



A GUIDE TO RESTRAINING ORDERS



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A Guide to Restraining Orders

What is a Restraining Order?

A Restraining Order is an order of a South Carolina Magistrates Court that protects a person (the “Plaintiff”) from stalking and harassment by prohibiting another person (the “Defendant”) from doing certain things.

Who can get a Restraining Order?

Anyone who is a victim of harassment, first degree, harassment, second degree, or stalking. You can get a Restraining Order against anyone who is harassing or stalking you, including family members, boyfriends or girlfriends, strangers, or anyone else.

Although in some circumstances you might be able to get a Restraining Order against a former spouse or cohabitant (someone you live with, usually in a romantic way), the Magistrates Court is often unable to order a current spouse or cohabitant to stay away from your home. The best remedy for these cases is usually an Order of Protection in Family Court.

(See the [chart on page 6](#) for more information)

Harassment, First Degree

This means that someone has made you feel mental or emotional distress by doing things such as:

- following you,
- watching you or hanging around your home, workplace, school, or another place you often go
- damaging your property, or
- repeatedly contacting you after you have told the person not to contact you or after you have filed a police report.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times. The Defendant’s actions also must be intentional (on purpose), unreasonable, and “serve no legitimate purpose.” This basically means that there is a not a good reason for the Defendant’s actions. Finally, the Defendant’s actions must be a “substantial intrusion” into your private life, not just a minor annoyance.

For the full legal definition of Harassment (First Degree) [see the attached statute \(§16-3-1700\(A\)\)](#) on page 9.

Harassment, Second Degree

This means that someone has made you feel mental or emotional distress by doing things such as contacting you repeatedly through verbal, written or electronic means.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times. The Defendant’s actions also must be intentional (on purpose), unreasonable, and “serve no legitimate purpose.” This basically means that there is a not a good reason for the Defendant’s actions. Finally, the Defendant’s actions must be a “substantial intrusion” into your private life, not just a minor annoyance.

For the full legal definition of Harassment (Second Degree) [see the attached statute \(§16-3-1700\(B\)\)](#) on page 9.

Stalking

This means that someone has made you afraid that they will harm you or your family or damage your or your family's property by saying, writing, or doing something to you.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times.

For the full legal definition of Stalking [see the attached statute \(§16-3-1700\(C\)\)](#) on page 9.

What can a Restraining Order do?

If granted by the Court, a Restraining Order can order a Defendant:

- not to abuse, threaten or bother (in a bad way) you or certain members of your family,
- to stay away from your home, work, school, and other places you often go, and
- not to contact you.

The Court may not be able to grant you some of these remedies if you are married to, live with, or have a child in common with the Defendant.

How do you get a Restraining Order?

To get a Restraining Order, you must go to a Magistrates Court and fill out a Complaint and Motion for Restraining Order, form SCCA 749. You must go to the Magistrates Court in the county:

1. where the defendant lives;
2. where the stalking/harassment occurred; or
3. where you live if the defendant is a nonresident of the State or cannot be found.

See the "[How to Fill Out a Complaint and Motion for Restraining Order](#)" guide on page 7 for more information on writing your Complaint.

How much does a Restraining Order cost?

It does not cost anything to file a Complaint and Motion for a Restraining Order, but the Court does charge a \$55 fee at the end of a Restraining Order case. At the end of a Restraining Order hearing, the Court will either order you or the Defendant to pay the \$55 fee for filing a Restraining Order. If you are granted a Restraining Order, the Defendant will have to pay the fee. If you are not granted a Restraining Order, you will have to pay the fee.

What happens after I file my Complaint and Motion for Restraining Order?

After you file your Complaint and Motion for Restraining Order, the clerk will have the Sheriff's Department serve the Defendant with your Complaint. Be sure that you write the Defendant's address correctly on your Complaint so that the Sheriff's Department can serve the Defendant. The clerk will also schedule a hearing before a Magistrate Judge. The hearing should be scheduled within 15 days of the filing of your Complaint and must occur at least 5 days after the Defendant was served. The clerk will let you know when and where the hearing will take place.

