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The Do's And Don'ts of Restraining Orders in New Jersey

Domestic Violence is an epidemic in this country, with New Jersey being no exception. If you find yourself in a violent relationship, you must do everything in your power to ensure the safety of yourself and of your family. No one should have to live in an abusive household.

If you are being abused, call the police. If the abuse occurs during normal business hours, you should also immediately go to your local courthouse and file for a Temporary Restraining Order (TRO) in the Domestic Violence Unit. If the abuse occurs after hours, the police will assist you in obtaining a TRO. New Jersey Judges are on call 24 hours a day to hear initial domestic violence complaints and decide whether or not a TRO is necessary to protect you. If a TRO is granted, the Court will schedule a hearing to determine if they will issue a Final Restraining Order (FRO) in your case.

Domestic Violence is addressed in two forums in New Jersey: Family Court & Criminal Court

Family Court

In the Family Part, the Judge decides whether or not your TRO should be made into a Final Restraining Order. He or she will conduct a trial. You are the Plaintiff and the alleged abuser is the Defendant. It is the victim's responsibility to present his/her case and prove by a preponderance of the evidence that abuse occurred AND that there is a continued and permanent need for a Final Restraining Order. If the judge finds in your favor, a Final Restraining Order will issue and that will prevent the abuser from contacting you in any way. The FRO does not expire and will remain in effect until either you dismiss it voluntarily or the abuser shows the court a compelling reason why the FRO should be dismissed. If the FRO is granted, other issues such as custody, child support and parenting time can be addressed by the Court.

Criminal Court

In the Criminal Part, your domestic violence matter may be heard in Superior Court (for more serious abuses such as sexual assault or attempted murder) or in Municipal Court (for less serious abuses such as harassment or stalking). Know that there are various degrees of crimes that dictate where your criminal domestic violence matter will be heard. The more serious the crime, the more likely it will be heard by a criminal judge in Superior Court. In criminal domestic violence proceedings, the prosecutor acts as the advocate for the state, and the defendant may either represent him or herself, hire an attorney or be provided with a public defender. The victim's role in these criminal proceedings is mainly that of witness to the alleged abuse. Relief granted may include a criminal no-contact order. The abuser may be sentenced to jail time, community service or be forced to pay a fine. Or, the charges may be dismissed.

The Family Part and Criminal Part matters are separate proceedings and the outcome of either case should not effect the other.

The following is a basic list of Do's and Don'ts you should consider if you find yourself with a TRO in place and are unsure about your next step.

- If you have been granted a TRO, DON'T contact your alleged abuser in any form or fashion.
- If your alleged abuser contacts you, DO call the police immediately and report the violation of the TRO. This violation is a separate court matter that is handled by the prosecutor.
- DO make sure you know when your FRO hearing date is. FRO hearings are scheduled no more than 10 days after the TRO has been issued.
- DO amend your TRO if you feel that it is missing details or if it does not contain prior history of domestic violence. The Court will consider the most recent act of domestic violence but will then consider past history as a factor in determining whether or not you should get a TRO.
- DO gather all of your evidence that you wish to present before the FRO hearing date. This evidence can include phone recordings, text messages, and photos of injuries.
- If you wish to have witnesses testify on your behalf, DO advise them as soon as possible. If you wish to have any police officers testify on your behalf, you MUST subpoena them first. The police officers will not come to court unless you subpoena them first.
- DO know that medical reports and hospital records are hearsay and are NOT admissible unless you plan to have the treating physician or the custodian of medical records from the facility where you were treated come into court and testify as to the record's accuracy.
- DO prepare yourself for court. Be sure that you can accurately testify to all of the events that are contained in your TRO. Be prepared to be questioned by either the Judge or your alleged abuser's attorney.
- DON'T become confrontational or angry while testifying in Court. Maintain a calm and respectful demeanor.
- DO contact an attorney if you are feeling confused or overwhelmed by the process. While legal representation is not mandatory, it may be critical in cases where there is complicated testimony or extensive evidence. If you appear in Court without an attorney, but your alleged abuser has an attorney, it is strongly recommended that you ask the Judge for an adjournment of your hearing and seek advice from an attorney.

If you are feeling afraid or intimidated by your alleged abuser while waiting in the courtroom, you should ask for a victim's advocate to sit with you. In Hudson County, you are free to wait in the Domestic Violence Unit for your case to be called.

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