitution of this State or the United States and does not apply to law enforcement officers or process servers performing their official duties.

(C) **'AGGRAVATED STALKING'** means staling accompanied or followed by an act of violence.

(D) **'PATTERN'** means two or more acts within a ninety-day period.

(E) **'FAMILY'** means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

Remember, you must prove two or more acts within a 90 day period. You will need incident report(s) from your local law enforcement agency describing these two or more acts in order to file a petition for a restraining order.

An action for a restraining order must be filed in the county in which:

1. the defendant resides when the action commences,
2. the harassment or stalking occurred, or
3. the plaintiff resides if the defendant is a nonresident of the State or cannot be found.

The restraining order will be for a fixed period of time not to exceed 6 months, but may be extended by court order on a motion by the plaintiff, showing good cause, with notice to the defendant. A restraining order issued pursuant to this legislation is enforceable throughout the State. If, prior to the expiration of this period, the Court has charged the defendant with the crime of harassment or stalking, the restraining order will remain in effect beyond the 6 month period until the conclusion of the trial.