What if I need the Court to protect me immediately?

If you feel you are in danger and need the Court's protection right away, you may ask the court to hold an emergency hearing and grant you a Temporary Restraining Order. You do this by filing a Motion and Affidavit for Emergency Hearing (Temporary Restraining Order) (Harassment and Stalking), form SCCA 752 (found on page 13).

You may file this Motion when you file your Complaint and Motion for Restraining Order. The Court may hold an emergency hearing within 24 hours of you filing this motion. Note that because Temporary Restraining Orders are issued without giving the Defendant a chance to object, they are not common. The Court will grant you an emergency hearing and a Temporary Restraining Order only if you show "good cause." The Court will find that there is "good cause" if you show that you are in danger of "bodily injury," which means being physically hurt. You will also need to prove that you are being harassed or stalked by the Defendant.

You should bring to your emergency hearing any information that will help the show the Court why you believe you are in danger and that you are being harassed or stalked. See ["What should I bring to my Restraining Order hearing"](#) below for ideas about the types of information that would be helpful to bring with you.

What happens at a Restraining Order hearing?

The hearing is the chance for you and the Defendant to tell the Court your side of the story. If you and the Defendant are both at Court on the hearing day, the Court might ask if you can agree on a Restraining Order. If you do not agree, then the Court will hold a hearing.

During the hearing, you and the Defendant will each have a turn to tell your story. When it is your turn, you should tell the court what has happened. Be sure to talk about each of the events you included on your Complaint and Motion for Restraining Order, and give the court any papers or other evidence you brought with you. The judge will also hear from any witnesses you bring with you.

After you and your witnesses have finished telling your stories, The Defendant or the Defendant's attorney will have a chance to ask you and your witnesses questions. Next, the Defendant will tell the Court the Defendant's story and present any witnesses the Defendant brought to Court. You or your attorney will have a chance to ask the Defendant and the Defendant's witnesses questions after they tell their stories to the Court.

To get a Restraining Order, you must prove to the Court at the hearing that you have been a victim of harassment, first degree, harassment, second degree, or stalking by the Defendant. The judge will decide whether to grant you a Restraining Order at the end of the hearing. If you get a Restraining Order, the judge will explain what the Order says.

What should I bring to my Restraining Order hearing?

You should bring to your restraining order hearing as much information as you can that will help the judge make a decision in the case.

- You should bring any **witnesses** that saw what happened or heard what was said.
- You should bring any **documents** that show what happened. Bring **three (3) printed copies** of any document you want to present to the court.
- If you contacted the police or the sheriff's department, bring any **papers officers gave you**.

- If you told the Defendant to stop contacting you, and you ever did so in writing, bring **three (3) printed copies of any letter, email, text message (or any other type of message)** where you did this.
- If you plan to talk about the Defendant contacting you, you should bring **three (3) printed copies of letters, emails, or social media posts from the Defendant.**
- To use any information that is on your phone in court, you must make a separate copy of that information off of your phone to give to the court. You should **PRINT OUT screen shots of text messages, photos, and call logs, and make a separate recording of any voicemail messages, videos, or any other evidence you want to show the court from your cell phone.** Otherwise, to review any evidence stored on your phone, the court must take your phone away from you for at least 30 days.
- If you were injured, bring **photographs of your injuries or papers from a doctor or a hospital.**
- If your property was damaged or destroyed, bring **photographs, receipts** showing how much you paid for the property and when you bought it, and **papers that show how much it would cost to fix or replace the property.**

Remember, you must show that the Defendant contacted you or did something to you two or more times. If possible, try to bring witnesses or papers that show something about each time the Defendant contacted you or did something to you.

What if the Defendant was not served?

If the Defendant was not served by the time of your Restraining Order hearing, the Court will need to schedule another hearing for a different date and ask the Sheriff's Department to try to serve the Defendant again. It is a good idea to bring any information you have about how to find the Defendant to your Restraining Order hearing to help the Court get the Defendant served, especially about where the Defendant lives and works.

