

The State of South Carolina



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Opinion 18-88-74  
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Nancy E. Shealy, Esquire  
Staff Attorney  
South Carolina Court Administration  
Post Office Box 50447  
Columbia, South Carolina 29250

Dear Nancy:

In a letter to this Office you referenced that pursuant to Section 17-15-10 of the Code conditions of release may be imposed by a magistrate or municipal judge in releasing a defendant on bond. Noting that magistrates and municipal judges have limited authority under the Protection from Domestic Abuse Act, Sections 20-4-10 et seq. of the Code, you have questioned whether a magistrate or municipal judge, as a condition of bond in a criminal domestic violence case, can provide that a defendant (1) be restrained or enjoined from entering the domestic dwelling; (2) be restrained from the use of specified bank accounts; or (3) be restrained from leaving the State of South Carolina.

Section 17-15-10 provides that a defendant may

... be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release:

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(a) Require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;

(b) Place the person in the custody of a designated person or organization agreeing to supervise him;

(c) Place restrictions on the travel, association or place of abode of the person during the period of release;

(d) Impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

Additionally, Section 17-15-30 states that

... (i)n determining which conditions of release will reasonably assure appearance, or what release would constitute an unreasonable danger to the community, the court may, on the basis of available information, take into account the nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.

As referenced by you, magistrates and municipal judges have limited authority under the Protection from Domestic Abuse Act. Pursuant to Section 20-4-30 a magistrate may issue an order of protection providing only the relief set forth by Section 20-4-60(a)(1) which is "(t)emporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed." A family court judge, however, has authority to order additional relief. See: Section 20-4-60 of the Code. Violation of any order of protection issued is a misdemeanor punishable pursuant

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to Section 16-25-50 of the Code. Also, failure to comply with an order of protection may constitute contempt of court. Any such contempt action would be heard by the family court.

In addition to any relief authorized by the Protection from Domestic Abuse Act, other relief is available in a criminal domestic violence case. Section 16-25-20 provides that it is a criminal offense for an individual to "... cause physical harm or injury to his or her family or household member ... (or) ... offer or attempt to cause physical harm or injury to his or her family or household member with apparent present ability under circumstances reasonably creating fear of imminent peril." The penalty for a first or second offense violation is a fine of not more than two hundred dollars or imprisonment for not more than thirty days. A third offense is a general sessions court offense.

As to your specific question concerning whether a magistrate or municipal judge in setting a bond in a criminal domestic violence case could impose the conditions set forth above, it appears that a defendant could be restrained or enjoined from entering a domestic dwelling and be restrained from leaving the State of South Carolina. As noted, Section 17-15-10 authorizes as a condition of release restrictions on a defendant's "travel, association or place of abode of the person during the period of release." Also, the judge may impose any other condition considered "reasonably necessary to assure appearance as required." Such conditions would be consistent with the provisions of Section 17-15-30 which sets forth additional matters to be considered in determining conditions of release.

Concerning your further question as to whether a defendant as a condition of bond can be restrained from using specified bank accounts, it appears that such a condition would similarly be appropriate in a criminal domestic violence case in certain circumstances. As noted, in setting a bond a court determines what conditions of release will reasonably assure an appearance. Also, as stated above, Section 17-15-30 referenced several criteria to be considered in determining conditions of release. A specific finding restraining the use of specified bank accounts therefore may be made in certain circumstances. However, such a restraint must be tied to a condition of a bail bond and could not be used to infringe on a matter that should be considered in typical domestic litigation. Therefore, a magistrate or municipal judge could impose such a condition in releasing a defendant on bond in a criminal domestic violence case.

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It should be stressed that these conditions can only be imposed as conditions of a bond and cannot be imposed as part of an order of protection which is issued by a magistrate or municipal court judge. As noted, in such circumstances the authority of these judges is very limited.

If there is anything further, please advise.

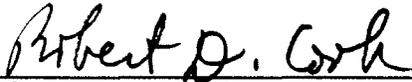
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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