

Fighting Harassment Charges

1. What exactly constitutes harassment?

Harassment charges are commonly filed in Municipal Court. There are thousands of harassment cases filed each year. These type of cases range from bar fights, neighbor wars, and people who just don't like each other and have taken it to the next level.

New Jersey's harassment law is set forth at N.J.S.A. 2C:33-4. A person is guilty of a petty disorderly person's offense of harassment if he:

- a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively court language, or any other manner likely to cause annoyance or harm;
- b. Subjects another to striking, kicking, shoving, or other offense touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

Harassment becomes an indictable offense of the fourth degree if the harassment occurs while the defendant is on parole or probation for an indictable criminal offense. In summary, harassment cases are always fact sensitive.

2. Why is important to vigorously defend against a harassment charge?

A criminal conviction for harassment can wreck your life. Try getting a decent job with a criminal record. Moreover, being charged with harassment can destroy your reputation, make it difficult for you to find a job, or make a landlord afraid to permit you to rent from them. You should not let one mistake destroy your life.

3. What does the prosecutor have to prove to convict a person of harassment?

A person must commit an annoying or offensive act to another person to be convicted of harassment. Furthermore, most importantly you must also have an intent to harass the victim. The State must prove that the defendant had a conscious object to

engage in conduct that is intended to harass the victim. In the absence of proof beyond a reasonable doubt on this element, a defendant charged with harassment in Municipal Court must be found not guilty.

4. What type of annoying or alarming conduct constitutes harassment?

There are no bright line rules on what constitutes harassment conduct. Each harassment case harassment turns on their own individual facts and circumstances. When considering whether a communication(s) constitutes harassment, the court must analyze such factors such as the age, gender, occupation, and the relationship between the parties. It is important to emphasize that the New Jersey courts have consistently held that thoughtless or insensitive words by itself do not constitute harassment. In summary, the line to determine whether conduct is insensitive and thoughtless or harassment is a very thin.

5. What are the penalties for harassment?

Harassment is generally considered to be a disorderly person's offense. The possible sentencing exposure is up to six months in jail and up to \$1,000 in fines.

6. What are some key principles to keep in mind when defending against a harassment charge?

When a person is charged with harassment based on annoying or alarming conduct a key factual distinction must be made. The court must determine whether or not the conduct was just insensitive or whether it is in fact harassment. In the majority of the cases, this legal distinction is always extremely difficult to make. Thankfully, the New Jersey's courts have provided some helpful legal doctrines on this area of law. The first doctrine to emphasize is that intent is a required element of New Jersey's harassment statute. Therefore, it must be proven the defendant made the communication(s) for the purpose of harassing the victim. See, State v. Hoffman, 149 N.J. 564 (1997).

It also must be noted that the New Jersey's courts have consistently held that profanity by itself does not constitute an intent to harass. Instead, a communication must disturb, irritate, or bother the victim to be considered to be harassing. See, Cesare v. Cesare, 154 N.J. 394 (1998). Moreover, the New Jersey's courts have consistently held that it is not the purpose of the harassment law to criminalize communications made in inoffensive language, at convenient hours, or in the communicator's own name. Finally, the factors of gender, the age and occupation of the victim, are relevant to determine whether a communication(s) is severe enough to rise to the level of a harassment charge.

7. What is the best strategy to beat a harassment charge?

There are always legitimate defense strategies to use against any type of a harassment charge. The best strategy is to try to have a harassment charge downgraded to a municipal ordinance charge. A municipal ordinance charge will not give you a criminal record, and the only penalty will be a fine. If this strategy is not successful, then you could also consider fighting the case. The prosecutor's evidence may be very flimsy or subjective, or the witnesses may not even show up at Municipal Court. Believe it or not the most common way that a harassment charge is dismissed is if the victim drops the charges, or if he does not show up to court to testify.

8. What is the most important case in New Jersey on what constitutes harassment?

The most important case is State v. Hoffman, 149 N.J. 564 (1997). This case was decided by the New Jersey Supreme Court. Meanwhile, the vast amount of other notable domestic violence cases was decided by the Appellate Division. Here, the issue(s) was whether or not the husband's act of mailing a torn up child support order on two separate times constituted harassment. Another issue was whether the mailing out of the ripped up legal papers constituted a violation of a prior restraining order. Here, the parties really had a rocky marriage. There were many restraining orders in this case, dismissals, and violations of the orders. Ultimately, the defendant pled guilty to three years of probation and to 364 days in jail.

While the defendant/ex-husband was in the county jail, he mailed by regular and certified mail to his ex-wife a copy of a notice of motion to reduce child support. He also sent her a copy of a torn up child support order. Thereafter, the ex-wife filed two complaints against her former husband for these two mailings. One complaint was based on harassing communications, and the other charge was for a contempt of a domestic violence order.

The domestic violence charges alleged that the mailings by the ex-husband of a torn-up support order to his former spouse violated the harassment statute, N.J.S.A. 2C:33-4(a). The New Jersey Supreme Court did not agree. Instead, the Hoffman court held that the manner of communications did not establish the requisite harassing intent to annoy or alarm.

Thus, the Hoffman court held that the ex-husband did not violate the harassment statute by simply mailing a ripped-up support order to his former wife. The court further held that the mailings, while harassing in intent, did not invade the ex-spouse's privacy, because it occurred during convenient hours and was in the ex-husband's name. However, the New Jersey Supreme

Court did hold that the mailings did violate the terms of the prior restraining order that prohibited no contact. In summary, in the Hoffman case, the defendant prevailed on the harassment charge. However, he was convicted for violating a prior restraining order because he sent the motion and the torn up order to his wife. This type of contact was held to violate the no contact provisions of the restraining order.