How long does a Restraining Order last?

A Restraining Order lasts for one year from the date when it was entered by the Court.

How is a Restraining Order different than an Order of Protection or a Permanent Order?

There are two other types of orders that can protect people in South Carolina: Orders of Protection in Family Court and Permanent Restraining Orders in Circuit Court. Each order protects a different group of people and does different things. Some people might be eligible for more than one type of order. See the [chart below on page 6](#) for more information about these other types of orders and how they compare to Restraining Orders.

Where else can I get help?

The Court can only enter a Restraining Order if the specific requirements for harassment or stalking are met. If these do not fit your situation, there might be other legal remedies available to you. The website lawhelp.org/sc is a good place to learn about legal remedies in South Carolina and find free legal services that might be available to you. You also may want to visit the website of the [South Carolina Coalition Against Domestic Violence and Sexual Assault \(SCCADVASA\)](#) for information about available legal and social services in each county in South Carolina.

Restraining Order Remedies in South Carolina

	RESTRAINING ORDER	ORDER OF PROTECTION	PERMANENT RESTRAINING ORDER
Who can file?	Anyone who is being harassed or stalked by another person.	A person who is being physically harmed, threatened with physical harm, or sexually harmed by a current or former spouse, a co-parent, or someone they live with.	Anyone who has been a victim or witness of certain crimes by a person who has been convicted of that crime. Eligible crimes include: domestic violence, stalking, harassment, sexual offenses, as well as some others.
Where do I file?	Magistrates Court	Family Court	Circuit Court
How long does the order last?	1 year	6 months to 1 year	It is up to the court to decide.
What can the order do?	<p>Order the Defendant not to:</p> <ul style="list-style-type: none"> Abuse, threaten, or bother (in a bad way) you or your family Enter your home, work, school, or other places you go often Contact you in any way <p>The members of your family that the court can protect include your spouse, child, parent, sibling, or someone who lives with you.</p>	<p>Order the Defendant not to:</p> <ul style="list-style-type: none"> Abuse, threaten, or bother (in a bad way) you Enter your home, work, school, or other places you go often Contact you in any way Have firearms <p>Also enter temporary orders about:</p> <ul style="list-style-type: none"> Custody and visitation Spousal support Child support Who lives in the family home and who must move out Who keeps shared property such as cars and pets 	<p>Order the Defendant not to:</p> <ul style="list-style-type: none"> Abuse, threaten, or bother (in a bad way) you or your family Enter your home, work, school, or other places you go often Contact you and your family in any way <p>The members of your family that the court can protect include your spouse, child, parent, sibling, or someone who lives with you.</p>

How to Fill out a Complaint and Motion for Restraining Order

Form SCAA/749

Caption (Top Left of the Form)

- A. The person requesting the Restraining Order is the Plaintiff. If you are requesting a Restraining Order to protect you, write your name on the line above "Plaintiff."
- B. The person who the Plaintiff is requesting a Restraining Order against is the Defendant. Write the name of the person against whom you are requesting a Restraining Order on the line above "Defendant."
- C. Leave the line above "Civil Case Number" blank. The clerk will add this information when you file the document with the Court.

Line 1: Write the county that you live in on the blank line.

Line 2: Write the address where the Defendant lives. Write the Defendant's building number and street name and apartment number (if any) on the first blank line. Write the Defendant's city or county on the second blank line. Write the Defendant's state on the third blank line.

Example: "The Defendant lives at 1234 Apple Street, which is in Lexington County, South Carolina."

Line 3: Write the location where the stalking or harassment occurred. Write the city or county on the first blank line. Write the state on the second blank line.

Example: "The Harassment First or Second Degree or Stalking occurred in Lexington County, South Carolina."

Line 4: Check one or more boxes that describe what has happened to you. You may choose one, two, or all three options. Check as many boxes as you believe apply to your situation. The choices are: Harassment, First Degree, Harassment, Second Degree, and Stalking.

