



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 18, 2001

Lieutenant Richard F. Moser
City of Charleston Police Department
180 Lockwood Boulevard
Charleston, SC 29403

Dear Lieutenant Moser:

Thank you for your letter requesting an opinion of this Office relating to S.C. Code Ann. § 16-3-1750.

Section 16-3-1750 of the South Carolina Code of Laws creates an action in magistrate's court allowing a person to seek a restraining order against an individual who may be engaged in the harassment or stalking of that person. The law provides the following:

(A) Under this article, the magistrate's court shall have jurisdiction over an action seeking a restraining order against a person engaged in harassment 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 or stalking occurred; **or**

(3) the plaintiff resides if the defendant is a nonresident of the State or cannot be found.

S.C. Code Ann. § 16-3-1750 (emphasis added).

Your question to this Office referenced the subsections of section (B) that relate to the appropriate venue for the filing of a restraining order. Your request for clarification of this law concerned the practice of magistrates in your jurisdiction only adhering to subsection (1), referring cases to the county where the defendant resides when the action commences. In reading this statute, this Office finds that if harassment or stalking occurs and an action for a restraining order commences, the order can be filed in either the county in which the defendant resides **or** the county in which the harassment or stalking occurs, and only if subsections (1) and (2) cannot be satisfied, can subsection (3) be used. The use of the disjunctive "or" after the semicolon shows that subsection (3) can only be used when (1) or (2) cannot be satisfied.

Request Letter

In answer to your second question regarding the authority of magistrates to prohibit persons subject to a restraining order from purchasing or possessing a handgun, no state law specifically addresses such. However, S.C. Code Ann. §16-3-1770(B) sets forth the possible terms of a restraining order issued pursuant to Section 16-3-1750. Those terms are as follows:

The terms of the restraining order shall protect the plaintiff and may include temporarily enjoining the defendant from:

- (1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family;
- (2) entering or attempting to enter the plaintiff's place of residence, employment, education, or other location; and
- (3) communicating or attempting to communicate with the plaintiff in a way that would violate the provisions of this article.

While Section 16-3-1770(B) does not explicitly provide that this is an exhaustive list of available conditions, the Office of Court Administration, a Division of our Supreme Court, has indicated that, "[i]f the court determines that the [restraining] order should be issued, the judge should simply check the terms that apply" on the form order provided.¹ This direction to the magistrate/municipal judge would appear to indicate that he/she should not go beyond the terms expressed in Section 16-3-1770(B). However, as it cannot be conclusively determined that this is the case, legislative or judicial clarification is probably necessary. Moreover, a judge could certainly advise as part of his/her order that persons subject to certain domestic violence related restraining orders are prohibited by federal law from possessing certain firearms. See 18 U.S.C.A. §922(g)(8).^{2 3}

¹ See *South Carolina Bench Book for Magistrates and Municipal Court Judges*, Second Edition.

² The statute provides in relevant part that possession of a firearm or ammunition which has traveled in interstate commerce is unlawful for any person who is subject to a court order that:

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person ... or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner ...; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner ...; or

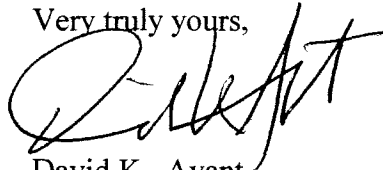
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner ... that would reasonably be expected to cause bodily injury....

³ The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. 18 U.S.C.A. §921(a)(32)

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This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor published in a manner of a formal opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Avant', written over the typed name.

David K. Avant
Assistant Attorney General