Civil Rights Intimidation; Harassment

**QUESTIONS**

1. Do the provisions of Tenn. Code Ann. § 39-17-309 apply to persons who are intimidated from exercising a right or privilege secured by the Constitution or laws of the United States or the Constitution or laws of the State of Tennessee, even though such act of intimidation is not related to race, color, ancestry, religion or national origin?

2. Under the provisions of Tenn. Code Ann. § 4-21-701, does a civil cause of action for malicious harassment exist even though the harassment is not related to race, color, ancestry, religion or national origin?

**OPINIONS**

1. No.

2. No.

**ANALYSIS**

Tenn. Code Ann. § 39-17-309(a) (civil rights intimidation) begins with the following sentence:

The general assembly finds and declares that it is the right of every person regardless of race, color, ancestry, religion or national origin, to be secure and protected from fear, intimidation, harassment and bodily injury caused by the activities of groups and individuals.

Tenn Code Ann.§ 39-17-309(a) protects “every person” from intimidation, harassment and bodily injury for exercising his civil rights. For there to be a violation of this criminal statute, the intimidation must have occurred because of an individual’s race, color, ancestry, religion or national origin. *See Surber v. Cannon*, No. M1998-00928-COA-R3-CV, 2001 WL 120735, *5 (Tenn. App.
In Surber, the Tennessee Court of Appeals explained: 1

Tennessee Code Annotated § 39-17-309, which provides the elements necessary to establish malicious harassment, specifically addresses the legislature’s concern about ‘intimidation’ arising from ‘race, color, ancestry, religion or national origin.’ This language identifies the statute as an ‘ethnic intimidation’ or ‘hate crimes’ statute, similar to those passed in a number of states. . . . In general, conviction under such statutes requires proof of the defendant’s specific intent to assault or commit other specified acts due to the defendant’s perception of the victim’s race, religion, national origin or other factor defined by the relevant statute.

February 14, 2001). 1 Thus, this criminal statute does not proscribe intimidation of others from exercising civil rights if the act of intimidation is not related to race, color, ancestry, religion or national origin. It does not include incidents of intimidation unless they are within one of these protected groups. See Young v. State Farm Mut. Auto. Ins. Co., 868 F.Supp. 937, 943 (D.C.TN. 1994) (age not a protected category).


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Requested by:

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