- A. **Harassment, First Degree** means that someone has made you feel mental or emotional distress by doing things such as:
 - following you,
 - watching you or hanging around your home, workplace, school, or another place you often go
 - damaging your property, or
 - repeatedly contacting you after you have told the person not to contact you or after you have filed a police report.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times.

For the full legal definition of Harassment (First Degree) [see the statute below \(§16-3-1700\(A\)\)](#) on page 9.

- B. **Harassment (Second Degree)** means that someone has made you feel mental or emotional distress by doing things such as contacting you repeatedly through verbal, written or electronic means.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times.

For the full legal definition of Harassment (Second Degree) [see the statute below \(§16-3-1700\(B\)\)](#) on page 9.

- C. **Stalking** means that someone has made you afraid that they will harm you or your family or damage your or your family's property by saying, writing, or doing something to you.

There must be a pattern of the Defendant acting in this way, which means the Defendant must have done something like this to you two or more times.

For the full legal definition of Stalking [see the statute below \(§16-3-1700\(C\)\) on page 9.](#)

Line 5: To prove that the Defendant has committed Harassment First Degree, Harassment Second Degree, or Stalking against you, you must show that the Defendant contacted you or did something to you at least two times. This section is where you should tell the story of every time you can remember when the Defendant contacted you or did something to you that you believe is harassment or stalking. You should tell a separate story about each time that you remember. If you remember more times when things happened than there is space to describe on the form, you can ask the clerk for another page to use to add more information.

The form includes blanks that you should use to fill in the details of each separate time when something happened. For each, you fill in the blanks and write:

- A. On the first line: the month, the day, the year, and the time when it happened,
- B. On the second line: the building number, street name, and apartment number (if any) where it happened,
- C. On the third line: the city or county and the state where it happened, and
- D. Starting on the fifth and sixth lines: the story of what happened.

For each story, you should explain what happened and how it made you feel. If you need more space to write any of the stories of what happened, you should ask the clerk for another page to use to add more information.

Example:

"On February 29, 2019, at 8:00 P.M., at 5678 Main Street, which is in Lexington County, South Carolina, the conduct complained of occurred when the defendant: came to my door and kept banging on it and screaming for me to let him in. The Defendant told me I would not live to see another day if he caught me with another man."

If you have any documents from police officers or copies of letters or text messages where you told the Defendant not to contact you, it is a good idea to give the court copies of these documents when you file your Complaint.

Line 6: This is where you tell the court what protections you would like the Court to include if it grants you a Restraining Order. You may choose one, two, or all three. Check as many as you think you might want included.

- a. This box means you ask the Court to order the Defendant not to abuse, threaten, or bother (in a bad way) you or members of your family. The members of your family that the court can protect include your spouse, child, parent, sibling, or someone who lives with you.
- b. This box means you ask the Court to order the Defendant not to come inside your home, workplace, school, or another place that you often go.
- c. This box means you ask the Court to order the Defendant not to contact you.

Article 17. Stalking and Harassment

S.C. Code Ann. § 16-3-1700 Definitions.

(A) **“Harassment in the first degree”** means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

- (1) following the targeted person as he moves from location to location;
- (2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;
- (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 or visited by the targeted person; and
- (4) vandalism and property damage.

(B) **“Harassment in the second degree”** means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) **“Stalking”** means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and 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 a member of his family;
- (4) criminal sexual contact on the person or a member of his family;
- (5) kidnapping of the person or a member of his family; or
- (6) damage to the property of the person or a member of his family.

(D) **“Pattern”** means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

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

(F) **“Electronic contact”** means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.

(H) A person who commits the offense of harassment in any degree or stalking, as defined in this section, while subject to the terms of a restraining order issued by the family court may be charged with a violation of this article and, upon conviction, may be sentenced pursuant to the provisions of Section 16-3-1710, 16-3-1720, or 16-3-1730.

S.C. Code Ann. § 16-3-1750.

Action seeking a restraining order against a person engaged in harassment or stalking; jurisdiction and venue; forms; enforceability.

