

April 21, 2008

The Honorable C. Ryan Johnson  
Magistrate, Greenwood County  
528 Monument Street, Room 100  
Greenwood, South Carolina 29646

Dear Magistrate Johnson:

In a letter to this office you referenced our prior opinion to you dated March 19, 2008 which dealt with the question of whether a defendant in a restraining order hearing pursuant to S.C. Code Ann. §§ 16-3-1750 et seq. has the right to a jury trial. The opinion determined that inasmuch as such is a matter in equity, the defendant was not entitled to a trial by jury as a matter of right.

You have now questioned whether S.C. Code Ann. § 22-3-230 which states that “[e]ither party to a suit before a magistrate shall be entitled to a trial by jury” would change the result of that opinion. In the opinion of this office, there is no statutory right for a defendant to request a jury trial in a restraining order hearing. Provisions for a hearing following the filing of a complaint and motion seeking a restraining order are set forth in Section 16-3-1760. Such provides that upon good cause shown, the court “may hold an emergency hearing” and “if the plaintiff proves his allegation by a preponderance of the evidence,...(the court)...may issue a temporary restraining order without giving the defendant notice of the motion for the order.” Subsection (D) of such provision states that “[t]he court shall hold a hearing on a motion for a restraining order within fifteen days of the filing of a complaint and motion, but no sooner than five days after service has been perfected upon the defendant.” As set forth, there is the requirement for a hearing but not a trial in such situations.

In a similar situation dealing with an order of protection, the Tennessee Attorney General in an opinion dated May 22, 2006 stated that

[w]hen presented with the issue of the right to a jury trial prior to the issuance of orders of protection, the Tennessee Court of Appeals...(in Clark v. Crowe, 37 S.W.3d 919, 921 (Tenn. Ct. App. 2000))...opined that the statute was silent on the issue and that, “the language of this act clearly conveys the legislature’s intent to provide a swift and efficient summary proceeding which requires only a hearing in front of a judge, not a jury trial.”

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Similarly, in the situation addressed by you regarding the issue of a restraining order, the General Assembly provides for a hearing, not a jury trial. In the opinion of this office, such requirement is an exception to the provisions of Section 22-2-230 which generally provides for either side to be entitled to a jury trial in matters before a magistrate. Such determination is also consistent with the cases cited in the prior opinion to you which have specifically held that a defendant does not have the right to a jury trial in a matter seeking a protective order, such as an anti-stalking order, inasmuch as such are matters within the equitable jurisdiction of the court.

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General