

Can I Get Restraining Order Although Abuse Occured In Past?

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Dear Ask the Attorney:

A few months ago my husband hit me in front of our children. He immediately apologized but I have asked him to move out. Now, he is being verbally abusive while he takes his time packing his stuff. I know I should have called the police on the day that he hit me, but I didn't. Can I do so now to force him to move out faster?

J.R.

Our Guest Blogger is Michael R. Ascher, Esq. Mr. Ascher is a partner in the firm and is engaged in a litigation practice handling both criminal and complex civil matters. His practice includes all categories of criminal cases including drunk driving defense, sex offenses, drug and white collar crimes, computer crime, conspiracy, fraud & theft cases and matters involving the Division of Youth and Family Services (DYFS).

Dear J.R.

In New Jersey, in a Domestic Violence matter, there are fourteen (14) enumerated prohibited acts, ranging from homicide and assault to harassment. Any one of those acts would entitle a victim to obtain a Temporary Restraining Order. A Restraining Order may be issued based upon specific incident and a prior history of acts of Domestic Violence.

It is always best to file the Domestic Violence Complaint as soon as the incident occurs. The reason for that is simple and clear. The more time that goes by the less likely it is that a Court will believe that you are in fear for your safety. However, the passage of time does not automatically bar the victim from obtaining a Restraining Order, it only makes it more difficult if there is a significant passage of time. Since your incident happened a few months ago, you will be confronted by the question of why

you waited so long. If there has been a prior history of Domestic Violence that history should be outlined in the Complaint and explained to the Judge. That would explain why there was not an immediate filing of a Complaint. Courts in New Jersey recognize the existence of the cycle of Domestic Violence that often times keeps people from timely filing a Complaint due to their fear of their abuser. If you now wish to file a Domestic Violence Complaint, you may do so.

During normal Court hours, you should go to the Courthouse in the County in which you reside and fill out the Complaint with the assistance of the Domestic Violence Unit. Alternatively, you should go to a Police Department after normal Court hours, file a Police Report and then seek to obtain a Temporary Restraining Order.

Your Domestic Violence Complaint should be filed as soon as possible to the date to the actual occurrence. Every day that passes minimizes the chance that a Complaint will be accepted by the Court after a Hearing. The Court may preliminarily grant you a Temporary Restraining Order subject to a Final Hearing at which time, your husband would have the ability to present his side of the story. That may well include your husband filing a Cross-Complaint for Domestic Violence against you citing instances of Domestic Violence that has occurred in the months since the incident.

At no time should the Domestic Violence be used to gain an advantage in any other proceedings, such as a divorce. The Courts do not appreciate such misuse of the system. The Courts are concerned with protecting individuals where actual Domestic Violence has occurred. Remember, Domestic Violence is not necessarily an assaultive behavior. It may also be based upon harassment, including verbal and sexual abuse.

Michael R. Ascher, Esq.

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