(A) Pursuant to this article, the magistrates court has jurisdiction over an action seeking a restraining order against a person engaged in harassment in the first or second degree or stalking.

(B) 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 in the first or second degree or stalking occurred; or
- (3) the plaintiff resides if the defendant is a nonresident of the State or cannot be found.

(C) A complaint and motion for a restraining order may be filed by any person. The complaint must:

- (1) allege that the defendant is engaged in harassment in the first or second degree or stalking and must state the time, place, and manner of the acts complained of, and other facts and circumstances upon which relief is sought;
- (2) be verified; and
- (3) inform the defendant of his right to retain counsel to represent him at the hearing on the complaint.

(D) The magistrates court must provide forms to facilitate the preparation and filing of a complaint and motion for a restraining order by a plaintiff not represented by counsel. The court must not charge a fee for filing a complaint and motion for a restraining order against a person engaged in harassment or stalking. However, the court shall assess a filing fee against the non-prevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee.

(E) A restraining order remains in effect for a fixed period of time of not less than one year, as determined by the court on a case-by-case basis.

(F) Notwithstanding another provision of law, a restraining order or a temporary restraining order issued pursuant to this article is enforceable throughout this State.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE MAGISTRATES COURT

_____)
_____)
_____)
PLAINTIFF(S))
VS.)
_____)
_____)
DEFENDANT(S))

COMPLAINT AND MOTION
FOR RESTRAINING ORDER
(Harassment and Stalking)

CIVIL CASE NUMBER

The Plaintiff alleges:

1. The Plaintiff lives in _____ County.
2. The Defendant lives at _____, which is in _____.
3. The Harassment First or Second Degree or Stalking occurred in _____.
4. Plaintiff further alleges that the following conduct occurred by the defendant on the times, dates, and places listed below, and such conduct falls within the definition of:
 HARASSMENT, FIRST DEGREE (§16-3-1700 (A)), or
 HARASSMENT, SECOND DEGREE (§ 16-3-1700 (B)), or
 STALKING (§ 16-3-1700 (C)).
5. _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

(State details of harassment/stalking and other facts and circumstances upon which relief is sought above. Attach additional sheets if necessary.)

6. Plaintiff requests: (Check one or more)

- a. That the defendant be enjoined from abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family.
- b. That the defendant be enjoined from entering or attempting to enter the plaintiff's place of residence, employment, education, or other location.
- c. That the defendant be enjoined from communicating or attempting to communicate with the plaintiff in a way that would violate Article 17, Chapter 16 of the 1976 South Carolina Code of Laws, as amended.

SWORN to and Subscribed before me)
)
 This ___ day of _____, 20_____.)
)
 _____)
 Notary Public for South Carolina)
 My Commission expires: _____)

 Signature of Plaintiff or Person Filing
 on Behalf of Plaintiff

NOTICE: THE NON-PREVAILING PARTY IN THIS ACTION IS ASSESSED A FILING FEE OF FIFTY-FIVE DOLLARS (\$55.00). THE COURT MAY HOLD A PERSON IN CONTEMPT OF COURT FOR FAILURE TO PAY THIS FILING FEE. §16-03-170(D).

NOTICE TO DEFENDANT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE MAGISTRATES COURT

_____)
_____)
_____)
PLAINTIFF(S))
VS.)
_____)
_____)
DEFENDANT(S))

MOTION AND AFFIDAVIT FOR
EMERGENCY HEARING
(Temporary Restraining Order)
(Harassment and Stalking)

CIVIL CASE NUMBER

I, _____, being duly sworn, state that I am the Plaintiff/making this motion on behalf of the Plaintiff (circle one) and that the Plaintiff is in present danger of bodily injury as shown by the following facts:

Therefore, I request an emergency hearing.

SWORN to and Subscribed before me)
)
this _____ day of _____, 2_____)
)
_____)
Notary Public for South Carolina or Judge)
)
My Commission expires: _____)

Signature of Plaintiff or Person Filing
on Behalf of Plaintiff

ORDER

Request for emergency hearing granted/denied (circle one).

(MAGISTRATE)