

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Even Innocent Violations of Orders of Protection Can Have Consequences in New Mexico

There can be both civil or criminal domestic violence no-contact orders against an accused. Violation of either the Family Violence Protection Act Order of Protection or a no-contact order in a criminal domestic violence action is very serious. Violation of the Order of Protection can result in a number of penalties including orders of contempt and bench warrants. Violation of a no-contact order in a criminal domestic violence action results in additional criminal charges. Repeated or aggravated violations can result in aggravated stalking and other felony charges.

Unfortunately, these results may occur even in cases of inadvertent or innocent violations. Innocent violations such as contact through marital or family counseling and/or exchanges of the children can result in criminal charges for violations of the no-contact provisions in criminal cases. Worse yet, charges may result even if the alleged victim initiated the contact. This often happens when the alleged victim invites contact and then calls the police on contact or upon receiving a text or phone call from the accused. This may happen for any number of reasons. It may be malicious. At times, it could be that the alleged victim is simply confused or conflicted. The defendant may have a defense to the violation in cases where the alleged victim initiated the contact, but it will not prevent the criminal charges, and the stress and costs associated with those charges.

On many occasions, the alleged victim is confused or concerned about the process. The alleged victim may not want to pursue the case but be concerned about the calls or subpoenas from the district attorney's office. Many times, the alleged victim will actually call the accused for advice in these situations. The alleged victim should be seeking independent legal counsel. The accused should not be talking with the alleged victim at all. Certainly, the accused should not be weighing in on issues related to the alleged victim's cooperation in the criminal proceeding.

The accused in these situations should have no contact with the alleged victim. In fact, the accused should have absolutely no contact with the alleged victim under any circumstance when there is an order of protection or no-contact order in place. This includes receiving or returning calls or texts. The accused should under no circumstances advise or direct the alleged victim on how to proceed in the case. It is not uncommon that the alleged victim solicits the advice from the defendant and then passes the advice on to the prosecutor. At this point, an aggressive prosecutor may file charges for tampering or intimidation of a witness. Intimidation of a witness may be charged as a

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3rd degree felony carrying **felony sentencing**. This is so even when where the accused is genuinely concerned about the alleged victim and sincerely trying to help.

If an alleged victim is confused about the process or his or her rights in the process, he or she should contact a criminal defense attorney for advice. The reality is that the process can be just as confusing and frightening to an alleged victim as it is for the accused. This is particularly so in cases that have been blown out of proportion by law enforcement or prosecutors, which at times seems the rule rather than the exception. Unfortunately, alleged victims have little input and no control over the process once it begins. However, they do have rights and a criminal defense attorney will be able to explain those rights along with any legal duties on the alleged victim as the process moves along.

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