

What magistrates need to know: domestic violence protective orders

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Fall magistrates conference

j.c o r p e n i n g



Everything you need to know:

whether and how to issue an ex parte
d v p o



Let's look at the law

- Who can file?
 - Any NC resident: whether or not act of DV occurred in NC
 - If act occurred in NC, residency not required
- Civil action
 - Initiated by complaint or motion in existing action
 - No filing fee
 - No lawyer required/necessary (always helpful)
- Remedy:
 - Injunctive relief: prohibits certain acts, and or requires actions
 - It's a restraining order
 - Enforceable by contempt or criminal charge of violating DVPO

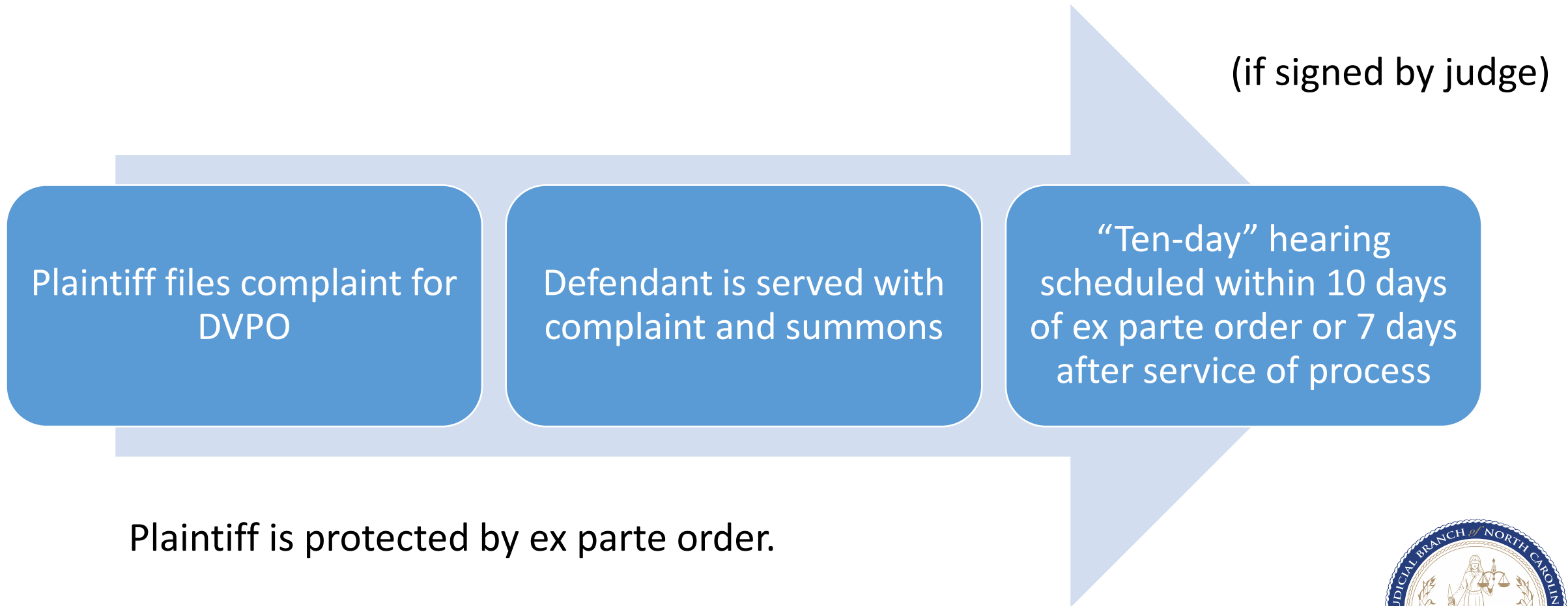


Where do you come in?

- Enforcement: LEO and/or victim
- Authorized by CDCJ to issue Ex Part Domestic Violence Protective Orders
 - Temporary order
 - Protect Plaintiff pre-trial
 - Maximum 10 days
 - Shorter if issued by Magistrate: end of the next business day
- How many are authorized by CDCJ to issue these orders?
 - Nights? Weekends? Holidays?



timeline



GS 50B2(c 1): Ex Parte DVPOs

- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.
- Translation:
 - CDCJ may give a magistrate authority to hear requests for ex parte DVPOs when:
 - Written authorization given
 - District court **not** in session
 - No DCJ will be available for **4** hours



Procedure

- Generally, file with clerk
 - If request for ex parte DVPO and no DCJ available, you're up (if authorized)
- If clerk's office closed and you're authorized:
 - Plaintiff may "file" complaint with magistrate as first step
 - The magistrate shall accept the complaint for filing, note thereon the filing date, and issue a summons. 50B-2(c1)
 - Any complaint, motion or other documents accepted by the magistrate shall be delivered to the clerk's office as soon as the office is opened for business, **whether or not the magistrate grants the request for the ex parte DVPO. GS 50B-2(c1)**
 - Clerk shall provide forms..... GS 50B-2(d)



Aoc -c v-303:in s t r u c t i o n s f o r d v f o r m s

- Complaint & Motion for DVPO (CV-303)
- Notice of Hearing on DVPO (CV-305)
- Ex Parte DVPO (CV-304)
- Civil Summons DV (CV-317)
- Identifying Information About a DV Action (CV-312)
- Affidavit as to Status of Minor Child (CV-609)



More....

