

A harassment protection order was brought against me and it was denied because the petitioning accuser was lying, can I get the record of it expunged?

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Answer: Maybe, but it is unlikely due to the standard that must be met.

It is a common occurrence; a harassment protection order is issued *ex parte* (without notice or the presence of the opposing side) and the defendant is served with it. The required hearing is scheduled in 10 days from that date. At the hearing, with the benefit of the defendant present, the order is not continued and the matter is over, but is it.

The statute does require that the court send written notification to the appropriate law enforcement agency directing it to destroy its records related to the terminated/vacated order. We trust that happens. However, this remedy for the defendant is deceptive, because it does not eliminate all records of the charge, in fact it does not address the most important record.

What many people do not know is that when a harassment protection order is issued, a record of it goes to the Massachusetts commissioner of probation, just like restraining orders do, to be recorded in a certain state-wide registry. Understand that this registry is checked by the court to see if there is a history for the defendant before any harassment protection order is issued. This means that in a subsequent application by the same or a different person the court will see a history for the defendant. This couldn't help. To have a record in this state-wide registry when a person didn't do anything wrong would seem to be unfair, especially since the statute does require the police to delete their records.

The only way to have the record deleted from the state-wide registry maintained by the commissioner of probation is to have the matter expunged. J.S.H. v. J.S., 91 Mass. App. Ct. 107 (2017). A person may think that in the scenario described above that it would be expunged, right? After all, the petitioner was lying. Well it takes more than that. The standard is that it must be shown that there was a fraud on the court, which "occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 729-30 (2006).

Examples are when forged letters or fabricated emails are presented or there is a calculated pattern of false statements. J.S.H. v. J.S., 91 Mass. App. Ct. 107 (2017). Simply lying does not constitute a fraud on the court, there must be something more. Id.

Make no mistake, harassment protection orders are serious business. In the event that you are facing a harassment protection order matter, please feel free to give this office a call.

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