

My husband has threatened to kidnap the kids; what do I do?

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Dear Ask the Attorney:

My husband is incredibly angry that I asked for a divorce. Before he moved out he went on a rampage and destroyed our things. Now he is threatening to take the children away and that I will never see them again. I wouldn't put it past him to "kidnap" our kids and run away. What do I do?

L.M.

Our guest blogger today is Ivette R. Alvarez, Esq. Ms. Alvarez is counsel at Einhorn, Barbarito, Frost & Botwinick in Denville, New Jersey, where she concentrates her practice in civil litigation with an emphasis on [matrimonial and family law](#). Ms. Alvarez is fluent in Spanish.

Dear L.M.

It is not unusual for the party who is asked for a divorce to be upset, feel betrayed and have some reaction. Remember that you are the one asking for the divorce. Therefore, you have already made the decision and at some level, you have already moved on while he has not had the opportunity to process the situation. However, what you describe as your husband's reaction may not be reasonable or understandable even if the request for divorce came as a total surprise to him.

You state that your Husband was "incredibly angry", "went on a rampage", "destroyed our things", and is "threatening to take the children away [so] I will never see them again". What exactly do you mean by each of those descriptions? It is very important to have the exact facts of what you are describing in order to be able to provide you with appropriate legal information.

For example, it would be very different if you state that A) he acted “incredibly angry” because he slammed the door as he left the room or B) he acted incredibly angry because he yelled and screamed at you and called you demeaning names while following you around the room. Similarly, does he “went on a rampage and destroyed our things” mean A) he ripped up the notebook where you wrote up your proposed settlement as opposed to B) he picked up an item and hurled it at you or slammed it to the floor saying “I want to do this to you”? In each of these examples, the conduct described in B might be considered domestic violence. Clearly, the conduct described in the B scenarios would make you feel apprehensive and afraid for your well being.

Similarly, concerns for your children's well being from his statement that he will “take the children away [so you] will never see them again” will be more meaningful and threatening if he had done things in the past, such as concealed the children's whereabouts from you before, has sole possession of the children's passports or, could obtain foreign passports for the children without your involvement.

Domestic violence is a pattern of abusive and controlling behavior injurious to its victim. *Peranio v Peranio*, 280 N.J. Super 47, (App. Div. 1995). Domestic violence is defined as conduct which qualifies as one or more of the following 14 crimes or disorderly persons violations: homicide, assault, terroristic threats, kidnapping, criminal restraints, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary criminal trespass, harassment and stalking.

While it is impossible to detail in this patch response what conduct constitutes each of these crimes or offenses, it is important to be informed of what categories of behavior are legally sufficient to constitute domestic violence. Thus, it is very important for you to describe in detail to your attorney what has happened in your particular case. What you may not think is harassment, may in fact be and vice versa.

If your Husband's conduct constitutes domestic violence, you may apply for a Temporary Restraining Order. After a hearing, if you prevail, you may receive a Final Restraining Order (“FRO”). The FRO may, among other things, restrain your Husband from further acts of domestic violence against you, grant you exclusive possession of your home or apartment, grant you payment of ongoing expenses, grant you spousal support and/or support for the children, require payment of appropriate compensatory

damages such as cost of repair of property, moving expenses and attorney fees, prevent your Husband from having contact with you and other protected members of your family , prevent your Husband from coming to your place of employment, provide for appropriate parenting time between your Husband and the children, even supervised if the risk to them is deemed significant, provide for a risk assessment of potential harm to the children and give you temporary custody based on a presumption that the best interest of the children is served by granting temporary custody to the non-abusive parent.

If your Husband's conduct does not rise to the level of domestic violence but persists, once a Complaint for Divorce is filed, your attorney may address an application to the Court asking for specific provisions to counteract or prevent the offensive conduct. In any case, free and complete communication with your attorney is the key. Err on the side of giving more information to your attorney as it is always better to be safe.

Again, it is truly important that you discuss all of the facts with a matrimonial attorney who will be able to best ascertain whether the behavior rises to the level of that requires obtaining a restraining order or not.

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different, therefore you should seek competent legal representation.