- An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed.
- Translation:
 - Order automatically expires on the next day court is in session
 - Magistrate is responsible for scheduling a second ex parte hearing before a DCJ before the order expires (even if the magistrate denies the request for the ex parte DVPO)
 - Local practice.....



Ultimate questions

- “If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate **may** enter orders as it deems necessary to protect the aggrieved party or a minor child from those acts.” **GS 50B-2(c)(1)**
- If the magistrate “finds that an act of domestic violence has occurred, the court **shall** grant a protective order restraining the defendant from any further acts of domestic violence.” **GS 50B-3(a)**



Definition of dv

Personal Relationship + Act



Personal relationship

- Current or former spouses
- Persons of the opposite sex who live together or have lived together
- Related as parent and children, including others acting *in loco parentis* to a minor child
 - Includes grandparents and grandchildren
 - Defendant must be 16+
- Have a child in common
- Current or former household members
- Are persons who are or have been in a dating relationship (ignore “persons of the opposite sex”)
- Remember “domestic” definition in 15A-534.1 is different



M.E. v. T.J., 380 NC 539 (2022)

- Court held “of the opposite sex” language in GS 50B-1(b)(6) unconstitutional
- Ordered that statute be read to cover same sex dating relationship



What's a dating relationship?

- “...one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”
 - GS 50B-1(b)(6)
- Thomas v. Williams 242 NC App 236 (2015)
 - No magic minimum length of time. Court should consider all the circumstances. “Dating relationships” should be interpreted broadly to cover a wide range of romantic relationships, with “only the least intimate of personal relationships” excluded.



An act

- Attempting to cause bodily injury, or intentionally causing bodily injury; or
- Placing the aggrieved party, or a member of the aggrieved party's family or household in fear of:
 - Imminent serious bodily injury or
 - Continued harassment
 - Defined in GS 14-277.3A
 - That rises to such a level as to inflict substantial emotional distress; or
- Committing any act defined in GS 14-27.21 through GS 14-27.33



Notes on the act

- Acts in self-defense are not included
- Plaintiff must be involved in personal relationship with the Defendant but act may be directed to specified others
- “Fear” in #2 refers to actual, subjective fear. Objective test is not applicable
 - Can we talk about subjective v. objective?
- “Imminent” is not the same as immediate, but rather “without significant delay”
- “Harassment” is knowing conduct (including electronic communication) that torments or terrorizes the other person and serves no legitimate purpose
- Offenses specified in #3 are criminal sex offenses



Special rules for kids.....



Here are the rules

- “(A) temporary order for custody ex parte and prior to service of process and notice **shall not be entered** unless the magistrate finds that **the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.**”
- If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse:
 - Upon request of the aggrieved party
 - The magistrate shall consider **and may order** the other party to:
 - Stay away from a minor child, or
 - Return a minor child to plaintiff, or
 - Not remove a minor child from the physical care of parent or person *in loco parentis*
 - ...If the magistrate finds that the order is in the best interest of the minor child and necessary for the safety of the minor child



Requests for custody: be careful

- Plaintiff may be making a false allegation in order to gain an advantage in a custody dispute
- Plaintiff may be attempting to use the DVPO action as a substitute for a custody action
- Plaintiff may have genuine concerns about the safety and well-being of the children that, impartially assessed, fall short of “substantial risk of injury”
- Plaintiff’s decision to leave the relationship and seek DVPO is motivated either entirely or in large part by the defendant’s threats or actions directed at children
- Defendant is angry/devastated/desperate about separation and plaintiff has justified concerns about the children’s safety



Special rules for guns.....



- Magistrate must always ask about defendant's ownership and/or access to firearms and ammunition, along with identifying information
 - Including permits to purchase/carry
- If statutory requirements exist, magistrate must order that defendant surrender all firearms, ammunition, and permits to sheriff
- When can guns/ammunition/permits be returned? (you aren't involved!)



Required surrender of firearms

- 50B-3.1
- “...court shall order the defendant to surrender.... If:”
- Defendant has used or threatened to use a deadly weapon, or has a pattern of prior conduct involving the use or threatened use of a firearm against a person; or
- Has made threats to seriously injure or kill plaintiff or minor child; or
- Has threatened to commit suicide; or
- Has inflicted serious injuries on plaintiff or child
- Multiple check boxes on the order: use care
- Exception for law enforcement or military (official duty): use care



Ex parte order aoc-cv-304



Basic school reminders.....

REMEMBER RENEE

BE GOOD LISTENERS

DON'T LET YOUR FRUSTRATIONS BECOME BIAS



QUESTIONS?





Thank You

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