

Massachusetts Restraining Orders Procedure and Ramifications

The Commonwealth of Massachusetts enacted a comprehensive abuse prevention statute, known as chapter 209A. A restraining order may also be granted as part of a divorce, under chapter 208.

A person may file a request for a restraining order against another person if that person,

- is a spouse or former spouse
- residing together in the same household;
- are or were related by blood or marriage
- have a child in common regardless of whether they have ever married or lived together;
- are or have been in a substantive dating or engagement relationship (with consideration of the length of the relationship, type of relationship, frequency of interaction between parties, if the relationship has been terminated by either person, length of time elapsed since termination

A complaint may be filed through the police department or any district, municipal, probate or superior court having the venue of where the person filing the complaint resides.

The relief that may be obtained as part of a restraining order includes:

- order that defendant refrain from abuse;
- order that defendant refrain from contacting the plaintiff;
- order the defendant to vacate and remain away from the household and/or workplace;
- award plaintiff temporary custody of a minor child;

Abuse is defined as :

- 1) attempting to cause or causing physical harm;
- 2) placing another in fear of imminent serious physical harm;
- 3) causing another to engage involuntarily in sexual relations by force, threat of force or duress.

Procedure for Obtaining a Restraining Order:

1. A restraining order may be obtained without notice to the alleged “abuser” by contacting the appropriate court (during court hours, generally 8:30 - 4:00 pm) or contacting the police department, which will assist applicants outside court hours.
2. The applicant must file an Affidavit disclosing the nature and details of the abuse.
3. If the judge decides that the affidavit and/or testimony of the applicant meets the definition of abuse (see above), then the restraining order may be issued for no more than ten (10) days. This initial order also identifies a hearing date so that both parties have an opportunity to be heard. This hearing provides the

defendant (alleged abuser) with an opportunity to contest the extension of the restraining order. At this hearing, the judge has the discretion to amend the terms of the original restraining order and/or extend the restraining order for a period not to exceed one (1) year. At the one (1) year hearing anniversary, at which both parties are expected to appear, the court has the discretion of issuing a permanent restraining order or extending it for a finite period of time.

Procedure for Defending a Restraining Order:

1. Usually the initial restraining order is obtained without previous notice of the initial emergency hearing. Once the defendant is served with the restraining order, he/she should obtain a copy of the plaintiff's affidavit and application for the restraining order, which were filed with the court or police department. These documents should provide details of the reasons the restraining order was requested and initially granted.
2. The defendant is entitled to a hearing to contest the allegations in the affidavit and may wish to appear at this hearing with credible witnesses or documentation that could defend or discredit the allegations contained in the plaintiff's affidavit. Oftentimes, information in FaceBook, twitter and blogs written by either party shed some light on the facts and may be persuasive proof of a person's state of mind or actions/non-actions. Remember, these cyberspace disclosures also can negatively impact on your character, so you may want to consider your entries the next time you post and internet entry !

REALITY CHECK: It is important to note that once a restraining order is issued, any violation of the order will be considered a criminal offense. Furthermore, the Court has the authority to order suspension or surrender of firearms license, firearms. If your employment or business requires the use of a firearm or firearm license, you have the right to immediately petition the Court for review and you must file an affidavit describing your situation that requires the use of a firearm/license.

EXPUNGEMENT OF RECORDS

In the event a Restraining Order is issued for any period of time (initial 10 day or subsequent extension/dismissal), you will be listed in the statewide Domestic Violence Registry system. This could impact your ability to obtain or maintain employment in government, law enforcement or certain medical fields , social services or be able to work/coach with children. Impoundment of the restraining order does not expunge your listing on the statewide domestic violence registry, as certain government agencies and private companies with significant government contracts, still have access to the registry system.

Until recently, it was almost impossible to expunge a person's record with the domestic violence registry once the initial entry was made. In the 2006 case of

Commissioner of Probation v. Adams, it was recognized that a judge has the inherent authority to expunge a record of an abuse violence registry system in the rare and limited circumstance that the judge finds the order was obtained through fraud on the court. In order to determine the likelihood of you prevailing with an expungement request of your restraining order/listing on the domestic violence registry, a careful legal analysis of your case must be conducted.