

## MEMO FROM VIOLENCE FREE MINNESOTA REGARDING HARASSMENT RESTRAINING ORDERS

A petitioner is entitled to a waiver of the filing fees in a harassment restraining order based on the wording of Minnesota Statute § 609.748, subd. 3(a), regardless of the petitioner's IFP status.

Minnesota Statute § 609.748, subd. 3(a) specifies that “the filing fees for a restraining order under this section are waived for petitioner if the petition alleges acts that would constitute a violation of section 609.749 [the stalking statute] or sections 609.342 to 609.3451 [criminal sexual misconduct statutes].” Included in the section 609.749 definition of harassing behavior are such actions as stalking, following, or monitoring another person, whether in person or through technological means, repeated telephone calls, causing the telephone to continuously ring when the victim won't answer, and repeated letters, emails, messages, packages, etc. When a petitioner files for a harassment restraining order, alleging acts within the scope of the statute, that petitioner should be granted a waiver of the filing fee for her petition for a harassment restraining order, as directed under the language of section 609.748, subd.. 3(a).

Courts have been denying petitioners with valid claims of harassment/stalking behaviors the right to file for a restraining order without payment of the filing fee. The district courts are requiring petitioners to apply for *in forma pauperis* status and allowing a waiver of the filing fees only if the petitioner qualifies for IFP status. The language of section 609.748, subd.. 3(a) makes a waiver of the filing fee available to *any* petitioner who alleges acts of stalking or criminal sexual conduct; the waiver is not based on financial need. Therefore, the district courts that deny filing fee waivers to petitioners with valid allegations are in error.

A court's denial of a petitioner's request for a filing fee waiver effectively decides the case and establishes a new rule of law. This denial also creates precedent for future cases.

The district courts effectively decide these cases by requiring the petitioner to meet the financial requirements to be granted IFP status or to pay the filing fee. In cases where the petitioner does not qualify for IFP status, but paying the filing fee would be too financially burdensome, the case is effectively decided against the petitioner. The petitioner will not have the opportunity to obtain a harassment restraining order, no matter how egregious or dangerous the behaviors alleged.

Additionally, the denial creates a new rule of law that does not follow the language of 609.748. It creates a rule of law that allows for only IFP eligible petitioners to have the fee waived, and all other petitioners must pay the fee. These denials create a precedent with this new rule of law and prohibit petitioners from obtaining a restraining order against harassment and/or stalking behaviors.

Petitioners who file for harassment restraining order with allegations that fall within the guidelines for stalking behavior as outlined in section 609.749 should be afforded a filing fee waiver under 609.748, subd.. 3(a), without concern about IFP status. Courts have been denying petitioners in similar cases a waiver of filing fees. By denying these waivers, the courts are effectively deciding the cases, as well as creating new law and precedent.