

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Lifting the Domestic Violence No-Contact Order is Not as Clear Cut as One Might Imagine

In every criminal domestic violence case such as battery or assault on a household member, the court will issue a no-contact order. The no-contact order prohibits contact between the defendant and the alleged victim. There can be very harsh penalties for violation of the no-contact order.

Violation of the no-contact order can result in a bench warrant for violation of the conditions of release. In the alternative, the judge may order a hearing to review the conditions of release. The judge can revoke the conditions of release and take the defendant into custody pending trial. The violation typically also results in new charges for the violation of the no-contact order. Repeated violations can result in felony charges.

Due to the severity of the possible consequences for violating a no-contact order, it is highly inadvisable to violate the order. This is the case even when the alleged victim wants contact. The fact is that the alleged victim will frequently want contact following domestic violence charges. However, judges are highly intolerant of violations of the no-contact order no matter what the wishes of the alleged victim. To avoid the wrath of the judge, the defendant must get the no-contact order lifted. To do this, the defendant must file a motion to modify the conditions of release to allow contact between the parties. The alleged victim must be present at the hearing on the motion to modify the conditions of release. Neither the court nor the prosecutor will allow modification in the absence of the alleged victim.

This can be a tricky situation. Cases where the alleged victim wants the no-contact order lifted typically involve very minor incidents. Frequently there was no domestic violence at all which may be why the alleged victim is so anxious to resume contact. The alleged victim in many of these cases called the police in error or for illegitimate reasons. As a result, alleged victims in these cases are often very nervous about going to court or speaking with the prosecutor about the case for fear of reprisals for making a false police report. And in essence, in order for the no-contact order to be lifted, the alleged victim must say that he or she does not fear harm from the defendant. One would think that this strongly suggests that no domestic violence occurred.

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Unfortunately, prosecutors do not necessarily see it this way for many legitimate reasons. Then there are those that will not let go of a case no matter what the alleged victim says, even when he or she says unequivocally that there was no domestic violence. Some prosecutors will simply assume the alleged victim is lying. Instead, these prosecutors that will take the opportunity at the hearing on the motion to modify conditions of release to insist that the alleged victim cooperate in the prosecution of the case. It is therefore very important to know the prosecutor in the case before filing the motion to modify conditions of release. Many, if not most, are very reasonable with no time or inclination to prosecute baseless cases. With these, the motion hearing is worth pursuing and in some cases may even result in dismissal of the charges. With overly enthusiastic prosecutors, it may be both pointless and even unwise to file the Motion.

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