

COVID-19 UPDATE: WORKING FOR YOU IN THESE CHALLENGING TIMES

Massachusetts 258E Restraining Order Attorney Wins Case In Massachusetts Supreme Judicial Court

February 12, 2014 | by **Stephen Neyman, P.C.**

Massachusetts Restraining Order Attorney **Our Attorney** successfully vacates Harassment Prevention Order [258E Order] in the Massachusetts Supreme Judicial Court.

The plaintiff and the defendant were former roommates. The defendant moved out of the apartment to a location down the street. The plaintiff claimed that she was in fear of harassment because the defendant drove by his former apartment [which was down the street] a number of times while she was unpacking her car turned around and drove by her house again. The **Newton District Court** Judge erroneously held that the plaintiff met the standard for the issuance of a Harassment Prevention Order. Our Attorney appealed the decision of the District Court judge to the Massachusetts Supreme Judicial Court. Our Attorney argued that the conduct of the defendant did NOT meet the threshold for the issuance of a Harassment Prevention Order. The Massachusetts Supreme Judicial Court agreed and held that there was insufficient evidence to issue the restraining order.

Another issue raised in this case was whether a 258 E Harassment Prevention Order becomes moot when the order expires during the pendency of the Appeal. Our Attorney presented convincing arguments that the orders are not moot because the defendant has serious interests to protect that survive even if the order expires. For example, similar to 209A cases, the existence of an order (even if expired) can have an effect on an individual if he or she is ever in court and bail becomes an issue, it can effect employment opportunities and in some cases effect a person's ability to attend some social activities or volunteer at school. The Supreme Judicial Court agreed with Our Attorney and held that an appeal from a 258E order should not be dismissed as "moot."

When someone is served with either a Massachusetts 209A Restraining Order or a M.G.L. Chapter 258E Restraining Order one of the first questions that he or she has is whether a lawyer should be retained. The simple answer to this question is YES. The restraining order is a "civil" order however, if a defendant is charged of violating the order he or she can find themselves in the criminal court charged with violation of a restraining order. Although this charge is a misdemeanor, there is a potential for a committed sentence and avoiding the charged in the first place by successfully arguing that the restraining order should not issue is the best defense.

In the event that a District Court Judge issues or extends either a 209A order or a 258E order a Notice Of Appeal should be filed immediately. This issuance and/or extension of the order can be appealed to the Massachusetts Appeals Court and if not successful there eventually the case can be heard by The Massachusetts Supreme Judicial Court. If a defendant wins in the higher court then the case is remanded and the order is vacated. This is a great result. It is important to realize that a Motion To Vacate The Restraining Order should be filed to ensure that the restraining order is vacated and not in any court records.

Posted in: **Restraining Order**

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